

Effective 5/3/2023

Part 2
Abuse, Neglect, or Exploitation of a Vulnerable Adult

26B-6-201 Definitions.

As used in this part:

- (1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person 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 Individual; 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 an individual who is 18 years old 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 an individual to understand and communicate regarding the nature and consequences of decisions relating to the individual, and relating to the individual's property and lifestyle, including a decision to accept or refuse services.
- (7) "Caretaker" means a person or public institution that is entrusted with or assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities for pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a position of trust and confidence with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is under court order to provide care.
- (8) "Counsel" means an attorney licensed to practice law in this state.
- (9) "Database" means the statewide database maintained by the division under Section 26B-6-210.
- (10)
 - (a) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.
 - (b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.
- (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- (12) "Elder adult" means an individual 65 years old or older.

- (13) "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.
- (14) "Emergency protective services" means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.
- (15)
- (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.
- (16) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.
- (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.
- (18) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (19) "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.
- (20)
- (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person, unless the restriction of personal rights is authorized by court order, by:
- (i) preventing the vulnerable adult from communicating, visiting, interacting, or initiating interaction with others, including receiving or inviting visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, or 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) "Isolation" does not include an act:
- (i) intended in good faith to protect the physical or mental welfare of the vulnerable adult; or
- (ii) performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (21) "Lacks capacity to consent" is as defined in Section 76-5-111.4.
- (22)
- (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.
- (23) "Physical injury" includes the damage and conditions described in Section 76-5-111.
- (24) "Protected person" means a vulnerable adult for whom the court has ordered protective services.
- (25) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.
- (26) "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.
- (27) "Serious physical injury" is as defined in Section 76-5-111.
- (28) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (29) "Undue influence" occurs when a person:
- (a) uses influence to take advantage of a vulnerable adult's mental or physical impairment; or
 - (b) uses the person's role, relationship, or power:
 - (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or
 - (ii) to gain control deceptively over the decision making of the vulnerable adult.
- (30) "Vulnerable adult" means an elder adult, or a dependent 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.
- (31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-202 Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section 26B-6-110, 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;
- (3) shall, subject to Section 26B-6-217, provide emergency protective services; and
- (4) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-203 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 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 has the capacity to consent, the vulnerable adult signs a release of information; or
 - (b) an administrative subpoena is issued by Adult Protective Services:
 - (i) for a vulnerable adult who has limited capacity to consent;
 - (ii) for a vulnerable adult whose legal guardian refuses to consent;
 - (iii) to a custodian of records or other items for a vulnerable adult, if the custodian refuses to allow access to the records or items without a subpoena; or
 - (iv) when the records or other items sought are reasonably necessary for Adult Protective Services to:
 - (A) investigate the alleged abuse, neglect, or exploitation of a vulnerable adult; or
 - (B) protect the vulnerable adult who may be the victim of abuse, neglect, or exploitation;
- (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (10) shall, subject to Section 26B-6-217, provide emergency protective services;
- (11) 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;
- (12) 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;
- (13) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (14) may issue reports and recommendations.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 318, 2023 General Session

26B-6-204 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-205 Reporting requirements -- Investigation -- Exceptions -- Immunity -- Penalties -- Nonmedical healing.

- (1) Except as provided in Subsection (4), if an individual has reason to believe that a vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services or to the nearest peace officer or law enforcement agency.
- (2)
- (a) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer or the law enforcement agency shall immediately notify Adult Protective Services.
- (b) Adult Protective Services and the peace officer or the law enforcement agency shall coordinate, as appropriate, efforts to investigate the report under Subsection (1) and to provide protection to the vulnerable adult.
- (3) When a report under Subsection (1), or a 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 shall initiate an investigation in cooperation with Adult Protective Services.
- (4) Subject to Subsection (5), the reporting requirement described in Subsection (1) does not apply to:
- (a) a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:
- (i) the perpetrator made the confession directly to the member of the clergy; and

- (ii) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession; or
 - (b) an attorney, or an individual employed by the attorney, if knowledge of the suspected abuse, neglect, or exploitation of a vulnerable adult arises from the representation of a client, unless the attorney is permitted to reveal the suspected abuse, neglect, or exploitation of the vulnerable adult to prevent reasonably certain death or substantial bodily harm in accordance with Utah Rules of Professional Conduct, Rule 1.6.
- (5)
 - (a) When a member of the clergy receives information about abuse, neglect, or exploitation of a vulnerable adult from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse, neglect, or exploitation from the confession of the perpetrator.
 - (b) Exemption of the reporting requirement for an individual described in Subsection (4) does not exempt the individual from any other efforts required by law to prevent further abuse, neglect, or exploitation of a vulnerable adult by the perpetrator.
- (6)
 - (a) As used in this Subsection (6), "physician" means an individual licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (b) The physician-patient privilege does not:
 - (i) excuse a physician from reporting suspected abuse, neglect, or exploitation of a vulnerable adult under Subsection (1); or
 - (ii) constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any judicial or administrative proceeding resulting from a report under Subsection (1).
- (7)
 - (a) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification.
 - (b) A covered provider or covered contractor, as defined in Section 26B-2-238, that knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.
 - (c) This Subsection (7) does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (8) If Adult Protective Services has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in accordance with this section, Adult Protective Services shall file a complaint with:
 - (a) the Division of Professional Licensing if the individual is a health care provider, as defined in Section 80-2-603, or a mental health therapist, as defined in Section 58-60-102;
 - (b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and
 - (c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102.
- (9)

- (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection (1).
 - (b) If an individual is convicted under Subsection (9)(a), the court may order the individual, in addition to any other sentence the court imposes, to:
 - (i) complete community service hours; or
 - (ii) complete a program on preventing abuse, neglect, and exploitation of vulnerable adults.
 - (c) In determining whether it would be appropriate to charge an individual with a violation of Subsection (9)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse, neglect, or exploitation of a vulnerable adult because reporting would have placed the individual in immediate danger of death or serious bodily injury.
 - (d) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (9)(a) as the basis for charging the individual with another offense.
 - (e) A prosecution for failure to report under Subsection (9)(a) shall be commenced within two years after the day on which the individual had knowledge of the suspected abuse, neglect, or exploitation and willfully failed to report.
- (10) Under circumstances not amounting to a violation of Section 76-8-508, an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report under Subsection (1), the individual who made the report under Subsection (1), a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.
- (11) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-206 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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-207 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-208 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-209 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-210 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 an individual 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 Professional Licensing;
 - (iii) the Division of Licensing and Background Checks within the department;
 - (iv) the Bureau of Emergency Medical Services and Preparedness, within the department, or a designee of the Bureau of Emergency Medical Services and Preparedness;
 - (v) any government agency specifically authorized by statute to access or use the information in the database; or
 - (vi) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-211 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-212 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, the Division of Professional Licensing, 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 26B-6-302; and
 - (B) the Long-Term Care Ombudsman Program, created in Section 26B-2-303.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-213 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-214 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 has the 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) A court may order emergency protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to protective services in accordance with Section 26B-6-217.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-215 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 26B-6-214;

- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-216 Venue for protective services proceedings.

Venue for all proceedings related to protective services and emergency protective services under this part is in the county where the vulnerable adult resides or is present.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-217 Emergency protective services -- Forcible entry.

- (1) Adult Protective Services shall, immediately upon court order, provide emergency protective services to a court-designated vulnerable adult.
- (2) A court may, without notice, order emergency protective services immediately upon receipt of a petition for emergency protective services when a court finds that:
 - (a) the subject of the petition is a vulnerable adult;
 - (b)
 - (i) the vulnerable adult does not have a court-appointed guardian or conservator; or
 - (ii) 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 vulnerable adult requires emergency protective services.
- (3) An emergency protective services order shall specifically designate the services that are approved and the facts that support the provision of those services.
- (4) Services authorized in an emergency protective services order may include hospitalization, nursing, custodial care, or a change in residence.
- (5) An emergency protective services order expires five business days after the day on which the court issues the order unless an appropriate party petitions for temporary guardianship pursuant to Section 75-5-310 or the division files a new petition for an emergency services order.
- (6) If a petition for guardianship or an additional emergency protective services petition is filed within five business days after the day on which the court issues the original emergency protective services order, a court may extend the duration of the original order an additional 15 business days after the day on which the subsequent petition is filed to allow for a court hearing on the petition.
- (7) To implement an emergency protective services order, a court may authorize forcible entry by a peace officer into the premises where the vulnerable adult may be found.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-218 Petition for injunctive relief when caretaker refuses to allow protective 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.
- (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 26B-6-217.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-219 Medical cannabis use by a vulnerable adult or guardian.

A peace officer or an employee or agent of the division may not solicit or provide, and a court may not order, emergency services for a vulnerable adult based solely on:

- (1) the vulnerable adult's possession or use of cannabis in accordance with Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
- (2) the guardian of the vulnerable adult assisting with the use of or possessing cannabis in accordance with Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

Renumbered and Amended by Chapter 308, 2023 General Session