

To: The House Human Services Committee

From: The Vermont Association of Hospitals and Health Systems, Vermont Health Care Association, Vermont Medical Society, VNAs of Vermont, Vermont Association of Adult Days

Date: February 10, 2023

Re: Joint Comments Regarding H. 171

**1. (Page:Line) 2:19 – 3:2, and 8:17-20 - § 6902(1)(A), and (20)(A) Definitions Abuse and Neglect**

- Expands the definition of Abuse to include . . . “any treatment administered purposefully, knowingly, recklessly, or **negligently** that places the life, health, or welfare of a vulnerable adult in jeopardy and is likely to result in impairment of health to the vulnerable adult.”
- Abuse includes various categories such as (A) treatment, (B) conduct, (D) behavior. Abuse related to “treatment” is the only category that is expanded to include negligence whereas the other categories remain limited to purposefully, knowingly, recklessly.
- Expands the definition of Neglect to include “negligent failure to . . . carry out a plan of care.
- By adding “negligently” the bill dramatically expands the scope of mandatory reports to include unintentional mistakes by a caregiver such as a missed dose of medication, or a fall.

**Propose:** removing “negligent” and “negligently” from the definitions

**2. 2:19 - § 6902(1)(A) Definition of Abuse – “treatment”**

- The proposed change regarding treatment adds the word “administered” which could be interpreted to mean, and be potentially limited to, the administration of medical treatment.

**Propose:** “Abuse” means (A) Any **mistreatment administered that** purposefully, knowingly, recklessly, or **negligently that** places the life, health, welfare of a vulnerable adult in jeopardy . . .”

**3. 4:12 - § 6902(1)(G) Definitions Abuse – denying or withholding care**

- The new language regarding the “denial or withholding of necessary medication, care, durable medical equipment, or treatment” could be interpreted to include appropriate denials of therapeutic interventions such as where the medication or device is not

available, or where the patient or guardian believes that the intervention is necessary but the prescriber believes that the medication or device is not medically appropriate.

**Propose:** Narrow abuse to include only wrongful denials of treatment.

(G) **Wrongful** denial or withholding of necessary medication, care, durable medical equipment, or treatment.

#### 4. 14:17 - §6903(a) – Reporting standard

**Propose:** The reporting standard should be harmonized with the child abuse reporting standard to avoid confusion and reduce unnecessary reports.

- The child reporting standard at 33 V.S.A. §4913(c) states that “Any mandatory reporter who reasonably suspects abuse or neglect of a child shall report . . .”
- The vulnerable adult reporting standard at 33 V.S.A. §6903(a) states that “Any of the following . . . who knows of or has received information of, abuse, neglect, or exploitation of a vulnerable adult or who has reason to suspect that any vulnerable adult has been abused, neglected, or exploited shall report . . .”
- There is no rationale for the two statutes, which generally serve the same interest, to have such inconsistent language.
- The phrase “received information of abuse” has been problematic because it causes reporters to report instances where they have received information that is not credible, accurate, or realistic. For example, a mandatory reporter is obligated to report information of abuse even when the information is objectively false because the plain language of the statute does not allow the reporter any discretion when they receive of abuse even where such information is objectively false or inaccurate. Conversely, the child abuse statute allows a reporter to disregard false and inaccurate information when they are determining whether they have a good faith reason to suspect abuse.

#### 5. 14:19 - §6903(a) – Reporting

- The bill seeks to change the reporting process by eliminating the option for a mandatory reporter to have someone report on their behalf. The bill strikes the phrase “**or cause a report to be made.**”
  - The ability to delegate the reporting process is important in numerous instances where the report may be more efficient, complete, clear, accurate, and/or timely if a single individual can satisfy the reporting obligation on behalf of other people.
  - For example, where multiple staff in an emergency department receive the same information, the change in the language would require each individual to make a report, as opposed to assigning the reporting task to the person who is in the best position to report such as a supervisor who can identify, and/or gather information from multiple witnesses. This can also be a problem when an individual is

admitted to an inpatient unit from an emergency department, and additional individuals receive the same information regarding abuse or neglect that has already been reported.

- The elimination of the “or cause a report to be made” language created a problem when a similar change was made by Act 60 of 2015 when the child abuse statute was changed. Act 60 struck the same “cause a report to be made” language from 33 V.S.A. §4913(c). The change in Act 60 created confusion where multiple people received the same information regarding abuse or neglect. After multiple conversations, DCF eventually addressed the problem by providing informal guidance, which appears on the [DCF website](#). However, the guidance, which allows a single person to submit a on behalf of multiple reporters, is not clearly consistent with the legislation, which requires each person to make a report. The DCF FAQ states that where there are multiple reporters “we strongly recommend that you report as a group, by phone or in writing.” Since reports cannot be made on someone’s behalf, in an emergency department, a group of reporters would need to stop providing patient care to simultaneously participate in a phone call so that each individual satisfies their reporting obligation. DCF also advises that individuals report as a group in writing. However, since only one person can actually submit a report in writing, the other reporters would not be complying with the requirement because they would be **causing a report to be made** as opposed to individually reporting.

**Propose:** Retain ability to “cause a report to be made”

#### **6. 16:16 – 17 - § 6903(a)(1) and (b)(4) – confidentiality of the reporter’s identity**

- The bill reduces the confidentiality of a broad category of reporters by allowing their identity to be disclosed to “other investigative bodies.”

**Propose:** To encourage reporting, a reporters’ identity should be protected from unnecessary disclosure to other entities by requiring the Department to determine that such disclosure is necessary to further the purposes of this subchapter (see §6906(a)(6) page 20 for interagency collaboration).

#### **7. 20:3-18 - §6906(a)(6) Interagency collaboration**

- The bill adds a provision that authorizes the Department to collaborate with other agencies to further the purposes of the statute. In the past, the Department has routinely referred reports to other divisions within the Department, and other agencies where the referral was unrelated to furthering the purpose of the statute, and often involved cases that the Department did not intend to investigate. The bill should include limiting language so that such referrals are limited to where it is necessary to protect vulnerable adults. The routine referral of cases may deter reporting and increase the risk of retaliation.

**Propose:**

(6) To the extent permitted by law, the Department may collaborate with law enforcement, healthcare, and service providers, and other departments and agencies in Vermont and other jurisdictions to evaluate the risk to the vulnerable adult and may enter into reciprocal agreements with law enforcement, other departments and agencies, and other jurisdictions to further the purpose of this subchapter. Information related to reports are confidential, **and in no event shall the Department disclose information to other divisions, departments, or agencies unless such disclosure is necessary to further the express purpose of this subchapter.**

**8. 42:6-7 - §6913(b) Investigations of the failure to report**

- The first sentence regarding the investigation of a mandatory reporter who fails to report is ambiguous, and potentially unnecessary where it states “Allegations that a mandated reporter has failed to make a required report *shall be investigated under neglect.*”

**Propose:** It would be less confusing if the provision merely states that the Department may investigate the failure to report.

**(b) The Department shall investigate allegations that a mandated reporter has failed to make a required report when it appears that an investigation is appropriate.**