

## Chapter 3 Aging and Adult Services

### Part 1 Division and Board of Aging and Adult Services

#### **62A-3-101 Definitions.**

As used in this chapter:

- (1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:
  - (a) that places the person at a high risk of being unable to care for himself:
    - (i) as determined by assessment; and
    - (ii) due to the onset of a physical or cognitive impairment or frailty; and
  - (b) for which the person is not eligible to receive services under:
    - (i) Chapter 5, Services for People with Disabilities; or
    - (ii) Chapter 15, Substance Abuse and Mental Health Act.
- (2) "Aging" and "aged" means a person 60 years of age or older.
- (3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.
- (4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:
  - (a) operate within a planning and service area of the state; and
  - (b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).
- (5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:
  - (a) operate within a planning and service area of the state; and
  - (b) develop and implement services for high risk adults in the area described in Subsection (5)(a).
- (6) "Board" means the Board of Aging and Adult Services.
- (7) "Director" means the director of the division.
- (8) "Division" means the Division of Aging and Adult Services within the department.
- (9) "Personal care attendant" means a person who:
  - (a) is selected by:
    - (i) an aged person;
    - (ii) an agent of an aged person;
    - (iii) a high risk adult; or
    - (iv) an agent of a high risk adult; and
  - (b) provides personal services to the:
    - (i) aged person described in Subsection (9)(a)(i); or
    - (ii) high risk adult described in Subsection (9)(a)(iii).
- (10) "Personal services" means nonmedical care and support, including assisting a person with:
  - (a) meal preparation;
  - (b) eating;
  - (c) bathing;
  - (d) dressing;
  - (e) personal hygiene; or

(f) daily living activities.

(11) "Planning and service area" means a geographical area of the state designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.

(12)

(a) "Public funds" means state or federal funds that are disbursed by:

- (i) the Department of Health;
- (ii) the division;
- (iii) an area agency; or
- (iv) an area agency on aging.

(b) "Public funds" includes:

- (i) Medicaid funds; and
- (ii) Medicaid waiver funds.

Amended by Chapter 107, 2005 General Session

**62A-3-102 Division created.**

There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

Amended by Chapter 181, 1990 General Session

**62A-3-103 Director of division -- Appointment -- Qualifications.**

(1) The director of the division shall be appointed by the executive director with the concurrence of the board.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning the aging and adult populations.

(3) The director is the administrative head of the division.

Amended by Chapter 104, 1992 General Session

**62A-3-104 Authority of division.**

(1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:

- (a) serve as an effective and visible advocate for the aging and adult population of this state;
- (b) develop and administer a state plan under the policy direction of the board; and
- (c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.

(2)

(a) The division has authority to designate:

- (i) planning and service areas for the state; and
- (ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.

(b) Designation as an area agency on aging may be withdrawn:

- (i) upon request of the area agency on aging; or
- (ii) upon noncompliance with the provisions of the:

- (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
  - (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
  - (C) provisions of this chapter; or
  - (D) rules, policies, or procedures established by the division.
- (3)
- (a) The division has the authority to designate:
    - (i) planning and service areas for the state; and
    - (ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.
  - (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:
    - (i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:
      - (A) being the area agency on high risk adults; or
      - (B) operating the area agency on high risk adults:
        - (I) through joint cooperation with one or more existing area agencies on aging; and
        - (II) without reducing geographical coverage in any service area; or
    - (ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).
  - (c)
    - (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
    - (ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.
  - (d) Designation as an area agency on high risk adults may be withdrawn:
    - (i) upon request by the area agency; or
    - (ii) upon noncompliance with:
      - (A) state law;
      - (B) federal law; or
      - (C) rules, policies, or procedures established by the division.
- (4)
- (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act:
    - (i) seek federal grants, loans, or participation in federal programs; and
    - (ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.
  - (b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.
- (5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.
- (6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:
- (a) the governing body of an area agency to provide a comprehensive program of services; or
  - (b) public and private entities for special services.

- (7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.
- (8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.
- (9) The division shall:
  - (a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;
  - (b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:
    - (i) the division;
    - (ii) area agencies; and
    - (iii) an entity that receives funds from an area agency;
  - (c) examine expenditures of public funds;
  - (d) withhold funds from programs based on contract noncompliance;
  - (e) review and approve plans of area agencies in order to ensure:
    - (i) compliance with division policies; and
    - (ii) a statewide comprehensive program;
  - (f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:
    - (i) state and federal agencies;
    - (ii) social and health agencies;
    - (iii) education and research organizations; and
    - (iv) other related groups;
  - (g) advocate for the aging and adult populations;
  - (h) promote and conduct research on the problems and needs of aging and adult persons;
  - (i) submit recommendations for changes in policies, programs, and funding to the:
    - (i) governor; and
    - (ii) Legislature; and
  - (j)
    - (i) accept contributions to and administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and
    - (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the "Out and About" Homebound Transportation Assistance Fund in accordance with Section 62A-3-110.

Amended by Chapter 347, 2012 General Session

**62A-3-104.1 Powers and duties of area agencies -- Registration as a limited purpose entity.**

- (1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:
  - (a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);
  - (b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;
  - (c) conduct periodic reviews and evaluations of needs and services;
  - (d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;

- (e) establish, either directly or by contract, programs licensed under Chapter 2, Licensure of Programs and Facilities;
- (f)
  - (i) appoint an area director;
  - (ii) prescribe the area director's duties; and
  - (iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);
- (g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;
- (h) operate other services and programs funded by sources other than those administered by the division;
- (i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;
- (j) establish fee schedules; and
- (k) comply with the requirements and procedures of:
  - (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
  - (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.
- (2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:
  - (a) the division may examine the entity's program and financial records; and
  - (b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.
- (3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.
- (4)
  - (a) For the purpose of providing services pursuant to this part, a local area agency may receive:
    - (i) property;
    - (ii) grants;
    - (iii) gifts;
    - (iv) supplies;
    - (v) materials;
    - (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and
    - (vii) contributions.
  - (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.
- (5)
  - (a) Area agencies shall award all public funds in compliance with:
    - (i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or
    - (ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).
  - (b)
    - (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.
    - (ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.

- (c)
  - (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.
  - (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.
- (d)
  - (i) Contracts awarded by an area agency shall be for a:
    - (A) fixed amount; and
    - (B) limited period.
  - (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.
- (6) Local area agencies shall comply with:
  - (a) applicable state and federal:
    - (i) statutes;
    - (ii) policies; and
    - (iii) audit requirements; and
  - (b) directives resulting from an audit described in Subsection (6)(a)(iii).
- (7)
  - (a) Each area agency shall register and maintain the area agency's registration as a limited purpose entity, in accordance with Section 67-1a-15.
  - (b) An area agency that fails to comply with Subsection (7)(a) or Section 67-1a-15 is subject to enforcement by the state auditor, in accordance with Section 67-3-1.

Amended by Chapter 256, 2018 General Session

**62A-3-104.2 Contracts for services.**

When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

Amended by Chapter 254, 1998 General Session

**62A-3-104.3 Disbursal of public funds -- Background check of a personal care attendant.**

- (1) For purposes of this section, "office" means the same as that term is defined in Section 62A-2-101.
- (2) Public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high risk adult unless the office approves the personal care attendant to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:
  - (a) who desires to receive public funds as payment for the personal services described in Subsection (2); and
  - (b) using the same procedures established for a background check of an applicant for a license under Section 62A-2-120.

Amended by Chapter 255, 2015 General Session

**62A-3-105 Matching requirements for state and federal Older American funds.**

- (1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:
  - (a) 15% of service dollars; and
  - (b) 25% of administrative dollars.
- (2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.
- (3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

Amended by Chapter 110, 2013 General Session

**62A-3-106 Eligibility criteria.**

Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

Enacted by Chapter 1, 1988 General Session

**62A-3-106.5 Agency responsible to investigate and provide services.**

- (1) For purposes of this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).
- (2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:
  - (a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and
  - (b) determine whether, and under what circumstances, the agency described in Subsection (2) (a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.
- (3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 62A-3-305.

Amended by Chapter 382, 2008 General Session

**62A-3-107 Requirements for establishing division policy.**

- (1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.
- (2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also

provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.

- (3) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

**62A-3-107.5 Allocation of funds to acquire facilities.**

- (1)
- (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.
  - (b) Acquisition of a facility may include acquisition of real property, construction of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.
  - (c) The local area agency may allocate grants received under this section to a local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.
- (2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.
- (3) In making grants under this section, the board may consider:
- (a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;
  - (b) the need for community-based services in the geographical area served by the area agency on aging;
  - (c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and
  - (d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.
- (4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection 62A-3-104(8).
- (5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

Enacted by Chapter 299, 1996 General Session

**62A-3-108 Allocation of funds to local area agencies -- Formulas.**

- (1) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need. Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or



the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.

- (2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:
- (a) funds that local area agencies receive from sources other than the division;
  - (b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;
  - (c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and
  - (d) funds that a local area agency receives from the division for research projects.

Amended by Chapter 254, 1998 General Session

**62A-3-109 Adjudicative proceedings.**

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 91, 2008 General Session

Amended by Chapter 382, 2008 General Session

**62A-3-110 "Out and About" Homebound Transportation Assistance Fund.**

- (1)
- (a) There is created an expendable special revenue fund known as the "Out and About" Homebound Transportation Assistance Fund.
  - (b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:
    - (i) private contributions;
    - (ii) donations or grants from public or private entities;
    - (iii) voluntary donations collected under Section 53-3-214.8; and
    - (iv) interest and earnings on account money.
  - (c) The cost of administering the "Out and About" Homebound Transportation Assistance Fund shall be paid from money in the fund.
- (2) The Division of Aging and Adult Services in the Department of Human Services shall:
- (a) administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund; and
  - (b) select qualified organizations and distribute the funds in the "Out and About" Homebound Transportation Assistance Fund in accordance with Subsection (3).
- (3)
- (a) The division may distribute the funds in the "Out and About" Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.
  - (b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the "Out and About" Homebound Transportation Assistance Fund.

Amended by Chapter 167, 2013 General Session

Amended by Chapter 400, 2013 General Session

## **Part 2 Long-Term Care Ombudsman Program**

### **62A-3-201 Legislative findings -- Purpose -- Ombudsman.**

- (1) The Legislature finds and declares that the citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.
- (2) The purpose of this part is to establish within the division the Long-Term Care Ombudsman Program for the citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care and to fulfill federal requirements.

Amended by Chapter 60, 2018 General Session

### **62A-3-202 Definitions.**

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section 26-21-2.
- (2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.
- (3) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
- (4) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
- (5)
  - (a) "Long-term care facility" means:
    - (i) a skilled nursing facility;
    - (ii) except as provided in Subsection (5)(b), an intermediate care facility;
    - (iii) a nursing home;
    - (iv) a small health care facility;
    - (v) a small health care facility type N; or
    - (vi) an assisted living facility.
  - (b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section 58-15-101.
- (6) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.
- (7) "Ombudsman program" means the Long-Term Care Ombudsman Program.
- (8) "Resident" means an individual who resides in a long-term care facility.
- (9) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
- (10) "Small health care facility" means the same as that term is defined in Section 26-21-2.

- (11) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

Amended by Chapter 415, 2022 General Session

**62A-3-203 Long-Term Care Ombudsman Program -- Responsibilities.**

- (1)
- (a) There is created within the division the ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received and the quality of life experienced by residents of long-term care facilities within the state.
  - (b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:
    - (i) receiving and resolving complaints relating to residents of long-term care facilities;
    - (ii) conducting investigations of any act, practice, policy, or procedure of a long-term care facility or government agency that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of a resident of a long-term care facility;
    - (iii) coordinating the department's services for residents of long-term care facilities to ensure that those services are made available to eligible citizens of the state; and
    - (iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.
- (2)
- (a) A long-term care facility shall display an ombudsman program information poster in a location that is readily visible to all residents, visitors, and staff members.
  - (b) The division is responsible for providing the posters, which shall include phone numbers for local ombudsman programs.

Amended by Chapter 60, 2018 General Session

**62A-3-204 Powers and responsibilities of ombudsman.**

The long-term care ombudsman shall:

- (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;
- (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;
- (3) investigate an administrative act or omission of a long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;
- (4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;
- (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;
- (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

- (7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the ombudsman program under this part; and
- (8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Amended by Chapter 60, 2018 General Session

**62A-3-205 Procedures -- Adjudicative proceedings.**

The ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the ombudsman's adjudicative proceedings.

Amended by Chapter 60, 2018 General Session

**62A-3-206 Investigation of complaints -- Procedures.**

- (1) The ombudsman shall investigate each complaint the ombudsman receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.
- (2) In making an investigation, the ombudsman may engage in actions the ombudsman considers appropriate, including:
  - (a) making inquiries and obtaining information;
  - (b) holding investigatory hearings;
  - (c) entering and inspecting any premises, without notice to the facility, provided the investigator presents, upon entering the premises, identification as an individual authorized by this part to inspect the premises; and
  - (d) inspecting or obtaining a book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to residents, subject to Subsection (3).
- (3)
  - (a) Before reviewing a resident's records, the ombudsman shall seek to obtain from the resident, or the resident's legal representative, permission in writing, orally, or through the use of auxiliary aids and services to review the records.
  - (b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the resident or the resident's legal representative. If the resident or the resident's legal representative refuses to give permission, the ombudsman shall record and abide by this decision.
  - (c) If the ombudsman's attempt to obtain permission fails for a reason other than the refusal of the resident or the resident's legal representative to give permission, the ombudsman may review the records.
  - (d) If the ombudsman has reasonable cause to believe that the resident is incompetent to give permission and that the resident's legal representative is not acting in the best interest of the resident, the ombudsman shall determine whether review of the resident's records is in the best interest of the resident. If the ombudsman determines that review of the resident's records is in the best interest of the resident, the ombudsman shall review the records.

Amended by Chapter 60, 2018 General Session

**62A-3-207 Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.**

- (1) The ombudsman shall establish procedures to ensure that all files maintained by the ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or resident of a long-term care facility may not be disclosed by the ombudsman unless:
  - (a) the complainant or resident, or the legal representative of either, consents in writing, orally, or through the use of auxiliary aids and services to the disclosure;
  - (b) disclosure is ordered by the court; or
  - (c) the disclosure is approved by the ombudsman and is made, as part of an investigation involving the resident, to an agency that:
    - (i) has statutory responsibility for the resident;
    - (ii) has statutory responsibility over the action alleged in the complaint;
    - (iii) is able to assist the ombudsman to achieve resolution of the complaint; or
    - (iv) is able to provide expertise that would benefit the resident.
- (2) Neither the ombudsman nor the ombudsman's agent or designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.
- (3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.
- (4)
  - (a) Discriminatory, disciplinary, or retaliatory action may not be taken against a volunteer or employee of a long-term care facility or governmental agency, or against a resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.
  - (b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Amended by Chapter 60, 2018 General Session

**62A-3-208 Prohibited acts -- Penalty.**

- (1) No person may:
  - (a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;
  - (b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;
  - (c) willfully interfere with the lawful actions of the ombudsman;
  - (d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to a resident of a long-term care facility; or
  - (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter that is before the ombudsman for determination of whether an investigation should be conducted.
- (2) Violation of any provision of this part constitutes a class B misdemeanor.

Amended by Chapter 60, 2018 General Session

**62A-3-209 Assisted living facility transfers.**

- (1) After the ombudsman receives a notice described in Subsection 26-21-305(1)(a), the ombudsman shall:
  - (a) review the notice; and
  - (b) contact the resident or the resident's responsible person to conduct a voluntary interview.
- (2) The voluntary interview described in Subsection (1)(b) shall:
  - (a) provide the resident with information about the services available through the ombudsman;
  - (b) confirm the details in the notice described in Subsection 26-21-305(1)(a), including:
    - (i) the name of the resident;
    - (ii) the reason for the transfer or discharge;
    - (iii) the date of the transfer or discharge; and
    - (iv) a description of the resident's next living arrangement; and
  - (c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding:
    - (i) the resident's treatment at the assisted living facility; and
    - (ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident.
- (3) On or before November 1 of each year, the ombudsman shall provide a report to the Health and Human Services Interim Committee regarding:
  - (a) the reasons why assisted living facilities are transferring residents;
  - (b) where residents are going upon transfer or discharge; and
  - (c) the type and prevalence of complaints that the ombudsman receives regarding assisted living facilities, including complaints about the process or reasons for a transfer or discharge.

Enacted by Chapter 220, 2018 General Session

**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 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 62A-3-311.1.
- (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.

Amended by Chapter 430, 2022 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;
- (3) shall, subject to Section 62A-3-320, 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.

Amended by Chapter 176, 2017 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 has the 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) shall, subject to Section 62A-3-320, 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.

Amended by Chapter 176, 2017 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 -- 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 26-21-201, 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.

Amended by Chapter 274, 2022 General Session  
Amended by Chapter 335, 2022 General Session  
Amended by Chapter 415, 2022 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 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 Bureau of Licensing, within the Department of Health;
    - (iv) the Bureau of Emergency Medical Services and Preparedness, within the Department of Health, 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.

Amended by Chapter 415, 2022 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, 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 62A-14-103; and
      - (B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Amended by Chapter 415, 2022 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 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 62A-3-320.

Amended by Chapter 176, 2017 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 related to protective services and emergency protective services under this chapter is in the county where the vulnerable adult resides or is present.

Amended by Chapter 176, 2017 General Session

**62A-3-320 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.

Amended by Chapter 176, 2017 General Session

**62A-3-321 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 62A-3-320.

Amended by Chapter 176, 2017 General Session

**62A-3-322 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 Title 26, Chapter 61a, Utah Medical Cannabis Act; or
- (2) the guardian of the vulnerable adult assisting with the use of or possessing cannabis in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

Enacted by Chapter 1, 2018 Special Session 3