

Abuse, Neglect and Exploitation In Licensed Facilities

USM LIBRARIES

- ✓ **Recognize it**
- ✓ **Prevent it**
- ✓ **Report it**

**State of Maine
Department of Human Services
Bureau of Elder and Adult Services
35 Anthony Avenue
State House Station #11
Augusta, Maine 04333-0011**

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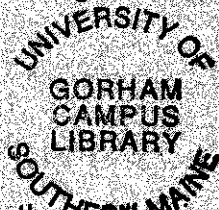
August 1993



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Ann Twombly, Affirmative Action Coordinator, has been designated to coordinate our efforts to comply with the U.S. Department of Health and Human Services regulations (45 C.F.R. Parts 80, 84 and 91) and the U.S. Department of Education regulations (34 C.F.R. Part 106) implementing these Federal laws. Inquiries concerning the application of these regulations and our grievance procedures for resolution of complaints alleging discrimination may be referred to Ann Twombly at 221 State Street, Augusta, Maine 04333. Telephone number: (207) 287-3488 (Voice) or 1-800-332-1003 (TDD), or to the Assistant Secretary of the Office of Civil Rights, Washington, D.C.



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In Maine there are approximately 14,450 beds in licensed nursing homes, boarding homes and adult foster homes. In addition there are a total of approximately 110 beds for long term care patients at the Augusta and Bangor Mental Health Institutes.

This Bureau of Elder and Adult Services (BEAS) booklet is a guide for facility staff regarding abuse of residents: how to recognize it; how to prevent it; and responsibilities for reporting it.

The Bureau of Elder and Adult Services which is part of the Maine Department of Human Services recognizes the responsibility of facility staff to assure the welfare and safety of their residents and that the care of adults residing in long term care facilities is a demanding and often difficult job. Unfortunately, there will be times when family members or staff of the facility may treat residents abusively, and almost all facilities have experienced problems with patients abusing one another.

The Bureau is responsible for investigating reports of abuse, neglect or exploitation of incapacitated and dependent adults and to protect incapacitated and dependent adults at substantial risk or in danger. Bureau staff are available at no charge, to train facility staff on site, and there are several video tapes available on the subject of abuse and neglect which can be borrowed without cost. For more information, contact the BEAS Regional Program Manager in your region's Department of Human Services office. The addresses and phone numbers are on page 12.

The Bureau's goal is to maintain a partnership between facilities and the Bureau that will assure the protection of residents and the preservation of their rights.

SIGNS OF ABUSE AND NEGLECT

Definition "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs. (22 MRSA §3472)

The cases described briefly below are examples of cases referred to the Bureau of Elder and Adult Services.

Cases:

- 95 year old woman, nursing home resident, physically and sexually abused by son-in-law and grandson during visits
- 37 year old man, boarding home resident, kicked in groin and stabbed with a paring knife by another resident
- 35 year old man with mental illness, involved in a series of violent outbursts toward other patients, including dislocating the shoulder of an elderly patient
- 23 year old woman, mental health institute patient, sexually assaulted while home on a weekend pass
- 101 year old woman, nursing home resident, slapped by C.N.A. resulting in serious facial bruises

There may be times when you observe signs of abuse but were not actually a witness to what happened. The tangible signs or indicators of abuse, neglect or exploitation described on the following pages tend to be ones that can be detected by trained observers such as facility staff members. More difficult to detect or to determine are intimidation and mental anguish. Facility residents who are ridiculed, maliciously teased, cursed at or threatened may fear retaliation if they speak up or complain about a family member, another resident or a member of the facility staff. It takes skill and sensitivity beyond that required for routine observation to find out if verbal abuse has occurred.

SIGNS OF ABUSE AND NEGLECT (Cont.)

<i>Physical Abuse Indicators</i>

Physical assaults, cruel discipline, excessive use of physical or chemical restraints, and unnecessary or incorrect medication may cause any one of the following:

Broken bones

Pain and inability to move a limb may be a sign of a broken bone. This may occur when a resident with osteoporosis is handled roughly by visitors or staff.

Burns

Burns and blistering skin over a wide area may show up because a resident was placed in a scalding hot tub of water. A more confined spot of burned skin may indicate purposeful burning with a cigarette.

Cuts

You may observe cuts or scratches because one resident jabbed another resident with a sharp object such as a pencil or scratched a resident with fingernails.

Bites

These do occur, sometimes because one resident bites another.

Internal Injuries

Watch for such signs as vomiting, pain, stuporous states, bleeding, swelling or bloody stools. You may observe any one or a combination of these if someone, for example, gave a resident alcohol or drugs that can cause sickness; or if someone overdoses a resident with anti-diarrhea medicine causing severe constipation; or if a blow to the stomach or head has caused internal injuries

***Marks/
Bruises***

A resident may have a hand-print shaped bruise where a person slapped them across the face or buttocks.

Scars

You may observe scars which could indicate that the resident has been a victim of repeated or past abuses.

SIGNS OF ABUSE AND NEGLECT (Cont.)

<i>Sexual Abuse Indicators</i>

"Sexual abuse or exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's consent (22 MRSA §3472).

Examples:

You notice that a family member offers affectionate gestures to a resident that are too lingering and seductive or become centered on the sex organs, anus or breasts.

You observe injury to a resident's genitals, anus, breast or mouth following an overnight visit with family.

You overhear a resident attempting to talk an incapacitated resident into sexual intercourse, fellatio, or cunnilingus.

A young female resident tells you that her father manipulates her genitals, buttocks and breasts during his visits to the boarding home.

You happen upon a staff member exposing his/her genitals to a resident.

You learn of a visitor taking nude photographs of residents.

SIGNS OF ABUSE AND NEGLECT (Cont.)

<i>Indicators of Neglect</i>

"Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. (22 MRSA §3472)

Residents suffer from neglect when they are left alone, ignored by staff or left with staff who fail to care for them appropriately.

Examples:

You notice a group of assaultive residents have been left alone and unsupervised.

You discover an aide who has fallen asleep or is intoxicated while on duty.

You find that a resident has bleeding gums and some loose teeth, which tells you that a visit to the dentist is long overdue.

A resident is continually fearful about leaving her room and seems almost panicky when it's time to leave the facility for an outing. Staff "leave her be" rather than attempting to determine the cause of her fear.

You check on a resident who fell several days ago. Her ankle is swollen and bruised, and she complains of pain when walking. The resident's doctor or family were not notified of the fall immediately. X-rays taken several days after the fact reveal a fracture.

<i>Indicators of Exploitation</i>

"Exploitation" means the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage. (22 MRSA §3472) Maine law prevents facility employees from being appointed guardians or conservators. (18-A MRSA §5-311)

Examples

Resident's relative, who is representative payee, fails to pay nursing, boarding or foster home bills and provide personal needs money.

Facility administrator, who is resident's representative payee purchases furniture or clothing not intended for resident.

Staff member forces resident to give him or her money or personal property such as a TV, jewelry, furniture.

ABUSE: RISK FACTORS

Types of Abuse Abuse in facilities may occur in a variety of ways. Residents may abuse one another, facility staff may abuse residents or residents may be abusive toward staff. Abuse may be an act of violence such as physical or sexual assault, or it may be verbal abuse, medication errors or failure to provide proper assistance resulting in injuries.

Risk factors for abuse can be related to facility employees, to conditions in the facility itself or to residents. Listed below are some factors which increase the risk of abuse. The more of them that are present in a situation, the greater the risk. There are also other forces which may contribute to a problem such as the season, holidays, reactions to family visits, weather and time of day. Being aware of what to watch for and averting a build up of such risk factors can help to prevent abuse.

<i>Employee Risk Factors</i>

- Alcohol/drug abuse
- Chronic physical illness
- Excessive absenteeism
- Family problems/history of family violence
- Financial problems
- Insubordination/power conflicts/rivalry
- Mental illness
- Numerous disciplinary actions
- Poorly trained
- Role reversal, e.g. looking to resident to fulfill the employee's needs
- Social isolation
- Tardiness/unexplained absences

ABUSE: RISK FACTORS (Cont.)

<i>Facility Risk Factors</i>

Accepting residents whose needs cannot be met by facility
Crowding/concentration of vulnerable adults
Frequent "reorganizations"
High employee absenteeism
High overtime demands
High personnel turnover
Inadequate and uninformed administrator response to abuse
Inconsistent and unclear expectations of staff
Lack of staff training
Lack of clear role definition for staff
Poor communication between administrators and staff(in both directions)
Poorly paid staff
Staff shortages, e.g. least experienced staff required to work holidays when staffing is skeletal/residents agitated
Poor building maintenance (ventilation, noise, lighting)

<i>Resident Risk Factors</i>

Argumentative
Assaultive
Demanding
History of multiple incidents
History of substance abuse
Hostile
Incompetent, organic brain syndrome (OBS), demented
Incontinent
Intrusive
Manipulative
Mute
Passive/passive aggressive
Sexual acting out behavior
Verbally abusive

PREVENTION

Preventing abuse in facilities requires trained staff at all levels. In addition, staff must have administrative support to act to prevent abuse and to file proper incident reports. There is general agreement that an atmosphere in a facility conducive to abuse prevention and protection can be greatly enhanced if the following conditions pertain:

Prevention

Facility administration communicates clearly and consistently that all residents and staff must be treated with dignity and respect.

Orientation and ongoing training programs are provided that develop appropriate attitudes in new employees and teach staff about resident behavior and needs.

Administrators and supervisors are competent, accessible to and supportive of staff.

Employees feel comfortable about discussing personal problems with their supervisors or facility administration. Administrators make appropriate referrals for counseling or assistance.

Staff who are becoming angry with a particular patient can request reassignment.

Staff have a pleasant and clean break room.

Staff have supplies and equipment necessary to do their jobs.

Staff deal with even minor incidents of abuse immediately. No level of abuse, no matter how "minor", is tolerated.

Administrators and supervisors convey to staff and residents the importance of reporting suspected abuse, neglect or exploitation to the Department of Human Services. Note in the section on reporting that in addition to reporting to one's supervisor or the facility administrator, the staff person must also make a report directly to the department.

Facility protects confidentiality of staff/resident reporters.

Facility administration and staff are aware of, understand the purpose of and call upon the Long Term Care Ombudsman Program for assistance. See page 19 for program description.

MAINE'S REPORTING LAW

Mandatory Reporting

Maine law (22 MRSA §3477-3479-A) requires that certain persons, while acting in their professional capacity immediately report or cause a report to be made of suspected abuse, neglect, or exploitation of an adult, if there is reasonable cause to suspect that the adult is incapacitated.

Professionals who must report:

Ambulance Attendant	Law Enforcement Official	Physician (MD and DO)
Certified Nursing Assistant	Licensed Practical Nurse	Physician's Assistant
Chiropractor	Medical Examiner	Podiatrist
Christian Science Practitioner	Medical Intern	Psychologist
Coroner	Mental Health Professional	Registered Nurse
Dentist	Occupational Therapist	Social Worker
Emergency Medical Technician	Pharmacist	Speech Therapist
Emergency Room Personnel	Physical Therapist	

Facility reporting

Maine law further states that whenever a person is required to report in his or her capacity as a member of the staff of a medical, public or private institution, facility or agency, that person shall immediately notify the person in charge of the institution, facility or agency or a designated agent of the person in charge, who shall then cause a report to be made. The staff person shall also make a report directly to the appropriate department.

When a staff person is required to report, they must make a report to the person in charge at the facility and to the appropriate department. The charge person will meet the "cause a report to be made" requirement of the law by ensuring the staff person has made a report to the appropriate department.

Optional reporting:

Any person may make a report if that person knows or has reasonable cause to suspect abuse, neglect or exploitation of a dependent or incapacitated adult, or has reasonable cause to suspect that an adult is incapacitated.

Where to report:

Mandatory or optional reports are made to the Department of Human Services, or when the alleged victim has mental retardation, to the Department of Mental Health and Mental Retardation. During office hours reports to the departments are made through Regional Offices of the Bureau of Elder and Adult Services and the Department of Mental Health and Mental Retardation Office of Advocacy. Phone numbers are on pages 12 and 13 respectively.

MAINE'S REPORTING LAW (Cont.)

<i>Immunity</i>	When reports are made in good faith, reporters are immune from any civil liability. Facility staff who comply with the mandatory reporting law also are protected from discharge, threats or discrimination regarding their conditions of employment by their employers under Maine's "whistleblowers protection act" (26 MRSA §831-840.)
<i>Liability</i>	A referral may be made to the professional's licensing board by BEAS. A fine of not more than \$500 may be imposed upon a professional who is convicted of knowingly failing to report, and the conviction will also be reported to the professional's licensing board or accrediting unit.
<i>Confidentiality</i>	The Department will respect a request for confidentiality. Identity of reporters requesting confidentiality will not be revealed unless a court or grand jury determines it is required to protect the adult from serious harm.
<i>Self-Abuse</i>	Self-abuse or self-neglect must be recorded in the resident's chart and noted in an incident report but is not reportable to BEAS unless the resident is suspected to be, or is, incapacitated.
<i>Accidents</i>	Injuries from a known accident are not reportable but must be noted in the resident's chart.
<i>Resident vs. Staff abuse</i>	Residents who abuse staff do not have to be reported to BEAS unless the resident is a BEAS client or under public guardianship. These resident incidents must be documented and brought to the attention of appropriate supervisory personnel. The staff member may choose to press charges in cases of assault. The facility is responsible for taking steps to address such abusive behavior on the part of the residents. Residents who abuse staff may also be reported if the resident is incapacitated and has no involved family.

INVESTIGATIONS OF REPORTS OF ABUSE, NEGLECT OR EXPLOITATION

What happens after the incident or suspicion is reported to BEAS also depends on Maine law (Adult Protective Services Act, 22 MRSA §3470-3492) and on the policies and procedures governing the Bureau's operations.

When a report of abuse, neglect or exploitation of a resident is made to BEAS, the Bureau will record the report and decide whether to assign the case for investigation. In general, a case will be assigned if any one of the following conditions exists:

- Cases Assigned:*
- ⇒ Resident was physically harmed, suffered pain or mental anguish and abuse or neglect was suspected.
 - ⇒ Resident's resources have been used or taken by a family member, another resident, or facility staff person.
 - ⇒ Resident was believed to be or was sexually abused or sexually exploited.
 - ⇒ Victim or perpetrator is incapacitated and may need a guardian or conservator.

Referrals to Law Enforcement:

Upon finding evidence indicating that a person has abused, or neglected an incapacitated or dependent adult resulting in serious harm, or has exploited an incapacitated or dependent adult, the Department is required to notify the District Attorney. Suspected abuse, neglect or exploitation on the part of staff in licensed facilities is also reported to the Medicaid Fraud Control Unit of the Attorney General's Office.

WHERE TO REPORT

Report to the regional office of the
Department of Human Services,
Bureau of Elder and Adult Services

COUNTY

OFFICE

CUMBERLAND, YORK

509 Forest Avenue
Portland, Maine 04101
774-4581; 1-800-482-7520
TDD 1-800-492-0670

ANDROSCOGGIN, FRANKLIN & OXFORD

200 Main Street
Lewiston, Maine 04240
795-4300; 1-800-482-7517
TDD 1-800-784-4421

KENNEBEC, KNOX, LINCOLN SAGadahoc, SOMERSET, WALDO

2 Anthony Avenue
Augusta, Maine 04333
624-8060; 1-800-452-1926
TDD 1-800-633-0770

HANCOCK, PENOBSBOT PISCATAQUIS & WASHINGTON

396 Griffin Street
Bangor, Maine 04401
947-0511; 1-800-432-7825
TDD 945-6711

AROOSTOOK

11 High Street
Houlton, Maine 04730
532-5094; 1-800-432-7338

After hours and emergency services

Statewide

1-800-452-1999

WHERE TO REPORT

When the adult is mentally retarded, report to the Regional Advocate of the
Department of Mental Health and Mental Retardation

COUNTY

OFFICE

CUMBERLAND AND YORK

169 Lancaster Street
Portland, Maine 04101
822-0270
TDD 822-0272

ANDROSCOGGIN, FRANKLIN OXFORD

200 Main Street
Lewiston, Maine 04240
795-4500
TDD 795-4502

KENNEBEC, SOMERSET

AMHI Complex
State House Station #60
Augusta, Maine 04333
287-7189

KNOX, LINCOLN, SAGadahoc & WALDO

32 Turner Street
Brunswick, Maine 04011
725-4407
TDD 725-0980

HANCOCK, PENOBSCOT PISCATAQUIS, WASHINGTON

106 Hogan Road
Bangor Office Center
Bangor, Maine 04401
941-4076
TDD 941-4392

AROOSTOOK & NORTHERN PENOBSCOT

Box 60
Westfield, Maine 04787
425-2751

AFTER BUSINESS HOURS

Pineland Switchboard
688-4811

Office of Advocacy, State House Station 40, Augusta, Maine 04333
287-4228

The Office of Advocacy is responsible for investigating abuse, neglect, and exploitation of mentally retarded adults. It has resident advocates at the Augusta Mental Health Institute (AMHI 287-7200) and the Bangor Mental Health Institute (BMHI 941-4000) and Regional Advocates at the offices listed above.

DEPARTMENT OF THE ATTORNEY GENERAL

DISTRICT ATTORNEYS**DISTRICT I**

(York County)

York County Courthouse (Main office)

Alfred, Maine 04002

324-8001

FAX 324-4997

Biddeford District Court

11 Adams Street, Suite 4

Biddeford, Maine 04005

282-0466

Springvale District Court

Butler Street

Springvale, Maine 04083

324-8214

York District Court

Chase's Pond Road, P.O. Box 776

York, Maine 03909

363-7434

DISTRICT II

(Cumberland county)

Cumberland County Courthouse (Main office)

142 Federal Street

Portland, Maine 04101

871-8384 or 871-8388

DISTRICT III(Androscoggin, Franklin &
Oxford counties)

Androscoggin Cnty Courthouse (Main office)

Two Turner Street

Auburn, Maine 04210

784-1397

FAX 782-5367

Assistant District Attorney

Main Street

Farmington, Maine 04938

778-5890

FAX 778-5899

Assistant District Attorney

27 Western Avenue

South Paris, Maine 04231

743-8282

DEPARTMENT OF THE ATTORNEY GENERAL (Continued)

DISTRICT IV

(Kennebec & Somerset)

Kennebec County Courthouse (Main office)
95 State Street
Augusta, Maine 04330
623-1156
FAX 622-5839

Assistant District Attorney
Augusta District Court
145 State Street
Augusta, Maine 04330
623-1635

Assistant District Attorney
Somerset County Courthouse
Court Street
Skowhegan, Maine 04976
474-2423

Assistant District Attorney
Waterville District Court
46 Front Street
Waterville, Maine 04901
873-7317

DISTRICT V

(Penobscot & Piscataquis)

Penobscot County Courthouse (Main office)
97 Hammond Street
Bangor, Maine 04401
942-8552
FAX 947-5926

Assistant District Attorney
Piscataquis County Courthouse
Dover-Foxcroft, Maine 04426
564-2181

DEPARTMENT OF THE ATTORNEY GENERAL (Continued)

DISTRICT VI

(Knox, Lincoln
Sagadahoc, Waldo)

Knox County Courthouse (Main office)
62 Union Street
Rockland, Maine 04841
594-0425
FAX 594-0433

Assistant District Attorney
Sagadahoc County Courthouse
752 High Street
Bath, Maine 04530
443-8204 or 443-8205

Assistant District Attorney
73 Church Street
Belfast, Maine 04915
338-2512

Assistant District Attorney
Lincoln County Courthouse
High Street
Wiscasset, Maine 04578
882-7312

DISTRICT VII

(Hancock & Washington)

Hancock County Courthouse (Main office)
60 State Street
Ellsworth, Maine 04605
667-4621
FAX 667-7516

Assistant District Attorney
City Building, 88 South Street
Calais, Maine 04619
454-3159

Assistant District Attorney
Washington County Courthouse
34 Center Street, P.O. Box 297
Machias, Maine 04654
255-4425

DEPARTMENT OF THE ATTORNEY GENERAL (Continued)

DISTRICT VIII
(Aroostook)

Aroostook County Courthouse (Main office)
240 Sweden Street
Caribou, Maine 04736
498-2557
FAX 493-3491

Assistant District Attorney
Aroostook County Courthouse
Houlton, Maine 04730
532-4294

MEDICAID FRAUD CONTROL UNIT

State House Station #6, State Office Building 6th Floor
Augusta, Maine 04333
626-8520

This unit is mandated to investigate fraud perpetrated by Medicaid providers and situations where there are allegations of abuse, neglect or exploitation by staff in a facility that receives Medicaid

DEPARTMENT OF HUMAN SERVICES

BUREAU OF MEDICAL SERVICES

State House Station #11, 249 Western Avenue
Augusta, Maine 04333

Licensing and Certification This division surveys hospitals, nursing homes and other medical and health related institutions and determines if they meet standards for Medicaid and Medicare Certification and state licensure.
Central office - 287-2606

Augusta District Office
State House, Station #11
35 Anthony Avenue
Augusta, Maine 04333
624-5386

Bangor District Office
396 Griffin Road
Bangor, Maine 04401
947-0511
1-800-432-7825
TDD 945-6711

Portland District Office
509 Forest Avenue
Portland, Maine 04101
774-4581
1-800-482-7520
TDD 1-800-492-0670

Residential Care Under the Division of Licensing and Certification is responsible for licensing of adult foster and boarding homes. It conducts surveys, investigates complaints and provides facility staff training.

State House Station #11, 35 Anthony Avenue
Augusta, Maine 04333
624-5250

LONG TERM CARE OMBUDSMAN PROGRAM

Legal Services for the Elderly

P.O. Box 2723

Augusta, Maine 04338

621-1079 1-800-499-0229

The Long Term Care Ombudsman Program investigates and resolves complaints made on behalf of residents of Maine's nursing, boarding, and adult foster homes and recipients of home care. Any person may ask for assistance from the Ombudsman Program on behalf of a resident of one of these facilities. The Ombudsman receives complaints directly from residents, from friends and relatives, employees and administrators, and public agencies and community groups. They include complaints about the quality of care that a resident receives in a long term care facility, and about problems that residents have regarding eligibility for state programs, financial status, legal problems, and transfer assistance. The Ombudsman Program also provides training on resident rights and on federal and state regulations and identifies issues that may require legislative or regulatory changes.

THE RIGHTS OF LONG TERM CARE RESIDENTS

1. To voice grievances without fear of reprisal and receive a prompt response from the facility.
2. To exercise their rights as a resident and as a citizen.
3. To be free from mental and physical abuse and to be free from chemical and physical restraints.
4. To be discharged or transferred only if the facility is unable to meet the resident's medical needs, if the resident's health has improved such that he/she no longer needs nursing home care, if the health or safety of other residents is endangered, or if the resident has failed, after reasonable notice, to pay for his/her stay in the facility. Discharge notice must be given in writing at least 30 days in advance or as soon as possible if more immediate changes in health require a more immediate transfer.
5. To associate and communicate privately with persons of their choice.
6. To participate in social, religious, and community activities.
7. To have access to their personal and medical records, to be informed of their medical condition, to participate in planning their care and treatment.
8. To manage personal financial affairs.
9. To keep and use personal belongings as space permits.
10. If married, to share a room with a spouse.
11. To receive a reasonable accommodation by the facility for individual needs and preferences.
12. To choose activities, schedules and health care consistent with his/her interests, assessments and plan of care.
13. To advance notice of change in room or roommate.
14. To organize and participate in residents groups.
15. To have access to results of licensing surveys.

If you feel that these or other rights have been denied to any person in a long term care facility, call the Ombudsman Program.

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Maine. Bureau of Elder and
Adult Services.

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exploitation in licensed

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