

UNDERSTANDING PRIVACY LEGISLATION: A GUIDE TO HELP SERVICE PROVIDERS IDENTIFY AND RESPOND TO ELDER ABUSE

As a service provider who delivers health, social and/or support services for seniors, you are in a unique position to help identify and respond to elder abuse. Seniors who are impacted by elder abuse may confide in those they trust including service providers, such as nurses, doctors, social workers, police, pharmacists or therapists.

Because of your role as a service provider, you may learn about situations of physical, emotional, financial, sexual, medication abuse or neglect from any of the seniors you support. So it is all the more important that you understand how to recognize, respond and refer in cases of elder abuse.

While it can sometimes be difficult to understand all of the legislation surrounding elder abuse, including what you can take action on, it is imperative that you are able to share information when it is in the best interest for the senior you support.

To help you respond to elder abuse, this guide will provide you with the knowledge of the legislation that applies to your role as a service provider, including how legislation supports you, at work, to prevent and address elder abuse.

The guide will also outline factors that need to be considered in making decisions about how and when information about a senior can be shared, if elder abuse is suspected.

What you can do as a service provider if you suspect abuse:

- 1. Recognize:** When a senior discloses or presents with symptoms of abuse, it is important to first acknowledge what the senior is saying. At this time try to assess if basic life necessities are being provided, and if there is an immediate risk of physical harm. If the senior is in immediate danger, call the police.

It is important that you also assess the senior's ability to make an informed decision, and his or her desire to get help.

Some additional things to be aware of: it is often extremely difficult for people to speak about being a victim of abuse. But you can break down barriers to disclosure by asking the senior about their situation, and even ask about their concerns for seeking help. Seniors may be fearful of retaliation, withdrawal of support, and may not know who to go to for help.

Definition — What is Elder Abuse?

Elder abuse is any action or inaction by self or others that jeopardizes the health or well-being of any older adult. Elder abuse can take several forms including: physical, emotional, financial and sexual, medication abuse and neglect.

Elder abuse can occur anywhere: in the community, at home, in the hospital, in a clinic, at an office or in a care facility. Older adults may experience abuse by someone they trust and love, such as family members or friends, legal guardians, care facility staff or even professionals.

- 2. Respond:** After you've recognized the potential situation of abuse, encourage the senior to seek support. The best way to do this is by educating the senior on what elder abuse is and what services are available to support them. You can also offer to help them develop a safety plan: this is a plan to help ensure the senior can be safe in the present, as well as a plan in case the abuse occurs again.
- 3. Refer:** Elder abuse is a complex issue needing a complex response. Therefore, it is important to understand who else can help support the senior from further abuse. If abuse occurs in a publicly funded facility, it is mandatory to report the abuse to the appropriate body: The Protection for Persons in Care office. They can be reached at 1-888-357-9339.

If the senior lives in the community, know that you are not alone in responding to the seniors' needs. You can support the senior to connect with other resources, you can obtain consent to make referrals on their behalf, and if the senior is in danger, you can contact police.

Many service providers do not know if they are permitted to, and under what circumstances they can, report abuse. In case you have questions about who to report the abuse to, and when you can and cannot share personal information about a senior, the following legislation may enable you to disclose information about a senior impacted by suspected abuse.

The Protection for Persons in Care Act (PPCA)

The PPCA pertains to publicly funded service providers as set out in the legislation, such as lodges, hospitals, nursing homes, group homes and social care facilities.

Under section 7(1), every individual who has reasonable grounds to believe that there is or has been abuse involving a client shall report that abuse to a complaints officer; a police service; or to a committee, body or person authorized under another enactment to investigate such abuse.

Scenario:

An elderly couple live together at a care facility where you work. The wife has dementia. You suspect that the wife is being abused by her husband. You are aware of incidents where he has pushed his wife and calls her names, but dismisses his actions as being related to caregiver stress.

Response:

Since this couple lives in a publicly funded care facility, under the PPCA it is mandatory to report abuse and suspected abuse to one of the following: a complaints officer, a police service, or a committee, body or person authorized under another enactment to investigate such abuse.

Freedom of Information and Protection of Privacy (FOIP) Act

The FOIP Act authorizes public bodies subject to the Act, and organizations providing services to clients under contract to a public body, to report elder abuse. Public bodies include departments, branches, or offices of the Government of Alberta; Agencies, Boards, and Commissions as designated in the FOIP Regulation; Alberta municipalities; housing management bodies; police services; public libraries; and universities, public colleges, and post-secondary technical institutes.

Under section 40(1)(ee) of the FOIP Act, the head of the public body must believe, based on some form of objective evidence, that a disclosure of personal information will avert or minimize a danger or risk to the physical or psychological health or safety of any person. When balancing the privacy of an

individual against the health or safety of others, it is appropriate to err on the side of protecting health and safety. A disclosure of information for this purpose must only be to the extent necessary and done in a reasonable manner.

Scenario:

Jane, who is in her 70's, is a regular client of yours who comes to your Provincial/Municipal Customer Service Counter. During her most recent visit, she seems withdrawn, and you notice bruises on both her arms. You ask her if everything is okay and she replies that her daughter has been threatening to "put her in a home" if she does not comply with her demands. You learn that the daughter has been taking her mother to the bank to get money, and forcing her to sign over her house.

Response:

In this case, you have learned that Jane is at risk of physical harm, as well as emotional and financial abuse. The FOIP Act authorizes you to disclose personal information about Jane in order to help her. Follow your professional protocols for dealing with elder abuse.

The Health Information Act (HIA)

Professionals who fall under The HIA are considered custodians of health information. They are health services providers or organizations that are in the health sector that have health information in their custody or under their control.

Professionals need to be aware of all applicable laws, standards and policies that apply to their practice. The HIA may enable the disclosure of health information in cases where a health care provider is concerned that an elderly person in their care may suffer abuse or when medical examinations detect possible indicators of elder abuse. Health information held by custodians may be readily shared with other professionals within the health system for treatment and care purposes.

Those outside the health system are more restricted in their ability to have health information disclosed to them. Unlike FOIP, where information is able to be disclosed without individual consent unless there is a specific legislative prohibition against it, the HIA starts with the opposite paradigm: nothing is to be disclosed without individual consent unless there is specific authority which allows disclosure of the particular health information being contemplated. Also, the HIA does not require disclosure; rather, it allows disclosure so that custodians can comply with other legislation or court orders that do require disclosure.

Disclosure of health information including diagnostic, treatment and care information is authorized by the HIA as follows:

Under section 35(1) a custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

(m) to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person,

(n) if that individual lacks the mental capacity to provide a consent and, in the opinion of the custodian, disclosure is in the best interests of the individual,

(p) if the disclosure is authorized or required by an enactment of Alberta or Canada.

37.3(1) disclosure to protect public health and safety – the two part test requires that an offense may have been committed and the disclosure is necessary to protect the health and safety of the individual or Albertans in general.

Scenario:

Bob is a client of yours who is about to be discharged from the hospital after recovering from a serious injury, as a result of falling at home. While he has been in the hospital, Bob has had visits from his son, who he lives with. You have noticed that Bob is often upset and withdrawn after the son leaves. Since he has learned that he will be discharged, Bob has been quiet anxious, and states he is not ready to go home.

Response:

In cases where a serious injury has occurred and the client is exhibiting fear-based behaviors, you may want to consider asking questions about elder abuse. The Service Provider Screening Guide for Elder Abuse provides information on signs and symptoms, and includes questions you can ask. If the injury was a result of physical harm by the son, then under the HIA, section 37.3(1) disclosure to protect public health and safety of an individual allows you to directly report to police.

In this case let's suppose the injury was sustained by a fall, but the client has disclosed other forms of abuse such as financial, emotional and/or neglect. If you believe it is in the best interest of the individual to disclose the abuse, to protect your client, then you may rely on s35(1)(m)) of the HIA to authorize disclosure to the police . You can also consider contacting the Family Violence Info Line for further information and resources. Always trust your professional judgment in situations like this.

4. **Reconnect:** Elder abuse can be difficult to detect, and the recurrences of abusive behaviours may continue on. Therefore, it is important to follow up and reconnect with victims of elder abuse to ensure that the referrals were helpful, the abuse has stopped, and to explore if additional help and resources are required.

Get Help

If you or someone you know is in immediate danger, phone 911.

If you suspect someone is being abused in a care facility, phone the toll-free Protection for Persons in Care Information and Reporting Line at 1-888-357-9339.

For information about local family violence resources, phone the 24-hour Family Violence Info Line at 310-1818, toll-free in Alberta, or visit www.familyviolence.gov.ab.ca

For information on elder abuse and resources, visit www.seniors-housing.alberta.ca or Alberta Elder Abuse Awareness Council – www.albertaelderabuse.ca

If you are still not sure if a disclosure is permitted, consult the following resources for additional information.

Public bodies subject to the FOIP Act should consult with their FOIP Coordinator and refer to AB OIPC Order F2012-01 for additional clarification.

AHS affiliates, subject to the HIA may also want to consult with their manager or the AHS Privacy Office at Phone: 1-877-476-9874.

Other custodians subject to the HIA may contact the HIA help desk:

Alberta Health
HIA Help Desk

Email: hiahelpdesk@gov.ab.ca

Phone: 780-427-8089 or call your area code and 310-0000 and ask for 780-427-8089

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