

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 2324 (Rubio) – As Introduced February 13, 2018

SUBJECT: Elder or dependent adult abuse: public shaming.

SUMMARY: Includes in the definition of “abuse of an elder or a dependent adult” public shaming, which the bill would define as the taking, transmission, or dissemination of an image of an elder or dependent adult that shames, degrades, humiliates, or otherwise harms the personal dignity of the elder or dependent adult. Specifically, **this bill:**

- 1) Includes in the definition of “abuse of an elder or a dependent adult” public shaming, which the bill would define as the taking, transmission, or dissemination of an image of an elder or dependent adult that shames, degrades, humiliates, or otherwise harms the personal dignity of the elder or dependent adult.
- 2) “Public shaming” or “publicly shames” means the taking, transmission, or dissemination of an image of an elder or dependent adult that a reasonable person believes shames, degrades, humiliates, or otherwise harms the personal dignity of the elder or dependent adult, and shall be presumed to be conduct that is outside the course and scope of the employment.

This does not include the taking, transmission, or dissemination of an image as permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), or images obtained for clinical, safety or security, legal or reporting purposes.

- 3) “Public” is defined as social media or other virtual platforms.
- 4) The bill would make it a misdemeanor for a mandated reporter to fail to report public shaming of an elder or dependent adult.

EXISTING LAW:

- 1) The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures for the reporting, investigation, and prosecution of abuse of an elder or dependent adult, which is defined to mean physical abuse, neglect, abandonment, and financial abuse, among other forms of abuse.
- 2) Existing law requires specified persons, known as mandated reporters, who, have observed or have knowledge of an incident that reasonably appears to be, or is told by an elder or dependent adult that he or she has experienced behavior constituting, physical abuse, abandonment, abduction, isolation, financial abuse, or neglect to report the known or suspected instance of abuse, as specified. A failure to report is a misdemeanor.
- 3) Existing law makes it a misdemeanor for a person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits an elder

or dependent adult to suffer or inflicts unjustifiable physical pain or mental suffering on him or her.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

Author's Statement: "I have introduced AB 2324 to ensure elder and dependent adults no longer have to be subject to cruel and inhuman behavior at the hands of the people entrusted to take care of them. To say that a person with Alzheimer's does not have the ability to experience shame simply because they cannot recall a degrading photo being taken or posted, is heartbreaking and impermissible. I am repulsed by the very thought that we have to introduce legislation to address this issue. However, while we would like to think people understand that intentionally mocking a senior or a dependent adult in their care is completely inappropriate, that is sadly not always the case. I recognize most individuals who work in nursing homes, or as caregivers, are wonderful people with hearts of gold. However, there are some bad actors out there that need to face the consequences for their poor behavior."

BACKGROUND:

Current law does not provide clear language prohibiting staff in licensed care facilities from the taking of unauthorized photographs and videos of residents in degrading or dehumanizing situations and posting these images to social media. In addition, current law does not trigger the mandatory reporting requirements to disclose if a mandated reporter has knowledge of the taking or disseminating of shaming, degrading or humiliating images.

In response to media reports about this issue and complaints across the country, Centers for Medicare and Medicaid Services issued memo 16-33-NH titled, "Protecting Resident Privacy and Prohibiting Mental Abuse Related to Photographs and Audio/Video Recordings by Nursing Home Staff," and provided examples and guidance about this issue in the revised State Operations Model (SOM). This memo warrants the need for explicit language in state statute that holds individuals accountable in a way this manual alone cannot. SOM provides examples and guidance on the prohibition of taking pictures or audio/visual recordings of residents and sharing them.

The definition of abuse in the revised regulations includes abuse facilitated by the use of technology. It specifies that photographs or recordings of a resident and/or his or her private space without the resident's, or designated representative's written consent, is a violation of the resident's right to privacy and confidentiality. Examples include, but are not limited to, staff taking unauthorized photographs of a resident's room or furnishings (which may or may not include the resident), or a resident eating in the dining room, or a resident participating in an activity in the common area. Taking unauthorized photographs or recordings of residents in any state of dress or undress using any type of equipment (for example, cameras, smart phones, and other electronic devices) and/or keeping or distributing them through multimedia messages or on social media networks is a violation of a resident's right to privacy and confidentiality.

Argument in Support: The California Long-Term Care Ombudsman Association writes, "AB 2324 seeks to amend Section 368 of the Penal Code relating to elder or dependent adult abuse to include the recent and despicable occurrence of dehumanizing images, taken without the resident's consent, often naked, of older adults residing in long-term care facilities. These

images are then being shared and posted to personal social media accounts of staff and other individuals. The same individuals hired to provide these vulnerable residents with care are exploiting them through public shaming.”

Argument in Opposition: None.

REGISTERED SUPPORT / OPPOSITION:

Support

California Long-Term Care Ombudsman Association – Sponsor
AARP

California Advocates for Nursing Home Reform (CANHR)

California Commission on Aging

California Retired Teachers Association (CalRTA)

Council on Aging, Southern California Long-Term Care Ombudsman Program

El Dorado County Long-Term Care Ombudsman Program

Humboldt Del-Norte Counties Long Term Care Ombudsman

Imperial County Long Term Care Ombudsman Program

Long Term Care Ombudsman Services of San Luis Obispo County

Long Term Care Services of Ventura County, Inc.

Ombudsman Services of San Mateo County, Inc.

Stanislaus Long-Term Care Ombudsman Program

WISE & Healthy Aging Long-Term Care Ombudsman Program

Opposition

None on file.

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