

NOTICE 1330 OF 2007**DEPARTMENT OF SOCIAL DEVELOPMENT****PUBLICATION FOR COMMENT: DRAFT REGULATIONS UNDER THE
OLDER PERSONS ACT, 2006 RELATING TO CHAPTER 5 OF THE ACT**

The Minister of Social Development intends to make regulations in terms of section 34 of the Older Persons Act, 2006 (Act No. 13 of 2006).

Interested parties are invited to submit comments on the proposed draft regulations to the Director-General: Social Development, Private Bag X901, Pretoria, 0001, fax number (012) 3127547 or e-mail: Isabellas@socdev.gov.za (for attention: Ms Isabella Sekawana), within 30 days of the date of publication of this notice.

Copies of the draft regulations can be obtained from the Government Printer Pretoria, from Ms Isabella Sekawana Department of Social Development, 7th Floor, HSRC Building, 134 Pretorius Street, Pretoria, Tel: (012) 312-7352 or from the various provincial departments of Social Development. The draft regulations are also available on the Department of Social Development's website: www.dsd.gov.za.

OLDER PERSONS ACT, 2006

REGULATIONS IN TERMS OF THE OLDER PERSONS ACT 13 of 2006

REGULATIONS RELATING TO CHAPTER 5 OF THE ACT

The Minister of Social Development intends, in terms of section 34 of the Act, to make the regulations in the Schedule hereto relating to Chapter 5 of the Act.

SCHEDULE**DEFINITIONS**

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context otherwise indicates—

“**form**” means a form prescribed in the Regulations;

“**service provider**” means a person who is providing services as defined in the Act

“**resident**” means an older person residing in a residential facility;

“**restraint**” means use of physical force or medication to impede the movement of the body or limbs of a person ;

“**the Act**” means the Older Persons Act, 2006 (Act No. 13 of 2006).

Measures to prevent and combat abuse of older persons

2. (1) Every service provider and operator of a residential facility must take measures to prevent abuse of older persons, including:
- (a) Displaying of the code of conduct of staff
 - (b) Displaying of the contact details of the department that includes telephone numbers and toll free number and service provider help lines
 - (c) Promote cooperation with service providers and stakeholders such as SAPS, hospitals, clinics, local government, courts, faith based organisations, traditional leaders and others.
 - (d) Displaying the charter on the rights older persons in areas that older persons frequently visit.
 - (e) implementing the National Elder Abuse Protocols contained in ANNEXURE B
 - (f) displaying of the registration certificate issued by the department.
- (2) Every service provider and operator of a residential facility must provide education and training to their staff members on:
- (a) older persons and their human rights; and
 - (b) elder abuse as defined in section 30(2) of the Act including awareness and prevention.

- (3) Every service provider and operator of a residential facility may provide;
- (a) education, awareness and training to older persons, their family members and communities on:
 - (i) services to assist older persons to prevent and combat elder abuse;
 - (ii) services including support available to abused older persons;
 - (b) The services referred to in (i) and (ii) above may include, but not be limited to, toll free help lines, counselling and safe beds
- (4) The Department of Social Development at national and provincial level must conduct education and training on the management of elder abuse to social workers, SAPS officials and the relevant department of justice officials regarding the implementation and use of sections 26,27,28 and 29 of the Act.
- (5) Any complaints from staff, residents or their representatives must be reported to the operator and must be recorded in a Complaints Register and dealt with immediately and the Residents Committee must be informed of all complaints and the outcome thereof at each committee meeting.
- (6) Where grievances, complaints and abuse are discussed during a management meeting, the discussion and outcome of the investigation must be noted in the official minutes, which shall be treated as confidential.
- (7) The Department of Social Development must take the necessary steps in order to bring section 30(4) to the attention of the relevant officials, such as SAPS, magistrates and prosecutors.
- (8)(a) Any person who suspects that an older person has been abused, suffers from an abuse-related injury or in need of care must immediately notify the Director-General or a police official of his or her suspicion in person, telephonically or in writing and such official must complete Form 1 of ANNEXURE A
- (b) Any social worker as defined in section 1 of the act or members of the South African Police Services to whom such a report referred to in (a) above is made, shall ensure that the Form 1 is submitted to the Director-General within 48 hours.
- (c) The Director-General shall ensure that the investigation referred to in Section 26(4)(a) of the Act is completed within 48 hours and a written report with necessary recommendations on steps to be considered is submitted.

Restraint provisions

3. (1) no person shall in any manner restrain or administer drugs to a older person in order to restrain the older person, unless it is required to treat a medical condition or to ensure the safety of the older person or other residents or staff members.
- (2) A older person may only be restrained with the consent of a registered medical health practitioner

- (3) The service provider must keep a register in Form 2 To these regulations in which full details of the restraining of any older person must immediately be recorded
- (4) The register referred to in sub regulation (3) must be submitted to the management meetings of the service provider and the meetings of the residents committee
- (5) When a older person is restrained, the manager must within 24 hours or as soon as possible inform the relatives of that older person.

Complaints from older persons

4. (1) Any complaints from staff, older persons or their representatives, must be reported to the service provider or operator of a residential facility and must be recorded in a Complaints Register, similar to that contained in Forms 3 and 3A dealt with by the service provider or operator of a residential facility, within seven (7) days.
- (2) The residents committee must be informed of all complaints and the outcome thereof at each of their committee meetings.

Incidents Register

5. (1) The service provider or operator of a residential facility must record and keep a register of all incidents, in the manner set out in Form 4 involving an older person that occurs whilst the older person is receiving a service or where the older person is a resident of a residential facility.
- (2) The residents' committee must be informed of all complaints incidences and the outcome thereof, at each of their committee meetings.
- (3) In those circumstances where in the view of the residents committee, the complaint or incident amounts to elder abuse the residents committee must act in terms of section 20(3)(e) of the Act.
- (4) The service provider and the operator of the residential facility, with the consent of the older person must inform the older persons family members or next of kin of any complaints or incidents and the outcome thereof.

Measures to promote the rights of residents in residential facilities

6. (1) Every service provider and operator of a residential facility must take measures to prevent abuse of older persons, including
 - (a) Display registration certificate;
 - (b) Older Abuse Protocol to be made available;
 - (c) Display contact details of the department of social development;
 - (d) Displaying of the charter on the rights of older persons; and
 - (e) Establishment of residents committee.
- (2) All operators of residential facilities must demonstrate that measures are taken within residential facilities, to:
 - (a) promote awareness and educational programmes in the residential facility and services that will facilitate understanding of ageing issues and create awareness that ageing is a natural process;
 - (b) protect older persons from any form of abuse including neglect ill-treatment and financial exploitation;

- (c) promote the participation of older persons in the planning and management of the residential facility services as far as possible; and
- (d) This is dealt with in the complaints and incidents register

(3) Residents must be encouraged to report any violation of their rights to the Residents Committee or operator of the residential facility.

Measures to promote the rights of older persons that are not in residential facilities

7. (1) Every service provider must take measures to prevent abuse of older persons, including:

- (a) Display registration certificate in the case of a service center elder Abuse Protocol to be made available at strategic areas such as police stations, hospitals, clinics, pay points, tribal authorities.
 - (c) Display contact details of department of Social Development and help lines in public areas frequented by older persons and community members e.g. clinics, libraries, schools, day hospitals, banks, post office, pay points.
 - (d) Display a Charter on the Rights of older persons in public areas frequented by older persons.
- (2) No person may in any manner prevent an older person from exercising any of the rights in terms of section 7 of the Act.
- (3) It is the responsibility of service providers, organs of state to ensure that older persons are aware of their rights and that their rights are not unfairly infringed.
- (4) Educate structures e.g. pension committees, churches and faith based organizations that are involved with older persons.

Keeping of register persons convicted of abuse of older persons

8. (1) The register referred to in this regulation must be contained in a form similar to Form 5 Contained in the Annexure A to these regulations.

(2) For the purpose of sub regulation (1), the residents committee or any other person must in writing, inform the Minister of any conviction resulting from the abuse of an older person.

(3) The Minister may, subject to the conditions he or she determines generally or in a particular case, approve that the register may be examined or inspected for official and bona fide research purposes such as the following:

- (a) collecting of information on the occurrence, distribution and prevalence of cases of abuse;
- (b) collecting of information on cases of abuse and various interventions made in such cases; and
- (c) collecting of information for employment and registration purposes.

(4) The Minister may, subject to the conditions he or she determines generally or in a particular case, disclose information contained in the register to a person with the sole purpose of serving the interest, safety and welfare of older persons.

(5) No person will be liable in respect of any information provided for entry in the register and given in good faith according to these regulations.

Penalties

9. Any person who contravenes or fails to comply with these Regulations is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year or to both such fine and such imprisonment.

Short title and commencement

10. These Regulations are called the Older Persons Regulations, 2007 and will come into operation on the date of publication.

ANNEXURE A

FORM 1

ELDER ABUSE: REPORT

[Section 27 (1) and regulation 2 (8)]

**DEPARTMENT OF SOCIAL DEVELOPMENT
OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)**

Organisation/ individual making the Report:

Date report received: _____

Date/ period of alleged abuse: _____

PROFILE OF ALLEGED ABUSED PERSON

Name: _____ Date of birth: _____

Gender: Male Female **Race:** White Black Coloured Indian

Address: _____

Usual health care provider (e.g. GP, clinic, hospital etc.)

Other organizations/individuals involved in their care:

Health Status (mark with a X all that apply):

Mental Health Problem Physical Difficulty Healthy

If alleged perpetrator is a carer, please mark caring status:

Family caregiver Paid caregiver Volunteer Other (Specify)

Other: _____

Category (ies) of Abuse alleged to have taken place (mark with a X all that apply):

Physical Sexual Emotional or Psychological Neglect Financial

Violation of Human Rights Systematic Abuse Medication

Setting where the abuse took place: _____

Give details of the circumstances by which the abuse came to light, how the person described it and how the report was triggered:

Any other relevant information: _____

Key issues of Risk Assessment: _____

Recommendation: (mark with a X)

Emergency Action Non-emergency Action No Action

Reason for Recommendation: _____

Full Name of person receiving report:

_____ Signature: _____

Full name of person making report (if available)

_____ Signature: _____

Organization/ Department:

Relationship to Abused Person:

Date: _____

Date: _____

FORM 2

RESTRAINING OF RESIDENTS
[Regulation (3)]
DEPARTMENT OF SOCIAL DEVELOPMENT
OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)

Record Number Date

1. Name of resident

2. Reasons for the restraining of the resident
.....

3. The method of restraining used
.....

4. Duration of the restraining

5. Restraining applied by

6. Restraining authorized by

7. Previous restraining incidents:
Reason (s) for restraining
Date (s) of restraining
Record number

8. Family/representative notified: Yes No
if not, why not?
.....

9. Minted by Management Committee on:
.....

10. Action taken by Management Committee:
.....

Signature of Manager
.....

Date:

FORM 3

COMPLAINTS REGISTER

[Regulation 4 (1)]

**DEPARTMENT OF SOCIAL DEVELOPMENT
OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)**

Date:.....

Name of complainant / anonymous:

.....

Nature of complaint:

.....

Person against whom complaint made:.....

Investigators name:.....

Outcome.....

.....

Feedback to complainant.....

.....

Steps taken:.....

.....

Date matter finalized:.....

FORM 3A
COMPLAINT
DEPARTMENT OF SOCIAL DEVELOPMENT
OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)

NB. All complaints and incidents must be treated as confidential.

I _____ (*full name of complainant*)
 Herein represented by (when applicable) _____ (*full names and surname*),
 In his or her capacity as _____ [Manager of Residential Facility, Social Worker, Relative, Attorney, Residents Committee member or Representative etc.] duly authorised. (Chapter 4, Section 16a, Chater 5, Section 25)

Lodge a complaint against the Organization / Individual

SECTION A (*Details of Organisation and Community Based Care and Support Services*)

Name of Organisation / Facility		
Physical address of facility:		
Postal address of facility:		
Telephone No		
Email address of facility		
Fax No of facility		
Name of individual / staff member complaint is about		
Date of Incident		
Time of Incident		
Place of incident		
Names of witnesses (if any)	Contact detail of witnesses	

**FORM 4
COMPLAINT / INCIDENT REGISTER**

OF ABUSE OF OLDER PERSONS

[Regulation 5(1)]

DEPARTMENT OF SOCIAL DEVELOPMENT

OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)

Date of incident	Time of incident	Name of Older Person	Name and contact details of complainant	Incident reported	Date & Time reported	To whom reported	Brief description of incident	Steps taken	Investigation outcomes

FORM 5

**REGISTER OF PERSONS CONVICTED
OF ABUSE OF OLDER PERSONS**

[Section 31 (1) and regulation 8 (1)]

DEPARTMENT OF SOCIAL DEVELOPMENT

OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)

Case no.	Name of convicted person	Identity number	Offence	Penalty	Area where offence was committed	Year

ANNEXURE B**The National Elder Abuse Protocol**

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Acknowledgements

This protocol is based on:

- The National Elder Abuse Strategy of the Department of Health;
- The report and recommendations of the Ministerial Committee of Enquiry on the abuse of Older Persons;
- Elder abuse protocols from Australia, England, New Zealand and Canada;
- The efforts and work of a Steering Committee in Kwa Zulu Natal under the Chairperson, Ms Sibongile Dube.

The KZN Protocol was adjusted to be in line with the Older Person's Act NO 13 of 2006.

1. PURPOSE

This Protocol is designed as a guide to assist state departments, local authorities and non-governmental organisations and others who care, who comes into contact with older people. The Protocol caters for both older persons living in residential facilities and independently in the community. This Protocol should be used as a living document alongside the Aged Persons Act of No 13 of 2006. In this document the term Act is frequently used

2. PRINCIPLES

- ✧ Older persons have a right to live safely and without fear of abuse, violence or exploitation.
- ✧ The abuse of older persons is an unacceptable infringement of human rights which should be prevented or terminated.
- ✧ Until shown otherwise, older persons are assumed to be competent to make informed choices and decisions about their own lives.
- ✧ Older persons who disclose abuse need to be taken seriously.
- ✧ Both the victim and the abuser have a right to fair and equitable treatment.
- ✧ Elder Abuse is everyone's shame.
- ✧ Preventing elder abuse is everyone's responsibility.

3. DUTY OF CARE AND PROTECTION

Older persons may have increased vulnerability to abuse because of their age, state of health, social circumstances or other factors (such as crime and violence).

Older Persons are protected under the Older Person's Act no 13 of 2006. The objects of the Act under Article 2 *inter alia* to:

- a) Maintain and promote the status, well-being, safety and security of older persons; and
- b) Maintain and protect the rights of older persons.

Service providers have a legal duty of care, as stipulated in the Older Persons Act, to take reasonable steps to ensure the safety and well-being of any older person who may ordinarily be a victim of abuse.

Elder Abuse is a crime, and if committed, should be reported. Everyone, both in residential facilities and in the community, has a responsibility to report it and take the necessary steps to protect and assist the victim. It is an offence to conceal the crime of abuse.

4. IMPLEMENTING THE PROTOCOL

This Protocol requires commitment from:

- ✧ State Departments - *inter alia* Health, Social Development, Welfare, Local Authorities, Justice, Police (SAPS), Education, Housing, Sport and Recreation, Home Affairs.
- ✧ Non- governmental organisations specialising in the field of older persons in order for implementation to be effective.
- ✧ Members of the public.
- ✧ Persons in professional capacity, i.e. doctors, nurses, lawyers, etc.

For the Protocol to be effective it is necessary that:

- ✧ All service providers fully understand the Older Persons Act and the Regulations.
- ✧ Organisational and departmental policies and procedures be reviewed to ensure that they clearly identify their role in relation to elder abuse and neglect.
- ✧ Inter-sectoral agreements be made operational and to specify each stake holder's role, boundaries and expectations in relation to elder abuse and neglect.
- ✧ All staff, including volunteers, to be trained to ensure the understanding of and effectiveness in dealing with victims of abuse and neglect.
- ✧ Uniform data be collected to identify individual cases of alleged abuse.
- ✧ Debriefing programmes be developed to give all persons dealing with older persons the opportunity to discuss elder abuse issues they encounter in relation to specific cases and situations.
- ✧ Organisations develop their own procedures to safeguard the rights and personal safety of staff and volunteers.

5. DEFINITIONS

This Protocol uses the terms "older person" and "elder" interchangeably. No specific age limit has been applied as this could exclude adults who experience chronic disease, physical or psychological disability, or premature ageing. Elder abuse is defined; as are elder protection and also different forms of abuse.

Elder Protection refers to planned interventions, including offers of services and counselling, to ensure older persons are protected from harm from another person or persons.

Elder Abuse refers to a single or repeated act, or lack of appropriate action, which causes harm or distress to an older person, *occurring within any relationship where there is an expectation of trust*. Harm includes physical, psychological, financial and material abuse, and sexual abuse, as well as neglect, violation of rights and systemic abuse. In terms of Article 30 (2 + 3) of the Older Persons Act 13 of 200, abuse means:

2. *Any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to and older person constitutes abuse of an older person.*
3. *For the purposes of subsection (2), 'abuse' includes physical, sexual, psychological and economic abuse and –*
 - (a) *'physical abuse' means any act of threat of physical violence towards an older person;*
 - (b) *'sexual abuse' means any conduct that violates the sexual integrity of an older person;*
 - (c) *'psychological abuse' means any pattern of degrading or humiliating conduct towards an older person, including-*
 - (i) *repeated insults, ridicule or name calling;*
 - (ii) *repeated threats to cause emotional pain; and*
 - (iii) *repeated invasion of and older person's privacy, liberty, integrity of security;*
 - (d) *'economic abuse' means-*
 - (i) *the deprivation of economic and financial resources to which an older persons is entitled under any law;*
 - (ii) *the unreasonable deprivation of economic and financial resources which the older persons requires out of necessity; or*
 - (iii) *the disposal of household effects or other property that belongs to the older person without the older person's consent.*

Elder self-neglect occurs when an older person experiences harmful physical, psychological, material and/or social effects as a result of failing to provide him/herself with the basic necessities for physical and/or mental well-being. As self-neglect is self-inflicted, it is a different kind of problem from elder abuse and neglect and is therefore not dealt with in detail in this protocol. It is however referred to because it is important to recognise that self-neglect does occur. In some situations it will be necessary to assess whether a situation is one of neglect by others or self-neglect, or a combination.

The problem of self-neglect highlights a very important ethical issue. The right of the older person to self-determination must be respected. While elder self-neglect may cause considerable anxiety among neighbours and others, it is important to remember that unless the older person is causing a danger to others he/she has every right to choose how he/she lives.

6. CLASSIFICATION OF ABUSE according to TYPE OF ABUSE and INDICATORS

The following need to be understood:

- ✧ Many indicators exist that suggest that an older person *may* be at risk of abuse or neglect.
- ✧ In some instances it will be clear that abuse or neglect is present, but in other situations one or more indicators may be present, suggesting a medical condition or some other factor.
- ✧ Experience suggests, however, that the existence of more than one of these factors places an older person at risk of elder abuse or neglect.
- ✧ Elder Abuse tends to escalate in frequency and severity over time.

ABUSE INDICATORS

6.1 Physical Abuse Indicators

Physical Abuse is the infliction of physical pain or injury or physical coercion. Examples include hitting, shoving, pushing, burning, and physical and chemical restraint.

*Abrasions	*Grip marks	*Welts
*Direct beatings	*Punctures	*Cuts/lacerations
*Paralysis	*Bruises	*Malnutrition
*Attempted murder	*Hypothermia	*Wounds
*Dislocations	*Sprains	*Dehydration
*Pressure areas	*Burns/scalding	*Over-sedation/polypharmacy
*Bedsores	*Internal injuries	*Death
*Fractures	*Swelling	
*Poisoning	*Choke marks	
*Bleeding	*Inexplicable falls	

6.2 Medication Abuse Indicators

Medication Abuse is the misuse of an older person's medication and prescriptions, including withholding medication, or over-medicating.

- *Over-sedation
- *Increased anxiety
- *Reduced mental or physical activity
- *Depression
- *Reduced or absent therapeutic response

6.3 Psychological Abuse Indicators

Psychological Abuse refers to the infliction of mental anguish, including actions that lead to fear of violence, isolation or deprivation, feelings of shame, indignity or powerlessness. Examples include treating the older person as a child, humiliation, emotional blackmail, blaming,

swearing, intimidation, name calling, teasing and taunting, enforced isolation from friends, relatives, carers or others, and stigmatisation e.g. being accused of witchcraft.

- | | |
|--------------------------------------|---|
| *Ambivalence | *Restlessness |
| *Sudden mood or behaviour change | *Social isolation |
| *Resignation | *Suicide |
| *Fear/anxiety and agitation/cowering | *Insomnia |
| *Shame | *Helplessness and clinging |
| *Marked passivity or anger | *Incoherence and implausible explanations |
| *Depression | *Denial |
| *Intimidation | *Obsequiousness |
| *Confusion | |

6.3 Financial Abuse Indicators

Financial Abuse refers to the illegal or improper use of an older person's property or finances. Examples include misappropriation of money, valuables or property, forced changes to a will or other legal documents, and denial of right of access to, or control over, personal finances.

- *Intimidation of an older persons to provide money or goods to another person
- *Failure to pay rent or other bills on behalf of the older person
- *Lack of money for necessities
- *Depletion of savings
- *Disappearance of possessions (eg.art, jewellery)
- *Management of a seemingly competent older person's finances by another person
- *Signatures on documents/cheques not resembling the older person's signature

6.4 Sexual Assault and Abuse Indicators

Sexual assault and abuse includes exploitative behaviour, ranging from rape to indecent assault and sexual harassment.

- *Bruising or bleeding in the genital area
- *The contraction of a sexually transmittable disease
- *Pain or itching in the genital area
- *Difficulty sitting or walking
- *Recoiling from being touched
- *Fear of bathing or toileting

6.5 Neglect Indicators

Neglect refers to any active or passive behaviour that results in the older person's basic needs for food, shelter and safety not being met.

- ✧ *Active Neglect* (commission) is a carer's deliberate refusal or failure to fulfill an older person's physical or psychological needs by withholding available resources.

- ◇ *Passive Neglect* (omission) is a carer's unintentional refusal or failure to fulfill an older person's physical or psychological needs. This can result from a carer's lack of awareness or ignorance about available resources or lack of experience/ability/skills.

- *Malnourishment or dehydration
- *Hypothermia
- *Weight loss with no apparent medical cause
- *Pallor, sunken eyes and cheeks
- *Injuries that have not been properly cared for
- *Poor personal hygiene
- *Dressings not changed
- *Dehydration
- *Bedding unchanged
- *Clothing in poor repair, or inappropriate for the weather
- *Lack of safety precautions around the home, or appropriate supervision
- *Absence of appropriate dentures, glasses or hearing aids when these are needed
- *Abandoned or left unattended for long periods
- *Medicines not purchased or administered
- *No social, cultural, intellectual or physical stimulation
- *Refusal to permit other people to provide appropriate care
- *Unnecessary or prolonged restraint

6.6 Violation of Human Rights Indicators

Violation of Human Rights is when an older person's fundamental human right are denied, when they are unable to exercise the following:

- *a right to life
- *a right to vote
- *a right to be treated with respect, dignity and courtesy
- *a right to have access to appropriate medical care including the right to sight
- *a right to have access to live in a clean, safe living environment
- *a right to complain, seek redress or grievances
- *a right to decision making
- *freedom from verbal abuse
- *freedom from forced labour
- *freedom from sexual abuse
- *freedom of assembly
- *freedom of speech
- *freedom of movement (without restraint)
- *deny access to information or withholding of information.
- *Denial of privacy
- *Restriction on visitors
- *Mail censorship
- *Withholding of information

6.7 Systemic Abuse Indicators

Systemic Abuse refers to any policies, laws or practices that are harmful to the well-being of an older person.

- *Denial of medical attention
- *Compulsory retirement age
- *Denial of access to medical aid/insurance
- *Unilateral cancellation of social security
- *Inhumane treatment of older persons by service providers in the private and public sector
- *Ageist attitudes
- *Denial of access to the indigent policy
- *Restrictions on the issuing of identity documents

Self neglect is excluded from this definition, as are crimes by unknown assailants which would require a different type of response beyond the intention of this Protocol.

7. RISK FACTORS OF ABUSE

The following factors, either singly or in combination, may increase the likelihood of abuse:

Carer abuse (by the older person)

- Carer stress
- Care giving inexperience/lack of knowledge and skills
- Dependency and the loss of physical and mental capacities
- Emotional/psychological health problems of the older person and/or carer
- Family conflict(s)
- History of abuse in the family/cycle of inter-generational violence
- Isolation
- Substance abuse by the senior and/or carer
- Poverty/unemployment/financial difficulties
- Lack of basic facilities/amenities e.g. water, sanitation, electricity
- Overcrowding
- Professionals are often either unaware of the problem of elder abuse, lack knowledge about elder abuse, have not detected it, or do not know where to turn if they suspect it.
- Incontr??? and care demands

8. DISCLOSURE AND NOTIFICATION OF ABUSE

Abuse may be disclosed by a concerned member of the public, a relative, a neighbour, a professional person or any other person who has reason to believe that the well-being of an older person is threatened or being compromised. It is in terms of Sections 25 and 26 compulsory to report the alleged abuse. All cases of abuse must be reported to the Director General.

When abuse is disclosed by any person, the report must be treated seriously and dealt with in a sensitive manner. Such disclosure may be a cry for help from a carer who can no longer cope. Government, NGO and CBO managers, and practitioners should make every effort to support the carer and offer all services necessary to reduce the likelihood of abuse re-occurring. In the case of an abuser who wants to stop the abuse the practitioner should work with the abuser to gain recognition and ownership of behaviours that are abusive, and to contract for the immediate cessation of the abuse. Some abusers may require specialised counselling, therapeutic intervention, and separation from the older person or punitive action to stop the abuse.

The Act requires that, once the alleged incident of abuse is reported, the social worker must investigate with urgency the matter and report. The Act prescribes under Section 25 (4) different action that a social worker can take to protect the victims

Where the abuse may constitute criminal behaviour, referral should be made to the Justice Department or the Police for legal action.

The Older Persons Act must not be construed as limiting amend?? replacing or otherwise altering any provisions of the Domestic Violence Act (No 116 of 1998). Both acts must be used interchangeably.

9. KEY STEPS IN THE IDENTIFICATION OF ABUSE, REPORTING OF ABUSE, ASSESSMENT AND MANAGEMENT OF ABUSE AND STRATEGIES FOR INTERVENTION:

9.1 IDENTIFICATION OF ABUSE

Identification refers to the process whereby a member of the public, professional or a lay person, in his/her official capacity or otherwise recognises an act of neglect, exploitation, ill treatment or abuse or has good reason to suspect that it is occurring or has occurred.

a) Who should do it?

- Professionals including medical practitioners, nurses, social workers, lawyers and police officers.
- The staff of all organisations involved with the care of or provision of services to older persons should be able to recognise suspected cases of abuse of older persons and refer them to the appropriate resources for assessment and/or services.
- Any person who has an interest in the well-being of an older person.

b) What should be done?

- Identify reasonable grounds for belief that abuse is occurring.
- Establish the wishes of the older person
- Assess or refer the older person, and/or carer, to appropriate resources or professional groups for further assessment, including for example the collection of forensic evidence or the assessment of the mental competency of the older person
- Multi-disciplinary interventions may be indicated i.e. medical, psychiatric, police, or legal reports.
- Sections 25 and 26 of the Act spells out that a possible case of abuse must be reported without delay and that the social worker investigate the matter and submit a report.

9.2 ASSESSMENT

a) Who should do it?

- Emergency Services : Police, Hospital Casualty Departments, Ambulance Services

- Community Health Services : primary health care clinics (including mobile clinics), psychiatric clinics, hospitals' out patients departments
- Other State Departments : Welfare, Health, Justice, Police (SAPS), Human Rights Commission
- Non-governmental Organisations : civil society organisations rendering welfare services, including old age homes

b) What should be done?

- Determine the type, extent, frequency and history of abuse
- Determine the needs, wishes and capacities of the older person and carer(s)
- Determine the risk factors of abuse (see page 9)
- Recommend appropriate interventions to the victim and abuser
- The report on an alleged case of abuse is to be submitted to the Director General of the Department.

9.3 CASE MANAGEMENT OF ABUSE

a) Introduction

When there are concerns about elder abuse, the response must follow a pattern understood and agreed by all organisations/departments concerned. Individual organisations/departments will need to develop procedures that suit their particular requirements, but, to ensure the comprehensive response that is required, they must contain the same principles and priorities, and follow a similar format to the following :

The process for case management includes

- Alerting & Reporting
- Screening/Assessment
- Investigating(strategy/plan of action)
- Monitoring and Reviewing

Section 25 (4) and (5) of the Act prescribes the different actions that can be taken by a social worker.

- (4) *If the report is substantiated by the investigation, the Director General or the social worker concerned may take any one or more of the following actions, namely to-*
- (a) *facilitate the removal of the older person concerned to a hospital, in case of injury, or to a shelter;*
 - (b) *make a report to a police official requesting the latter to act in terms of section 27;*
 - (c) *take such other steps as may be prescribed to ensure adequate provision for the basic needs and protection of the older person concerned; or*
 - (d) *if the older person concerned is the victim of an offence or crime, assist the older person to see a police official in order to lay a complaint.*

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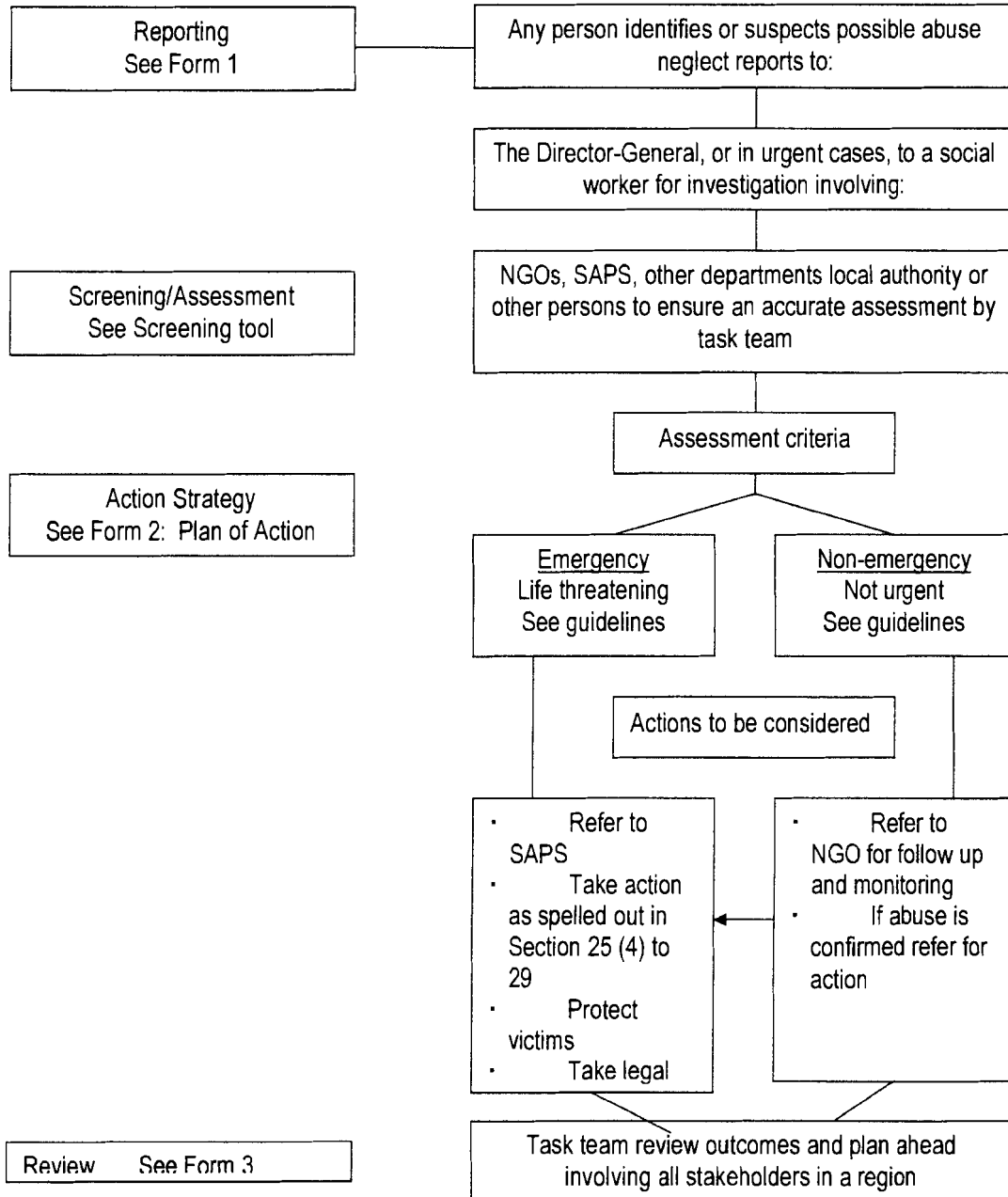
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- (5) An older person who is in need of care and protection is one who-
- (a) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other economic abuse;
 - (b) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;
 - (c) has been neglected or abandoned without any visible means of support;
 - (d) lives or works on the streets or begs for a living;
 - (e) abuses or is addicted to a substance and without any support or treatment for such substance abuse or condition;
 - (f) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;
 - (g) lives in or is exposed to circumstances which may harm that older person physically or mentally; or
 - (h) is in a state of physical, mental or social neglect.

FLOW CHART ON THE REPORTING AND MANAGEMENT OF CASES OF ABUSE



10. GUIDELINE FOR THE MANAGEMENT OF SUSPECTED ELDER ABUSE

NOTE: To be used flexibly as determined by the circumstances of the case

10.1 IDENTIFICATION OF SUSPECTED ABUSE, NEGLECT OR EXPLOITATION OF AN OLDER PERSON

a) Assessment

- Take a history from the suspected victim of abuse / consult with supervisor or other colleagues
- Assess the older person's physical status and mental competence
- Document the allegations and evidence of abuse
- Interview the suspected victim and abuser separately, if possible, to
 - assess whether the older person is at immediate risk
 - assess whether urgent action is required
 - consider the need for separation of the victim from the abuser
- Liaise with family members and service providers to confirm the details of abuse
- Identify a key organisation for intervention

b) Service Providers

Emergency:

Police
Ambulance
Hospital Casualty Department
Psychiatric Intervention
Crisis Care
Designated Place of Safety

Non-Emergency:

Police
General Practitioner, Social Worker
(either State or Private Sector), Nurse,
Medical Doctor
Legal Aid
Respite Care
Advocacy
Community Support Services
Power of Attorney/Curator ship

c) Service Options

Victim is **capable** of making a decision

Victim is incapable of making a decision

Victim is *unwilling* to accept intervention

- *Offer continued support and the provision of assistance.
- *Advise that legal intervention may be necessary where a criminal offence has been committed, or the victim's life is in danger.
- *Arrange follow-up assistance and monitoring of the situation

Victim is *willing* to accept intervention

- *Establish the needs of the victim
- *Provide information about abuse, and arrange counselling where appropriate
- *Arrange appropriate community support, counselling, legal intervention and advocacy

- *Offer continued support and the provision of assistance
- *Arrange monitoring and follow-up of the situation
- *Assist with the following as needed:
 - Police intervention in cases where a crime has been committed

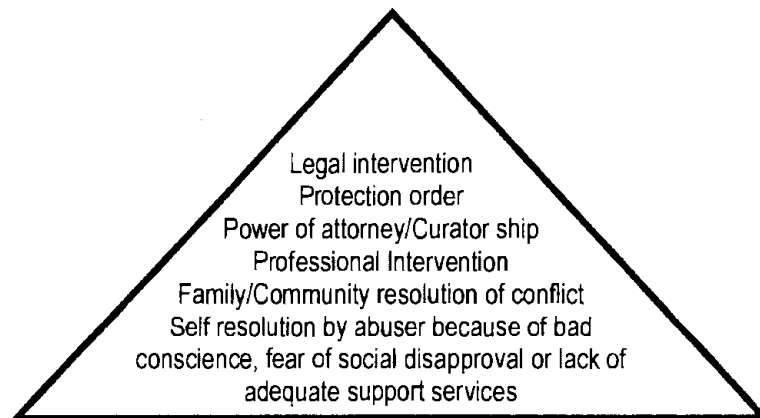
where possible. If this is declined, document, and following consultation, withdraw as appropriate.

services
 *Assist with completion of Power of attorney if appropriate
 *Encourage activities and contact outside of the home situation
 *Assess the need for, and acceptance of, respite care - in the home, day care centre, or institution
 *Explore the older person's desire or need for separation from the abuser
 *Work with abuser or refer the older person to an appropriate organisation

-Possible curator ship
 -Arrange for reception order for certification if appropriate
 -Comprehensive assessments by psychiatric services for intervention.

11. OPTIONS FOR INTERVENTION

The least obtrusive interventions for older persons should be used wherever possible. This is well illustrated by an intervention pyramid which suggests that the interventions higher up the pyramid (the more restrictive alternatives) should be used with caution.



There are a range of interventions available. In cases of severe physical abuse, the abused person and the abuser may need to be separated.

11.1 Who should do it?

- Whoever the task team refers the case to i.e. either an NGO or a social worker from the department

11.2 What should be done?

- Provide residential, health, welfare or community care services and counselling inclusive of follow up, to address the causes of abuse.

11.3 Crisis Care

This might involve admission to an acute hospital bed, or perhaps urgent respite care in an old age home or a designated place of safety, depending on the needs of the older person.

11.4 The full range of community services such as home nursing, housekeeping help, continence advice, community services, meals on wheels, assistance with shopping and transport, day care, service centres, support groups, can be used to alleviate situations where abuse is occurring.

Case management is often required due to the complexity of the situation and the likelihood that multiple services will be involved. The designated key practitioners would be professional i.e. a social worker or nurse, who will be responsible for the coordination of services provided to the older person.

11.5 Provision of Respite Care

This may be in-home respite or residential care. This is particularly helpful when carer stress is a problem or where there has been a situation of neglect. If the abused person is quite dependent, then often respite care is the only alternative.

11.6 Counselling

This may involve individual counseling or family therapy. The aim is to help abused people cope with their situation, and assist them to find a way to be safe from their abusers. Group therapy may be utilised in such situations as carer support groups. In cases where domestic violence is the main cause of abuse, a referral may need to be made to the appropriate services for victims of domestic violence. Counseling of a violent abuser should not be attempted unless he or she has agreed to cease the violence and the possibility of legal intervention has been investigated. Counselors should have appropriate expertise.

11.7 Treatment of the Abuser

It is important to acknowledge the needs of the abuser. Psychological counselling which allows them to talk openly about their behaviour is often beneficial. In cases where abuser psychopathology is a major causative factor, treatment may be necessary to address psychiatric illness, behaviour problems, alcohol or other drug dependency problems.

In terms of the Act an abuser can be brought before a magistrate who may find him or her guilty of elder abuse. See sections 27, 28, 29 and 30 of the Act for the different options to deal with the abuser. The court may make different orders, i.e. restricting access to a victim, or hold her/him financially responsible for his or hers maintenance. If found guilty of elder abuse, his or her name will be entered into the register for perpetrators. Perpetrators will not be allowed to be employed by any service where older persons are involved.

11.8 Alternative Accommodation

This may be necessary on a permanent basis. Realistically, this usually means residential accommodation for the abused person. However, in some situations where carer abuse has occurred, it could be the abuser who requires alternative accommodation.

12. LEGAL INTERVENTIONS

Legal intervention is hopefully a last resort, but may be the first line of intervention where criminal charges need to be laid in cases of financial abuse or severe physical or sexual abuse (particularly where there is a history of domestic violence). Older persons who are competent to make their own decisions can, with support if necessary, access mainstream legal services, for instance to evict an unwelcome person from their home. Magistrates or Police may need to be involved if a Protection Order/Restraining Order is sought.

Reference needs to be made to:

- ✧ *The Constitution of South Africa* (Act No.108 of 1996). Section 12 of the Constitution of South Africa states that all persons have the right to freedom and security of person.
- ✧ *The Domestic Violence Act* (Act No. 116 of 1998). This makes provision for a judge or magistrate to grant a protection order preventing assaults or threats against an applicant. An offender who contravenes such an order may be arrested. This Act is thus a basis for removing perpetrators rather than victims. The definition of a domestic relationship has been broadened to include a wide range of domestic relationships, i.e. Family members and people sharing the same residence. Therefore the Act allows for older persons to obtain protection orders against children or family members who abuse them.

An application may be brought on behalf of the complainant by any person, including a counsellor, health service provider, member of the South African Police Service, social worker or any other person who has interest in the well-being of the complainant. The application must be brought with the written consent of the complainant, except in cases where the complainant is a minor, mentally retarded, unconscious, or a person whom the court is satisfied is unable to provide consent.

- ✧ *The Aged Persons Act* (Act No.13 of 2006), and the regulations thereto. Chapter Five of the Act provides the scope for legal process in the handling of alleged cases of abuse. Of particular importance is the following:
 - Reporting and implementing cases of abuse: Sections 25 and 25.

- Options available for urgent intervention: Section 25 (4).
- How to deal with an alleged offender: Sections 28 – 31.
- The assessment criteria to determine if an alleged abuser is to be found guilty must be understood. Section 30 (1) (2) (3) and (4) reads:
 30. (1) Any person who abuses an older person is guilty of an offence.
 - (2) Any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person constitutes abuse of an older person.
 - (3) For the purpose of subsection (2), 'abuse' includes physical, sexual, psychological and economic abuse and-
 - (a) 'physical abuse' means any act or threat of physical violence towards and older person;
 - (b) 'sexual abuse' means any conduct that violates the sexual integrity of an older person;
 - (c) 'psychological abuse' means any pattern of degrading or humiliating conduct towards an older person, including-
 - (i) repeated insults, ridicule or name calling;
 - (ii) repeated threats to cause emotional pain; and
 - (iii) repeated invasion of an older person's privacy, liberty, integrity or security;
 - (d) 'economic abuse' means-
 - (i) the deprivation of economic and financial resources to which an older person is entitled to under any law;
 - (ii) the unreasonable deprivation of economic and financial resources which the older person requires out of necessity; or
 - (iii) the disposal of household effects or other property that belongs to the older person without the older person's consent.
 - (4) If a court, after having convicted a person of any crime of offence, finds that the convicted person has abused an older person in the commission of such crime or offence, such finding must be regarded as an aggravating circumstance for sentencing purposes.

Other Legal remedies that might be sought include:

1. Criminal Law

- The State defines what actions constitute a crime and the State will prosecute a person who performs those actions the State has defined as being criminal.
- Go to the nearest police station to lay a charge.
- The police will then investigate the allegations and refer the matter to a prosecutor.
- Examples include common assault, assault with intent to do grievous bodily harm, rape, fraud, theft, and *crimen injuria* (impairing a person's dignity).

2. Civil Law

- This governs the relations between individuals. In terms of civil law one can obtain an interdict, restraining order or protection order which could attempt to stop the abusive

behaviour. Divorce falls under civil law; also claims for damages such as hospital costs and damage to property, and defamation.

- If a person cannot afford legal representation in a civil matter, they can approach one of the following agencies:
 - i. Legal Aid Board
 - ii. Black Sash Advice Office
 - iii. Legal Resource Centre
 - iv. Faculties of Law at universities may have Legal clinics where advice can be sought.
 - v. Lawyers for Human Rights

3. Referrals to Statutory Bodies

- i. Commission on Gender Equality
- ii. S A Human Rights Commission
- iii. Public Protector (if the alleged abuser works for the State)
- iv. Independent Complaints Directorate (if the alleged abuser is a member of the SA Police Service)

It is important that the major factors contributing to abuse are identified in each situation, so that interventions can be designed accordingly. This assists the practitioner to choose the most appropriate and effective interventions.

13. COMMUNITY RESOURCES

In South Africa, no one organisation has sole responsibility for dealing with elder abuse. There are a number of State Departments and community service organisations to whom older persons and members of the community can turn for help or confidential advice.

The following may be useful as first point of contact for further investigation.

A detailed list of resources available in specific areas would need to be drawn up, with contact names, telephone numbers and addresses. These should include:

- HEAL (Halt Elder Abuse Line) TOLL FREE NUMBER 0800003081
- Department of Social Development
- Department of Health
- Department of Justice
- SAPS (South African Police Services)
- Local Hospital - some already have established crisis centres to deal with women and child abuse
- Primary Health Care Clinics
- Private Welfare Organisations

APPENDIX 1

FORM 1

ELDER ABUSE : REPORT

Organisation/ individual making the Report:

Date report received:

Date / period of alleged abuse:

PROFILE OF ALLEGED ABUSED PERSON

Name: _____ Date of birth:

Gender: Male Female Race: White Black Coloured Indian

Address:

Usual health care provider (eg.GP,clinic, hospital etc) _____

Other organisations/individuals involved in their care:

Health Status (mark with a X all that apply):

Mental Health Problem Physical Difficulty Healty

If alleged perpetrator is a carer, please mark caring status:

Family care giver Paid care giver Volunteer Other (Specify)

Other:

Category(ies) of Abuse alleged to have taken place (mark with a X all that apply):

Physical Sexual Emotional or Neglect Financial

Psychological

Violation of Human Systematic Medication
Rights Abuse

ELDER ABUSE FORM 1: REPORT CONTINUED

Setting where alleged abuse took place:

Give details of the circumstances by which the abuse came to light, how the person described it and how the report was triggered:

Any other relevant information:

Key issues of Risk Assessment _____

Recommendation: (mark with a X)

Emergency Action Non-emergency Action No Action

Reason for Recommendation

Full Name of person receiving report:
available):

Full name of person making report (if

Signature: _____

Signature: _____

Organisation / Department:

Relationship to Abused Person:

Date: _____

Date: _____

APPENDIX 2

FORM 2

ELDER ABUSE: PLAN OF ACTION

Date of Task Team Meeting:

Type of Action (Mark with a X): Emergency Action Non-emergency Action

Has the person alleged to have been abused been spoken to? Yes No

Please state all organisations / departments involved in the task team meeting / consultation :

Please state Plan of Action:

Reason for decision:

Full Name of Relevant Social Worker:

Signature:

Organisation/Department: _____

Date: _____

If further action is required

Social Worker handling case to proceed with investigation

If no further action is required,

a copy of this form to be returned to the relevant Regional Welfare office (see Appendix 5 for

addresses), in an envelope marked CONFIDENTIAL

APPENDIX 3

FORM 3

ELDER ABUSE: TASK TEAM REVIEW

Date of Review Meeting:

Who was involved in the Review Meeting:

Progress on activities detailed in Plan of Action

Date of next Task Team Review Meeting :

In appropriate client notes, social worker to write that a review meeting was held and any outcome (i.e. Date of next review or case closed)

If case is closed, reason for closure must be indicated.

APPENDIX 4

FORM 4

GUIDELINE FOR SCREENING / ASSESSMENT OF RISK:

HIGH RISK SCREENING TOOL

(RISK INDICATORS TO BE COMPLETED TO BEST OF SCREENER'S KNOWLEDGE)

PART 1

Alleged Abused Person's Name:

Screener (Social Worker/Nursing Sister) :

Organisation/Departmental Service point:

Living arrangements: Alone Spouse Son Daughter

Other (specify):

PART 2 ALLEGED VICTIM'S RISK INDICATORS		HIGH	MEDIUM	LOW
Mental Status		Confused	some memory loss and/or orientation variable	no memory loss and fully oriented
Mental Health		history of mental illness	evidence of fear, anger, withdrawal, depression	minimal/no emotional disability
Physical Health Status		dependent on others	some assistance required for activities of daily living	independent
Acute	Chronic			
Drug/alcohol abuse		active abuse	episodic abuse	no abuse
Isolation		isolated from others	limited network	existence of formal and informal network
Financial Resources		dependent on others for funds	some financial dependency	Independent curator
		finances managed by others	some assistance in place for financial management.	
History of abuse/neglect/exploitation		known history present report	previous report	no history

PART 3		Caregiver's name:		Relationship:	
CAREGIVER RISK INDICATORS		HIGH	MEDIUM	LOW	
Mental Status		confused	some memory loss and/or orientation variable	no memory loss/ fully oriented	
Mental Health		history of mental illness	evidence of fear, anger, withdrawal, depression	minimal/ no emotional disability	
Drug/Alcohol abuse		active abuse	episodic abuse	no abuse	
Isolation		isolated from others	limited network	existence of formal and informal network	
Financial Resources		dependent on elderly person	some dependency on elderly person	independent	
Stress		caregiver is overwhelmed by stress (emotional, social, economic, physical)	caregiver overwhelmed at times	care giving not found to be stressful	
Physical Health Status		unable to provide care giving	can provide some care giving	able to provide care giving	
Acute	Chronic	needs some assistance for activities of daily living			

PART 4					
SIGNIFICANT OTHER: (Can be child, spouse, companion, friend, doctor etc)					
Name:		Relationship:		Telephone:	
SIGNIFICANT OTHER RISK INDICATORS		HIGH	MEDIUM	LOW	
Mental Status		confused	some memory loss and /or orientation variable	no memory loss/ fully oriented	
Mental Health		history of mental illness	evidence of fear, anger, withdrawal, depression	minimal/no emotional disability	
Drug/Alcohol Abuse		active abuse	episodic abuse	no abuse	
Isolation		isolated from others	limited network	existence of formal an informal network	
Financial Resources		dependent on elderly person	some dependency on elderly person	independent	
Physical Health		dependent	some dependency	no dependency	
Acute	Chronic				

CODE 1:

Abused person is in a life threatening abusive situation. Intervention will be required immediately. Protective measures must be initiated by social worker e.g. Warrant of removal, hospitalisation of victim, emergency placement in safe house etc.

CODE 2:

Abused person is not in life threatening situation or in immediate danger but the danger and risk is real and is foreseeable in the near future. Intervention will be required to stabilize the situation OR Older person is at potential risk for abuse, neglect or exploitation, and intervention will be required.

CODE 1 = LIFE THREATENING

CODE 2 = NOT LIFE THREATENING

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