

Appendix G.4.

Act 53 FAQs

§ 2713 and § 2713.1 (Act 53) FAQs

PA Department of Aging Protective Services

- Q1. Under Definitions (f)(4), it says a (Caretaker) “is an adult who resides with a care-dependent person and who has a legal duty to provide care or who has voluntarily assumed an obligation to provide care because of a familial relationship....” How do we determine if the family member has voluntarily assumed this obligation?**

If the case is a protective services case, the intake or investigative processes may provide enough information to determine if the alleged perpetrator meets the definition of a caretaker under the law.

For example, a daughter visits her mother almost every day, and has been doing so for a while. Neighbors comment that the daughter takes care of her mom; like taking her shopping, to doctor appointments, the pharmacy, etc. When interviewing the daughter, she states that she provides care for her mother, including helping her bathe, prepare some of her meals, med-management, etc.

- Q2. Can the family member withdraw their voluntary obligation?**

Yes; however, the older adult needs to be aware of the withdraw of services and/or there must have been an attempt by the caretaker to ensure that the older adult has the services necessary to ensure their health and welfare. The older adult must also have the cognitive capacity to understand that the voluntary services are being withdrawn.

- Q3. How does the family member withdraw a voluntary obligation? Verbal, written.... To whom do they communicate this? Is there a requirement to give an advance notice?**

Under 2713(f)(4) a caretaker is an adult WHO RESIDES WITH a care-dependent person AND who has a legal duty to provide care OR who has voluntarily assumed an obligation to provide care because of a familial relationship, contract, or court order...

2713(f)(5) states that a caretaker is also an adult WHO DOES NOT RESIDE WITH a care-dependent person BUT WHO HAS A LEGAL DUTY to provide care OR who has affirmatively assumed a responsibility for care, OR who has responsibility by contract, or court order.

If they have a legal duty, there is likely a contract of some kind (signed care plan or contractual agreement). In this case, the caretaker must submit a written notice to withdraw their caretaker obligation. The notice must be provided to the person or entity responsible for enforcing the contract or care plan.

It depends upon the nature and scope of the services provided by the voluntary caregiver. If the older adult will be at imminent risk, adequate and written notice should be given to ensure the older adult has time to have alternative arrangements for care/services.

§ 2713 and § 2713.1 (Act 53) FAQs

PA Department of Aging Protective Services

Q4. Is there an obligation to arrange for alternate care before the family member can withdraw as a caretaker? If so, during the time they are arranging for alternative care are they obligated voluntarily? If it is required how can it continue to be considered voluntary? Is it appropriate to report to the police if it is not voluntary? Regarding Statute 2713 ONLY.... We realize under Title 6 to not arrange for alternate care could be considered abandonment.

See responses to questions 2 and 3 above.

Q5. Does a spouse who lives with the Care-dependent person have an implied obligation? If so is it a voluntary obligation? If not, when can we know that they have entered into or exited from a voluntary obligation? Can they deny ever having had a voluntary obligation?

Any person who has voluntarily or otherwise assumed the role of caretaker is subject to this law.

Q6. Is there any familial obligation that is not voluntary? Mother taking care of a Son/Daughter? Other?

Please apply the concept to this scenario:

A son is living with his mother (Mom), 87 years of age, who meets the care-dependent person definition and is the usual (by default, no verbal agreement has been expressed) family caregiver. The son is an alcoholic and announces on a Friday that he is expecting to go on a binge that weekend and leaves the house to do just that.

Under 2713(f)(4) a caretaker is an adult WHO RESIDES WITH a care-dependent person AND who has a legal duty to provide care OR who has voluntarily assumed an obligation to provide care because of a familial relationship, contract, or court order...

2713(f)(5) states that a caretaker is also an adult WHO DOES NOT RESIDE WITH a care-dependent person BUT WHO HAS A LEGAL DUTY to provide care OR who has affirmatively assumed a responsibility for care, OR who has responsibility by contract, or court order.

2713 states that a caretaker is guilty of neglect of a care dependent person if he:

Intentionally, knowingly or recklessly causes bodily injury, serious bodily injury or death by failing to provide treatment, care goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.

Intentionally, knowingly or recklessly endangers the welfare of a care-dependent person for whom he is responsible by failing to provide

§ 2713 and § 2713.1 (Act 53) FAQs

PA Department of Aging Protective Services

treatment, care, goods or services necessary to preserve the health, safety or welfare of the care-dependent person.

Keeping all of this information in mind, it depends upon the amount and nature of the services he provided to his mother prior to the “bender.” If his absence as a caretaker, either physical or cognitive, due to alcohol consumption, put his mother at risk or failed to meet her care needs in some way that results in bodily injury, serious bodily injury or death, he could be found guilty of neglect or abuse of a care dependent person.

Q7. When a caretaker knowingly endangers the welfare of a care-dependent person does the degree of endangerment come into play. In other words, can the caretaker take a calculated gamble. If so, what kind of gamble? 50/50 chance that something could happen? 25/75 chance? Any chance at all? When do we report to the police?

There is no exact “chance” figure that can or should be used. Serious consideration would be given to the “reasonable person” standard and injuries incurred by the older adult. What was known at the time of the incident about the older adult’s care needs, what care/services was the person typically giving to the older adult, and what is the level of risk posed if the care/services were not given.

Q8. What if we do not report this to the police? Are our case managers subject to the penalties under this section?

Yes. AAA staff could be subject to penalties through both PDA and law enforcement.

Q9. Should we report all potential cases so as to protect our staff from potential penalty?

No. Only those cases that you and your agency have determined (through investigation) to meet the definitions set forth in the law shall be reported.

Q10. When we arrange consumer services that we know are not comprehensive and therefore not adequate under every conceivable circumstance, (happens every day) are we knowingly endangering the welfare of a care-dependent person? Why/why not?

Please apply the concept to this scenario:

Daughter is family caretaker for Mom. Mom has confusion to the point of not always making the best decisions. Generally, Mom is aware of herself and others, understands the consequences of her actions, and can formulate and implement a plan for self-care. She recognizes her home, does not wander and has taken care of herself for years. During the last two years, she is increasingly unsteady on her feet but verbally refuses repeated offers of assistance. (Note: no written, signed and witnessed instructions.) Daughter works and leaves Mom during the days in her home with instructions and calls Mom during her daily lunch breaks. In comes out-of-town-from-California-expert-

§ 2713 and § 2713.1 (Act 53) FAQs

PA Department of Aging Protective Services

attorney-daughter who disagrees with the arrangements that in-state-don't-know-nothing-daughter has made. She calls the office of aging and demands a section 2713 (a) (3) report of neglect of a care dependent person be made to the local police department. She cites her sister as having neglected her Mom due to knowingly endangering Mom's safety. Mom is subject to falls when not supervised....an obviously dangerous circumstance.

The reasonableness standard must be applied. All efforts must be documented, including those beyond their control. The AAA must put forth their best effort.

Q11. Have we clarified the distinction between paid caregivers under the old conception for the law and other non-paid caregivers under the new? For example, typically, familial guardians and other voluntary caregivers who assume a caregiving role that eliminates the need for others to provide care are typically not paid. Does the present iteration of the new law fall upon them as well?

Yes. The caregiving standard is NOT assumed to be higher just because the caregiver is paid. Therefore, it does not matter if the caregiver is being paid or not.

Q12. Have we thought out the implications of referring to law enforcement under the "reasonable suspicion" level versus clear and convincing that was, up to this point, required for a written perpetrator notification? Referring a perpetrator to law enforcement requires the issuance of a perpetrator letter. If we are now to be referring to law enforcement on a reasonable suspicion and a substantiated case on a preponderance of evidence. Are we ready for the onslaught of Appeals?

Regardless of the impact this may or may not have on appeals, you are required to follow the law and have an obligation to report to law enforcement under Act 53.

Q13. Will the PowerPoint presentation be available on the LTLTI Website for downloading and training purposes?

Yes, the following resources will be available on the LTLTI LMS training Website:

- The APD (the APD will also be available on the PDA Website)
- Revised IS&A form with annotations
- SAMS Documentation Procedural Manual, Appendix B – IS&A Instructions
- Office of Attorney General (OAG) Referral Flowchart
- OAG Referral Form
- Original 2018 Webinar PowerPoint file (updated June 2019) and the June 2019 Webinar PowerPoint file
- Videos of both Webinars
- This FAQ document

§ 2713 and § 2713.1 (Act 53) FAQs

PA Department of Aging Protective Services

Q14. Consent is not required under Act 53. For cases of abuse and neglect that don't fall under Act 53, do we still need the consumer's consent to make a report to law enforcement?

Consent to report to the Office of the Attorney General or local police are not necessary under this law.

Outside of § 2713 and § 2713.1, it will depend on the individual situation. Always seek guidance from your solicitor.