

STATE WIDE

New York StateWide Senior Action Council, Inc

Improving The Lives of Senior Citizens & Families in NY State

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THE AFFORDABLE CARE ACT

ELDER JUSTICE ACT

As the number of older Americans increases, so does the potential for elder abuse, neglect and exploitation. President Obama and Congress acknowledged this concern by including the Elder Justice Act of 2009 as part of the Affordable Care Act (ACA) signed into law in 2010. This part of the ACA authorizes a variety of federal and state programs designed to promote elder justice by improving detection of cases of elder abuse, both in the community at large and in nursing homes.

This fact sheet summarizes the relevant provisions in the law. The subsection numbers are included as a reference for those who want further information, such as to find out the status of a provision's implementation in the future.

Establishment of an Elder Justice Coordinating Council and Advisory Board on Elder Abuse, Neglect, and Exploitation

§2021: Authorizes creation of a federal Elder Justice Coordinating Council, located in the Department of Health and Human Services (HHS), with representatives from HHS, the Attorney General, and other federal departments and agencies that administer programs relating to elder abuse and neglect. The council will report to the Secretary of HHS and to Congress regarding coordination of federal elder justice activities. This should improve communication and collaboration between federal agencies regarding elder justice issues.

§2022: Authorizes creation of an Advisory Board on Elder Abuse, Neglect, and Exploitation, to be composed of 27 members of the public with expertise in elder abuse prevention, detection, intervention, and treatment. The board is directed to analyze current research, determine best practices of care, and produce innovative approaches to ensuring quality care and reducing elder abuse. The board will report to the Coordinating Council and to Congress.

Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers

§2031: The Secretary of HHS will make grants to institutions with expertise in detecting elder abuse and neglect to help these institutions establish and operate stationary and mobile forensic centers. These centers are expected to develop and implement forensic techniques for collecting evidence and determining whether elder abuse has occurred.

Enhancement of Long-Term Care

§2041(a): The Secretary of HHS shall create several grant programs designed to improve staffing and training of employees of long term care facilities. Long term care facilities can apply for grants to pay for further training and certification for their employees who provide direct care for residents. Employees are incentivized by receiving bonuses for completing certification.

§2041(b): Provides grants to assist long term care facilities in implementing Electronic Healthcare Record (EHR) technology. The grants must be used to purchase or upgrade computers and software and to train staff in using this technology to keep track of patient records and prescription information.

Adult Protective Services

State Adult Protective Services (APS) offices, like New York's Protective Services for Adults, located in the Office of Children and Family Services, play a central role in combating elder abuse. The ACA contains several provisions designed to help state APS offices provide better services.

§2042(a): HHS shall collect and disseminate data regarding elder abuse, conduct research on and develop best practices relating to providing APS. HHS will also help provide training and technical assistance for state APS offices.

§2042(b): From 2011-2014, each state will receive an equal proportion of the grant funding set aside for APS programs, intended to supplement existing state funding. Funds may be used for all standard state APS functions, including investigation of abuse, the provision of social services, monitoring case work, etc....

§2042(c): Additionally, grants will be awarded to states on a competitive basis to create demonstration projects and develop training tools for APS workers to detect elder abuse and financial exploitation. For example, a state could get funds to develop a training program in elder abuse forensics and to conduct a study on how effective the program was in improving the abilities of APS workers to substantiate abuse claims.

Long Term Care Ombudsman Program Grants and Training

Every state has a Long Term Care Ombudsman Program who, through paid staff and volunteers, are a critical component in detecting and resolving issues of elder abuse and neglect in nursing homes and assisted living. The New York Long Term Care Ombudsman Program provides coverage across the state through local offices. To find out who the ombudsman is in your community go to www.ltombudsman.ny.gov or call 1-800-342-9871.

The following grant programs under the ACA are intended to improve ombudsman capacity and services:

§2043(a): Grants will be awarded for the purposes of improving the capacity of state ombudsman programs to respond to elder abuse and conducting pilot programs to improve ombudsman services. Funding authorization: 2011: \$5 million; 2012: \$7.5 million; 2013-2014: \$10 million.

§2043(b): The Secretary of HHS will establish programs for improving ombudsman training in the areas of elder abuse, neglect, and exploitation. Funding authorization: 2011-2014: \$10 million.

Establishment of a National Training Institute for Nursing Home Inspectors

§2046: The Secretary of HHS will establish a national institute for training federal and state surveyors (nursing home inspectors) to improve detecting and investigating allegations of abuse, neglect, and theft in long-term care facilities.

Reporting of Crimes Occurring in Nursing Facilities and Other Long Term Care Facilities

§2046: All long term care facility staff - including employees, owners, operators, managers, agents and contractors of any long-term care facility that receives at least \$10,000 in federal funding – now have stricter requirements for reporting to law enforcement suspected crimes against residents. For the purpose of this section, a long term care facility includes nursing homes, hospices that provide long term care, and intermediate care facilities for the mentally retarded. If one of these people suspects serious bodily harm has occurred, he must report the crime within 2 hours of forming the suspicion. When serious bodily harm is not suspected the incident must be reported within 24 hours. Failure to report can result in a civil money penalty (CMP) of up to \$200,000. If the failure to report results in increased harm to the original victim, or harm to another resident, another CMP of up to \$300,000 may be added.

The law also prohibits retaliation against someone who reports suspicion of a crime: a facility may not discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee who reports a suspected crime. If the facility is

found to have retaliated against an employee for reporting a crime, another CMP of up to \$200,000 may be added. While some provisions of the ACA are being implemented over time, these requirements are currently in effect.

National Nurse Aide Registry

§2046: HHS will produce a study to determine whether creating a national nurse aide registry is feasible, who to include in such a registry, how to collect data in a way that protects privacy, who to make the data available to, how to coordinate use of the registry with a national background check system, and any other issues related to the creation of such a registry.

Resources for Further Information:

The Patient Protection and Affordable Care Act,

<http://www.gpo.gov/fdsys/search/pagedetails.action?packageId=PLAW-111publ148>.

CMS Guidance, *Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility*,

http://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf.

National Health Policy Forum, *The Elder Justice Act*, http://www.nhpf.org/library/the-basics/Basics_ElderJustice_11-30-10.pdf.

If you are a victim of elder abuse, or if you know or suspect a family member or loved one is a victim of elder abuse, you should contact your state Adult Protective Services office. In New York, the hotline number is: 1-800-342-3009. For further information on how to get help, see New York State Adult Protective Services at <http://www.ocfs.state.ny.us/main/psa/> or the New York State Office of Long Term Care Ombudsman, <http://www.ltombudsman.ny.gov/>.

If you live outside New York State, or are looking for additional resources, see the National Center on Elder Abuse, <http://www.ncea.aoa.gov/> for further information and links to other state APS offices.

For further information on how the Elder Justice Act is being implemented, challenges related to implementation, and how you can get involved in elder justice advocacy, see the Elder Justice Coalition's website at <http://www.elderjusticecoalition.com/>.