

ARTICLE 3.1
PROTECTIVE SERVICES FOR ADULTS AT RISK OF
MISTREATMENT OR SELF NEGLECT
PART 1
PROTECTIVE SERVICES FOR AT-RISK ADULTS

26-3.1-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "At-risk adult" means an individual eighteen years of age or older who is susceptible to mistreatment, self-neglect, or exploitation because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

(2) "Caretaker" means a person who:

- (a) Is responsible for the care of an at-risk adult as a result of a family or legal relationship;
- (b) Has assumed responsibility for the care of an at-risk adult;
- (c) Is paid to provide care or services to an at-risk adult.

(2.3) "Caretaker neglect" means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this subsection (2.3), "medical directive or order" includes but is not limited to a Medical Durable Power of Attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., A Medical Order for Scope of Treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.

(2.5) "Clergy member" means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.

(3) "County department" means a county or district department of social services.

- (4) "Exploitation" means an act or omission committed by a person that:
- (a) Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of his or her money, assets, or property;
 - (b) In the absence of legal authority:
 - (I) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; or
 - (II) Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or
 - (c) Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.
- (5) "Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.
- (6) "Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of actual mistreatment, self neglect, or exploitation.
- (7) "Mistreatment" means an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. "Mistreatment" includes, but is not limited to:
- (a) Abuse that occurs:
 - (I) Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;
 - (II) Where unreasonable confinement or restraint is imposed; or
 - (III) Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.
 - (b) Caretaker neglect.

- (8) “Person” means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.
- (9) “Protective services” means services provided by the state or political subdivisions or agencies thereof in order to prevent the mistreatment, self-neglect, or exploitation of an at-risk adult. Such services, include, but are not limited to: Receiving and investigating reports of mistreatment, self-neglect, or exploitation, providing casework and counseling services, and arranging for coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs, protection from mistreatment, assistance with application for public benefits, referral to community service providers, and initiation of probate proceedings.
- (10) “Self-neglect” means an act or failure to act whereby an at-risk adult substantially endangers his or her health, safety, welfare, or life by not seeking or obtaining services necessary to meet his or her essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect. Refusal of medical treatment, medications, devices, or procedures by an adult or on behalf of an adult by a duly authorized surrogate medical decision maker or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. As used in this subsection (10), “medical directive or order” includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

26-3.1-102. Reporting requirements.

- (1) (a) A person specified in paragraph (b) of this subsection (1) who observes the mistreatment, self-neglect, or exploitation of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated, is self-neglected, or has been exploited and is at imminent risk of mistreatment, self-neglect, or exploitation is urged to report such fact to a county department not more than twenty-four hours after making the observation or discovery.
- (a.5) As required by Section 18-6.5-108, C.R.S., certain persons specified in paragraph (B) of this subsection (1) who observes the abuse or exploitation of an at-risk elder, as defined in Sections 18-6.5-102(1) and (10), C.R.S., or who have reasonable cause to believe that an at-risk elder has been abused or exploited or is at imminent risk of abuse or exploitation shall report such fact to a law enforcement agency not more than twenty-four

hours after making the observation or discovery.

- (b) The following persons, whether paid or unpaid, are urged to report as described in paragraph (a) of this subsection (1):
- (I) Physicians, surgeons, physicians' assistants, osteopaths, physicians in training, podiatrists, occupational therapists, and physical therapists;
 - (II) Medical examiners and coroners;
 - (III) Registered nurses, licensed practical nurses, and nurse practitioners;
 - (IV) Emergency medical service providers;
 - (V) Hospital and long-term care facility personnel engaged in the admission, care, or treatment of patients;
 - (VI) Chiropractors;
 - (VII) Psychologists and other mental health professionals;
 - (VIII) Social work practitioners;
 - (IX) Clergy members;
 - (X) Dentists;
 - (XI) Law enforcement officials and personnel;
 - (XII) Court appointed guardians and conservators;
 - (XIII) Fire protection personnel;
 - (XIV) Pharmacists;
 - (XV) Community-centered board staff;
 - (XVI) Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions; and
 - (XVII) A caretaker, staff member, or employee of or volunteer or consultant for a licensed or certified care facility, agency, home, or governing board, including but not limited to home health providers; and,

(XVIII) A caretaker, staff member, employee, or a volunteer or consultant for, a home care placement agency, as defined in Section 25-27.5-102(5), C.R.S.

(XIV) In addition to those persons urged by this subsection (1) to report known or suspected mistreatment, self-neglect, or exploitation of an at-risk adult and circumstance or conditions that might reasonably result in mistreatment, self-neglect, or exploitation, any other person may report such known or suspected mistreatment, self-neglect, or exploitation and circumstances or conditions that might reasonably result in mistreatment, self-neglect, or exploitation of an at-risk adult to the local law enforcement agency or the county department. Upon receipt of such report, the receiving agency shall prepare a written report within forty-eight hours.

(2) Pursuant to subsection (1) of this section, the report shall include:

(a) The name and address of the at-risk adult;

(b) The name and address of the at-risk adult's caretaker, if any;

(b) The age, if known, of the at-risk adult;

(c) The nature and extent of the at-risk adult's injury, if any;

(d) The nature and extent of the condition that will reasonably result in mistreatment, self-neglect, or exploitation; and

(e) Any other pertinent information.

(3) A copy of the report prepared by the county department in accordance with subsection (1) and (2) of this section shall be forwarded within twenty-four hours to the district attorney's office and a local law enforcement agency. A report prepared by a local law enforcement agency shall be forwarded within twenty-four hours to the county department and to the district attorney's office.

(4) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of mistreatment, self-neglect, or exploitation to a county department or local law enforcement agency. Any person who willfully violates the provisions of this subsection (4) commits a class 3 misdemeanor and shall be punished as provided in Section 18-1.3-501, C.R.S., and shall be liable for damages proximately caused thereby.

(5) Any person, except a perpetrator, complicitor, or co-conspirator, who make a report pursuant to this section shall be immune from any civil or criminal liability on

account of such report, testimony, or participation in making such report, so long as such action was taken in good faith and not in reckless disregard of the truth or in violation of subsection (4) of this section.

- (6) No person shall take any discriminatory, disciplinary, or retaliatory action against any person who, in good faith, makes a report or fails to make a report of suspected mistreatment, self-neglect, or exploitation of an at-risk adult.
- (7)
 - (a) Except as provided in paragraph (b) of this subsection (7), reports of the mistreatment, self-neglect, or exploitation of any at-risk adult, including the name and address of any at-risk adult, member of said adult's family, or informant, or any other identifying information contained in such reports, shall be confidential, and shall not be public information.
 - (b) Disclosure of a report of the mistreatment, self-neglect, or exploitation of an at-risk adult and information relating to an investigation of such a report shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when:
 - (I) A criminal complaint, information, or indictment based on the report is filed;
 - (II) There is a death of a suspected at-risk adult from mistreatment, self-neglect, or exploitation and a law enforcement agency files a formal charge or a grand jury issues an indictment in connection with death; or
 - (III) Such disclosure is necessary for the coordination of multiple agencies' investigation of a report or for the provision of protection services to an at-risk adult.
 - (c) Any person who violates any provision of this subsection (7) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

26-3.1-103. Evaluations – investigations – rules

- (1) The agency receiving a report of mistreatment, self-neglect, or exploitation of an at-risk adult shall immediately make a thorough evaluation of the reported level of risk. The immediate concern of the evaluation shall be the protection of the at-risk adult. The evaluation, at a minimum, shall include a determination of a response time frame and whether an investigation of allegations is required. If a county department determines that an investigation is required, the county department shall arrange for an investigation and subsequent provision of protective services to be conducted by persons trained to conduct such investigations and provide protective services.

- (2) Each county department, law enforcement agency, district attorney's office, and other agency responsible under federal law or the laws of this state to investigate mistreatment, self-neglect, or exploitation of at-risk adults shall develop and implement cooperative agreements to coordinate the investigative duties of such agencies. The focus of such agreement shall be to ensure the best protection for at-risk adults. The agreements shall provide for special requests by one agency for assistance from another agency and for joint investigations. The agreements shall further provide that each agency shall maintain the confidentiality of the information exchanged pursuant to such joint investigations.
- (3) Each county or contiguous group of counties in the state in which a minimum number of reports of mistreatment, self-neglect, or exploitation of at-risk adults are annually filed shall establish an at-risk adult protection team. The state board shall promulgate rules to specify the minimum number of reports that will require the establishment of an adult at-risk protection team. The at-risk adult protection team shall review the processes used to report and investigate mistreatment, self-neglect, or exploitation of at-risk adults, review the provision of protective services for such adults, facilitate interagency cooperation, and provide community education on the mistreatment, self-neglect, and exploitation of at-risk adults. The director of each county department shall create or coordinate a protection team for the respective county in accordance with rules adopted by the state board of human services, which rules shall govern the establishment, composition, and duties of the team and shall be consistent with this subsection (3).

26-3.1-104. Provision of protective services for at risk adults consent – non-consent –least restrictive intervention.

- (1) If a county director or such director's designee determines that an at-risk adult is being mistreated, self-neglected, or exploited, or is at risk thereof, and the at-risk adult consents to protective services, the county director or designee shall immediately provide or arrange for the provision of protective services, which services shall be provided in accordance with the provisions of 28 CFR part 35, subpart B.
- (2) If a county director or designee determines that an at-risk adult is being or has been mistreated, self-neglected, or exploited, or is at risk thereof, and if the at-risk adult appears to lack capacity to make decisions and does not consent to the receipt of protective services, the county director is urged, if no other appropriate person is able or willing to petition the court, pursuant to Part 3 of Article 14 of Title 15, C.R.S., for an order authorizing the provision of specific protective services and for the appointment of a guardian, for an order authorizing the appointment of a conservator pursuant to Part 4 of Article 14 of Title 15, C.R.S., or for a court order providing for any combination of these actions.

- (3) Any protective services provided pursuant to this section shall include only those services constituting the least restrictive intervention.

26-3.1-105. Prior consent form. (Repealed)

26-3.1-106. Training. The general assembly strongly encourages training that focuses on detecting circumstances or conditions that might reasonably result in mistreatment, self-neglect, or exploitation of an at-risk adult for those persons who are urged by Section 26-3.1-102 (1) to report known or suspected mistreatment, self-neglect, or exploitation of an at-risk adult.

26-3.1-107. Background check. Each county department shall require each protective services employee hired on or after the effective date of this section to complete a fingerprint-based criminal history records check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation. The employee shall pay the cost of the fingerprint-based criminal history records check unless the county department chooses to pay the cost. Upon completion of the criminal history records check, the Colorado Bureau of Investigation shall forward the results to the county department. The county department may require a name-based criminal history records check for an applicant or an employee who has twice submitted to a fingerprint-based criminal history records check and whose fingerprints are unclassifiable.

26-3.1-108. Rules. The state department shall promulgate appropriate rules for the implementation of this article.

26-3.1-109. Limitation. Nothing in this article shall be construed to mean that a person is mistreated, neglected, exploited, or in need of emergency or protective services for the sole reason that he or she is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of that person's recognized church or religious denomination, nor shall anything in this article be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such a person.

26-3.1-110. Report Concerning the Implementation of Mandatory Reporting of Elder Abuse and Exploitation – Repeal.

(1) On or before December 31, 2016, the State Department shall prepare and deliver to the Joint Budget Committee and to the Health and Human Services Committee of the Senate; the Health, Insurance, and Environment Committee of the House of Representatives; and the Public Health Care and Human Services Committee of the House of Representatives, or to any successor committee, a report concerning the implementation of S.B. 13-111, enacted in 2013, and mandatory reports of abuse and exploitation of at-risk elders, as described in Section 18-6.5-108, C.R.S.

(2) To the extent that the State Department is able to provide the data, the report shall include, but need not be limited to, the following information:

- (a) Caseload information, including the number of reports and number of investigations that resulted in substantiation of allegations;
- (b) Demographic information related to each at-risk elder, alleged perpetrator, and reporting party involved in each report;
- (c) The availability and utilization of services for at-risk elders who have experienced abuse or exploitation, or the lack of availability of such services;
- (d) Community outreach, training, and other activities undertaken by the State Department or county departments to inform the public and train persons who are required to report or to investigate allegations of abuse or exploitation of at-risk elders;
- (e) Data concerning program expenditures at both the state and local levels;
- (f) Average per-worker caseload; and
- (g) Information concerning quality assurance activities.

ARTICLE 3.1, PART 2 – PROTECTIVE SERVICES FOR ADULTS AT RISK OF MISTREATMENT OR SELF-NEGLECT– FINANCIAL EXPLOITATION OF AT-RISK ADULTS. (Repealed 5/29/2012)

ARTICLE 3.1, PART 3 – PROTECTIVE SERVICES FOR ADULTS AT RISK OF MISTREATMENT OR SELF-NEGLECT– ELDER ABUSE TASK FORCE. (Repealed 11/2/2013)