

# **VULNERABLE ADULT PROTECTIVE SERVICES POLICIES AND PROCEDURES**

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Service Chapter 690-01

**North Dakota Department of Human Services  
600 East Boulevard Dept. 325  
Bismarck, ND 58505-0250**

VULNERABLE ADULT PROTECTIVE SERVICES  
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**Vulnerable Adult Protective Services Policies and  
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**Purpose 690-01-05  
(Revised 11/1/2020 ML #3597)**

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This manual outlines the Policies and Procedures governing the administration, management, funding, and implementation of state and community services funded under the Older Americans Act (OAA), Title III and VII.

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**Legal Authority 690-01-10**

**(Revised 11/1/20 ML #3597)**

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- Public Law 114-144, Older Americans Act of 1965, as amended in 2016
- North Dakota Century Code Chapter 50-25.2;
- North Dakota Century Code Section 50-06-05.1(3);
- North Dakota Century Code Section 6-08.1-03;
- North Dakota Century Code Chapter 50-25.3;
- North Dakota Century Code Chapter 12.1-31-07.1; and
- North Dakota Century code Chapter 10-04-08.5

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**Best Practice Guidelines 690-01-15**  
**(NEW 11/1/2020 ML #3597)**

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Best Practice Guidelines and Guiding Values as of August 20,

- Every action taken by APS must balance the duty to protect the safety of the vulnerable adult with the adult's right to self-determination.
- Older persons and persons with disabilities who are victims of mistreatment should be treated with respect, integrity and dignity.

Adult Protective Services Practice Guidelines

The VAPS program is guided by practice guidelines that emphasize the need to:

- Recognize that the interests of the adult are the first concern of any intervention
- Avoid imposing personal values on others
- Respect the adult's right to keep personal information confidential
- Recognize individual differences such as cultural, historical and personal values
- Honor the right of adults to receive information about their choices and options in a form or manner that they can understand
- The adult has a right to participate in their own service plan development
- Focus on service planning that maximizes the adult's independence and choice based on the adult's capacity and strengths
- Use the least restrictive services first; community-based services rather than institutionally-based services whenever possible
- Use of family and informal support systems above all others when this is in the best interest of the adult
- Maintain clear and appropriate professional boundaries
- Use Supportive Decision Making (SDM) in service planning when historical knowledge of the adult's values is available
- Do no harm. A guiding principle that, whatever the intervention, the vulnerable adult's well-being is the primary consideration; Inadequate or inappropriate intervention for the sake of intervention is doing harm.

**Principles for Adult Protective Services as August 20, 2020**

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ND VAPS adheres to the Principles for APS developed by the National Adult Protective Services Association. The principles are as follows:

- Adults have the right to be safe
- Adults retain all their civil and constitutional rights, i.e., the right to live their lives as they wish, manage their own finances, enter contracts, marry, etc. unless a court adjudicates otherwise
- Adults have the right to make decisions that do not conform with societal norms if these decisions do not harm others
- Adults have the right to accept or refuse services.

**References:**

- [National Adult Protective Services Code of Ethics](#)
- [ACL Natinal Voluntary Consensus Guidelines for State Adult Protective Services Systems](#)
- [ND Board of Social Work Examiners Code of Ethics](#)

**Definitions 690-01-20**

**(Revised 11/1/2020 ML #3597)**

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**Abuse** – Any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult. N.D.C.C. § [50-25.2-01\(1\)](#).

**Administrative Action** – any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility. N.D.C.C. § [50-10.1-01\(1\)](#).

**Adult** – Includes a minor emancipated by marriage. N.D.C.C. § [50-25.2-01\(2\)](#).

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**Adult Protective Services** – Remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department’s designee:

1. Receiving, evaluating, and assessing reports of alleged abuse, neglect, or exploitation;
2. Short term crisis intervention and arranging for the provision of essential services such as case management and counseling;
3. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;
4. Monitoring the delivery of services to vulnerable adults making progress assessments; and
5. Arranging for or providing and coordinating other services consistent with state law. N.D.C.C. § 50-25.2-01(3).

**Aging Services Division** – The state agency in North Dakota designated to carry out the provisions of the Older Americans Act of 1965, as amended.

**Caregiver** – Any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult, or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution that provides services to, and has assumed responsibility for the care of a vulnerable adult. N.D.C.C. § 50-25.2-01(4).

**Conflicting Needs** - Occurs when there are health and safety needs for both the vulnerable adult and the caregiver or other individuals. Examples include a vulnerable adult who is physically threatening to a caregiver; a chemically dependent or mentally ill parent with minor children; and a pregnant, chemically dependent woman (both she and the unborn child have safety needs).

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**Department** – The North Dakota Department of Human Services

**Department Designee** – Any individual or entity that has been given the responsibility for duties delegated under this Service Chapter.

**Emotional Abuse** - Exists when an individual acts in a manner that produces psychological stress or distress for the vulnerable adult.

Emotional abuse may exist when the caregiver or legal guardian refuses the vulnerable adult access to services necessary for well-being; when an individual subjects a vulnerable adult to terrorization, excessive humiliation or verbal abuse; when an individual threatens the vulnerable adult's family, friends, pets, or otherwise subjects the vulnerable adult to coercive measures.

**Essential Services** – Those services necessary to maintain and safeguard the physical and mental health of the vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision. N.D.C.C. § 50-25.2-01(6).

**Financial Exploitation** – Use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. Financial exploitation includes extortion, embezzlement, illegal rental or sale of property, scams, fraud, theft, or abuse of property or assets. N.D.C.C. § 50-25.2-01(7).

**Least Restrictive Alternative** – Adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services. N.D.C.C. § 50-25.2-01(8).

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**Living Independently** – Includes using the telephone, shopping, preparing food, housekeeping, and administering medications. N.D.C.C. § 50-25.2-01(9).

**Long-Term Care Facility** - Any skilled nursing facility, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, assisted living facility, or swing-bed hospital approved to furnish long-term care services; provided, that a facility, as defined in section 25-01.2-01, providing services to individuals with developmental disabilities is not a long-term care facility. N.D.C.C. § 50-10.1-01(3).

**Medical and Mental Health Professional** - A professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, tier 1 through tier 4 mental health professional as defined under section 25-01-01, emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult. N.D.C.C. § 50-25.2-03(1).

**Mental Anguish** – Psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral change or physical symptoms. N.D.C.C. § 50-25.2-01(10).

**Neglect** – Failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health. Neglect may include failure to provide hygienic living conditions; failure to administer medications properly; failure to provide adequate supervision during caregiver absences; failure to provide adequate basic needs (food, medical care, shelter); and failure to correct inadequate housing (windows broken, lack of indoor plumbing, heating). N.D.C.C. § 50-25.2-01(11).

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**Physical Abuse** - Occurs when an individual causes physical injury to a vulnerable adult. Probable cause for physical abuse includes: bruises, abrasions, welts, cuts, broken bones, dislocations, puncture wounds, brain injury, and death. If there is probable cause for physical abuse, the worker may refer the vulnerable adult for physical examination, notify law enforcement, or otherwise ensure the safety and appropriate care for the vulnerable adult through local domestic violence programs or agencies.

**Physical Injury** – Damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function. N.D.C.C. § 50-25.2-01(12).

**Self-Care** – Includes maintaining personal hygiene, eating, and dressing. N.D.C.C. § 50-25.2-01(13).

**Self-Neglect** - The most common form of abuse and neglect in vulnerable populations, occurs when the adult, of their own choice, fails to provide adequate self-care or to provide food, shelter, clothing or services which are necessary to maintain their physical or mental health. Examples of self-neglect include choosing not to take medications prescribed by a physician, choosing not to eat adequate meals and maintain nourishment; choosing to utilize finances improperly (failure to pay bills); inadequate personal hygiene (matted hair, soiled clothing).

**Sexual Abuse or Exploitation** – Involves using the vulnerable adult in non-consenting sexual acts, or other activities, to satisfy or arouse sexual or aggressive desires in the other initiating individual. Sexual abuse includes sexual contact, including touching of intimate body parts or penetration; sexual exploitation, using the vulnerable adult to create pornography; rape; incest; and sexual harassment. Includes sex offenses defined in North Dakota Century Code Chapters 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, and 12.1-20-12.3. N.D.C.C. § 50-25.2-01(14).

**Substantial Functional Impairment** – A substantial incapability, because of physical limitations of living independently or providing self-care

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as determined through observation, diagnosis, evaluation, or assessment.  
N.D.C.C. § 50-25.2-01(15).

**Substantial Mental Impairment** – A substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment. N.D.C.C. § 50-25.2-01(16).

**Vulnerable Adult** - An adult who has a substantial functional or mental impairment. N.D.C.C. § 50-25.2-01(17).

**Willfully** – To engage in conduct or actions intentionally, knowingly, or recklessly. N.D.C.C. § 50-25.2-01(18).

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**Division Administrative and Management Functions  
690-01-25**

**(Revised 11/1/2020 ML #3597)**

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The Department of Human Services, Aging Services Division will develop, administer, and implement the Vulnerable Adult Protective Services Program in North Dakota.

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**Program Implementation 690-01-25-05**

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Aging Services Division has established the Vulnerable Adult Protective Services Program in accordance with the requirements of Title VII and III of the Older Americans Act and consistent with State law.

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**Hearings 690-01-25-10**  
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Aging Services Division conducts public hearings to obtain input for the development of the State Plan on Aging, which includes the Vulnerable Adult Protective Services Program. The views of older adults and other interested parties are considered in the development of the State Plan.

Additional public hearings are scheduled upon request or as necessary.

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**Non-Discrimination 690-01-25-15**  
**(NEW 11/1/2020 ML #3597)**

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Programs and services administered and supervised by the department, directly or through contractual agreements, must be made available without regard to race, color, religion, national origin, age, sex, political beliefs, disability, or status with respect to marriage. These programs and services must also be accessible to persons with disabilities and comply with:

- Title I and Title II of the Americans with Disabilities Act of 1990 as amended
- Section 504 of the Rehabilitation Act of 1973 as amended
- Title VI of the Civil Rights Act of 1964 as amended
- Age Discrimination Act of 1975 as amended
- North Dakota Human Rights Act of 1983

Persons needing accommodation or who have questions or complaints regarding the provision of services according to these Acts may contact the following Civil Rights Officers:

Program Civil Right Officer or  
ADA/Section 504 Coordinator  
North Dakota Department of Human Services  
Legal Advisory Unit  
600 E Boulevard Avenue Dept 325  
Bismarck, ND 58505-0250  
701-328-2311  
TTY 1-800-366-6888  
FAX 701-328-2173

U.S. Department of Health and Human Services  
Office for Civil Rights, Region VIII

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999 18th Street, Suite 417  
Denver, Colorado 80202  
1-800-368-1019  
TTY 1-800-537-7697  
FAX 303-844-2025

U.S. Department of Agriculture  
Director, Office of Adjudication  
1400 Independence Avenue SW  
Washington, D.C. 20250  
1-866-632-9992  
TTY 800-877-8339  
FAX 202-690-7442

U.S. Department of Health and Human Services  
Office of Civil Rights  
200 Independence Avenue SW  
HHH Building, Room 509-F  
Washington, D.C. 20201  
202-619-0403  
TTY 1-800-537-7697  
FAX 202-619-3437

A valid civil rights complaint must be in writing and include the name of the individual or organization against whom the complaint is made; the basis of the discrimination, e.g. race, age, religion, national origin, color, gender, disability or status with respect to marriage or public assistance; and the reason for the complaint (details of when, where, and how the alleged discrimination occurred).

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**Funding 690-01-25-20**  
**(Revised 11/1/20 ML #3597)**

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Each year Congress appropriates Older Americans Act funds to carry out programs for the prevention of elder abuse, neglect, and exploitation. In addition, state funds are appropriated to carry out Vulnerable Adult Protective Services.

Older Americans Act funds cannot be expended for individuals under the age of 60.

The department is not required to implement or enforce this chapter with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that region, area, or county.  
N.D.C.C. § [50-25.2-14](#).

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**Technical Assistance & Education 690-01-25-25**  
**(Revised 11/1/2020 ML #3597)**

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Aging Services Division provides technical assistance and education in the implementation of the Vulnerable Adult Protective Services Program. Upon request, technical assistance is provided to other agencies, organizations, and individuals.

All requests for technical assistance, including inquiries requiring legal clarification, should be directed to Aging Service Division. Aging Services Division will contact the Department of Human Services' Legal Advisory Unit as necessary for information and clarification.

Community and Staff Training N.D.C.C § [50-25.2-13](#)

Aging Services Division, in cooperation with other agencies, shall conduct a public education program to identify and prevent abuse, neglect, and exploitation. The education program shall include:

- Information regarding the laws governing the abuse, neglect, or exploitation of vulnerable adults;
- Mandatory reporting;
- The need for and availability of Vulnerable Adult Protective Services; and
- Information for caregivers regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver or vulnerable adult relationship.

Aging Services Division, in cooperation with other agencies, shall institute a program of education and on-going training for staff, law enforcement agency staff, and other persons who provide Vulnerable Adult Protective Services. N.D.C.C. § 50-25.2-13. The training shall include:

- The philosophy of the Vulnerable Adult Protective Services Program;
- State and Federal law;
- Department policies and procedures;

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- Mandatory reporting;
- Evaluation and assessment;
- Legal remedies;
- Confidentiality; and
- Community resources.

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**Confidentiality 690-01-25-30**

**(Revised 11/1/2020 ML #3597)**

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Vulnerable Adult Protective Services follows confidentiality as outlined in N.D.C.C. . All reports made under this chapter and all records and information obtained as a result of the reports are confidential.

An individual making a report should be advised of the confidentiality of the report; however, the reporter should also be informed that the right to remain anonymous is not guaranteed, especially if the identity of the report is subject to disclosure by subpoena or court order. The individual making the report should also be informed of their immunity from liability and, if applicable, the prohibition against employer retaliation.

Neither the State, nor the department may require any provider of legal assistance to reveal any information that is protected by the attorney-client privilege.

While the worker may see the person as needing services, the worker may be legally mandated to report other aspects of the case. The legal mandate to report supersedes the right of confidentiality or the needs identified in a voluntary program. The worker must also be concerned with the health and safety needs of caregivers or other individuals. N.D.C.C. § 50-25.2-07.

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**Authorized Disclosures 690-01-25-35**  
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Records and information obtained or generated as the result of a report must be made available to the following upon request (NDCC 50-25.2-12):

- A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect if the identity of individuals reporting under section 50-25.2-03 is protected.
- Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
- A vulnerable adult who is the subject of a report if the identity of individuals reporting under section 50-25.2-03 is protected.
- Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
- A court when it determines that the information is necessary for determination of an issue before the court.
- A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.
- A guardian or legal representative of the vulnerable adult who is the subject of a report if the identity of individuals reporting under section 50-25.2-03 is protected and the guardian or legal representative is not suspected of abusing or neglecting the vulnerable adult.

All records requests must be sent to the Aging Services Division program administrator responsible for the oversight of the Vulnerable Adult Protective Services Program or their designee. Records requests must be in writing and provide evidence of the right to access Vulnerable Adult Protective Services records. All records requests will be run through the department's Legal Advisory Unit for approval prior to any documentation being sent.

When information is requested by any individual who might be identified as "public officials and their authorized agents who require such information in

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connection with the discharge of their official duties", it must first be determined whether the individual truly meets the definition of a "public official". The term 'public officials' as used in NDCC 26.1-21-01 means an elected or appointed officer or deputy of a state agency or a political subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association. This is defined to refer to those individuals whose powers are statutorily derived and whose authority and duties are defined, regulated and prescribed by law.

It is also necessary to verify that the "official" is requesting information in their role as a "public official" (not in the capacity of a friend, business associate, or family member) and who requires the information in connection with the discharge of their official duties (not as a matter of curiosity, or as a favor for a constituent).

Persons identified as "public officials" include: elected officials of a state, county, city, or school district (such as the governor, a senator or congressman, a state legislator, sheriff, county commissioner, or school board member); and persons appointed or hired to fill a statutorily derived role (such as police chief /police officer, county coroner, forensic medical examiner, etc.).

Information may be provided to a public official, upon request, in written form, designated as a copy and confidential. A cover letter shall state "The information is being provided to the person(s) as a public official who needs the information in connection with the discharge of their official duties and the information remains confidential."

The following procedures must be followed:

1. The following types of information may not be disclosed or discussed:
  - a. Information covered by 42 C.F.R. Part 2, regarding confidentiality of substance abuse treatment records; and
  - b. Information identifying an adoptive parent, relinquishing parent, adopted person, genetic parent, or genetic sibling in an adoption.

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2. The name, title, and telephone number of the individual inquiring on behalf of the person who is the subject of the report should be obtained. If the circumstances lead the worker to question the authenticity of the call, they may inform the caller that they will call back when the appropriate records have been obtained. This allows the worker to verify that the caller is located at the purported office, to attempt to contact the person who is the subject of the report, and to locate the relevant information.
3. Reasonable care must be taken to verify the identity of the person who is the subject of the report.
4. Before disclosing or discussing the information, reasonable attempts should be made to verify the individual's request for inquiry. Sometimes concerned relatives, friends, or neighbors will initiate the inquiry, but these requests do not give rise to an implied authorization. Only a request by the person who is the subject of the report creates an implied authorization, unless the person has a legal guardian or personal representative. If the inquiry is initiated by someone else, ask to speak to the person who is the subject of the report directly if available.
5. Care should be taken to disclose only information necessary to make a meaningful response to the inquiry. Do not volunteer information, which is not relevant to the question asked. If unclear about exactly what the problem is or the question presented, ask for clarification.
6. Any requests shall be documented in the person's record, if applicable, all disclosures made under this section, including the identity of the inquirer, attempts to contact the person who is the subject of the report, and information disclosed.

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**Grievances 690-01-25-40**  
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A person who receives vulnerable adult protective services may file a grievance in writing to the Director of the Aging Services Division. The grievance statement must list the facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance should be made in writing within thirty (30) days of the action. A response to the grievance will be made within five (5) working days of receipt of the grievance.

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**Providing Adult Protective Services 690-01-30**  
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N.D.C.C. § [50-25.2-06](#) requires the department or department's designee to provide, or arrange for the provision of, adult protective services, provided the vulnerable adult consents to and accepts the services.

The Aging Services Division have designated staff or have entered into contractual agreements with other agencies to accomplish this requirement.

If Aging Services Division or the department's designee determines a person demonstrates a need for adult protective services, the worker shall arrange for provision of adult protective services provided that the person consents to and accepts the services. If the person is unable to consent, please refer to [690-01-30-25](#) for further direction.

N.D.C.C. § 50-06-05.3(1)(b) requires Regional Human Service Centers to provide services to prevent or remedy the neglect, abuse, or exploitation of adults unable to protect their own interests.

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**Eligible Individuals 690-01-30-05**

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Persons age 18 and older or a minor emancipated by marriage who have a substantial mental or functional impairment that compromises health, safety, or independence.

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**Cost of Services 690-01-30-10**

**(Revised 11/1/2020 ML #3597)**

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The department is not responsible for the cost of providing services unless provision of the services is specifically provided by law and funding exists to provide the services. N.D.C.C. § 50-25.2-08.

No one will be turned away from services due to financial reasons.

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**Voluntary Services 690-01-30-15**

**(Revised 11/1/2020 ML #3597)**

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The Vulnerable Adult Protective Services Program was established to safeguard the rights, safety, and well-being of vulnerable adults. If services are provided, the following issues must be considered:

- If the person has the capacity to reach rational decisions, they should be allowed to live in a manner they choose.
- People who receive services have the right at any time and within their abilities, to make an informed choice and refuse services.
- In determining if services are appropriate, the worker shall consider the person's ability to consent. If a question exists, the worker shall seek input from other appropriate professionals. (690-01-30-25).

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**Mandatory Reporting of Abuse, Neglect, or Exploitation  
690-01-30-20**

**(Revised 11/1/2020 ML #3597)**

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Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy (unless derived from information received in the capacity of spiritual advisor), or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency. N.D.C.C. § 50-25.2-03.

Reporting options:

- Online: (<https://fw2.harmonyis.net/NDLiveIntake/>);
- Reporting form SFN 1607 (emailed or faxed)
- Phone, if no computer or internet accessibility, 1-855-462-5465, Option 2;
- Web-based case management system

A report to the North Dakota Protection & Advocacy Project, if required by N.D.C.C. § 25-01.3-04, satisfies all reporting requirements of this chapter.

Any individual, not required to report, who has reasonable cause to believe that a vulnerable adult has been subjected to conditions or circumstances that would result in abuse, neglect, or exploitation may report the information to the department or the department's designee.

A law enforcement agency receiving a report, under this law, shall immediately notify Vulnerable Adult Protective Services central intake staff at the Aging Services Division. N.D.C.C. § 50-25.2-03(3).

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Any individual required to report under this section who willfully fails to do so is guilty of an infraction. N.D.C.C. § 50-25.2-10(1).

er this section who willfully fails to do so is guilty of an infraction. N.D.C.C. § 50-25.2-10.

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**Refusal or Inability to Accept Services 690-01-30-25**  
**(Revised 11/1/2020 ML #3597)**

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If a person who is subject to abuse, neglect, or exploitation is unable to consent or accept services or if the caregiver refuses, vulnerable adult protective services may pursue any administrative, legal or other remedies authorized by law that are necessary and appropriate under the circumstances to protect the person and prevent further abuse or neglect. The state's attorney of the county in which the person resides shall assist the worker, upon request, in pursuing an appropriate remedy. Available remedies include:

- The appointment of a guardian under N.D.C.C. Chapter [30.1-28](#) or a conservator under N.D.C.C Chapter [30.1-29](#);
- A restraining order or other court order necessary under the circumstances;
- The removal of an abusive or neglectful guardian or conservator and the appointment of a suitable person as a guardian or conservator, (pursuant to North Dakota Century Code Chapters 30. 28-07 and 30.1-29.15);
- The provision of appropriate treatment under N.D.C.C. Chapter [25-03.1](#) (Commitment Procedures);
- The criminal prosecution of the individual responsible for abuse or neglect; and
- Any other available administrative, legal, or other remedies on behalf of the vulnerable adult. N.D.C.C. § [50-25.2-07](#).

When providing services under this section, the worker shall consider that the person receiving services has the right to receive services that are the least restrictive alternative available that still meet the their needs and that they have a right to representation through formal or informal channels.

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**Report Concerning Long-Term Care Facilities  
690-01-30-30**

**(Revised 11/1/2020 ML #3597)**

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The State Long-Term Care Ombudsman shall be notified of any report concerning any action, inaction, or decisions that may adversely affect the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility or tenant in an assisted living facility. The State Long-Term Care Ombudsman must also be notified if there is an alleged action, inaction, or decision on a person who was discharged from a long-term care facility within one month of the complaint. N.D.C.C. § 50-25.2-04

Ombudsmen will collaborate with Vulnerable Adult Protective Services workers on cases as needed and with necessary consent from the resident to collaborate and disclose information. The intent is that the assessment be done in a cooperative manner with all interested parties.

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**Report Concerning Qualified Service Providers  
690-01-30-35**

**(Revised 11/1/2020 ML #3597)**

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If the case involves abuse, neglect or exploitation, a formal Vulnerable Adult Protective Services report will be initiated according to N.D.C.C. § [50-25.2-03\(4\)](#). Vulnerable Adult Protective Services workers will be responsible for independent review and follow up.

HCBS Case Manager must also follow the critical incident reporting protocol as outlined in HCBS Policies and Procedures ([525-05](#)).

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**Report Concerning Individual and Agency Adult Foster  
Care 690-01-30-40**

**(Revised 11/1/2020 ML #3597)**

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If a resident of an adult foster care facility is receiving Home and Community-Based Services (HCBS), the HCBS Case Manager has primary responsibility to resolve concerns in collaboration with the licensing facility. If there is no HCBS Case Manager, the licensing worker has primary responsibility to resolve licensing or quality of care issues in collaboration with the Vulnerable Adult Protection Services worker and licensing facility. The intent is that the assessment be done in a cooperative manner with all interested parties.

If the case involves abuse, neglect, or exploitation, , a formal Vulnerable Adult Protective Services report will be initiated according to ND Century Code 50-25.2-03(4). The HCBS case manager will coordinate with the region's designated Vulnerable Adult Protection Services worker.

HCBS Case Manager must also follow the critical incident reporting protocol as outlined in HCBS Policies and Procedures (525-05).

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**Report Concerning Adults with Developmental Disabilities  
690-01-30-45**

**(Revised 11/1/2020 ML #3597)**

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A report to the North Dakota Protection & Advocacy Project, if required by N.D.C.D. § 25-01.3-04, satisfies all reporting requirements of this chapter.

The North Dakota Protection and Advocacy Project has responsibility to investigate allegations of abuse, neglect, or exploitation for individuals with developmental disabilities and adults suffering from a mental illness who are an in-patient or resident in a facility rendering care or treatment, even if the location of the person is unknown. As needed, the Vulnerable Adult Protective Services worker will collaborate with The North Dakota Protection and Advocacy Project.

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**Contact With the Vulnerable Adult or Other Individuals  
690-01-30-50**

**(Revised 11/1/2020 ML #3597)**

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Aging Services Division or the department's designee may interview the person who is the subject of the report with or without notice to the caregiver or any other individual. N.D.C.C. § 50-25.2-05(1)(a).

An unannounced face-to-face home visit is considered the optimal environment. The worker should identify themselves and explain the purpose of the visit.

Whenever possible, the person should be interviewed alone. The caregiver and any other individual who may have knowledge of the circumstances regarding the report may also be interviewed. Whenever possible, each individual should be interviewed alone. A comparison of information obtained by the individual interviews, will give the worker a more accurate picture of the circumstances and potential needs of the person and other individuals in the household.

The Risk Assessment Form found in the web-based data collection system is required to document the person's needs based on the home visit and observation of the them and their environment.

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**Entry to the Residence or Premises 690-01-30-55**  
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Aging Services Division or department's designee may enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver. N.D.C.C. § 50-25.2-05(1)(b).

If the alleged vulnerable adult or the caregiver denies entry or does not consent to an evaluation or investigation, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse, neglect, or exploitation has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent or serious physical injury or death. N.D.C.C. § 50-25.2-05(3).

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## **Workers Safety 690-01-30-60**

**(NEW 11/1/20 ML #3597)**

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It is very important for the worker, who is investigating the safety and wellbeing of adults, to also remain safe. The following are some steps the worker should utilize:

### **1. Before the home visit**

- Know the history of the person being visited and the others who reside in the home.
  - Research the case. Review the database for previous history, if report indicates previous services; check to see if there have been previous problems and resolutions documented.
  - Research the case. Review the database for previous history, if report indicates previous services; check to see if there have been previous problems and resolutions documented.
- Keep supervisor and coworkers informed of visit schedule. This can be accomplished by updating calendars to reflect visits both initial and follow-up.
  - Utilize the Outlook calendar to indicate what person (using initials) will be seen, the case number, and/or address.
- If there are acute safety concerns, options include having a 2nd worker on the visit, rescheduling the visit, arranging a joint visit with staff from another agency (law enforcement), or arranging the visit at a neutral safe location.

### **2. Arriving at the home/during home visit**

- Park the car so the worker can leave quickly if warranted.
  - Before exiting the car, look around and observe if there are any animals, broken glass, creeks, etc. that may be hazardous or harmful.
- Carry a cell phone and keys, they should not be in a purse, brief case or pocket.

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- If a pet's history is not known, and the worker is concerned about aggression, request that animals be secured or removed from the vicinity of the visit.
- Consider not entering a home if yelling or disturbances are heard from inside the home.

### **3. During the home visit**

- Enter location and scan area for possible threats or safety concerns.
- Assess for a safe exit if this should be needed quickly.
- Discontinue the home visit at the first safety concern. This could include anger by vulnerable adult, family member, or caregiver, signs of weapons or illicit drugs.
  - Remain calm
  - Leave premises
  - Call police if warranted

### **4. After the home visit**

- Inform supervisor or coworker of completion
- Document safety concerns
- If an incident occurs submit an SFN 50508 Risk Management Incident Report. [www.nd.gov/risk/riskvision/](http://www.nd.gov/risk/riskvision/)

### **References:**

DHS Policy 130-12 Community and Home Visit Safety

DHS ELM online training 'Personal Safety during Home Visits'.

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**Collateral Contacts 690-01-30-65**  
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Collateral contacts are sources that have information on special circumstances that will assist in the evaluation or assessment of a report or referral. Collateral sources may include but not be limited to the following: law enforcement, medical professionals, relatives of the vulnerable adult, neighbors, other agencies and providers, the reporter of the referral, educators and state's attorneys. Law enforcement officials are encouraged to provide collateral information. The vulnerable adult may need to sign an authorization to disclose information in order for information to be disclosed by these sources. When necessary, the authorization to disclose information may be witnessed by an individual other than the worker.

Whenever possible, the worker should inform the vulnerable adult of his or her intent to contact collateral sources and obtain a signed authorization for disclosure of information for this purpose. Circumstances that may prohibit informing the vulnerable adult of intent to contact collateral sources include when there is reason to believe that a serious emergency exists that endangers the health and safety of the vulnerable adult; when the worker lacks sufficient information to evaluate the seriousness or appropriateness of the report or referral; and when the worker has attempted to inform the vulnerable adult, but because of impaired mental functioning, the adult may be unable to consent to such contacts and no guardian has been appointed. If the vulnerable adult is impaired and does not have a court appointed guardian, the worker is empowered to request collateral information in order to provide needed services for the vulnerable adult.

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**Contact with Law Enforcement Officials 690-01-30-70**  
**(Revised 11/1/2020 ML #3597)**

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In all cases of alleged abuse, neglect, or exploitation, Aging Services Division or the department's designee may request assistance from law enforcement officials in an evaluation for the provision of other adult protective services.

If a report indicates violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the law enforcement agency may investigate the allegations of the report, take immediate steps necessary to protect the vulnerable adult, and if appropriate, institute legal proceedings. N.D.C.C. § [50-25.2-05\(2\)](#).

Law enforcement officials are authorized to take photographs as a part of an investigation.

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**Denial of Services 690-01-30-75**  
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Vulnerable Adult Protective Services may be denied if the person is:

- Not an adult or a minor emancipated by marriage;
- Not vulnerable by program criteria;
- Not residing within the state of North Dakota;
- Already receiving sufficient services to prevent, correct, or discontinue abuse, neglect, exploitation, or self-neglect; the services are being provided in the least restrictive manner possible; and the services are promoting self-care and independent living;
- Receiving assistance from existing support systems who are willing to continue to assist;
- Residing on an Indian reservation and no cooperative agreement has been developed between the tribal government and the Department of Human Services; and/or
- Only in need of specific services (such as guardianship or conservatorship services) that are obtainable through other agencies.

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**Immunity From Liability 690-01-35**

**(Revised 11/1/2020 ML #3597)**

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The following are immune from any civil or criminal liability that might result from actions taken in reporting of any alleged abuse, neglect, or exploitation:

- Any individual acting in good faith, other than the individual responsible for the alleged abuse, neglect, or exploitation; and
- Any individual employed by the Department of Human Services or a law enforcement agency conducting or supervising an investigation, evaluation or assessment, or enforcing provisions of the law if the individual is acting in good faith and exercising due care. N.D.C.C. § [50-25.2-09](#).

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**Penalty and Civil Liability for False Reports 690-01-40**  
**(Revised 11/1/2020 ML #3597)**

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Any person required to report who willfully fails to do so is guilty of an infraction. N.D.C.C. § [50-25.2-10](#).

Any individual who willfully makes a false report or provides false information that causes a report to be made is guilty of a class B misdemeanor. If the false report is made to a law enforcement official, the individual is guilty of a class A misdemeanor. False reports may be reported to the state's attorney or law enforcement official having jurisdiction in that area.

An individual who willfully makes a false report or provides false information that causes a report to be made is liable in a civil action for all damages reported by the person reported. N.D.C.C. § [50- 25.2-10](#).

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## **Employee Retaliation 690-01-45**

**(Revised 11/1/20 ML #3597)**

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An employer who imposes any form of discipline or retaliation against an employee who reports alleged abuse, neglect, or exploitation in good faith is guilty of a Class B misdemeanor.

An employer who retaliates against an employee who reports alleged abuse, neglect, or exploitation in good faith is liable to that employee in a civil action for all damages.

A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. An adverse action includes the discharge from or termination of employment; the demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or the restriction or prohibition of access by the employee to any place of employment or persons affiliated with the place of employment. N.D.C.C. § [50-25.2-11](#).

Employee retaliation may be reported (by the employee) to the state's attorney having jurisdiction in that area.

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**Program Reporting Requirements 690-01-50**  
**(Revised 11/1/2020 ML #3597)**

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Upon receipt of a report, designated intake staff must evaluate and assess the report for alleged abuse, neglect or exploitation.

Designated intake staff are required to input information into the web-based data collection system in a timely manner. The designated Aging Services program administrator will collect data quarterly.

Required program reporting is found in the web-based data collection system and includes the intake and investigation and all related forms.

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**Assessing a Report 690-01-50-05**  
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**Information & Referral/Screened Out Intake** – An inquiry not meeting the criteria for full assessment, in which assistance is given to help people gain access to services, through provision of information and referral services or a misdirected phone call.

Examples may include:

- Reports regarding a person under the age of 18, unless emancipated by marriage. Such reports should be referred to the appropriate social service agency;
- Reports that include involvement of other formal or informal resources that will address or resolve the presenting problem;
- The person or situation is currently or was recently known to Adult Protective Services and the report does not provide additional information or circumstances to require further assessment;
- Reports concerning persons being discharged to community from treatment facilities when the need for services is placement only;
- Reports concerning persons lacking resources due to a travel related incident, unemployment, or transient lifestyle;
- Reports concerning a person in another state;
- Reports not containing sufficient information to find the person such as name or address; or
- Reports concerning a person with developmental disabilities or mental illness who is an in-patient or resident in a facility providing care. Such reports should be referred to the North Dakota Protection and Advocacy Project.

**Full Assessment/Screened In Intake** – Require a home visit and completion of the assessment report and are conducted to:

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- Determine if criteria for vulnerability are met. Criteria for vulnerability include substantial mental or functional impairment or both.
- Determine if the person is in need of adult protective services or is in need of services to support or maintain independent living.
- Determine the person's functional abilities, mental abilities, capabilities and limitations.
  - The worker should use the Vulnerable Adult Protective Services Risk Assessment form found in the web-based data collection system.
- Formulate, with the person and other supports a plan to meet those needs in the least restrictive environment.
- Evaluate the effectiveness of the plan and reassess needs as necessary.

The assessment should include careful observation of the vulnerable adult's environment. Areas to observe include:

- **Living Environment** – Are there environmental factors that suggest the person may have difficulty maintaining independent living skills without assistance, i.e. spoiled food on the counters, excess garbage, urine odor, too hot, too cold, etc.?
- **Support System** – Are there family members or other supports in place to assist the person? Does the alleged perpetrator live in the home or have access to finances? Is a caregiver needed? Are there adequate formal/informal supports?
- **Neighborhood** – Does it appear safe? Are the buildings, sidewalks, etc., well maintained? Is public transportation available? Is there access to health care, shopping, religious, and social activities?
- **Home** – What is the general impression of the home? Is the access uncluttered? Does the home accommodate physical needs of the person?

The physical evidence should also be observed. It is necessary to locate items that could be used to identify and describe incidences of abuse, neglect or exploitation made in the report. Physical evidence may include clothing worn by the person that contains blood, semen, other body fluids; clothing that is torn; weapons; photographs; and x-rays. The worker should not collect physical evidence – it should be left undisturbed until law enforcement can be called to collect it for possible criminal charges.

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Observations should be recorded on the Risk Assessment or in the documentation section of the web-based data collection system.

**Standard for Substantiation**

The standard for indicating an allegation of abuse or neglect and maintaining an open case in order to provide protective services is the existence of relevant evidence that furnishes a reasonably sound factual basis for the decision. This means that there is enough credible evidence regarding whether an event has occurred or a factual situation exists that the decision makes sense when looked at objectively and it is reasonable to act upon that evidence. It is a lesser standard of evidence than the “preponderance of evidence” or “beyond a reasonable doubt” standards of evidence.

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**Intake Report 690-01-50-10**  
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Designated Vulnerable Adult Protection Services intake workers shall record intake information on the SFN 1610 Vulnerable Adult Protective Services Intake form and in the designated web-based data collection system to include, when available:

- Demographic information of the person who is the subject of the report, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;
- The person's physical or cognitive limitations;
- The demographics of any identified legal representative of the person;
- The reporter's demographic information, unless the reporter requests anonymity, such as a name, phone number, address, relationship to vulnerable adult, and the reporter's employer;
- Primary reason for report such as allegations of abuse, neglect, self-neglect or exploitation;
- Safety concerns for the person who is the subject of the report;
- Safety concerns for the the worker;
- Individuals living in the home with the person who is the subject of the report;
- The alleged perpetrator's information, such as name, gender, address, phone number, and relationship to the client (when abuse, neglect, or exploitation is alleged and if available); and
- If the SFN 1610 and assessment are not completed; a reason why must be noted.

**Intake Process**

Intake staff shall strive for consistency in all reports. Intake staff are responsible to:

- Make a screening determination on all reports within two (2) business days. If the report screening is delayed, a note detailing the reason

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should be included in the file in the designated web-based data collection system.

- Track the number of duplicate reports received on current investigations.
  - Investigation staff will be notified of all duplicate reports received.
- Take reports in the order received whether by phone, fax, online or email and utilize the shared inbox for accepting reports.
- Complete a welfare check if a report includes concerns of imminent harm or danger to self or others and screen the report in regardless of the results from law enforcement.
- Complete appropriate records requests and collateral contacts as needed. Information will be attached to a note in the designated web-based data collection system or secure drive once received.
  - All financial records requests will be given a 30 (30) day response time frame.
- Document follow-up attempts. All new reports, unless a duplicate report (one already open in investigation), must have at least two (2) documented attempts at follow-up.

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**Maintenance of Files 690-01-50-15**  
**(Revised 11/1/2020 ML #3597)**

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The following must be adhered to:

- Vulnerable Adult Protective Service files and any supporting documentation will be maintained in the designated web-based data collection system or secure drive.
- Files made prior to the implementation of the web-based data collection system are to be maintained in a separate filing system and kept in a locked file cabinet.
- Destruction or storage of files will be conducted in accordance with the records management policy of the department consistent with Older Americans Act (OAA) requirements 650-25 State & Community Programs Funded Under the Older Americans Act Policies & Procedures Manual.
- Contract entities must follow the same procedures for confidentiality and maintenance of files. If the entity is no longer under contract with the department, records are property of the department and any existing physical records must be transferred to the Department of Human Services Aging Services Division. Access to the web-based data collection system will be terminated at contract ending.

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**Evaluation and Assessment of a Report - Priority of Response 690-01-50-20**

**(Revised 11/1/2020 ML #3597)**

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The following levels must be used to determine priority of response:

- **High Priority:** The person is at urgent and significant risk of harm due to the severity of the alleged abuse, or due to the vulnerability or physical frailty, a worker shall make face-to-face contact within twenty-four (24) hours. If unable to make contact within that time frame, the worker shall contact law enforcement for assistance.
  - If a welfare check is completed by law enforcement, the report is screened in regardless of the result of the contact.
- **Priority 1:** The person is not in imminent danger or urgent risk or harm but alleged abuse is present or conditions exist that might reasonably result in abuse, a worker shall make face-to-face contact with the person no later than five (5) working days beginning the day after the receipt of the report.
- **Priority 2:** The person is not in imminent danger or urgent risk or harm but conditions exist that are of concern, a worker shall make face-to-face contact with the person no later than ten (10) working days beginning the day after the receipt of the report.

Documentation of contacts made:

- When the initial attempt at face-to-face contact with the person is unsuccessful, two (2) more attempts will be made within a one (1) month timeframe.
- Any reason for delayed response shall be documented.
- Initial and subsequent attempts at contact shall begin immediately when the person becomes or is expected to become available.
- Following the two (2) unsuccessful attempts at contact, the worker may choose to send a letter requesting an appointment with the person who is the subject of the report.
- If attempts at contact remain unsuccessful, the worker shall close the case no later than thirty (30) working days after receipt of the report.

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- The worker shall document all attempts to contact.
- When the report originally appears to indicate a need for face-to-face contact but further assessment determines that a face-to-face contact is not required to resolve potential risk, the worker may provide telephone response and assistance. Reports appropriate for telephone response and assistance include those that:
  - Present heightened worker safety concerns and upon consultation, law enforcement directs not to respond;
  - Present heightened worker safety due to the presence or report of environmental or infectious disease concerns and upon consultation, first responders, public health officials, or code enforcement directs not to respond;
  - In which it is determined that responsible family member or other support is aware of the concerns and is working appropriately to address the concerns; or
  - Are considered a chronic situation in which the worker has had a visit with the person in the past twenty (20) working days and determined intervention is unwanted or there is no resolution for the concern.
  - In which the person has a case manager in place, and calls between the worker and the case manager can resolve the reporter's concerns.
  - In which the person is hospitalized or institutionalized prior to the initial visit and the worker has determined that ongoing protective services are not required. If the person is hospitalized or institutionalized outside the area of service and requires ongoing protective services, the report shall be transferred to the appropriate entity for follow-up.

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**Access to Records of the Vulnerable Adults 690-01-50-25  
(Revised 11/1/2020 ML #3597)**

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For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee access to all records of the vulnerable adult (N.D.C.C. § [50-25.2-05 \(1\)](#)):

- If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access;
- If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is an individual with respect to whom a report was received by the department or the department's designee; or
- If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, the legal guardian or other legal representative is alleged to cause the circumstances surrounding the report, and is an individual with respect to whom a report was received by the department or the department's designee.

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**Case Closure 690-01-50-30**  
**(Revised 11/1/2020 ML #3597)**

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Services may be discontinued through action of the Vulnerable Adult Protective Services worker or the person or their legal representative, as appropriate. The person will be involved in the process to the maximum degree possible.

The worker may initiate case closure when:

- Reasonable attempts have been made, and with the help of appropriate collaterals, the worker has been unable to locate the person who is the subject of the report.
- The death of the person.
  - All deaths are considered sentinel events and must be reported through the SFN 53601 found on the [Risk Management portal](#).
- The person is living in a licensed facility or otherwise receiving appropriate services.
- The case is transferred to another agency, such as domestic violence or Protection and Advocacy.
- The person has moved out of the state.
- Crisis intervention has successfully resolved current problems with no additional needs identified.

The person who is the subject of the report may initiate activities to close the case with Vulnerable Adult Protective Services. These activities include:

- They have refused contact – no full assessment was possible and there was insufficient information to pursue legal remedies.
- They or the caregiver misrepresented their needs or willingness to participate.
- They have withdrawn their request for services.

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**Quality Assurance 690-01-50-55**

**(NEW 11/1/2020 ML #3597)**

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Quality assurance will be completed every quarter of the biennium; one region per quarter. QA staff will review five (5) open investigations and five (5) closed investigations for each staff member of the region. If a staff member has completed intakes, QA staff will review five (5) screened in and five (5) screened out intake; if available. QA will also be completed on intake staff in the biennium; five (5) screened in and five (5) screened out intakes.

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**Records Retention and Destruction 690-01-60**  
**(NEW 11/1/2020 ML #3597)**

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All Vulnerable Adult Protective Services records must be retained for a period of 10 years from the date of case closure and in accordance with department record retention policy.