

## **HEALTH CARE INTERPRETERS: ARE THEY MANDATORY REPORTERS OF CHILD ABUSE?<sup>1</sup>**

### **I. Introduction**

As the nation continues to diversify and more health care providers are using interpreters to communicate with their patients, one issue that arises is whether interpreters are covered by mandatory child abuse reporting laws. Members of some professions are mandated by state law to report known and suspected cases of child abuse seen within the course of their employment.<sup>2</sup> While most states require health care workers to report child abuse, the laws are not clear if interpreters in health care settings fall within the parameters of the health care profession. It is important that interpreters know whether or not they fall within a state's mandatory reporter category, as they could be liable for not reporting cases of child abuse. Failure to report cases of abuse is a misdemeanor in many states.

### **II. Are Health Care Interpreters Mandatory Reporters?**

Individuals who are required to report usually have direct contact with children. Some state statutes are very explicit in how they define health care workers, while others are not. Depending on the wording and interpretation of a statute, an interpreter may or may not fall into this designation and be a mandatory reporter. Although interpreters generally work in clinical settings with a practitioner who is usually required to report, interpreters cannot assume that the practitioner will report a child abuse case. The wording of a mandatory reporting statute may independently require the interpreter to report.

Whether an interpreter has a duty to report suspected or known child abuse depends on the laws of a particular state. Those who must report pursuant to state reporting laws generally fit into four categories. The state breakdown is as follows:<sup>3</sup>

- Four states<sup>4</sup> require “any person” or “every person” to report
- Thirty-three states<sup>5</sup> require health care workers or “hospital personnel” to report

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<sup>1</sup> © 2003 by the National Health Law Program. This report was made possible through the generous support of The California Endowment.

<sup>2</sup> There may be a similar reporting requirement for elder abuse, but that is beyond the scope of this paper.

<sup>3</sup> For a breakdown of all states, see [http://www.childwelfare.gov/systemwide/laws\\_policies/state/](http://www.childwelfare.gov/systemwide/laws_policies/state/).

<sup>4</sup> Florida, New Jersey, North Carolina and Wyoming. See <http://www.calib.com/nccanch/pubs/sag/manda.pdf>.

<sup>5</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wisconsin. See <http://www.calib.com/nccanch/pubs/sag/manda.pdf>.

#### **OTHER OFFICES**

- Thirteen states<sup>6</sup> require “any person” or “every person” and health care workers to report<sup>7</sup>
- Texas requires “any person” or “every person” and “professionals” to report<sup>8</sup>

Ten states (including those with the highest LEP populations) were examined to ascertain whether interpreters are required to report child abuse observed in health care settings.<sup>9</sup> None of the reporting statutes in those states specifically requires interpreters to report. However, three states have adopted statutes that require *all* persons to report suspected abuse regardless of their profession. Four states require “hospital personnel” to report, which may sometimes include interpreters (see below). Two of the ten states have adopted both the catchall “any person” provision, and a specific health care worker provision. One state has an “any person” as well as a “professional” provision. Only one state clearly did not require health care interpreters to report child abuse.

#### ***a. The “Any Person” or “Every Person” Requirement***

Three of the ten states we examined require “any person” or “every person” to report suspected cases of child abuse. These states are Florida, New Jersey, and North Carolina. For example, in New Jersey, the statute states that “any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report...”<sup>10</sup> Thus, a health care interpreter would be required to report child abuse, regardless of the context within which she learned of the abuse.

Although Florida has an “any person” requirement, the state additionally requires health care workers to give their name when making a report of child abuse. Individuals who are not health care workers (or members of certain other professions listed in the statute) are allowed to report anonymously.<sup>11</sup>

#### ***b. The “Health Care Worker” Requirement***

Of the ten states we examined, California, Illinois, Massachusetts, and New York require some categories of health care workers to report suspected cases of child abuse.

New York requires “hospital personnel engaged in the admission, examination, care or treatment of persons” to report child abuse and neglect.<sup>12</sup> Thus, whether or not health care

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<sup>6</sup> Delaware, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, Oklahoma, Rhode Island, Tennessee, and Utah. See <http://www.calib.com/nccanch/pubs/sag/manda.pdf>.

<sup>7</sup> Although it may seem redundant and illogical, many state statutes contain a provision requiring health care workers or professionals to report child abuse *in addition to* having a provision requiring “any” or “every” person to do so. Why this is so and how it originated is beyond the scope of this paper.

<sup>8</sup> Other states from the thirteen that have an “any” or “every” person and health care worker requirement may fit into this category, but that is beyond the scope of this paper and not available from the chart cited above.

<sup>9</sup> The chosen states were California, Florida, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, and Texas.

<sup>10</sup> N.J. STAT. ANN. § 9:6-8.10 (West 2002).

<sup>11</sup> FLA. STAT. ANN. §39.201(1)(b) (West 2003).

<sup>12</sup> N.Y. SOC. SERV. LAW § 413(1) (McKinney 2003).

interpreters fall into this category depends on whether (1) they are hospital “personnel;” and (2) they are engaged in the “admission, examination, care or treatment of persons.” For example, a full time interpreter employed by a hospital would likely be considered hospital “personnel,” while an interpreter who independently contracted with a hospital might not be. If interpreters are hospital personnel, the second question is whether they are engaged in “admission, examination, care or treatment.” If an interpreter is used to communicate with LEP patients in the hospital admissions process, they are likely to be considered mandatory reporters.

Illinois and Massachusetts have statutory language that requires reporting from similar personnel, with the only difference being that hospital personnel engaged in *admissions* are not included.<sup>13</sup>

California exhaustively lists every profession that is required to report, but does not list interpreters or include a category as broad as “health care worker,” as do the three states above.<sup>14</sup> While California’s statute also requires child abuse reporting by persons who are currently licensed under a section of the Business and Professions Code,<sup>15</sup> interpreters are not among those so licensed. Therefore, health care interpreters are not mandated to report child abuse.

### ***c. The “Any Person” and a “Health Care Worker” Requirement***

A state with an “any” or “every” person mandatory reporting provision obviously requires all interpreters to report child abuse because they definitely fall within the catch-all “any”/“every” person. Of the states examined, New Mexico and Maryland have adopted the “any person” requirement, augmented by a specific requirement for certain types of health care workers to report child abuse. While Maryland has also adopted the “any person” requirement, it also has a separate requirement for health practitioners.<sup>16</sup> Maryland’s statutory definition of health practitioner does not encompass interpreters, yet the “any person” requirement obligates interpreters to report cases of child abuse. New Mexico’s health care worker provision is limited to physicians, residents and interns, although interpreters would be included under the “every person” provision.<sup>17</sup>

### ***d. The “Any Person” and “Professional” Requirement***

Like the states above which have a health care worker requirement in addition to an “any person” requirement, Texas requires “any person” as well as “professionals” to report child abuse.<sup>18</sup> In Texas, interpreters are obligated to report any suspected case of child abuse under the “any person” requirement.

Other states may use “professional” instead of “health care worker” and thus an examination of the Texas requirement may be helpful. The Texas statute defines a professional

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<sup>13</sup> 325 ILL. COMP. STAT. 5/4 (2001 & Supp. 2003); MASS. ANN. LAWS ch. 119, § 51A (Law. Co-op 2003).

<sup>14</sup> CAL. PENAL CODE § 11165.7 (West 2003).

<sup>15</sup> CAL. PENAL CODE § 11165.7(21) (West 2003).

<sup>16</sup> MD. CODE ANN., FAM. LAW §§5-704-705 (2002).

<sup>17</sup> N.M. STAT. ANN. § 32A-4-3(A) (Michie 2002).

<sup>18</sup> TEX. FAM. CODE ANN. § 261.101 (Vernon 2002).

as “an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children.”<sup>19</sup> Currently, Texas has no licensure or certification requirement for interpreters; however, an interpreter falls into this category if they are *employed* by a hospital or other licensed facility. The question will therefore be the meaning of “employee” and it is likely independent contractors would be excluded under this provision.

### III. Other Important Components of Mandatory Reporting Laws

There are several other important components regarding failure to report and protections for good faith reporting. Interpreters need to know these requirements because a failure to report can have negative repercussions.

Failure to report a suspected case is a misdemeanor in six of the states we examined – California, Florida, Illinois, New Mexico, New York and Texas.<sup>20</sup> In Illinois, a first violation is a misdemeanor and any subsequent failure to report is considered a felony.<sup>21</sup> Massachusetts fines non-reporters up to \$1000.<sup>22</sup> In New Jersey, a person is deemed a “disorderly person” for failing to report child abuse.<sup>23</sup> North Carolina and Maryland have no punishment for non-reporting.

Finally, most states give immunity from civil and criminal liability to mandatory reporters who report in good faith. If a health care interpreter suspects child abuse and reports it, but later the child abuse charge is determined to be unfounded, the interpreter cannot be held liable for reporting what he/she believed to be abuse. All ten states examined here give this immunity.

### IV. Conclusion

To determine whether health care interpreters are required to report child abuse in a state, one should examine the state’s child abuse and neglect statute regarding mandatory reporting. The National Clearinghouse on Child Abuse and Neglect Information has produced a chart with citations to every state’s child abuse laws. The chart is also useful as a quick guide for the individuals and/or professions who must report child abuse and neglect.<sup>24</sup>

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<sup>19</sup> TEX. FAM. CODE ANN. § 261.101(a)-(b) (Vernon 2002).

<sup>20</sup> See CAL. PENAL CODE § 11166(b) (West 2003); FLA. STAT. ANN. § 39.205 (West 2003); 325 ILL. COMP. STAT. 5/4 (2001 & Supp. 2003); N.M. STAT. ANN. § 32A-4-3(F) (Michie 2002); N.Y. SOC. SERV. LAW § 420 (McKinney 2003); TEX. FAM. CODE ANN. § 261.109 (Vernon 2002).

<sup>21</sup> 325 ILL. COMP. STAT. 5/4 (2001 & Supp. 2003).

<sup>22</sup> MASS. ANN. LAWS ch. 119, § 51A (Law. Co-op 2003).

<sup>23</sup> N.J. STAT. ANN. § 9:6-8.14 (West 2002). A disorderly persons offense is a petty offense and is not a crime. N.J. STAT. ANN. § 2C:1-4 (West 2003).

<sup>24</sup> National Clearinghouse on Child Abuse and Neglect Information, *Statutes At-a-Glance, Mandatory Reporters of Child Abuse and Neglect* (Feb. 2002), available at <http://www.calib.com/nccanch/pubs/sag/manda.pdf>.

**Checklist: What to look for in a state mandatory reporting statute:**

- Is there an “any person” requirement clause?  
*If yes*, then all health care interpreters have a mandatory reporting duty, and you need not go any farther.  
*If no*, check if another provision may apply to interpreters
  
- Is there a health care worker, health personnel or hospital personnel requirement clause?  
*If yes*, then look to see if a health care interpreter would fit within such a profession. If the terms are not defined within the clause, look for a definitions provision, usually in an earlier subsection of the statute or in cases decided by the courts in your state.
  - Is the interpreter considered a hospital “employee” or “personnel,” as opposed to an independent contractor or an employee of an interpreter service?  
*If yes*, the interpreter must report  
*If no*, check if another provision may apply to interpreters  
*If no*, check if another provision may apply to interpreters
  
- Is the interpreter engaged in the activities covered by the statute – e.g. admission, examination, care or treatment of patients?  
*If yes*, the interpreter must report  
*If no*, check if another provision may apply to interpreters
  
- Look for other relevant provisions:
  - Is there punishment for non-reporting?
  
  - Is there immunity for good faith reporting?