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CHAPTER 35

Adult Protection

ARTICLE 1

Duties and Procedures of Investigative Entities

SECTION 43-35-5. Short title.

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

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(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 and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. 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.

(12) “Operated facility” means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) “Contracted facility” means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2004 Act No. 301, Section 1, eff September 8, 2004; 2006 Act No. 301, Section 2, eff May 23, 2006; 2010 Act No. 223, Section Section 1 to 3, eff June 7, 2010.

SECTION 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.

HISTORY: 1995 Act No. 87, Section 1, eff June 12, 1995.

SECTION 43-35-15. Vulnerable Adults Investigations Unit; Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities; referral of reports.

(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 when 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) Except as otherwise provided in subsection (D), 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.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall refer reports of abuse, neglect, and exploitation involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 3, eff May 23, 2006; 2010 Act No. 223, Section 4, eff June 7, 2010; 2012 Act No. 189, Section 1, eff June 7, 2012.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 4, eff May 23, 2006.

SECTION 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 health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 5, eff May 23, 2006.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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 pursuant to Section 43-35-520.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 5, eff June 7, 2010.

SECTION 43-35-40. Responsibilities when a report is received; initiation of investigation; reports to local law enforcement or Vulnerable Adults Investigations Unit.

Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services promptly shall:

(1) initiate an investigation; or

(2) review the report within two working days for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to local law enforcement or SLED must be made within one working day of completing the review.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 6, eff June 7, 2010.

SECTION 43-35-45. Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semiannual reevaluation; 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 also may 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 shall appoint a guardian ad litem and an attorney for the vulnerable adult and an attorney for a lay guardian ad litem. A party may move to have the guardian ad litem relieved of his or her services if the party demonstrates that the vulnerable adult has the capacity to assist counsel in the protective services case. Within forty days of the filing of a petition, 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2014 Act No. 162 (S.764), Section 2, eff May 16, 2014.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1994 Act No. 393, Section 1, May 17, 1994.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 7, eff May 23, 2006.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 8, eff May 23, 2006.

SECTION 43-35-85. Penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report 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.

(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.

(I) 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1999 Act No. 56, Section 1, eff June 1, 1999; 2010 Act No. 223, Section 7, eff June 7, 2010.

SECTION 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.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 2

Vulnerable Adult Guardian ad Litem Program

SECTION 43-35-200. Vulnerable Adult Guardian ad Litem Program.

(A) There is created the Vulnerable Adult Guardian ad Litem Program in the Office on Aging to serve as a statewide system to recruit, train, and supervise volunteers to serve as court-appointed guardians ad litem for vulnerable adults in abuse, neglect, and exploitation proceedings within the family court, pursuant to Section 43-35-45(C).

(B) The Vulnerable Adult Guardian ad Litem Program shall develop policies and procedures to administer the program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-210. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article, "guardian ad litem" means an individual appointed by the family court pursuant to Section 43-35-45 to advocate for the best interests of a vulnerable adult.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-220. Duties and responsibilities of guardian ad litem; assessments.

(A) The duties and responsibilities of a guardian ad litem include, but are not limited to:

(1) representing the best interests of the vulnerable adult by advocating for the welfare and rights of a vulnerable adult involved in an abuse, neglect, or exploitation proceeding;

(2) conducting an independent, balanced, and impartial assessment of the facts and the needs of the vulnerable adult relevant to his or her situation;

(3) maintaining accurate, written case records, including case notes, which are a guardian ad litem's work product and not subject to subpoena;

(4) providing the family court, and all parties, with written reports including, but not limited to, a comprehensive final report regarding the best interests of the vulnerable adult. The final report must be consistent with the rules of evidence and the rules of the court, and must include, but is not limited to, evaluation and assessment of the issues brought before the court, the wishes of the vulnerable adult, and recommendations for the case plan and the disposition of the case; and

(5) attending all court hearings to protect and promote the best interests of the vulnerable adult until formally relieved of the responsibility by the family court. The guardian ad litem is authorized through counsel to introduce, examine, and cross-examine witnesses in any proceeding involving the vulnerable adult, participate in the proceedings to any degree necessary to represent the vulnerable adult adequately, participate on a multidisciplinary evaluation team concerning the vulnerable adult, and make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the vulnerable adult.

(B) The assessment conducted by the guardian ad litem pursuant to subsection (A) must include, but is not limited to:

(1) obtaining and reviewing relevant documents including, but not limited to, the vulnerable adult's medical records; records from the place of residence if the vulnerable adult is living in a facility or other institution; records related to assets and debts of the vulnerable adult in cases of alleged exploitation; and records from the Department of Social Services, Department of Mental Health, Department of Disabilities and Special Needs, or other public entities providing services to the vulnerable adult;

(2) meeting with and observing the vulnerable adult on at least one occasion;

(3) visiting the home setting if appropriate;

(4) interviewing family, caregivers, medical providers, law enforcement, and others with knowledge relevant to the case;

(5) exploring available resources within the family and community to meet the needs of the vulnerable adult;

(6) obtaining the criminal history of a party if determined necessary; and

(7) determining the wishes of the vulnerable adult and informing the court of these wishes.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-230. Appointment of guardian ad litem; continuing legal education.

(A) A guardian ad litem may be either an attorney or a layperson. To be appointed as a guardian ad litem pursuant to Section 43-35-45(C) an individual:

(1) must be twenty-one years of age or older;

(2) shall possess a high school diploma or its equivalent;

(3) shall have completed the minimum hours of continuing education for initial qualification as required by the Vulnerable Adult Guardian ad Litem Program; and

(4) shall have observed two child protective services or adult protective services custody merit hearings before serving as a guardian ad litem. A lay guardian ad litem shall retain a certificate showing that observation of these hearings has been completed. This certificate, which must be on a form approved by court administration, must state the names and dates of the cases and the judges involved and must be attested to by the presiding judge.

(B) An attorney guardian ad litem annually shall complete a minimum of six hours of family or elder law continuing legal education credits; however, this requirement may be waived by the court.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-240. Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings; criminal background checks.

(A) An individual may not be appointed as a guardian ad litem for a vulnerable adult in an abuse, neglect, or exploitation proceeding who:

(1) has been convicted of a crime enumerated in Chapter 3, Title 16, Offenses Against the Person; in Chapter 15, Title 16, Offenses Against Morality and Decency; in Article 3, Chapter 53, Title 44, Narcotics and Controlled Substances; in Section 43-35-85, Omnibus Adult Protection Act; in Chapter 25, Title 16, Criminal Domestic Violence; or Section 16-17-490, Contributing to the Delinquency of a Minor; or

(2) is or has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect, the Sex Offender Registry, or listed as "not in good standing" on the Nurse Aide Registry.

(B) A criminal background check must be conducted for each volunteer guardian ad litem as required by the Vulnerable Adult Guardian ad Litem Program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-250. Charge of guardian ad litem; petition for removal.

(A) A guardian ad litem is charged in general with representing the vulnerable adult's best interests. After appointment by the family court in a case involving an abused, neglected, or exploited vulnerable adult, the parties to the action and the court shall notify the guardian ad litem of all court hearings and proceedings. The obligation of the guardian ad litem to the court is a continuing obligation and continues until formally relieved by the court.

(B) The Vulnerable Adult Guardian ad Litem Program may intervene in a vulnerable adult abuse, neglect, or exploitation proceeding in order to petition the court to relieve the guardian ad litem from appointment for the following reasons:

(1) incapacity;

(2) conflict of interest;

(3) misconduct;

(4) persistent neglect of duties;

(5) incompetence; or

(6) knowing and wilful violation of the Vulnerable Adult Guardian ad Litem Program policies and procedures that affect the health, safety, or welfare of the vulnerable adult.

(C) The court shall determine what is in the best interest of the vulnerable adult when ruling on a petition for removal of the guardian ad litem.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-260. Access to information.

The Department of Social Services shall make available to the guardian ad litem all reports made and information collected relating to the vulnerable adult. Appropriate medical and dental care providers shall provide a guardian ad litem access to information upon request of the guardian ad litem and upon proof of appointment as the guardian ad litem for the vulnerable adult. Records must be made available to the guardian ad litem by any agency or any individual providing services to the vulnerable adult and financial

records of the vulnerable adult including, but not limited to, state and federal tax records, banking and other financial institution records, and public benefits records.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-270. Confidentiality of reports and information.

(A) All reports and information collected pursuant to this article maintained by the Vulnerable Adult Guardian ad Litem Program or by a guardian ad litem are confidential. These records must be maintained and destroyed in accordance with program policy.

(B) The Director of the Vulnerable Adult Guardian ad Litem Program, or the director's designee, may disclose to the media information contained in the vulnerable adult protective services records, if disclosure is limited to discussion of the program's activities in handling the case. The program may incorporate into its discussion of the handling of the case any information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, and other public judicial proceedings. For the purposes of this subsection, information is considered placed in the public domain if it has been reported in the news media, is contained in public records of a law enforcement agency, is contained in public records of the court, or has been the subject of testimony in a public judicial proceeding.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-280. Civil liability.

After participating in the Vulnerable Adult Guardian ad Litem Program training, an individual who is appointed to serve as a guardian ad litem and who serves without compensation is not liable for any civil damages for any personal injury as a result of any act or omission by the guardian ad litem in the discharge of the duties and responsibilities of a guardian ad litem if the guardian ad litem acts in good faith and is not guilty of gross negligence.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-290. Funding.

The General Assembly shall provide the funds necessary for the Vulnerable Adult Guardian ad Litem Program to carry out the provisions of this article.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

ARTICLE 3

Adult Protection Coordinating Council

SECTION 43-35-310. Council created; membership; filling vacancies.

(A) There is created the Adult Protection Coordinating Council under the auspices of the South Carolina Department of Health and Human Services and is comprised of:

(1) one member from the institutional care service provision system who is a consumer or a family member of a consumer of that system and one member from the home and community-based service

provision system who is a consumer or a family member of a consumer of that system, both of whom must be appointed by the council for terms of two years; and

(2) these members who shall serve ex officio:

(a) Attorney General or a designee;

(b) Office on Aging, Executive Director, or a designee;

(c) Criminal Justice Academy, Executive Director, or a designee;

(d) South Carolina Department of Health and Environmental Control, Commissioner, or a designee;

(e) State Department of Mental Health, Director, or a designee;

(f) South Carolina Department of Disabilities and Special Needs, Director, or a designee;

(g) Adult Protective Services Program, Director, or a designee;

(h) South Carolina Department of Health and Human Services, Executive Director, or a designee;

(i) Police Chiefs' Association, President, or a designee;

(j) South Carolina Commission on Prosecution Coordination, Executive Director, or a designee;

(k) Protection and Advocacy for People with Disabilities, Inc., Executive Director, or a designee;

(l) South Carolina Sheriff's Association, Executive Director, or a designee;

(m) South Carolina Law Enforcement Division, Chief, or a designee;

(n) Long Term Care Ombudsman or a designee;

(o) South Carolina Medical Association, Executive Director, or a designee;

(p) South Carolina Health Care Association, Executive Director, or a designee;

(q) South Carolina Home Care Association, Executive Director, or a designee;

(r) South Carolina Department of Labor, Licensing and Regulation, Director, or a designee;

(s) executive director or president of a provider association for home and community-based services selected by the members of the council for terms of two years, or a designee;

(t) South Carolina Court Administration, Executive Director, or a designee;

(u) executive director or president of a residential care facility organization selected by the members of council for terms of two years, or a designee.

(B) Vacancies on the council must be filled in the same manner as the initial appointment.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 1, eff June 18, 2012.

SECTION 43-35-320. Responsibilities of council.

The Adult Protection Coordinating Council shall coordinate the planning and implementation efforts of the entities involved in the adult protection system. Members shall facilitate problem resolution and develop action plans to overcome problems identified within the system. The council shall develop methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation. The council shall remain abreast of new trends in adult protection from national clearinghouses and other appropriate entities. The Adult Protection Coordinating Council has no authority to direct or require implementing action from any member or entity.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-330. Duties of council.

(A) Duties of the council are subject to the appropriation of funding and allocation of personnel sufficient to carry out the functions of the council. Staffing for the council must be provided by the South Carolina Department of Health and Human Services.

(B) Duties of the council are to:

(1) provide and promote coordination and communication among groups and associations which may be affected by the council's actions and recommended changes in the system;

(2) identify and promote training on critical issues in adult protection, facilitate arrangements for continuing education seminars and credits, when appropriate, and determine and target problem areas for training based on analysis of the data;

(3) coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation;

(4) assist with problem resolution and facilitate interagency coordination of efforts to address unmet needs and gaps in the system;

(5) promote and enhance public awareness;

(6) promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families; and

(7) annually prepare a report of the council's activities and accomplishments for the calendar year and distribute the report to council members, the Chairman of the Medical Affairs Committee of the Senate, the Chairman of the Medical, Military and Municipal Affairs Committee of the House of Representatives, directors or chairs of member agencies or entities who have a designee serving on the council, and other interested parties as well as publishing the report on the department's website.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 2, eff June 18, 2012.

SECTION 43-35-340. Officers; terms of office; quorum.

The chair of the council must be elected by a majority of the council membership for one two-year term. Other officers may be elected as needed in the same manner as the chair. A majority of the membership of the council constitutes a quorum for official business to be conducted.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-350. Meetings.

Meetings of the council must be held at least quarterly at the call of the chair or may be called by a petition of two-thirds of the council membership.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 5

Vulnerable Adult Fatalities

SECTION 43-35-500. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article:

(1) “Committee” means the Vulnerable Adult Fatalities Review Committee.

(2) “Meeting” means both in-person meetings and meetings through telephone conferencing.

(3) “Preventable death” means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

(4) “Provider of medical care” means a licensed health care practitioner who provides, or a licensed health care facility through which is provided, medical evaluation or treatment, including dental and mental health evaluation or treatment.

(5) “SLED” means the South Carolina Law Enforcement Division.

(6) “Unit” means the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

(7) “Working day” means Monday through Friday, excluding official state holidays.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-510. Policy of State regarding health and safety of vulnerable adults.

It is the policy of this State that:

(1) Every vulnerable adult is entitled to live in safety and in health.

(2) Responding to deaths of vulnerable adults is a state and a community responsibility.

(3) When a vulnerable adult dies, the response by the State and the community to the death must include an accurate and complete determination of the cause of death, the provision of services to surviving family members, and the development and implementation of measures to prevent future deaths from similar causes and may include court action, including prosecution of persons who may be responsible for the death and family court proceedings to protect other vulnerable adults in the care of the responsible person.

(4) Professionals from disparate disciplines and agencies that have responsibilities for vulnerable adults and expertise that can promote safety and well-being of vulnerable adults should share their expertise and knowledge toward the goals of determining the causes of deaths of vulnerable adults, planning and providing services to nonoffending family members, and preventing future vulnerable adult deaths.

(5) A greater understanding of the incidence and causes of deaths of vulnerable adults is necessary if the State is to prevent future vulnerable adult deaths.

(6) Multidisciplinary and multiagency reviews of vulnerable adult deaths can assist the State in the investigation of vulnerable adult deaths, in the development of a greater understanding of the incidence and causes of vulnerable adult deaths and the methods for preventing such deaths, and in identifying gaps in services to vulnerable adults and families.

(7) Access to information regarding vulnerable adults and their families is necessary to achieve the mandates and purposes of this article.

(8) Competent investigative services must be sensitive to the needs of South Carolina's vulnerable adults and their families and not be unnecessarily intrusive and should be achieved through training, awareness, and technical assistance.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-520. Investigations of deaths in facilities operated by the Department of Mental Health or the Department of Disabilities and Special Needs; death by natural causes in a veterans' nursing home.

The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23-3-810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44-7-130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43-35-35(A). In the event that a coroner rules that the death of an individual in a veterans' nursing home under the authority of the Department of Mental Health results from natural causes, the State Law Enforcement Division is not required to conduct an investigation regarding the individual's death.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006; 2010 Act No. 223, Section 8, eff June 7, 2010; 2012 Act No. 128, Section 2, eff March 13, 2012.

SECTION 43-35-530. Conduct of investigations.

Upon receipt of a report of a vulnerable adult death, as required by Section 17-5-555 or Section 43-35-35, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall:

(1) investigate and gather all information on the vulnerable adult fatality pursuant to Section 43-35-520. The coroner or medical examiner immediately must request an autopsy if the unit determines that an autopsy is necessary. The autopsy must be performed by a pathologist with forensic training as soon as possible. The forensic pathologist must inform the unit of the findings within forty-eight hours of completion of the autopsy. If the autopsy reveals the cause of death to be pathological or an unavoidable accident, the case must be closed by the unit. If the autopsy reveals physical or sexual trauma, suspicious markings, or other findings that are questionable or yields no conclusion to the cause of death, the unit immediately must begin an investigation;

(2) request assistance of any other local, county, or state agency to aid in the investigation;

(3) upon receipt of additional investigative information, reopen a case for another coroner's inquest;

(4) upon receipt of the notification required by item (1), review agency records for information regarding the deceased vulnerable adult or family. Information available to the department pursuant to Section 43-35-570 and information that is public under Chapter 4, Title 30, the Freedom of Information Act, must be available as needed to the county coroner or medical examiner, the Long Term Care Ombudsman Program, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, and the Adult Protective Services Program of the Department of Social Services;

(5) report the activities and findings related to vulnerable adult deaths to the Vulnerable Adults Fatalities Review Committee; and

(6) develop a protocol for vulnerable adult death investigations.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-540. Access to medical information.

Upon request of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and as necessary to carry out the unit's duties, the unit immediately must be provided:

(1) by a provider of medical care, access to information and records regarding a vulnerable adult whose death is being investigated by the unit or reviewed by the committee;

(2) access to all information and records maintained by any state, county, or local government agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the vulnerable adult or family.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-550. Subpoena of medical information.

When necessary in the discharge of the duties of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and upon application of the unit, the clerks of court shall issue a subpoena or subpoena duces tecum to any state, county, or local agency, board, or commission or to any representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the unit's duties. Failure to obey a subpoena or subpoena duces tecum issued pursuant to this section may be punished as contempt.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-560. Vulnerable Adults Fatalities Review Committee; members; terms; meetings; administrative support.

(A) There is created a multidisciplinary Vulnerable Adults Fatalities Review Committee composed of:

(1) the Director of the South Carolina Department of Social Services;

(2) the Commissioner of the South Carolina Department of Health and Environmental Control;

(3) the Executive Director of the South Carolina Criminal Justice Academy;

(4) the Chief of the South Carolina Law Enforcement Division;

(5) the Director of the South Carolina Department of Alcohol and Other Drug Abuse Services;

(6) the Director of the South Carolina Department of Mental Health;

(7) the Director of the South Carolina Department of Disabilities and Special Needs;

(8) the Director of the Office on Aging;

(9) the Executive Director of Protection and Advocacy for People with Disabilities, Inc.;

(10) two representatives from two county boards of disabilities and special needs established pursuant to Section 44-20-375;

(11) a county coroner or medical examiner;

(12) an attorney with experience in prosecuting crimes against vulnerable adults;

(13) a physician with experience in treating vulnerable adults, appointed from recommendations submitted by the South Carolina Medical Association;

(14) a solicitor;

(15) a forensic pathologist; and

(16) two members of the public at large, one of whom must represent a private nonprofit community residential care facility and one of whom must represent a public for profit community residential care facility, both of which must provide services to vulnerable adults.

(B) Those members enumerated in items (1) through (10) shall serve ex officio and may appoint a designee, who has administrative or program responsibilities for vulnerable adults, to serve in their place from their particular departments or agencies. The remaining members, including the coroner or medical examiner and solicitor, who shall serve ex officio, must be appointed by the Governor for terms of four years and until their successors are appointed and qualify.

(C) A chairman and vice chairman of the committee must be elected from among the members by a majority vote of the membership for a term of two years.

(D) Meetings of the committee must be held at least quarterly. A majority of the committee constitutes a quorum.

(E) Each ex officio member shall provide sufficient staff and administrative support to carry out the responsibilities of this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-570. Purpose of Vulnerable Adult Fatalities Review Committee.

(A) The purpose of the Vulnerable Adult Fatalities Review Committee is to decrease the incidence of preventable vulnerable adult deaths by:

(1) developing an understanding of the causes and incidences of vulnerable adult deaths;

(2) developing plans for and implementing changes within the agencies represented on the committee which will prevent vulnerable adult deaths; and

(3) advising the Governor and the General Assembly on statutory, policy, and practice changes that will prevent vulnerable adult deaths.

(B) To achieve its purpose, the committee shall:

(1) meet with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division no later than one month after the unit receives notification by the county coroner or medical examiner pursuant to Section 17-5-555 or Section 43-35-35 to review the investigation of the death;

(2) undertake annual statistical studies of the incidence and causes of vulnerable adult fatalities in this State. The studies shall include an analysis of community and public and private agency involvement with the decedents and their families before and subsequent to the deaths;

(3) consider training, including cross-agency training, consultation, technical assistance needs, and service gaps;

(4) educate the public regarding the incidences and causes of vulnerable adult deaths, the public role in preventing these deaths, and specific steps the public can undertake to prevent vulnerable adult deaths. The committee shall enlist the support of civic, philanthropic, and public service organizations in performing the committee's educational duties;

(5) develop and implement policies and procedures for its own governance and operation;

(6) submit to the Governor and the General Assembly an annual written report and any other reports prepared by the committee including, but not limited to, the committee's findings and recommendations for changes to any statute, regulation, policy, or procedure that the committee determines is needed to decrease the incidence of preventable vulnerable adult deaths. Annual reports must be made available to the public.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-580. Meetings discussing individual cases closed; disclosure of information identifying vulnerable adult or family member.

(A) Meetings of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and of the Vulnerable Adult Fatalities Review Committee are closed to the public and are not subject to Chapter 4, Title 30, the Freedom of Information Act, when the unit and committee are discussing individual cases of vulnerable adult deaths.

(B) Except as provided in subsection (C), meetings of the committee are open to the public and subject to the Freedom of Information Act when the committee is not discussing individual cases of vulnerable adult deaths.

(C) Information identifying a deceased vulnerable adult or a family member, guardian, or caretaker of a deceased vulnerable adult, or an alleged or suspected perpetrator of abuse or neglect upon a vulnerable adult may not be disclosed during a public meeting and information regarding the involvement of any agency with the deceased vulnerable adult or family may not be disclosed during a public meeting.

(D) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-590. Confidential and public information.

(A) All information and records acquired by the unit and the committee in the exercise of their duties and responsibilities pursuant to this article are confidential, exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, and only may be disclosed as necessary to carry out the unit's and committee's purposes and responsibilities.

(B) Statistical compilations of data that do not contain information that would permit the identification of a person to be ascertained are public records.

(C) Reports of the unit and the committee that do not contain information that would permit the identification of a person to be ascertained are public information.

(D) Except as necessary to carry out the unit's and committee's duties and responsibilities, unit personnel and members of the committee and persons attending meetings may not disclose what transpired at a meeting that is not public under Section 43-35-580 and may not disclose information, the disclosure of which is prohibited by this section.

(E) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of the meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or unit or because it is maintained by the committee or unit. Nothing in this subsection may be construed to prevent a person from testifying to information obtained independently of the committee or which is public information.

(F) Information, documents, and records of the unit and of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise

available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the unit or committee or because they are maintained by the unit or the committee.

(G) A person who knowingly violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-595. Promulgation of regulations.

The South Carolina Law Enforcement Division may promulgate regulations if necessary to carry out its responsibilities under this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.