CHAPTER 50-25.2
VULNERABLE ADULT PROTECTION SERVICES

50-25.2-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.
2. "Adult" includes a minor emancipated by marriage.
3. "Adult protective services" means remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:
   a. Receiving, evaluating, and assessing reports of alleged abuse or neglect;
   b. Arranging for and coordinating the provision of essential services;
   c. Providing case management and counseling for the purposes of planning and providing social and other services needed by vulnerable adults;
   d. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;
   e. Monitoring the delivery of services to vulnerable adults and making progress assessments; and
   f. Arranging for or providing, and coordinating, other services consistent with this chapter.
4. "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
5. "Department" means the department of human services.
6. "Essential services" means those services necessary to maintain and safeguard the physical and mental health of a vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision.
7. "Financial exploitation" means the taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
8. "Least restrictive alternative" means adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services.
9. "Living independently" includes using the telephone, shopping, preparing food, housekeeping, and administering medications.
10. "Mental anguish" means psychological or emotional damage that requires medical treatment or care or is characterized by behavioral change or physical symptoms.
11. "Neglect" means the failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.
12. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.
13. "Self-care" includes maintaining personal hygiene, eating, and dressing.

14. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
15. "Substantial functional impairment" means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.
16. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.
17. "Vulnerable adult" means an adult who has a substantial mental or functional impairment.
18. "Willfully" means willfully as defined in section 12.1-02-02.

50-25.2-02. Adult protective services program - Rules.

The department, with the advice and cooperation of county social service boards, shall develop, administer, and cause to be implemented a program of protective services for vulnerable adults consistent with this chapter. In developing and administering the program, the department, within the limits of legislative appropriation, shall allocate and distribute funds for the purpose of providing adult protective services. All law enforcement agencies, courts of competent jurisdiction, and appropriate state and local agencies shall cooperate in the implementation and enforcement of this chapter. The department may adopt rules in accordance with chapter 28-32 for the purpose of implementing the provisions of this chapter.

50-25.2-03. Reporting of abuse or neglect - Method of reporting.

1. Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency if the knowledge is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the capacity of spiritual adviser. For purposes of this subsection, "medical or mental health professional or personnel" means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a physician, nurse, medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, addiction counselor, counselor, marriage and family therapist, social worker, mental health professional, emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.
2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter.
3. Any person not required to report under subsection 1 who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.
4. A person required to report under subsection 1 shall make an oral or written report and a person voluntarily reporting under subsection 2 may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:

a. The name, age, and residence address of the alleged vulnerable adult;
b. The name and residence address of the caregiver, if any;
c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;
d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
e. Any other information that in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect and the identity of the individual responsible for the alleged abuse or neglect.

50-25.2-04. Referral of complaints concerning long-term care facilities.

Any report received by the department or the department's designee under section 50-25.2-03 complaining of any administrative action, as defined in section 50-10.1-01, that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or a person who was discharged from a long-term care facility within nine months of the complaint, must be referred to the state long-term care ombudsman for investigation pursuant to chapter 50-10.1.

50-25.2-05. Evaluation and assessment - Participation by law enforcement agencies - Entry.

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 50-25.2-03, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
   a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other person who may have knowledge of the circumstances surrounding the report;
   b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
   c. Have access to all records of the vulnerable adult:
      (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; or
      (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is a person with respect to whom a report was received by the department or the department's designee; and
   d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the agency of the protection and advocacy project, or private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult.
2. If a report alleges, or circumstances surrounding the report indicate, a violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the department or the department's designee shall notify the appropriate law enforcement agency. In such a case, the law enforcement agency may investigate the allegations in the report, take immediate steps if necessary to protect the vulnerable adult, and institute legal proceedings if appropriate. The law enforcement agency shall notify the department or the department's designee if such action is taken. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct. In all other cases of alleged abuse or neglect, the department or the department's designee may request

assistance in an evaluation or the provision of other adult protective services from an appropriate law enforcement agency if necessary under the circumstances.

3. If the alleged vulnerable adult, or the caregiver, does not consent to an evaluation or investigation, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse or neglect has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent danger of serious physical injury or death.

50-25.2-06. Provision of adult protective services.

If the department or the department's designee determines that a vulnerable adult demonstrates a need for adult protective services, the department or the department's designee shall provide, or arrange for the provision of, adult protective services, provided the vulnerable adult consents to and accepts the services.

50-25.2-07. Refusal or inability to accept adult protective services - Department alternatives.

If a vulnerable adult who is subject to abuse or neglect is unable to consent and accept, or the caregiver refuses, adult protective services determined by the department or the department's designee to be necessary under this chapter, the department or the department's designee may pursue any administrative, legal, and other remedies authorized by law which are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further abuse or neglect. The state's attorney of the county in which the vulnerable adult resides or is located shall assist the department or the department's designee, upon request, in pursuing an appropriate remedy. Available remedies include seeking:

1. The appointment of a guardian under chapter 30.1-28 or a conservator under chapter 30.1-29;
2. A restraining order or other court order necessary under the circumstances;
3. The removal of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to sections 30.1-28-07 and 30.1-29-15;
4. The provision of appropriate treatment under chapter 25-03.1;
5. The criminal prosecution of the individual responsible for the abuse or neglect; and
6. Any other available administrative, legal, or other remedies on behalf of the vulnerable adult.

50-25.2-08. Cost of adult protective services.

The vulnerable adult is responsible for the costs of providing adult protective services, except the receipt, evaluation, and assessment of reports of suspected abuse or neglect pursuant to subdivision a of subsection 3 of section 50-25.2-01, if the department or the department's designee determines, based on standards set by the department, that the vulnerable adult is financially capable of paying for the protective services received either through the vulnerable adult's own income or resources or other programs for which the vulnerable adult may be eligible. The department or the department's designee is not responsible for the cost of providing adult protective services unless the provision of the services is specifically provided by law and funding exists to provide the services.

50-25.2-09. Immunity from liability.

The following persons are immune from any civil or criminal liability that otherwise might result from the person's actions taken pursuant to this chapter:

1. Any person, other than an alleged perpetrator, making a report or participating in an investigation, evaluation, or assessment under this chapter if the person is acting in good faith.

2. Any person, employed by the department or the department's designee or a law enforcement agency, conducting or supervising an investigation, evaluation, or assessment or implementing or enforcing the provisions of this chapter if the person is acting in good faith and exercising due care.

50-25.2-10. Penalty for failure to report - Penalty and civil liability for false reports.

1. Any person required to report under subsection 1 of section 50-25.2-03 who willfully fails to do so is guilty of an infraction.
2. Any person who willfully makes a false report, or provides false information which causes the report to be made, is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.
3. A person who willfully makes a false report, or provides false information that causes a report to be made, is liable in a civil action for all damages suffered by the person reported.

50-25.2-11. Retaliation prohibited - Presumption - Penalty.

1. An employer who imposes any form of discipline or retaliation against an employee solely because the employee reported in good faith having knowledge of or reasonable cause to suspect that a vulnerable adult is or has been abused or neglected, or because the employee is a vulnerable adult with respect to whom a report was made, is guilty of a class B misdemeanor.
2. The employer of a person permitted to report pursuant to section 50-25.2-12 who retaliates against the person because of a report is liable to that person in a civil action for all damages.
3. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. An adverse action includes:
   a. The discharge from or termination of employment;
   b. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
   c. The restriction or prohibition of access by the employee to any place of employment or persons affiliated with the place of employment.

50-25.2-12. Confidentiality of records - Authorized disclosures.

All reports made under this chapter and all records and information obtained or generated as a result of the reports are confidential, but must be made available to:

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A person who is the subject of a report if the identity of persons reporting under section 50-25.2-03 is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.

50-25.2-13. Information, education, and training programs.

1. The department, in cooperation with county social service boards and law enforcement agencies, shall conduct a public information and education program. The elements and goals of the program must include:

a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary reporting authorized by this chapter, and the need for and availability of adult protective services.
b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.

2. The department, in cooperation with county social service boards and law enforcement agencies, shall institute a program of education and training for the department, the department's designee, and law enforcement agency staff and other persons who provide adult protective services.

50-25.2-14. Implementation contingent upon appropriation.

The department and county social service boards are not required to implement or enforce this chapter with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that region, area, or county.