

Responding To Elder Abuse

A Resource Manual For Genesee County

- 2017 Edition -



Prepared by the Genesee Elder Abuse Alliance

TABLE OF CONTENTS

Responding To Elder Abuse	i
TABLE OF CONTENTS.....	ii
INTRODUCTION	iii
DEFINITION OF ELDER ABUSE.....	1
ADULT PROTECTIVE SERVICES: DEPARTMENT OF HEALTH & HUMAN SERVICES	2
REPORTING ELDER ABUSE	4
Where to Report Abuse Involving Residents of Adult Foster Care Homes	5
Where to Report Abuse Involving Residents of Nursing Homes	8
Where to Report Abuse Involving Residents of Homes for the Aged.....	10
State Law and Regulations Governing AFCs, Nursing Homes, HFAs	12
Note Regarding Assisted Living Facilities and Board and Care Homes	14
Special Reporting Requirements for Health Care Personnel	15
Special Reporting Requirements for Health Care Personnel	15
Genesee County Probate Court Guardianships: Conservatorships.....	17
APPENDIX.....	22
FEDERAL INTERAGENCY GUIDELINES ON PRIVACY LAWS.....	23
INDICATORS OF ABUSE, NEGLECT, OR EXPLOITATION OF AN ELDERLY PERSON..	28
LEGAL PROTECTION FOR WHISTLEBLOWERS	31
VULNERABLE ADULT ABUSE ACT: 1994 PA 149, MCL 750.145m – 750.145r.....	33
FINANCIAL EXPLOITATION OF A VULNERABLE ADULT 2000 PA 222, MCL 750.174a .	35
REPORTING PERSONS WITH A DISABILITY OR DEMENTIA AS MISSING: MCL 28.25837	
EMERGENCY TELEPHONE NUMBERS	38
GENESEE COUNTY LAW ENFORCEMENT AGENCIES.....	39
NATIONAL ORGANIZATIONS	42

INTRODUCTION

In every community across this country vulnerable older adults are being abused, neglected, and exploited. Yet in many instances their plight is ignored or minimized by a society that all too often views older persons as burdens, rather than as valued individuals who are entitled, as we all are, to be treated with dignity and respect. Many incidents of abuse go unreported because older persons are embarrassed, ashamed, or fearful of losing the help they need from family members or caregivers to remain in their homes. As the number of older adults in our population increases, the incidence of elder abuse will almost certainly increase, unless our society takes action to address this issue.

The Genesee County Elder Abuse Task Force was organized as a volunteer task force in the summer of 1999 to increase the awareness of elder abuse, to improve the response to incidents of elder abuse, to develop strategies to prevent elder abuse, and to enhance coordination among service providers. In the spring of 2010 the Task Force merged with the advisory committee for Sheriff's Elder Abuse and Exploitation Prevention Unit. The Sheriff's Department receives funding from the Genesee County senior millage to investigate complaints of violations of criminal laws related to elder abuse. In 2014 the membership of the Sheriff's Elder Abuse and Exploitation Prevention Unit advisory committee and the Task Force determined that a more formal organizational structure was needed in order to pursue independent funding and expand their activities. The two groups merged with a local nonprofit organization that had been formed to work in conjunction with the Sheriff's Elder Abuse Unit and that had obtained a 501(c)(3) tax exemption but had been dormant for several years. The name of the organization was changed to the Elder Abuse Alliance.

This Resource Manual is intended to support the continuing efforts of the Elder Abuse Alliance to improve the lives of older adults in Genesee county.

DEFINITION OF ELDER ABUSE

The following definitions are derived from the Adult Protective Services Act, Act 519, Public Acts of 1982, MCL 400.11. Abuse is defined in the Act as the harm or threatened harm to an adult's health or welfare caused by another. The term "elder abuse" includes physical abuse, emotional abuse, sexual abuse, neglect, and financial exploitation.

Physical and Emotional Abuse

Physical abuse is conduct that is intended to cause physical injury to an elderly person, such as slapping, hitting, kicking, imposing physical restraints, and similar conduct. Emotional abuse includes conduct such as threatening to withdraw needed care or making humiliating or demeaning remarks toward an elderly person.

Physical abuse also includes sexual abuse, such as inappropriate touching and nonconsensual or forcible sexual activity. An adult has the right to a consensual sexual relationship with another adult; however these relationships can become abusive if an adult does not have the capacity to turn away unwanted sexual advances or is coerced or threatened into consenting to sexual activity.

Neglect

Neglect is harm to an adult's health or welfare that is the result of the adult's inability to respond to a harmful situation [self neglect] or the failure of a person who assumes responsibility for a significant aspect of the adult's health or welfare to respond to a harmful situation or to provide adequate food, clothing, shelter, or medical care [caregiver neglect]. An example of caregiver neglect would be leaving an elderly person who is in a wheelchair due to a stroke in front of the TV all day without meals or assistance in getting to the bathroom.

Financial Exploitation

Financial exploitation is the misuse of an adult's funds or property. Financial exploitation can include outright theft, misuse of a power of attorney or other breach of a fiduciary duty to manage funds belonging to the adult, or an intentional breach of a promise to repay money or provide services paid for in advance. An example of financial exploitation would be using a power of attorney to withdraw money from an elderly person's bank account and then spending the money for personal benefit instead of using the money for the benefit of the elderly person.

ADULT PROTECTIVE SERVICES: DEPARTMENT OF HEALTH & HUMAN SERVICES

In response to the growing awareness of abuse directed against vulnerable adults the Michigan legislature enacted the Adult Protective Services Act (Act 519 of the, Public Acts of 1982), which was effective April 1, 1983. The Act requires the Department of Health and Human Services [formerly the Department of Social Services; renamed the Family Independence Agency; renamed the Department of Human Services in 2005; consolidated with the Department of Community Health and renamed the Department of Health and Human Services in 2015] to investigate reports of the abuse, neglect, or exploitation of vulnerable adults and to provide protective services. Vulnerable adults are those who are unable to protect themselves from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age. The Act also requires certain persons in the community to report suspected abuse, neglect, or exploitation to the agency and provides penalties for failure to report [see p 4].

Upon receipt of a report of suspected abuse, neglect or exploitation the Adult Protective Services (APS) worker must initiate an investigation within 24 hours to determine if the person suspected of being abused, neglected or exploited is in need of protective services. Upon request, the local police agency is required to cooperate in the investigation. However the APS investigation is not intended to take the place of an investigation by the police agency regarding any suspected criminal conduct. The APS investigation includes a determination of the nature and cause of the abuse, identification of the person(s) responsible, an evaluation of the person's ability to make informed decisions and an evaluation as to whether or not the adult consents to protective services. The investigation must include an interview with the adult. In attempting to conduct a personal visit with the adult in the adult's residence, if admission to the residence is denied, APS may seek a search warrant through the local law enforcement agency.

The APS worker will determine whether the report is substantiated. APS is required to make available appropriate and least restrictive protective services and take necessary action to safeguard and enhance the welfare of the adult. This can include finding suitable housing, arranging for in-home personal care services, arranging medical care, assisting with applying for public benefits, and referrals for legal assistance.

In appropriate cases, where it appears that the adult is legally incapacitated [lacks sufficient capacity or understanding to make or communicate informed decisions concerning his/her person] the DHHS may petition the Probate Court for appointment of a guardian or temporary guardian. In appropriate cases, where it appears that the adult is unable to manage his/her financial affairs effectively the DHHS may petition the Probate Court for appointment of a conservator [see pp 14-20] or request the Social Security Administration to appoint a representative payee.

The identity of the person making the report of suspected abuse, neglect or exploitation is confidential and may only be disclosed with the consent of the person or by court order. If the report is made in good faith, the person is immune from civil liability.

REPORTING ELDER ABUSE

Legal Authority:

Act 519, Public Acts of 1982; MCL 400.11.

When should you report?

You should report if you suspect or have reasonable cause to believe that physical abuse, emotional abuse, sexual abuse, neglect, or financial exploitation of an adult has occurred. A report does not have to be based on eye witness accounts or incriminating statements or definite proof of abuse. If you suspect elder abuse you should make a report. Any person can make a report. Certain individuals (described in the next paragraph) are required by law to report suspected abuse.

Who is required to report?

All persons who are employed, licensed, registered, or certified to provide health care, education, social welfare, mental health, and other human services; employees of an agency that is licensed to provide such services; physicians; employees of the county medical examiner's office; and law enforcement officers are mandatory reporters and are required to report suspected abuse.

How is the report made?

Report suspected abuse by calling the Adult Protective Services (APS) statewide Centralized Intake Unit: 855-444-3911 (toll free). The Intake Unit operates 24 hours/day, 7 days/week. A written report may be submitted at the discretion of the reporting person but is not required.

In Genesee County a report can also be made by calling the Genesee County Sheriff's Elder Abuse Unit at 810-257-3422.

What is the penalty for not reporting?

If the person is a mandatory reporter and failed to make a report to APS the person may be sued for damages caused by the failure to report and may be liable for a civil fine of \$500.

What is role of law enforcement in an APS investigation?

Upon request by APS, local law enforcement officers are required to cooperate in an investigation of suspected abuse, neglect or exploitation. If the APS worker is denied entry to the victim's residence to interview the victim, APS may request the law enforcement agency to seek a search warrant.

Where to Report Abuse Involving Residents of Adult Foster Care Homes

Adult Protective Services

If the person suspected of being abused, neglected, or exploited is a resident of an Adult Foster Care Home the APS reporting requirements described in the preceding section [see p 4] should be followed. In addition, the reporter may also file a complaint with the following agencies.

Michigan Department of Licensing and Regulatory Affairs: Bureau of Community and Health Systems

The Michigan Department of Licensing and Regulatory Affairs (LARA) is responsible for investigating complaints of violations of the AFC licensing law, rules, and policies. A complaint should be made to:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems
Children and Adult Licensing-Complaint Intake Unit
611 W. Ottawa, 1st Floor
P.O. Box 30664
Lansing, MI 48909
866-856-0126
FAX 517-284-9739

A complaint may be completed and submitted online from the LARA website at www.michigan.gov/lara [click on Community and Health Systems, then Adult Foster Care/Homes for the Aged, then Complaints]. A complaint form can also be filled in online, then printed and mailed or faxed to the Department at the above address. A complaint can also be made by calling the toll free number, 866-856-0126 or, if the complaint involves abuse, neglect, or exploitation, by calling 855-444-3911.

The identity of the person making the complaint is confidential, subject to disclosure only with the consent of the person making the complaint or if the investigation results in an administrative or judicial proceeding.

Office of Recipient Rights

If the person resides in an AFC home which is certified as a specialized program for persons with mental illness or a developmental disability a complaint should also be made to the

Office of Recipient Rights [Michigan Department of Health and Human Services] or to the Genesee Health System (formerly Community Mental Health) Recipient Rights Officer. The Office of Recipient Rights is responsible for investigating complaints of violations of rights protected under the Mental Health Code and the Department of Health and Human Services rules and policies. A Recipient Rights Complaint Form is available from the Department of Health and Human Services website at www.michigan.gov/mdhhs [click on Keeping Michigan Healthy, then Behavioral Health & Developmental Disability, then Mental Health, then Recipient Rights]. It can be completed online. The completed form should be mailed to:

Michigan Department of Health and Human Services
Office of Recipient Rights
Lewis Cass Building
320 South Walnut Street
Lansing, MI 48933

or

Genesee Health System
Recipient Rights Director
420 W. Fifth Avenue
Flint, MI 48503-2494
810-257-3710 or toll free 877-668-8933

A complaint can also be made by calling the statewide MDHHS-ORR toll free hotline: 800-854-9090.

Michigan Long Term Care Ombudsman 866-485-9393

The Michigan Long Term Care Ombudsman Program, <http://mltcop.org>, advocates for the rights of residents in long term care facilities, including adult foster care facilities. The LTCO Program is a project of the Michigan Elder Justice Initiative, <http://meji.org>. The Elder Justice Initiative is affiliated with the Michigan Advocacy Program, <http://miadvocacy.org>. The LTCO Program will investigate complaints of abuse, neglect, or exploitation and attempt to resolve the matter. The program can also assist residents and their families with information on a wide range of long term care issues, including information on choosing an adult foster care home or other long term care facility.

Department of Attorney General: 800-242-2873 (800-24-ABUSE)

The Michigan Attorney General's Health Care Fraud Division investigates complaints of abuse and neglect in resident care facilities and complaints of Medicaid provider fraud. A Medicaid Fraud Complaint Form or a Patient Abuse Complaint Form may be filed online from the

Attorney General's website at www.michigan.gov/ag [click on File a Complaint]. Copies of supporting documents can be mailed, e-mailed, or faxed to the

Department of Attorney General
Health Care Fraud Division
P.O. Box 30218
Lansing, MI 48909
FAX 517-241-6515 or 517-241-1029
Email: hcf@michigan.gov

Genesee County Sheriff's Department: Elder Abuse Unit: 810-257-3422 (Radio Room)

Where to Report Abuse Involving Residents of Nursing Homes

Department of Licensing and Regulatory Affairs

The Michigan Department of Licensing and Regulatory Affairs (LARA) investigates complaints of suspected abuse, neglect, or exploitation of nursing home residents that involve violations of federal or state nursing home laws and regulations. A person who suspects abuse, neglect, or exploitation may make a verbal complaint or a written complaint to:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems-Health Facility Complaints
P.O. Box 30664
Lansing, MI 48909
800-882-6006 Complaint Hotline
FAX 517-335-7167
BHCS-Facility-Complaints@michigan.gov

A Health Facility Complaint Form can be completed and submitted online at the Department's website at www.michigan.gov/lara [click on Community and Health Systems, then File a Complaint, then Health Agencies & Facilities]. A complaint form can also be filled in online, then printed and mailed, emailed, or faxed to the Department. A complaint can also be made by calling the toll-free Complaint Hotline. The hotline is accessible 24 hours per day, 7 days a week, but is not staffed at a 24/7 level. The hotline staff must identify priority complaints and initiate a response within 24 hours after receipt. A priority complaint is one that alleges an existing situation that involves physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident that requires immediate corrective action to prevent serious injury, serious harm, serious impairment, or death of a resident while receiving care in a nursing home. LARA is required to assist a person who makes a verbal complaint to the toll-free consumer complaint line in reducing the complaint to writing.

The identity of the person making the complaint is confidential, subject to disclosure only with the consent of that person or if the investigation results in an administrative or judicial proceeding.

Michigan Long Term Care Ombudsman: 866-485-9393

The Michigan Long Term Care Ombudsman Program, <http://mltcop.org>, advocates for the rights of residents in long term care facilities, including nursing homes. The LTCO Program is a

project of the Michigan Elder Justice Initiative, <http://meji.org>. The Elder Justice Initiative is affiliated with the Michigan Advocacy Program, <http://miadvocacy.org>. The LTCO Program will investigate complaints of abuse, neglect, or exploitation and attempt to resolve the matter. The program can also assist residents and their families with information on a wide range of long term care issues, including information on choosing a nursing home or other long term care facility.

Adult Protective Services

If a person residing in a nursing home is subjected to abuse, neglect or exploitation by someone outside the facility, such as a family member or former caregiver, the APS reporting requirements described in the preceding section [see p 4] should be followed.

Department of Attorney General: 800-242-2873 (800-24-ABUSE)

The Michigan Attorney General's Health Care Fraud Division investigates complaints of abuse and neglect in resident care facilities and complaints of Medicaid provider fraud. A Medicaid Fraud Complaint Form or a Patient Abuse Complaint Form may be filed on line from the Attorney General's website at www.michigan.gov/ag [click on File a Complaint]. Copies of supporting documents can be mailed, e-mailed, or faxed to the

Department of Attorney General
Health Care Fraud Division
P.O. Box 30218
Lansing, MI 48909
FAX 517-241-6515 or 517-241-1029
Email: hcf@michigan.gov

Genesee County Sheriff's Department: Elder Abuse Unit: 810-257-3422 (Radio Room)

Where to Report Abuse Involving Residents of Homes for the Aged

Adult Protective Services

If the person suspected of being abused, neglected, or exploited is a resident of a Home for the Aged the APS reporting requirements described in the preceding section [see p 4] should be followed. In addition, the reporter may also file a complaint with the following agencies.

Michigan Department of Licensing and Regulatory Affairs: Bureau of Community and Health Systems

The Michigan Department of Licensing and Regulatory Affairs (LARA) is responsible for investigating complaints of violations of the Home for the Aged licensing law, rules, and policies.

A complaint should be made to:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems
Children and Adult Licensing-Complaint Intake Unit
611 W. Ottawa, 1st Floor
P.O. Box 30664
Lansing, MI 48909
866-856-0126
FAX 517-284-9739

A complaint may be completed and submitted online from the LARA website at www.michigan.gov/lara [click on Community and Health Systems, then Adult Foster Care/Homes for the Aged, then Complaints]. A complaint form can also be filled in online, then printed and mailed or faxed to the Department at the above address. A complaint can also be made by calling the toll free number, 866-856-0126 or, if the complaint involves abuse, neglect, or exploitation, by calling 855-444-3911.

The identity of the person making the complaint is confidential, subject to disclosure only with the consent of that person or if the investigation results in an administrative or judicial proceeding.

Michigan Long Term Care Ombudsman: 866-485-9393

The Michigan Long Term Care Ombudsman Program, <http://mltcop.org>, advocates for the rights of residents in long term care facilities, including homes for the aged. The LTCO Program is a project of the Michigan Elder Justice Initiative, <http://meji.org>. The Elder Justice Initiative is

affiliated with the Michigan Advocacy Program, <http://miadvocacy.org>. The LTCO Program will investigate complaints of abuse, neglect, or exploitation and attempt to resolve the matter. The program can also assist residents and their families with information on a wide range of long term care issues, including information on choosing a home for the aged or other long term care facility.

Department of Attorney General: 800-242-2873 (800-24-ABUSE)

The Michigan Attorney General's Health Care Fraud Division investigates complaints of abuse and neglect in resident care facilities and complaints of Medicaid provider fraud. A Medicaid Fraud Complaint Form or a Patient Abuse Complaint Form may be filed on line from the Attorney General's website at www.michigan.gov/ag [click on File a Complaint]. Copies of supporting documents can be mailed, e-mailed, or faxed to the

Department of Attorney General
Health Care Fraud Division
P.O. Box 30218
Lansing, MI 48909
FAX 517-241-6515 or 517-241-1029
Email: hcf@michigan.gov

Genesee County Sheriff's Department: Elder Abuse Unit 810-257-3422 (Radio Room)

State Law and Regulations Governing AFCs, Nursing Homes, HFAs

Adult Foster Care Homes

State law governing AFC homes is set forth in the Adult Foster Care Facility Licensing Act, [MCL 400.701 et seq.](#) There are four categories of AFC homes, based on the number of residents in the home and whether the licensee also lives in the home. There is a separate set of administrative rules in the Michigan Administrative Code (AC) for each category. Foster care is defined as the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation. [MCL 400.704\(7\)](#).

1. An *adult foster care family home* is a private residence that provides care for up to 6 adults where the AFC licensee is a member of the household and an occupant of the residence. [MCL 400.703\(5\)](#). [AC, R 400.1401 et seq.](#)
2. An *adult foster care small group home* provides care from 1 to 12 adults, but the licensee is not required to live on the premises. [MCL 400.703\(7\)](#). [AC, R 400.14101 et seq.](#)
3. An *adult foster care large group home* provides care to 13 to 20 adults. [MCL 400.703\(6\)](#). [AC, R 400.15101 et seq.](#)
4. An *adult foster care congregate facility* provides care to more than 20 adults. [MCL 400.703\(3\)](#). [AC, R 400.2401 et seq.](#) There is a moratorium on issuing any new licenses for congregate homes, and only a handful still exist.

AFCs serve not only elderly adults but also adults with developmental disabilities and those with mental health care needs.

Homes for the Aged

State law governing HFAs is set forth in Article 17, Part 213 of the Michigan Public Health [MCL 333.21301 et seq.](#) The administrative rules are set forth in the Michigan Administrative Code, [AC, R 325.1901 et seq.](#) An HFA is defined as a supervised personal care facility, other than a hotel, an AFC home, a hospital, a nursing home, or a county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient persons 60 years of age or older. An HFA that is operated in conjunction with and as a distinct part of a licensed nursing home may have fewer than 21 residents. [MCL 333.20106\(3\)](#).

Nursing Homes

State law governing nursing homes is set forth in Article 17, Part 217 of the Michigan Public Health Code, [MCL 333.21701 et seq.](#) The administrative rules are set forth in the Michigan Administrative Code, [AC, R 325.20101 et seq.](#)

Nursing homes that participate in the Medicare and Medicaid program are also regulated under federal law. The federal law governing nursing homes is found at [42 USC 1395i-3](#) [for Medicare certification], and [42 USC 1396r](#) [for Medicaid certification]. The rules for both certifications are virtually identical. The regulations are set forth in the federal Code of Federal Regulations, [42 CFR 483.1 – 483.95](#). Most nursing homes in Michigan are certified to participate in both the Medicare and Medicaid program. A small number of nursing homes [none in Genesee county] do not participate in either Medicare or Medicaid and accept only residents who can private pay. There is no special licensing for “memory care units” in nursing homes.

Note Regarding Assisted Living Facilities and Board and Care Homes

The term assisted living facility is not a licensing category under Michigan law. The licensing categories under Michigan law for facilities that provide care (nursing care, care assistance, or supervision) are nursing homes, homes for the aged, and adult foster care homes. Many facilities that use the term assisted living are licensed as an adult foster care facility or a home for the aged. The distinction between these licensing categories is based on the type of care provided and the number of residents. A facility that designates itself as an assisted living facility that provides personal care or supervised personal care in addition to room and board but is not licensed as an adult foster care facility or home for the aged should be reported to the Department of Licensing and Regulatory Affairs (LARA) Bureau of Community and Health Systems for investigation [see pp 5, 10 for contact information].

The term “board and care home” is also not a licensing category under Michigan law. A home that designates itself as a board and care home that also provides supervision or care assistance but is not licensed as an adult foster care facility should be reported to the Department of Licensing and Regulatory Affairs (LARA) Bureau of Community and Health Systems for investigation [see pp 5, 10 for contact information].

Special Reporting Requirements for Health Care Personnel

Nursing Homes

The Public Health Code, MCL 333.21771, requires a nursing home employee who has a reasonable suspicion of physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident to report the matter to the director of nursing or the administrator and to the Department of Licensing and Regulatory Affairs (LARA). A director of nursing or the administrator who has a reasonable suspicion of physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident must report that suspicion by telephone to LARA and to a law enforcement entity. A physician or other licensed health care professional of a facility to which a nursing home resident is transferred who has a reasonable suspicion of physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident must report this to LARA and to a law enforcement entity.

Mental Health Providers

The Mental Health Code, MCL 330.1723, requires certain mental health providers who have reasonable cause to suspect the criminal abuse of a recipient of mental health services to make an immediate verbal report to the appropriate law enforcement agency or to the state police. The required reporters are mental health professionals, persons employed by or under contract to the Department of Health and Human Services (DHHS), a licensed facility, or a community mental health services agency, and persons employed by a provider under contract to DHHS, a licensed facility, or a community mental health services agency. A written report must be filed within 72 hours of the verbal report to the law enforcement agency and the chief administrator of the facility or agency responsible for the recipient. However, a person is not required to report if the individual has knowledge that the incident has already been reported to the appropriate law enforcement agency or the suspected criminal abuse occurred more than one year before the date on which it first became known to a person required to report. Furthermore this section of the Mental Health Code does not require the disclosure of confidential information or privileged communications unless one of the exceptions in MCL 330.1723(10) is applicable. Those exceptions are where the suspected abuse is alleged to have been committed by a mental health professional or other person who is a required reporter under this section or where the suspected abuse is alleged to have been committed in a state facility, a state-licensed facility, a CMH site, the

work site of a required reporter, or a place where a recipient is under the supervision of a required reporter.

The identity of a person making a report is confidential and is not subject to disclosure without the consent of the individual or by court order. An individual who acts in good faith in making a report is immune from civil or criminal liability as to acts done under this section. This immunity does not extend to a negligent act that causes personal injury or death.

Genesee County Probate Court Guardianships: Conservatorships

Genesee County Courthouse
900 S. Saginaw St, 5th Floor (West)
Flint, MI 48502
810-257-3528

[The Courthouse is located between Court and Fifth Streets; the east entrance is on Saginaw Street and the west entrance is on Beach Street]

Hours: 8:00 AM – 4:00 PM, Monday – Friday

Description of Services

The Genesee County Probate Court has jurisdiction over petitions for guardianship and conservatorships of alleged incapacitated or developmentally disabled adults and petitions for involuntary psychiatric treatment of alleged mentally ill persons. The Court also has jurisdiction over the probate of decedents' estates, the administration of trusts, and several other specialized functions prescribed by law.

The Probate Court has developed a packet of forms with instructions for persons who seek to file a petition for appointment of a guardian or conservator without the assistance of an attorney. Under the Estates and Protected Individuals Code court personnel can provide general information on filling out forms and court procedures. However they cannot give legal advice or complete a form, petition, or other document. Petitioners must consult with an attorney for legal advice on their personal situations. In addition, there may be alternatives to a guardianship or conservatorship that should be considered. A person interested in these alternatives should consult an attorney who specializes in elder law and can request a pamphlet on alternatives to guardianship or conservatorship available from the Probate Court.

Petition for Appointment of Guardian of Incapacitated Individual

A guardian is a person appointed by the Probate Court to make decisions on behalf of someone who has been determined to lack the capacity or understanding to make or communicate informed decisions concerning his/her person. The guardian is authorized to make decisions concerning medical treatment, placement, and other personal decisions. However if an individual has previously executed a Patient Advocate Designation (medical power of attorney) the person

named in that document, and not the guardian, is authorized to make medical treatment decisions, unless the Probate Court determines that the patient advocate is not acting in the individual's best interests. If no conservator is appointed [because the person has minimal property or assets] the guardian will also have authority to manage the individual's financial affairs. Depending on the circumstances, the Court can appoint a full guardian or a limited guardian. In emergency situations the Court may appoint a temporary guardian [as described in the following section].

When a petition for guardianship is filed, the Court will appoint a guardian ad litem (GAL) for the individual. The GAL will visit the individual, advise the individual of his/her right to object to the guardianship, to object to the person seeking to be appointed, to object to the scope of the guardianship, the right to be present at the hearing, and the right to a court-appointed attorney. The Court may direct that the individual be examined by a physician or mental health professional appointed by the Court. The alleged incapacitated individual may request an independent evaluation by a mental health professional. If the individual is unable to pay for the cost of the evaluation, the Court will authorize payment by the county. At the hearing on the petition for guardianship the Court must determine whether the individual meets the legal standard for incapacity [whether the individual lacks the capacity to make or communicate informed decisions concerning his/her person and whether a guardianship is necessary in order to protect the individual]. The Court must also consider whether a limited guardianship would be sufficient to protect the individual.

If the petition is granted, the Court issues Letters of Authority and the guardian assumes the responsibility for the care and custody of the individual. The guardian must file an annual report with the Court concerning the care and custody of the individual. The guardian must also file an annual accounting of any funds under the control of the guardian. The guardian must keep accurate records, with supporting documentation, of all receipts and disbursements on behalf of the individual. The Court will review the guardianship one year after the initial appointment and three years thereafter. A petition to terminate a guardianship may be filed at any time.

Petition for Temporary Guardianship

If an emergency exists for an individual who appears to lack decision-making capacity but does not have a guardian, and no one else appears to have any authority to act, the Probate Court may hold an emergency hearing to determine whether a temporary guardian should be appointed, pending the completion of the procedures set forth in the preceding section for appointment of a

guardian. For example, an elderly person who is transported to the hospital might need immediate medical treatment, but the treating physician believes the person is unable to give informed consent. In such situations, if the elderly person has not previously executed a Patient Advocate Designation (medical power of attorney) designating someone to make health care decisions in the event of incapacity, the hospital might seek the appointment of a temporary guardian. The alleged incapacitated individual must be given notice of the emergency hearing. The Court must appoint a guardian ad litem for the individual unless the appointment would cause delay that would be likely to result in serious harm to the individual. If time permits, the guardian ad litem must visit the individual, report to the Court, and take whatever other action the Court directs. If necessary an emergency Court hearing can be scheduled the same day that the petition is filed. At the time the request for a temporary guardian is filed, the Court will also set a later hearing date on the petition for guardianship.

If there is proof that the individual is incapacitated and an emergency exists that requires the appointment of a temporary guardian, the Court may itself exercise the powers of a guardian or may appoint a temporary guardian. A temporary guardian has only those powers specifically given in the order appointing the temporary guardian and only for the time period specified.

The appointment of a temporary guardian is a very serious step because it takes away an individual's liberty and freedom of choice after a hearing on very short notice. Therefore, it is always preferable if the appointment of a guardian can wait until the court hearing following the procedures described in the preceding section.

Petition for Appointment of Guardian of Developmentally Disabled Person

The Mental Health Code provides specific procedures for the appointment of a guardian for a developmentally disabled person which are similar to the procedures under the Estates and Protected Individuals Code, described in the preceding section, for the appointment of a guardian for an incapacitated individual. A developmentally disabled person is a person with a severe, chronic condition that is attributable to a mental or physical impairment or combination of impairments that was manifested before age 22, is likely to continue indefinitely, and results in substantial functional limitations of major life activities.

Petition for Appointment of Conservator or for a Protective Order in Relation to an Individual's Property or Financial Affairs

A conservator is a person appointed by the Probate Court to manage the property and financial affairs of someone who has been determined to be unable to do so effectively. Depending on the circumstances, the Court can appoint a conservator, a limited conservator, or enter a protective order in relation to a person's property or financial affairs. The Court may appoint the same person as both guardian and conservator. In emergency situations the Court may appoint a special conservator or make an emergency protective order.

When a petition for conservatorship or other protective order is filed, the Court must appoint a guardian ad litem unless the person is mentally competent but due to age or physical infirmity is requesting the conservatorship or protective order. The Court may direct that the individual be examined by a physician or mental health professional appointed by the Court. The individual has the right to secure an independent evaluation at his/her own expense.

At the hearing on a petition for conservatorship or entry of a protective order the Court must determine whether the person is unable to manage his/her income or property effectively. A person does not have to be found legally incompetent in order to have a conservator appointed or a protective order entered. In an appropriate case the Court can order that only a part of the individual's property will be subject to a conservatorship, or the Court, without appointing a conservator, may authorize or ratify a transaction relating to the individual's property or financial affairs. If a conservator is appointed the Court will usually require the conservator to post a bond. If the conservator mismanages the person's money or property, a claim can be filed with the bonding company for reimbursement for any losses. In some circumstances in lieu of a bond the Court will require that an account be restricted and that no withdrawals may be made without a court order. The conservator must file an annual accounting with the Court. The conservator must keep accurate records, with supporting documentation, of all receipts and disbursements on behalf of the individual. A petition to terminate a conservatorship may be filed at any time.

Fees:

A fee schedule is available from the Probate Court Clerk's office. The filing fee for a petition to appoint a guardian or conservator is \$175. There is no fee for a petition filed by the person who is the subject of the guardianship, conservatorship or involuntary hospitalization

proceeding. A person who is unable to pay a court fee because of indigence may file an affidavit requesting waiver or suspension of the fee.

APPENDIX

FEDERAL INTERAGENCY GUIDELINES ON PRIVACY LAWS

**Board of Governors of the Federal Reserve System
Commodity Futures Trading Commission
Consumer Financial Protection Bureau
Federal Deposit Insurance Corporation
Federal Trade Commission
National Credit Union Administration
Office of the Comptroller of the Currency
Securities and Exchange Commission**

Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults

PURPOSE

The Board of Governors of the Federal Reserve System (Federal Reserve), Commodity Futures Trading Commission (CFTC),¹ Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) are issuing this guidance to financial institutions to clarify the applicability of privacy provisions of the Gramm-Leach-Bliley Act (GLBA) to reporting suspected financial exploitation of older adults.

Employees of depository institutions and other financial service providers that constitute “financial institutions” for purposes of the GLBA may observe signs of possible financial exploitation of an older adult. Various federal and state authorities either require or encourage reporting of this type of information to the appropriate agency. This guidance clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the GLBA or its implementing regulations.² In fact, specific privacy provisions of the GLBA and its implementing regulations permit the sharing of this type of information under appropriate circumstances without complying with notice and opt-out requirements.³

¹ The CFTC is issuing this document as staff guidance.

² While this guidance discusses when reporting is allowed under the GLBA, it does not address any other federal or state laws that may regulate such reporting. Also, the guidance does not specifically address risk management expectations for financial institutions related to the reporting of elder abuse.

³ This guidance’s analysis of the GLBA’s privacy provisions builds on joint guidance issued by several federal agencies in 2002 that specifically addressed disclosures to the Michigan Family Independence Agency. See Letter to Hon. Debbie Stabenow, July 3, 2002, available at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_bank_rptg_op_ltr.auth_checkdam.pdf.

BACKGROUND

Elder abuse includes the illegal or improper use of an older adult's funds, property, or assets.⁴ Recent studies suggest that financial exploitation is the most common form of elder abuse and that only a small fraction of incidents are reported.⁵ Older adults can become targets of financial exploitation by family members, caregivers, scam artists, financial advisers, home repair contractors, fiduciaries (such as agents under power of attorney and guardians), and others. Older adults are attractive targets because they may have significant assets or equity in their homes. They may be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, and/or the recent loss of a partner, family member, or friend. Financial institutions can play a key role in preventing and detecting elder financial exploitation. A financial institution's familiarity with older adults it encounters may enable it to spot irregular transactions, account activity, or behavior.⁶ Prompt reporting of suspected financial exploitation to adult protective services, law enforcement,⁷ and/or long-term care ombudsmen⁸ can trigger appropriate intervention, prevention of financial losses, and other remedies.

⁴ See the National Center on Elder Abuse definitions available at http://www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx. The Older Americans Act, as amended by the Elder Justice Act of 2009, defines exploitation as "the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets." 42 U.S.C. 1397j(8).

⁵ Acierno, R., M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, "Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study," *American Journal of Public Health* 100(2): 292-97; Lifespan of Greater Rochester, Inc., et al., *Under the Radar: New York State Elder Abuse Prevention Study*, (Rochester, NY: Lifespan of Greater Rochester, Inc., May 2011).

⁶ Treasury Department rules require recipients of federal nontax payments to receive payment by electronic funds transfer, with an allowance for certain waivers from the requirement. The rule applies to recipients of Social Security, Veterans Affairs, Supplemental Security Income, Railroad Retirement Board, Department of Labor, and Office of Personnel Management benefit payments. Benefit recipients may have payments directly deposited to an account at a financial institution or to a *Direct Express* debit card account. See 75 Fed. Reg. 80315 (Dec. 22, 2010). Financial institutions should be mindful that this change may result in additional electronic funds transfer activity involving the accounts of older adults.

⁷ Financial institutions file "Suspicious Activity Reports" with the Financial Crimes Enforcement Network (FinCEN), a Bureau of the U.S. Department of the Treasury, involving money laundering and terrorist financing as well as activities related to elder abuse and other consumer fraud. The reports assist law enforcement in identifying individuals and organizations involved in financial crime. See FinCEN, Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation, FIN-2011-A003 (Feb. 22, 2011), available at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a003.pdf.

⁸ Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. Under the federal Older Americans Act, each state has an Office of the State Long-Term Care Ombudsman that addresses complaints and advocates for improvements in the long-term care system. Local ombudsman staff and volunteers work to resolve problems of individual residents. For more information, see http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/index.aspx. To find your local ombudsman program, search by location at www.eldercare.gov.

DISCUSSION OF PRIVACY PROTECTIONS

The GLBA establishes a general rule that a financial institution may not disclose any nonpublic personal information about a consumer to any nonaffiliated third party unless the financial institution first provides the consumer with a notice that describes the disclosure (as well as other aspects of its privacy policies and practices) and a reasonable opportunity to opt out of the disclosure, and the consumer does not opt out. However, section 502(e) of the GLBA provides a variety of exceptions to this general rule that permit a financial institution to disclose information to nonaffiliated third parties without first complying with notice and opt-out requirements. Generally, disclosure of nonpublic personal information about consumers to local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults will fall within one or more of the exceptions.⁹ These disclosures of information may be made either at the agency's request or on the financial institution's initiative.

The following are specific exceptions to the GLBA's notice and opt-out requirement that, to the extent applicable, would permit sharing of nonpublic personal information about consumers with local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization and without violating the GLBA:

- A financial institution may disclose nonpublic personal information to comply with federal, state, or local laws, rules and other applicable legal requirements, such as state laws that require reporting by financial institutions of suspected abuse. (15 U.S.C. 6802(e)(8) and implementing regulations at ____15(a)(7)(i)).¹⁰
- A financial institution may disclose nonpublic personal information to respond to a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities or to respond to judicial process or government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law. (15 U.S.C. 6802(e)(8) and implementing regulations at ____15(a)(7)(ii)-(iii)).
- A financial institution may disclose nonpublic personal information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. (15 U.S.C. 6802(e)(3)(B) and implementing regulations at ____15(a)(2)(ii)). For example, this exception generally would allow a financial institution to disclose to appropriate authorities nonpublic personal information in order to:
 - report incidents that result in taking an older adult's funds without actual consent, or
 - report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction.

⁹ See Section 502(e) of the GLBA (15 U.S.C. 6802(e)).

¹⁰ The CFPB's, FTC's, CFTC's, and SEC's implementing regulations are contained in 12 CFR part 1016, 16 CFR part 313, 17 CFR part 160, and 17 CFR part 248, respectively. For ease of reference, this discussion uses the shared numerical suffix of each of these agencies' regulations

- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), a financial institution may disclose nonpublic personal information to law enforcement agencies (including the CFPB, the federal functional regulators, and the FTC), self-regulatory organizations, or for an investigation on a matter related to public safety. (15 U.S.C. 6802(e)(5) and implementing regulations at _____.15(a)(4)).

In addition, a financial institution may disclose nonpublic personal information with the consumer's consent or consent of the consumer's legal representative. (15 U.S.C. 6802(e)(2) and implementing regulations at _____.15(a)(1)).

POSSIBLE SIGNS OF FINANCIAL ABUSE OF OLDER ADULTS

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published an advisory in February 2011 that describes potential signs of elder financial exploitation that might trigger the filing of a Suspicious Activity Report (SAR).¹¹ As described in the advisory, among the possible signs of abuse are:

- Erratic or unusual banking transactions, or changes in banking patterns:
 - Frequent large withdrawals, including daily maximum currency withdrawals from an ATM;
 - Sudden non-sufficient fund activity;
 - Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
 - Debit transactions that are inconsistent for the older adult;
 - Uncharacteristic attempts to wire large sums of money; or
 - Closing of CDs or accounts without regard to penalties.
- Interactions with older adults or caregivers:¹²
 - A caregiver or other individual shows excessive interest in the older adult's finances or assets, does not allow the older adult to speak for himself, or is reluctant to leave the older adult's side during conversations;
 - The older adult shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker;
 - The financial institution is unable to speak directly with the older adult, despite repeated attempts to contact him or her;
 - A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the older adult without proper documentation;

¹¹ See footnote 6 above.

¹² References to "caregiver" or "caretaker" also may apply to other individuals who may be involved in transactions of the type described in the FinCEN advisory.

- The older adult moves away from existing relationships and toward new associations with other “friends” or strangers;
- The older adult's financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual; or
- The older adult lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

Further information about the use of Suspicious Activity Reports to report suspected elder financial exploitation is available in FinCEN's “The SAR Activity Review” published in May 2013.¹³ In addition, if financial institutions or other organizations are interested in raising public awareness among older adults and their caregivers about preventing, identifying, and responding to elder financial exploitation, *Money Smart for Older Adults*, a financial resource tool, serves as a helpful source of training and information.¹⁴

¹³ See “The SAR Activity Review: Trends Tips & Issues,” Issue 23, May 2013, available at http://www.fincen.gov/news_room/rp/files/sar_tti_23.pdf.

¹⁴ *Money Smart for Older Adults* (June 2013), available at www.fdic.gov or www.consumerfinance.gov.

INDICATORS OF ABUSE, NEGLECT, OR EXPLOITATION OF AN ELDERLY PERSON

The following is a general list of indicators of abuse, neglect or exploitation of an elderly person. They should be evaluated in conjunction with other information about the individual's situation. The Adult Protective Services law provides for the reporting of a reasonable suspicion of abuse, neglect or exploitation. It is not necessary that the report be based on eye witness accounts, incriminating statements, or other types of evidence that would be admissible in a court proceeding under the formal rules of evidence. The report can be based on hearsay or circumstantial evidence, if the evidence gives rise to a reasonable suspicion of abuse, neglect or exploitation. See pages 2-4 for further information on the Adult Protective Services law reporting requirements, confidentiality of the identity of the reporter, and good faith immunity from civil liability.

Physical Appearance

- Burns
- Bilateral bruises on upper arms [such as those caused by shaking]
- Clustered bruises on trunk [such as those caused by repeated striking]
- Bruises resembling an object
- Old and new bruises – indicating repeated injuries
- Bone fractures and signs of fractures
- Lacerations; welts; black eyes
- Bed sores; other unhealed sores
- Untreated injuries
- Broken glasses or frames
- Lack of prosthetic devices
- Clothing that is inappropriate for the weather, dirty, torn, too big/small
- Wearing the same clothing all the time
- Urine-soaked clothing
- Shoes on wrong feet
- Body odor; lice; fleas
- Malnutrition; dehydration
- Swollen ankles; swollen legs; blue feet
- Decayed teeth
- Swollen eyes; red, painful eyes
- Severe or constant pain
- Coldness in parts of body
- Swelling of joints accompanied by weakness or fever

- Sudden weight loss/gain
- Loss of sight or hearing
- Heat exhaustion
- Overmedication
- Thin hair that appears to be caused by pulling
- Dilated pupils
- Nails need clipping

Behavior

- Recent or sudden changes in behavior
- Unjustified fear or suspicion
- Refusal to open the door to family/friends
- Denial of obvious problems; refusal to recognize the need for help
- Implausible or inconsistent explanations for injuries
- Unaware of income or regular monthly expenses
- Recent changes to will; representative payee; trust documents; power of attorney
- Large cash withdrawals
- Transfers of title to property, change of beneficiaries on insurance policies
- Newly opened joint accounts
- Payment of exorbitant prices for goods, services
- Depleted bank accounts
- Large amount of purchases on credit or ATM withdrawals
- Chronic failure to pay bills
- Frequently running out of money at the end of the month
- Frequent moves
- Prolonged interval between injury and treatment
- Changing doctors frequently

Environment

- Hazardous home conditions such as poor wiring, rotting porch, broken glass, no locks, unventilated gas, roof leaks, burst water pipes
- Numerous outdated medications from different doctors
- Medicine not clearly marked
- Fecal, urine smell
- Soiled bedding, furniture
- Evidence of restraints
- Lack of food, inadequate or spoiled food
- Empty liquor bottles
- Lack of electricity, heat, water, working toilet, cooking facilities, refrigeration
- House infested with fleas, lice, roaches, rats
- Disappearance of personal property, household items

- Home too hot or too cold
- Extreme clutter or hoarding

Behavior of Family or Caregivers

- Isolating the elderly person from family and friends; not allowing visitors
- Criticizing, mocking, or making demeaning remarks toward the elderly person
- Marital or family discord; continuous friction, secretive behavior, poor self control among household members
- Conflicts with neighbors and others in the community
- Showing hostility or little concern for the elderly person
- Blaming the elderly person for problems
- Denying obvious problems regarding the elderly person' situation
- Arguments within extended family regarding care provided to the elderly person
- Manipulating the elderly person into paying family member/caregiver's bills, borrowing money from the elderly person
- Alcohol abuse; drug use
- Resentment or jealousy toward the elderly person
- Lack of knowledge of elderly person's condition and care needs
- Evidence/history of mental illness in family
- Leaving the elderly person alone for extended periods of time
- Excessive payments by the elderly person to caregiver for care
- Failing to provide the elderly person with needed personal care
- Withholding of food, medication
- Lack of interaction with the elderly person
- Unrealistic expectations of the elderly person
- Implausible or inconsistent explanation for the elderly person's injuries
- Recent appearance of previously uninvolved relatives or a new "best friend"
- Numerous persons living with the elderly person who have no apparent income; who are financially dependent on the elderly person

LEGAL PROTECTION FOR WHISTLEBLOWERS

Whistleblowers' Protection Act, MCL 15.361 – 15.369

The Act prohibits an employer from discharging, threatening, or discriminating against an employee because the employee reports or is about to report a suspected violation of a federal, state, or local law or rule to a public body, unless the employee knows the report is false. An employer is also prohibited from discharging, threatening or discriminating against an employee because the employee is requested by a public body to participate in an investigation or hearing by that public body or to testify at a court hearing

The employee may file a civil action within 90 days of the violation of the Act. The Court may order reinstatement of the employee, payment of back wages and fringe benefits, other actual damages, and reasonable attorney fees and costs. The Court may also order payment of a civil fine of not more than \$500.00 which is paid to the State Treasurer.

Public Health Code, MCL 333.20176a

A health facility may not discharge or discipline or otherwise discriminate against an employee acting in good faith for reporting a violation of a state law or regulation governing health care facilities, health care professionals, or controlled substances, for reporting the malpractice of a health professional, or for acting as an expert witness in a lawsuit involving medical malpractice or in an administrative hearing. A health facility that violates this section is subject to an administrative fine of up to \$10,000.00 for each violation and suspension, limitation or revocation of its license.

Public Health Code, MCL 333.20180

An employee of a health care facility, a person under contract to a health care facility, or any other person who in good faith makes a report or complaint regarding a health care facility or who assists the Department of Health and Human Services in carrying out its duties under the Public Health Code is immune from civil and criminal liability. The immunity granted under this section extends only to acts done pursuant to Article 17 of the Public Health Code (relating to health care facilities). The Department is required to keep the person's identity confidential unless the person agrees to disclosure or unless the person is required to testify in disciplinary proceedings against the subject of the report or complaint. However if disclosure of the person's

identity is considered by the Department to be essential to the disciplinary proceedings and if the person is the complainant the Department must give the person the opportunity to withdraw the complaint before disclosure. There are special provisions governing immunity from civil and criminal liability if the person is employed by or under contract to a hospital.

Public Health Code, MCL 333.21771(6); 333.21772

A nursing home licensee, administrator, or employee is prohibited from harassing, dismissing, or retaliating against an employee who reports a reasonable suspicion of physical, mental or emotional abuse, mistreatment, or harmful neglect.

An administrator, owner, employee, or other representative of a nursing home is prohibited from interfering with the right of any individual to file a complaint with a government agency or to bring a civil or criminal action with respect to the operation of the nursing home, and is also prohibited from discharging, harassing, or retaliating against an individual for such actions.

Vulnerable Adult Abuse Act, MCL 750.145p

The Act prohibits intentional retaliation or discrimination against an employee who files a complaint against a facility, or provides information to a state or local official enforcing the Adult Foster Care Licensing Act or the Public Health Code, or who initiates, participates in, or testifies in an administrative action or criminal action against a facility or a civil suit related to the criminal action. The violation is punishable as a misdemeanor with a possible sentence of up to one year and/or a fine of not more than \$10,000.00. A second offense is punishable as a felony with a possible sentence of up to five years and/or a fine of not more than \$75,000.00.

Mental Health Code, MCL 330.1723(4) and (5)

An individual who makes a report pursuant to this section, [see pp 15-16] in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report.

VULNERABLE ADULT ABUSE ACT: 1994 PA 149, MCL 750.145m – 750.145r

This law, which was enacted in 1994 as Public Act 149, MCL 750.145m – 750.145r, defines the crime of vulnerable adult abuse. A vulnerable adult is one who because of age, developmental disability, mental illness, or physical handicap requires supervision or personal care, lacks the personal or social skills to live independently, is unable to protect him/herself from abuse, neglect, or exploitation, or who is living in an adult foster care facility. The Act applies to persons who directly care for or have physical custody of a vulnerable adult. MCL 750.145m(c),(u). It covers all vulnerable adults, whether they are living in their own residence or in a facility (such as an AFC home, home for aged, or nursing home).

The Act establishes four degrees of vulnerable adult abuse: MCL 750.145n.

1st Degree: Where a caregiver or other person with authority over the adult intentionally causes serious physical or mental harm to a vulnerable adult. A violation is a felony, with a possible sentence of up to 15 years and/or a fine of not more than \$10,000.00.

2nd Degree: Where a caregiver or other person with authority over the adult recklessly acts or fails to act, causing serious physical or mental harm to a vulnerable adult. A violation is a felony, with a possible sentence of up to 4 years and/or a fine of not more than \$5,000.00.

3rd Degree Where a caregiver or other person with authority over the adult intentionally causes physical harm to a vulnerable adult. A violation is a misdemeanor, with a possible sentence of up to 2 years and/or a fine of not more than \$2,500.00.

4th Degree Where a caregiver or other person with authority over the adult recklessly acts or fails to act, causing physical harm to a vulnerable adult or where such person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results. A violation is a misdemeanor with a possible sentence of up to one year and/or a fine of not more than \$1,000.00.

If a person operates an unlicensed facility (such as a room and board home) that is subject to licensure under the Adult Foster Care Licensing Act or is an employee of, or acts on behalf of, an unlicensed facility and violates a provision of that Act or the Public Health Code or the administrative rules promulgated pursuant to such Acts, and the violation causes the death of a vulnerable adult, the person is guilty of a felony with a possible sentence of up to 5 years and/or a fine of not more than \$75,000.00. MCL 750.145o.

MCL 750.145p lists a number of prohibited acts by a caregiver, a person with authority over a vulnerable adult, or a person licensed to operate an AFC home which are classified as misdemeanors punishable by up to 2 years and/or a fine of not more than \$25,000.00. These include co-mingling of funds by an AFC home or other licensee who is required to keep resident funds in a separate trust account, interfering with an investigation by a state agency; giving false information to a state agency, and retaliation/discrimination against a resident for making a complaint against a facility or testifying in an administrative or legal action against a facility. Second or subsequent offenses are felonies punishable by imprisonment up to 5 years and/or a fine of not more than \$75,000.00.

FINANCIAL EXPLOITATION OF A VULNERABLE ADULT 2000 PA 222, MCL 750.174a

This law makes it a crime for a person to obtain or use or attempt to obtain or use, through fraud, deceit, misrepresentation, coercion or unjust enrichment, a vulnerable adult's money or property for his/her own direct or indirect benefit, if the person knows or had reason to know that the person is a vulnerable adult. A vulnerable adult is one who because of advanced age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills to live independently or who is unable to protect him/herself from abuse, neglect, or exploitation or who is living in an adult foster care facility, regardless of whether there is a court order (such as order appointing a guardian) finding the adult to be incapacitated. However, the law does not apply to financial institutions or brokers, or their officers, directors, employees, or agents, provided they were performing duties in the normal course of their business. Violations are punishable under a tiered penalty structure based on the value of the money or property involved,

If the value of the money or property involved was less than \$200.00 the person would be guilty of a misdemeanor with a possible sentence of up to 93 days and/or a fine. The fine would be not more than \$500.00 or three times the value of the money or property involved, whichever was greater.

If the value of the money or property involved was at least \$200.00 but less than \$1,000.00 the person would be guilty of a misdemeanor with a possible sentence of up to one year and/or a fine. The fine would be not more than \$2,000.00 or three times the value of the money or property involved, whichever was greater.

If the value of the money or property involved was at least \$1,000.00 but less than \$20,000.00 the person would be guilty of a felony with a possible sentence of up to five years and/or a fine. The fine would be not more than \$10,000.00 or three times the value of the money or property involved, whichever was greater.

If the value of the money or property involved was at least \$20,000.00 but less than \$50,000.00 the person would be guilty of a felony with a possible sentence of up to ten years and/or a fine. The fine would be not more than \$15,000.00 or three times the value of the money or property involved whichever was greater.

If the value of the money or property involved was at least \$50,000.00 but less than \$100,000.00 the person would be guilty of a felony with a possible sentence of up to fifteen

years and/or a fine. The fine would be not more than \$15,000.00 or three times the value of the money or property involved whichever was greater.

If the value of the money or property involved was \$100,000.00 or more the person would be guilty of a felony with a possible sentence of up to twenty years and/or a fine. The fine would be not more than \$50,000.00 or three times the value of the money or property involved whichever was greater.

If the person has one or more previous convictions under MCL 750.174a the possible sentences for a subsequent offense are enhanced.

A court may order a sentence imposed for a felony conviction of financial exploitation of a vulnerable adult to be served consecutively to any other sentence imposed for a misdemeanor or felony conviction of financial exploitation of a vulnerable adult.

REPORTING PERSONS WITH A DISABILITY OR DEMENTIA AS MISSING: MCL 28.258

The Uniform Crime Reporting System law, Act 319 of 1968, requires a law enforcement agency that receives a missing person report concerning an individual who is within one of the designated classes of individuals covered by the Act to immediately enter information regarding that individual into the Law Enforcement Information Network (LEIN) and the national crime information center, after conducting a preliminary investigation. The Act covers an individual who has a physical or mental disability, as evidenced by written documentation from a physician or other authoritative source, including an individual with Alzheimer's disease and dementia, and an individual who is believed to be incapable of returning to his/her residence without assistance. If the missing individual has Alzheimer's disease or dementia or is believed to be incapable of returning to his/her residence without assistance the law enforcement agency must broadcast information regarding the individual over the LEIN to all law enforcement agencies having jurisdiction of the location where the missing individual lives or was last seen and to any other law enforcement agency that potentially could become involved in locating the missing individual. The person making the report of the missing individual can also request that the information be reported to other law enforcement agencies.

EMERGENCY TELEPHONE NUMBERS

POLICE ASSISTANCE

911

ADULT PROTECTIVE SERVICES*

Statewide Centralized Intake Unit (24 hrs/day; 7 days/week)

855-444-3911
(toll free)

YWCA SAFE HOUSE: Crisis Line

810-238-7233
(810-238-SAFE)

NATIONAL DOMESTIC VIOLENCE HELPLINE

800-799-7233
(800-799-SAFE)

GENESEE HEALTH SYSTEM CRISIS LINE (formerly
Genesee County Community Mental Health)

810-257-3740
877-346-3648

*Michigan Department of Health and Human Services
Genesee County Adult Services non-emergency contact information:

125 E. Union St.
Flint, MI 48502
810-760-2200

GENESEE COUNTY LAW ENFORCEMENT AGENCIES

Michigan State Police – Flint Post
4481 Corunna Road
Flint, MI 48532
810-732-1111

Genesee County Sheriff
1002 S. Saginaw
Flint, MI 48502
810-257-3422

City and Township Police Departments

Argentine Township Police Department
8274 Silver Lake Road, Linden, MI 48451
810-735-5317

Atlas Township (Sheriff Substation)
810-257-3422

Burton City Police Department
4090 Manor Drive
Burton, MI 48519
810-742-2542

Clayton Township Police Department
2011 S. Morrish Road, Swartz Creek, MI 48473
810-635-3230

Clio City Police Department
505 W. Vienna Road, Clio, MI 48420
810-686-5010

Davison City Police Department
200 E. Flint, Davison, MI 48423
810-653-4196

Davison Township Police Department
1280 N. Irish Road, Davison, MI 48423
810-653-5656

Fenton City Police Department
311 S. Leroy, Fenton, MI 48430
810-629-5311

Fenton Township (Sheriff Substation)
810-257-3422

Flint City Police Department
210 E. Fifth Street, Flint, MI 48502
810-237-6800

Flint Township Police Department
5200 Norko Drive, Flint, MI 48507
810-600-3250

Flushing City Police Department
725 E. Main Street, Flushing, MI 48433
810-659-3119

Flushing Township Police Department
6524 N. Seymour Road, Flushing, MI 48433
810-659-0809

Gaines Township Police Department
9255 Grand Blanc Road., Gaines, MI 48436
989-271-6039

Genesee Township Police Department
7244 N. Genesee Road, Genesee, MI 48437
810-640-2000

Grand Blanc City Police Department
203 E. Grand Blanc Road, Grand Blanc, MI 48439
810-694-1111

Grand Blanc Township Police Department
5405 S. Saginaw Street, Grand Blanc, MI
810-424-2611

Linden City Police Department
132 E. Broad, Linden, MI 48451
810-735-5454

Montrose Police Department (City & Township)
810-639-5400

Mt. Morris City Police Department
11649 N. Saginaw Street, Mt. Morris, MI 48458
810-686-4400

Mt. Morris Township Police Department
5447 Bicentennial Parkway, Mt. Morris, MI 48458
810-785-1311

Mundy Township Police Department
4029 W. Grand Blanc Road, Swartz Creek, MI 48473
810-655-4646

Otisville Village Police Department
300 East St, Otisville, MI 48463
810-631-6310

Richfield Township Police Department
5381 N. State Road, Davison, MI 48423
810-653-3565

Swartz Creek City Police Department
8100 Civic Drive, Swartz Creek, MI 48473
810-655-4646

Thetford Township Police Department
4014 E. Vienna Road, Clio, MI 48420
810-670-3400

Vienna Township (Sheriff Substation)
810-686-8622

NATIONAL ORGANIZATIONS

Eldercare Locator
800-677-1116
www.eldercare.gov

Family Caregiver Alliance
235 Market Street, Suite 950
San Francisco, CA 94104
800-445-8106
www.caregiver.org

National Center on Elder Abuse
c/o University of Southern California Keck School
of Medicine
Department of Family Medicine and Geriatrics
1000 South. Fremont Avenue, Unit 22, Bldg. A-6
Alhambra, CA 91803
855-500-3537
www.ncea.acl.gov

National Committee for the Prevention of Elder Abuse
333 Westchester Avenue, Suite South 201
White Plains, NY 10604
www.preventelderabuse.org

National Clearinghouse on Abuse in Later Life
1245 E. Washington Ave, Suite 150
Madison, WI 53703
608-255-0539
www.ncall.us

Clearinghouse on Abuse and Neglect of the Elderly
Center for Drug and Health Studies
University of Delaware
257 E. Main St, Suite 110
Newark, DE 19716
CANE-UD@udel.edu
www.cane.udel.edu

Commission on Law and Aging
American Bar Association
1050 Connecticut Ave, N.W. Ste 400
Washington, DC 20036
202-662-8690
www.americanbar.org/aging

National Center for Victims of Crime
2000 M Street, N.W., Suite 480
Washington, DC 20036
202-467-8700
www.victimsofcrime.org

The National Consumer Voice for
Quality Long-Term Care
1001 Connecticut Ave, NW, Suite 632
Washington, D.C. 20036
202-332-2275
www.theconsumervoic.org

National Guardianship Association
174 Crestview Drive
Bellefonte, PA 16823
877-326-5992
www.guardianship.org

Elder Financial Protection Network
17 Keller Street
Petaluma CA 94952
707-981-8403
www.elderfinancialprotection.org

International Network for the
Prevention of Elder Abuse
INPEA Secretariat.
The Somers Law Firm
P.O. Box 368: Nassau, NY 12123
518-281-2777
www.inpea.net

U. S. Department of Justice
Elder Justice Initiative
950 Pennsylvania Ave, NW
Washington, DC 20530-0001
202-514-2000
elder.justice@usdoj.gov
www.justice.gov