

## An act relating to adult protective services

Prepared by the Office of Legislative Counsel

### Sec. 1. 33 V.S.A. chapter 69, subchapter 1 (Reports of Abuse of Vulnerable Adults) is amended to read:

#### § 6901. PURPOSE

- Protect vulnerable adults whose health and welfare may be adversely affected through abuse, neglect, or exploitation
- Recognize and accommodate barriers for vulnerable adults that may impair both their response to maltreatment and their ability to substantiate allegations of maltreatment
- Require reporting of suspected abuse, neglect, and exploitation, investigation of reports, and establishment of protective services
- *Removes language pertaining to finding a nurturing and safe environment for vulnerable adults and intervening in family or substitute care situations only when necessary*
- Aims to uphold autonomy and provide opportunities for consideration of vulnerable adult's preferences

#### § 6902. DEFINITIONS

- Significant changes to the definition sections, including substantial changes to what constitutes “abuse”, “exploitation”, and “neglect” (none of which include self-neglect)
- Numerous added definitions

#### § 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND EXPLOITATION OF VULNERABLE ADULTS

- Streamlines list of mandatory reporters to “all employees, contractors, grantees, or volunteers who [provide direct] health care, law enforcement, caregiving, counseling, education, banking, or social services to vulnerable adults” and any other person who knows of, has received a complaint of, or suspects abuse, neglect, or exploitation

#### § 6904. NATURE AND CONTENT OF REPORT; TO WHOM MADE

- Report made to Commissioner or designee, *but removes language that report can be made to a law enforcement officer*
- New language specifies that a reporter in possession of documentation establishing the alleged victim's conditions, needs, or services include that information in the report, as well as evidence of maltreatment

#### § 6906. ASSESSMENT AND INVESTIGATION

- Report of Maltreatment
  - Upon receipt of a report of maltreatment, DAIL determines whether it constitutes an allegation of abuse, neglect, or exploitation
  - DAIL responds to reports about conduct occurring in-State or out-of-State if the vulnerable adult is a VT resident
  - If report is accepted as a report of abuse, neglect, or exploitation, DAIL determines whether to conduct an assessment or investigation or whether to

screen out report. (Assessment may be used to determine whether an investigation is necessary.)

- If DAIL initiates an assessment or investigation, it shall be w/in 2 business days after receipt of accepted report
- Determination to conduct an assessment shall include consideration of:
  - Severity of alleged maltreatment and injuries;
  - Relationship between alleged victim and perpetrator; and
  - Known history of the report
- DAIL shall investigate accepted report involving allegations of maltreatment; it may investigate any report of maltreatment received
- DAIL shall immediately begin an investigation if at any time during an assessment, an investigation is deemed appropriate
- To the extent permitted by law, DAIL may collaborate with law enforcement, health care and service providers, other VT agencies and agencies in other jurisdictions to evaluate risk to vulnerable adult
- DAIL may enter into reciprocal agreements
- Assessment
  - An assessment, to the extent reasonable based on report, shall include:
    - An interview with alleged victim, focused on ensuring immediate safety and mitigating future risk of harm;
    - A determination as to whether alleged victim meets the definition of a vulnerable adult, and whether allegations, if true, meet definitions of abuse, neglect, and/or exploitation;
    - ID resources and protective services needs to reduce risk of future maltreatment and improve care and safety of alleged victim
  - Services offered during or at conclusion of assessment can only be implemented through voluntary agreement or court action
  - If assessment closes w/o resulting in an investigation, there is no finding of abuse, neglect, or exploitation and no indication of the intervention in the registry, but DAIL shall document outcome of assessment
- Investigation
  - DAIL must commence an investigation w/in 2 days after a report is accepted for investigation
  - DAIL is required to:
    - Notify the reporter if it decides not to investigate or conduct an assessment w/in 5 days of decision, and inform reporter that the reporter may ask DAIL to review its decision
    - Notify the victim and victim's representative in writing of the outcome of the investigation w/in 5 days of decision, and inform victim or representative that either may ask DAIL to review its decision
  - Unless it will jeopardize the health or safety of vulnerable adult, investigation must include:
    - Interview with alleged victim if victim consents
    - Opportunity for alleged perpetrator to be interviewed; if person declines (by notice or failure to respond), the person will be notified that their

- declination may be noted in the investigation and may be taken into account in any potential appeal process
- At conclusion of investigation a report is submitted to Commissioner or designee describing evidence and recommending either un/substantiation and whether placement in the registry is appropriate
    - If recommendation is for substantiation, alleged perpetrator shall be given notice of:
      - evidence that forms basis of recommendation;
      - remedial options; and
      - how substantiated report might be used
  - Alleged preparator may seek administrative review of placement on registry by notifying DAIL w/in 14 days after date listed on notice of right to administrative review; Commissioner may grant an extension of up to 28 days for good cause
  - Administrative review of placement on registry may be stayed if a case is pending in the Criminal or Family Division of the Superior Court arising out of the same conduct, during which time the alleged perpetrator's name may be added to the registry
    - Alleged perpetrator may exercise right to review, upon resolution of Superior Court case, by so requesting in writing w/in 28 days after case has been fully adjudicated; otherwise the decision becomes final
    - If administrative review is requested, it shall be held w/in 28 days at which point the alleged perpetrator may present evidence or information. DAIL has burden of providing that a reasonable person would believe the vulnerable adult was abused, neglected, or exploited by alleged perpetrator by a preponderance of the evidence
    - DAIL is required to establish a case review unit and may contract for administrative reviewers, which are neutral and independent arbiters with no previous involvement in the investigation
  - W/in 7 days of completed administrative review, reviewer shall either reject or accept DAIL's recommendation of substation or defer recommendation and direct further investigation and notify the alleged perpetrator of the decision (and where appropriate, of the opportunity to appeal)
  - If reviewer accepts recommendation of substantiation, a registry record is created w/in 2 business days, otherwise a record is not created
  - In exceptional circumstances, Commissioner (but not a designee) may reconsider a reviewer's decision—and resulting penalty of creation of a registry record can be appealed to the Human Services Board
  - W/in 30 days after receiving notice of substantiation, the alleged perpetrator may apply to the Human Services Board, the resulting expedited hearing shall be provided not later than 30 days after notice of substantiation
  - Records are retained confidentially for 6 years after unsubstantiation
  - Vulnerable adult, the adult representation, and alleged perpetrator's employer shall be notified upon final determination

## § 6907. REMEDIAL ACTION

- DAIL shall pursue protective services/measures if they have not already been put in place and the investigation shows that the vulnerable adult has been maltreated, assuming consent from the vulnerable adult, the vulnerable adult's representative, or a court order
- Failure to consent to protective services does not automatically end investigation

## § 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

- New language specifies that this section does not provide immunity to person reporting their own perpetration of maltreatment

## § 6910. INTERFERENCE BY CAREGIVER (in provision of protective services)

- New language is predominantly technical or conforming changes
- Repeals authority for court to modify terms of a coordinated treatment plan

## § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

- Access to records
  - APS shall have access to any records/documents, including client-identifying information, financial records, medical and psychological records, necessary to perform its duties
  - Persons or entities with a record/document that APS needs shall make it available
  - Provision of a document that is relevant to an APS of law enforcement investigation is not a violation of confidential privilege, but access to records that violate attorney-client privilege shall not be provided w/o a court order
  - If made in the course of an investigation, DAIL is not required to pay a fee to acquire a financial or medical record
  - If it cannot otherwise access a record, DAIL can petition the Superior Court for access, and on good cause shown the Court may order the person or entity in possession to provide access under the Court's terms
  - Person or entity in possession of a record is entitled to notice and hearing
  - Access to a confidential record is not waiver of confidentiality
- Confidentiality of reports and documents
  - Information obtained through reports to DAIL and assessments/investigations conducted by DAIL, including ID of reporter, are confidential and cannot be released absent a court order, except those certain individuals listed in statute may receive a final investigative summary report
  - Allows necessary disclosures to conduct investigations to make referrals to law enforcement agencies or DAIL grantees, but reasonable efforts must be made to limit information to the minimum necessary
  - Financial records disclosed to APS may only be used in a judicial or administrative proceeding or investigation directly related to a report
- Registry
  - DAIL is required to maintain a registry of substantiated providers that contains:
    - Name of individuals who regularly work or interact with vulnerable adults who are found to have maltreated a vulnerable adult in their role and date and nature of finding

- Names of individuals convicted of a crime related to maltreatment
- A personal identifier, aside from individual's name
- Disclosure of registry information
  - Includes an individual seeking to determine if the individual's own name is on the registry to the list of who the Commissioner or designee may disclose registry information to
- *Removes fine of \$500 for persons violating this section*

§ 6913. PENALTIES; ABUSE; NEGLECT; EXPLOITATION; MANDATORY REPORTER'S FAILURE TO REPORT

- Increases penalties throughout section
- Allegations that a mandated reporter failed to make a report is investigated as neglect
- When DAIL finds that a mandatory reporter willfully or knowingly withheld information or provided false/inaccurate information, the Commissioner may impose an administrative penalty of not more than \$1,000.00 per violation

§ 6914. ACCESS TO CRIMINAL RECORDS

- Employer may ask Commissioner or designee, in writing, to obtain from VT Crime Information Center the conviction record of person who is a current employee, volunteer, or contractor. Request must be accompanied with release by employee, volunteer, or contractor. DAIL will inform employer of the date and type of any convictions.

§ 6915. ~~ACCESS TO FINANCIAL INFORMATION~~

- Moved to subchapter 2

§ 6917. RULEMAKING

- Directs the Commissioner to adopt rules on referrals, assessments, and investigations

**Sec. 2. 33 V.S.A. chapter 69, subchapter 2 (Maltreatment Prevention for Vulnerable Adults) is amended to read:**

§ 6931a. ACCESS TO FINANCIAL INFORMATION

- Moved from subchapter 1

§ 6932. JURISDICTION AND VENUE

- Conforming amendment (addition of the word "neglect")

§ 6933. REQUEST FOR RELIEF

- Specifies that APS staff can seek relief from maltreatment on behalf of a vulnerable adult

§ 6934. NOTICE

- Conforming amendment (gender neutral language)

**Sec. 3. Effective Date:** July 1, 2023