

## Chapter 47.24. PROTECTION OF VULNERABLE ADULTS

### Sec. 47.24.010. Reports of harm.

- (a) Except as provided in (e) and (f) of this section, the following persons who, in the performance of their professional duties, have reasonable cause to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for the belief, report the belief to the department's central information and referral service for vulnerable adults:
- (1) a physician or other licensed health care provider;
  - (2) a mental health professional as defined in AS 47.30.915 (11) and including a marital and family therapist licensed under AS 08.63;
  - (3) a pharmacist;
  - (4) an administrator of a nursing home, residential care or health care facility;
  - (5) a guardian or conservator;
  - (6) a police officer;
  - (7) a village public safety officer;
  - (8) a village health aide;
  - (9) a social worker;
  - (10) a member of the clergy;
  - (11) a staff employee of a project funded by the Department of Administration for the provision of services to older Alaskans, the Department of Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
  - (12) an employee of a personal care or home health aide program;
  - (13) an emergency medical technician or a mobile intensive care paramedic;
  - (14) a caregiver of the vulnerable adult;
  - (15) a certified nurse aide.
- (b) A report made under this section may include the name and address of the reporting person and must include
- (1) the name and address of the vulnerable adult;
  - (2) information relating to the nature and extent of the abandonment, exploitation, abuse, neglect, or self-neglect;
  - (3) other information that the reporting person believes might be helpful in an investigation of the case or in providing protection for the vulnerable adult.
- (c) The department or its designees shall report to the Department of Law any person required by (a) of this section to report who fails to comply with this section. A person listed in (a) of this section who, because of the circumstances, should have had reasonable cause to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to comply with this section is guilty of a class B misdemeanor. If a person convicted under this section is a member of a profession or

occupation that is licensed, certified, or regulated by the state, the court shall notify the appropriate licensing, certifying, or regulating entity of the conviction.

- (d) This section does not prohibit a person listed in (a) of this section, or any other person, from reporting cases of abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's attention.
- (e) If a person making a report under this section believes that immediate action is necessary to protect the vulnerable adult from imminent risk of serious physical harm due to abandonment, exploitation, abuse, neglect, or self-neglect and the reporting person cannot immediately contact the department's central information and referral service for vulnerable adults, the reporting person may make the report to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the vulnerable adult and shall, at the earliest opportunity, notify the department. A person may not bring an action for damages against a police officer, village public safety officer, the state, or a political subdivision of the state based on a decision under this subsection to take or not to take immediate action to protect a vulnerable adult. If a decision is made under this subsection to take immediate action to protect a vulnerable adult, a person may not bring an action for damages based on the protective actions taken unless the protective actions were performed with gross negligence or intentional misconduct; damages awarded in the action may include only direct economic compensatory damages for personal injury.
- (f) A person listed in (a) of this section who reports to the long term care ombudsman under AS 47.62.015 , or to the Department of Health and Social Services, that a vulnerable adult has been exploited, abused, or neglected in an out-of-home care facility is considered to have met the duty to report under (a) of this section.
- (g) [Repealed, Sec. 14 ch 129 SLA 1994].
- (h) [Repealed, Sec. 14 ch 129 SLA 1994].

**Sec. 47.24.011. Duties of the department regarding services and protection for vulnerable adults.**

In order to facilitate the provision of supportive and protective services for vulnerable adults, the department shall

- (1) compile information on available supportive and protective services for vulnerable adults in the state;
- (2) establish, publicize, and maintain a central information and referral service for vulnerable adults;
- (3) develop and coordinate a statewide system to serve vulnerable adults who are in need of protective services;
- (4) establish criteria and procedures for the authorization and supervision of other state agencies or community-based service providers to serve as designees of the department under this chapter;
- (5) in accordance with this chapter, designate other state agencies or community-based service providers to deliver supportive and protective services to vulnerable adults who are in need of protective services;

- (6) develop within the central information and referral service for vulnerable adults a central registry for reports of vulnerable adults in need of protective services;
- (7) maintain confidentiality of records as provided for in AS 47.24.050; and
- (8) adopt regulations to carry out the purposes of this chapter.

**Sec. 47.24.013. Reports of abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in out-of-home care facilities.**

- (a) If a report received under AS 47.24.010 regards the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of age or older that is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility, including a facility licensed under AS 47.32, in which the vulnerable adult resides, the department shall transfer the report for investigation to the long term care ombudsman under AS 47.62.015 .
- (b) The department shall investigate a report received under AS 47.24.010 regarding the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is less than 60 years of age that is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility in which the vulnerable adult resides.
- (c) Upon receipt of a report under (a) or (b) of this section, the long term care ombudsman and the department shall
  - (1) conduct an investigation as appropriate under [AS 47.62.015](#) or this title, respectively;
  - (2) coordinate and cooperate in their responses to and investigations of the report if their jurisdictions overlap;
  - (3) provide the results of their actions or investigations to the central information and referral service of the department within 60 days after the receipt of the report.
- (d) If the long term care ombudsman receives directly a report regarding the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the ombudsman shall provide the report, and the results of the ombudsman's actions or investigations regarding the report, to the central information and referral service of the department. The department may investigate the report as described in AS 47.24.015 if the department determines that action is appropriate.
- (e) After the results of an investigation by the long term care ombudsman are provided to the department under (c) or (d) of this section, the department may make a final determination as described in AS 47.24.015 (b), based on the investigation results provided, regarding services to be offered to the vulnerable adult.
- (f) If an investigation conducted by an agency under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the agency shall report the matter to the Board of Nursing.

**Sec. 47.24.015. Action on reports.**

- (a) Upon the department's receipt of a report under AS 47.24.010 that is not transferred under AS 47.24.013 , the department, or its designee, shall promptly initiate an investigation to determine whether the vulnerable adult who is the subject of the report suffers from abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its designee,

shall conduct a face-to-face interview with the subject of the report unless that person is unconscious or the department, or its designee, has determined that a face-to-face interview could further endanger the vulnerable adult.

- (b) After the department conducts an investigation under (a) of this section, the department shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of supportive or protective services are needed by and are to be offered to the vulnerable adult. After the department's designee conducts an investigation under (a) of this section, the designee shall prepare a written report of the investigation, including findings, recommendations, and a proposed determination of whether and what kind of supportive or protective services are to be offered to the vulnerable adult. The department shall prepare, and attach to the designee's report, a final determination regarding services to be offered to the vulnerable adult.
- (c) The department, or its designee, shall immediately terminate an investigation under this section upon the request of the vulnerable adult who is the subject of the report made under AS 47.24.010 . However, the department or its designee may not terminate the investigation if the investigation to that point has resulted in probable cause to believe that the vulnerable adult is in need of protective services and the request is made personally by the vulnerable adult and the vulnerable adult is not competent to make the request on the adult's own behalf, or the request is made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker and that person is the alleged perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. If the department has probable cause to believe that the vulnerable adult is in need of protective services,
  - (1) the department may petition the court as set out in [AS 47.24.019](#); or
  - (2) the department or its designee may refer the report made to the department under [AS 47.24.010](#) to a police officer for criminal investigation.
- (d) Upon request, a person who made a report to the department under AS 47.24.010 regarding a vulnerable adult shall be notified of the status of the investigation conducted under (a) of this section regarding that vulnerable adult.
- (e) A person may not bring an action for damages based on a decision under this section to offer or not to offer protective services to a vulnerable adult.
- (f) A person may not bring an action for damages based on the provision of protective services under this section unless the action is based on gross negligence or intentional misconduct. The damages awarded in an action under this section may include only direct economic compensatory damages for personal injury.
- (g) If an investigation under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the department shall report the matter to the Board of Nursing.

**Sec. 47.24.016. Surrogate decision makers for vulnerable adults.**

- (a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services, but the department cannot obtain the vulnerable adult's consent to receive the services because the vulnerable adult is unable to consent or lacks decision making capacity, and has no guardian or attorney in fact to serve as the vulnerable adult's surrogate decision maker, the department may select from the following list, in the order of

priority listed, an individual who is willing to be the vulnerable adult's surrogate decision maker for the purpose of deciding whether to consent to the vulnerable adult's receipt of protective services:

- (1) the vulnerable adult's spouse, unless
    - (A) the vulnerable adult and the spouse have separate domiciles; or
    - (B) the vulnerable adult or the spouse have initiated divorce or dissolution proceedings;
  - (2) an individual who lives with the vulnerable adult in a spousal relationship or as a domestic partner and who is 18 years of age or older;
  - (3) a son or daughter of the vulnerable adult who is 18 years of age or older;
  - (4) a parent of the vulnerable adult;
  - (5) a brother or sister of the vulnerable adult who is 18 years of age or older; or
  - (6) a close friend or relative of the vulnerable adult who is 18 years of age or older.
- (b) An individual from the list in (a) of this section may not be selected as a surrogate decision maker if
- (1) the department determines that individual does not possess decision making capacity; or
  - (2) there are allegations that individual is a perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult.
- (c) If the department intends to select a surrogate decision maker from a priority level in the list in (a) of this section and there is more than one individual at that priority level who is willing to be the surrogate decision maker, those individuals
- (1) may select from amongst themselves, by majority vote, an individual to serve as the surrogate decision maker; or
  - (2) as a group may serve as the surrogate decision maker and reach decisions by consensus.
- (d) The department may not continue to provide protective services to a vulnerable adult based on the consent of a surrogate decision maker serving under this section if the department determines that the vulnerable adult has become able to consent or has regained decision making capacity since the surrogate's consent was given. The department may continue protective services to a vulnerable adult who has become able to consent or has regained decision making capacity only if the vulnerable adult consents.

**Sec. 47.24.017. Delivery of protective services for vulnerable adults.**

- (a) If the department determines under [AS 47.24.015](#) that a vulnerable adult is in need of protective services and either the vulnerable adult, the vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected under [AS 47.24.016](#) consents to receipt of the protective services, and to the extent that resources are available, the department shall ensure that the protective services for the vulnerable adult are provided by the department or its designee within 10 working days after the department received the report under [AS 47.24.010](#) regarding the abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult. However, if circumstances beyond the control of the department or the department's designee make it impossible to provide the protective

services within the 10 working days, the department shall ensure that the services are provided as soon as possible after that time.

- (b) Notwithstanding (a) of this section, if the department determines that an emergency situation exists that necessitates provision of protective services to a vulnerable adult, the department may provide the necessary protective services in a manner determined by the department to be the most appropriate in light of the emergency situation, regardless of whether the vulnerable adult or any other person has consented to receipt of the services.
- (c) To the extent practicable, protective services provided under this section shall be delivered in a culturally relevant manner that protects the vulnerable adult's right to the least restrictive environment and maximizes that person's own decision making capabilities.
- (d) If the protective services under this section include the placement of a vulnerable adult in an assisted living home at the state's expense, the minimum daily reimbursement rate to the assisted living home for the vulnerable adult is \$70. The department may, under its regulations, provide for a daily rate higher than \$70 if the additional care provided to the vulnerable adult in the assisted living home justifies the additional reimbursement. In this subsection, "assisted living home" means an assisted living home licensed under AS 47.32.

**Sec. 47.24.019. Petitioning court for certain protective services.**

- (a) If, after investigation under [AS 47.24.015](#), the department has reasonable cause to believe that a vulnerable adult is in need of protective services and is an incapacitated person, the department may petition the court under AS 13.26 for appointment of a guardian or temporary guardian, or for a change of guardian, for the vulnerable adult for the purpose of deciding whether to consent to the receipt of protective services for the vulnerable adult.
- (b) If, after an investigation under [AS 47.24.015](#), the department has reasonable cause to believe that a vulnerable adult is mentally ill and as a result either is likely to cause serious harm to self or others or is gravely disabled, the department may petition the court under AS 47.30.700 to initiate an involuntary commitment proceeding.
- (c) If a vulnerable adult who has consented to receive protective services, or on whose behalf consent to receive protective services has been given, is prevented by a caregiver, guardian, attorney-in-fact, or surrogate decision maker from receiving those services, the department may petition the superior court for an injunction restraining the caregiver, guardian, attorney-in-fact, or surrogate decision maker from interfering with the provision of protective services to the vulnerable adult.

**Sec. 47.24.020. , 47.24.030I Action; protective services. [Repealed, Sec. 14 ch 129 SLA 1994].**

Repealed or Renumbered

**Sec. 47.24.040. Monitoring.**

If ongoing protective services are provided to a vulnerable adult under [AS 47.24.017](#), the department shall monitor the adult's situation, as the department considers appropriate, until the department determines that the protective services are no longer needed.

**Sec. 47.24.050. Confidentiality of reports.**

- (a) Investigation reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult filed under this chapter are confidential and are not subject to public inspection and copying under [AS 40.25.110](#) - 40.25.125. However, in accordance

with this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate agencies or individuals inside and outside the state, in connection with investigations or judicial proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult.

- (b) The department shall disclose a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the vulnerable adult who is the subject of the report or the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker consents in writing. The department may not disclose a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker if that person is an alleged perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. The department shall, upon request, disclose the number of verified reports of abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that occurred at an institution that provides care for vulnerable adults or that were the result of actions or inactions of a public home care provider.

**Sec. 47.24.060. Authority of the department. [Repealed, Sec. 14 ch 129 SLA 1994].**

Repealed or Renumbered

**Sec. 47.24.070. Required review of proposed regulations.**

Before adoption by the department, regulations to implement this chapter shall be provided to the Alaska Commission on Aging established under [AS 47.45.200](#) for review.

**Sec. 47.24.075. - 47.24.110I Reports; definitions. [Repealed, Sec. 14 ch 129 SLA 1994].**

Repealed or Renumbered

**Sec. 47.24.120. Immunity from liability; retaliation prohibited.**

- (a) A person who in good faith makes a report under [AS 47.24.010](#), regardless of whether the person is required to do so, is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report.
- (b) An employer or supervisor of a person who in good faith makes a report under [AS 47.24.010](#) may not discharge, demote, transfer, reduce pay or benefits or work privileges of, prepare a negative work performance evaluation of, or take other detrimental action against the person because the person made the report. The person making the report may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days after the report was made.

**Sec. 47.24.130. Treatment through spiritual means.**

This chapter may not be construed to mean that a person is abused, neglected, self-neglected, vulnerable, unable to consent, abandoned, exploited, or in need of emergency or protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a church or religious denomination of which the person is a member or adherent, provided that the person consents to the treatment through spiritual means only and the treatment is administered by an accredited practitioner of the church or religious denomination. In this section, "church or religious denomination" has the meaning given to "religious organization" in [AS 05.15.690](#).



## **Sec. 47.24.900. Definitions.**

In this chapter,

- (1) "abandonment" means desertion of a vulnerable adult by a caregiver;
- (2) "abuse" means
  - (A) the wilful, intentional, or reckless nonaccidental, and nontherapeutic infliction of physical pain, injury, or mental distress; or
  - (B) sexual assault under [AS 11.41.410](#) or 11.41.420;
- (3) "caregiver" means
  - (A) a person who is providing care to a vulnerable adult as a result of a family relationship, or who has assumed responsibility for the care of a vulnerable adult voluntarily, by contract, or by court order; or
  - (B) an employee of an out-of-home care facility who provides care to one or more vulnerable adults;
- (4) "decision making capacity" means the ability to understand and appreciate the nature and consequences of a decision and the ability to reach and communicate an informed decision;
- (5) "department" means the Department of Health and Social Services;
- (6) "designee" means another state agency or a community-based program, individual, or provider of supportive services that has been licensed, or authorized by agreement with the department, to provide one or more services to vulnerable adults;
- (7) "exploitation" means unjust or improper use of another person or another person's resources for one's own profit or advantage;
- (8) "incapacitated person" means a person whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that the person lacks the ability to provide or arrange for the essential requirements for the person's physical health or safety without court-ordered assistance;
- (9) "neglect" means the intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult;
- (10) "police officer" has the meaning given in [AS 18.65.290](#);
- (11) "protective services" means services that are intended to prevent or alleviate harm resulting from abandonment, exploitation, abuse, neglect, or self-neglect and that are provided to a vulnerable adult in need of protection; "protective services" includes protective placement;
- (12) "public home care provider" has the meaning given in AS 47.05.017(c);
- (13) "self-neglect" means an act or omission by a vulnerable adult that results, or could result in the deprivation of essential services necessary to maintain minimal mental, emotional, or physical health and safety;
- (14) "supportive services" means the range of services delivered by public and private organizations and individuals that assist the elderly and vulnerable adults with their social,



health, educational, recreational, transportation, housing, nutritional, financial, legal, or other needs;

(15) "unable to consent" means refusal to, or inability to, accept services because

(A) the person is an incapacitated person or apparently is an incapacitated person;

(B) of coercion by or fear of reprisal from the perpetrator of abandonment, exploitation, abuse, or neglect;

(C) of dependency on the perpetrator of abandonment, exploitation, abuse, or neglect for services, care, or support; or

(D) of an inability to perceive that refusal to consent results in an imminent and substantial danger of death or irreparable harm to self or others;

(16) "vulnerable adult" means a person 18 years of age or older who, because of physical or mental impairment, is unable to meet the person's own needs or to seek help without assistance.