



45 Minutes



Visuals

### Elder Abuse & Dependent Adult Abuse

# 06 What is the Abuse Law in Iowa?

## 1. Elder Abuse and Dependent Adult Abuse

Elder Abuse is defined by the Federal Older Americans’ Act as the abuse, neglect or exploitation of an individual age 60 or older. Beginning July 1, 2014, newly established Iowa Code Chapter 235F, Elder Abuse Relief becomes effective and creates an elder abuse definition and law for civil elder abuse relief. Currently, the law does not mandate reporting of elder abuse; however, if mandatory reporters encounter such situations or circumstances that do not meet the criteria for dependent adult abuse, contact **LifeLong Links at 866-468-7887** for available services and supports.

The Dependent Adult Abuse Law is in Iowa Code Chapter 235B and 235E. The law is specifically aimed at protecting dependent adults from abuse by their caretakers.

### Three Elements Are Needed for Dependent Adult Abuse

- Dependent Adult (Age 18 or older)
- Caretaker
- Allegation of Abuse recognized by 235B or 235E

Under the Dependent Adult Abuse Law, mandatory reporters who **SUSPECT** a dependent adult is suffering from abuse by a caretaker **SHALL** report their reasonable belief to the Department of Human Services (DHS) or the Department of Inspections and Appeals (DIA).

### Dependent Adult Abuse Agency Roles

DHS is responsible for the evaluation / assessment of dependent adult abuse in the community. DIA is responsible for the investigation of dependent adult abuse in facilities and programs. Each department must then investigate the report and make an evaluation of the situation.



Visuals

### DAA Agency Roles

## 2. Iowa's Dependent Adult Abuse Law

- A. **In laying the groundwork for dependent adult services the law stresses the need for the state to provide protection of Iowa's dependent adults.** In the Dependent Adult Abuse Information Registry (Central Abuse Registry), the Code also focuses on the right to individual privacy, as well as the need for a centralized system of collecting, maintaining, and disseminating adult abuse information.
- B. **The Iowa Code will be referenced throughout this training.** Chapter **235B** deals directly with dependent adult abuse in the community and Chapter **235E** deals directly with dependent adult abuse in facilities and programs.

### **To Obtain the Most Current Information, Contact:**

- Department of Human Services (DHS): 515-281-5392
- Department of Inspections and Appeals (DIA): 515-281-4234
- Department on Aging (IDA): 515-725-3321

## **Community – DHS 235B**

**(Chapter 235E is addressed on pages 06-17 through 06-22)**

**Iowa Code Chapter 235B: Department of Human Services  
Iowa Administrative Code 441 – Chapter 176**

### **235B.3 Dependent Adult Abuse Reports in the Community**

The Department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information.

Examples include:

- A. Residential house, apartment, mobile home
- B. Independent living
- C. In facilities or programs when alleged perpetrator is not staff or employee

## Definitions



### Definitions

- A. **Dependent Adult** is defined in Iowa Code as a person eighteen years of age or older who is unable to protect his/her own interests **OR** is unable to adequately perform **OR** obtain services necessary to meet essential human needs, as a result of a physical **OR** mental condition which requires assistance from another, or as defined by departmental rule.
- B. **Caretaker** is defined in Iowa Code as a related or non-related person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.



### Voluntary Caretaker

- B1. “Related or nonrelated person who has the responsibility for the protection, care or custody of a dependent adult **as a result of assuming the responsibility voluntarily**” means a person voluntarily provides care to a dependent adult and according to Iowa Code 235B.2 is considered the dependent adult’s caretaker

#### Examples

- Attorney-in-Fact (Power of Attorney)
- A relative provides a daily meal for a dependent adult either by bringing the meal to the dependent adult or by preparing the meal at the dependent adult’s home.
- Any person upon whom the adult relies to meet an essential human need.

- B2. “Related or nonrelated person who has the responsibility for the protection, care or custody of a dependent adult **as a result of a contract**” means the dependent adult and the person have a contract wherein the person agrees to provide care to the dependent adult and according to Iowa Code 235B.2 is the dependent adult’s caretaker.

#### Examples

- The dependent adult is receiving funding for health care on an individual contract basis, such as provided by the DHS’



### Contract Caretaker

Waiver, Consumer Directed Attendant Care (CDAC) program or In-Home Health Related Care program. These programs include a contract that is written between the dependent adult, the provider and the Department.

- A dependent adult and another person could independently write a contract where the person agrees to provide care to the dependent adult in exchange for room and board, an agreed upon amount of money, ownership of the dependent adult's home upon death, or any other exchange of care for something of value to the caretaker



### Employment Caretaker

- B3. "Related or nonrelated person who has the responsibility for the protection, care or custody of a dependent adult **through employment**" means the person is employed and is being paid a salary to provide care to a dependent adult and according to Iowa Code 235B.2 is the dependent adult's caretaker.

#### Examples

- A dependent adult hires a neighbor to provide a meal every evening and pays the neighbor \$40 per week.
- A service agency arranges for paid staff to provide services to a dependent adult and the service agency pays the salaries of all the caretakers.
- Relatives agree to contribute equally to paying for a granddaughter to provide care to grandma, the dependent adult. The granddaughter is the grandma's caretaker.



### Court Ordered Caretaker

- B4. "Related or nonrelated person who has the responsibility for the protection, care or custody of a dependent adult **by order of the court**" means a person has been appointed by the court to assume responsibility for the dependent adult's protection, care or custody and according to Iowa Code 235B.2 is the dependent adult's caretaker.

**Examples:**

- Guardian or Conservator
- An eighty-three year old gentleman who was experiencing loss of memory forgot to pay his bills and his electricity and phone service was disconnected. His relatives got together and petitioned the court for a niece to assume responsibilities for him. The court appointed the niece as his guardian/conservator. This gave her control over her uncle's physical and financial affairs. The niece is her uncle's caretaker.

**REMEMBER:** Adult abuse does not only happen in the community, but also in long term care facilities, hospitals, adult care settings, etc. This includes Consumer Directed Attendant Care (CDAC) providers. If the person relies on you to routinely meet an essential human need, you could be considered a caretaker.



**Dependent Adult Abuse**

C. **Dependent Adult Abuse** *Dependent Adult Abuse* is defined by any of the following as a result of the willful or negligent acts or omissions of a caretaker:

1. Physical Abuse, including assault
2. Sexual Abuse
3. Sexual Exploitation
4. Exploitation
5. Denial of Critical Care
6. Self-Denial of Critical Care

**NOTE:** If a participant inquires about the legal terms below, refer them to the glossary.

- Willful
- Negligent Act
- Negligent
- Omission

## TYPES OF ABUSE (235B)

Dependent Adult Abuse, under the Code of Iowa, breaks down into these categories:



### Physical Abuse

#### A. Physical Abuse

1. **Definition** Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement or unreasonable punishment, or assault of a dependent adult, as a result of the willful or negligent acts or omissions of a caretaker.

**Assault** as defined in Iowa Code 708.1 is when, without justification the person does any of the following:

- Commits any act which is intended to cause pain or injury to a dependent adult, or which is intended to result in physical contact which will be insulting or offensive to a dependent adult, coupled with the apparent ability to execute the act.
- Commits any act, which is intended to place a dependent adult in fear of immediate physical contact, which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
- Intentionally points any firearm toward a dependent adult or displays in a threatening manner any dangerous weapon toward a dependent adult.

However, the act is not an assault when the caretaker and the dependent adult are voluntarily participants in a sport, social activity, or other activity not in itself criminal, and the act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace.

**NOTE:** An assault does **NOT** have to involve a physical injury. A person can be assaulted and not have any injuries.



## Indicators

### 2. Indicators

- a. Injury that has not been cared for properly
- b. Any injury incompatible with history
- c. Pain on touching
- d. Cuts, lacerations, or puncture wounds
- e. Dehydration and/or malnourishment without illness related cause; weight loss
- f. Pallor
- g. Sunken eyes, cheeks
- h. Evidence of inadequate care
- i. Eye problems, retinal detachment
- j. Poor skin hygiene
- k. Absence of hair or hemorrhaging below scalp
- l. Soiled clothing or bed
- m. Burns
- n. Locked in a room
- o. Lack of bandages on injuries or stitches when indicated, or evidence of unset bones
- p. Heavy or excessive medication



## Examples

### 3. Examples

- b. Unauthorized use of physical or chemical restraints
- c. Administration of medications or enforced isolation as punishment or simply for convenience
- d. Use of treatment in conflict with a physician's order.

### 4. Dating of Bruises

The dating of bruises is controversial. There is a difference of opinion between physicians and law enforcement on the validity of the process. What physicians and law enforcement do agree on is that bruises change color as the injury ages and that having various colors on the same person at the same time indicates separate injuries.



## Case Study

### Case Studies –

#### Physical Abuse

Sally, age 63, was treated for a fractured jaw. She states that this happened as the result of a fall. The hospital nurse is concerned that Sally may have been struck by her husband because a third party told the nurse there is a history of domestic violence in the home. Sally has heart failure, diabetes and depression.

#### Assault

James, age 81, resides with his spouse in independent living. He has a section 8 housing apartment and shares his home with his wife, Emma, age 78. James has a CDAC provider who comes to assist him in the home. James is on the elderly waiver but the reporter is not sure of what his medical issues are. James told his visiting nurse that his provider threatened him and said that James is disgusting for needing all this help taking care of himself and that if James didn't start trying harder to be independent or at least cooperate, his provider was going to "lose it." James said this was strange because his provider was in his face and had a hold of his shirt at the time. James had just mentioned this saying he thinks his provider Greg might not like him.



#### Definition

#### B. Sexual Exploitation

1. **Definition** "Any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to..."

2. **Indicators**

- Person's behavior changes drastically, such as acting out, angry, lashing out, inappropriate affect.
- Person is depressed or symptoms of other mental health issues.
- Person acts afraid in the presence of caretaker.
- Person does not want to be left alone with the caretaker.
- Genital or anal bruises
- Vaginal or anal bleeding
- Swelling or redness of genital area
- Venereal Disease



#### Indicators

### 3. Examples

- Kissing;
- Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act (Iowa Code 702.17)
- Transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation.

Sexual Exploitation **DOES NOT** include:

- Touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of practice or employment of the caretaker;
- A brief touch or hug for the purpose of reassurance, comfort, or casual friendship; or touching between spouses



#### Case Study

**Case Study** – Betsy is 45 and has In Home Health. Her IHHC provider is a family friend who comes in to assist Betsy with ADL's and homemaking. The provider has been coming to the home about 4 months. Betsy requires services in relation to being quadriplegic. She seems lucid but it is unclear if she has the capacity to consent to intercourse. However, historically she has been involved in drugs and allowing those who are drug dealing to live with her. Recently, she became pregnant. Betsy is thrilled and says that Mark might not react too well. When asked who Mark is, she says he is a family friend who comes and helps her sometimes at home.



#### Definition

#### C. Sexual Abuse

1. **Definition** The commission of a sexual offense under Iowa Code, sections 709, 726.2 or 235B.2, with or against a dependent adult as a result of the willful or negligent acts or omissions of a

caretaker. This includes the following categories:

- First-degree sexual abuse (Iowa Code section 709.2)
- Second-degree sexual abuse (Iowa Code section 709.3)
- Third-degree sexual abuse (Iowa Code section 709.4)
- Indecent exposure (Iowa Code section 709.9)
- Assault with intent to commit sexual abuse (Iowa Code section 709.11)
- Sexual exploitation by a counselor or therapist (Iowa Code section 709.15)
- Invasion of privacy, nudity (Iowa Code section 709.21)
- Incest (Iowa Code section 726.2)



### Case Study

**Case Study** – Anna, age 85 is in nursing facility care due to advanced stages of Alzheimer’s. She experiences time in the community with her husband Tom. He takes her out for visits for a few hours sometimes with other family members and sometimes not. Recently, a family member expressed concern to you when coming in to visit. Anna’s daughter Emily stated that Tom and her mom were at the house before Emily came over to visit her for a bit. Emily states that she came over earlier than planned and no one answered the door so she went inside the house. She states that when she walked in, Tom was dressing while walking to the door and her mom was on the bed looking disheveled. Anna states that she asked her mom if she was okay to which she replied “I don’t know.” Emily offered to help her mom and after asked Tom what happened. He replied it was not Emily’s business. Emily isn’t sure what to do about this but said it seems like her mom was not having a good day. She also noted this was an afternoon visit and they took her mom back by supper. Emily said her mom didn’t tell her anything more.



### Statistics on Sexual Abuse of Persons with Disabilities

#### Sexual Abuse and Persons with Disabilities

Persons with disabilities and elders may be targeted by sexual predators due to their vulnerability.

##### a. Statistics on Sexual Abuse of Persons With Disabilities

- 99% of persons with developmental disabilities have had no sex education

- 83% of women and 32% of men with developmental disabilities have experienced sexual assault
- 70% of women with disabilities have been violently sexually victimized at some point in their lives

Sexual assault is not spontaneous or accidental and communities tend to blame the survivors. It is often treated as scandals, internal personnel matters, or public relation problems. While the many of the victims are female, we need to be mindful there are also male victims.

b. **Person with Disabilities Victims are Frequently Thought To Be:**

i. **Seeking attention**



**Seeking Attention**

- “She wants special privileges so she doesn’t have to follow the rules.”
- “That’s what his roommate said last month.”
- “They all accuse someone.”
- “She wants you to feel sorry for her and spend extra time with her.”

ii. **Asexual or hypersexual**



**Asexual or Hypersexual**

- “Why is she complaining? She is lucky to get any action.”
- “Who would want to rape someone who drools?”
- “He probably doesn’t even know what happened.”
- “If we teach her about sex, she’ll just want to do it.”

iii. **Not credible witnesses**



**Not Credible Witness**

- “People with disabilities lie all the time about a lot of things.”
- “If he can’t tell us the date, what can he tell us?”
- “She giggles whenever she talks about it.”
- “People like him have an active imagination.”

*Source: Iowa Coalition Against Sexual Assault Training 2006, Who, What, When: A Symbol Book For Communicating with Women Survivors of Sexual Abuse Who Use Augmentative and Alternative Communication*



### How is Sexual Abuse Different with Age or Frailty

- c. **How is Sexual Abuse Different with Age or Frailty?**
- Lack of a strong support system
  - Beliefs about sexual abuse increase feelings of shame and guilt
  - May complicate an existing illness
  - Longer recovery time dealing with abuse
  - Increased chance of sustaining serious injury
  - Increased genital tearing and bruising
  - Pelvis or hip bones can be broken by friction and weight
  - Increased risk of infections

*Source: Speaking Out on a Silent Crime, NCEA Newsletter, 2004, Vierthaler, Karla*

### D. Exploitation



### Definition

1. **Definition** The act or process of taking unfair advantage of a dependent adult or a dependent adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses as a result of the willful or negligent acts or omissions of a caretaker.

**NOTE:** If a participant inquires about the legal term below, refer them to the glossary.

- Informed Consent
- Theft
- Undue Influence
- Harassment
- Duress
- Deception
- False Representation
- False Pretenses



## Indicators

### 2. Indicators

- Dependent adult is inaccurate, confused or has no knowledge of finances
- Disparity between income / assets and lifestyle or living arrangement
- Caretaker expresses unusual interest in the amount of money being expended for the care of the dependent adult
- Unpaid bills when resources should be adequate
- Caretaker is evasive about financial arrangements
- Signatures on checks don't match dependent adult's
- Unusual activity in bank accounts
- Dependent adult turns over financial affairs to someone in exchange for lifelong care, but does not appear to have basic necessities such as food and shelter
- Caretaker begins to handle the dependent adult's financial affairs without their presence or without consultation



## Examples

### 3. Examples

- Misuse of power of attorney or conservatorship
- Identity theft
- Scams
- Coercion into signing or changing legal documents
- Taking or misusing a dependent adult's property, money, social security or pension check, food stamps, medication, etc.

Exploitation can directly impact quality of care, depriving victims of the financial means to access medical treatment or obtain medications.

**Case Study** – Dorothy, age 76, lives with her adult daughter Anne. Dorothy has a history of stomach cancer and has an in home provider coming to her home once per week for homemaker services. Anne is Dorothy's power of attorney. Reporter alleges that Dorothy was historically in a domestic violence relationship with her husband Earl, now deceased. Earl is Anne's father. Dorothy was taking oxycodone and tramadol for pain due to a broken femur.



## Case Study

She has since healed but has residual pain and remains on pain medication. Once, Anne took her mother's pain medication away stating that her mother doesn't need them and is a "druggie." Dorothy doesn't understand where her medication goes. She doesn't recall taking it and has been experiencing a lot of pain. Dorothy is diagnosed with dementia (stage unknown). Anne tries to prevent Dorothy from seeing other family members but is frequently seen out shopping in the community. Reporter states that she is not aware of Anne's employment status.

#### E. Denial of Critical Care (Neglect)

1. **Definition** The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care and other care necessary to maintain a dependent adult's life or health as a result of the willful acts or negligent acts or omissions of a caretaker.

**Administrative Code 176.1** adds "Denial of Critical Care exists when the dependent adult's basic needs are denied or ignored to such an extent that there is immediate or potential danger of the dependent adult suffering injury or death, or the failure to provide the mental health care necessary to adequately treat the dependent adult's serious social maladjustment, or is a gross failure of the caretaker to meet the emotional needs of the dependent adult necessary for normal development, or a failure of the caretaker to provide for the proper supervision of the dependent adult."



#### Definition

**NOTE:** If a participant inquires about the legal term below, refer them to the glossary.

- Willful
- Negligent Act
- Negligent
- Omission



## Indicators

### 2. Indicators

- Pattern of failure to provide adequate food; malnourishment, or food in home, food contamination or spoilage
- Lack of clothing to adequately provide protection from the weather
- Lack of heat; unsanitary or hazardous conditions
- Refusal to provide medical evaluation for condition detected by medical personnel
- Failure to follow through with medical treatment plan recommended by health professional
- Unable to manage affairs because of confusion and deterioration
- Leaving dependent adult who is incapable of self-supervision without a responsible caretaker
- Knowingly selecting an inappropriate caretaker
- Abandonment



## Examples

### 3. Examples

- Withholding of care, medication, food, liquids, assistance with hygiene, etc.
- Failure to provide physical aids such as eyeglasses, hearing aids, false teeth
- Failure to provide safety precautions and access to care



## Case Study

**Case Study** – Phil, age 83, uses a wheelchair for a mobility disability. He is diagnosed with Parkinson's and dementia. His dementia is in the early stages. Phil administers his own medications, makes his own decisions and can identify when he needs to use the toilet. Phil depends on his wife, Marie, to provide for his hygiene, cooking, dressing and transportation. Phil has been complaining recently of back pain from a fall in his home last week. Marie has not taken Phil for a medical assessment of his possible injury. Marie indicates that it would depend on her schedule and ability to get him to the doctor. Phil wanted to be taken to the doctor but Marie has not taken him. DCC is alleged.



### Definition

## F. Denial of Critical Care (self)

1. **Definition** Deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.



### Indicators

2. **Indicators**
  - Failure to provide adequate food, shelter or clothing
  - Intentional physical self-abuse
  - Suicidal statements
  - Refusal of medical treatment or medication (refusal not based on religious grounds)
  - Refusal of services that might alleviate the situation, when once would have accepted
  - Refusal of visitors
  - Denial of obvious problems
  - Apathy
  - Hopelessness



### Examples

3. **Examples**
  - Unable to prepare food or obtain groceries
  - Unable to care for self
  - Confused and unable to understand living conditions
  - Holes in the floors and walls of home
  - Home is cluttered with garbage health hazard
  - Person subjects self to unsanitary living conditions
  - Person subjects self to a deplorable living environment



### Case Study

**Case Study** – Pearl, age 80, is alleged to present as increasingly confused and disoriented. She will fall in her home and once hit her face on the bathroom sink but forgot to press her life alert button. Pearl was recently seen driving on the wrong side of the road. Pearl lives on her own and has said she is afraid to see her doctor because she is afraid he will say she has dementia. Pearl reports having anxiety and obsessive thoughts. Pearl says she is increasingly confused.



Visuals

### **What Dependent Adult Abuse Is Not**

#### **What Dependent Adult Abuse is NOT:**

There are some situations which may appear to be dependent adult abuse but, according to the Iowa Code and Administrative Rules, they do not apply.

1. *Refusal or deprivation of medical treatment based on religious beliefs.* The practices and beliefs of some religions call for reliance on spiritual means for healing rather than medical treatment. A patient may refuse treatment based on religious grounds.
2. *Withholding, withdrawing or refusing medical treatment based on terminal illness.* If based upon the request of the dependent adult, their next-of-kin, attorney-in-fact (power of attorney), or guardian.
3. *Domestic abuse.* In domestic abuse situations where the victim is not dependent as defined in law.
4. *Persons incarcerated in a penal setting.* While one could make a case that an incarcerated person is a dependent adult, the Code excludes these persons from the Dependent Adult Abuse Law.
5. *Lack of means or access to means for providing care.* Where there is a lack of means to care for a dependent adult, the caretaker would not be guilty of perpetrating denial of critical care. Likewise, cases where a dependent adult lacks the means to care for her or himself would not be considered self-denial of critical care.

**Iowa Administrative Rules 441, Ch 176.3(2) & Iowa Code 235B.2(5)(b)**

**THIS CONCLUDES CHAPTER 235B**



## Facilities & Programs

# Facilities And Programs – DIA 235E

(Chapter 235B is discussed on pages 06-2 through 06-17)

**Iowa Code Chapter 235E: Department of Inspections & Appeals**  
**Iowa Administrative Code 481 – Chapter 52**

### Iowa Code 235E.2 Dependent Adult Abuse Reports in Facilities & Programs

The Department of Inspections and Appeals (DIA) shall receive and evaluate reports of dependent adult abuse in facilities and programs and shall inform the Department of Human Services (DHS) of such evaluations and dispositions for inclusion in the central registry.

**Facility** means a health care facility (135C.1) or a hospital (135B.1) and includes:

1. Long term care facilities
2. Residential care facilities
3. Intermediate care facilities for persons with mental illness
4. Intermediate care facilities for persons with intellectual disabilities
5. Hospitals

**Program** means:

1. Elder group homes (231B.1)
2. Assisted living programs (231C.3)
3. Adult day services (231D.1)



## Definitions

### Definitions

- A. **Dependent adult** A person eighteen years of age or older whose ability to perform the normal activities of daily living or to provide for the person's own care or protection is impaired, either temporarily or permanently.
- B. **Caretaker** A person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.



## Dependent Adult Abuse

C. **Dependent Adult Abuse** Any of the following as a result of the willful misconduct or gross negligence or reckless acts or omissions of a caretaker, taking into account the totality of the circumstances:

1. **Physical Injury, Unreasonable Confinement, Unreasonable Punishment, and Assault**

a. **Physical Injury** A physical injury or injury which is at a variance with the history given of the injury which involves a breach of skill, care, and learning ordinarily exercised by a caretaker in similar circumstances.

**Case Study:** Staff discover a large hematoma on a resident's arm in the morning that was not present during the resident's bath the previous evening. The resident says the aide who helped her on to the bed pan overnight was frustrated and handled her roughly. The resident describes the aide and the description accurately matches that of the one staff who provided cares to the resident on the overnight shift. The resident has no cognitive impairment and no history of false allegations against staff.

b. **Unreasonable Confinement.** Confinement that includes but is not limited to, the use of restraints, either physical or chemical, for the convenience of staff. "Unreasonable confinement" does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraints or as authorized by a physician or physician extender.

**Case Study:** A nurse uses a gait belt to tie a resident to a dining room chair because the resident keeps getting up from the table and disrupting other residents during mealtime. Staff are tired of redirecting the resident per the care plan and want to get their other work done. The gait belt is utilized for convenience rather than for

safety/protection of the resident.

- c. **Unreasonable Punishment.** A willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

**Case Study:** As punishment for a resident soiling herself and a staff member having to clean it up, the staff member makes the resident sit in the facility dining room for several hours late into the night, knowing the resident prefers to stay in her room and routinely goes to bed in the early evening

- d. **Assault.** “**Assault of a dependent adult**” means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

**Case Studies:**

- A resident spits on a staff member. The staff member spits back.
- A staff member covers a resident’s mouth with their hand because they are tired of the resident yelling.



**Sexual  
Offense  
Exploitation  
Neglect**

2. **Sexual offense** The commission of a **sexual offense** under chapter 709 or section 726.2 with or against a dependent adult.
3. **Exploitation** A caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult’s funds, assets,

medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

**Case Study:** Theft by a caretaker of a resident/tenant's personal property or medication.

4. **Neglect of a dependent adult.** The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.

**Case Study:** A staff member knows a resident is care planned for a two person transfer with a hooyer lift. The staff member has been disciplined in the past for transferring residents alone when they are care planned for two people. The staff member responds to a resident's call light. The resident is in his wheelchair and wants to go to bed. The staff member attempts to transfer the resident alone without the hooyer and the resident falls to the floor and is injured.

5. **Sexual exploitation of a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program.** Any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. "**Sexual exploitation**" includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing investigation



### **Sexual Exploitation**



### **Dependent Adult Abuse Does Not Include**

Sexual exploitation **DOES NOT** include touching by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

### Case Studies:

- A staff member engages in sexual conduct (kissing) with a resident. The two state the conduct is consensual.
- A staff member takes a picture with her cell phone of an unclothed resident seated on the toilet. The picture is sent to a friend via snap chat. The image shows the resident's breasts and genitals.

### Dependent Adult Abuse DOES NOT include:

- Circumstances in which the dependent adult or the dependent adult's caretaker acts in accordance with the dependent adult's stated or implied consent, declines medical treatment or care due to a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult's next of kin, attorney in fact, or guardian.

## This Concludes Chapter 235E



**235B & 235E  
Side-By-Side  
Comparison**

**NOTE:** Refer participants to the side-by-side document in their handouts that have 235B and 235E comparisons.



### 3. Reportable Criteria

In order for DHS or DIA to conduct an evaluation / investigation of dependent adult abuse, the following criteria must be met:

#### Reportable Criteria

1. The victim is a dependent adult;
2. The alleged perpetrator is a caretaker (or self under 235B); and
3. An allegation of abuse under the Dependent Adult Abuse Law.

**REMEMBER:** It is the role of the mandatory reporter to report **SUSPECTED** abuse and it is the role of the Departments (DHS & DIA) to determine if abuse has occurred. When in doubt **REPORT!**



### 4. Behavior Indicators

There are a number of victim and abuser behaviors which may indicate the presence of abuse or other serious problems. An awareness of the common indicators will assist a potential reporter in assessing the situation.

#### Behavior Indicators of Victim

#### A. Behavior Indicators of the Victim Include:

While each of the following indicators frequently occurs in the absence of elder abuse, their presence should prompt a consideration of the presence of abuse.

1. **Fear:** Fear or reluctance to openly talk with others.
2. **Withdrawal:** Self isolates, quiet/subdued, depressed mood.
3. **Depression:** Acute or situational depression displayed by someone who has not appeared depressed in the past.
4. **Helplessness or resignation:** Displays an “I don’t care” attitude and appears too accepting of their perceived fate/future.
5. **Hesitation to talk openly:** Reluctant to discuss matters related to their wellbeing, frequently changes the subject to issues that are to them non-threatening.
6. **Implausible stories (non dementia related):** Explanation does not match up with facts or observations.
7. **Confusion or disorientation (non dementia related):** Has difficulty expressing thoughts and appears distracted.

8. **Ambivalence/Contradictory Statements:** Does not show concern about personal events or unable to relate the same explanation repeatedly.
9. **Anger:** May display anger towards you, family/friends or angry with everybody/everything.
10. **Non-responsiveness:** Will not respond appropriately to questions.
11. **Agitation/Anxiety:** Becomes agitated when you are in their presence, usually escalates during the visit.



**Behavior  
Indicators of  
Abuser**

**B. Behavior Indicators of the Abuser Include:**

1. The victim is not allowed to speak for him/herself
2. Obvious absence of assistance
3. Attitudes of indifference or anger toward victim
4. Caretaker blames the victim
5. Aggressive behavior
6. Previous history of abuse to others
7. Problems with alcohol or drugs
8. Flirtations, coyness, etc.
9. Conflicting accounts of incidents by the family, supporters, victim
10. Non-compliance with service providers in planning for care and implementation
11. Withholding of security and affection
12. Perpetrators frequently groom their targets before the assault, gaining their trust, testing the waters, to see how they will react. Indicators of grooming include: special interest, gifts, touch, massage, setting up time to be alone (bathing in the late evening, transportation)

Observation of one indicator may not cause a potential reporter to suspect abuse, but a combination of the indicators may reveal a serious situation. The potential reporter may want to question further, document the situation for future use, or make a report.



## Types of Perpetrators

### C. Types of Perpetrators

1. **Well intentioned:** Overwhelmed, stressed, lashing out (Caretaker who means well, but tries to do too much)
2. **Well intentioned:** Ignorant – incompetent (Doesn't really understand how to take care of someone. Alzheimer's patient tied to a chair, while caregiver goes shopping.)
3. **Lacks interest and concern:** (A lazy person who needs job, doesn't take pride in work, just wants an "easy" paycheck)
4. **Abusive:** Motivated by self-interest, power and control (Gains trust of dependent persons, manipulates him/her into signing over all the money)
5. **Sadistic:** Enjoys hurting, extreme power and control (Looks for jobs with position and authority to gain control over people for the purpose of hurting others)

Source: Holly Ramsey-Klawnsnik, PhD, Klawnsnik & Klawnsnik Associates, Canton MA



## Expected Results From Perpetrators

### D. Expected Results from Perpetrators

1. Admission of guilt, embarrassment, desire to do better
2. Admission – believes abusive action was justified
3. Varies with IQ and social sophistication
4. Denial, outrage, rationalizations, attempts to "turn the tables" on the victim, reporter and/or investigator

Source: Holly Ramsey-Klawnsnik, PhD, Klawnsnik & Klawnsnik Associates, Canton MA