

COMMUNITY LIVING disABILITY SERVICES

Subject: **Protection Policy, Procedures and Guidelines:
Introduction**

ADULT DISABILITY SERVICES

PURPOSE

The Vulnerable Persons Living with a Mental Disability Act (VPA) provides the legislative framework for the protection of vulnerable persons from abuse and neglect as defined by the Act. This section is intended for service providers and staff from Manitoba Families who provide services to vulnerable persons.

This section describes the following: the legislative framework, the principles and rights pertinent to protection, definitions under the Act, working definitions for identifying abuse/neglect, reporting abuse/neglect, and appeal procedures. Sections C99.2 to C99.4 provide guidance to Community Service Workers with the protection investigation and intervention process, protection interviews and involvement by other authorities. The VPA is noted wherever sections of the Act are referenced.

LEGISLATIVE FRAMEWORK

The following sections of the Act in particular are relevant to the protection of vulnerable persons. These sections define:

- the principles respecting decision making by vulnerable persons (VPA, Preamble); *
- the terms used in the Act including abuse and neglect (VPA, Part 1, Section 1(1));
- the reporting requirements for all persons (VPA, Part 3, Section 21(1));
- the powers and duties of the executive director or designate during investigation, protection and emergency intervention (VPA, Part 3, Sections 22(1) to 28(2)); *
- confidentiality requirements (VPA, Part 5, Sections 160 to 161(2));
- immunity provisions (VPA, Part 5, Sections 162(1) and 162(2)); * and
- penalties for offences (VPA, Part 5, Section 164(1) and 164(2)). *

* *Refer to Appendix A for more information on the asterisked sections. The non-asterisked sections of the Act are covered in this section of the manual.*

PRINCIPLES AND RIGHTS RELATED TO PROTECTION

The Act is based on the belief that the rights of the vulnerable person are paramount with any decisions or actions taken. Also refer to Section C11A in this manual, for service principles and indicators developed to support government policy and the intent of the Act.

In keeping with the Act and *A Statement of Government Policy Regarding Legislation for Vulnerable Persons Living with a Mental Disability (May 1993)*, the Department has adopted the following guiding principles and rights with respect to protection:

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1. The vulnerable person has the right to refuse protection services, where he or she understands why such services are offered and appreciates the danger or reasonably foreseeable consequences of his or her refusal.
2. If the vulnerable person does not understand why protection services are offered and does not appreciate the consequences of refusing such services, the assistance of a support network or SDM or committee, if any, should be sought where appropriate. Where this is inappropriate (e.g. support network member or SDM is the alleged offender), then an application should be made to the Vulnerable Persons' Commissioner for an emergency or replacement SDM.
3. To maintain the vulnerable person's independence and self-determination, his or her wishes, values or beliefs are to be considered. Where these are not known or may endanger the vulnerable person or another person, his or her best interests should be considered.
4. Protective action should be the least restrictive and least intrusive to ensure reasonable safety and security under the circumstances and to maintain the vulnerable person's independence, privacy and dignity.
5. All information on the vulnerable person is to be maintained in a confidential manner only to be released or disclosed with consent (e.g. by the vulnerable person or SDM/committee, if any), to be compliant with legislation or in the best interests of the vulnerable person. Refer to exceptions to confidentiality below.

EXCEPTIONS TO CONFIDENTIALITY

Under *The Vulnerable Persons Living with a Mental Disability Act* (VPA, Section 160) and *The Freedom of Information and Protection of Privacy Act* (FIPPA), all information concerning the vulnerable person is to be treated in a confidential manner. Also refer to Confidentiality, Section C155.3 of this manual, for further information on how to maintain confidentiality. Information may be disclosed (exception: client/solicitor privilege is protected under the Act, VPA, Section 161(2)):

- with the consent of the vulnerable person or, if they are incapable, with the consent of a person authorized to consent on his or her behalf (e.g. SDM, committee);
- to be compliant with *The Vulnerable Persons Living with a Mental Disability Act* or other legislation (e.g. records are subpoenaed for criminal charges) or by order of a court;
- where disclosure is necessary for the performance of duties or the exercise of powers under *The Vulnerable Persons Living with a Mental Disability Act*; or
- where disclosure is in the best interests of the vulnerable person.

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Community Service Workers must report incidents of abuse in intimate relationships to the police according to the **zero tolerance** policy. Intimate relationships include a common-law or legal spouse or significant other. As well, Community Service Workers are obligated to report any criminal offence against a vulnerable person although the vulnerable person may decide not to make a statement to the police.

Under **FIPPA**, a vulnerable person may have access to his or her personal information on file with Manitoba Family Services and Housing. However, access to personal information may be denied under FIPPA to protect the privacy of a third party (e.g. discloser). As well, access may be denied where access may result in physical or serious psychological harm to the vulnerable person or another person.

A third party is someone other than the applicant (a vulnerable person) or the department. Information involving a third party may be released to the applicant with the consent of the third party. Otherwise, information concerning the third party may be removed from the records before the records are released to the applicant.

DEFINITIONS UNDER LEGISLATION

The following definitions or modified definitions pertain to protection (VPA, Part 1, Section 1 (1)):

Abuse - means mistreatment, whether physical, sexual, mental, emotional, financial or a combination thereof, that is reasonably likely to cause death, or that causes or is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property.

Neglect - means an act or omission whether intentional or unintentional that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property.

Vulnerable Person - means an adult living with a mental disability who is in need of assistance to meet his or her basic needs with regard to personal care or the management of his or her property.

Service Provider - means:

1. a person who provides care, support services or related assistance for a vulnerable person:
 - in the course of professional, official, or employment duties;
 - as a student in a training placement;
 - as a volunteer; or
 - as an owner, operator, or manager of a facility which provides such care, support services or related assistance; and
2. an employee under *The Civil Service Act* who provides services for a vulnerable person in the course of his or her employment duties.

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Support Network - means one or more persons who provide advice, support or direction to a vulnerable person and may include:

- the vulnerable person’s spouse;
- other members of the vulnerable person’s family; and
- others chosen by the vulnerable person.

Substitute Decision Maker (SDM) - means a person appointed under the Act to make decisions in specific areas on behalf of a vulnerable person. The Vulnerable Persons Commissioner may appoint substitute decision makers to make decisions regarding the vulnerable person’s personal care and/or property (Part 4, Divisions 3 to 7). (Note: The Vulnerable Persons’ Commissioner maintains a registry which includes the SDMs specific area of decision making, the SDMs powers, and the terms and duration of the SDM appointment.)

Committee means:

- a committee appointed by the court under *The Mental Health Act* or otherwise; or
- the Public Guardian and Trustee as a committee under *The Mental Health Act* (under clause 80 (1)(b), (c) or (d)) as it read immediately before the coming into force of this Act.

Executive Director - means any person designated by the Minister of Family Services and Housing to exercise some or all of the powers or perform some or all of the duties of an executive director under the Act. An executive director may, in writing, authorize a person to perform any of the duties or exercise any of the powers of that executive director (VPA, Sections 7 and 8).

Support Services - means those services that may be provided or are arranged to be provided for a vulnerable person by the department (VPA, Section 9). (Examples include, but are not limited to, assessment, individual planning, counselling, day services, residential services.)

WORKING DEFINITIONS RELATED TO ABUSE/NEGLECT

The following terms are used throughout Sections C99.1 to C99.4 of the manual:

Alleged Offender - refers to the person who has been reported to commit an abusive or neglectful action against a vulnerable person.

Criminal Offence - refers to a crime committed against a vulnerable person and punishable under the *Criminal Code of Canada* (e.g. physical, sexual or financial abuse).

Discloser - the person who initially reports the alleged abuse/neglect of a vulnerable person. The discloser may be the vulnerable person, his/her substitute decision maker, support network member or service provider or anyone else who witnesses/suspects the vulnerable person’s abuse/neglect. Personal disclosure refers to the vulnerable person disclosing the abuse/neglect himself/herself.

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REPORTING ABUSE/NEGLECT ALLEGATIONS

Any person who has reason to believe that the vulnerable person is or is likely to be abused or neglected, **must immediately report** that belief and the information upon which it is based (VPA, Section 21(1) to the regional Family Services and Housing office. The exception to the reporting mandate by a service provider is that the solicitor/client privilege is protected under the Act (VPA, Section 24).

Where the vulnerable person lives in a residential care facility or is a day service program participant, a service provider must also forward a written report to the regional office. In addition, a residential care facility operator must report the alleged abuse/neglect of a vulnerable person to the appropriate licensing coordinator. Refer to Incident Reporting - Day Services, Section C155.12 of this manual or Appendix B, Residential Care Licensing Manual.

Any person reporting must be prepared to provide some **basic information** about the alleged abuse/neglect. The least information required is the name of the vulnerable person, the person's address, and why it is believed or what happened to substantiate that the vulnerable person is abused/neglected. Additional information needed, but may not always be known by the discloser, includes:

- the name, address, and phone number of the alleged offender;
- the alleged offender's relationship to the vulnerable person; and
- when and where did the alleged incident take place.

While reporting any suspicions of the abuse or neglect of a vulnerable person to the appropriate regional office is mandatory, they may also report to the police if the vulnerable person is a **victim of a criminal offence**. The police will determine if further investigation is warranted under the *Criminal Code of Canada*.

REGIONAL RESPONSE

Regional offices **must respond** to any reports/disclosures of the abuse/neglect of a vulnerable person from any source. If the vulnerable person resides outside the region, the report must be immediately referred to the appropriate local/regional office. The referral source will be advised of the address and phone number for that office.

Where the vulnerable person resides within the region, the discloser will be directed to talk to the vulnerable person's Community Service Worker, if available. The regional office will follow regional procedures for the assignment of a Community Service Worker to investigate and intervene as appropriate, if no worker is currently involved. If the vulnerable person is in **immediate danger**, a worker will be informed or assigned immediately to investigate and intervene.

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