

Testimony
Senate Bill 2163 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 17, 2017

Chairman Lee, and members of the Senate Human Services Committee, I am Michelle Gayette, Elder Rights Program Administrator for Aging Services Division, for the Department of Human Services (Department). I appear to provide information and request an amendment to Senate Bill 2163.

The Aging Services Division administers the Vulnerable Adult Protective Services (VAPS) program which addresses the safety of vulnerable adults who are at-risk of harm due to the presence or threat of abuse, neglect, or exploitation. The program is offered statewide through the North Dakota Department of Human Services' regional human service centers or through local partner agencies.

Department staff reviewed Senate Bill 2163 and identified language in the Bill that may impact eligibility for vulnerable adult protective services. The Department is requesting to keep the current definition of abuse in subsection 1 of 50-25.2-01 because it is part of all-encompassing language used throughout this chapter to describe individuals who may be the "subject of abuse or neglect". The definition of abuse and neglect are used to determine who qualifies to receive vulnerable adult protective services. Removing financial exploitation from the definition of abuse may prohibit VAPS staff from assisting in financial exploitation matters because it would no longer be part of the definition of "abuse". Further, adding "or" on page 1, line 9 before sexual abuse or exploitation, may be interpreted as only referring to sexual exploitation and would not be fully inclusive of all forms of exploitation.

The Department is also requesting to add language to the definition of financial exploitation in subsection 7 of 50-25.2-01 to encompass an additional form of exploitation that may occur and is also requesting that the definition of vulnerable adult in subsection 17 of 50-25.2-01 remain as currently written.

“Substantial” mental or functional impairments are defined in subsections 15 and 16 of 50-25.2-01 and are more accurate in describing the population served. Using the words “unable to protect oneself from abuse, neglect, or financial exploitation” may limit the assistance VAPS could provide. The courts have recognized that someone with dementia or other cognitive issues may be considered impaired at times, but not necessarily a permanent condition and; therefore, at times of coherence are still able to protect themselves. This may impact program eligibility and the civil remedy for financial exploitation recoveries if cognitive abilities of the vulnerable adult are in question.

The Department has prepared two amendments for the committee to consider:

- Both amendments:
 - Amend the title of Senate Bill 2163 on page 1, lines 3 and 4.
 - Remove lines 6-10 to leave the definition of abuse as currently written in subsection 1 of section 50-25.2-01
 - Add “use or receipt of services provided by the vulnerable adult without just compensation” to the definition of “financial exploitation” in subsection 7 of section 50-25.2-01
 - Remove lines 17-21 to leave the definition of “vulnerable adult” as currently written in subsection 17 of section 50-25.2-01

- [Amendment A](#) adds a definition of vulnerable adult to the proposed civil remedy section for financial exploitation so that the definition only applies to this section. The definition of “vulnerable adult” would be “an adult who is unable to protect oneself from financial exploitation by others because of a mental or functional impairment.”
- [Amendment B](#) does not add the definition of vulnerable adult to the proposed civil remedy section for financial exploitation as the current definition of vulnerable adult would be used. “Vulnerable adult” is currently defined as “an adult who has a substantial mental or functional impairment.”

This concludes my testimony. I would be happy to answer any questions.