



TO: Sen. Ginny Lyons
Senate Committee on Health and Welfare

FROM: Betsy Hassan, DNP, RN, NEA-BC, CPPS
American Nurses Association – Vermont

RE: Written Testimony Regarding H. 171, An act relating to adult protective services

The American Nurses Association – Vermont strongly supports the need to report abuse and neglect of vulnerable adults. Nurses appreciate the importance of their role as mandatory reporters. However, H. 171 dramatically expands the scope of mandatory reporting that could negatively impact every nurse in the state as either a reporter or a person subject to a report.

The expansion of mandatory reporting, to include “negligence” within the definitions of abuse and neglect including the “negligent failure or omission by a caregiver,” “to carry out a plan of care” will adversely affect all nurses. Although APS testified that the negligent standard is a common standard in neighboring states, **Tables 1.1 to 1.4** shows several factors narrowing the application of the negligence standard that are not included in H.171.

Additionally, the definition of a vulnerable adult could encompass almost every adult admitted as an inpatient in a hospital who is temporarily “disabled” and requires “assistance” with “personal care,” or who have “some impairment” in their ability to protect themselves from abuse or neglect. These expansive definitions will confront nurses in their everyday work as they assume the care of a patient from a co-worker who missed a scheduled dose of medication, or scheduled treatment. A busy nurse, who is a mandatory reporter, has no ability to gather the facts to determine if the missed dose was due to professional negligence, or caused by a medical record systems error, or was due to a need to prioritize other patients. They will only know that they have an obligation to report their co-worker’s failure to follow a plan of care.

Neither a busy staff nurse, nor a layperson investigator from Adult Protective Services (APS) have the ability to conduct a root cause analysis to determine if the missed dose was the result of professional negligence, that a reasonably prudent nurse could have avoided, or that it was caused by a flawed process, short staffing, or the needs of other patients. A root cause analysis, and an assessment of professional negligence takes time (longer than the two business days), and requires transparency, and expertise to determine if a reasonably prudent health care provider could, or should have avoided the deviation from a plan of care. Health care organizations are required to have quality assurance improvement programs that enhance patient safety through the development of a Just Culture that require input from all relevant staff to identify the systems issues that cause most adverse events. In addition, there is extensive oversight of adverse events that includes reporting serious adverse events as part of the Patient Safety Surveillance and Improvement System to the Vermont Program for Quality in Health Care, the rigorous and frequent federal regulatory reviews performed by licensed nurses on behalf of CMS, and for licensing matters, the expertise of the Board of Nursing, and their knowledge of nursing practice and the provision of health care.

It should be noted that a culture of reporting potential and real adverse events is a health care industry best practice established in the 2000 seminal report from the Institute of Medicine, *To Err Is Human: Building a Safer Health System*. It is an essential component of building a culture that does not demonize and punish health care workers for events created by a failing system – **we want our staff to tell us the barriers in their work to patient safety**. A just culture,

promotes psychological safety for providers to report their mistakes and potential errors into a system that provides expert review and analysis to determine the contributing factors to mistakes. The improvement framework does not punish the individuals, but addresses the causes within the system that led to the actions of the error – and to make sure it does not happen again.¹

Thorough investigation through a root cause analysis can take days to weeks to fully appreciate the contributing factors or causes of an adverse event. Currently, we use this reporting system to make reports to APS when there is any reason to suspect deliberate or reckless behavior. Nurses and health care providers under investigation for potential or suspected abuse are typically removed from the care environment until the investigation is completed.

In my time as a Chief Nursing Officer/Vice President of Patient Care Services of a Vermont community hospital, the Patient Safety Department received over 6,000 event reports annually. A significant portion of these could be attributed to omissions of medications or medication errors. With the expansion of abuse to include ‘negligence,’ many of these 6,000 adverse events would be reported to APS for review, thus pointing the finger providers for failures in the system, and removing them from the workforce until APS completes the investigation.

Lowering the standard of abuse and neglect from a nurse or person that is **acting with purpose, knowledge and reckless behavior** to a nurse or person that makes a mistake that could have many contributing factors, not only adds fear, and will deter transparent reporting but will overburden agencies who should focus on investigations of perpetrators who engage in purposeful and reckless abuse and neglect of vulnerable adults in less regulated settings.

The ANA-Vermont urges the Legislature to be cautious in considering the proposed expansion of the abuse and neglect to include negligence, especially for highly regulated health care workers where such a change could have significant systemic impacts on the health care workforce, employers, professionals, and patients.

ANA-Vermont requests the following changes to H. 171:

Sec. 1

Page 2, line 9

- Strike the word “negligently” from the definition of abuse.

Page 8, line 9

- Strike the word “negligent” from the definition of neglect.

Page 13, lines 8-9

- Revise the definition of vulnerable adult to include “. . . has a physical, mental, or developmental disability, not caused by an acute illness or injury, infirmities as a result of . . .”

¹ [Why Accountability Sharing in Health Care Organizational Cultures Means Patients Are Probably Safer | Journal of Ethics | American Medical Association \(ama-assn.org\)](#)
[The Differences Between Human Error, At-Risk Behavior, and Reckless Behavior Are Key to a Just Culture | Institute For Safe Medication Practices \(ismp.org\)](#)
[just_culture.pdf \(nursingworld.org\)](#)
[NLN Promotes a Just Culture Approach with Health Care Errors](#)

Review of neighboring states mandatory reporting standards

The tables below provide a comparison of abuse and neglect laws of neighboring states that APS has referred to.

In relation to neighboring states, the definitions of abuse in both Massachusetts and New York specifically exclude accidental injuries from the definition of abuse. APS seeks to add “negligent” to the definitions of abuse or neglect, which would include accidental medical errors. Also, the New York definition of neglect applies to the **willful failure** by a caregiver to fulfill care-taking responsibilities. Which is almost identical to the current Vermont definition of neglect as the purposeful or reckless failure by a caregiver. Massachusetts and New York do not have a strict liability abuse and neglect standard.

In relation to New Hampshire, the abuse and neglect law does not include a culpability standard, but in applying the statute the New Hampshire Supreme Court did not view the statute as a strict liability law but applied a knowingly standard as to whether the perpetrator knew that that their conduct would result in neglect.

Table 1.1 Culpability

State	Culpability
Vermont	<p>Abuse:</p> <ul style="list-style-type: none"> intentional or reckless disregard that conduct is likely to cause harm, intentionally subjecting to behavior <u>Any medical treatment that purposely, knowingly, recklessly, or negligently</u> <p>Neglect:</p> <ul style="list-style-type: none"> Purposeful, or reckless failure <u>Purposeful, reckless, or negligent failure</u>
New Hampshire	<p>Emotional abuse</p> <ul style="list-style-type: none"> Misuse of power or authority <p>Physical abuse</p> <ul style="list-style-type: none"> Physical force that results or could result in injury <p>Neglect</p> <ul style="list-style-type: none"> Act of omission which result of could result deprivation of essential services or supports <p>In State v. Saintil, 172 N.H. 110, 126 (2019) the NH Supreme Court applied “<i>knowingly</i>” to a neglect related violation of the statute, which means that person knows that their conduct will result in neglect.</p>
Massachusetts	<p>Abuse</p> <p>An intentional, reckless, or negligent act or omission that results in serious physical or emotional injury unless the injury was accidental</p> <p>[Neglect does not appear in the statute]</p>
New York	<p>Abuse</p> <ul style="list-style-type: none"> Non-accidental <p>Neglect</p> <ul style="list-style-type: none"> Willful failure

Table 1.2 Individuals protected by abuse and neglect statute

State	Individuals protected by abuse and neglect statute
Vermont	Several different categories including “impairment of ability to protect themselves.”
New Hampshire	Vulnerable adult physical, mental, or emotional ability such that they are unable manage personal affairs
Massachusetts	Elderly 60 or over or disabled
New York	Vulnerable adults who because of mental or physical impairments are unable to carry out activities of daily living.

Table 1.3: APS Jurisdiction by location of the victim

State	APS Jurisdiction by location of the victim
Vermont	APS: Any report of maltreatment of a vulnerable adult regardless of where victim resides.
New Hampshire	Bureau of Elderly and Adult Services: All reports related to vulnerable adults except where other state agencies would be investigating such as certified or licensed facility or residence <i>NH Code Admin R. He-E 701.04</i> Office of Long-Term Care Ombudsman: long-term care residents
Massachusetts	APS: Elderly - victim is 60 or over, and lives in the community Disabled victim – Disabled Persons Protection Commission investigates abuse and neglect of disabled adults between 18 and 59 who reside in any setting
New York	APS: Vulnerable adults who live in the community

Table 1.4: Agency that has jurisdiction for investigation of abuse and neglect in a facility

State	Agency that has jurisdiction for investigation of abuse and neglect in a facility.
Vermont	DAIL – APS and DAIL Licensing & Protection
New Hampshire	
Massachusetts	Licensing agency: Dept. of Health, Div. of Health Care Facility Licensure investigates abuse and neglect of patients in health care facilities including hospitals, long-term care, and home health agencies
New York	Licensing agency: Department of Health, Office of Health Sys. Mgmt. investigates abuse of nursing home residents.