

New Jersey Expands Reporting Requirements to Include Immunity Provisions for Healthcare Providers Reporting Abuse, Neglect or Exploitation of Vulnerable Adults

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On January 17, 2010 the State of New Jersey enacted P.L. 2009, c.276 amending laws that govern the reporting of abuse, neglect and exploitation of “vulnerable adults.” Of particular significance is the expansion of N.J.S.A. 52:27D-409 that requires that a “healthcare professional” (in addition to other named professionals) who has reasonable cause to believe that a “vulnerable adult” is the subject of abuse, neglect or exploitation report the information to the county adult protective services. N.J.S.A. 52:27D-407. The law defines the phrase “vulnerable adult” as a person eighteen (18) years of age or older who resides in a community setting¹ (a private residence or any non-institutional setting in which a person may reside alone or with others) and who, because of physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his or her well-being and is the subject of abuse, neglect or exploitation.

Is a medical practice, or more specially a licensed physician or nurse, required to report instances of domestic abuse? Many physician practices struggle with this issue as the person seeking treatment often refuses to report the incident to police and may even beg or threaten (claiming privacy concerns) the physician practice so that no report is made. The practice is then left to determine whether to comply with the patient’s wishes in light of the current as well as possible future harm to the patient (and others).

When confronted with such a situation, a physician must evaluate the physical, mental and emotional condition of the patient to determine whether the patient satisfies the definition of a “vulnerable adult.” If the patient is reasonably determined to be a “vulnerable adult” and is the subject of abuse, neglect or exploitation, then the physician (as well as other licensed healthcare providers in the practice) has a statutory obligation to report. The difficulty is making the determination that the patient actually has a physical or mental illness, disability or deficiency, and lacks sufficient understanding or capacity to make, communicate or carry out decisions concerning his or her well-being.

In addition to the mandatory reporting, under the new law New Jersey provides immunity protections to the healthcare professionals who make reports to adult protection services. N.J.S.A. 52:27D-409(c). Such reports must be made to the appropriate County’s Adult Protective Services Provider Agency. A list of such agencies can be found at <http://www.state.nj.us/health/senior/aps.shtml>.

Specifically, the law provides that any person who reports information as required under this law and/or provides information concerning the abuse of a vulnerable adult to county adult protective services or testifies at the grand jury, judicial or administrative proceeding resulting from the report, is immune from civil and criminal liability arising from the report, information, or testimony, unless the person acts in bad faith or with malicious purpose. Id. This statutory immunity protection should provide licensed healthcare providers with a sense of relief that immunity will be afforded to protect good faith reportings under the law.

In each instance of suspected abuse, neglect or exploitation, competent legal counsel should be sought to discuss the matter and to decide how to proceed. Perhaps a key consideration is the effectiveness of the reporting and the impact that the report shall have upon the patient. It has been our experience that in some cases not only adult protective services but the local police department may need to be notified in order to attempt to protect the safety of the patient.

The physician practice should realize that in most cases the patient will not be cooperative and may be openly hostile to any attempts to report the abuse, neglect or exploitation. In these instances, licensed healthcare providers should be careful to protect themselves and their practice to the greatest extent practicable while also attempting to ensure the safety of the patient. The first step would be to contact competent legal counsel before making any report unless there is an emergency situation. Once a decision has been made that the patient is a “vulnerable adult” and is being abused, neglected or exploited, then a call to the appropriate County Adult Protective Services Provider Agency should be made. If there is an immediate concern for the safety of the patient, then the local police department may need to be called. In all cases, prepare sufficient notes for the record to memorialize the basis for the decision in case the decision is later challenged.

¹“Community setting” does not include residential healthcare facilities, rooming houses or boarding homes or any other facility or living arrangement subject to licensure by, operated by, or under contract with, state department or agency. N.J.S.A. 52:27D-407.

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