

MANDATED REPORTING- INCAPACITATED ADULTS AND ELDERS

Introduction:

Behavioral health professionals are expected to comply with mandated reporting statutes. The intent of this document is to bring consistency to the process of mandated reporting, all the while maintaining a trusting relationship with those they seek to help. The following sections include an overview of law as well as a clear protocol for behavioral health professionals when they are confronted with an apparent case of adult abuse, neglect, exploitation or self-neglect.

Background:

In 1978, New Hampshire was one of the first states in the nation to enact an Adult Protective Services (APS) Law (RSA 161-F: 42-57). The law covers individuals aged 18 and over who are incapacitated. According to 161-F: 43, VII, “ ‘Incapacitated’ means that the physical, mental, or emotional ability of a person is such that he is unable to manage personal, home, or financial affairs in his own best interest, or he is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.”

The law, which is a civil and not criminal law, has remedy as its focus, an intent which is clearly stated in its purpose section, RSA 161-F: 42: “The purpose of this subdivision is to provide protection for incapacitated adults who are abused, neglected or exploited. Implicit in this subdivision is the philosophy that whenever possible an adult’s right to self-determination should be preserved, and that each adult should live in safe conditions and should live his own life without interruption from state government. Only when these principles become impossible to follow should legal proceedings be initiated in order to care for and protect such adults.”

In addition to the philosophy expressed in its purpose section, the law also reflects New Hampshire’s concern about its vulnerable adult citizens by the inclusion of a mandatory reporting section: RSA 161-F: 46. This section requires that **any person** suspecting or believing in good faith that an adult who is or who is suspected to be incapacitated has been subjected to abuse, neglect, self-neglect or exploitation, must report this to the Bureau of Elderly and Adult Services (BEAS), the Bureau within the Department of Health and Human Services that administers the Adult Protection Program. **Failing to make a report can result in being found guilty of a misdemeanor**, as stated in RSA 161-F: 50, “Any person who knowingly fails to make any report required by 161-F: 46 shall be guilty of a misdemeanor.”

To respond to concerns that individuals may have about personal liability when making reports and/or providing information during an investigation, the APS law contains immunity from liability as is set forth in RSA 161-F: 47 **Immunity from Liability**. “Any person or agency, other than an alleged perpetrator, participating in good faith in the making of a report of an alleged incident of adult abuse, neglect or exploitation, providing information relative to such incident or following a reporting protocol developed jointly with the department, or who in good faith investigates the report, administers the registry or who participates in a judicial or administrative proceeding

resulting from that report, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any person or agency providing information in good faith, including materials requested by the department pursuant to RSA 161-F: 56, shall have the same immunity with respect to participation in any investigation by the commissioner or his authorized representative or in any judicial proceeding resulting from such report.”

The types of abuse contained in the law are: physical abuse, emotional abuse, sexual abuse, neglect, exploitation, and self-neglect, and are defined as follows:

RSA 161-F: 43, II:

(a) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of an incapacitated adult.

(b) “Physical abuse” means the use of physical force which results or could result in physical injury to an incapacitated adult.

(c) “Sexual abuse” means contact or interaction of a sexual nature involving an incapacitated adult without his or her informed consent.

RSA 161-F: 43, III “Neglect” means an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of an incapacitated adult.

RSA 161-F: 43, IV “Exploitation” means the illegal use of an incapacitated adult’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud.

RSA 161-F: 43, VI. “Self-neglect” means an act or omission by an incapacitated adult which results or could result in the deprivation of essential services or supports necessary to maintain his or her minimum mental, emotional or physical health and safety.

There are numerous indicators to bear in mind when considering the possibility of abuse and neglect of incapacitated adults and elders.

Indicators of Physical Abuse. Unexplained injuries or explanation (s) inconsistent with medical findings

- Bruises and/or Welts
 - Bilateral bruising: top of the shoulders, both sides of the face, or insides of the thighs
 - Bruises from bumping into bedrails (in facilities), bruises on the head, thighs or buttocks

- Bruises in various stages of healing: fresh bruises, faded bruises
 - Multiple bruises or bruises that form clusters on forearms of both arms, from arms to the elbows
 - Bruises that have the shape and size of a familiar object, such as a hand print, finger marks, electric cord, belt buckle
- Burns
 - Scalding burns causing blistering from hot water
 - Small burns from cigarettes or cigar butts, especially on soles of feet, palms, back of the buttocks
 - Burns in the shape of familiar objects, such as an iron
 - Rope burns on arms, legs, neck or torso
- Cuts, lacerations, punctures, or wounds
- Sprains, dislocations
- Fractures of the skull, nose or facial structure
- Broken bones
 - Pain and inability to move a limb
 - In various stages of healing
- Internal injuries
 - Unexplained pain, abnormal functioning of organs, bleeding from bodily orifices, vomiting

Indicators of Neglect

- Caretaker or responsible party fails to:
 - Wash, bathe, dress, provide personal care
 - Shop for food, prepare meals, feed the adult
 - Change bed linens/pads so that bed is soiled and/or urine-soaked
 - Change position of bed-bound individual to lessen the possibility of decubiti (bedsores)
 - Provide supervision, allowing adult with dementia or Alzheimer's Disease to wander
 - Purchase/Administer necessary medications properly

Indicators of Sexual Abuse

- Torn, stained or bloody underclothing
- Difficulty in walking or sitting
- Pain, itching, bruising or bleeding in genital area
- Unexplained venereal disease or genital infections

Indicators of Emotional Abuse

- Verbal harassment such as yelling, ridiculing, berating
- Withholding food, money, or mail
- Threatening harm
- Refusing to allow contact with friends or family
- Confining, locking in/out

Indicators of Exploitation

- Unexplained or sudden inability to pay bills, purchase food and other necessary items
- Inaccurate, confused, or no knowledge of finances
- Disparity between income/assets and lifestyle
- Fear or anxiety when discussing finances
- Unprecedented transfer of assets to others
- Extraordinary interest by others in finances or assets

Indicators of Self-Neglect

- Evidence of poor hygiene
 - Matted or lice-infected hair
 - Soiled clothing
 - Odors or presence of feces/urine
 - Dirty nails/skin
- Dehydration, Malnutrition
- Inadequate or inappropriate clothing for the weather
- Hoarding
- Untreated medical condition and refusal to seek/accept treatment
- Inability/Refusal to take necessary medications
- Decubiti (bedsores)
- Inability/failure to pay bills
- Mental confusion

Where To Report:

When a decision is made that a report must be made to the Bureau of Elderly and Adult Services, reports are made to the BEAS Unit in one of the twelve DHHS District Offices across the State which covers the city or town where the incapacitated adult lives in his/her own home/apartment, in the homes/apartments of relatives or friends, or in boarding homes.

Reports are made to the BEAS Intake Worker in the Central Adult Protective Services (APS) Unit in Concord when the incapacitated adult lives in homes that are overseen by or affiliated with the Bureau of Behavioral Health or the Bureau of Developmental Services, when the adult is a resident of a rehabilitation facility or a general or specialized hospital, or when the incapacitated adult lives in any setting and is an alleged victim of mistreatment at the hands of an individual who receives reimbursement to provide care and/or services to him/her.

If an incapacitated adult is a resident of a nursing facility, assisted living facility, or a residential care facility, a report is made to the Office of the Long-Term Care Ombudsman, who forwards the report/reporter to the Central APS Unit.

What Happens Next

When a report is received and assessed as meeting the legal criteria in the APS Law, it is assigned for investigation by a BEAS staff person. The investigation is conducted in accordance with the Adult Protective Services Law and the Adult Protection Program Rule (He-E 700) adopted under New Hampshire's Administrative Procedures Act.

The responsibilities of the BEAS Investigator include:

- Initiating the investigation within 72 hours of the receipt of the report
- Reporting to law enforcement if the report contains information that suggests a crime has been committed
- Meeting with and interviewing the alleged victim
- Meeting with and interviewing the alleged perpetrator, if any
- Interviewing all witnesses and collateral contacts who have information about the reported incident/situation
- As necessary, obtaining and reviewing medical records, financial records, photographs, tapes, correspondence, and any other relevant documentation that relate to the reported incident/situation
- After reviewing and assessing all information obtained through the investigation, making a determination as to whether the allegation (s) is substantiated or unsubstantiated, whether the report is founded or unfounded, and in founded situations, whether or not the victim is in need of protective services
- Sending required notifications regarding the investigation determination and outcome to the alleged victim (and his/her guardian, if there is one), the alleged perpetrator, if any, and the administrator/director of a facility, agency or program if the alleged perpetrator is an employee of same
- Affording due process to the perpetrator of a founded investigation or a victim of founded self-neglect by providing a Reconsideration Meeting upon his/her request, or advising the perpetrator who meets the criteria to be entered into the BEAS State Registry, of his/her right to request an appeal conducted by the Administrative Appeals Unit.

Providing Protective Services

If the investigation resulted in a founded determination and the need for protective services by the victim, BEAS staff offers services to him/her. If the victim agrees to accept the services (as an adult presumed to be "competent" he/she can refuse) and is living independently in the community, the BEAS staff person assigned to the case will develop a case plan with him/her that includes services to help ameliorate whatever the conditions were that led to the protective report, as well as to help the individual to maintain safety, health and independence. The services may include, but are not limited to, case management and counseling provided by the BEAS staff person, in-home services such as homemaker, chore, home-delivered meals, services outside the home, such as Adult Group Day Care, and services such as respite care to relieve an overburdened caregiver. For victims living in supervised settings, follow-up by facility staff may be necessary; in addition, referrals may be made to involve staff of the Long-Term Care Ombudsman's Office.

Frequently Asked Questions

Can I file a report anonymously? Yes, you can, although if the reporter is a professional, we would hope that he/she would identify himself/herself. The majority of reporters to BEAS identify themselves.

When do I talk to the adult who may be suffering from mistreatment or self-neglect, and do I tell the adult that I have to report? That would be your decision and would be based on your relationship with the individual. If you feel comfortable in discussing this with the adult, it is usually beneficial to let the adult know that you have concerns and are trying to obtain some help on his/her behalf, to pave the way; but, again, this is entirely your decision.

If I do give my name, will it be given out? Under the Protection Program Administrative Rule, BEAS only releases the name of the reporter when requested by law enforcement, which may be doing a criminal investigation, or in response to a court order.

Who are the adult victims of abuse and neglect in New Hampshire? The victims range from 18 to over a hundred, and are living in a variety of settings, although the majority of those that are reported are living in the community. They may be physically or mentally disabled, they may suffer from a mental illness or dementia associated with aging, they may be elderly and in frail health.

How many reports to you receive a year? When BEAS first collected APS statistics in 1980, there were 239 reports received statewide. In State Fiscal Year (SFY) 2007 (7/1/2006-6/30/2007), 2,450 reports were received statewide.

How many of the reports are on elderly victims? In SFY 2007, 1,633 (66.6%) of the 2,450 reports involved alleged victims over the age of 60.

If the adult is at risk remaining at home, can BEAS remove him/her to a safer place? If the individual were willing to leave, BEAS would help find a substitute living arrangement for him/her. But if the adult is not willing to leave, BEAS has no legal authority to remove the adult against the adult's wishes. Again, because the individual is 18 or older, he/she has the right to make decisions, even if they're decisions that we all might consider "bad" decisions. However, if the adult is willing, BEAS staff continues to stay involved and work with the adult towards accepting safer options.

What if the victim has dementia and really doesn't understand the situation? If there is a possibility that the individual may not be making informed decisions, BEAS will assess the need for a substitute decision-maker, and if one is necessary, may assist a willing and concerned family member to take on that responsibility, or if there is no one, may petition for guardianship.

DBHRT Member Protocol: Mandated Reporting - Adult

If a DBHRT member has reason to suspect abuse or neglect of an incapacitated adult, the following steps should be taken:

1. As soon as possible contact the DBHRT Team Leader at the scene. Inform him/her about the circumstances causing you concern. If the Team Leader is not readily available, contact the Disaster Behavioral Health Liaison. If neither the team leader nor the Disaster Behavioral Health Liaison is reachable, contact the Disaster Behavioral Health Coordinator.
2. The Team Leader should contact the Disaster Behavioral Health Liaison, who will consult with the Disaster Behavioral Health Coordinator. If the DBH Liaison is unreachable, the Team Leader should make direct contact with the DBH Coordinator.
3. The DBHRT team member and any of the following- Team Leader, Disaster Behavioral Health Liaison and Disaster Behavioral Health Coordinator will:
 - discuss the circumstances involved in the possible mandated reporting event.
 - review the Adult Protective Services (APS) Law (RSA 161-F:42-57) (see attached)
 - address the following questions:
 - Do the circumstances mandate reporting to BEAS?
 - Should the individual's caregiver be informed about the reporting?
 - Is there imminent risk?

(Note: if it is decided that the adult is at imminent risk, the DBHRT member and/or Team Leader should call the local police immediately. Safety of the individual must always be the primary concern)

4. If a report is to be made, it should be directed to the local BEAS District Office or to the BEAS Central APS Unit. **1-800-949-0470** (if calling from within NH) or **603-271-7014** (if calling from outside NH). The list of BEAS District Offices is attached. The DBHRT team member who raises the concern about mandated reporting should make the report to BEAS, as they will likely have the most information to give BEAS. When the report is made, an intake worker will take the call Monday through Friday 8:00a.m. to 4:30p.m. During non-business hours and on weekends, the statute directs the call to local police or sheriff, who then contacts BEAS within 72 hours. If the report occurs outside of regular business hours, the local police or sheriff's department will be called. When this is the method of reporting, **the DBHRT team member will include their assessment of imminent risk** in their report to law enforcement.

5. While it is expected that the DBHRT member will include the Team Leader, Liaison and Coordinator in the process, there will be no interference with a DBHRT

team member who chooses to file a report that they believe is mandated. It is recommended however, that the protocol outlined in steps 1-4 be followed.

6. Once an oral report has been filed with BEAS, the DBHRT member will complete a summary report (see attached) of the incident and will send it to the Disaster Behavioral Health Coordinator (DBHC) within 48 hours of the event either by fax (223-3609) or by E-mail Paul.Deignan@hsem.nh.gov .

If you wish to send the report electronically, you will need to contact the Coordinator and request an electronic version of the reporting form. Hard copies of the Reporting forms will be available at all events in which DBHRT has been activated. A reporting team member may complete the form by hand and mail or fax it to the DBHC.

At a minimum, the report should include:

- a. The name of the person who filed the report
- b. A description of the reason and circumstances for filing a report
- c. The date and time that the report was filed
- d. Any additional important information

DBHRT Leadership Contact Information:

Paul Deignan DBHC: 33 Hazen Dr. Concord, NH 03305	work: (603)223-3621	Cell: (603) 419-0074 FAX: (603) 223-3609
Mark Lindberg DBHL:	work: (603)444-5358	Cell: (603) 991-3366
Joan Haskell DBHL:	work: (603)889-6147	Cell: (603) 566-3523