
**Report to
The Vermont Legislature**

**Older Vermonters Act
Adult Protective Services Annual Report**

In accordance with Act 156 of 2020, Sec. 2 33 V.S.A § 6916

**Submitted to: House Committee on Human Services
Senate Committee on Health and Welfare**

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§ 6916 Older Vermonters Act:

Adult Protective Services Annual Report for State Fiscal Year 2020

Introduction

Adult Protective Services (APS) is one of two branches in DAIL's Division of Licensing and Protection (the other being the Survey and Certification survey and regulatory component). APS investigates allegations of abuse, neglect, and exploitation of vulnerable adults and implements protective services, as necessary, to limit future maltreatment. APS has 18 employees, including 11 home-based investigators who travel throughout the state to investigate allegations of maltreatment. APS frequently partners with law enforcement agencies and human service providers in the performance of their investigations.

Vermont APS has followed the national trend in noting decreasing reports in the final quarter of SFY20 as a result of COVID-19. In response to the pandemic and those national trends, Vermont's APS operations have been modified to ensure continuing access. APS implemented a COVID-19 protocol which provided direction on when to conduct in-person interviews, appropriate use of PPE, and other necessary precautions. Remote contact has been mandated except in cases where in-person contact is required to ensure the safety of the vulnerable adult. APS has also expanded outreach efforts to encourage reporting despite decreased in-person contact with vulnerable adults during the pandemic.

APS continues to value our work with volunteers and community partners on the APS Committee of the DAIL Advisory Board and through the file review process. During file reviews, individuals on the APS Committee review reports and investigations to provide feedback on current process and practice; increasing transparency into our work as an investigative body for the protection of vulnerable adults.

APS, in cooperation with key Vermont stakeholders and community partners, submitted a grant application in early 2019 to the Administration for Community Living. The grant was awarded to APS in the first quarter of SFY20 and approved by the Vermont Legislature in third quarter of SFY20. The grant's three-year project will create, coordinate and maintain a Restorative Justice Program aimed at serving an unmet need for participants served by APS in Vermont. The program will seek to serve both victims and perpetrators of maltreatment. The goal of this project is to provide a meaningful, strength-based, participant driven response to the victims and perpetrators of vulnerable adult maltreatment in Chittenden, Franklin and Washington Counties.

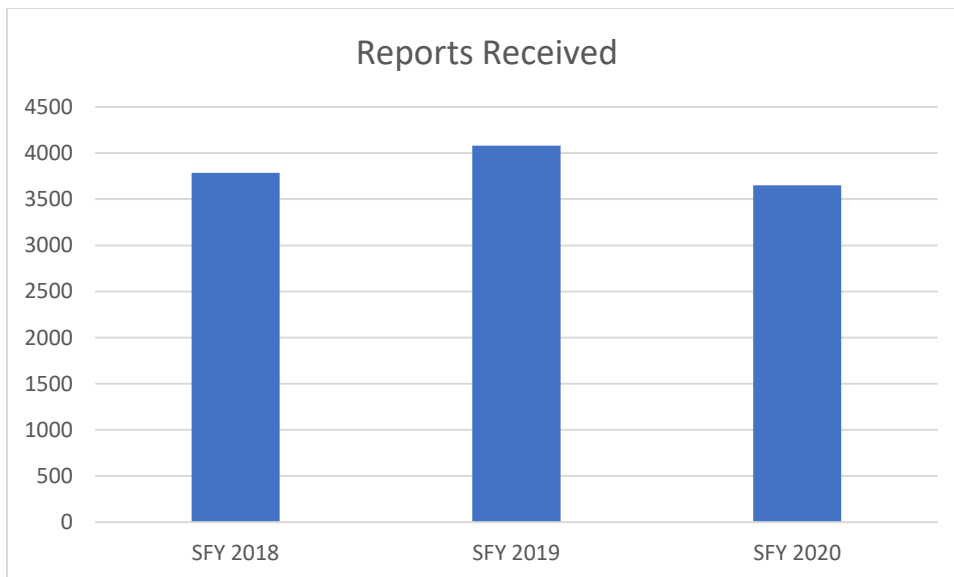
Act 46 of 2013 required the Secretary of the Agency of Human Services to submit an annual report to the Legislature through January 2018. Although the requirements of Act 46 sunset, the Department continued each year to provide the requested information to ensure transparency and accountability. The improvements in Vermont’s APS programs over the past seven years have been well-documented; that progress has been a result of building and maintaining collaborative partnerships and continuous efforts to improve both policy and practice.

Reporting Elements

Beginning in 2021, as stated in § 6916, on or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department [DAIL] shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare regarding the Department’s adult protective services activities during the previous fiscal year. The following provides detail on the eighteen (18) required reporting elements as specified in the Older Vermonters Act.

(1) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that the Department’s Adult Protective Services program received during the previous fiscal year and comparisons with the two prior fiscal years.

APS received 3,649 reports of maltreatment (abuse, neglect, and/or exploitation) in State Fiscal Year 2020 (SFY20). In SFY19, APS received 4080, and in SFY18, APS received 3785.



(2) the Adult Protective Services program's timeliness in responding to reports of abuse, neglect, or exploitation of a vulnerable adult during the previous fiscal year, including the median number of days it took the program to make a screening decision.

APS responded to reports within a median 1.95 calendar days in SFY20. This median number is calculated by the time elapsed between the report date/time and resolution date/time of that report.

(3) the number of reports received during the previous fiscal year that required a field screen to determine vulnerability and the percentage of field screens that were completed within 10 calendar days.

In SFY20, 143 reports received by APS required a Field Screen, an extension of the screening process where an APS Investigator gathers additional information in order to determine if an investigation should be opened. 45% of the resulting Field Screens were completed within 10 calendar days of receipt of report.

(4) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that were received from a facility licensed by the Department's Division of Licensing and Protection during the previous fiscal year.

APS received 765 reports in SFY20 where the alleged maltreatment occurred in a nursing home, residential care home, therapeutic community residence, or assisted living residence. These reports are shared with the State's Survey & Certification component in the event that facility practices may need to be investigated.

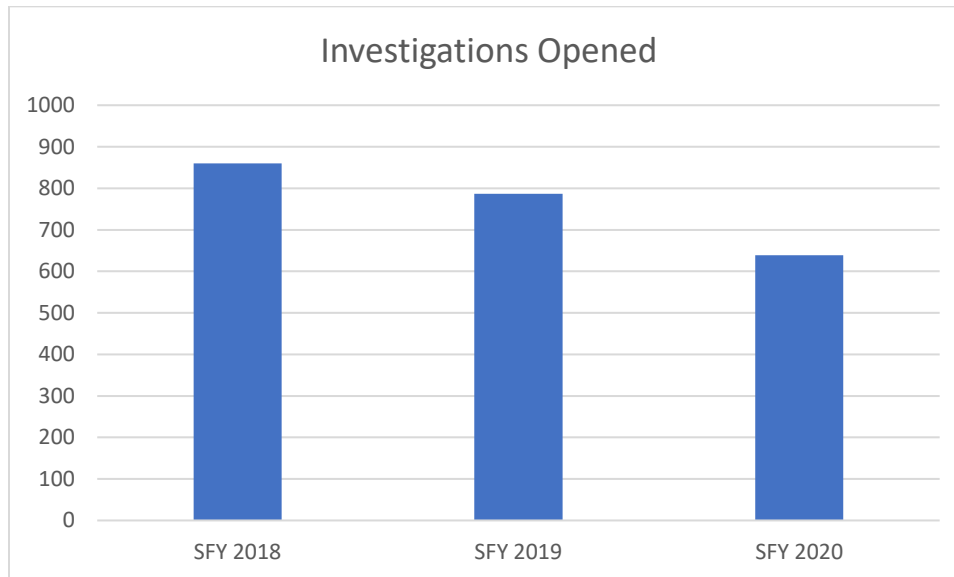
(5) the numbers and percentages of reports received during the previous fiscal year by each reporting method, including by telephone, e-mail, Internet, facsimile, and other means.

In SFY20, APS received 3,649 reports:

- 812 telephone reports, representing 22%
- 382 e-mail reports, representing 10%
- 2,334 internet reports, representing 64%
- 106 facsimile reports, representing 3%
- 15 reports from other methods, representing less than 1%

(6) the number of investigations opened during the previous fiscal year and comparisons with the two prior fiscal years.

APS opened 639 investigations in SFY20. In comparison, APS opened 787 investigations in SFY19 and 860 investigations in SFY18.



(7) the number and percentage of investigations during the previous fiscal year in which the alleged victim was a resident of a facility licensed by the Department's Division of Licensing and Protection.

In SFY20, 80 investigations— representing 13% of all investigations that year— involved an alleged victim in a nursing home, residential care home, therapeutic community residence, or assisted living residence.

(8) data regarding the types of maltreatment experienced by alleged victims during the previous fiscal year, including: (A) the percentage of investigations that involved multiple types of allegations of abuse, neglect, or exploitation, or a combination; (B) the numbers and percentages of unsubstantiated investigations by type of maltreatment; and (C) the numbers and percentages of recommended substantiations by type of maltreatment.

In SFY20, there were 160 investigations with combined multiple allegations of abuse, neglect, or exploitation, representing 23% of the total 688 investigations that year.

Investigations that resulted in a recommendation of unsubstantiation by APS for each type of maltreatment were:

- Abuse = 267, representing 39% of 688
- Exploitation = 198, representing 29% of 688
- Neglect = 205, representing 30% of 688

Investigations that resulted in a recommendation of substantiation by APS for each type of maltreatment, including cases that were overturned in appeal and/or the recommendation was rejected, were:

- Abuse = 46, representing 7% of 688
- Neglect = 47, representing 7% of 688
- Exploitation = 84, representing 12% of 688

(9) the Department's timeliness in completing investigations during the previous fiscal year, including both unsubstantiated and recommended substantiated investigations.

In SFY20, 684 investigations were completed in a timely manner in accordance with the APS Policy Manual (within 120 days of assignment from intake), representing more than 99% of all APS investigations in that year.

Of the investigations that still remain open due to (1) ongoing legal proceedings or (2) completed beyond their due date and allowable review period, nine (9) investigations were recommended for unsubstantiation and eleven (11) investigations were recommended for substantiation.

(10) data on Adult Protective Services program investigator caseloads, including: (A) average daily caseloads during the previous fiscal year and comparisons with the two prior fiscal years; (B) average daily open investigations statewide during the previous fiscal year and comparisons with the two prior fiscal years; (C) average numbers of completed investigations per investigator during the previous fiscal year; and (D) average numbers of completed investigations per week during the previous fiscal year.

In SFY20, the average daily caseload of each APS investigator was 13. By comparison, the average daily caseloads per investigator was 21 in SFY19, and 34 in SFY18.

The average daily open caseloads across all of APS in SFY20 was 121. By comparison, the average daily open caseloads in SFY19 was 189, and 308 in SFY18.

The average number of completed investigations per investigator in SFY20 was 77. By comparison, the average number of completed investigations in SFY19 was 102, and 88 in SFY18.

The average number of completed investigations per week in SFY20 was thirteen (13). By comparison, the average number of investigations completed weekly in SFY19 was four (4), and ten (10) in SFY18.

(11) the number of reviews of screening decisions not to investigate, including the number and percentage of these decisions that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY20, the Department reviewed 51 decisions not to investigate, of which 33 (65%) decisions by APS were upheld, and 18 (35%) decisions were reversed. By comparison, in SFY19, the Department reviewed 16 decisions, of which 11 (69%) were upheld, and 5 (31%) were reversed. In SFY18, the Department reviewed 17 decisions, of which 14 (82%) were upheld, and 3 (18%) were reversed.

(12) the number of reviews of investigations that resulted in an unsubstantiation, including the number and percentage of these unsubstantiations that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY20, the Department reviewed 3 investigations that resulted in a recommendation by APS for unsubstantiation, and upheld 3 (100%) of these recommendations. By comparison, in SFY19, the Department reviewed 6 investigations recommending unsubstantiation and upheld 6 (100%), and in SFY18, the Department reviewed 2 investigations recommending unsubstantiation and upheld 2 (100%).

(13) the number of appeals of recommendations of substantiation that concluded with the Commissioner, including the number and percentage of these recommendations that the Commissioner upheld during the previous fiscal year and comparisons with the two prior fiscal years.

The Commissioner heard 32 appeals in SFY20 of recommendations of substantiation. Of these 32 appeals, the Commissioner upheld 15 (47%) and reversed 17 (53%) of these recommendations. By comparison, in SFY19 the Commissioner heard 21 appeals, upheld 15 (71%) and reversed 6 (29%). In SFY18, the Commissioner heard 16 appeals, upheld 12 (75%) and reversed 4 (25%).

(14) the number of appeals of recommendations of substantiation that concluded with the Human Services Board, including the numbers and

percentages of these recommendations that the Board upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY20, 17 appeals of recommendations of substantiation concluded with the Human Services Board. Of these 17 appeals, 10 (59%) recommendations were upheld by the Board, and 7 (41%) were overturned. By comparison, in SFY19, 11 recommendations were appealed to the Board, 7 (64%) were upheld and 4 (36%) were overturned. In SFY18, 3 recommendations were appealed to the Board, and 3 (100%) were upheld.

(15) the number of appeals of recommendations of substantiation that concluded with the Vermont Supreme Court, including the numbers and percentages of these recommendations that the Court upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY20, zero (0) appeals of recommendations of substantiation concluded with the Vermont Supreme Court. There were also zero (0) appeals that concluded with the Court in both SFY19 and SFY18.

(16) the number of expungement requests received during the previous fiscal year, including the number of requests that resulted in removal of an individual from the Adult Abuse Registry.

In SFY20, the Department received 23 expungement requests. Of these 23 requests, 12 resulted in expungement and removal from the Adult Abuse Registry, and 11 requests were denied.

(17) the number of individuals placed on the Adult Abuse Registry during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY20, 97 individuals were placed on the Adult Abuse Registry. By comparison, in SFY19, 157 individuals were placed on the Registry, and in SFY18, 106 individuals were placed on the Registry.

(18) the number of individuals removed from the Adult Abuse Registry during the previous fiscal year.

In SFY20, 12 individuals were removed from the Adult Abuse Registry.

Conclusion

In SFY21, APS continues to balance its mission and its new focus on the Restorative Justice grant efforts with the challenges of COVID-19. To meet these challenges, APS

will continue to collaborate with other departments in AHS to host regional gatherings to inform communities and service providers about the role, responsibility, and statutory authority of APS. This outreach will include new, remote mandatory reporter trainings.

APS continues to work closely with the DAIL Advisory Board's APS Committee to review Vermont's current APS Statute and to consider needed changes to align with national trends and best practices. Since the APS statute was established, Vermont demographics and structure for service delivery have changed dramatically. When the statute was passed nearly half a century ago, most of the care provided to vulnerable adults was provided in institutional settings. Now many more vulnerable adults are receiving care in home and community-based settings, provided by a range of different service providers and family caregivers. That change in settings generates a need for review and possible revision of the current statutes.

Additionally, APS is seeing an increasing number of complaints that involve financial exploitation. Again, the current statute does not necessarily address financial exploitation as fully as it may need to in order to meet current situations. In the next biennium, APS plans to work with the APS Committee to look at whether any changes should be made to the statutory measures to ensure that APS is able to continue to protect vulnerable adults whose health or welfare is at risk due to abuse, neglect or exploitation. This may lead to proposed changes in the APS statute at 33 V.S.A. Chapter 69.

Appendix A: Definitions

- 1) "Abuse" means:
 - a) Any treatment of a vulnerable adult which places life, health, or welfare in jeopardy or which is likely to result in impairment of health;
 - b) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable adult;
 - c) Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;
 - d) Any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a caregiving facility or program. This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse or domestic partner, nor to a consensual relationship between a vulnerable adult and a caregiver hired, supervised, and directed by the vulnerable adult;
 - e) Intentionally subjecting a vulnerable adult to behavior which should reasonably be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress; or
 - f) Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

Note: A report of abuse cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996).

- 2) "Adult Abuse Registry" means a list, maintained by APS, of individuals who have been substantiated for or convicted of abusing, neglecting, or exploiting a vulnerable adult.
- 3) "Agency" means the Agency of Human Services, also referred to as "AHS."
- 4) "Alleged Perpetrator" means the individual alleged to have abused, neglected, or exploited the alleged victim, as reported. Also referred to as the "AP."
- 5) "Alleged Victim" means the individual who is alleged to have been abused, neglected, or exploited by the alleged perpetrator, as reported. Also referred to as the "AV."
- 6) "Appeal" means:
 - a) The process through which the DAIL Commissioner, the Human Services Board, and/or the Vermont Supreme Court review a decision to recommend

- substantiation of, or to substantiate, an alleged perpetrator for abusing, neglecting, or exploiting a vulnerable adult.
- 7) "Care" means subsistence, medical services, custodial services, personal care services, mental health services, or rehabilitative services, and includes assistance with activities of daily living or instrumental activities of daily living.
 - 8) "Caregiver" means a person, agency, facility, or other organization with responsibility for *providing* subsistence or medical or other care to an adult who is an elder or has a disability, who has assumed the responsibility voluntarily, by contract, or by an order of the Court; or a person *providing* care, including medical care, custodial care, personal care, mental health services, rehabilitative services, or any other kind of care provided which is required because of another's age or disability.
 - 9) "Commissioner" means the Commissioner of the Department of Disabilities, Aging, and Independent Living or their designee.
 - 10) "Department" means the Department of Disabilities, Aging, and Independent Living, also referred to as "DAIL."
 - 11) "Division" means the Division of Licensing and Protection, also referred to as "DLP."
 - 12) "Exploitation" means:
 - a) Willfully using, withholding, transferring, or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;
 - b) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;
 - c) The act of forcing or compelling a vulnerable adult against their will to perform services for the profit or advantage of another; or
 - d) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status.
- Note: A report of exploitation cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996). This requirement, however, does not apply to allegations under subsection d) above.
- 13) "Expungement" means the removal of an individual's name from the Adult Abuse Registry.

- 14) "Field Screen" means an extension of the screening process where an APS Investigator gathers additional information in order to determine if an investigation should be opened.
- 15) "Intake" means the act of gathering information from a reporter or other individuals with information pertaining to a report for the purpose of making a screening decision.
- 16) "Investigation" means an investigation conducted by an APS Investigator for the purpose of determining if a vulnerable adult was abused, neglected, or exploited and which complies with the requirements set forth in 33 V.S.A. § 6906(b).
- 17) "Investigative Summary" means the document that summarizes the investigation conducted by an APS Investigator, to include a recommendation for substantiation or unsubstantiation for the alleged perpetrator.
- 18) "Investigator" means an APS Investigator who investigates allegations of the abuse, neglect, or exploitation of a vulnerable adult.
- 19) "Neglect" means purposeful or reckless failure or omission by a caregiver to:
 - a) Provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or their representative, or an advance directive, as defined in 18 V.S.A. §9701;
 - b) Make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect, or exploitation by others;
 - c) Carry out a plan of care for a vulnerable adult when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or their representative, or advance directive, as defined in 18 V.S.A. §9701; or
 - d) Report significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides or arranges for personal care.

Note: A report of neglect cannot be substantiated absent evidence that the alleged perpetrator knew, or should have known, of the alleged victim's status as a vulnerable adult. In re Appeal of Tinker, 165 Vt. 621 (1996).

Note: When considering the definition of neglect, neglect:

- May include a mandatory reporter's willful failure to report when they know of or have received information about or reasonably suspect abuse, neglect, or exploitation of a vulnerable adult, but only when the mandatory reporter is also a caregiver.

- May be repeated conduct or a single incident which has resulted in or could be expected to result in physical or psychological harm, as a result of a), b), c) or d) of this subdivision.

Note: When considering substantiation for neglect:

- The APS Investigator will consider whether the alleged perpetrator was acting in their role as caregiver of the vulnerable adult at the time of the alleged misconduct. Caregivers who assist vulnerable adults with supported decision making, where the vulnerable adult has the authority to make a decision about their actions or inactions, will not be considered to have acted purposefully or recklessly if the vulnerable adult ignores the advice of the caregiver.

- 20) "Protective Services" means actions taken to safeguard a vulnerable adult to prevent future abuse, neglect, or exploitation.
- 21) "Purposeful" means it is a person's intent or desire to engage in or refrain from engaging in specific conduct to cause or bring about specific harm.
- 22) "Reasonable Effort" includes those actions that an ordinary person in the same or similar circumstances would take, in accordance with his authority, to protect a vulnerable adult from abuse, neglect, or exploitation.
- 23) "Reasonably Suspect" means that an ordinary person under the same or similar circumstances would be of the opinion that a vulnerable adult may have been abused, neglected, or exploited.
- 24) "Reckless" means acting without regard to the probable or possible injurious consequences of their actions, or, foreseeing such consequences, consciously ignoring a known, substantial and unjustifiable risk that their conduct would cause that result. To be reckless, the person's disregard of the risk, when considered in light of the nature and purpose of their conduct, and the circumstances known to them, must have been a gross deviation from how a law-abiding person would have acted in the same situation.
- 25) "Recommendation for Substantiation" means that an investigation has been conducted and that the APS Investigator has concluded that accurate and reliable information discovered in the course of the investigation would lead a reasonable person to believe that the alleged perpetrator abused, neglected, or exploited the vulnerable adult.
- 26) "Referral" means that APS staff has either forwarded information to another service provider to assist a vulnerable adult or has recommended to the vulnerable adult or reporter that they seek services from another service provider. A referral is not a deferral, meaning that APS is still bound to meet its statutory obligation to investigate allegations of the abuse, neglect, and exploitation of vulnerable adults even if they make referrals to other organizations.

- 27) "Report" means the statements provided to APS from a Reporter alleging that a vulnerable adult has been abused, neglected, or exploited. This is not the same "report" described at 33 V.S.A. §6906(c); that "report" is the "Investigative Summary" described above.
- 28) "Reporter" means the person or persons who has submitted a report to APS.
- 29) "Substantiated" means that a Recommendation for Substantiation has been accepted, either because the Alleged Perpetrator did not appeal the recommendation or because their appeal or appeals were denied.
- 30) "Survey and Certification" means the State Survey Agency responsible for licensing and surveying healthcare organizations which, like APS, is housed within DLP.
- 31) "Unsubstantiated" means that an investigation has been conducted and the APS Investigator has concluded there is a lack of accurate and reliable information to lead a reasonable person to believe that the alleged perpetrator abused, neglected, or exploited the vulnerable adult.
- 32) "Vulnerable adult" means any person 18 years of age or older who meets at least one of the following conditions.
- a) Is a resident of a facility required to be licensed under 33 V.S.A. Chapter 71.
 - b) Is a resident of a psychiatric hospital or a psychiatric unit of a hospital.
 - c) Has been receiving personal care services for more than one month from a home health agency certified by the Vermont Department of Health or from a person or organization that offers, provides, or arranges for personal care.
 - d) Regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, mental condition, or physical, psychiatric, or developmental disability:
 - i. That results in some impairment of the individual's ability to provide for their own care without assistance, including the provision of food, shelter, clothing, health care, supervision, or management of finances; or
 - ii. Because of the disability or infirmity, the individual has an impaired ability to protect themselves from abuse, neglect, or exploitation.