

Part 3 Abuse, Neglect, or Exploitation of a Vulnerable Adult

62A-3-301 Definitions.

As used in this part:

- (1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.
- (2) "Abuse" means:
 - (a) knowingly or intentionally:
 - (i) attempting to cause harm;
 - (ii) causing harm; or
 - (iii) placing another in fear of harm;
 - (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;
 - (c) emotional or psychological abuse;
 - (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or
 - (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:
 - (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
 - (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
- (3) "Adult" means a person who is 18 years of age or older.
- (4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.
- (5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.
- (6) "Capacity to consent" means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.
- (7) "Caretaker" means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities.
- (8) "Counsel" means an attorney licensed to practice law in this state.
- (9) "Database" means the statewide database maintained by the division under Section 62A-3-311.1.
- (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- (11) "Elder adult" means a person 65 years of age or older.
- (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- (13)
 - (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
 - (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.
 - (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:

- (i) engage in the conduct; or
 - (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
- (14) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section 76-5b-202.
- (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.
- (16) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (17) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.
- (18)
- (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
 - (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
 - (b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (19) "Lacks capacity to consent" is as defined in Section 76-5-111.
- (20)
- (a) "Neglect" means:
 - (i)
 - (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or
 - (B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
 - (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;
 - (v) self-neglect by the vulnerable adult; or
 - (vi) abandonment by a caretaker.
 - (b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.
- (21) "Physical injury" includes the damage and conditions described in Section 76-5-111.

- (22) "Protected person" means a vulnerable adult for whom the court has ordered protective services.
- (23) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.
- (24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.
- (25) "Serious physical injury" is as defined in Section 76-5-111.
- (26) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (27) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.
- (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:
 - (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own financial resources; or
 - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
- (29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Amended by Chapter 149, 2012 General Session

62A-3-302 Purpose of Adult Protective Services Program.

- Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective Services:
- (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;
 - (2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; and
 - (3) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:
 - (a) reporting and investigating incidents of abuse, neglect, or exploitation; and
 - (b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Amended by Chapter 91, 2008 General Session

62A-3-303 Powers and duties of Adult Protective Services.

- In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:
- (1) shall maintain an intake system for receiving and screening reports;
 - (2) shall investigate referrals that meet the intake criteria;

- (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
- (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
- (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
- (6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;
- (7) shall have access to facilities licensed by, or contracted with, the department or the Department of Health for the purpose of conducting investigations;
- (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:
 - (a) for a vulnerable adult who does not lack capacity to consent, the vulnerable adult signs a release of information; or
 - (b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;
- (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (10) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;
- (11) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;
- (12) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (13) may issue reports and recommendations.

Amended by Chapter 245, 2014 General Session

62A-3-304 Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

Amended by Chapter 91, 2008 General Session

62A-3-305 Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

- (1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement

shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

- (2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
 - (b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.
- (3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.
- (4)
 - (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.
 - (b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.
- (5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.
- (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 328, 2012 General Session

62A-3-307 Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

- (1) consents to the taking of the photographs, video tape recordings, or audio or video tape accounts; or
- (2) lacks the capacity to give the consent described in Subsection (1).

Repealed and Re-enacted by Chapter 91, 2008 General Session

62A-3-308 Peace officer's authority to transport -- Notification.

- (1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:
 - (a) the officer has probable cause to believe that:
 - (i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
 - (ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;
 - (b) the vulnerable adult refuses to consent or lacks capacity to consent; and
 - (c) there is not time to notify interested parties or to apply for a warrant or other court order.

- (2) A peace officer described in Subsection (1) shall, within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:
 - (a) notify Adult Protective Services intake; and
 - (b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

Amended by Chapter 91, 2008 General Session

62A-3-309 Enforcement by division -- Duty of county or district attorney.

- (1) It is the duty of the county or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, to:
 - (a) assist and represent the division;
 - (b) initiate legal proceedings to protect vulnerable adults; and
 - (c) take appropriate action to prosecute the alleged offenders.
- (2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:
 - (a) the division may request the attorney general to act; and
 - (b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

Amended by Chapter 237, 2013 General Session

62A-3-311 Requests for records.

- (1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.
- (2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 91, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-3-311.1 Statewide database -- Restricted use and access.

- (1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.
- (2) The database shall include:
 - (a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;
 - (b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:
 - (i) supported;
 - (ii) inconclusive;
 - (iii) without merit; or
 - (iv) for reports for which the finding is made before May 5, 2008:
 - (A) substantiated; or
 - (B) unsubstantiated; and
 - (c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.
- (3) Information obtained from the database may be used only:

- (a) for statistical summaries compiled by the department that do not include names or other identifying data;
- (b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:
 - (i) the department;
 - (ii) the Division of Occupational and Professional Licensing;
 - (iii) the Bureau of Licensing, within the Department of Health;
 - (iv) any government agency specifically authorized by statute to access or use the information in the database; or
 - (v) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or
- (c) as otherwise specifically provided by law.

Amended by Chapter 91, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-3-311.5 Notice of supported finding -- Procedure for challenging finding -- Limitations.

- (1)
 - (a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).
 - (b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:
 - (i) the delay is necessary in order to:
 - (A) avoid impeding an ongoing criminal investigation or proceeding; or
 - (B) protect the safety of a person; and
 - (ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.
- (2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.
- (3) The notice described in Subsection (1)(a) shall:
 - (a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;
 - (b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;
 - (c) include a summary of the facts that are the basis for the supported finding;
 - (d) indicate that the supported finding may result in disqualifying the person from:
 - (i) being licensed, certified, approved, or employed by a government agency;
 - (ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or
 - (iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);
 - (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;
 - (f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and
 - (g) inform the alleged perpetrator of:

- (i) the right described in Subsection (4)(a); and
 - (ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.
- (4)
- (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.
- (5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.
- (6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based.
- (7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:
- (a) request that the division reconsider the division's finding; or
 - (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

Enacted by Chapter 91, 2008 General Session

62A-3-312 Access to information in database.

The database and the adult protection case file:

- (1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, and county or district attorney's offices;
- (2) shall be released as required under Subsection 63G-2-202(4)(c); and
- (3) may be made available, at the discretion of the division, to:
 - (a) subjects of a report as follows:
 - (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and
 - (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and
 - (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
 - (i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;
 - (ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;
 - (iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

- (iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and
- (v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:
 - (A) the Office of Public Guardian, created in Section 62A-14-103; and
 - (B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Amended by Chapter 245, 2014 General Session

62A-3-314 Private right of action -- Estate asset -- Attorney fees.

- (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.
- (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.
- (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.
- (4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

Amended by Chapter 176, 2007 General Session

62A-3-315 Protective services voluntary unless court ordered.

- (1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.
- (2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.
- (3) The court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with this part.

Enacted by Chapter 108, 2002 General Session

62A-3-316 Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

- (1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section 62A-3-315;
- (2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
- (3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

Enacted by Chapter 108, 2002 General Session

62A-3-317 Venue for protective services proceedings.

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

Enacted by Chapter 108, 2002 General Session

62A-3-318 Petition by division for protective services -- Notice -- Rights of adult.

- (1) If the division determines that a vulnerable adult is in need of protective services but lacks capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:
 - (a) the name, address, and age of the adult who is the subject of the petition;
 - (b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;
 - (c) the name and address of any court-appointed guardian or conservator for the adult;
 - (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and
 - (e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.
- (2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least 10 days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).
- (3) The notice shall be in plain language and in at least a 14-point font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.
- (4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be determined by the court on the basis of evidence provided to the court.
- (5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.
- (6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorney fees.
- (7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.

(8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

Amended by Chapter 91, 2008 General Session

62A-3-319 Court order for protective services -- Review.

- (1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.
- (2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under Section 62A-3-318 lacks capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.
- (3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within 10 days after the date the order was entered.

Enacted by Chapter 108, 2002 General Session

62A-3-320 Petition for emergency order -- Protective services -- Temporary guardian -- Forcible entry.

- (1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:
 - (a) the subject of the petition is a vulnerable adult;
 - (b) the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties;
 - (c) an emergency exists; and
 - (d) the welfare, safety, or best interests of the adult require immediate action.
- (2) The order described in Subsection (1) shall specifically designate the protective services which are approved, together with supporting facts.
- (3) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.
- (4)
 - (a) Protective services provided through an emergency order may not be provided longer than three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.
 - (b) If a petition for guardianship, conservatorship, or other protective services is filed within the three-business-day period described in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.
- (5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section 75-5-310.
- (6) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required.

Amended by Chapter 91, 2008 General Session

62A-3-321 Petition for injunctive relief when caretaker refuses to allow services.

- (1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.
- (2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services or to order other appropriate relief.
- (3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.
- (4) The petition under Subsection (1) may be joined with a petition under Section 62A-3-318 or Section 62A-3-320.

Enacted by Chapter 108, 2002 General Session