



Omnibus Adult Protection Act

Training for Mandated Reporters

Notice

This powerpoint represents an attempt to condense a large amount of complex information into a useful training and reference tool. Although every effort has been made to ensure that the information presented is both correct and current, these materials should be used only as overviews and general guidance, not necessarily as a basis for making specific decisions in a particular case. The powerpoint is not a legal document, nor is it intended to fully explain all of the provisions or exclusions of the relevant laws, regulations, and rulings that may impact cases involving abuse of the elderly or other vulnerable adults. The powerpoint should not be viewed as rendering any legal, accounting, or other professional advice, nor does it necessarily reflect the policies or legal positions of any individual, agency, or other entity participating in its preparation or use.

Note: This training is also not intended as a replacement for any agency or entity's internal training regarding protection for vulnerable adults or any other conventional training. Each agency or entity has policies and procedures for handling these cases.

Omnibus Adult Protection Act

- ▶ Omnibus Adult Protection Act often referred to as OAPA
- ▶ Found at South Carolina Code Ann §43-35-5 et.seq.



Who is a Vulnerable Adult

- ▶ A person who is 18 years or older
- ▶ Has a physical or mental condition
 - which substantially impairs the person from adequately providing for his/her own care
- ▶ Due to infirmities of aging, including:
 - organic brain damage
 - advanced age, and
 - physical, mental, or emotional dysfunction
- ▶ A resident of a facility is a vulnerable adult



SC Code Ann. §43-35-10

<http://www.scstatehouse.gov/code/t43c035.php#43-35-10>

Who is a Mandated Reporter

- ▶ Physician
- ▶ Nurse
- ▶ Dentist
- ▶ Optometrist
- ▶ Medical examiner
- ▶ Coroner
- ▶ Other medical, Mental Health or allied health professional
- ▶ Christian Science Practitioner
- ▶ Religious Healer
- ▶ School teacher
- ▶ Counselor
- ▶ Psychologist
- ▶ Mental Health Specialist
- ▶ Intellectual Disability Specialist
- ▶ Social or public assistance worker
- ▶ Caregiver
- ▶ Staff or volunteer of an adult day care center or facility
- ▶ Law enforcement officer



SC Code Ann. § 43-35-25

Mandated Reporters

- ▶ May take photographs of trauma to vulnerable adult
- ▶ Notify the person in charge of the photographs
- ▶ Investigative entity or law enforcement may cause to be performed a radiological examination or medical examination without consent
- ▶ All photographs, x-rays, and results of medical examinations must be provided to law enforcement or the investigative entity upon request



SC Code Ann. §43-35-30

Who is Covered by the Act

- ▶ A caregiver is someone who:
 - Provides care to a vulnerable adult
 - With or without compensation
 - Temporary or permanent
 - Full or part-time
 - Can be a
 - relative
 - household member
 - day care personnel
 - adult foster home sponsor
 - personnel of a public or private institution or facility



SC Code Ann. §43-35-10(2)

What is a Facility under the Act

- ▶ A facility directly operated by or contracted for operation by:
 - Department of Mental Health
 - Department of Disabilities and Special Needs
- ▶ Nursing care facility
- ▶ Community residential care facility
- ▶ Psychiatric hospital
- ▶ Residential program operated or contracted for operation by:
 - Department of Mental Health
 - Department of Disabilities and Special Needs



S C Code Ann § 43-35-10(4),(12),(13)

What Must be Reported

- ▶ Physical Abuse
 - Including sexual abuse
- ▶ Psychological Abuse
- ▶ Neglect
- ▶ Exploitation



SC Code Ann. § 43-35-25

What is Physical Abuse

- ▶ Physical Abuse
 - Intentional infliction or allowing to be inflicted injury
- ▶ Types of Physical Abuse
 - Slapping
 - Hitting
 - Kicking
 - Biting
 - Choking
 - Pinching
 - Burning
 - Actual or attempted sexual battery
 - Use of medication outside the standards of medical practice



SC Code Ann. § 43-35-10(8)

What is Physical Abuse

- ▶ Use of restricted or physically intrusive procedure to control behavior
 - For punishment
 - Not used as part of a written plan of care from a physician or qualified professional



SC Code Ann. § 43-35-10(8)

Physical Abuse Case Example

- ▶ Staff at a nursing home beat resident with a belt when resident tried to smear feces on the staff at bath time. Staff on the next shift noticed the marks and reported the incident.
- ▶ Resident could not communicate, but based on physical evidence collected and interviews with staff, the abuser confessed to the physical abuse.
- ▶ Staff was charged with Abuse of Vulnerable Adult.



What is Not Abuse

- ▶ A vulnerable adult may be furnished non-medical remedial treatment by spiritual means through prayer if the vulnerable adult has practiced this in his/her religion



SC Code Ann. § 43-35-13

What is Not Physical Abuse

- ▶ Altercations or acts of assault between two vulnerable adults
- ▶ Refer to the agency policy and report to local law enforcement



SC Code Ann. §43-35-10(8)

What is Sexual Abuse



- ▶ Actual or
- ▶ Attempted sexual battery
 - Defined by SC Code Ann. §16-3-651

- ▶ Sexual battery means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

SC Code Ann. § 43-35-10(8)

What is Psychological Abuse

- ▶ Deliberately subjecting a vulnerable adult to threats or
- ▶ Harassment or other forms of intimidating behavior
 - causing fear
 - humiliation
 - degradation
 - agitation
 - confusion, or
 - other forms of serious emotional distress.



Example: Resident who is fearful of the dark and that fear is used as punishment

SC Code Ann. § 43-35-10(10)

What is Exploitation

- ▶ Causing or requiring a vulnerable adult to engage in activity or labor
 - which is improper, unlawful, or
 - against the vulnerable adult's reasonable and rational wishes



SC Code Ann. § 43-35-10(3)(a)

What is Exploitation

- ▶ Improper, unlawful, or unauthorized use of the
 - funds
 - assets
 - property
 - power of attorney
 - guardianship, or
 - conservatorship of a vulnerable adultby a person for the profit or advantage of that person or another person



SC Code Ann. § 43-35-10(3)(b)

What is Exploitation

- ▶ Causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through
 - undue influence,
 - harassment,
 - duress,
 - force,
 - coercion, or
 - swindling by overreaching
 - cheating, or
 - defrauding the vulnerable adult
 - through cunning arts or devicesthat delude the vulnerable adult and cause him to lose money or other property



SC Code Ann. § 43-35-10(3)(c)

What is Not Exploitation



- ▶ Requiring a vulnerable adult to participate in an activity or labor
 - which is a part of a written plan of care or
 - which is prescribed or authorized by a licensed physician attending the patient

SC Code Ann. § 43-35-10(3)

Exploitation Case Example

- ▶ A resident of a nursing home had her bills paid by her daughter who had power of attorney.
- ▶ The daughter stopped paying the bills and the resident's account went into arrears at the nursing home.
- ▶ Daughter used her mother's money to buy a new car and to install a swimming pool at her house.
- ▶ Daughter was charged with Financial Exploitation of a Vulnerable Adult.



What is Neglect

- ▶ Failure or omission of caregiver to provide
 - care, goods, or services necessary to maintain the health or safety of a vulnerable adult
- ▶ Such as, failure to provide
 - food
 - clothing
 - medicine
 - shelter
 - supervision
 - medical services
- ▶ May be repeated conduct or a single incident
- ▶ Failure or omission has caused or presents a substantial risk of causing physical or mental injury



SC Code Ann. § 43-35-10(6)

What is Neglect



- ▶ Includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce
 - serious physical harm or
 - psychological harm or
 - substantial risk of death

SC Code Ann. § 43-35-10(6)

What is Not Neglect

- ▶ Noncompliance with regulatory standards alone does not constitute neglect



SC Code Ann. § 43-35-10 (6)

Neglect Case Example

- ▶ Law Enforcement was called to a Residential Care Facility where they found an incoherent resident lying in dirty bed linens with the smell of rotting skin.
- ▶ EMS was contacted and they discovered that the resident had stage IV decubitus ulcers filled with maggots, was dehydrated, malnourished and near death.
- ▶ The resident was transported to the hospital where death occurred.
- ▶ The owner of the Residential Care Facility was charged with Neglect of a Vulnerable Adult resulting in death.

When Must a Mandated Reporter Make a Report

- ▶ Incident must personally be reported within 24 hours orally by telephone or in writing
- ▶ No facility can make policies that interfere with reporting
- ▶ A state agency may make a report on behalf of an employee if policies have been approved by SLED VAIU or other investigative entity

SC Code Ann. § 43-35-25(C)

To Whom are Reports Made

- ▶ SLED Vulnerable Adults Investigation Unit (VAIU) for incidents in facilities operated by or contracted for operation by DMH or DDSN
- ▶ Long Term Care Ombudsman of the Lieutenant Governor's Office for incidents in all other facilities
- ▶ South Carolina Department of Social Services Adult Protective Services for incidents in all other settings

SC Code Ann. § 43-35-25(D)

To Whom Reports are Made

- ▶ Investigative entities insure that if report is made to wrong agency it is forwarded to the proper agency



Reports of Death



- ▶ The death of any DMH client or DDSN consumer must be reported to the SLED VAIU within 24 hours
- ▶ The suspicious death of any vulnerable adult in the community or any other facility setting must be reported to the County Coroner or Medical Examiner

SC Code Ann. § 43-35-35

What are Privileged Communications



- ▶ Communications between attorney and client are privileged
- ▶ Communications between the following are not excused from mandated reporting
 - Husband and wife
 - Professional person and patient or client

SC Code Ann. § 43-35-50

What is Immunity for Mandated Reporters



- ▶ A report made in good faith
 - Is immune from civil and criminal liability
 - good faith is a rebuttable presumption in civil and criminal proceedings

SC Code Ann. § 43-35-75

What is Public Policy



- ▶ It is against the public policy of South Carolina to change an employee's status solely because
 - the employee reports or
 - the employee cooperates with an investigation under OAPA

SC Code Ann. § 43-35-75

What are Penalties for Failing to Report



- ▶ Mandatory reporter knowingly and willfully fails to report abuse, neglect or exploitation
- ▶ If convicted they are guilty of a misdemeanor
 - Fined not more than \$2500
 - Imprisoned not more than one year

SC Code Ann. § 43-35-85(A)

Links

- ▶ South Carolina Long Term Care Ombudsman
<http://aging.sc.gov/Pages/default.aspx>
- ▶ South Carolina Department of Social Services
Adult Protective Services
- ▶ South Carolina Law Enforcement Division (SLED)
<http://www.sled.sc.gov/Vulnerable.aspx?MenuID=VuIAdult>

Your role is very important to the safety
and care of others.

Thank you for caring about South Carolina's
vulnerable adults!

SC Adult Protection Coordinating Council
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