ABUSE, NEGLECT AND EXPLOITATION OF ELDERLY AND OTHER VULNERABLE ADULTS IN SOUTH CAROLINA

ADULT PROTECTION COORDINATING COUNCIL

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NOTICE

This manual represents an attempt to condense a large amount of complex information into a useful training and reference tool. Although every effort has been made to ensure that the information presented is both correct and current, these materials should be used only as overviews and general guidance, not necessarily as a basis for making specific decisions in a particular case. The manual is not a legal document, nor is it intended to fully explain all of the provisions or exclusions of the relevant laws, regulations, and rulings that may impact cases involving abuse of elderly or other vulnerable adults. The guide should not be viewed as rendering any legal, accounting, or other professional advice, nor does it necessarily reflect the policies or legal positions of any individual, agency, or other entity participating in its preparation or use.

Note: This manual is also not intended as a replacement for any agency or entity's internal training regarding protection for elderly or other vulnerable adults or any other conventional training. Each agency or entity has policies and procedures for handling these cases.

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PREFACE

The Adult Protection Coordinating Council has developed this manual to enhance awareness of vulnerable adult abuse, neglect and exploitation, including provisions of the Omnibus Adult Protection Act, roles and responsibilities of the investigative entities, risk factors, the Americans with Disabilities Act (ADA), the federal Elder Justice Act reporting requirements, and release of information to law enforcement professionals pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA). Knowledge and understanding of the issues are also keys to the prevention of mistreatment of vulnerable adults.

When one thinks of abuse, the tendency is to focus on child and spousal abuse. The problems of child and spousal abuse are well documented, and extensive efforts have been made by both social service agencies and law enforcement to combat these activities. Coming to the forefront, however, is the problem of vulnerable adult abuse. As demographics demonstrate, our population is aging and there is an increased focus on issues dealing with elderly individuals. Another rarely addressed aspect of abuse, neglect, and exploitation is that these crimes can be perpetrated on other high risk adults such as people with physical, mental, or intellectual disabilities. These vulnerable adults often go unnoticed in any discussion of abuse, neglect, and exploitation.

In the late 1970's, the problem of elder abuse began to surface as a national concern, and by the early 1980's, it had become a national issue through a series of hearings in the United States Congress (U.S. Congress, House Select Committee on Aging, 1981). This generated a response in many states that resulted in legislation addressing adult protective services.

There is no doubt that the population of the United States contains a larger segment of older persons than in the past. For the most current data, see South Carolina's Mature Adults Count* and the latest Census Bureau count.**

Older South Carolinians and adults with disabilities are an important and powerful segment of the population in our state. As such, they are able to bring their problems and needs to the attention of public service agencies. The problems of aging include such things as the rising costs of health care, availability of housing or appropriate placement for an individual's level of care, and tension between the generations over caregiver demands. One of the manifestations of this conflict is an increase in the abuse, neglect and exploitation of vulnerable adults.

The increasing aging population will have many implications for law enforcement and social services. One significant impact will be an increase in the contacts between social services and law enforcement personnel with older and disabled persons, making it necessary to be able to communicate clearly and effectively with these individuals. Understanding some general principles regarding the process of aging will help foster better communication. Stereotypes of

elderly and disabled individuals as "inactive", "immobile", and "senile" are often inaccurate and harmful.

Once again, while the discussion has focused on the elderly, we must not lose sight of other vulnerable adults. More elderly and people with disabilities are staying in their local communities with social services and medical supports than are entering institutions.

As more people with disabilities are living and working in communities, exercising their independence, the risk of being victimized also increases. Individuals with disabilities want to fit in and be accepted. They are susceptible to being used by others for criminal activity. They may be in wheelchairs and unable to adequately defend themselves from assaults. Persons with disabilities may have to rely on others to aid them with their finances which sets up an opportunity for financial exploitation. Persons with disabilities may be nonverbal and therefore unable to tell what has happened to them in a way that can be understood.

The Adult Protection Coordinating Council hopes that the information in this manual will be beneficial to you. Your dedication to the protection of the vulnerable adult citizens of our state is greatly appreciated.

*http//www.scaccesshelp.org
** http://www.census.gov/

Purpose:

The purpose of this manual is to provide information and to be used as a training and reference tool. With the estimated increase in the number of older adults and people in South Carolina who live with severe long term mental illness and other disabilities comes an increased exposure to abuse, neglect and exploitation. This manual will provide agencies, law enforcement and social services organizations with an understanding of the Omnibus Adult Protection Act and other aspects of the system for protection of vulnerable adults. In order to intervene effectively, professionals must be able to recognize the problem and be familiar with agencies and entities that provide support for, and otherwise interact with, the victims of abuse, neglect and exploitation, or their families.

Learning Objectives:

The reader will be able to:

- Understand the statutory requirements and procedures pertaining to protection for vulnerable adults in South Carolina
- Identify the various types of abuse, neglect and exploitation
- Be familiar with mandated reporting (persons required to report)
- Be familiar with the roles and responsibilities of the investigative agencies
- Become aware of procedures and services that exist to respond to the issues of vulnerable adult abuse, neglect and exploitation
- Understand the characteristics of vulnerable adult victims, perpetrators, and family dynamics
- Understand aspects of the federal requirements under the Americans with Disabilities Act (ADA) as it pertains to working with elderly and other vulnerable adults
- Understand the federal requirements for reporting reasonable suspicion of crimes to law enforcement
- Understand the confidentiality of patients' protected health information and the release of information to law enforcement under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

NOTE: **This manual is not intended as a replacement for any agency or entity's internal training regarding the protection for vulnerable adults or any other conventional training.**

CHAPTER 1: THE OMNIBUS ADULT PROTECTION ACT

SC Code §43-35-5 et seq (as amended):

The Omnibus Adult Protection Act created a system for the protection of vulnerable adults in South Carolina. This law defines what acts or omissions constitute abuse, neglect and exploitation of a vulnerable adult and identifies and defines the roles of the agencies charged with the responsibility of investigating reports of abuse, neglect and exploitation. According to the 1993 Preamble to the Omnibus Adult Protection Act, some of its features include but are not limited to "...clarifying the reporting procedures for allegations of abuse, neglect and exploitation," providing "...procedures for emergency protective custody," defining "...the role of the court in the adult protection system," and establishing criminal penalties for persons who violated the law.

The Omnibus Adult Protection Act is commonly referred to as OAPA. Always check the website, http://www.scstatehouse.gov/code/title43.php, to be sure you access the most recent version of the statute.

Definitions:

Whom Does the Omnibus Adult Protection Act Seek To Protect?

- *Vulnerable Adult:* A person who is over the age of eighteen and whose ability to protect or care for himself/herself is substantially limited due to advanced age, organic brain damage or physical, mental or emotional dysfunction.

  A resident of a facility is a vulnerable adult.

- *Facility:* 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 (DMH) or the Department of Disabilities and Special Needs (DDSN)

From Whom Is The Vulnerable Adult Protected?

- *Caregiver:* A person who has the responsibility of providing care to a vulnerable adult. This applies regardless of whether the caregiver is paid to care for the vulnerable adult or works on a part-time or full-time, temporary or permanent basis. The definition of caregiver is not restricted to the vulnerable adult's relative, household member or day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

From What Acts Or Omissions Is The Vulnerable Adult Protected?

- Abuse

Physical Abuse: Intentionally inflicting or allowing physical injury to be inflicted upon a vulnerable adult by an act of a caregiver or the caregiver's failure to act. Physical abuse includes, but is not limited to

a) slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined by criminal laws;
b) using medication outside the standards of reasonable medical practice in order to control the vulnerable adult's behavior; and
c) unreasonable confinement of the vulnerable adult; and
d) punishing a vulnerable adult by using a restrictive or physically intrusive procedure to control behavior;

Note: physical abuse does not include the use of a restrictive or physically intrusive procedure to control behavior when therapeutic procedure is prescribed by a licensed physician or qualified professional or when the procedure is part of a written plan of care by a licensed physician or other qualified professional. Neither does physical abuse include altercations or acts of assault between vulnerable adults.

Psychological Abuse: Deliberately threatening, harassing or intimidating a vulnerable adult or committing other acts of intimidation that cause fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

- *Exploitation* (three types)

(a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the vulnerable adult's reasonable and rational wishes;

This 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, cheating, or defrauding the vulnerable adult through acts that deceive the vulnerable adult and cause him to lose money or other property.

- *Neglect*: A caregiver's failure or omission in providing a vulnerable adult with the care, goods, services necessary to maintain the health or safety of the vulnerable adult. This includes but is not limited to food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or places the vulnerable adult at substantial risk of physical or mental injury.

  Note: the failure of facility staff to comply with regulatory standards alone does not constitute neglect.

- *Self-Neglect*: a situation that occurs when the vulnerable adult does not have a caregiver and the vulnerable adult is unable to provide for his or her own health or safety. Further, the vulnerable adult's inability to provide for his own care and protection could result or reasonably be expected to result in serious physical or psychological harm to the vulnerable adult or substantial risk of death.

  Note: a competent vulnerable adult has the right to self-determination. This means the vulnerable adult has the right to control and/or make decisions affecting his/her life.

Note: Under OAPA, a vulnerable adult is not considered to be abused or neglected solely because he/she declines medical treatment and has chosen nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

Who Investigates Allegations of Abuse, Neglect or Exploitation of Vulnerable Adults?

Under OAPA, the following are the investigative entities of vulnerable adult maltreatment:

(A) The Vulnerable Adults Investigations Unit (VAIU) of the South Carolina Law Enforcement Division (SLED) receives and coordinates the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by DMH or the DDSN;

(B) The Long Term Care Ombudsman Program (LTCO) investigates or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities other than those handled by SLED;

(C) The Adult Protective Services Program (APS) of the Department of Social Services (DSS) investigates or causes to be investigated noncriminal reports of alleged abuse,

neglect, and exploitation of vulnerable adults occurring in all settings other than facilities; and

(D) The Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General (AG) investigates abuse, neglect and exploitation in facilities receiving Medicaid funds. This entity also investigates and prosecutes health care fraud committed by Medicaid providers.

Mandatory Reporters: Persons Who Must Report Abuse, Neglect, or Exploitation of Vulnerable Adults

A) The following persons are mandated reporters and shall report when they have reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited:

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.

B) Any other person who has actual knowledge that a vulnerable adult has been abused, neglected shall report.

C) A person, other than a mandated reporter, who has reason to believe that a vulnerable adult has been or may be abused, neglected or exploited, may report the incident.

Penalty for failure to report abuse, neglect or exploitation of a vulnerable adult:

(A) A mandated reporter who knowingly and wilfully fails to report 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.

Reporting of Suspicious Deaths

(A) A mandated reporter or an investigator (as defined by OAPA) 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.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by DMH, DDSN, or their contractors must be referred to the VAIU of SLED for investigation.

Reporting Timeframes and Contact Requirements

(A) A person required to report 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 VAIU of SLED or the investigative entity to which the report is to be made.

(B) The report of an incident must be made within twenty-four hours or the next working day. Additionally, the report must be made in writing or orally by telephone or otherwise to:

(1) the VAIU of SLED for incidents occurring in facilities operated or contracted for operation by DMH or DDSN (incidents occurring in these facilities are reported to the SLED Hot-Line at 1-866-200-6066);

(2) the LTCO Program for incidents occurring in facilities, except DMH and DDSN facilities; and

(3) the APS Program for incidents occurring in all other settings.

(C) Provided the mandatory reporting requirements of this section are met, a reporter can also make direct contact with law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

Note: See Chapter 2 for additional information on reporting.

Protected Communications:

Communications between an attorney and his/her client or a priest and penitent are the only protected communications.

Non-Protected Communications:

Communications between husband and wife or between a professional person and the person's patient or client, are not privileged or confidential communications and do not constitute a reason for failing to make a report of abuse, neglect or exploitation of a vulnerable adult. These communications can also be used as evidence in a civil or criminal action resulting from a report of abuse, neglect or exploitation.

Immunity For Good Faith Reporters

A person who, acting in good faith, reports abuse, neglect or exploitation of a vulnerable adult 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.

Note: In a civil or criminal proceeding, good faith is a rebuttable presumption.

Reporting Requirements of Investigative Entities

(A) If the VAIU of SLED 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.

(B) When a health care professional is suspected of abuse, neglect or exploitation of a vulnerable adult, OAPA requires the investigative entity to make a report of the alleged incident to the occupational licensing board by which that person is licensed.

What are the additional powers of the investigative entities?

The investigative powers and duties of investigative entities include, but are not limited to, the following:

(A) Accessing facilities for the purpose of conducting investigations, as otherwise permitted by law;

(B) Requesting and receiving 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;

(C) Issuing through its director, administrative subpoenas for the purpose of gathering information and documents;

(D) Instituting proceedings in a court of competent jurisdiction to seek relief necessary to carry out the requirement of OAPA;

(E) Requiring 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;

(F) Requiring 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;

(G) Conducting studies and compiling data regarding abuse, neglect, and exploitation; and

(H) Issuing reports and recommendations.

The Investigative Process for the Long Term Care Ombudsman or Adult Protective Services

(A) Upon receipt of a report, the LTCO or APS promptly

1) Initiates an investigation; or

2) Reviews 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 VAIU of SLED.

Note: A report to local law enforcement or SLED must be made within one working day of completing the review.

Inspection Warrant

An inspection warrant is a tool used by the investigative entities to gain access to a vulnerable adult or the premises at which a vulnerable adult is located when access has been denied by the caregiver or the vulnerable adult. The inspection warrant is issued by the family court once the investigative entity demonstrates probable cause to believe that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect or exploitation.

Adult Protective Services Proceedings Involving the Department of Social Services and/or Law Enforcement in the Family Court

DSS is the agency charged with providing protective services to a vulnerable adult once the adult has been found to be a victim of abuse, neglect or exploitation by a caregiver. The protective services are provided through the APS division of each county DSS.

A vulnerable adult enters the protective custody of DSS by way of protective custody proceedings. There are two types of such proceedings, emergency protective custody and non-emergency protective custody.

(A) Emergency Protective Custody: There are two ways in which a vulnerable adult can be placed in emergency protective custody (EPC). This can be done at the initiative of law enforcement or by an emergency court order referred to as an ex parte order.

Law Enforcement

(A) If a vulnerable adult is in a life-threatening situation, a law enforcement officer may take him/her into protective custody if:

(1) There is probable cause to believe that by reason of abuse, neglect, or exploitation there exist 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 the officer takes a vulnerable adult into EPC, the officer must transport the vulnerable adult to a place of safety (not a detention center for the vulnerable adult is not

under arrest), immediately notify APS that the vulnerable adult has been taken into emergency protective custody, and then place the vulnerable adult in the temporary custody of APS pending a family court hearing to determine if there is probable cause for protective custody of the vulnerable adult.

(1) This hearing is held seventy-two hours after the vulnerable adult is taken into EPC by law enforcement and is called a "probable cause hearing."

Note: APS files a petition in the family court to initiate this proceeding

(C) The notification provided to APS by law enforcement must be made in writing or orally by telephone and must include the following:

(1) The vulnerable adult's name or a physical description if his/her name is unknown;

(2) The address of the place from which the vulnerable adult was removed;

(3) The name and the address, if known, of the 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.

(D) APS commences an investigation upon receipt of this information from law enforcement.

Ex Parte Order

(A) A vulnerable adult can also be taken into EPC without the involvement of law enforcement. This occurs when APS, on its initiative, petitions the family court for an order placing the vulnerable adult in protective custody.

(1) The process commences when APS receives a report alleging that a vulnerable adult is in a life-threatening situation and immediate agency action is needed to protect the vulnerable adult.

(2) Before a court issues an ex parte order taking a vulnerable adult into emergency custody without his/her or his caregiver's consent, APS must demonstrate that there is probable cause to believe the vulnerable adult's life or physical safety is in imminent danger by reason of abuse or neglect.

(a) In the ex parte order, the court may also order other emergency services or other relief necessary to protect the vulnerable adult.

(3) The APS investigation commences and continues even after the family court has issued the *ex parte order* for the vulnerable adult to be placed in APS custody.

After a vulnerable adult has been taken into EPC by law enforcement or ex parte order, the remaining court proceedings are the same as those involving nonemergency protective proceedings.

(B) Nonemergency protective proceedings

The purpose of any type of protective proceeding sought by APS is to render "protective services" to a vulnerable adult. "Protective Services" are those services designed to protect a vulnerable adult from harm caused by the vulnerable adult or another. Such services include, but are not limited to: evaluating the need for protective services; securing and coordinating existing services; making suitable living arrangements for the vulnerable adult; obtaining financial benefits to which a vulnerable adult is entitled; and obtaining appropriate medical services, supplies, and legal services for the vulnerable adult.

At any point during or after APS initiates an investigation into a report alleging a vulnerable adult has been abused, neglected or exploited or is at substantial risk of such maltreatment, APS can petition the family court for an order to provide protective services.

(1) Within ten days after the petition is filed, the court has to appoint a guardian ad litem and an attorney to represent the vulnerable adult as well as an attorney to represent a lay guardian ad litem for the vulnerable adult. 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.

(2) Within forty days of the petition for protective services being filed, the court has to hold a hearing on the merits of the allegations. This is called a merits hearing.

(a) At the hearing, APS, the vulnerable adult's attorney and the vulnerable adult's guardian ad litem are permitted to present evidence

(3) Prior to the merits hearing, APS has to prepare a comprehensive report to be provided to the court and the other parties to the action. A summary of the information contained in this report is as follows:

(a) Vulnerable adult's name, address and person with whom he/she is residing;

(b) List of agencies currently involved with the vulnerable adult and type of service(s) rendered by the agencies. For example, if DMH is involved with the vulnerable adult, the comprehensive report should contain that information;

(c) Summary of services provided by APS;

(d) Results of any medical, psychological, social, vocational, or educational evaluations conducted on the vulnerable adult; and

(e) Recommendations for protective services which would serve the best interests of the vulnerable adult. For example, a recommendation could be to place the vulnerable adult in a nursing facility or a community residential treatment facility.

(4) In order for a court to direct APS to provide protective services to the vulnerable adult, the court must find:

(a) The vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and is unable to protect herself or himself; and

(b) Protective services are necessary to protect the vulnerable adult from substantial risk from abuse, neglect, or exploitation.

(5) If the court orders protective services to be provided to the vulnerable adult, the services must be provided in the least restrictive setting available and appropriate for the vulnerable adult. Further, if placement in an institution can be avoided, APS must seek alternative placement for the vulnerable adult.

(a) If the vulnerable adult needs to be committed to a treatment facility, APS may cause commitment proceedings to be initiated in the probate court.

(6) In addition to finding that the vulnerable adult has been abused, neglected or exploited, the court can also find and order the following to occur:

(a) If the vulnerable adult is financially capable of paying for protective services then his/her financial resources can be used to pay for the services;

(b) If the vulnerable adult dies and the expenses incurred by APS have not been reimbursed at the time of the vulnerable adult's death, APS can file a claim against the estate of the vulnerable adult in probate court;

(c) In an exploitation action, the court may order that the vulnerable adult's financial records be available to DSS, and the attorney and guardian ad litem for the vulnerable adult.

(7) Following a merits hearing and once the court has ordered APS to provide protective services to the vulnerable adult, every six months, APS must evaluate the vulnerable adult and submit a written report to the court and other parties regarding the vulnerable adult's need for continued protective services.

(8) Any interested person, on behalf of the vulnerable adult, may file a motion in court to review the court's order from the merits hearing.

Confidentiality of Records

Unless prohibited by law, state agencies, investigative entities and law enforcement may share information related to an investigation pertaining to abuse, neglect or exploitation of a vulnerable adult. However, this information cannot be disclosed to any member of the public. For example, this information is not subject to release under the Freedom of Information Act.

Posting of Notices by Facilities

A facility as defined by the OAPA shall prominently display notices stating the duties of its employees and providing the contact information for the employees. The content of the notices must be provided by the LTCO Program in consultation with the VAIU of SLED. *(See Chapter 4 on the Elder Justice Act)*

Actions Against Facilities

A facility could be subject to regulatory or administrative penalties for acting or failing to act in a manner that constitutes abuse, neglect or exploitation of a vulnerable adult. Additionally, OAPA permits the AG to take certain actions against facilities. They are as follows:

(A) Upon referral from the LTCO Program or the VAIU, the AG 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. However, a person or facility which verifies good standing of the subject employee with the appropriate licensure or accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring.

For purposes of this section, a "person" means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(1) The offending person or facility may be assessed a civil fine of not more than thirty thousand dollars or the court could order injunctive relief, or both. The presiding court can also order any other relief it considers appropriate.

(a) An "injunction" is a civil action that seeks to have one party court-ordered to stop operating or any other particular action.

(2) This statutory provision does not create a private cause of action against one who fails through pattern or practice to exercise reasonable care.

(3) Any fines collected as a result of an action by the AG that exceed the cost of litigation are credited to the APS Emergency Fund.

Criminal Penalties for Abuse, Neglect or Exploitation

The OAPA imposes criminal penalties on those persons convicted of abuse, neglect or exploitation of vulnerable adults. The penalties are as follows:

(A) Willful abuse, neglect or exploitation of a vulnerable adult is a **felony** and upon conviction a person must be sentenced to prison for not more than five years.

(1) For a person convicted of exploitation, the court must also impose a fine of not more than five thousand dollars and/or order that person to make restitution to the court.

(B) Willful abuse or neglect of a vulnerable adult resulting in **great bodily injury** is a felony. A person convicted of this offense must be imprisoned for not more than fifteen years.

(1) "Great bodily injury" means injury which creates a substantial risk of **death** or causes permanent disfigurement or extended loss or impairment of any body function or bodily organ.

(C) Willful abuse or neglect of a vulnerable adult resulting in **death** is a felony. A person convicted of this offense must be imprisoned for not more than thirty years.

(D) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, or any other person cooperating with an investigation into a report of abuse, neglect or exploitation is guilty of a misdemeanor. The penalty for this conviction is a fine of not more than five thousand dollars or imprisonment for not more than three years.

Note: The penalty will increase according to the severity of the injury or if the injury results in death.

VULNERABLE ADULT FATALITIES

Investigations

The VAIU of SLED investigates cases of vulnerable adult fatalities in facilities operated or contracted for operation by DMH or DDSN.

Additionally, in a nursing home contracted for operation by DMH, the VAIU shall investigate those deaths 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.

Upon receipt of a report of a vulnerable adult death, the VAIU of SLED shall:

(1) Investigate and gather all information on the vulnerable adult death;

> The coroner or medical examiner immediately must request an autopsy if the VAIU 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 VAIU 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 VAIU.
>
> If the autopsy reveals physical or sexual trauma, suspicious markings or other questionable or inconclusive findings pertaining to the cause of death, the VAIU 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 of vulnerable adult fatality, review agency records for information regarding the deceased vulnerable adult or family;

(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.

The Vulnerable Adult Fatalities Review Committee

The Vulnerable Adults Fatalities Review Committee (Committee) has the following members that are appointed by statute:

(A) The Director of the South Carolina Department of Social Services;
(B) The Commissioner of the South Carolina Department of Health and Environmental Control;
(C) The Executive Director of the South Carolina Criminal Justice Academy;
(D) The Chief of the South Carolina Law Enforcement Division;
(E) The Director of the South Carolina Department of Alcohol and Other Drug Abuse Services;
(F) The Director of the South Carolina Department of Mental Health;
(G) The Director of the South Carolina Department of Disabilities and Special Needs;
(H) The Director of the Office on Aging;
(I) The Executive Director of Protection and Advocacy for People with Disabilities, Inc.;
(J) Two representatives from two county boards of disabilities and special needs;
(K) A county coroner or medical examiner;
(L) An attorney with experience in prosecuting crimes against vulnerable adults;
(M) A physician with experience in treating vulnerable adults, appointed from recommendations submitted by the South Carolina Medical Association;
(N) A solicitor;
(O) A forensic pathologist; and
(P) 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.

Purpose of the Vulnerable Adult Fatalities Review Committee

The purpose of the 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 state legislature on statutory, policy, and practice changes that will prevent vulnerable adult deaths.

In order to achieve its purpose, the Committee shall:

(1) Meet with SLED's VAIU no later than one month after the VAIU receives notification by the county coroner or medical examiner to review the investigation of the death;

(2) Conduct 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) Provide an annual written report to the Governor and the state legislature containing 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.

(a) These annual reports must be made available to the public.

Access to Meetings of the Vulnerable Adult Fatalities Review Committee

(A) Meetings of the VAIU of SLED and of the Committee are closed to the public and are not subject to the Freedom of Information Act, when the VAIU and Committee are discussing individual cases of vulnerable adult deaths.

(B) Meetings 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.

Public Access to Information Reviewed By the Vulnerable Adult Fatalities Review Committee And The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division

Generally, all information received by the Committee and SLED's VAIU is confidential and not subject to public disclosure. However, some information may be disclosed as necessary to carry out those entities' purposes and responsibilities.

(A) Committee members, 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.

a. Note that information available from other sources can be introduced into evidence through those sources solely because it was presented during Committee proceedings or VAIU or because it is maintained by the Committee or VAIU;

b. A person who has information obtained from a source other than the Committee or which is public information can testify to that information obtained independently.

(B) Information, documents, and records of the VAIU 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 VAIU or Committee or because they are maintained by the VAIU or the Committee.

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

(D) Penalty: 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.

CHAPTER 2: ROLES AND RESPONSIBILITIES OF THE INVESTIGATIVE ENTITIES

The key to successful intervention in any vulnerable adult abuse, neglect, self-neglect or exploitation case is a thorough, timely and complete investigation assessment. While it may appear that social service agencies have very different roles from that of law enforcement, both have broad complimentary and/or supportive goals that can serve the needs of the vulnerable adult victim.

While the information provided in this chapter is focused on the investigative entities pursuant to the OAPA (SC Code §43-35-5 et seq (as amended)), it is important to include the role of local law enforcement. Reports can be made to local law enforcement by the investigative entities and from any adult for victims in any setting. Law enforcement completes an incident report, and can help the victim, process the crime scene, develop probable cause and where appropriate take action against the suspected perpetrator to build a case for prosecution. It is important to note that many law enforcement agencies have victim advocates. They can be valuable in assisting a victim in navigating a sometimes complex criminal justice process.

The roles and responsibilities of the investigative entities pursuant to the OAPA are discussed below.

Adult Protective Services Program

SC Code §43-35-15(C) (as amended) in the OAPA sets forth the investigative responsibilities for APS:

The Adult Protective Services Program of 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.

APS at DSS is responsible for receiving and investigating allegations of abuse, neglect (including self-neglect), and exploitation that occur in community settings. The goal of APS is to protect the vulnerable adult and provide services to meet the adult's needs.

Every case consists of an assessment of the allegation and referrals for services based on the identified needs of the client. Initial investigations should focus on what happened and how it happened and attempt to minimize any discussion of "why." The fundamental key to any good investigation is documentation. Documentation should focus on those items of information that substantiate or unsubstantiated the allegations reported to DSS.

Social services can bring the following benefits to any assessment:

- Knowledge about resources to meet the needs of the vulnerable adult

- Experience in assisting victims of abuse, neglect, self-neglect and/or exploitation
- Authority to obtain certain types of records without a search warrant
- Access to information without legal process or consent
- Expertise in issues related to vulnerable adults

APS case managers:

- Evaluate the need for services
- Secure and coordinate existing services
- Obtain financial benefits to which a vulnerable adult is entitled
- Secure medical services, supplies and legal services
- Protect the vulnerable adult
- Meet the vulnerable adult's immediate and long-term needs
- Develop a service plan and arrange in-home or out of home placement as needed
- Report to law enforcement, as applicable

Reporting to Adult Protective Services

When to Report: The statute requires reports to be made within 24 hours or the next working day. However, reporters are encouraged to report ***immediately*** when the reporter has reasonable cause to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited. (See reporting section in Chapter 1)

Where to Report: The DSS County office in which the vulnerable adult is located when there is an allegation of abuse, neglect or exploitation of a vulnerable adult.

Criteria for APS to accept a report:

A. Adult with impairment, vulnerable adult age 18 or older.

B. Allegation of abuse (including psychological), neglect or exploitation by caregiver or self-neglect by the vulnerable adult.

What Information to Give When Making a Report

The more information given, the more assistance can be provided the vulnerable adult and the APS investigation. When making a report, give as much of the following information as possible:

- Name and birth date of the victim
- Current DSS case manager, if one exists
- Allegation—what is the abuse, neglect, self-neglect or exploitation event and what happened and when
- Other interested individuals
- Income/income source

- Date/time of allegation and when incident occurred
- Name the typology (abuse, neglect, exploitation or self-neglect) of the allegation
- Household members, other known relatives
- Location of the incident/directions
- Perpetrator/caregiver information
- Any potential danger to client and/or worker
- Reporter request follow up (name and number required)

Sometimes people want to make a report anonymously. That is permissible. However, DSS prefers that the reporter leaves his/her name and phone number so that the intake worker can call the reporter back to obtain more information, if necessary. The additional information provided may be the very information needed to protect the vulnerable adult.

The intake worker will document the reporter's name and phone number, which is *proof* of the reporter's fulfillment of his/her obligation by law to report the abuse of vulnerable adults.

Please note: the results of investigations are confidential and cannot be disclosed. SC Code §43-35-60 (as amended)

Long Term Care Ombudsman Program

SC Code §43-35-15(B) (as amended) in the OAPA sets forth the investigative responsibilities for the LTCO Program:

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.

> *"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. S.C. Code Ann. §43-35-10(4)*

LTCO are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They work to resolve problems of individual residents and to bring about changes at the local, state and national levels that will improve residents' care and quality of life.

The Office of the State Long Term Care Ombudsman which is housed in the Lieutenant Governor's Office on Aging is responsible for receiving and investigating non-criminal allegations of abuse, neglect and exploitation occurring in long term care facilities. Allegations of abuse, neglect or exploitation that occur in facilities operated or contracted for operation by the DDSN or DMH are initially reported to the SLED VAIU. After the SLED vetting process, non-criminal complaints occurring in these facilities are sent to the LTCO program.

Allegations of abuse, neglect or exploitation occurring in nursing homes, assisted living facilities, and residential care facilities are reported to the Regional Long Term Care Ombudsman or local law enforcement.

If the LTCO has reason to believe that abuse or gross neglect has occurred, and the resident may be at risk, the complaint will be investigated within 24 hours of the first action or the next working day. If the LTCO receives a complaint of abuse or gross neglect and has no reason to believe that a resident is at risk then the complaint is investigated within 5 working days of the first action.

Notification to Law Enforcement by APS and LTCO

Pursuant to SC Code §43-35-40 (as amended), within two business days of receiving a report, APS and the LTCO must determine if law enforcement notification is necessary because of criminal activity. Criminal activity involves the intentional abuse, neglect, or exploitation of a vulnerable adult by another person. Immediate involvement of law enforcement is especially important if evidence needs to be preserved. Intakes involving financial exploitation, sexual battery, and physical abuse with visible injuries are appropriate for immediate notification. The notification must be in the hands of law enforcement within three business days of the report. Should the caseworker or ombudsman call law enforcement to the location of the client to secure evidence or take the client into emergency protective custody, law enforcement will be notified by APS. After the placement in protective custody by law enforcement, the adult is in the custody of DSS and the caseworker will initiate an assessment. The caseworker will secure a copy of the incident report from the law enforcement officer.

State Law Enforcement Division (SLED)

SC Code §43-35-15(A) (as amended) and SC Code §43-35-15(D) (as amended) in the OAPA set forth the investigative responsibilities for SLED:

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.

SC Code §43-35-15(D) (as amended): *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.*

Intake Process

The VAIU receives calls twenty four hours a day, seven days a week, through the hotline at 1-866-200-6066. The reported allegation should involve an incident in which a vulnerable adult in a facility has been abused, neglected, or exploited. In all other incidents, the reporter will be forwarded to the agency with appropriate jurisdiction. At the time of the intake, it must be decided from the information given whether the allegation is criminal or non-criminal in nature. If the allegation is criminal in nature and did not occur at a facility operated by DMH or DDSN, it will be forwarded to the local law enforcement agency that has jurisdiction over the location at which the incident occurs. If the allegation is criminal in nature and occurs at a facility operated by DMH or DDSN, the VAIU will investigate. If the allegation is non-criminal in nature, it will be forwarded to the appropriate agency including, but not limited to, APS, LTCO, DHEC, or other appropriate entities for investigation.

- Reports:

It is important that the reporter give as much detailed information as possible. The reporter may remain anonymous, but that often prohibits the investigator from obtaining additional information not given during the intake. The following is basic information that is asked during an intake:

- Name of the reporter and contact information, unless anonymous
- Name, date of birth, sex and race of the victim
- Location at which the incident occurs
- Location at which the vulnerable adult lives
- Name and other identifying information for the alleged suspect
- Name and contact information for any witnesses
- Detailed account of the incident

If the above information is not available at the time of the report and cannot be obtained in a timely manner, it is important that the report be made immediately so that a thorough investigation can be conducted. The call to report abuse must be made immediately to ensure a prompt response and thorough investigation even if all of the information listed above is not known at the time of the initial call.

- Reports of death

SC Code §43-35-35(B) (as amended): *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.*

The VAIU will obtain facility records and medical documents regarding the death of all DDSN and DMH patients even if the death is natural. The results of the investigation will be reviewed by the Vulnerable Adult Fatality Review Committee in accordance with the law.

SC Code §43-35-35(A) (as amended): *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.*

If the vulnerable adult is not a DDSN consumer or DMH patient, the coroner or local law enforcement department may request assistance from the VAIU if the death is suspicious.

Jurisdiction of VAIU

It is important to note that although SLED has statewide jurisdiction, the law specifically states that the VAIU only has jurisdiction to investigate the abuse, neglect, or exploitation of a vulnerable adult at facilities operated by DDSN or DMH. The VAIU also assists local law enforcement departments, at their request, in incidents that do not occur in facilities operated by DDSN or DMH.

Often, the VAIU receives reports from citizens regarding a vulnerable adult who does not reside in a DMH or DDSN facility. In these instances, the reporter will be forwarded to the agency which has jurisdiction where the incident occurs.

Once an intake is completed and forwarded to a local law enforcement agency for investigation, the VAIU will not be able to give an updated status on the case until it is completed and the results are forwarded back to the VAIU. If there are questions regarding the investigation, they should be directed to the local law enforcement agency conducting the investigation. If an intake

is non-criminal in nature and forwarded to another agency for investigation, the VAIU closes the case in the database and the investigating agency should be contacted for any status updates.

Attorney General's Office

SC Code §43-35-10(5) (as amended) designates the Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General (AG) as an investigative entity.

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.

The MFCU was established in 1995 pursuant to federal regulations. The MFCU is comprised of attorneys, auditors and investigators who are authorized to investigate and prosecute patient abuse, neglect and exploitation in skilled nursing and residential care facilities in accordance to the OAPA, S. C. Code §45-35-10. Under the OAPA, the MFCU is designated an investigative entity which allows the MFCU broad investigative powers, including the authority to issue subpoenas for documents and records. The MFCU receives reports and allegations from various individuals and organizations within the State, including, but not limited to the LTCO, DDSN, Mental Health providers, DHEC, physicians, long term care facilities, hospitals, concerned family members and law enforcement. A preliminary inquiry is opened so that documents and facts can be gathered and reviewed. Once it is determined that there exists sufficient evidence of criminal conduct in the form of abuse, neglect or exploitation, the MFCU has the authority to prosecute the individual or individuals responsible. The MFCU has state-wide authority and has investigated and prosecuted cases from throughout the State of South Carolina.

SC Code §43-35-80(A) (as amended) provides for actions by the AG's Office against a person or facility for failure to exercise reasonable care:

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.

Investigative Actions Chart

AGENCY	INVESTIGATIVE ACTIONS
South Carolina Law Enforcement Division Vulnerable Adults Investigations Unit (VAIU)	• 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 (DMH) or the Department of Disabilities and Special Needs (DDSN) • Operate a toll-free number (1-866-200-6066) to receive reports of alleged abuse, neglect, or exploitation of vulnerable adults • Investigate or refer to the appropriate law enforcement agency those reports in which there is reasonable suspicion of criminal conduct • Investigate all deaths of vulnerable adults in facilities operated or contracted for operation by DDSN or DMH. The VAIU also receives the findings of any death investigation conducted by the coroner's office in which there is reasonable suspicion to believe that the death of the vulnerable adult resulted from abuse or neglect • Assist other agencies as requested
Department of Social Services: Adult Protective Services	• Initiate investigation upon information alleging abuse, neglect, or exploitation in all settings other than facilities. • Contact law enforcement if criminal violation is suspected. • Initiate protective measures either through Ex Parte order or Emergency Protective Custody (requires law enforcement participation if appropriate). • Conduct complete investigation.
Lieutenant Governor's Office on Aging, Long Term Care Ombudsman	• Initiate investigation of suspected abuse, neglect or exploitation occurring in facilities. • Contact law enforcement if criminal violation is suspected. • Conduct complete investigation and if substantiated, notification sent to appropriate agencies (e.g. DHEC, appropriate Boards of LLR, Solicitor, etc).
Attorney General-Medicaid Fraud Control Unit	• Initiate investigation of abuse, neglect or exploitation in Medicaid facilities after incident referral from DHEC, LTC Ombudsman or Law Enforcement. • Conduct complete investigation and, if substantiated and probable cause can be established, prosecute or forward for prosecution. • Notify appropriate agency of outcome of investigations (e.g. DHEC, LTC Ombudsman, Law Enforcement). • Assist other investigative agencies as necessary.
Law Enforcement	• Initiate investigation of abuse, neglect or exploitation and contact appropriate social service agency if required (e.g. DSS, LTC Ombudsman). • Complete incident report. • Initiate emergency protective custody (EPC) if required. • Conduct complete investigation and, if substantiated and probable cause can be established, prosecute or forward for prosecution. • Assists other investigative agencies as necessary.

CHAPTER 3: RISK FACTORS

Over time there has been an effort to provide relevant data regarding the dynamics of abuse directed at elderly and other vulnerable adults. The most recent study of elder mistreatment (*National Elder Mistreatment Study,* NIJ, Acierno, et. al. (2009) provided the following data regarding the prevalence of the various forms of abuse facing elders in the community. These percentages represent what many already assumed from a practice perspective. An additional effort by the State of New York found the same results:

- Family financial exploitation: 5.1%
- Neglect: 5.1%
- Emotional abuse: 4.6%
- Physical abuse: 1.6%
- Sexual abuse: 0.6%

The most predictive factor for abuse is "social isolation" and most often the perpetrator is the partner/spouse. This supports the contention that most abuse, neglect and exploitation is done in the community and most often by family members or those in a trusted relationship with the victim.

Characteristics exhibited by both the victim and the perpetrator, while not necessarily a guarantee, may indicate the actuality of abuse, neglect, and exploitation. However, they do serve as a frame of reference for the law enforcement officer, social service worker, ombudsman and others when confronted with a situation where there is a possible case of abuse, neglect or exploitation.

While general risk factors have been discussed in various academic publications, and by advocacy groups, the National Research Council, in a comprehensive publication, *Elder Mistreatment: Abuse, Neglect, and Exploitation in An Aging America,* (2003), presented the following as risk factors for both the community and facilities:

- Community: shared living arrangements, dementia and social isolation
- Facilities: stressful working conditions (staff levels), staff burnout and resident aggression

No single group of vulnerable adults is immune to the possibility of abusive behavior. The United States Government Accountability Office (GAO) report in March 2011, *Elder Justice*, found factors associated with elder abuse included physical impairment, mental health problems, cognitive impairment, and inadequate social support. These factors, discussed below, could vary by type of abuse, could occur in combination, and could characterize both the victim and the perpetrator.

Community Victims

Older adults living in the community in their own home or another's home may have *physical impairments* that limit their ability to defend themselves. They may be unable to perform activities of daily living, such as bathing and dressing, making them more dependent and more vulnerable to abuse. The GAO report found that those who had difficulty completing at least one instrumental activity of daily living, such as housework or using the phone, were at greater risk of financial exploitation.

Mental health problems including depression may make older persons less likely to ask for help and thus more vulnerable to abuse. Depression among caregivers might also be a factor in abuse of older adults. Alcohol abuse is another factor among self-neglecting older adults as well as perpetrators of abuse.

Cognitive impairment may also make older adults more vulnerable to abuse. The cognitively impaired are most at risk because they are unable to defend themselves from, or even recognize, abuse or neglect.

Victims and perpetrators who *lack adequate social supports* are likely to have problems with relationships and are at high risk for abuse. Strong social supports provide more opportunity for contacts with others and monitoring of the victim and perpetrator's interactions.

Institutional Victims

When dealing with abuse occurring in a facility/institution, it should be understood that generally only those adults with severe impairments are in these settings. In the case of the elderly, it is generally the oldest and frailest individuals who are institutionalized. People with disabilities, mental illness or intellectual disabilities are least likely to be able to prevent their victimization.

Once again, we have to establish generalities about the high-risk adult population based upon existing research. Little has been done in the area of institutional abuse, but the victim typology would apply in both community and facility/institutional settings. In either case, it can be said that persons most at risk are the ones least able to protect themselves.

Perpetrators

The National Research Council report provides a list of perpetrator characteristics. They are:

- Mental illness
- Hostility
- Substance abuse
- Abuser dependency

These perpetrators may be any age, known and trusted by the victim, and very often dependent on the victim. The dependence is very often financial. Motivation very often is power and control and/or greed. While there is still the notion that caregiver stress is the foundation of abuse, that notion is not borne out by data and is not an acceptable justification.

Self-Neglect

The definition of neglect in the OAPA includes self-neglect. It is defined as occurring when a vulnerable adult does not have a caregiver and the vulnerable adult is unable to provide for his or her own health or safety. Further, this inability could result or reasonably be expected to result in serious physical or psychological harm to the vulnerable adult or the inability presents a substantial risk of death.

As noted in the OAPA discussion in Chapter 1, a competent vulnerable adult has the right to self-determination. This means the vulnerable adult has the right to control and/or make decisions affecting his/her life. Also under OAPA, a vulnerable adult is not considered to be abused or neglected solely because he/she declines medical treatment, or has chosen nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

The GAO report found that alcohol abuse could be a factor in self-neglect situations. It should also be noted that self-neglect may be a product of financial exploitation (all the resources are gone) and must be a part of any investigation.

Summary

In summary, it is important to understand the complex nature of vulnerable adult abuse, neglect and exploitation. While it can be said with some certainty that most abusive incidents take place in the community, and the perpetrator is a family member or in a trusted relationship, that is not always the case. While much of this material focuses on the risk factors associated with elders, the general nature of the material applies to any vulnerable adult.

Characteristics of People with Intellectual Disabilities versus Mental Illness

It is important for those working in the area of abuse, neglect and exploitation of vulnerable adults to understand the difference between those who may have intellectual disabilities or mental illness. The chart below, furnished by the DDSN, illustrates some of these differences.

CHARACTERISTICS OF INTELLECTUAL DISABILITIES VS. MENTAL ILLNESS

INTELLECTUAL DISABILITIES	MENTAL ILLNESS
1. Refers to below average intellectual functioning.	Has nothing to do with IQ. A person with mental illness may be a genius or may be below average.
2. Refers to impairment in social adaptation.	May be very competent socially but may have a character disorder or other aberration.
3. Incidence: 3% of general population.	16-20% of general population.
4. Is present at birth or usually occurs during the period of development.	May have its onset at any age.
5. Impairment is permanent but can be aided through full development of the person's potential.	Is often temporary and in many instances is reversible. Seldom meets the definition of a developmental disability.
6. Person can usually be expected to behave rationally at his/her operational level.	Person may fluctuate between normal and irrational behavior.
7. Erratic and/or violent behavior are rarely noted in persons with intellectual disabilities secondary to the cause of their intellectual disability.	The presence of erratic behavior is a hallmark in some types of mental illness, and violence may be a characteristic of certain specific mental illnesses.
8. Symptoms of failure to adjust to societal demands are secondary to limited intelligence and social adaptive responses.	Symptoms are secondary to a break with reality and/or emotional interference with responses.
9. Person often has impaired communication skills.	Person may communicate in a very idiosyncratic manner.
10. Person can also have mental illness.	Person can also have impaired intellectual functioning as a result of the mental illness.

CHAPTER 4 LEGAL ISSUES

While there are many issues that impact the system for the protection of vulnerable adults, a few of them will be addressed here.

Americans with Disabilities Act

Most vulnerable and many elderly adults will have one or more disabilities. The Americans with Disabilities Act (ADA) prohibits governments and businesses from discriminating against individuals with disabilities, and requires them to make reasonable accommodations to enable individuals to use their services. The ADA also applies to individuals who are perceived as having a disability and who have a history of a disability, such as cancer that is in remission. The ADA requires governments to provide services in the most integrated environment. Flexibility is the key to the ADA—each individual's need must be considered. The United States Department of Justice ADA website has a wealth of information, for example these materials for law enforcement personnel: http://www.ada.gov/q%26a_law.pdf

The ADA covers many aspects of working with elderly and vulnerable adults, such as:

Communication: ensuring that the individuals can hear, read and understand information. Sign language interpretation may be necessary for individuals who are deaf. Written materials should be available in large print or Braille and written at a level that individuals with limited cognitive ability or learning disabilities can understand. Responders need to be aware of how to communicate with individuals with mental illness or intellectual disabilities. Websites should be ADA compliant.

Mobility: if individuals are removed from their home they must be able to take any mobility aids such as wheelchairs and walkers. Vehicles should be appropriate to transport someone using a wheelchair safely.

Service animals: individuals should not be separated from their service animal. Training should be provided about how to interact with an individual who needs a service animal.

Physical accessibility: many facilities are still not fully accessible to individuals with disabilities. Common problems include steps, narrow doors, door handles, and inaccessible bathrooms.

Most integrated environment: individuals should be able to remain in their own homes with appropriate support services when they can do so safely. If they must be removed, the goal should be return home or to the least restrictive setting.

While there are other guides, one etiquette guide for working with people with disabilities can be found at: http://www.unitedspinal.org/pdf/DisabilityEtiquette.pdf. This 35 page guide provides information on an extensive list of disabilities.

Elder Justice Act Reporting Requirements

In 2010, the Elder Justice Act (EJA) (42 U.S. Code §§1397j-1397m-5) passed as part of healthcare reform and passage of the Patient Protection and Affordable Care Act (ACA). Reporting requirements were addressed in the EJA and went into effect March 23, 2011.

The ACA amended the Social Security Act by establishing new section 1150B entitled, "Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities." This section requires certain individuals in federally funded, long-term care facilities to timely report any reasonable suspicion of a crime committed against a resident of that facility. These facilities include nursing facilities, skilled nursing facilities, hospices that provide services in long term care facilities, and intermediate care facilities for the mentally retarded (ICFs/MR).

The report must be submitted to at least one law enforcement agency of jurisdiction and to DHEC, the State Survey Agency. The facility may not retaliate against an individual who lawfully reports a reasonable suspicion of a crime. Long term care facilities are required to post notice of employee rights posters, to include non-retaliation, in a conspicuous location.

Individuals who fail to report under this section shall be subject to various penalties, including civil monetary penalties. Two time limits are established for the reporting of reasonable suspicion of a crime, depending on the seriousness of the event that leads to the reasonable suspicion.

1. ***Serious Bodily Injury – 2 Hour Limit:*** If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion;

2. ***All Others – Within 24 Hours:*** If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion.

HIPAA and Release of Information to Law Enforcement Professionals

HIPAA (the Health Insurance Portability and Accountability Act of 1996) generally requires health care entities such as hospitals, practitioners, and health care programs and clearinghouses to maintain confidentiality of a patient's protected health information (PHI). This includes not disclosing information about or records concerning a patient's past, present, or future medical or mental health condition, history, diagnosis, or treatment. It also covers payments for care. Covered health information includes any record created or received by a covered entity whether electronic, oral, or written. If information is released, the patient must be notified. Violations are subject to criminal and civil actions. 45 C.F.R. §164.501.

The following information was drawn from health policy answers at the United States Department of Health and Human Services website on August 24, 2005.

HIPAA permits the disclosure of PHI to law enforcement without the patient's written authorization in various situations. These include:

1) In compliance with a court order, judicially authorized warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena. 45 C.F.R. §164.512(f)(1)(ii)(A)-(B)

2) In response to an administrative request, including a written request from a law enforcement official. The request must include a written statement that ***the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used.*** 45 C.F.R. §164.512(f)(1)(ii)(C)

3) In response to a request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. The information that can be provided without a warrant or court order is limited. See 45 C.F.R. §164.512(f)(2).

The same limited information can be reported to law enforcement by a health care provider if it concerns a perpetrator of a crime and the reporter is the victim who is an employee of that entity; or to identify or apprehend a person who has admitted participating in a violent act that the entity believes may have caused serious physical harm and the admission was not made in the course of therapy, counseling, or treatment related to the propensity to commit this kind of violent act.

4) With victim/patient consent

5) If the victim, because of the emergency or incapacity, the victim/patient cannot agree, the provider can provide PHI to law enforcement after assurances that the information will not be used against the victim/patient, is needed to determine if a crime has been committed, delay to await consent would materially and adversely affect the investigation and the health care provider believes that compliance is in the best interest of the individual about whose PHI is requested. 45 C.F.R. §164.512(f)(3)

6) Child abuse reports may be made to any law enforcement official authorized by law to receive such reports (this includes state or local law enforcement officials) 45 C.F.R. §164.512(b)(i)(ii)

7) Adult abuse (including elder abuse) and domestic violence may be made to any law enforcement official authorized by law to receive such reports if the individual agrees; the report is required by law; or when expressly authorized by law and the professional believes that reporting is necessary to prevent serious harm to the individual or others. 45 C.F.R. §164.512(c)(1)(iii)(B)

8) When disclosure is required by law, such as gunshot wounds, injuries caused by violent attacks. 45 C.F.R. §164.512(f)(1)(i)

9) To notify law enforcement of a suspicious death (can also share information with a medical examiner or coroner). 45 C.F.R. §164.512(f)(4)

10) When responding to an off-site emergency when necessary to alert law enforcement about criminal conduct. 45 C.F.R. §164.512(f)(6)

11) When consistent with applicable law and ethical standards, such as to prevent or lessen a serious and imminent threat to the health or safety of the public or an individual or to identify or apprehend someone who has escaped from lawful custody.

12) Requests from correctional or custodial facilities for information necessary to provide health care to an inmate or to meet health, safety, and good order needs of other inmates and staff.

For more information, see the web site for the United States Department of Health and Human Services, Office of Civil Rights, www.hhs.gov. See also www.healthprivacy.org.

For specific effect on domestic violence matters, see Hudson, Rodney (June 4, 2003) "Summary of New Federal Medical Privacy Protections for Victims of Domestic Violence" and "Disclosures to Law Enforcement" at the endabuse.org website.