

Post-COVID Enforcement of California's Mandated Reporting Requirements

Insights

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Over the last two years, the COVID-19 pandemic has wreaked havoc on long term care facilities. From outbreaks to staffing shortages, facilities caring for the elderly have faced significant challenges in assuring resident wellness and maintaining standard operations. Amidst the compounding difficulties in managing long term care facilities during and post-pandemic, both state and federal agencies continue to strictly monitor these facilities. As these agencies have emerged from the enforcement emergencies of COVID-19, there has been a renewed focus on historical enforcement priorities such as allegations of abuse in long term care facilities. To avoid both monetary penalties and criminal exposure to staff, it is imperative that providers review policies and procedures for preventing, investigating and reporting fraud and abuse in their facilities.

Under California Welfare and Institutions Code section 15630, any individual who has assumed responsibility for the care or custody of an elder is deemed a mandated reporter. Under the same obligations, any mandated reporter that has observed or has knowledge of an incident of physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects such abuse, must report the known or suspected abuse. Generally, the mandated reporter must report, by telephone or internet reporting tool, immediately or as soon as practicably possible. A written report must then be submitted to the necessary authorities within two working days. Depending on nature of the incident, such reporting timelines could be even shorter.

While the basis of California's mandated reporting statute seems straightforward, other federal and state reporting requirements can muddy the waters in terms of understanding exactly what needs to be reported, when it needs to be reported, and how those requirements change based on the type of long term care facility.

At the federal level, for example, long term care facilities are required to report allegations of elder abuse, neglect, exploitation or mistreatment no less than two hours after the allegation is made when the allegation involves abuse or result of serious bodily injury, or no later than 24 hours after if there is no allegation of abuse or serious bodily injury. (42 CFR § 483.13(c)(2)). Such reporting must be made to the state survey agency and adult protective services. There is no express and separate duty regarding telephone and written reporting.

In the context of residential care facilities for the elderly ("RCFEs"), California Code of Regulations, tit. 22, section 87211 requires an RCFE to report incidents which

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threaten to welfare, safety or health of a resident or cause serious injury or death to the appropriate licensing agency and the responsible party for the resident within seven days. Incidents occurring within an RCFE which involve physical abuse specifically, however, are subject to the reporting requirements under Welfare and Institutions Code section 15630.

To avoid penalties associated with failure to report violations, it is imperative to assess the nature of the incident and to promptly report it to the required agencies. At the facility level, such violations include significant monetary penalties, and could subject a facility to defending or indemnifying its employees for failing to report any incidents. Failures at the individual level can constitute a misdemeanor with up to one year imprisonment and/or a monetary fine up to \$5,000.

To minimize risk and create a culture of compliance, facilities can provide regular trainings regarding the mandated reporting and incident reporting requirements, ensure the required information regarding the timing of reporting is easily accessible to all staff, and keep its policies and procedures up to date to reflect all deadlines, including the most stringent deadlines from both the state and federal regulations.

For further information, please contact [Scott Kiepen](#) in San Francisco, [Taryn Reid](#) in Los Angeles, [Joe LaMagna](#) in San Diego, or any other member of our Hooper, Lundy, and Bookman team.

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