

Adult Protective Services

The Process: From Intake to Adult
Abuse Registry

February 2014

Title 33 Chapter 69: Reports of Abuse, Neglect and Exploitation of Vulnerable Adults

Adult Protective Services (“APS”) is charged with the responsibility of investigating allegations of abuse, neglect or exploitation of vulnerable adults.

With the consent of the vulnerable adult or his/her representative, APS assists with arranging for the protection of vulnerable adults whose health and welfare may be adversely affected through abuse, neglect, or exploitation.

33 V.S.A. §6901, §6907

Title 33 Chapter 69

DEFINITIONS

Vulnerable Adult

- Any person 18 years of age or older who:
 - Is a resident of a facility required to be licensed under Chapter 71 of Title 33;
 - Is a resident of a psychiatric hospital or a psychiatric unit of a hospital;
 - Has been receiving personal care services for more than 1 month from a home health agency or from a person or organization that offers, provides, or arranges for personal care;

Vulnerable Adult

- Any person 18 years of age or older who regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, or physical, mental, or developmental disability:
 - That results in some impairment of the individual's ability to provide for his/her own care without assistance—food, shelter, clothing, healthcare, supervision, or management of finances.

Vulnerable Adult

- Any person 18 years of age or older who, due to brain damage, infirmities of aging, or a physical, mental, or developmental disability has an impaired ability to protect himself/herself from abuse, neglect or exploitation.

33 V.S.A. §6902 (14)

Caregiver

- A person, agency, facility or other organization with responsibility for providing subsistence or medical or other care to a vulnerable adult, who has assumed responsibility voluntarily, by contract or by an order of court;
- A person providing medical care, custodial care, personal care, mental health services, rehabilitative services or any other kind of care provided as required because of another's age or disability.

33 V.S.A. §6902 (2)

Abuse

- Any treatment of a vulnerable adult which places life, health, or welfare in jeopardy or which is likely to result in impairment of health.
- Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable adult.

Abuse

- Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;
- Any sexual activity with a vulnerable adult by a caregiver from a caregiving facility or program (other than consensual relationship);
- Intentionally subjecting a vulnerable adult to behavior which should *reasonably* be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress;

Abuse

- Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for other than a legitimate purpose and lawful, medical or therapeutic treatment.

33 V.S.A. §6902(1)

Exploitation

- Willfully using, withholding, transferring, or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;
- Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;
- The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;

Exploitation

- Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status.

33 V.S.A. §6902 (6)

Neglect

- Purposeful or reckless failure or omission by a caregiver to provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult—food, clothing, medicine, shelter, supervision and medical services—unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his/her representative, or terminal care document.

Neglect

- Purposeful or reckless failure or omission by a caregiver to make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect, or exploitation by others.

Neglect

- Purposeful or reckless failure or omission by a caregiver to carry out a plan of care for a vulnerable adult when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or a terminal care document.

Neglect

- Purposeful or reckless failure or omission by a caregiver to report significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides or arranges for personal care.
- May be repeated conduct or a single incident

33 V.S.A. §6902 (7)

Protective Services

- Services, action, or intervention that will, through voluntary agreement or court action, prevent further neglect, abuse, or exploitation of vulnerable adults
 - 33 V.S.A. §6902 (9)
- Examples:
 - Assist with securing orders of protection/relief from abuse orders
 - Provide referrals to law enforcement and appropriate agencies
 - Assist with securing representative payee
 - Assist with reversing fraudulent credit card charges
 - Assist with securing appropriate supervision, guidance and/or counseling
 - Assist with petition for appointment of guardian
 - Assist securing safe and sanitary living conditions.

Substantiated Report

- Determination by the Commissioner or her designee that an investigative report is based upon accurate and reliable information that would lead a *reasonable person* to believe that the vulnerable adult has been abused, neglected or exploited.

33 V.S.A. §6902 (12)

APS INTAKE PROCESS

- Report submitted to Adult Protective Services intake worker by fax, phone or secure, web-based report.
- Intake worker screens report to determine if allegations meet one or more of the statutory definitions of abuse, neglect and/or exploitation, and if the alleged victim meets the statutory definition of “vulnerable adult.”
- Intakes are completed and a determination made regarding opening a case for investigation, or closing a report, within 48 hours of receipt of the report, if no additional information is required to complete the intake.
- If initial report is complete upon receipt, the report is assigned to an investigator.
- If initial report is not complete, intake staff will make 2 documented attempts to reach the reporter by phone, and make a determination regarding opening a case for investigation or closing the report within 4 business days of receipt of the initial report.
- Reporter, victim or victim’s representative notified if the report is not opened, and if referrals were made to another agency.

Adult Protective Services Policies and Procedures

Initial Reports

- Name, address and contact information for reporter, vulnerable adult, accused, caregiver and guardian, if applicable.
- Age of vulnerable adult
- Nature of vulnerable adult's disability
- Nature and extent of alleged abuse, neglect and/or exploitation
- Any evidence of previous abuse, neglect and/or exploitation
- Additional information regarding cause of injuries and other relevant information known by reporter

33 V.S.A. §6904

Why is an investigation not opened following an initial report alleging abuse, neglect or exploitation?

- Incident previously investigated, or currently under investigation (same vulnerable adult, same alleged perpetrator, same allegations).
- Alleged vulnerable adult does not meet statutory definition of vulnerable adult.
- Allegations do not meet statutory definition of abuse, neglect or exploitation.
- Reports incomplete as received, and 2 attempts to reach the reporter were unsuccessful.
- Report is a resident-to-resident or patient-to-patient incident within a licensed setting, exceptions set forth in APS Policies and Procedures (e.g., incident alleges sexual abuse/assault that was resident-to-resident; incident required medical treatment for one or more residents involved in incident).

Reporters

- Confidential
 - Unless reporter consents to disclosure
 - Unless a judicial proceeding results from the report
 - Concerned citizen
 - Mandated*:
 - AHS employees, contractors, grantees involved in caregiving
 - Medical professionals
 - School employees and contractors
 - Mental health professionals
 - Social workers
 - Personal care providers; caregivers
 - Law enforcement
 - Employees of Adult Day, AAA, Senior Centers, Meal Programs
 - Employees and owners of nursing homes, hospitals, residential care homes, home health agencies, therapeutic care homes, group homes, developmental homes, intermediate care facility
- *Administrative penalties (\$500 - \$5,000) may be assessed for failure of mandated reporter to report.
- 33 V.S.A. §6903, §6913(b)

Investigations

- Intake commences an investigation into the report within 48 hours
- Keep reporter and alleged victim informed at all stages of investigation
- Notify reporter, victim and victim's representative of the outcome of an investigation
- Notify the perpetrator and perpetrator's representative of the outcome of an investigation.

33 V.S.A. §6906 (a), (c); Adult Protective Services Policies and Procedures

Investigation Requirements

- Visit to alleged victim's residence and location of alleged abuse, neglect or exploitation
- Interview witnesses and other collateral contacts
- Interview reporter
- Interview alleged victim if he/she consents
- Offer accused interview

33 V.S.A. §6906 (b)

Investigative Reports

- Describe all evidence obtained during investigation
- Recommend finding of substantiated or unsubstantiated

33 V.S.A. §6906

**Reports are reviewed and approved by investigator's supervisor.

Disclosure of Information

- Investigative reports, absent a court order, only disclosed to:
 - Commissioner or her designee
 - Adult Protective Services investigator
 - Accused
 - Vulnerable adult or his/her representative
 - Office of Professional Regulation by direction of the Commissioner
 - Law enforcement
 - State's attorney/Office of Attorney General
 - Criminal investigation/prosecution
 - Civil investigation/enforcement action

33 V.S.A. §6911(a)(1)

Disclosure of Information

- Relevant information obtained through investigation, absent a court order, only disclosed:
 - Secretary of AHS or his designee for purposes of:
 - Remediating or preventing abuse, neglect, or exploitation
 - To assist the agency in its monitoring and oversight responsibilities
 - In the course of a relief from abuse proceeding, guardianship proceeding, or any other court proceeding when:
 - The Commissioner deems it necessary to protect the victim and
 - The victim or his/her representative consents to disclosure.

33 V.S.A. §6911 (a)(2)

Disclosure of Information

- Limited to “minimum amount necessary” to accomplish intended purpose:
 - Investigative Reports
 - Relevant information
- 33 V.S.A. 6911(a)(1) and (2)

Recommendation for Substantiation

- Report is based upon accurate and reliable information that would lead a *reasonable person* to believe that the vulnerable adult has been abused, neglected or exploited.
- Notify accused of right to appeal
 - To commissioner
 - To Human Services Board
- If accused does not request Commissioner's hearing within 15 days of notification of recommendation of substantiation, Commissioner makes finding of substantiation and notifies accused of right to appeal to Human Services Board.

33 V.S.A. §, 6902 (12), §6906 (c)

Unsubstantiated Reports

- DAIL retains records as a confidential record for 6 years
- If no court proceeding is brought, or the Human Services Board reverses a substantiation, after 6 years, records shall be destroyed following notice to accused.

33 V.S.A. §6906 (e)

Human Services Board Appeal

- Within 30 days of notification from APS of substantiation by the Commissioner, the accused may file an appeal before the Human Services Board. 33 V.S.A. 6906(d).
- Standard of proof: preponderance of the evidence

Adult Abuse Registry

- If an appeal is filed, the name of the accused “shall not” be added to the Adult Abuse Registry until the substantiation is final.
- If no appeal is filed, the perpetrator’s name is placed on the Adult Abuse Registry following the substantiation by the Commissioner.

33 V.S.A. §6906

Adult Abuse Registry

- Information included in Registry:
 - Name of individual substantiated for abuse, neglect, or exploitation of a vulnerable adult.
 - The date of the finding.
 - The nature of the finding: abuse, neglect or exploitation of a vulnerable adult.
 - In addition to the individual's name, at least one (1) other personal identifier to prevent the possibility of misidentification.

33 V.S.A. §6911 (b)

Disclosure of Information from Adult Abuse Registry: LIMITED

- State's Attorney or Attorney General
- Public in accordance with Nursing Home Reform Act of 1986 and relevant regulations
- Employer (providing care, custody, treatment, transportation, or supervision of children or vulnerable adults); requires release
- Agencies assisting with employer functions, home sharing, personal care services, developmental services, or mental health services for vulnerable adults; requires release
- Commissioner of DCF or designee for licensing or registration of facilities regulated by DCF

Disclosure of Information from Adult Abuse Registry: LIMITED

- Commissioner of Health or designee for oversight and monitoring persons served by or compensated with funds from Department of Health
- Upon request when relevant to other states' APS offices.

33 V.S.A. §6911(c)(1)-(7)

Expungement from Adult Abuse Registry

- Expungement may be requested at any time by the individual listed.
- Expungement requests are directed to the DAAL Commissioner.
- Petitioner has burden of showing why expungement should be granted.

33 V.S.A. §6911(f)

Possible Administrative Penalties for Abuse, Neglect or Exploitation

- Substantiation for:
 - Sexual abuse as defined in 33 V.S.A. §6902
 - Sexual exploitation as defined in 33 V.S.A. §6902
 - Exploitation as defined in 33 V.S.A. §6902(6)(A) or (B) in an amount in excess of \$500
 - Abuse which causes grievous injury to or death of vulnerable adult
 - Neglect which causes grievous injury to or death of vulnerable adult
- Financial: administrative penalty up to \$10,000 for each violation
- Notification to Office of Professional Regulation or other applicable professional licensing board.
33 V.S.A. §6913(a)