

# **2019 VULNERABLE ADULT ABUSE CONFERENCE**

Friday, September 6, 2019  
Rio Salado College Conference Center  
M & M Room  
Tempe, Arizona



## **RESIDENT ABUSE AND NEGLECT**

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Distributed by:

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ELIZABETH BURTON ORTIZ  
EXECUTIVE DIRECTOR

**RESIDENT ABUSE AND NEGLECT**

Presented by Assistant Attorney Generals Sean Coll and Sterling Struckmeyer




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**OVERVIEW**

- What does the law say: the all-mighty §
- Type of Facility
- Identifying Duties
- Recognizing Signs of Neglect
- Who Can Be Charged?
- Current Events

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**WHAT DOES THE LAW SAY**

- A.R.S. §13-3623 **Vulnerable Adult Abuse**
  - Causing physical injury
    - Care or Custody NOT required
  - Causing or permitting the person *or health* of a vulnerable adult to be injured
  - Causing or permitting a vulnerable adult in a situation where his/her person or health is endangered
    - MUST have care or custody

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WHAT DOES THE LAW SAY	
Under Circumstances <b>LIKELY</b> to produce death or serious physical injury	Under Circumstances <b>OTHER THAN THOSE</b> likely to produce death or serious injury (in non-lawyer talk: every other circumstance)
MENTAL STATE	MENTAL STATE
Intentionally or Knowingly – Class 2 Felony	Intentionally or Knowingly – Class 4 Felony
Recklessly – Class 3 Felony	Recklessly – Class 5 Felony
Criminal Negligence – Class 4 Felony	Criminal Negligence – Class 4 Felony
*Be mindful of §13-704	

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WHAT DOES THE LAW SAY
<p><b>EMOTIONAL ABUSE</b> – It’s a felony (barely) §13-3623(D)</p> <ul style="list-style-type: none"> <li>- Mental State: <b>Intentionally or Knowingly</b> (no Reckless or Negligent)</li> <li>- Engaging in emotional abuse (Definition COMING SOON!!!)</li> <li>- Of a vulnerable adult (Definition ALSO COMING SOON!!!)</li> <li>- In a health care/assisted living facility OR</li> <li>- Having care or custody, allows vulnerable adult to be subjected to emotional abuse.</li> <li>- Class 6 felony</li> </ul>

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WHAT DOES THE LAW SAY
<ul style="list-style-type: none"> <li>■ Emotional Abuse - §13-3623(F)(3) <ul style="list-style-type: none"> <li>■ PATTERN of Ridiculing/Demeaning</li> <li>■ Derogatory Remarks</li> <li>■ Verballing Harassing</li> <li>■ Threatening Harm</li> </ul> </li> <li>■ Vulnerable Adult - §13-3623(F)(6) <ul style="list-style-type: none"> <li>■ 18+</li> <li>■ Unable to protect him/herself from abuse, neglect or exploitation</li> <li>■ Because of mental or physical impairment <ul style="list-style-type: none"> <li>■ YES, this is an element and YES, you must prove it beyond a reasonable doubt, but that can be your friend...</li> </ul> </li> </ul> </li> </ul>

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**WHAT DOES THE LAW SAY**

- **NEGLECT** - A.R.S. §46-455
  - Person **employed** to provide care to a vulnerable adult (including de facto guardian/conservator or court appointed)
  - Causes or permits life to be endangered
  - Or person's health to be injured or endangered
- **CLASS 5 FELONY**

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**TYPE OF FACILITY**

- **MANY different names, types of facilities:**
  - Behavior Health Residential Facilities
  - Adult Day Health Care Facilities
  - Behavioral Health Respite Homes
  - Adult Behavioral Health Therapeutic Homes
  - Developmentally Disabled Group Homes
- **Primarily, Assisted Living Facilities**

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**TYPE OF FACILITY**

**Assisted Living Facility (A.R.S. § 36-401 (A) (8))**

- "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.

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**TYPE OF FACILITY**

- Assisted Living Home or Center?
  - Assisted Living Home: 10 residents or fewer
    - Usually a home in a residential neighborhood
  - Assisted Living Center: 11 residents or more
    - Usually a commercial building

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**TYPE OF FACILITY**

- Total Number of licensed Assisted Living Facilities in Arizona today: **2,104.**
  - Total number of Centers: 306
  - Total number of Homes: 1,798

Growing, and growing, and growing...

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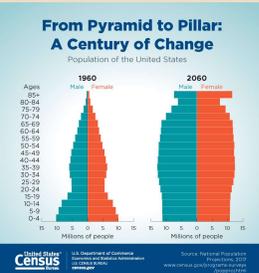
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**TYPE OF FACILITY**



**From Pyramid to Pillar: A Century of Change**  
Population of the United States

- BABY BOOMERS**
  - By 2035 people aged 65 or older will outnumber people aged 18 or younger for first time in U.S. history.
  - Some estimate that the Baby boomer generation could fuel more than a 50 percent increase in the number of Americans ages 65 and older requiring nursing home care, to about 1.9 million in 2030 from 1.2 million in 2017. (Population Reference Bureau)
  - Americans living with Alzheimer's disease could more than double by 2050 to 13.8 million, from 5.8 million today. (Alzheimer's Association, 2019 Alzheimer's Disease Facts and Figures (2019)).
- Advances in Medical Science**
  - Allow more and more people to live longer, and allow more people to live longer with physical or mental medical conditions.

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**TYPE OF FACILITY**

- Assisted Living Facility-Required Personnel:
  - Certified Assisted Living Manager-Arizona Board of Nursing Care Institution Administrators
    - Application
    - Fees
    - Baccalaureate degree and successfully complete Administrator in Training Program, or a Masters degree in health or business administration, or Associate of Arts degree in nursing and licensed as a registered nurse),
    - Pass Exam (min of 80% on Arizona exam), and
    - Fingerprint clearance card.
  - No requirement that the facility employ an RN or LPN or other "medical personnel"
  - Any Employee (i.e., "caregiver") is technically required to have Fingerprint clearance card

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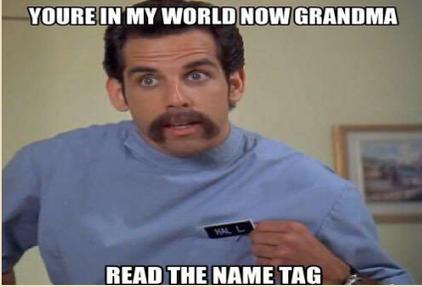
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**WHO ARE WE DEALING WITH?**




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**WHO ARE WE DEALING WITH?**

- Caregiver – Provides supervisory care services, personal care services, or directed care services to a resident, and *does not include a family member of the resident.*
- Manager – Designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.
- Primary Care Provider – Physician, physician's assistant, or registered nurse who directs a resident's medical services
- Assistant Caregiver – Employee or volunteer who helps (everyone above) – *does not include a family member.*

*\*All definitions from ADHS Article 8 (R9-10-801)*

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**IDENTIFYING DUTIES**

- There are specific duties and responsibilities depending on who you are dealing with:
  - Owner
  - Manager
  - Primary Care Provider
  - Caregiver

Starting thinking about it early: Who is the bad guy/gal?

- And YES...it can be more than one person.
  - Cover-ups
  - Inaction after notification
  - Accomplice liability

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**IDENTIFYING DUTIES**

- Where to find the duties:
  - Medical/Nursing Board
  - Administrative Requirements
  - Licensing Agency
  - Contracts
  - Resident Records – Medical and Otherwise

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**IDENTIFYING DUTIES**

**EXAMPLES – DHS**

- R9-10-806(A)(5) – Must have Manager, Caregivers, and Assistant Caregivers with the qualifications, experience, skills and knowledge necessary to:
  - Provide the scope of services offered by the facility (assisted living, behavioral health, etc.)
  - Meet the needs of a resident
  - Ensure the health and safety of a resident (i.e. – don't commit neglect)
- R9-10-806(A)(6) – At least one manager or caregiver is present and awake at an assisted living center when a resident is on premises.

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**IDENTIFYING DUTIES**

**EXAMPLES – DHS**

- R9-10-807 – Service Plans
  - Written description of resident's needs, services provided and services to be provided
    - If there is a significant change in resident's condition, it must be documented within 14 days
      - This is not just red tape: consider the reasons why.
        - Bed Sores
        - Medication – too much or too little
        - Documents behavior – does the person fall down a lot? Regular injuries?
        - Weight loss or gain
  - If there aren't any, or they are sub par, press the manager as to why.

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**IDENTIFYING DUTIES**

**EXAMPLES – LIGHTNING ROUND**

- Food and Water – safe and adequate supply (R9-10-817)
- Emergency Procedures (R9-10-818)
  - Disaster plan must be developed and include procedures to evacuate, relocate, etc.
  - Smoke detectors, sufficient exits, first aid, etc.
- Environmental Standards (R9-10-819)
  - Clean! Both to minimize illness and physical injury
  - Appropriate temperature (between 70 and 84 degrees)
  - Soiled linens/clothing handled appropriately
- Physical Plant Standards (R9-10-820)
  - Working plumbing, separate sleeping areas, EQUIPMENT (More on that soon...)

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**FOOD & WATER?**




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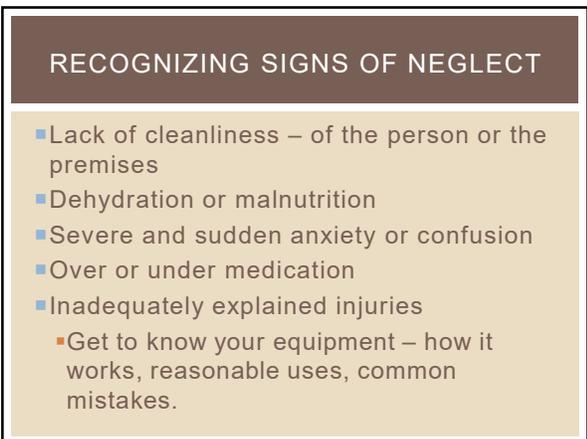
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RECOGNIZING SIGNS OF NEGLECT

**COMMON PATIENT CARE EQUIPMENT**

- Mechanical Lifting Device (Hoyer Device)



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RECOGNIZING SIGNS OF NEGLECT

**Common Patient Care Equipment**

- Wheelchairs
- Low accessible beds
- Floor mats
- Geri Sleeves (for skin care)
- Shower chairs or trolley
- Any Devices that store data
  - Glucometer
  - Feeding pumps
  - Cardiac monitor
  - Ventilator



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RECOGNIZING SIGNS OF NEGLECT

- There's a fine line between NEGLECT and a bad accident...
  - Knowing your equipment will help distinguish:
    - Faulty equipment...or poor maintenance
    - It didn't work right...or lack of training
    - She just slipped out...or you weren't using it properly.

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RECOGNIZING SIGNS OF NEGLECT

“But I’m not an expert...”



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RECOGNIZING SIGNS OF NEGLECT

...that’s OK. Other people ARE, and they will help you.

- Nurse Analyst – particularly important in cases involving equipment.
- Psychologist – particularly in emotional abuse cases.
- Physicians who specialize in geriatric medicine
- Occupational therapists

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CHARGING

- Owner
- Manager
- Primary Care Provider
- Caregiver
- Charging an Entity?
  - YES! *State v. Far West Water & Sewer*, 224 Ariz. 173 (2010).
  - A.R.S. §13-803
    - Felony up to \$1,000,000.00
    - Class 1 Misd up to \$25,000.00
    - Class 2 Misd up to \$10,000.00
    - Class 3 Misd up to \$ 2,000.00

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**RECENT CHANGES IN THE LAW**

- Senate Bill 1244 Amends A.R.S. §36-446
  - By June 1, 2020, the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers is required to prescribe rules for assisted living facility caregivers that are consistent with the training, competency and test methodology standards developed by the Arizona Health Care Cost Containment System (AHCCCS) Administration for in-home direct care workers.
- Senate Bill 1483 Adds A.R.S. §46-471, *et al.*
  - If a "Qualified Individual" reasonably believes that financial exploitation of an "eligible adult" may have occurred, may have been attempted, or is being attempted, the individual is permitted to notify Adult Protective Services and the Corporation Commission.
  - A broker-dealer or investment adviser is authorized to delay a disbursement or transaction from an account of an eligible adult if they reasonably believe that the requested disbursement may result in financial exploitation of an eligible adult;
  - A broker-dealer or investment adviser is required to provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to Adult Protective Services and law enforcement.
  - An individual who in good faith and exercising reasonable care discloses information under this allowance is immune from administrative or civil liability;

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**THE END**



The true measure of any society can be found in how it treats its most vulnerable members

— Mahatma Gandhi —

AZ QUOTES

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