MANDATORY REPORTING OF ELDER ABUSE
C.R.S. §18-6.5-108

“Protect Elders and Protect Yourself”

Law effective upon signature by Governor: May 16, 2013 (New crimes and amendments)
Mandatory Reporting begins on July 1, 2014
Training of Law Enforcement, Adult Protective Services, and general public to begin January 1, 2014

Who:
Medical Professionals*
Social Workers
Law Enforcement
Court-Appointed Guardians & Conservators
Fire Protection Personnel
Community-Centered Board Staff
Financial Institutions**
Care Facilities***
Home Care Placement Agency
Clergy (if outside protected communication)
— All of the Above regardless of whether paid or unpaid position

What:
If abuse or exploitation of an at-risk elder is observed, OR
If there is reasonable cause to believe that an at-risk elder has been abused or exploited or is at imminent risk of abuse or exploitation, THEN, that person shall report it to law enforcement agency within 24 hours after the observation or discovery.

At-Risk Elder – any person who is 70 years of age or older
Abuse – any of the following acts or omissions:
• Non-accidental bodily injury, SBI or death
• Confinement or restraint that is unreasonable under generally accepted caretaking standards
• Subjection to sexual conduct or contact classified as a crime under Title 18
• Caretaker neglect
• Exploitation

Exploitation – any of the following acts or omissions:
Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk elder of the use, benefit, or possession of anything of value.

Or, Without legal authority:
• Hires a third party for the profit or advantage of the person or another person to the detriment of the at-risk elder
• Forces, compels, coerces, or entices an at-risk elder to perform services for the profit or advantage of the person or another person against the will of the at-risk elder
• Misuses the property of an at-risk elder in a manner that adversely affects the at-risk elder’s ability to receive health care or health care benefits or to pay bills for basic needs or obligations

When:
Within 24 hours: file report with law enforcement
Law Enforcement will ask:
• Name, address and contact information of At-Risk Elder, the reporting party, and caretaker, if any
• Name of alleged perpetrator
• Nature and extent of abuse/suspected abuse
• Other pertinent information

Within 24 hrs Law Enforcement will notify Human Services and the District Attorney
Law Enforcement will complete an investigation when appropriate
Law Enforcement will file a summary report with Human Services and the District Attorney

Criminal Charges:
• Willful failure to report if elder abuse has been observed or when one has reasonable cause to believe elder abuse has occurred is a class 3 misdemeanor
• Knowingly filing a false report of elder abuse is a class 3 misdemeanor
• Penalties include up to 6 months jail and/or $750 Fine

Immunity:
• If report is made in GOOD FAITH, there is immunity from suit and liability for damages in civil actions and criminal prosecution
  - If the reporter is the perpetrator then immunity does not apply
• Mandatory reporting does not create a civil duty of care or establish a civil standard of care that is owed to an at-risk elder.

*Medical Professionals include Physicians, surgeons, Physician Assistants, Osteopaths, physicians in training, podiatrists, occupational therapists, physical therapists, medical examiners, registered nurses, LPNs, nurse practitioners, emergency medical service providers, hospital and long-term care facility personnel, chiropractors, psychologists and other mental health professionals, dentists, pharmacists

**Financial Institutions include Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions

***Care Facilities include Caretaker, staff member, employee, or consultant for a licensed or certified care facility, agency, home or governing board, including but not limited to home health care providers
STOP ELDER ABUSE

Things to Watch For . . .

A Senior or Elder Adult may be or is:
- Not allowed to speak for themselves or make decisions,
- Nervous or afraid of the person with them
- Confused about ‘missing funds’ from account
- Coerced into making transactions
- Accompanied by a stranger and withdrawing large sums of money
- Appears to be neglected or receiving insufficient care given their financial status

Red Flags—
- Unusual cash withdrawals in a short period of time by the Elder, a POA Holder, or another
- Abrupt increase in credit card activity or flurry of bounced checks.
- Sudden change in banking practice, e.g. late night ATM withdrawals
- Account shows ATM activity but Elder unable to leave home
- Abrupt and unexplained change in POA or POD
- New names added to accounts
- Signature seems forged, unusual or suspicious
- Out-of-sync check numbers
- Vulnerable elder fails to understand completed transactions or repercussion of his or her actions
- Bank or credit card statements being sent to an address other than the vulnerable Elder
- Unexplained disappearance of funds or valuable possessions
- Bruises, scrapes or signs of physical abuse
  (Physical Abuse, Financial Abuse & Neglect are frequently seen together)

Gramm-Leach-Bliley Act, 15 U.S.C. 6802(e), §502(e)

Financial institutions may disclose nonpublic personal information:
- To comply with federal, state or local laws such as laws that require reporting of suspected abuse
- To respond to a civil, criminal or regulatory investigation or subpoena
- To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability

Uniform Power of Attorney Act
C.R.S. §15-14-724:

Without specific authority an Agent with the POA cannot:
- Create, amend, revoke a trust
- Make a gift
- Create or change beneficiary designations
- Non-family member cannot create an interest in the principal’s property for self or others.

Criminal Exploitation & Undue Influence

Criminal Exploitation of an At-Risk Elder: knowingly using deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk elder of the use, benefit, or possession of anything of value.

C.R.S. 18-6.5-103 (7.5)

Undue Influence: The use of influence to take advantage of an at-risk Elder’s vulnerable state of mind, neediness, pain or emotional distress.

C.R.S. 18-6.5-102 (13)
ELDER ABUSE COMES IN MANY DIFFERENT FORMS.
- PHYSICAL ABUSE
- NEGLECT
- FINANCIAL EXPLOITATION
- SEXUAL ABUSE

KEEP YOUR EYES AND EARS OPEN FOR ALL FORMS OF ABUSE

Recognizing Peer Abuse
- Short temper—yelling, snatching things from patients’ hands, etc
- Seeing another staff member being rough with a patient
- Being too quick on a transfer or movement of a patient
- Seeing neglect—ignoring a patient’s request for assistance
- Shorting a patient on their medications for the purposes of theft or personal use
- Stealing the patient’s property

HIPAA
Applies to the protection of information contained in MEDICAL RECORDS

YOU MAY DISCLOSE your own observations and statements made by a victim/witness without disclosing personal medical information

YOU MAY DISCLOSE protected health information to law enforcement when you REASONABLY BELIEVE the patient is a victim of abuse, neglect or domestic violence

45 CFR 164.512(C)(1)

Recognizing Family Abuse
- Who visits regularly?
- What is the patient’s demeanor after a visit?
- Is property disappearing with no explanation?
- Do a visual inspection immediately after a suspicious family visit
- Keep the visitor log updated!

How to Protect Yourself
- Have a witness with you when possible
- When you get frustrated—walk away for a minute to calm down (when possible)
- Get another staff member to help
- Talk to your supervisor about your concerns before it becomes a problem
- Learn ways to relax or calm down—deep breaths, counting exercises, etc
- Take care of your personal life—get sleep
- Recognize your own weaknesses and find ways to self improve
- If you have a bad personal day it is not the patient’s fault

Recognizing Peer Abuse
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45 CFR 164.512(C)(1)

WHAT IF THE PATIENT HAS A POA?
Uniform Power of Attorney Act
C.R.S. §15-14-724:

Without specific authority an Agent with the POA (financial) cannot:
- Create, amend, revoke a trust
- Make a gift
- Create or change beneficiary designations
- Non-family member cannot create an interest in the principal’s property for self or others.

Medical POA:
- Authorized to make healthcare decisions
- May not consent or refuse treatment over the principal’s (informed) objection
MANDATORY REPORTING OF ELDER ABUSE
For Healthcare Providers

Who Must Report?
Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions

What Must be Reported?
If abuse or exploitation of an at-risk elder is observed, or if there is reasonable cause to believe that an at-risk elder has been abused or exploited or is at imminent risk of abuse or exploitation, the information shall be reported to a law enforcement agency within 24 hours after the observation or discovery.

At-risk elder
Any person 70 years of age or older

Abuse
Any of the following acts or omissions:
- Non-accidental bodily injury, serious bodily injury, or death
- Confinement or restraint that is unreasonable under generally accepted caretaking standards
- Subjection to sexual conduct or contact classified as a crime under Title 18
- Caretaker Neglect
- Exploitation

Exploitation
Any of the following acts or omissions:
- Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk elder of the use, benefit, or possession of anything of value.
- Or without legal authority:
  - Hires a third party for the profit or advantage of the person or another person to the detriment of the at-risk elder
  - Forces, compels, coerces, or entices an at-risk elder to perform services for the profit or advantage of the person or another person against the will of the at-risk elder
  - Misuses the property of an at-risk elder in a manner that adversely affects the at-risk elder’s ability to receive health care or health

What Information is Required?
- Name, address and contact information of at-risk elder
- Name, address, and contact information of person reporting observation
- Name, address and contact information of caretaker, if any
- Name of alleged perpetrator
- Nature and extent of abuse/suspected abuse
- Other pertinent information

Who do you Call to make Report?
Call 911 for: In Progress abuse or involved parties are on scene
Call Non-Emergency number for Local Law Enforcement for
- Discovered or suspected abuse that is not imminent
- “Cold Calls” for prior abuse & no immediate danger
- Account Audits

What Happens Next?
- Law enforcement agency will notify Human Services (APS) and District Attorney;
- If appropriate, law enforcement will complete a criminal investigation and file a summary report with Human Services (APS) and the District Attorney.

Immunity:
If report is made in good faith, there is immunity from suit and liability for damages in civil actions and criminal prosecution.
- If the reporter is the perpetrator, then immunity does not apply.

Penalty for Failure to Report:
Willful failure to report is a class 3 misdemeanor:
- $50 fine (minimum)
- 6 months imprisonment or $750 fine, or both (maximum)

Other professions that require mandatory reporting of observed abuse and exploitation of an at-risk elder: medical professionals, social workers, law enforcement, court-appointed guardians and conservatives, fire protection personnel, community-centered board staff, care institutions, home care placement agencies, and clergy (if outside protected communication). Applies to all personnel, whether paid or unpaid position.

For more information about wrongs to at-risk adults and at-risk elders, see Colorado Revised Statutes §18-6.5-108 and 26-3.1-101.