

Practical Impact of
The Cullen Act &
Peggy's Law



Peggy's Law: What it is, what is required, and what it means for the Assisted Living Community

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History of Peggy's Law

- Peggy's Law came about from a 2010 incident at an assisted living facility in New Jersey.
- Peggy Marzolla, a 93-year old resident, sustained a number of physical injuries.
- Her daughter was convinced that the injuries could have only come from abuse, despite being advised to the contrary.
- The daughter lobbied for seven years to have "Peggy's Law" enacted.
- Senate Bill 1219 amended *N.J.S.A. 52:27G-1, et seq.*, the enabling statute for the Office of the State Long-Term Care Ombudsman.
- Governor Christie signed the bill into law on August 7, 2017.

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24-Hour Reporting

N.J.S.A. 52:27G-7

- The Ombudsman's office shall establish and implement procedures for eliciting, receiving, processing, responding to, and resolving complaints from patients, residents, or clients of facilities, the relatives or guardians of such persons, or from interested citizens, public officials, or government agencies having an interest in the matter. The office shall ensure that a system is in place to receive complaints 24 hours per day, seven days per week, whether or not live staff members are available to receive the complaint.
- 24-hour reporting was not previously available.

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What does Peggy's Law require?

N.J.S.A. 52:27G-7.1(a)

- Any caretaker, social worker, physician, registered or licensed practical nurse, or other professional or staff member employed at a facility, and any representative of a managed care entity, who, as a result of information obtained in the course of that individual's employment, **has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited**, shall report such information to the ombudsman or to the person designated by the ombudsman to receive such report.
 - Any other person having reasonable cause to suspect or believe that an elderly person is being or has been abused or exploited may report such information to the local law enforcement agency and to the ombudsman or the person designated by the ombudsman to receive such report. *N.J.S.A. 52:27G-7.1(c)*
- If an individual reported suspected abuse or exploitation pursuant to this subsection **has reasonable cause to suspect or believe that the institutionalized person is or has been the victim of a crime**, the individual shall additionally report such information to the local law enforcement agency and to the health administrator of the facility.
 - NOTE: Facilities should consult their legal counsel for an interpretation of state criminal code.

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What does Peggy's Law require?

N.J.S.A. 52:27G-7.1(a)

- The Statute recognizes a dichotomy between abuse and exploitation, which are not required to be reported to local law enforcement, with criminal behavior, which must be reported to local law enforcement.
- However, the potential problem is that many times, the actions constituting abuse or exploitation are also crimes as defined by the statute.
- Examples:
 - Striking a resident (Assault)
 - Confining a resident to a specific room or area (False Imprisonment)
 - Stealing a resident's personal property (Theft)
- While an action may previously have only needed to be reported to the Ombudsman, it now must also be reported to local law enforcement under Peggy's Law.

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What does Peggy's Law require?

N.J.S.A. 52:27G-2(a) and (e)

- “Abuse” means the willful infliction of pain, injury, or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a person’s physical and mental health. However, no person shall be deemed to be abused for the sole reason he is being furnished nonmedical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment.
- “Exploitation” means the act or process of using a person or his resources for another person’s profit or advantage without legal entitlement to do so.
- What is NOT defined under the Statute: Reasonable Cause
 - Corollary Term: Probable Cause – “A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause—which amounts to more than a bare suspicion but less than evidence that would justify a conviction—must be shown before an arrest warrant or search warrant may be issued. (*Black’s Law Dictionary, Seventh Ed.*, c. 1999).

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Timeframe for Reporting

N.J.S.A. 52:27G-7.1(a)(1) and (2)

- If the events that cause the suspicion or belief result in serious bodily injury, the individual shall report the suspicion or belief immediately, **but not later than two hours after forming the suspicion or belief.**
- If the events that cause the suspicion or belief do not result in serious bodily injury, the individual shall report the suspicion or belief immediately, **but not later than 24 hours after forming the suspicion or belief.**

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What must be reported?

N.J.S.A. 52:27G-7.1(b); (d)

- The report must contain the name and address of the elderly person, information regarding the nature of the suspected abuse or exploitation and any other information which might be helpful in an investigation of the case and the protection of such elderly person.
- The name of the person who reports the suspected abuse or exploitation shall not be disclosed, unless the person who reported the abuse or exploitation specifically requests such disclosure or a judicial proceeding results from such report.

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Immunity and Penalties

N.J.S.A. 52:27G-7.1(e); (f); (i)

- Any person who reports suspected abuse or exploitation pursuant to this act or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.
- Any person required to report suspected abuse or exploitation pursuant to the act who fails to make such report shall be fined not more than \$500, and the facility employing the individual shall be fined not more than \$2,500.
- No provision of the act shall be deemed to require the disclosure of, or penalize the failure to disclose, any information which would be privileged pursuant to *N.J.S.A. 2A:84A-18* through *2A:84A-23*.
 - Right against self-incrimination
 - Attorney-Client privilege
 - Physician-Patient Privilege
 - Utilization Review Committees of Certified Hospital or Extended Care Facilities
 - Marital Privilege
 - Newsperson's Privilege
- The Ombudsman's Office may bring suit in a court of competent jurisdiction to enforce any of the powers enumerated in this section.

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Written notices; Informing about Rights and Entitlements

N.J.S.A. 52:27G-11

- The Ombudsman's Office has updated the "See It! Report it! Prevent it" abuse reporting poster.
- The Ombudsman's Office shall prepare and distribute to each facility written notices, in English and Spanish, which set forth the address and telephone number of the office, a brief explanation of the function of the office, the procedure to follow in filing a complaint and other pertinent information. The notice shall also indicate the option to call 9-1-1.
- The administrator of each facility shall ensure that such written notice is given to every patient, resident, or client or the patient's, resident's, or client's guardian upon admission to the facility and to every person already in residence or the person's guardian. The administrator shall post such written notice in a conspicuous, public place in the facility in the number and manner set forth in the guidelines adopted by the office.

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Written notices; Informing about Rights and Entitlements (continued)

N.J.S.A. 52:27G-11

- The facility shall inform patients, residents, or clients, and their guardians, resident representatives, or families, of their rights and entitlements under State and Federal laws and rules and regulations in a format and language that the recipient understands, by means of the distribution of educational materials as provided in subsection (b).
 - The new paragraph requires the facility, rather than the Ombudsman's Office to inform the patient, resident or client, about relevant law concerning resident rights. However, it also requires the Ombudsman's Office to provide educational materials.
- The administrator of each facility shall annually provide all caretakers, social workers, physicians, registered or licensed practical nurses, and other professionals and staff members employed at the facility with a notice explaining the requirements of *N.J.S.A. 52:27G-7.1* concerning the reporting of suspected abuse or exploitation of an institutionalized elderly person, and require, as a condition of employment at the facility, that the employee acknowledge in writing receipt of the notice. The signed acknowledgement shall be retained in the employee's personnel file.

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What to do when a situation arises

- Determine your reporting time. If there is serious bodily injury, you have two hours. If there is no serious bodily injury, you have 24 hours.
- Do an investigation and ask the following questions:
 - Do you have reasonable cause to suspect that a resident has been abused or exploited?
 - Do you have reasonable cause to suspect that a resident has been the victim of a crime?
 - On what facts are you basing your conclusions?
 - Do staff members' or residents' accounts match up with the injuries or allegations?
 - Has the staff member or resident involved been involved in similar situations previously?
 - Are there complicating medical issues? (e.g. Coumadin can make bruising look worse; osteoporosis or osteopenia can make it easier to fracture bones).
- Obtain as many eyewitness accounts and witness statements as necessary to corroborate or refute whether something untoward has happened.
- Document everything in your investigation.

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What to do when a situation arises (continued)

- If the police show up at your facility and want to speak with staff members:
 - Be polite, professional and courteous;
 - Advise them you want your attorneys to be present;
 - Do not allow them to speak with staff members until an attorney is present; and
 - Have your attorney present for all staff interviews.