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NCBLPC Professional Brief

Content Area: Chapter 108A-101
(Protection of the Abused, Neglected or Exploited Disabled Adult Act)

Brief Overview/Description:

Duty to report;

- (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director of the county department of social services in the county in which the person resides or is present, or his representative

Content of report;

- (b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

Immunity

- (c) Anyone who makes a report who testifies in any judicial proceeding, or who participates in a required evaluation shall be immune from any civil or criminal liability unless such person acted in bad faith or with a malicious purpose.

Whether "spanking or beatings" of a "disabled adult" amount to abuse within the meaning of subsection (a) of this section depends on the circumstances under which such spankings or beatings are administered.

Definitions:

1. "abuse" - the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.
2. "caretaker" - an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.
3. "director" - the director of the county department of social services in the county in which the person resides or is present, or his representative.
4. "disabled adult" - any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.
5. "disabled adult" - "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.
6. "emergency" - a situation where
 - i. the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately,
 - ii. the disabled adult is unable to consent to services.

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7. "emergency services" - those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.
8. "essential services" - those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual.
9. "exploitation" - the illegal or improper use of a disabled adult or his resources for another's profit or advantage.
10. "lacks the capacity to consent" - lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.
11. "neglect" - a disabled adult who is either living alone and not able to provide for himself services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. A person is not receiving services from his caretaker if the person is a resident of one of the State-owned psychiatric hospitals listed.
12. "protective services" - services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation.

Key Legal Factors:

Any Director of social services in the county in which the person resides or is present, or his representative upon receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include

- (a) an interview with the disabled adult with no other persons present;
- (b) consultation with others having knowledge of the facts of the particular case; and
- (c) a complete evaluation of the report. The director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or agency acting as a caretaker for the disabled adult.

After completing the evaluation the director shall make a written report of the case indicating whether protective services are needed and shall notify the individual making the report as to whether the disabled adult needs protective services.

The staff and physicians of local health departments, area mental health, developmental disabilities, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties by providing evaluations and in-home evaluations. The director may contract with an agency or private physician for medical evaluations.

Effective July 14, 2000, the Director shall complete the evaluation within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation.

Real Issues to Consider:

Understanding the language, procedures and practices of the protection of The Abused, Neglected or Exploited Disabled Adult Act is extremely important. The professional duty to report must be upheld working within our legal and professional ethical code. It is not the responsibility of the reporter to substantiate or debunk the validity of a claim. If in your professional opinion the law has been broken, proceed with caution but proceed.

The professional duty to report must be upheld working within our legal and professional ethical codes. The wellbeing of the client is our utmost concern. While our role is not to investigate or substantiate a claim we must exercise due diligence prior to reporting in order to protect our professional credibility.

The Director of social services has the major determining authority. However, those making the initial report have done so based on their professional perception of suspected abuse, which may not be highly regarded by the Director.

Catch 22:

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The professional duty to report must be upheld. Document your actions and make your report to the proper authorities (Director of the county department of social services in the county in which the person resides or is present, or his representative). Follow the procedures and stay out of the process.

While it is our professional duty to report within our legal and professional ethical codes, we must protect our personal and professional credibility by having primary, documentable evidence to aid our decision making process. We must be cautious of people using our professional status and credibility for their own purposes. Allow the process to work. Try not to second guess or to assume what the Director of social services will do with a particular case.

Summary Statement:

Whether "spanking or beating" of a "disabled adult" amount to abuse depends on the circumstances under which such spankings or beatings are administered.

Any person having cause to believe that a disabled adult is in need of protective services shall make a report in writing or orally to the director of the county department of social services. If called to testify, immunity from civil and criminal liability is granted unless the claim was made in bad faith or with malicious intent.

Any Director of social services in the county in which the person resides or is present, or his representative, upon receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed.