

OAPA

SC Code 1976 §43-35-5 et. seq.

CODE 1976 §43-35-5

Short Title

This chapter may be cited as the Omnibus Adult Protection Act.

CODE 1976 §43-35-10

Definitions

As used in this chapter:

- (1) “Abuse” means physical abuse or psychological abuse.
- (2) “Caregiver” means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
- (3) “Exploitation” means:
 - (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;
 - (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or
 - (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through

cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.

- (4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- (5) "Investigative entity" means the Long Term Care Ombudsman Program or the Adult Protective Services Program in the Department of Social Services.
- (6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.
- (7) "Occupational licensing board" means a health professional licensing board which is a state agency that licenses and regulates health care providers and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.
- (8) "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.
- (9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services,

securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

(10) “Psychological abuse” means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(11) “Vulnerable adult” means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

CODE 1976 §43-35-13

Nonmedical remedial treatment by spiritual means is not abuse or neglect of vulnerable adult

No vulnerable adult may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

CODE 1976 §43-35-15

Vulnerable Adults Investigations Unit; Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities

(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll-free number, which must be operated twenty-four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for

investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor to determine if further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.

- (B) The Long Term Care Ombudsman Program shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, and exploitation to the facilities or to the entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements. The Long Term Care Ombudsman Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.
- (C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for the investigation pursuant to this section. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services. The Adult Protective Services Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.
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CODE 1976 §43-35-20

Additional powers of investigative entities

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

CODE 1976 §43-35-25

Persons required to report abuse, neglect, or exploitation of adult; reporting methods

- (A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or mental retardation specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.
- (B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.
- (C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or the investigative entity to which the report is to be made.
- (D) A person required to report under this section must report the incident within twenty-four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:
- (1) the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;
 - (2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in Item (1); and
 - (3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

CODE 1976 §43-35-30

Photographing of visible trauma on abused adult

A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult who is the subject of a report. A person required to report under this chapter as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

CODE 1976 §43-35-35

Reporting deaths where abuse or neglect suspected

(A) A person required to report or investigate cases under this chapter who has reasonable suspicion to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation.

CODE 1976 §43-35-40

Initiation of investigation; reports of Vulnerable Adults Investigations Unit

Upon receiving a report, the investigative entity promptly shall initiate an investigation and within two working days of receiving the report must review the report for the purpose of reporting to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division those cases which indicate reasonable suspicion of criminal conduct. A report to the unit must be made within one working day of completing the review.

CODE 1976 §43-35-45

Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semi-annual re-evaluation; payment for services

(A) In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.

(B) At any time during or subsequent to an investigation where a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent to provide services cannot be obtained, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult. The family court may order ex parte that the vulnerable adult be taken into emergency protective custody without the consent of the vulnerable adult or the guardian or others exercising temporary or permanent control over the vulnerable adult, if the

court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult's life or physical safety. The court may also order emergency services or other relief as necessary to protect the vulnerable adult.

(C) Within ten days following the filing of a petition pursuant to this section the court must appoint a guardian ad litem and an attorney for the vulnerable adult; and within forty days of the petition being filed the court shall hold a hearing on the merits.

(D) Before the hearing on the merits the Adult Protective Services Program must conduct a comprehensive evaluation of the vulnerable adult. The evaluation must include, but is not limited to:

- (1) the vulnerable adult's current address and with whom the vulnerable adult is residing;
- (2) a list of all persons or agencies currently providing services to the vulnerable adult and the nature of these services;
- (3) a summary of services, if any, provided to the vulnerable adult by the Adult Protective Services Program;
- (4) if needed, a medical, psychological, social, vocational, or educational evaluation;
- (5) recommendations for protective services which would serve the best interests of the vulnerable adult; however, when these services are to be provided by another state agency, these recommendations must be developed in consultation with the other agency.

A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by this subsection must be paid by the Adult Protective Services Program which must seek reimbursement for these evaluations, where possible.

(E) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

- (1) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and
- (2) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect or exploitation.

- (F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.
- (G) Any interested person, on behalf of the vulnerable adult, may file a motion for review of the court order issued pursuant to this section.
- (H) Following a court order from the merits hearing to provide protective services to a vulnerable adult, the Adult Protective Services Program, at least every six months, must evaluate the vulnerable adult and submit a written report to the court, and any other parties required by the court, regarding the vulnerable adult's need for continued protective services as defined in this chapter.
- (I) If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.
- (J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable adult's financial records be made available on a certain day and time for inspection by the parties.
- (K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult that have not been reimbursed at the time of the vulnerable adult's death become a claim against the estate of the vulnerable adult.
- (L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.
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CODE 1976 §43-35-50

Abrogation of privilege for certain communications

The privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

CODE 1976 §43-35-55

Protective custody by law enforcement officer; procedure; notification of protective services program; subsequent proceedings

- (A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:
- (1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;
 - (2) the vulnerable adult or caregiver does not consent to protective custody; and
 - (3) there is not time to apply for a court order.
- (B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.
- (C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

- (D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:
- (1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;
 - (2) the address of the place from which the vulnerable adult was removed by the officer;
 - (3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;
 - (4) the address of the place to which the vulnerable adult was transported by the officer;
 - (5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.
- (E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).
- (F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.
- (G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

CODE 1976 §43-35-60**Sharing of report information by investigative entities; public confidentiality**

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

CODE 1976 §43-35-65**Notices to be displayed at facilities**

A facility as defined in Section 43-35-10 shall prominently display notices stating the duties of its personnel under this chapter and contact information, the text of which must be provided by the Long Term Care Ombudsman Program in consultation with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

CODE 1976 §43-35-70**Reports to occupational licensing boards**

The investigative entity shall report an alleged incident of abuse, neglect, or exploitation against a health care professional to the occupational licensing board by whom that person is licensed.

CODE 1976 §43-35-75**Immunity of person making report or participating in investigation in good faith**

- (A) A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.

- (B) It is against the public policy of South Carolina to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under this chapter.

CODE 1976 §43-35-80

Action by Attorney General against person or facility for failure to exercise reasonable care; fine

- (A) Notwithstanding any regulatory or administrative penalty that may be assessed and in addition to a private civil cause of action that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, or exploitation under this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program or the Vulnerable Adults Investigations Unit, may bring an action against a person who fails through pattern or practice to exercise reasonable care in hiring, training, or supervising facility personnel or in staffing or operating a facility, and this failure results in the commission of abuse, neglect, exploitation, or any other crime against a vulnerable adult in a facility. A person or facility which verifies good standing of the employee with the appropriate licensure or accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring.
- (B) In granting relief under this section, the court may assess a civil fine of not more than thirty thousand dollars or order injunctive relief, or both, and may order other relief as the court considers appropriate.
- (C) Nothing in this section may be construed to create a private cause of action against one who fails through pattern or practice to exercise reasonable care as provided for in subsection (A).
- (D) For the purposes of this section 'person' means any natural person, corporation, joint venture, partnership, unincorporated association or other business entity.
- (E) To the extent fines collected pursuant to this section exceed the cost of litigation, these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.
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CODE 1976 §43-35-85

Penalties

- (A) A person required to report under this chapter who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report under this chapter who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.
- (B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.
- (C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.
- (D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.
- (E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.
- (F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.
- (G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

CODE 1976 §43-35-90

Article not to affect authority of agencies

This article is not intended to affect in any way the authority of any agency to act under state or federal law.