

# Abuse Reporting Requirements Changes Under AB 40

Ryan Couzens  
Yolo County District Attorney's Office

Leza Coleman  
California Long-Term Care Ombudsman Association

Joseph Rodrigues  
State Long-Term Care Ombudsman

# The Problem:

- Until 2013, elder and dependent adult abuse occurring in LTC facilities was reported to:
  - The local LTCOP *or*
  - The local law enforcement agency
- Confidentiality requirements prohibit ombudsman cross-reporting crimes to law enforcement without victim's consent or court order.

# The Problem (continued)

- Our data shows in FY 2009-10, almost  $\frac{3}{4}$  of victims did not consent to disclose their identities.
- Therefore law enforcement may not have been able to investigate some criminal abuse in LTC.

# AB 40 Changes

- Effective January 1, 2013.
- Initial reporting of some types of physical abuse must be reported directly to local law enforcement.
- Attempts to align reporting requirements with requirements for SNFs under the Elder Justice Act provisions of the Patient Protection and Affordable Care Act.

# AB 40 Changes (continued)

- Is it abuse occurring in a “long term care facility” in which Ombudsman have jurisdiction to investigate abuse? (SNFs, RCFEs, ARFs, ICFs, Adult Day Programs, Congregate Living Health Facilities)
- Is it physical abuse?
- Then AB 40 changes the reporting requirements for mandated reporters.

# AB 40 Changes: Adds Welfare & Institutions Code section 15610.67

- Added to the definitions section of the Elder Abuse and Dependent Adult Civil Protection Act (W&I §15600 et seq.)
- Defines “serious bodily injury.”

# Welfare & Institutions Code section 15610.67 (continued)

- Language taken from the Elder Justice Act
- “*‘Serious bodily injury’ means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation*”

# Physical abuse resulting in serious bodily injury

- Report by telephone to local law enforcement immediately, but no later than within two hours of obtaining knowledge
- Report in writing (SOC 341) to local law enforcement, LTCOP & licensing within two hours of obtaining knowledge

# Physical abuse *not* resulting in serious bodily injury

- Report by telephone to local law enforcement within 24 hours of obtaining knowledge
- Report in writing (SOC 341) to local law enforcement, LTCOP, and licensing within 24 hours of obtaining knowledge
- BUT ...

## Physical abuse *not* resulting in serious bodily injury

- *If* alleged perpetrator is a resident, *and*
- has a physician's diagnosis of dementia,
- report by telephone to local law enforcement *or* LTCOP immediately or as soon as practicably possible.
- Report in writing (SOC 341) within 24 hours.

## Other (*not physical*) abuse occurring in LTC

- No changes
- Report by telephone to local law enforcement *or* LTCOP immediately or as soon as practicably possible
- Report in writing (SOC 341) within two working days



## Mandated Reporter

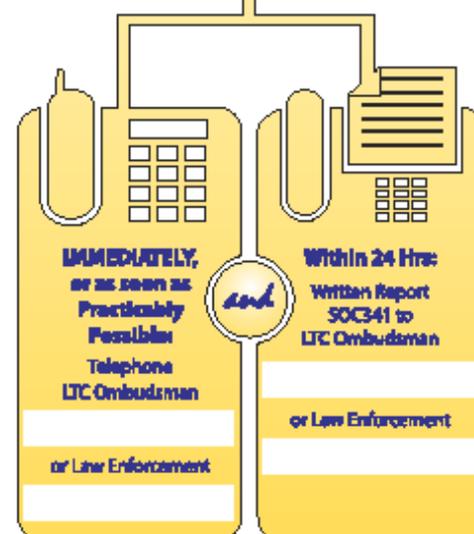
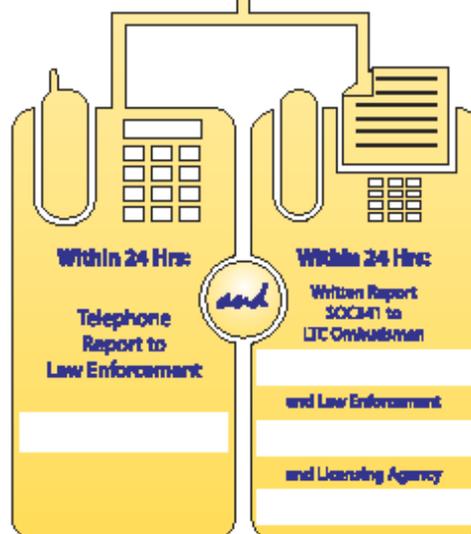
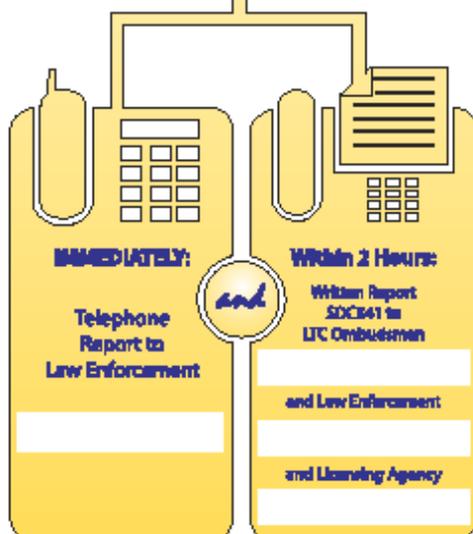
Observes, has knowledge of,  
or reasonably suspects  
Physical Abuse in a  
Long-Term Care Facility



**Serious Bodily Injury**  
(See reverse for definition)

**No Serious Bodily Injury**  
(See reverse for definition)

**Caused by Resident Diagnosed  
with Dementia by Physician  
No Serious Bodily Injury**



# Other Reports

- Reports of known or suspected abuse in state mental hospitals – send to Department of State Hospitals or local law enforcement
- Reports of known or suspected abuse in state developmental hospitals – send to Department of Developmental Services or local law enforcement

# Other Reports (continued)

- Abuse occurring outside of any of the defined facilities – send to APS or local law enforcement

# Cross-Reporting

- LTCOP and local law enforcement must cross-report “as soon as practicable,” unless an emergency, and then immediately:
  - Licensing –
    - DSS for RCFEs and adult day programs
    - DPH for long-term health care facilities (SNFs and ICFs)
    - DPH and CDA for adult day health care (CBAS)

# Cross-Reporting (continued)

- BMFEA – known or suspected criminal activity
- DA – known or suspected physical and financial abuse

# Ombudsman Role

- [W&I §15630(b)(1)(A)(iv)]
- Work with local law enforcement agencies to create protocols for responding to abuse reports *received by both agencies*
- Can use MOU template
- “Provide the most immediate and appropriate response”

# Ombudsman Role (continued)

- W&I §15650(f)
- *“The intent of this section is to acknowledge that the ombudsman responsibility in abuse cases is to receive reports, determine the validity of the reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.”*

# Ombudsman Role (continued)

- W&I §15636(a)
- *“Any victim or elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program.”*

# Ombudsman Confidentiality

- W&I §15636(a) (continued)
- *“A local long-term care ombudsman shall act only with the consent of the victim and shall disclose confidential information only after consent to disclose is given by the victim or pursuant to court order.”*
- Consistent with federal Older Americans Act requirements



**Questions?**