

TO: The House Human Services Committee  
FROM: Joe Nusbaum, Director of DLP and Stuart G. Schurr, General Counsel, DAIL  
DATE: February 28, 2023 *SGS*  
SUBJECT: H.171; Definitions of Abuse and Neglect

The Department of Disabilities, Aging, and Independent Living (“Department”) wishes to respond to the written comments recently submitted to the Committee by The Vermont Association of Hospitals and Health Systems, Vermont Health Care Association, Vermont Medical Society, VNAs of Vermont, Vermont Association of Adult Days, and the American Nurses Association – Vermont (collectively, “stakeholders”).

The Department finds that including “negligently” to the definitions of Abuse and Neglect is a critical component of the definitions that maintains an important level of care, in alignment with other States’ definitions of Abuse and Neglect. The Department disagrees with the stakeholders’ suggestion that including *negligently* “...expands the scope of mandatory reports to include mistakes or errors that occur within a medical setting...”. The Department agrees with other legal findings that *negligence* is more than a simple mistake made by a professional. For a mistake to be deemed negligent, it must be shown that a standard of care provided fell below what is expected of a medical professional. The Department and advocates believe this inclusion of negligence is a baseline standard that should be maintained towards protecting vulnerable adults.

In current statute (Title 33, Chapter 69), the level of negligence is not accounted for in the definitions of Abuse and Neglect, which has resulted in several reports of maltreatment to APS remaining unsubstantiated that a reasonable person would recognize as abuse or neglect. The Department has found that virtually any medical action or inaction taken where a caregiver states that they “forgot” the requirements of a plan of care or safety requirements of their profession cannot be substantiated, because the level of intent is not commensurate with the existing statutory definitions. To cite one recent example, a professional medical ventilator technician hired to clean ventilators in-use by vulnerable adults turned off an operating ventilator to clean it, and failed to turn it back on, resulting in the death of the vulnerable adult. APS recommended this case for substantiation and the recommendations was overturned on appeal because the actions were deemed “negligent”, which is not the current mens rea identified in statute. The Department agrees with other advocates in their testimony (Community of Vermont Elders, Vermont Legal Aid, et al) that *negligence* needs to remain in the bill’s definitions as a baseline for all professionals and caregivers that provide medical treatments to vulnerable adults.

The Department believes that the stakeholders’ assertion that deeming an act maltreatment could have a chilling effect on medical professionals reporting such maltreatment could theoretically apply to any form of maltreatment at any mens rea level for the same reasons and is not an appropriate justification for APS not to investigate those cases of maltreatment. Similarly, the Department disagrees with the argument that because other entities (Board of Medical Practice, Office of Professional Regulation) already regulate these professions, APS cannot investigate reports of maltreatment of these professionals. Multiple entities look at multiple sectors with different purposes, and no entity other than APS maintains a registry of abuse for professionals that are deemed unfit to work with vulnerable adults.

In response to the claim that “it is unclear APS has the expertise to evaluate medical errors,” again, this suggestion would apply to any level of medical maltreatment and is not grounds for APS to not investigate. Both the existing and proposed statutory language maintains a “reasonable person” standard to evaluate maltreatment. This reasonable person standard also serves to protect medical professionals if their actions or inactions do not constitute abuse or neglect, such as (one recent example offered by this stakeholder group to the Department) resulting bruising by imperfect placement of an intravenous device.

Finally, in response to the suggestion that has been brought forward to this Committee multiple times of “...no provider organizations representing mandatory reporters being involved in the development of the concepts of the bill...”, the Department has reported on the development of proposed statutory language annually for the past five years and has held monthly public meetings for the past three years where all stakeholders were invited and encouraged to attend. Concurrent efforts by partnering groups, such as the Self-Neglect Working Group and the Vulnerable Adult Fatality Review Team, had members from this group of stakeholders actively participate in meetings where the APS proposed changes were reviewed for comment and alignment with those groups’ efforts over the course of the last two years. The Department has welcomed and collaborated with all interested parties over the course of the development of this bill’s proposed language.