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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 1417                      **Hearing Date:** June 20, 2023  
**Author:** Wood  
**Version:** April 12, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Elder and dependent adult abuse: mandated reporting*

## HISTORY

**Source:** California Long Term Care Ombudsman Association

**Prior Legislation:** AB 40 (Yamada) Chapter 659, Stats. 2012

**Support:** Advocacy, Inc.; Area Agency on Aging Advisory Council; California Advocates for Nursing Home Reform; California Alliance for Retired Americans; California Commission on Aging; California District Attorneys Association; California Elder Justice Coalition (CEJC); California Office of The State Long-term Care Ombudsman; California Retired Teachers Association; Caring Across Generations; Catholic Charities of The Diocese of Stockton; Central Coast Commission for Senior Citizens; Council on Aging-Southern California Long-term Care Ombudsman Program Orange County; Council on Aging-Southern California Long-term Care Ombudsman Program, Riverside County, Psa 21; Disability Rights California; El Dorado County Long-term Care Ombudsman Program; Empowered Aging; Family Caregiver Alliance (FCA); Fresno-Madera Long-term Care Ombudsman Psa-14; Justice in Aging; Kings County Commission on Aging; Long Term Care Ombudsman Program of Lake and Mendocino Counties, Psa 26; Long Term Care Ombudsman Services of San Luis Obispo County; Long Term Care Services of Ventura Co, Ombudsman; Long-term Care Ombudsman Planning and Service Area 4 (PSA-4); Long-term Care Ombudsman Program of Santa Barbara County; Long-term Care Ombudsman Program, Kern County Psa 33; Ombudsman Services of San Mateo County, INC.; Placer Independent Resource Services; SEIU California; Senior Advocacy Services; Sonoma County Human Services Department

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

## PURPOSE

*The purpose of this bill is to reorganize and update provisions relating to mandated reporters of elder abuse.*

*Existing law* defines a person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not they receive compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, as a mandated reporter and further defines how abuse will be reported. (*WIC § 15630 et seq.*)

*Existing law* establishes, in federal law, the Older Americans Act (OAA), which promotes the well-being of Americans 60 years old and above through services and programs designed to meet their needs. (*42 United States Code (USC.) § 3001, et seq.*)

*Existing law* establishes, within the OAA, the Office of the LTCO Program and requires states to establish and operate a LTCO for the purpose of identifying, investigating, and resolving complaints that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities. (*42 USC § 3058(g)*)

*Existing law* establishes the Office of the State LTCO under the California Department of Aging (CDA), for the purpose of protecting and advocating for the rights and health and safety of long-term care facility residents, and in providing leadership, direction, and support to local LTCO programs. (*WIC § 9700 et seq.*)

*Existing law* defines “long-term health care facility” to mean a skilled nursing facility (SNF); intermediate care facility (ICF), including an ICF for individuals with developmental disabilities, as specified, a congregate living health facility; a nursing facility, and a pediatric day health and respite care facility. Specifies that a “long-term health care facility” does not include a general acute care hospital or acute psychiatric hospital, as specified. (*HSC § 1418*)

*Existing law* defines “long-term care facility,” for purposes of establishing the role of the State LTCO, to mean a nursing facility or SNF, including distinct parts of facilities that are required to comply with licensure requirements for SNFs, or a residential care facility for the elderly (RCFE.) (*WIC § 9701*).

*Existing law* defines “residential care facility for the elderly” to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (*HSC § 1569.2(p)(1)*)

*Existing law* establishes the RCFE Resident’s Bill of Rights, as provided, which intends that persons residing in RCFEs be treated with dignity, kindness and respect and that their civil liberties be honored, among other rights. (*HSC § 1569.261*)

*Existing law* mandates, for the purpose of local agency cross reporting, an adult protective services agency to immediately, or as soon as practically possible, report by telephone to the law enforcement agency and public agency with jurisdiction and responsibility for investigation of cases of elder and dependent adult abuse, in every known or suspected instance of abuse of an elder or dependent adult pursuant to WIC § 15630, 15630.1, or 15630.2.

*Existing law*, further details a county adult protective services agency also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

*Existing law* determines, before making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services first determines whether there is reasonable suspicion of any criminal activity. (*WIC § 15640 et seq*)

*Existing law* provides all records and files of the LTCO relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative, required by court order, or release of the information is to a law enforcement agency, public protective service agency, licensing or certification agency in a manner consistent with federal laws and regulations. (*WIC § 9725*)

*This bill* requires a mandated reporter to report abuse as defined in Welfare and Institutions Code § 15610.63 that is known, suspected or alleged immediately or as soon as practically possible, with a written report within two working days.

*This bill* mandates if the known, suspected, or alleged abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following occur:

- a) If the abuse was allegedly caused by another resident of the facility with dementia diagnosed by a licensed physician and there was no serious bodily injury, the reporter submits a written report of the known, suspected, or alleged instance of abuse to all of the following agencies within 24 hours:
  - i. The long-term care ombudsman;
  - ii. The local law enforcement agency; and,
  - iii. The corresponding state licensing agency.
- b) In all other instances, immediately or as soon as practically possible, but no longer than two hours, the reporter submits a verbal report of the known, suspected, or alleged instance of abuse to the local law enforcement agency, and submits a written report to all of the following agencies within 24 hours:
  - i. The long-term care ombudsman;
  - ii. The local law enforcement agency; and,
  - iii. The corresponding state licensing agency.

## COMMENTS

### 1. Need for This Bill

According to the author:

Mandated reporters and the protection they provide is critical to the safety of California's most vulnerable communities. Older adults are disproportionately victims of abuse, with studies finding that at least one in 10 community-dwelling older adults experienced some form of abuse in the prior year. Currently, there are several issues with California's mandated reporter process in long-term care regarding clarity and timeliness. For example, the timelines for reporting, lists of agencies to which the reports must be submitted, and required reporting methods differ depending on the type of abuse or neglect. The process creates confusion for mandated reporters and can inadvertently result in reports not being promptly submitted to the appropriate agencies. AB 1417 will require mandated reporters to follow a single, simplified and timely reporting process and ensure that criminal acts are reported to law enforcement first.

### 2. Long-Term Care Facilities

Sometimes referred to as assisted living facilities, RCFEs are responsible for providing housing, housekeeping, supervision, and personal care assistance with activities of daily living, like hygiene, dressing, eating, and walking, to individuals ages 60 and older. California's network of RCFEs consists of small homes serving a handful of residents to larger RCFEs that can house over 100 residents in communities across the state. Facilities provide a special combination of housing, personalized supportive services, and 24-hour staff designed to respond to the individual needs of those who require help with activities of daily living. This level of care and supervision is for people who are unable to live by themselves but who do not need 24 hour nursing care. They are considered non-medical facilities and are not required to have nurses, certified nursing assistants or doctors on staff. RCFEs are licensed and overseen by CDSS.

SNFs are health facilities that provide skilled nursing care and supportive care to patients whose primary need is for skilled nursing care on an extended basis. ICFs are health facilities that provide inpatient care to ambulatory or nonambulatory patients who have recurring needs for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care. As health care facilities, SNFs and ICFs are licensed and overseen by California Department of Public Health (CDPH). ICFs for Individuals with Intellectual Disabilities (ICF/IID) are also health facilities licensed by CDPH to provide 24-hour residential habilitative or nursing services. ICF/IIDs are approved by the Department of Developmental Services (DDS) prior to CDPH licensure. SNFs and ICFs are under the purview of the Senate Committee on Health.

### 3. Office of the State Long-Term Care Ombudsman (LTCO)

Under the federal OAA, each state is required to operate an Office of the State LTCO, which is charged with identifying, investigating, and resolving complaints that are made by, or on behalf of, residents of long-term care facilities. In California, the Office of the LTCO is housed under CDA. The State LTCO and their local representatives assist residents in long-term care facilities

with issues related to day-to-day care, health, safety, and personal preferences, including investigating abuse and violations of residents' rights or dignity, and other issues regarding quality of care.

The LTCO has oversight responsibility for 35 local Ombudsman programs throughout California. Approximately 216 paid staff and 717 certified volunteers advocate on behalf of residents of LTC facilities. These facilities include 1230 skilled nursing and intermediate care facilities, and 7307 residential care facilities for the elderly, with a combined count of 308,011 LTC beds.<sup>1</sup>

#### **4. Mandated reporting in long-term care facilities**

Elder mistreatment typically takes one of five forms: physical abuse, psychological or emotional abuse, sexual abuse, financial abuse and neglect. Studies have found that at least one in 10 community-dwelling older adults experienced some form of abuse in the prior year. A recent meta-analysis assessing the global prevalence rates of the abuse of older women found that one in six experienced abuse in the prior year. Furthermore, for every incident of abuse reported to authorities, nearly two dozen additional cases remain undetected.<sup>2</sup>

While there are many reasons why such abuse is not more widely reported, the current reporting system in long-term care facilities in California likely adds to the problem.

California's current mandated reporter process in long-term care has several issues regarding clarity and timeliness. The timelines for reporting, lists of agencies to which the reports must be submitted and required reporting methods differ depending on the type of abuse or neglect, which creates confusion for mandated reporters and can inadvertently result in reports not being submitted to the appropriate agencies in a timely manner.

In addition, the current statute authorizes mandated reporters in certain instances to make initial reports to the Long Term Care Ombudsman, who is prohibited by law to cross-report to law enforcement or other agencies without the consent of the long-term care resident-victim also causing a delay in reporting.

Both issues risk the safety of residents in long-term care facilities.

This bill clarifies how and to whom reports should be made when abuse occurs in a long term care facility. It also clarifies how reporting shall occur when the abuse was caused by another resident of the facility.

#### **5. Argument in Support**

The sponsor of this bill, California Long-Term Care Ombudsman Association states in support:

Elder abuse is chronically underreported. For every incident reported, it's estimated nearly 24 cases remain unreported. While there are many reasons why such abuse is not more widely reported – such as residents fearing retaliation and facilities failing

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<sup>1</sup> [https://aging.ca.gov/Providers\\_and\\_Partners/Long-Term\\_Care\\_Ombudsman/Program\\_Narrative\\_and\\_Fact\\_Sheets/](https://aging.ca.gov/Providers_and_Partners/Long-Term_Care_Ombudsman/Program_Narrative_and_Fact_Sheets/)

to train reporters – the complexity of the current mandated reporting system in California unquestionably adds to the problem.

Prior to AB-40 (2012), which codified our current mandated reporter system in long-term care, California had a relatively simple process that required to report to *either* the law enforcement *or* the local LTC Ombudsman Program in every instance. However, although simple, this process created serious problems for investigators because LTC Ombudsmen are not themselves mandated reporters. Serving primarily as resident advocates under federal law, LTC Ombudsmen cannot legally report cases of abuse to law enforcement without the consent of the resident they're representing, although they must investigate any abuse reports received under state law. This major discrepancy resulted in elder abuse reports being made to Ombudsmen which should have been made to law enforcement and vice versa, ultimately allowing abusers to avoid accountability for their crimes. AB-40 started out as an attempt to fix this loophole by requiring reports to both law enforcement *and* the LTC ombudsman in every instance. However, because of new requirements to send abuse reports to state licensing agencies around the same timeframe, AB-40 resulted in a reporting process that is arguably the most nuanced and difficult to follow in the nation.

California's current system requires reporters who witness, suspect, or know about abuse to follow a needlessly complex, illogical, and protracted reporting process, even in emergency situations. The reporter is expected to notify different agencies under different timelines depending on the specific type of abuse being reported. The current system also allows the reporter the *option* to report to different agencies in the exact same circumstances, which may not reflect the urgency of the situation. This confusion causes serious crimes, such as abduction and abandonment, not to be reported to first responders in a timely manner, and ultimately ends up protecting abusers from ever being investigated or prosecuted.

AB 1417 eliminates these logistical issues by creating a simple process for abuse to be reported quickly. **Reporters are asked to contact law enforcement (911 or a non-emergency number, if appropriate) immediately (no later than 2 hours) so that emergencies can be addressed urgently before submitting the same written report to the same 3 agencies (i.e., law enforcement, the LTC ombudsman, and the state licensing agency) within 24 hours.**<sup>8</sup> The only exception would be for cases of abuse caused by a resident with dementia since there is no criminal intent present in such circumstances. In those rare instances, only the written reports would be submitted to those 3 agencies.

Beyond providing a solution to these logistical issues, AB-1417 will make California's reporting process more aligned with federal requirements as well as avoid some of the issues inherent in allowing 911 response in cases where the abuse was *caused* by a resident with dementia. Federal law requires federally funded long-term care facilities to report abuse to law enforcement within 2 or 24 hours, depending on whether there is serious bodily injury, regardless of whether the abuser has dementia. Reporting all instances of abuse to the state licensing agency is also required. However, federal law does not prescribe a specific *method* of reporting. Current state law allows for reporting to 911 when the abuser has

dementia even when there is no serious bodily injury, which can sometimes create a dangerous situation for residents with dementia if law enforcement does not have all the facts before they're dispatched. Instead, AB-1417 would only require a *written report* to law enforcement within 24 hours in such cases, along with written reports to the LTC ombudsman and the state licensing agency, which should not only prevent or discourage such 911 calls from being made but also allow all three agencies to coordinate their responses given they'll be receiving the same reports at the same time. Law enforcement will not necessarily be required to respond to those reports at all if the LTC ombudsman and state licensing agency are also following up.

By making the process easier to follow and requiring reports to be submitted in a timely manner, AB-1417 will ensure that residents of long-term care facilities have the same protections against elder abuse as persons who reside in their own homes. We shouldn't wait to report abuse. And, we shouldn't make the reporting process any more difficult than it *must* be on well-intentioned mandated reporters.

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