

TITLE 39
HEALTH AND SAFETY

CHAPTER 53
ADULT ABUSE, NEGLECT AND EXPLOITATION ACT

39-5301. SHORT TITLE. This chapter shall be known and may be cited as the "Adult Abuse, Neglect and Exploitation Act."

[(39-5301) 1982, ch. 286, sec. 2, p. 734; am. and redesignated 1991, ch. 329, sec. 2, p. 847.]

39-5301A. DECLARATION OF POLICY. (1) It is the intent of the adult abuse, neglect, and exploitation act to authorize the fewest possible restrictions on the exercise of personal freedom and religious beliefs consistent with a vulnerable adult's need for services and to empower vulnerable adults to protect themselves.

(2) The legislature recognizes that vulnerable adults sometimes experience difficulties managing their own affairs or are unable to protect themselves from maltreatment. Often, vulnerable adults cannot find others who are able or willing to provide assistance.

(3) The commission is directed to investigate allegations of vulnerable adult maltreatment, to make appropriate referrals to law enforcement, and to arrange for the provision of necessary services. Further, the commission shall honor a vulnerable adult's freedom of choice and right to self-determination. When it becomes necessary for the commission to assist a vulnerable adult, actions shall be tempered by the requirements of due process and must place the fewest possible restrictions on personal freedom. Services provided under this chapter are also intended to provide assistance to a caregiver to help maintain a vulnerable adult in the household.

(4) In the process of carrying out its adult protective services responsibilities, the commission is directed to make effective use of multidisciplinary services available through any and all public agencies, community-based organizations, and informal resources.

[39-5301A, added 1998, ch. 308, sec. 2, p. 1020; am. 2019, ch. 43, sec. 1, p. 116; am. 2023, ch. 158, sec. 1, p. 426.]

39-5302. DEFINITIONS. (1) For the purposes of this chapter:

(a) "Administrator" means the administrator of the Idaho commission on aging appointed pursuant to section [67-5004](#), Idaho Code.

(b) "Adult" means a person aged eighteen (18) years or older.

(c) "Adult protective services" or "APS" means the legal and bureaucratic systems and protections safeguarding vulnerable adults through investigation of APS reports alleging maltreatment and arrangements for the provision of emergency, supportive, or prevention services necessary to reduce or eliminate risk of harm.

(d) "APS report" means an allegation of maltreatment of a vulnerable adult made to adult protective services.

(e) "Caregiver" refers to a formal caregiver or an informal caregiver.

(f) "Commission" means the Idaho commission on aging, established pursuant to [chapter 50, title 67](#), Idaho Code.

(g) "Department" means the Idaho department of health and welfare.

- (h) "Emergency" means an exigent circumstance in which a vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.
- (i) "Facility" means a health or treatment facility as defined in statute or by the department, including:
- (i) Certified family homes, as defined in section [39-3502](#), Idaho Code;
 - (ii) Developmental disabilities facilities, as defined in section [39-4604](#), Idaho Code;
 - (iii) Home health agencies, as defined in section [39-2402](#), Idaho Code;
 - (iv) Hospitals, as defined in section [39-1301](#), Idaho Code;
 - (v) Intermediate care facilities for people with intellectual disabilities, as defined in section [39-1301](#), Idaho Code;
 - (vi) Residential care or assisted living facilities, as defined in section [39-3302](#), Idaho Code; and
 - (vii) Residential habilitation agencies.
- (j) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of a vulnerable adult by any person or entity for profit or advantage other than for the vulnerable adult's profit or advantage. The term "financial exploitation" includes but is not limited to:
- (i) The use of deception, intimidation, or undue influence by a person or an entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or an entity other than the vulnerable adult;
 - (ii) The breach of a fiduciary duty, including but not limited to the misuse of a power of attorney, trust, or guardianship appointment that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, belongings, or trust funds of the vulnerable adult for the benefit of a person or an entity other than the vulnerable adult; or
 - (iii) Obtaining or using a vulnerable adult's property, income, belongings, resources, or trust funds without lawful authority by a person or an entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his property, income, belongings, resources, or trust funds.
- (k) "Formal caregiver" means a person or an entity that accepts compensation to perform a service or services for a vulnerable adult. Compensation may be provided by an employer, the vulnerable adult, or someone acting in the interests of the vulnerable adult.
- (l) "Human trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (m) "Infirmities of aging" means physical or mental deterioration associated with advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, such that the ability of an older adult to provide adequately for the adult's own care or protection is impaired.

- (n) "Informal caregiver" means a person who provides support for a vulnerable adult without expectation of compensation, goods, or services.
- (o) "Investigation" means the evaluation of allegations conducted by a provider or the commission through interviews, observations, and examination of information.
- (p) "Legal representative" means a guardian, a conservator, an attorney, or an individual with power of attorney who has the legal obligation to act for the benefit of another.
- (q) "Licensed medical professional" means an individual practicing in a medical or medical-related field who is licensed, certified, or otherwise credentialed by the state of Idaho.
- (r) "Neglect" means failure of a caregiver to provide food, clothing, shelter, or medical care, the absence of which impairs or threatens sustainable life or health of a vulnerable adult.
- (s) "Older adult" means a person aged sixty-five (65) years or older.
- (t) "Physical abuse" means the infliction of physical pain, injury, or unjust chemical or physical restraint on a vulnerable adult or death where:
- (i) The vulnerable adult's condition or death is not justifiably explained;
 - (ii) The history given concerning such condition or death is at variance with the degree or type of the condition or death; or
 - (iii) Circumstances indicate that such condition or death may not be the product of an accidental occurrence.
- (u) "Prevention services" means interventions designed to reduce the risk of maltreatment, including but not limited to case management, the provision of goods or services, or caregiver support.
- (v) "Protective action plan" or "PAP" means a person-centered plan addressing the remedial, social, legal, medical, educational, mental health, or other services available to reduce or eliminate the risk of harm to a vulnerable adult.
- (w) "Provider" means an area agency on aging or a person or an entity capable of providing adult protective services, including duly authorized agents and employees.
- (x) "Psychological abuse" means the infliction of fear, anguish, agitation, or other emotional distress through verbal or nonverbal acts or through unjust confinement of a vulnerable adult.
- (y) "Self-neglect" means failure of a vulnerable adult to provide for himself or refusal to accept support needed to obtain food, clothing, shelter, or medical care reasonably necessary to sustain the life and health of the vulnerable adult.
- (z) "Sexual abuse" means touching, fondling, intercourse, or any other sexual activity with a vulnerable adult when the vulnerable adult is unable to understand, unwilling to consent, threatened, or physically forced.
- (aa) "Skilled nursing facility" shall have the same meaning as "nursing facility" provided in section [39-1301](#), Idaho Code.
- (bb) "Supportive services" means social, legal, health, educational, mental health, and referral services.
- (cc) "Undue influence" means influence exercised over a vulnerable adult with the intent to:
- (i) Inhibit the vulnerable adult's freedom of choice;
 - (ii) Deprive the vulnerable adult of freedom of choice; or

(iii) Substitute the influencer's choice or desire over that of the vulnerable adult.

(dd) "Vulnerable adult" means an adult who is unable to protect himself from maltreatment because of:

(i) A mental, physical, or developmental disability;

(ii) A degenerative brain disease;

(iii) An inability to communicate or implement decisions regarding his person; or

(iv) Other infirmities of aging in an older adult.

(ee) "Vulnerable adult maltreatment" or "maltreatment" means the intentional or negligent infliction of pain or injury on a vulnerable adult, including financial exploitation, human trafficking, neglect, physical abuse, psychological abuse, or sexual abuse.

(2) Nothing in this chapter shall be construed to mean a person is abused, neglected, or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this chapter be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

[(39-5302) 1982, ch. 286, sec. 2, p. 734; am. and redesign. 1991, ch. 329, sec. 3, p. 847; am. 1996, ch. 78, sec. 1, p. 247; am. 1998, ch. 308, sec. 3, p. 1020; am. 2008, ch. 209, sec. 2, p. 663; am. 2019, ch. 43, sec. 2, p. 117; am. 2023, ch. 158, sec. 2, p. 427.]

39-5303. DUTY TO REPORT CASES OF VULNERABLE ADULT MALTREATMENT. (1) Licensed medical professionals, emergency services personnel, facility employees, skilled nursing facility employees, employees of an entity responsible for providing care to a vulnerable adult, medical examiners, social workers, or law enforcement personnel who have reasonable cause to believe that a vulnerable adult is being or has been maltreated shall report such information to the commission's designated APS provider as expeditiously as possible but within twenty-four (24) hours of acquiring the information that forms the basis of such reasonable cause. When there is reasonable cause to believe that maltreatment has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult, any person required to report under this section shall also report such information as expeditiously as possible to the appropriate law enforcement agency but within four (4) hours of acquiring the information that forms the basis of such reasonable cause. Ombudsmen recognized by the commission are exempt from reporting maltreatment that is discovered in the course of their duties.

(2) Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section [18-113](#), Idaho Code.

(3) Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected, or exploited may report such information to the commission or its providers.

[(39-5303) 1982, ch. 286, sec. 2, p. 734; am. and redesign. 1990, ch. 213, sec. 46, p. 518; am. 1991, ch. 329, sec. 4, p. 849; am. 1996, ch. 78, sec. 2, p. 248; am. 1998, ch. 308, sec. 4, p. 1021; am. 1998, ch. 396, sec. 1, p. 1240; am. 2000, ch. 274, sec. 119, p. 856; am. 2018, ch. 56, sec. 1,

p. 141; am. 2019, ch. 43, sec. 3, p. 117; am. 2023, ch. 158, sec. 3, p. 429.]

39-5303A. LIMITED EXEMPTION FROM DUTY TO REPORT FOR FACILITIES AND SKILLED NURSING FACILITIES. (1) The requirements set forth in section [39-5303](#), Idaho Code, pertaining to the reporting of vulnerable adult maltreatment to the commission or the department shall not apply to situations involving resident-to-resident contact within facilities or skilled nursing facilities that serve vulnerable adults, except in those cases involving sexual abuse, death, or serious physical injury that jeopardizes the life, health, or safety of a vulnerable adult or repeated resident-to-resident physical or verbal altercations, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff are unable to remedy through reasonable efforts.

(2) This exemption applies only to reports involving resident-to-resident abuse that are to be directed to the commission or the department pursuant to section [39-5303](#), Idaho Code. This exemption shall not limit any other reporting obligation or requirement whether statutory or otherwise.

[39-5303A, added 2000, ch. 104, sec. 1, p. 232; am. 2023, ch. 158, sec. 4, p. 431.]

39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY ACCESS. (1) When a report is made by an individual or required pursuant to this chapter, such report shall be made to the commission or appropriate provider. If known, the report shall contain:

- (a) The name and address of the vulnerable adult, the caregiver, and the alleged perpetrator;
- (b) The nature and extent of the suspected maltreatment; and
- (c) Any other information that will be of assistance in the investigation.

(2) The timing of the initiation of APS investigations shall be determined based on factors provided in the APS report. Such factors may include but are not limited to the potential for immediate danger or harm to an individual, the current location of the alleged vulnerable adult, and the nature of the allegations.

(3) The APS investigation shall include a determination of the nature, extent, and cause of the maltreatment, examination of evidence and consultation with persons thought to have knowledge of the circumstances, and identification, if possible, of the person alleged to be responsible for the maltreatment of the vulnerable adult.

(4) The commission or APS provider may determine that an interview with the vulnerable adult is not necessary to the investigation or not possible. If the commission or APS provider determines that an interview is necessary, the preferred method of interviewing is a personal visit with the vulnerable adult in the adult's dwelling. Alternatively, the interview may occur in the local office of the commission or APS provider, or by telephone conversation, or by any other means available to the commission or APS provider. Decisions regarding the method of conducting any interview will be within the discretion of the commission or APS provider.

(5) Upon completion of an APS investigation, the commission or APS provider shall prepare a final report of the investigation. If the vulnerable adult maltreatment is substantiated, the final report will be made to law enforcement pursuant to section [39-5310](#), Idaho Code. If the vulnerable

adult maltreatment is substantiated to have occurred in a state-certified or state-licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department. All records pertaining to APS investigations are held confidential in accordance with section [39-5307](#), Idaho Code, and federal law.

[39-5304, added 1991, ch. 329, sec. 5, p. 850; am. 1996, ch. 78, sec. 3, p. 248; am. 1998, ch. 308, sec. 5, p. 1022; am. 2000, ch. 104, sec. 2, p. 232; am. 2000, ch. 274, sec. 120, p. 857; am. 2001, ch. 79, sec. 1, p. 199; am. 2019, ch. 43, sec. 4, p. 119; am. 2023, ch. 158, sec. 5, p. 431.]

39-5305. INSPECTIONS -- RIGHT OF ENTRY. (1) Upon receiving information that a vulnerable adult is alleged to be maltreated, the commission or provider shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate. In making the investigation, the commission or provider shall use its own resources and may enlist the cooperation of peace officers. In an emergency, any authorized commission employee or provider shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult and shall receive the peace officer's assistance. Assistance in an emergency may include entry on private or public property where a vulnerable adult is allegedly subject to abuse, neglect or exploitation, and the removal and transportation of the vulnerable adult to a medical facility, care-providing facility, or other appropriate and safe environment.

(2) In a nonemergency, any peace officer may cooperate with an authorized commission employee or provider in ensuring the safety of a vulnerable adult who has been abused, neglected or exploited, including a vulnerable adult living in a condition of self-neglect. Assistance shall be provided only with the consent of the vulnerable adult or his legal representative.

(3) For the purposes of implementing or enforcing any provision of this chapter or any rule authorized under the provisions of this chapter, any duly authorized commission employee or provider may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to maltreatment.

(4) All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.

(5) If consent to entry is not given, a commission employee or provider with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to issue, a search warrant upon showing that probable cause exists to believe a vulnerable adult is subject to maltreatment. Upon request of a commission employee or provider, a peace officer shall serve the search warrant.

[39-5305, added 1991, ch. 329, sec. 6, p. 851; am. 1996, ch. 78, sec. 4, p. 249; am. 1998, ch. 308, sec. 6, p. 1023; am. 2019, ch. 43, sec. 5, p. 119; am. 2023, ch. 158, sec. 6, p. 432.]

39-5306. SERVICES. (1) If there is substantiated maltreatment of a vulnerable adult, the commission or provider has the responsibility to assist the adult in obtaining available services.

(2) If the commission or provider develops a protective action plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive to personal freedom and shall provide encouragement for client self-determination and continuity of care.

(3) If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.

(4) If a report is unsubstantiated, the commission or provider may assist the vulnerable adult or the vulnerable adult's caregiver with prevention services.

[(39-5306) 1982, ch. 286, sec. 2, p. 734; am. and redesign. 1991, ch. 329, sec. 8, p. 852; am. 1996, ch. 78, sec. 5, p. 250; am. 1998, ch. 308, sec. 7, p. 1024; am. 2019, ch. 43, sec. 6, p. 120; am. 2023, ch. 158, sec. 7, p. 433.]

39-5307. ACCESS TO RECORDS. Any person, department, agency, or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, which shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, and section [39-5310](#), Idaho Code. Other persons and entities shall be granted such access only with the written consent of the vulnerable adult or his legal representative, or pursuant to other proper judicial process or federal law.

[(39-5307) 1982, ch. 286, sec. 2, p. 734; am. and redesignated 1990, ch. 213, sec. 47, p. 519; am. and redesignated 1991, ch. 329, sec. 9, p. 852; am. 2015, ch. 141, sec. 95, p. 448; am. 2023, ch. 158, sec. 8, p. 434.]

39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set forth in this chapter, the commission or provider may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions, and local health directors and may utilize any other public or private agencies, groups, or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.

(2) The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators associated with substantiated allegations of vulnerable adult maltreatment.

(3) The department shall provide to the commission or provider any report of vulnerable adult maltreatment received under this chapter from a skilled nursing facility.

(4) The commission or provider shall provide the department with any report received under this chapter involving allegations of maltreatment occurring in a skilled nursing facility.

(5) The commission, providers, and the department shall conduct a joint investigation and share client and facility information when necessary.

[(39-5308) 1982, ch. 286, sec. 2, p. 737; am. and redesisg. 1991, ch. 329, sec. 10, p. 853; am. 1996, ch. 78, sec. 6, p. 251; am. 1998, ch. 308, sec. 8, p. 1024; am. 2000, ch. 274, sec. 121, p. 858; am. 2019, ch. 43, sec. 7, p. 121; am. 2023, ch. 158, sec. 9, p. 434.]

39-5309. DEPARTMENT AUTHORITY OVER CERTAIN FACILITIES -- IMMUNITY -- EXCEPTIONS -- REPORTS MADE IN BAD FAITH. (1) Skilled nursing facilities and employees of such facilities shall make reports required under this chapter to the department. If an employee at a state-licensed or state-certified residential facility fails to report maltreatment resulting in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult as provided under this section, then the department shall have the authority over the facility to:

- (a) Revoke its license or contract with the state to provide services;
- (b) Deny payment;
- (c) Assess and collect a civil monetary penalty with interest from the facility owner or facility administrator;
- (d) Appoint temporary management;
- (e) Close the facility or transfer residents to another certified facility;
- (f) Direct a plan of correction;
- (g) Ban admission of persons with certain diagnoses or requiring specialized care;
- (h) Ban all admissions;
- (i) Assign monitors; or
- (j) Reduce the licensed bed capacity.

(2) Any action taken by the department pursuant to subsection (1) of this section shall be appealable as provided in [chapter 52, title 67](#), Idaho Code.

(3) Any person who makes a report pursuant to this chapter, testifies in an administrative or a judicial proceeding arising from such a report, or is authorized to provide supportive services pursuant to the provisions of this chapter shall be immune from any civil or criminal liability on account of such report, testimony, or services being provided in good faith, except that such immunity shall not extend to:

- (a) Perjury;
- (b) Reports made in bad faith or with malicious purpose; or
- (c) In the provision of services, gross negligence under the existing circumstances.

(4) Any person who makes a report or allegation in bad faith, with malice, or knowing it to be false shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars (\$500), whichever is greater, as well as for attorney's fees and costs. If a court finds that a defendant acted with malice or oppression, then the court may award treble actual damages or treble statutory damages, whichever is greater.

[39-5309, added 2023, ch. 158, sec. 11, p. 434.]

39-5310. REPORT TO LAW ENFORCEMENT -- PROSECUTION. (1) If, as the result of any investigation initiated under the provisions of this chapter, it

appears that the maltreatment has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency, which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caregiver or other persons in accordance with applicable state law. Notwithstanding the prohibition against disclosure of names of persons associated with the written report of an investigation as provided in section [39-5304](#), Idaho Code, the commission shall disclose names associated with the written report when notification is made as required in this section.

(2) The abuse, neglect, or exploitation of a vulnerable adult is a crime under section [18-1505](#), Idaho Code, and is subject to punishments provided in that section and other applicable state law.

(3) If at any time an APS provider has reasonable belief that maltreatment has caused serious injury or imposition on the rights of a vulnerable adult, the provider shall notify law enforcement within twenty-four (24) hours of obtaining the information on which the reasonable belief is based.

[39-5310, added 1991, ch. 329, sec. 13, p. 853; am. 1996, ch. 78, sec. 8, p. 251; am. 1998, ch. 308, sec. 10, p. 1025; am. 2001, ch. 79, sec. 2, p. 200; am. 2005, ch. 166, sec. 3, p. 508; am. 2023, ch. 158, sec. 12, p. 435.]

39-5311. EFFECT OF ACTIONS TAKEN PURSUANT TO THE NATURAL DEATH ACT. Any action taken by a physician or health facility pursuant to an agreement with a vulnerable adult in accordance with the provisions of [chapter 45, title 39](#), Idaho Code, shall not be construed to constitute abuse, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient.

[(39-5311) 1982, ch. 286, sec. 2, p. 734; am. and redesignated 1991, ch. 329, sec. 14, p. 853.]

39-5312. RULES. The director of the commission shall have the authority to adopt, promulgate and enforce such rules as he deems necessary in carrying out the provisions of this chapter, subject to the provisions of [chapter 52, title 67](#), Idaho Code.

[(39-5312) 1982, ch. 286, sec. 2, p. 734; am. and redesignated 1991, ch. 329, sec. 15, p. 854; am. 1996, ch. 78, sec. 9, p. 251.]