

**Guam Code Annotated
Applicable to
Department of Mental Health and Substance Abuse**

**10 GCA Health and Safety
Chapter 2 Division of Public Welfare**

**10 GCA HEALTH AND SAFETY
CH. 2 DIVISION OF PUBLIC WELFARE**

**CHAPTER 2
DIVISION OF PUBLIC WELFARE**

NOTE: Article 8, Enforcement of Support, has moved to Title 5, as Chapter 34.

- Article 1. General Provisions.
- Article 2. Specific Provisions Covering Public Assistance.
- Article 3. Child Welfare Services: General Provisions.
- Article 4. Child Welfare Services Act.
- Article 5. Repealed.
- Article 6. General Assistance.
- Article 7. Food Stamps Program. Program.
- Article 9. Medically Indigent.
- Article 10. Adult Protective Services.
- Article 11. Guam Children's Health Insurance Program, Guam Medicaid Program and Medically Indigent Program.

**ARTICLE 1
GENERAL PROVISIONS**

- § 2101. Director of Welfare.
- § 2102. Personnel.
- § 2103. Duties Generally.
- § 2104. Federal Grants.
- § 2105. Prevention and Treatment of Conditions Giving Rise to Need.
- § 2106. Assistance Payments Inalienable.
- § 2107. Frauds: Penalties.
- § 2108. Cancellation or Revision.
- § 2109. Assistance Payments, Subject to Change or Repeal.
- § 2110. Incompetency of Recipient.
- § 2111. Misuse of Lists and Records.
- § 2112. Gifts for Welfare Purposes.

§ 2101. Director of Welfare.

There is hereby established a division of Public Welfare in the Department of Public Health and Social Services to be administered by the Director.

SOURCE: GC § 9100.

§ 2102. Personnel.

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The Department shall continue to administer the Catastrophic Illness Program, as established by Public Law Number 18-8, as further amended by Public Law Numbers 18-31 and 23-76, and as further regulated by the rules and regulations previously adopted by the Department pursuant to the public laws that originally established this Program. The Department may also adopt additional rules in accordance with the Administrative Adjudication Law to administer the Catastrophic Illness Program. The Program shall provide for care of victims of catastrophic illnesses, whether such care is provided on Guam or at off Guam medical facilities. The Catastrophic Illness Assistance Program ('CIAP') maximum coverage per individual is established at One Hundred Seventy-five Thousand Dollars (\$175,000.00).

§ 2919. Effective Date.

This shall become effective upon enactment of this Act. (9/30/2003)

§ 2920. Severability.

If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

**ARTICLE 10
ADULT PROTECTIVE SERVICES**

§ 2950. Purpose.

§ 2951. Definitions.

§ 2952. Reporting of Elderly or Disabled Adult Abuse.

§ 2953. Immunity from Liability.

§ 2954. Failure to Report.

§ 2955. Adult Protective Services Unit.

§ 2956. Duties of the Unit.

§ 2957. Consent of Victim; Guardianship.

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§ 2959. Confidentiality.

§ 2960. Appropriation.

§ 2950. Purpose.

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The purpose of this article is to recognize that abuse, neglect and exploitation of elderly or disabled adults are problems that require attention and intervention as a matter of public policy. Elderly or disabled adults need the same societal protection now being provided by law to abused and neglected children and spouses. The obligation of the government to extend protective care and services to the abused elderly or disabled adult should be carried out in a manner least restrictive of individual rights and in accordance with due process. The family's contribution to the care of its elderly or disabled adults is acknowledged and every effort should be made to assist, support and enhance its caretaking role.

SOURCE: Added by P.L. 19-54:1.

§ 2951. Definitions.

Definitions for Purposes of This Article:

(a) *Abandonment* refers to the desertion or willful forsaking of an elderly or disabled adult by his or her caregiver under circumstances in which a reasonable person would continue to provide care or custody.

(b) *Adult Protective Services Unit* means the unit established by § 2955 of this article.

(c) *Caregiver* is any family member or any person, health facility, community care facility, clinic, home health care agency or legal guardian who has the care or custody of the elderly or disabled adult.

(d) *Department* refers to the Department of Public Health and Social Services.

(e) *Elderly* refers to a person sixty (60) years of age or older.

(f) *Elderly or disabled Adult Abuse* means any one (1) or more of the following acts inflicted on an elderly or disabled adult by other than accidental means by another person: physical abuse, neglect, abandonment or self neglect.

(g) *Material Abuse* means illegal or improper use of an elderly or disabled adult's money, property or other resources for monetary or personal benefit, profit or gain. It includes but is not limited to theft, misappropriation, concealment, misuse or fraudulent deprivation of money or property belonging to the elderly or disabled adult.

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(h) *Mental or Emotional Abuse* includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, harassment, isolation which provokes fear, agitation, confusion or severe depression.

(i) *Neglect* means the failure of a caregiver to provide for the physical, mental or emotional health and well-being of the elderly or disabled adult and includes but is not limited to:

(1) Failure to assist or provide personal hygiene for the elderly or disabled adult.

(2) Failure to provide adequate food, water, clothing or shelter.

(3) Failure to provide medical care for the physical and mental health of the elderly or disabled adult. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(4) Failure to protect an elderly or disabled adult from health and safety hazards.

(j) *Physical Abuse* means the willful infliction of injury which results in physical harm. It includes but is not limited to cruel punishment resulting in physical harm or pain or mental anguish, such as direct beatings, slapping, kicking, biting, choking, burning, sexual assault or molestation, or unreasonable physical restraint or confinement resulting in physical injury.

(k) *Physical Harm* means bodily pain, injury, impairment or disease.

(l) *Substantiated Report* means a report made pursuant to this Chapter if an investigation by the Adult Protective Services Unit determines that there is sufficient evidence to support the existence of the abuse.

(m) *Unsubstantiated Report* means a report made pursuant to this Chapter if an investigation by the Adult Protective Services Unit determines that there is inconclusive evidence of abuse but existence of the abuse cannot be disproved to the satisfaction of the Unit.

(n) *Disabled Adult* is any person over the age of eighteen (18) years who:

(1) Has a physical or mental impairment which substantially limits one (1) or more major life activities; or

(2) Has a history of, or has been classified as having an impairment which substantially limits one or more major life activities.

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(o) *Major Life Activities* means functions such as, but not limited to caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

SOURCE: Added by P.L. 19-54:1; Subsection m added by P.L. 21-33:10, subsequent subsections were re-lettered.

§ 2952. Reporting of Elderly or Disabled Adult Abuse.

(a) Any person who, in the course of his or her employment, occupation or professional practice comes into contact with elderly or disabled adults, has actual knowledge or reasonable cause to believe that an elderly or disabled adults is suffering from or has died as a result of abuse as defined in § 2951, shall immediately make a verbal report of such information or cause a report to be made to the Adult Protective Services Unit and shall, within forty-eight (48) hours, make a written report to the unit.

(b) Persons required to report abuse under subsection (A) include but are not limited to physicians, medical interns, medical examiners, nurses, chiropractors, hospital personnel engaged in the admission, examination, care or treatment of persons, social workers, employees of nursing homes and adult day care facilities, police officers, probation officers and employees of homemaker service agencies.

(c) In addition to persons required to report under subsections A and B, any other person may make such report to the Adult Protective Services Unit if any such person has a reasonable cause to believe than an elderly or disabled adult is suffering from or has died as a result of abuse.

(d) Oral or written reports from persons required to report under subsection A and B shall include the following information, if available:

(1) The name of the person making the report and where he or she can be reached. The identify of the person making the report shall be confidential, but made available to an agency contracted by the Adult Protective Services to provide case investigation.

(2) The name, address and approximate age of the elderly or disabled adult.

(3) Information regarding the nature and extent of the abuse, the name of the person's caretaker, if known, and any medical treatment being received or immediately required, if known.

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(4) The name of the person or persons responsible for causing the suspected abuse.

(5) The source of the report.

(6) Any other information which may assist in the investigation of the suspected abuse. The identity of the person making the report shall be confidential.

(e) Reports of elderly or disabled adult abuse may be made anonymously under this Chapter.

SOURCE: Added by P.L. 19-54:1; Item 1 of Subsection (d) amended by P.L. 21-33:11; subsection (e) added by P.L. 21-33:12.

§ 2953. Immunity from Liability.

(a) Any person who in good faith makes a report under this article or testifies in any administrative or judicial proceeding related to the report is immune from civil or criminal liability for reporting or testifying.

(b) Any officer, agent or employee of the Adult Protective Services Unit who performs his or her duties in good faith is not liable for civil or criminal damages as a result of acts or omissions in rendering service or care to an elderly or disabled adult.

(c) For the purpose of any proceeding, civil or criminal, the good faith referred to in subsections A and B shall be presumed.

SOURCE: Added by P.L. 19-54:1.

§ 2954. Failure to Report.

Any person required by subsection A or B to report a case of suspected elderly or disabled adult abuse who fails to so report shall be liable for a fine of not more than \$500, except that for a second or subsequent offense, such person shall be guilty of a misdemeanor.

SOURCE: Added by P.L. 19-54:1.

§ 2955. Adult Protective Services Unit.

The Division of Senior Citizens of the Department of Public Health and Social Services, (the Department) shall establish an Adult Protective Services Unit, (the Unit) which shall have sufficient staff to fulfill the purposes of this Article and organized in such a way as to maximize the continuity of responsibility, care and services of individual workers toward individual adults and families. The Unit shall be the sole unit responsible

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for receiving and investigating all reports of elderly or disabled abuse made pursuant to this Article, specifically including but not limited to reports of abuse in facilities operated by the Department and other public or private agencies and in private residences. The Unit shall have authority to delegate to other social service agencies the responsibility of investigating reports of abuse, but shall monitor the investigations conducted by such other authorized agencies.

SOURCE: Added by P.L. 29-54:1; amended by P.L. 21-33:13.

§ 2956. Duties of the Unit.

The Unit shall:

(a) Receive on a twenty-four (24) hour, seven (7) days a week basis all reports, both oral and written, of suspected elderly or disabled adult abuse in accordance with this article and the regulations of the Department.

(b) Investigate and evaluate the information in the reports, either through its own investigators or through investigators of other authorized agencies. The investigation and evaluation shall be made within twenty-four (24) hours if the Unit has reasonable cause to believe the adult's health or safety is in immediate danger from further abuse and within seven (7) days for all other such reports. The investigation shall include a visit to the facility or residence, an interview with the adult allegedly abused, a determination of the nature, extent and cause or causes of the abuse, the identity of the person or persons responsible for the abuse, and all other pertinent facts. The investigation shall be completed within thirty (30) days. If the investigating social worker of the Unit or other authorized agency determines that it is appropriate, the social worker may request a law enforcement officer to accompany and assist the worker in the investigation. No social worker of the Unit or other authorized agency shall enter the home of any individual pursuant to the provisions of this article without the consent of the individual, unless authorized pursuant to subsection C of § 2957 of this article.

(c) Determine within sixty (60) days whether the report is substantiated or unsubstantiated. If the assessment results in determination that the elderly or disabled adult has suffered serious abuse, report such determination to the Attorney General within forty-eight (48) hours. The Attorney General may investigate and decide whether to initiate criminal proceedings.

(d) Develop a coordinated system of protective services to prevent further abuses to adults and to provide or arrange for and monitor the

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provision of those services necessary to safeguard and ensure the adult's well-being and development and preserve and stabilize family life wherever appropriate.

(e) Make available, among its services for the prevention and treatment of elderly and disabled adult abuse, through authorized individuals and through inter-agency assistance and cooperation, instruction in caring for elderly and disabled adults, protective and preventive social counseling, and emergency shelter care.

(f) Appoint a multi-disciplinary team which may include, but is not limited to, representatives from the Department of Mental Health and Substance Abuse, the Guam Medical Society, Guam Legal Services Corporation, the Advocacy Office, the Catholic Archdiocese of Guam, the Guam Ministerial Association and the Mayors' Council. Such members shall receive Forty-Five Dollars (\$45) as compensation for attendance at any meetings of the team, but such compensation shall not apply to more than two (2) meetings in any one (1) calendar month. No member shall receive any other compensation, but shall be reimbursed for actual travel, subsistence and out-of-pocket expenses incurred in the discharge of such member's responsibilities, including authorized attendance at meetings held away from Guam.

SOURCE: Added by P.L. 19-54:1; subsection (c) amended by P.L. 21-33:14; subsection (f) added by P.L. 21-33:15.

§ 2957. Consent of Victim; Guardianship.

(a) An Elderly or disabled adult who is a victim or alleged victim of abuse may refuse to cooperate in the investigation, or withdraw consent at any time to the provision of protective services by the Unit. The investigating agency shall act only with the consent of the victim or alleged victim of abuse. However, the Unit shall have the responsibility to complete the investigation, regardless of the lack of cooperation of the victim of abuse.

(b) If the elderly or disabled adult victim or alleged victim of abuse is so incapacitated that he or she cannot legally give or deny consent to an investigation or protective services, the Unit may initiate a petition for guardianship in accordance with Chapter 38 of Title 15 Guam Code Annotated, or initiate a petition for civil commitment pursuant to law.

(c) If a social worker of the Unit or other authorized agency who is investigating a report of abuse is denied access to the alleged victim by a caregiver or household member, such agency may petition the Superior

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(o) Release of Claim by Injured Person Ineffective as to Program; Action to Enforce Lien; Release of Lien. A release of a claim on which a lien is imposed pursuant to this Act is not valid or effective as against the lien, unless the Healthcare System Provider joins in the release, or executes a release of the lien. If any amount has been, or is to be collected by the injured person or that person's legal representative from or on account of the person, firm or corporation, including insurance carriers liable for liability or indemnity damages by reason of a judgment, settlement or compromise, the Healthcare System Provider may enforce the lien by action against the patient or the person, firm or corporation, including insurance carriers, liable for liability or indemnity damages. If the Healthcare System Provider prevails in the action, the Court may allow its reasonable attorney fees and disbursements. Such an action shall be commenced within two (2) years after the entry of the judgment or the making of the settlement or compromise. Within thirty (30) days after a lien is satisfied, the Healthcare System Provider shall issue a release of the lien to the person, firm or corporation against which the lien was claimed.

§ 2972. Creation of the Healthcare System Privatization Committee.

There is hereby created a Healthcare System Privatization Committee ('*Committee*'). The Committee shall consist of nine (9) members appointed by I Maga'láhen Guåhan [Governor] as follows: the MIP Program Administrator of DPH&SS; the Physician Specialist of DPH&SS; the Director of the Division of Personnel Services of the Department of Administration or Bureau of Budget and Management Research of the government of Guam; the Chairperson or designated member of the Guam Memorial Hospital Board; the Director or designee of the Department of Mental Health and Substance Abuse; the President or designated member from the Guam Association of Social Workers; and one (1) member representing the Community, one (1) member from the Guam Medical Society and one (1) member from the Guam Chamber of Commerce.

(a) Officers. The Committee shall elect a Chairperson and Vice-Chairperson from among its membership every two (2) years.

(b) Quorum. Five (5) members shall constitute a quorum of the Committee for the transaction of business. The concurrence of five (5) members present shall constitute official action of the Committee. The Committee may adopt rules and regulations governing the conduct of its affairs.

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(c) Meetings. Meetings of the Committee shall be held at a regular time and place as determined by the Committee. Special meetings may be called by the Chairperson, or by a majority of the members, as often as may be necessary. Meetings of the Committee, regular or special, shall be subject to the Open Government Law.

(d) Term of Office. The members of the Committee shall serve staggered terms to ensure continuity of membership. Committee members from the Guam Association of Social Workers and the Guam Medical Society shall serve a three (3) year term, and Committee members from the Community at large and the Guam Chamber of Commerce shall serve a two (2) year term. Committee members from government agencies serving by virtue of their positions shall serve for the duration of their holding that position in the designated Department or Board.

Upon the expiration of the term of any member, or in the event of a vacancy on the Committee due to resignation, death or any other cause, I Maga'lahaen Guåhan shall appoint another member for a full term in the first instance or for the remainder of the unexpired term, consistent with the membership qualifications set forth herein.

(e) Duties of the Healthcare System Privatization Committee. The Healthcare System Privatization Committee shall:

(1) review recommendations from I Liheslaturan Guahån [Guam Legislature];

(2) make recommendations to the Director of DPH&SS on all aspects of the annual preparation and issuance of the public invitation for proposals; proposed contract format; the scope of services to be provided which will include, but not be limited to preventive services, inpatient hospital, outpatient medical and support services, prescription benefits, and home care; qualified providers; pre-negotiation process; the population to be served; and the awarding of the contract to a Healthcare System Provider;

(3) assist in anyway possible in ensuring that the Healthcare System Provider contract, as authorized by this Act, will be effective within one hundred eighty (180) days of enactment;

(4) recommend to the Director of DPH&SS within ninety (90) days of enactment of this Act the minimum benefits to be required in the Healthcare System contract, in accordance with all Federal guidelines, as required;

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(5) formulate recommendations as to the periodic updating and revisions of Healthcare System benefits based upon an annual review of the Program enrollment, utilization, claims payment experience and operating expenses of the Program in preparation for the renegotiation of the annual variables of the contract for administrative and health services, and in preparation of the renewed bid process every three (3) years.

(6) make recommendations for the periodic reevaluation and updating of Program Eligibility Criteria and Standards in accordance with Guam's changing socio-economic environment;

(7) review and periodically recommend updating of this Article and the Drug Formulary of the Program;

(8) periodically review the Program's expenditures and funding levels to ensure prompt payment pursuant to the contract, and ensure that Program reimbursement levels are adequate to ensure continued and quality Provider participation; and

(9) assist in the identification of grants, donations, fundraising events and other philanthropic endeavors to assist with Program funding.

§ 2973. Application for Federal Funds and Waiver Authorized.

The Director is authorized to apply for and accept Federal funds available under Title XIX of the Social Security Act (P.L. No. 89-97; 79 Stat. 344; 42 United States Code § 1396 (1980)), the Children's Health Insurance program, or any other applicable Federal programs under the purview of DPH&SS, in support of the Healthcare System Program.

The Director, pursuant to this Section shall apply for a § 1115 waiver with the Health Care Financing Administration to qualify for Federal funding, primarily on a pre-negotiated basis with health insurance carriers and/or HMOs. Such funds shall be used only for the support of persons defined as eligible pursuant to Title XIX of the Social Security Act (P.L. No. 89-97; 79 Stat. 344; 42 United States Code §1396 (1980)), or pursuant to any other applicable Federal program under the purview of DPH&SS. Further, the Director is authorized to apply for any Federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the Healthcare System Programs. Available local funds appropriated for the administration and operation of

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the Healthcare System may be used as matching funds to secure Federal funds pursuant to this Section.

§ 2974. Duties of Administrator.

Notwithstanding any other provision of law or this Act, the Bureau of Healthcare Financing Administrator of the Department of Public Health and Social Services ('DPH&SS') shall continue, despite privatization of the Healthcare System Programs, to be responsible for:

(a) Determining whether an applicant meets the eligibility criteria of the Program.

(b) Establishment of:

(1) peer review/utilization study functions for all health service providers;

(2) a comprehensive quality assurance and fraud prevention system; and

(3) standards for payment mechanisms relative to patient transport for off-Guam medical care.

(c) Administration of the Healthcare System contract and oversight of the Healthcare System Provider.

(d) Provision of technical assistance services to the Healthcare System Provider and potential providers.

(e) DPH&SS is authorized to promulgate necessary rules and regulations implementing the provisions herein.

(f) Generating reports required by the Federal Healthcare Financing Administration, including, but not limited to audits and audit responses.

§ 2975. DPH&SS as a Healthcare System Provider.

DPH&SS shall not operate as a Healthcare System Provider, unless there is no contract in place for the Healthcare System or for any of the Healthcare System Programs, or notwithstanding the provisions of the contract, if DPH&SS finds that the public's health, safety or welfare requires emergency action, it may operate as the System or Program Provider on notice to the Healthcare System Provider being cited and pending an administrative hearing, which it shall promptly institute.

DPH&SS may directly operate as a System or Program provider only as long as it is necessary to assure delivery of uninterrupted care to

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members under the Program and accomplish the orderly transition of those members to another service provider, or until the service provider reorganizes or otherwise corrects the contract performance failure.

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