

Testimony
House Bill 1107 - Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 11, 2019

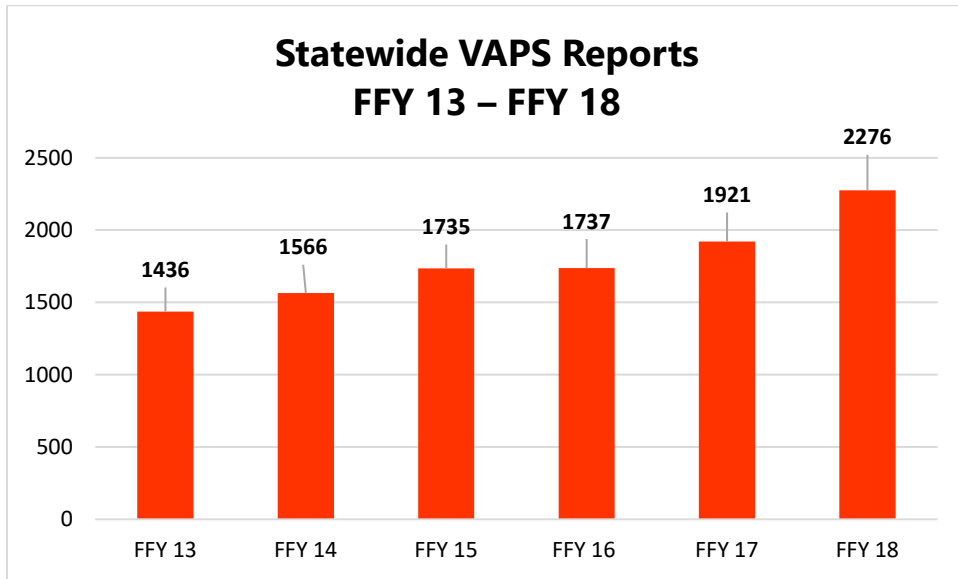
Chairman Lee, and members of the Senate Human Services Committee, I am Michelle Gayette, Assistant Director for the Department of Human Services Aging Services Division (Department). I appear before you to support House Bill No. 1107, which was introduced on behalf of the Department.

House Bill No. 1107 updates chapter 50-25.2 of the North Dakota Century Code by clarifying responsibilities of the Department, updating language to meet federal requirements, clarifying when information may be accessed or requested, and further defines confidentiality of records. Changes to section 50-10.1-03 of the North Dakota Century Code are proposed to mirror the proposed changes to chapter 50-25.2.

Background

The Vulnerable Adult Protective Services (VAPS) Program addresses the safety of vulnerable adults at risk of harm due to the presence or threat of abuse, neglect, or exploitation. Adults are considered vulnerable, or at risk, if a mental or physical impairment affects their ability to take care of themselves or to make good decisions. The VAPS Program is offered statewide at regional human service centers or through contracts with local partner agencies. There are currently 16 full-time equivalent investigative staff statewide and 1.75 full-time equivalent intake staff.

Mandatory reporting went into effect in 2013, as you can see in the graph, the number of reports received increased by 58% since that time. 2,276 reports were received in FFY 2018. Of those reports, 1305 required at least one home visit.



Section 1 Proposed Changes to N.D.C.C. § 50-10.1-03

Page 1, line 10, in section 50-10.1-03 of the North Dakota Century Code, changes “person” to “individual” and is cleanup language. This change also occurs in chapter 50-25.2 of the North Dakota Century Code and can be found on Page 2, line 29; Page 3, lines 10 and 21; Page 4, line 26; and Page 5, line 22.

Page 1, line 11, changes “nine months” to “one month” to better align with definitions in State law, and the Older Americans Act. A “resident” is defined as “an individual who resides in a long-term care facility and a long-term care ombudsman is a resident rights advocate”. Once a resident is discharged from a Long-Term Care Facility, they no longer meet the definition of resident, and the long-term care Ombudsman would investigate the report, only if it was related to a systems issue. Otherwise the Ombudsman would provide information and referral and document for future visits and observations at the facility. Therefore, a one-month timeframe is sufficient for the purposes of this section. This change also occurs in chapter 50-25.2 of the North Dakota Century Code and can be found in Section 4 of this Bill on Page 2, line 29.

Section 2 Proposed Changes to N.D.C.C. § 50-25.2-02

Page 1, line 16, in chapter 50-25.2 of the North Dakota Century Code removes reference to “county social service boards” to better reflect the current state of the program which is Department run and administered. The Department is responsible to develop, administer, and implement the program outlined in this chapter. This change also occurs in Sections 7 and 8 of this Bill on Page 5, lines 10 and 11, 19 and 20, and 26.

Section 3 Proposed Changes to N.D.C.C. § 50-25.2-03

Page 2, lines 12 and 13, add “An individual in the position of a long-term care ombudsman shall not be considered a mandated reporter of suspected abuse or neglect.” This addition is consistent with the Long-Term Care Ombudsman Program Final Rule, title 45, Code of Federal Regulations, section 1324.19(b)(3), governing information sharing by Ombudsman. This federal regulation prohibits disclosing resident identifying information without the consent of the resident. This precludes the Ombudsman from being a mandatory reporter. Ombudsmen are resident directed advocates and assist the resident in resolving concerns. Residents must be assured their information will not be disclosed without consent. The Final Rule clarified the Ombudsman act as an advocate for the abuse survivor, not as a substantiator to prove the abuse occurred.

It is rare an ombudsman would be the only person aware of an abusive situation. For example, facility staff would be considered a mandatory reporter and they would be charged with reporting the abuse. The victim may also reveal the abusive situation to family. The Ombudsman would act as the victim advocate.

Section 4 Proposed Changes to N.D.C.C. § 50-25.2-04

Page 2, lines 30 and 31, removes “for investigation pursuant to chapter 50-10.1” as this Chapter is referenced earlier in this section.

Section 5 Proposed Changes to N.D.C.C. § 50-25.2-05

Page 3, lines 23 through 28, adds language to the section on access to records of a vulnerable adult. If a report is received, this change will allow VAPS workers to access records of the vulnerable adult, who is unable to authorize the department or designee to have such access and the legal guardian or other representative is alleged to have caused the circumstances surrounding the report. If there are concerns a victim is incapacitated, VAPS would not ask the victim to sign any legal documents or releases.

Page 4, lines 3-13, adds language to allow VAPS workers to request records relevant to a vulnerable adult evaluation, assessment, or other adult protective services from specified agencies or professionals, except as prohibited under title 42, Code of Federal Regulations, part 2. These requests will be limited to minimum amounts of records necessary to enable a determination to be made or to support other adult protective services. This will allow sharing of information between VAPS and local partners such as the human service centers.

Section 6 Proposed Changes to N.D.C.C. § 50-25.2-12

Page 4, lines 20-21, clarifies a reporter's identity is protected if vulnerable adult records are shared with a physician.

Page 4, line 25, specifies and clarifies that the person who is the subject of the report is the vulnerable adult.

Page 5, lines 3 through 6, makes clear a guardian or legal representative may have access to vulnerable adult protective services records unless the guardian or legal representative is suspected of abusing or neglecting the vulnerable adult. Currently, if the alleged perpetrator is the guardian or legal representative, nothing in law prohibits them from accessing the VAPS records. This could pose a risk to the victim and the VAPS worker. In one recent experience, the alleged perpetrator received all records, posted them online, and threatened the worker.

Section 7 Proposed Changes to N.D.C.C. § 50-25.2-13

Page 5, line 14, adds the words “and mandatory” and is clean-up language based on mandatory reporting law passed in 2013.

This concludes my testimony, and I am happy to answer any questions you may have.