
**Report to
The Vermont Legislature**

**Adult Protective Services Annual Report
In Accordance with Act 156 of 2020, Sec. 2 33 V.S.A § 6916**

**Submitted to: House Committee on Human Services
Senate Committee on Health and Welfare**

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AGENCY OF HUMAN SERVICES

Department of Disabilities, Aging, and Independent Living

§ 6916 Older Vermonters Act:

Adult Protective Services Annual Report for State Fiscal Year 2021

Introduction

Adult Protective Services (APS) is one of two units within DAIL's Division of Licensing and Protection (the other is Survey and Certification). APS investigates allegations of abuse, neglect, and exploitation of vulnerable adults and implements protective services, as necessary, to limit future maltreatment. APS currently has 20 employees, including 9 home-based investigators who travel throughout the state to investigate allegations of maltreatment. APS frequently partners with law enforcement agencies and human service providers in the performance of their investigations.

Like many current employers, APS has struggled this year to recruit and hire staff. At the date of this report submission (January 2022), APS is actively trying to fill four (4) open positions, most of which have had to be reposted multiple times. This is a significant vacancy rate for a division of 20 staff.

Vermont APS has followed the national trend in noting decreasing reports in the final quarter of SFY20 and continuing into SFY21 as a result of COVID-19. In response to the pandemic and those national trends, Vermont's APS operations have been modified to ensure continuing access. APS implemented a COVID-19 protocol which provided direction on when to conduct in-person interviews, appropriate use of PPE, and other necessary precautions. Remote contact has been mandated except in cases where in-person contact is required to ensure the safety of the vulnerable adult. APS has also expanded outreach efforts to encourage reporting despite decreased in-person contact with vulnerable adults during the pandemic.

Pandemic outreach efforts included the creation of a stakeholder list of over 200 individuals across 25 partnering service industries and organizations. Phone calls were made to every partner in each region to confirm APS services were uninterrupted, and to encourage partners to increase their remote check-ins with vulnerable consumers. APS, in partnership with the Department for Children and Families (DCF), also launched a new "Family Safety and Support Services" website, with APS resources and reporting information. A one-page awareness piece was developed with key information and reporting resources and sent to over 200 partnering individuals. In collaboration with DCF, APS created an audio and video PSA that was aired on dozens of radio and television stations across Vermont. APS also conducted remote virtual events to provide reporter training and guidance regarding services during the pandemic.

APS continues to value our work with volunteers and community partners on the APS Committee of the DAIL Advisory Board and through the file review process. During file reviews, individuals on the APS Committee review reports and investigations to provide feedback on current process and practice; increasing transparency into our work as an investigative body for the protection of vulnerable adults.

Adult Protective Services was awarded a one-million dollar grant in August of 2019 by the Federal Health and Human Services (HHS) Administration for Community Living (ACL) to provide Restorative Justice case services towards lowering the re-victimization rates of vulnerable adults, as well as lowering the recidivism rates of perpetrators of maltreatment. The Restorative Justice pilot program in APS has demonstrated success, and in 3rd Quarter of SFY21, ACL has offered to fund the pilot program for one additional year, awarding a supplement of \$204,750 additional funds to extend the performance period through late calendar year 2023 with the option for a no-cost extension beyond that. Additionally, APS received notice from ACL regarding two other awards received in the 4th Quarter of SFY21: \$704,000 through Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) and \$645,000 through the American Rescue Plan Act (ARPA). ACL provided notice that the same award could be anticipated again in late FFY 2022 with a project period ending in late 2024. These additional award amounts are expected to be equal to this year's CRRSA and ARPA awards. These awards fund APS Service Navigators to help better identify vulnerable adults in Vermont and connect them to needed services, the building of a new data library, purchase of remote work equipment, PPE and training opportunities for staff.

Act 46 of 2013 required the Secretary of the Agency of Human Services to submit an annual report to the Legislature through January 2018. Although the requirements of Act 46 sunset effective January 15th, 2018, the Department continues to provide the requested information each year to ensure transparency and accountability. The improvements in Vermont's APS programs in recent years have been well-documented; that progress has been a result of building and maintaining collaborative partnerships and continuous efforts to improve both policy and practice.

Reporting Elements

Beginning in calendar year 2021, as stated in § 6916, on or before January 15 of each calendar year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department [DAIL] shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare regarding the Department's adult protective services

activities during the previous fiscal year. The following provides detail on the eighteen (18) required reporting elements as specified in the Older Vermonters Act.

(1) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that the Department's Adult Protective Services program received during the previous fiscal year and comparisons with the two prior fiscal years.

APS received 3,461 reports of maltreatment (abuse, neglect, and/or exploitation) in State Fiscal Year 2021 (SFY21). In SFY20, APS received 3,649, and in SFY19, APS received 4,080.

(2) the Adult Protective Services program's timeliness in responding to reports of abuse, neglect, or exploitation of a vulnerable adult during the previous fiscal year, including the median number of days it took the program to make a screening decision.

APS responded to reports within a median 1.81 calendar days in SFY21. This median number is calculated by the time elapsed between the report date/time and resolution date/time of that report.

(3) the number of reports received during the previous fiscal year that required a field screen to determine vulnerability and the percentage of field screens that were completed within 10 calendar days.

In SFY21, 142 reports received by APS required a Field Screen, an extension of the screening process where an APS Investigator gathers additional information in order to determine if an investigation should be opened. 69% of the resulting Field Screens were completed within 10 calendar days of receipt of report.

(4) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that were received from a facility licensed by the Department's Division of Licensing and Protection during the previous fiscal year.

APS received 641 reports in SFY21 where the alleged maltreatment occurred in a nursing home, residential care home, therapeutic community residence, or assisted living residence. These reports are shared with the State's Survey & Certification unit in the event that facility practices may need to be investigated.

(5) the numbers and percentages of reports received during the previous fiscal year by each reporting method, including by telephone, e-mail, Internet, facsimile, and other means.

In SFY21, APS received 3,461 reports:

- 862 telephone reports, representing 25%
- 402 e-mail reports, representing 12%
- 2,128 internet reports, representing 61%
- 56 facsimile reports, representing 2%
- 13 reports from other methods, representing less than 1%

(6) the number of investigations opened during the previous fiscal year and comparisons with the two prior fiscal years.

APS opened 616 investigations in SFY21. In comparison, APS opened 639 investigations in SFY20 and 787 investigations in SFY19.

(7) the number and percentage of investigations during the previous fiscal year in which the alleged victim was a resident of a facility licensed by the Department's Division of Licensing and Protection.

In SFY21, 78 investigations— representing 13% of all investigations that year— involved an alleged victim in a nursing home, residential care home, therapeutic community residence, or assisted living residence.

(8) data regarding the types of maltreatment experienced by alleged victims during the previous fiscal year, including: (A) the percentage of investigations that involved multiple types of allegations of abuse, neglect, or exploitation, or a combination; (B) the numbers and percentages of unsubstantiated investigations by type of maltreatment; and (C) the numbers and percentages of recommended substantiations by type of maltreatment.

In SFY21, there were 103 investigations with combined multiple allegations of abuse, neglect, or exploitation, representing 16% of the total 637 investigations that year.

Investigations that resulted in a recommendation of unsubstantiation by APS for each type of maltreatment were:

- Abuse = 185, representing 29% of 637
- Exploitation = 197, representing 31% of 637
- Neglect = 164, representing 26% of 637

Investigations that resulted in a recommendation of substantiation by APS for each type of maltreatment, including cases that were overturned in appeal and/or the recommendation was rejected, were:

- Abuse = 27, representing 4% of 637
- Neglect = 18, representing 3% of 637
- Exploitation = 36, representing 6% of 637

(9) the Department's timeliness in completing investigations during the previous fiscal year, including both unsubstantiated and recommended substantiated investigations.

In SFY21, 624 investigations were completed in a timely manner in accordance with the APS Policy Manual (within 120 days of assignment from intake), representing 98% of all APS investigations in that year.

Of the investigations that still remain open due to either ongoing legal proceedings or completion beyond their due date and allowable review period, one (1) investigation was recommended for unsubstantiation and thirteen (13) investigations were recommended for substantiation.

(10) data on Adult Protective Services program investigator caseloads, including: (A) average daily caseloads during the previous fiscal year and comparisons with the two prior fiscal years; (B) average daily open investigations statewide during the previous fiscal year and comparisons with the two prior fiscal years; (C) average numbers of completed investigations per investigator during the previous fiscal year; and (D) average numbers of completed investigations per week during the previous fiscal year.

In SFY21, the average daily caseload of each APS investigator was 16. By comparison, the average daily caseloads per investigator was 13 in SFY20 and 21 in SFY19.

The average daily open caseloads across all of APS in SFY21 was 125. By comparison, the average daily open caseloads in SFY20 was 121, and in SFY19 was 189.

The average number of completed investigations per investigator in SFY21 was 79. By comparison, the average number of completed investigations in SFY 20 was 77, and in SFY19 was 102.

The average number of completed investigations per week in SFY21 was twelve (12). By comparison, the average number of investigations completed weekly in SFY20 was thirteen (13), and in SFY19 was eighteen (18).

(11) the number of reviews of screening decisions not to investigate, including the number and percentage of these decisions that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY21, the Department reviewed 11 decisions not to investigate, of which 6 (55%) decisions by APS were upheld, and 5 (45%) decisions were reversed. By comparison, in SFY 20, the Department reviewed 51 decisions not to investigate, of which 33 (65%) decisions by APS were upheld, and 18 (35%) decisions were reversed, and in SFY19, the Department reviewed 16 decisions, of which 11 (69%) were upheld, and 5 (31%) were reversed.

(12) the number of reviews of investigations that resulted in an unsubstantiation, including the number and percentage of these unsubstantiations that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY21, the Department reviewed zero (0) investigations that resulted in a recommendation by APS for unsubstantiation. By comparison, in SFY20, the Department reviewed 3 investigations that resulted in a recommendation by APS for unsubstantiation, and upheld 3 (100%) of these recommendations, and in SFY19, the Department reviewed 6 investigations recommending unsubstantiation and upheld 6 (100%).

(13) the number of appeals of recommendations of substantiation that concluded with the Commissioner, including the number and percentage of these recommendations that the Commissioner upheld during the previous fiscal year and comparisons with the two prior fiscal years.

The Commissioner heard 19 appeals in SFY21 of recommendations of substantiation. Of these 19 appeals, the Commissioner upheld 7 (37%) and reversed 12 (63%). By comparison in SFY20 the Commissioner heard 32 appeals, and of these 32 appeals, the Commissioner upheld 15 (47%) and reversed 17 (53%) of these recommendations. In SFY19 the Commissioner heard 21 appeals, upheld 15 (71%) and reversed 6 (29%).

(14) the number of appeals of recommendations of substantiation that concluded with the Human Services Board, including the numbers and percentages of these recommendations that the Board upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY21, 6 appeals of recommendations of substantiation concluded with the Human Services Board. Of these 6 appeals, 3 (50%) recommendations were upheld by the Board, and 3 (50%) were overturned. By comparison, in SFY20, 17 appeals of recommendations of substantiation concluded with the Human Services Board. Of these 17 appeals, 10 (59%) recommendations were upheld by the Board, and 7 (41%) were

overturned. In SFY19, 11 recommendations were appealed to the Board, 7 (64%) were upheld and 4 (36%) were overturned.

(15) the number of appeals of recommendations of substantiation that concluded with the Vermont Supreme Court, including the numbers and percentages of these recommendations that the Court upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY21, zero (0) appeals of recommendations of substantiation concluded with the Vermont Supreme Court. There were also zero (0) appeals that concluded with the Court in both SFY20 and SFY19.

(16) the number of expungement requests received during the previous fiscal year, including the number of requests that resulted in removal of an individual from the Adult Abuse Registry.

In SFY21, the Department received 24 expungement requests. Of these 24 requests, 14 resulted in expungement and removal from the Adult Abuse Registry, and 10 requests were denied.

(17) the number of individuals placed on the Adult Abuse Registry during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY21, 55 individuals were placed on the Adult Abuse Registry. By comparison, in SFY20, 97 individuals were placed on the Registry, and in SFY19, 157 individuals were placed on the Registry.

(18) the number of individuals removed from the Adult Abuse Registry during the previous fiscal year.

In SFY21, 14 individuals were removed from the Adult Abuse Registry.

Conclusion

In SFY21, APS continues to balance its mission and its new focus on new Restorative Justice and Service Navigation grant efforts alongside the challenges of COVID-19. To meet these challenges, APS will continue to collaborate with other departments in AHS to host virtual gatherings to inform community partners and service providers about the role, responsibility, and statutory authority of APS. This outreach will include new, remote mandatory reporter trainings.

APS continues to work closely with the DAIL Advisory Board's APS Committee to review Vermont's current APS Statute and to consider needed changes to align with national trends and best practices. Since the APS statute was established, Vermont demographics and structure for service delivery have changed dramatically. When the statute was passed nearly half a century ago, most of the care provided to vulnerable adults was provided in institutional settings. Now many more vulnerable adults are receiving care in home and community-based settings, provided by a range of different service providers and family caregivers. That change in settings generates a need for review and possible revision of the current statutes. In SFY21, the APS Committee held monthly statute review meetings and identified nine major areas where the current APS statute and operations are not in alignment with national standards and recognized best practices for protecting vulnerable adults. These major areas include:

- Victim Rights
- Proportional Funding
- Self-Neglect
- Definitions
- Adult Abuse Registry
- Reporting requirements and Info Sharing
- Discretionary Powers and Differentiated Response
- Evidentiary Standards
- Review and Appeal Rights

DAIL leadership, in partnership with the APS Committee, will dedicate efforts in SFY22 to developing recommendations for APS operational changes. In the next biennium, APS plans to work with the APS Committee to look at whether any changes should be made to the statutory measures in 33 V.S.A. Chapter 69 to ensure that APS is able to continue to protect vulnerable adults whose health or welfare is at risk due to abuse, neglect or exploitation.

Appendix A: Definitions

- 1) "Abuse" means:
 - a) Any treatment of a vulnerable adult which places life, health, or welfare in jeopardy or which is likely to result in impairment of health;
 - b) 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;
 - c) Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;
 - d) Any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a caregiving facility or program. This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse or domestic partner, nor to a consensual relationship between a vulnerable adult and a caregiver hired, supervised, and directed by the vulnerable adult;
 - e) 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; or
 - f) Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

Note: A report of abuse cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996).

- 2) "Adult Abuse Registry" means a list, maintained by APS, of individuals who have been substantiated for or convicted of abusing, neglecting, or exploiting a vulnerable adult.
- 3) "Agency" means the Agency of Human Services, also referred to as "AHS."
- 4) "Alleged Perpetrator" means the individual alleged to have abused, neglected, or exploited the alleged victim, as reported. Also referred to as the "AP."
- 5) "Alleged Victim" means the individual who is alleged to have been abused, neglected, or exploited by the alleged perpetrator, as reported. Also referred to as the "AV."
- 6) "Appeal" means:
 - a) The process through which the DAIL Commissioner, the Human Services Board, and/or the Vermont Supreme Court review a decision to recommend

substantiation of, or to substantiate, an alleged perpetrator for abusing, neglecting, or exploiting a vulnerable adult.

- 7) "Care" means subsistence, medical services, custodial services, personal care services, mental health services, or rehabilitative services, and includes assistance with activities of daily living or instrumental activities of daily living.
- 8) "Caregiver" means a person, agency, facility, or other organization with responsibility for *providing* subsistence or medical or other care to an adult who is an elder or has a disability, who has assumed the responsibility voluntarily, by contract, or by an order of the Court; or a person *providing* care, including medical care, custodial care, personal care, mental health services, rehabilitative services, or any other kind of care provided which is required because of another's age or disability.
- 9) "Commissioner" means the Commissioner of the Department of Disabilities, Aging, and Independent Living or their designee.
- 10) "Department" means the Department of Disabilities, Aging, and Independent Living, also referred to as "DAIL."
- 11) "Division" means the Division of Licensing and Protection, also referred to as "DLP."
- 12) "Exploitation" means:
 - a) 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;
 - b) 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;
 - c) The act of forcing or compelling a vulnerable adult against their will to perform services for the profit or advantage of another; or
 - d) 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.

Note: A report of exploitation cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996). This requirement, however, does not apply to allegations under subsection d) above.

- 13) "Expungement" means the removal of an individual's name from the Adult Abuse Registry.

- 14) "Field Screen" means an extension of the screening process where an APS Investigator gathers additional information in order to determine if an investigation should be opened.
- 15) "Intake" means the act of gathering information from a reporter or other individuals with information pertaining to a report for the purpose of making a screening decision.
- 16) "Investigation" means an investigation conducted by an APS Investigator for the purpose of determining if a vulnerable adult was abused, neglected, or exploited and which complies with the requirements set forth in 33 V.S.A. § 6906(b).
- 17) "Investigative Summary" means the document that summarizes the investigation conducted by an APS Investigator, to include a recommendation for substantiation or unsubstantiation for the alleged perpetrator.
- 18) "Investigator" means an APS Investigator who investigates allegations of the abuse, neglect, or exploitation of a vulnerable adult.
- 19) "Neglect" means purposeful or reckless failure or omission by a caregiver to:
 - a) Provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or their representative, or an advance directive, as defined in 18 V.S.A. §9701;
 - b) Make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect, or exploitation by others;
 - c) 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 their representative, or advance directive, as defined in 18 V.S.A. §9701; or
 - d) 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.

Note: A report of neglect cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996).

Note: When considering the definition of neglect, neglect:

- May include a mandatory reporter's willful failure to report when they know of or have received information about or reasonably suspect abuse, neglect, or exploitation of a vulnerable adult, but only when the mandatory reporter is also a caregiver.

- May be repeated conduct or a single incident which has resulted in or could be expected to result in physical or psychological harm, as a result of a), b), c) or d) of this subdivision.

Note: When considering substantiation for neglect:

- The APS Investigator will consider whether the alleged perpetrator was acting in their role as caregiver of the vulnerable adult at the time of the alleged misconduct. Caregivers who assist vulnerable adults with supported decision making, where the vulnerable adult has the authority to make a decision about their actions or inactions, will not be considered to have acted purposefully or recklessly if the vulnerable adult ignores the advice of the caregiver.
- 20) “Protective Services” means actions taken to safeguard a vulnerable adult to prevent future abuse, neglect, or exploitation.
 - 21) “Purposeful” means it is a person’s intent or desire to engage in or refrain from engaging in specific conduct to cause or bring about specific harm.
 - 22) “Reasonable Effort” includes those actions that an ordinary person in the same or similar circumstances would take, in accordance with his authority, to protect a vulnerable adult from abuse, neglect, or exploitation.
 - 23) “Reasonably Suspect” means that an ordinary person under the same or similar circumstances would be of the opinion that a vulnerable adult may have been abused, neglected, or exploited.
 - 24) “Reckless” means acting without regard to the probable or possible injurious consequences of their actions, or, foreseeing such consequences, consciously ignoring a known, substantial and unjustifiable risk that their conduct would cause that result. To be reckless, the person’s disregard of the risk, when considered in light of the nature and purpose of their conduct, and the circumstances known to them, must have been a gross deviation from how a law-abiding person would have acted in the same situation.
 - 25) “Recommendation for Substantiation” means that an investigation has been conducted and that the APS Investigator has concluded that accurate and reliable information discovered in the course of the investigation would lead a reasonable person to believe that the alleged perpetrator abused, neglected, or exploited the vulnerable adult.
 - 26) “Referral” means that APS staff has either forwarded information to another service provider to assist a vulnerable adult or has recommended to the vulnerable adult or reporter that they seek services from another service provider. A referral is not a deferral, meaning that APS is still bound to meet its statutory obligation to investigate allegations of the abuse, neglect, and exploitation of vulnerable adults even if they make referrals to other organizations.

- 27) "Report" means the statements provided to APS from a Reporter alleging that a vulnerable adult has been abused, neglected, or exploited. This is not the same "report" described at 33 V.S.A. §6906(c); that "report" is the "Investigative Summary" described above.
- 28) "Reporter" means the person or persons who has submitted a report to APS.
- 29) "Substantiated" means that a Recommendation for Substantiation has been accepted, either because the Alleged Perpetrator did not appeal the recommendation or because their appeal or appeals were denied.
- 30) "Survey and Certification" means the State Survey Agency responsible for licensing and surveying healthcare organizations which, like APS, is housed within DLP.
- 31) "Unsubstantiated" means that an investigation has been conducted and the APS Investigator has concluded there is a lack of accurate and reliable information to lead a reasonable person to believe that the alleged perpetrator abused, neglected, or exploited the vulnerable adult.
- 32) "Vulnerable adult" means any person 18 years of age or older who meets at least one of the following conditions.
- a) Is a resident of a facility required to be licensed under 33 V.S.A. Chapter 71.
 - b) Is a resident of a psychiatric hospital or a psychiatric unit of a hospital.
 - c) Has been receiving personal care services for more than one month from a home health agency certified by the Vermont Department of Health or from a person or organization that offers, provides, or arranges for personal care.
 - d) Regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, mental condition, or physical, psychiatric, or developmental disability:
 - i. That results in some impairment of the individual's ability to provide for their own care without assistance, including the provision of food, shelter, clothing, health care, supervision, or management of finances; or
 - ii. Because of the disability or infirmity, the individual has an impaired ability to protect themselves from abuse, neglect, or exploitation.