

MEMORANDUM

TO: House Committee on Human Services

FROM: Joe Nusbaum, Division of Licensing & Protection Director, Department of Disabilities, Aging, and Independent Living (DAIL)

RE: Status of APS Operations under the 2023 amended 33 V.S.A. § 69

DATE: March 18, 2025

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Thank you for the opportunity to provide feedback on Adult Protective Services (APS) operations under the newly amended statute, passed by the Vermont Legislature and signed by the Governor in June of 2023. SFY24 marked the first full year the new APS statute has been in effect. The new statute updated the nearly half-century-old statute to center victims' rights and better serve Vermont's vulnerable adults. Additionally, the new statute created a new, bifurcated approach to APS reports that are screened-in for response from APS. Under the old statute, the only option for a screened-in report was an investigation. This was limiting in instances where a report did not immediately rise to the level of alleging statutory maltreatment or identifying statutory vulnerability. The new statute allows for differentiated responses to either investigate a screened-in report where maltreatment of a vulnerable adult is alleged, or to conduct a field assessment where those allegations may be absent in the report but there are still safety concerns or potential for unreported maltreatment.

This differentiated response of "investigations" and "assessments" has proven very successful in the first year, with assessments accounting for more than half of APS screened-in cases (424 assessments and 402 investigations). Assessments allow for an easier means to open an APS case, and an assessment will escalate to an investigation if evidence of maltreatment of a vulnerable adult is discovered during the assessment. Assessments also take the place of what was previously termed a "field screen" under the old statute and includes vulnerability screening as part of its standard function. Because of this change, past reported elements on "field screens" and other outdated statutory elements are no longer germane to this report. Those instances of outdated reporting elements are noted below.

Although, the new APS statute has brought about many positive changes in the service and protection of vulnerable adults in Vermont. DAIL recognizes that we still have work to do. DAIL has

previously testified to this Committee that the omission of caregiver negligence from APS' purview has left a significant gap in the protection of vulnerable adults in Vermont.

In May of 2024, the Federal Department of Health and Human Services' Administration for Community Living (ACL) released language for the first-ever federal APS rule. In August, 2024, DAIL's Division of Licensing & Protection Director Joe Nusbaum and Adult Protective Services (APS) Director John Gordon met with Federal Administration for Community Living leaders and state APS directors in Washington, DC, at HHS headquarters to discuss a national implementation plan for the new APS federal rule. At this national ACL meeting it was clear that Vermont's exemption of negligence from its APS statute is not in compliance with federal rule, which went into effect upon release in May of 2024. Though the federal rule is already in effect, State APS programs have until June of 2028 to come into full compliance. Failure to align to the federal rule in its entirety would likely result in loss of most, if not all, relevant federal funding.

DAIL has heard from Healthcare Providers and service partners that they are concerned about the requirement for providers to report, and for APS to subsequently investigate, caregiver negligence, anticipating a negative effect on an already strained workforce.

The Department is facilitating a series of meetings with representatives from the Vermont Healthcare Coalition, as well as victim advocates, to find a solution to address caregiver negligence in statute while minimizing the potential negative effects on the healthcare industry. The Department is looking forward to the opportunity to bring the results of these efforts to the Legislature next year, as we further prepare for necessary compliance by the 2028 deadline.

In conclusion, as we continue our work to provide protective services for vulnerable adult Vermonters, we are pleased to report that the new statute, with its new assessment services and victim-centered practices, have helped to provide better services and increased protections for vulnerable adults, helping to make Vermont a safer and healthier state for our older residents.