

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 161-F

ELDERLY AND ADULT SERVICES

General Provisions

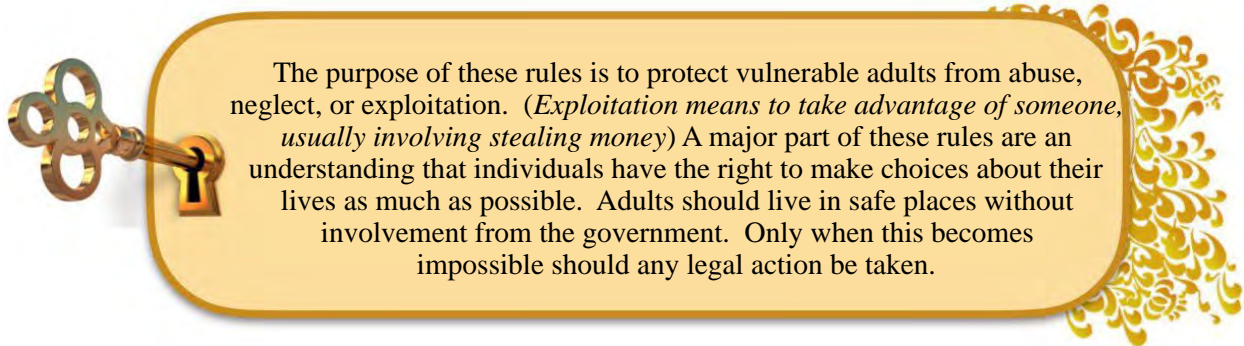
161-F:1 Definitions. – Unless the context indicates otherwise, in this chapter:

- I. "Adult" means any person 18 years of age or older.
- II. "Commissioner" means commissioner of health and human services.
- III. [Repealed.]
- IV. "Department" means the department of health and human services.
- V. "Elderly" means a person 60 years of age or older.

Protective Services to Adults

161-F:42 Purpose. – The purpose of this subdivision is to provide protection for vulnerable adults who are abused, neglected, or exploited. Implicit in this subdivision is the philosophy that whenever possible an adult's right to self-determination should be preserved, and that each adult should live in safe conditions and should live his own life without interruption from state government. Only when these principles become impossible to follow should legal proceedings be initiated in order to care for and protect such adults.

Source. 1989, 7:1, eff. Jan. 1, 1990.



The purpose of these rules is to protect vulnerable adults from abuse, neglect, or exploitation. (*Exploitation means to take advantage of someone, usually involving stealing money*) A major part of these rules are an understanding that individuals have the right to make choices about their lives as much as possible. Adults should live in safe places without involvement from the government. Only when this becomes impossible should any legal action be taken.

161-F:43 Definitions. – In this subdivision:

- I. "Protective services" means services and action which will, through voluntary agreement or through appropriate court action, prevent neglect, abuse or exploitation of vulnerable adults. Such services shall include, but not be limited to, supervision, guidance, counseling and, when necessary, assistance in the securing of nonhazardous living accommodations, and mental and physical examinations.
- II. "Abuse" means any one of the following:
 - (a) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of an vulnerable adult.
 - (b) "Physical abuse" means the use of physical force which results or could result in physical injury to an vulnerable adult.
 - (c) "Sexual abuse" means contact or interaction of a sexual nature involving an vulnerable adult without his or her informed consent.
- III. "Neglect" means an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of an vulnerable adult.

IV. "Exploitation" means the illegal use of an vulnerable adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.

V. "Serious bodily injury" means any harm to the body which causes or could cause severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.

VI. "Self-neglect" means an act or omission by an vulnerable adult which results or could result in the deprivation of essential services or supports necessary to maintain his or her minimum mental, emotional or physical health and safety.

VII. "Vulnerable " means that the physical, mental, or emotional ability of a person is such that he is unable to manage personal, home, or financial affairs in his own best interest, or he is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.

Source. 1989, 7:1. 2002, 36:2, eff. July 1, 2002.

161-F:44 Self-Neglect. – For the purposes of this subdivision, instances of suspected self-neglect shall be construed and acted upon in the same manner as instances of suspected neglect.

Source. 1989, 7:1, eff. Jan. 1, 1990.



Matters of self neglect (not taking good care of yourself) will be reviewed in the same manner as neglect.

161-F:45 Exception. – Nothing in this subdivision shall be construed to mean a person is abused, neglected, exploited, or in need of protective services for the sole reason that he relies on or is being furnished treatment by spiritual means alone through prayer in accordance with the tenets and practices of a church or religious denomination of which he is a member or adherent.

Source. 1989, 7:1, eff. Jan. 1, 1990.



If a person due to their belief is choosing spiritual and religious guidance over medical treatment, that cannot be considered abuse, neglect, or exploitation.


161-F:46 Reports of Adult Abuse; Investigations. – Any person, including, but not limited to, physicians, other health care professionals, social workers, clergy, and law enforcement officials, suspecting or believing in good faith that any adult who is or who is suspected to be vulnerable has been subjected to abuse, neglect, self-neglect, or exploitation or is living in hazardous conditions shall report or cause a report to be made as follows:

I. An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, if so requested, to the commissioner or his authorized representative. When oral reports are made after working hours of the department, or on weekends or holidays, such reports shall be made to the police department of the appropriate political subdivision, or to the sheriff of the county, in which the alleged abuse, neglect or exploitation occurred. Law enforcement officials receiving reports under this paragraph shall notify the commissioner within 72 hours of receipt of such reports.

II. Within 72 hours following receipt by the commissioner or his authorized representative of such oral reports, an investigation shall be initiated by the commissioner or his authorized representative.

III. Investigations shall not be made if the commissioner or his authorized representative determines that the report is frivolous or without a factual basis.

Source. 1989, 7:1. 1995, 310:175, 183. 2002, 36:3, eff. July 1, 2002.



Anyone who strongly believes that a vulnerable individual is being abused, or living in unsafe conditions can make a report.

- 1) You should immediately report it by calling 1-855-450-3593. If you can't get a hold of the Bureau you should call the police who will then contact the Commissioners office.
- 2) Within 72 hours of your phone call, the Commissioner of Health and Human Services will begin an investigation.
- 3) Investigations will not be made if the Commissioners office decides that the report cannot be backed up by facts.

161-F:47 Immunity From Liability. – Any person or agency, other than an alleged perpetrator, participating in good faith in the making of a report of an alleged incident of adult abuse, neglect or exploitation, providing information relative to such incident or following a reporting protocol developed jointly with the department, or who in good faith investigates the report, administers the registry, or who participates in a judicial or administrative proceeding resulting from that report, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any person or agency providing information in good faith, including materials requested by the department pursuant to RSA 161-F:56, shall have the same immunity with respect to participation in any investigation by the commissioner or his authorized representative or in any judicial proceeding resulting from such report.

Source. 1989, 7:1. 1995, 310:183. 2002, 36:4. 2006, 289:1, eff. July 1, 2007.



Any person or agency who reports a possible case of abuse neglect or exploitation cannot legally be held accountable for making the report.

161-F:48 Abrogation of Privileged Communication. – The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to any proceedings instituted pursuant to this subdivision and shall not constitute grounds for failure to report as required by this subdivision.

Source. 1989, 7:1, eff. Jan. 1, 1990.



In the process of this investigation, the only communication that can be considered privileged (*which means private*) is that between a lawyer and client.

161-F:49 Registry. –

I. There shall be established a state registry at the department for the purpose of maintaining a record of information on each founded report of abuse, neglect, or exploitation toward an individual by a paid or volunteer caregiver, guardian, or agent acting under the authority of a power of attorney or any durable power of attorney. The registry shall be confidential and subject to rules on access established by the commissioner of the department under RSA 541-A. Unfounded reports shall not be maintained on the registry. The department shall maintain statistical, non-identifying information on founded reports as the department determines is necessary to track and address trends.



The department of Health and Human Services will keep a record of individuals found guilty of a abuse, neglect or exploitation. The Registry is confidential and can only be accessed by certain people.

II. Within 5 business days of completion of an investigation of abuse, neglect, or exploitation of an individual by a paid or volunteer caregiver, guardian, or agent acting under the authority of a power of attorney or any durable power of attorney, the investigator shall provide a summary of the investigation to the commissioner, or designee. Except as provided in paragraph IV, for a founded report, the commissioner, or designee, shall, within 5 business days, notify the perpetrator:

(a) Of the founded report against him or her and that such information shall be entered on the registry and the consequences of such a finding.

(b) Of the right to contest the finding by appealing within 10 business days.

(c) Of the right to receive a full and fair administrative hearing, including the right to be represented by counsel at his or her own expense.

(d) Of the right to appeal an adverse administrative hearing decision to the probate court in accordance with paragraph V.

(e) That he or she may petition the probate court to expunge the report from the registry pursuant to RSA 161-F:49, X.

III. In response to a written request from an employer identified in paragraph VII, the commissioner, or designee, shall notify the employer:

(a) Relative to a prospective or current employee, consultant, contractor, or volunteer who is not on the registry of that fact within 5 business days of receipt of a request from the employer.

(b) Relative to a prospective or current employee, consultant, contractor, or volunteer who is on the registry of that fact within 5 business days of receipt of the request from the employer, and the department shall include in the notice the date the person was placed on the registry.

IV. A founded report of abuse, neglect, or exploitation, and other information the commissioner deems appropriate, shall be entered on the registry upon:

(a) Expiration of the 10-business-day period for appeal when the perpetrator does not request an appeal.

(b) An administrative hearing officer sustaining the finding, unless an appeal is filed in accordance with paragraph V and an order of stay is issued by the probate court.

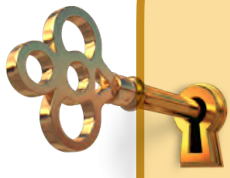


If the investigation finds a person is responsible for abuse neglect or exploitation, he or she has the legal right to appeal (*have a second chance to make their case*) within 10 business days and have a fair administrative hearing.

V. If the finding is sustained after an administrative hearing, a perpetrator shall have the right to appeal as follows:

(a) A perpetrator may file a petition in the Merrimack county probate court to review the final order by the commissioner, or designee, within 30 days of the date of the final order.

Jurisdiction to hear such appeals is vested in the Merrimack county probate court.



Within 30 days, if that person is still unsatisfied by the outcome of the administrative hearing then he or she has the right to appeal their case in court.

If the report is still founded following the appeal process, or if the accused does not appeal within 10 days, then the NH Department of Health and Human Services will have them placed on the registry.

(b) At the earliest practical time, the court shall review the record as developed before the commissioner, or designee, together with any written legal argument presented to the court. Based on that review, the court may affirm or reverse the decision of the commissioner, or designee, or order that oral argument be held. As justice may require, the court may remand the case to the commissioner, or designee, for further findings or rulings. The petition for appeal shall set forth all the grounds upon which the final order is sought to be overturned. Issues not raised by the appellant before the commissioner, or designee, shall not be raised before the probate court. The burden of proof shall be upon the appellant to show that the decision of the commissioner, or designee, was clearly unreasonable or unlawful, and all findings of the commissioner, or designee, upon all questions of fact properly before him or her shall be deemed to be prima facie lawful and reasonable. The order or decision appealed from shall not be vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence, that the order is unjust or unreasonable.

(c) No new or additional evidence shall be introduced in the probate court. The case shall be determined upon the record and evidence transferred, except that in any case, if it shall be necessary in order that no party shall be deprived of any constitutional right, or if the court determines that justice requires the reception of evidence of facts which have occurred since the hearing, or which by reason of accident, mistake, or misfortune could not have been offered before the commissioner, or designee, it shall remand the case to the commissioner, or designee, to receive and consider such additional evidence.

VI. If it is determined by the commissioner, or designee, or after a hearing requested pursuant to subparagraph II(c) that a founded report was caused by factors beyond the control of the perpetrator, then the finding shall not be entered onto the registry as founded.

VII. All employers of programs which are licensed, certified, or funded by the department to provide services to individuals shall be required before hiring a prospective employee, consultant, contractor, or volunteer who may have contact with individuals to submit his or her name, for review against the registry to determine whether the person is on the registry. The employer shall not hire the prospective employee, consultant, contractor, or volunteer if he or she is listed on the registry unless the employer requests and obtains a waiver from the department to hire such person. The employer, upon receiving notice that a prospective employee, consultant, contractor, or volunteer is on the registry and in order to determine whether to request a waiver from the department, may request permission from the prospective employee, consultant, contractor, or volunteer for the authority to obtain further information about a founded report of abuse, neglect, or exploitation. An employer may, with the consent of a current employee, consultant, contractor, or volunteer, submit his or her name for review against the registry. All employers, upon learning that the name of a current employee, consultant, contractor, or volunteer of their agency is on the registry shall take immediate action to ensure the safety of the individuals in their care. Such action may include, but is not limited

to, termination, training, re-assignment, probationary employment, and/or the provision of direct supervision of the employee, consultant, contractor, or volunteer when working with individuals.

VIII. Any person hiring or employing a paid or volunteer caregiver, consultant, or contractor directly, or through an authorized representative or fiscal intermediary, to provide personal care services, as defined in RSA 161-E or RSA 161-I, may, with the consent of the current or prospective caregiver, consultant, contractor, or volunteer, submit his or her name for review against the registry and, if he or she is on the registry, and with the further permission of the current or prospective caregiver, consultant, contractor, or volunteer, obtain information about any founded report. Any person considering designating another to serve as his or her agent under a power of attorney or any type of durable power of attorney may, with the consent of the proposed agent, submit the proposed agent's name for review against the registry. The person shall not be required in such situations to obtain a waiver prior to hiring a person on the registry.



An employer who wants to hire a caregiver, must have written permission from that prospective caregiver to check their name against the registry.

VIII-a. It shall be unlawful for any employer other than those specified under this section to require as a condition of employment that the employee submit his or her name for review against the registry of founded reports of abuse, neglect, or exploitation and any violation of this provision shall be punishable as a violation.

IX. Founded reports of abuse, neglect, or exploitation shall be retained on the registry for a period of 7 years subject to the perpetrator's right to petition for the earlier removal of the report from the registry as provided in this section.



Persons found guilty of abuse, neglect, and exploitation will remain on the registry for 7 years, unless the court decides to have them removed.

X. Any perpetrator whose name is listed in the founded reports maintained on the state registry may petition the probate court to have a founded report expunged from the registry as follows:

(a) A petition to expunge shall be filed in the probate court where the petitioner resides or where the abuse, neglect, or exploitation occurred.

(b) A petition to expunge shall be filed on forms provided by the probate courts. The petition shall include certified copies of the petitioner's criminal record and may include any other information the petitioner deems relevant.

(c) When a petition to expunge is filed, the probate court shall require the department to report to the court concerning any additional founded abuse, neglect, or exploitation reports relative to the petitioner and shall require that the petitioner submit the petitioner's name, birth date, and address to the state police to obtain information about criminal convictions. The court may require the department to provide any additional information that the court believes may aid it in making a determination on the petition.

(d) Upon the receipt of the department's report, the court may act on the petition without further hearing or may schedule the matter for hearing at the request of either party. If the court determines that the petitioner does not pose a present threat to the safety of individuals and has exhibited best efforts to eliminate the likelihood of reoccurrence of the type of behavior that resulted in his or her entry onto the registry, the court shall grant the petition and order the department to remove the founded report from the registry. Otherwise, the petition shall be denied.

XI. The department shall, in the notice it sends out pursuant to RSA 161-F:49, II(a), notify the perpetrator of his or her right to petition to have his or her founded report expunged from the registry. No petition to expunge a founded report shall be brought within one year from the date that the report was initially entered on the registry. If the petition to expunge is denied, no further petition shall be brought more frequently than every 3 years thereafter.

XII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

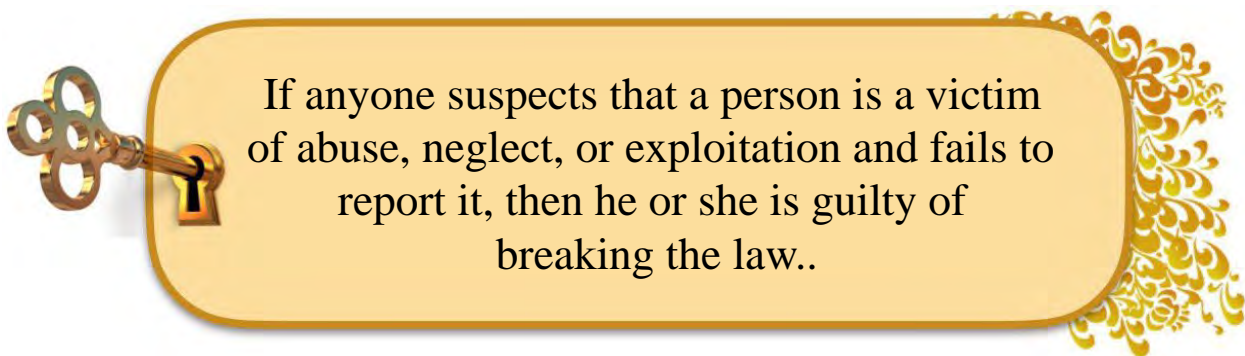
(a) Setting forth the process and criteria for requesting and granting a waiver pursuant to RSA 161-F:49, VII.

(b) Safeguarding the confidentiality of and access to the registry except for the functions necessary to comply with this section. Such safeguards shall include limitations on which persons in an employment situation may request and access the founded reports on the registry.

Source. 1989, 7:1. 1995, 310:175, 183. 2006, 289:2. 2009, 179:1, eff. July 13, 2009.

161-F:50 Penalty for Violation. – Any person who knowingly fails to make any report required by RSA 161-F:46 shall be guilty of a misdemeanor.

Source. 1989, 7:1, eff. Jan. 1, 1990.



161-F:51 Duties and Responsibilities. –

I. The commissioner or his or her authorized representative, upon the substantiation of a report of abuse, neglect, or exploitation of an vulnerable adult, shall provide, when necessary, protective services to such adults.

II. The commissioner or his or her authorized representative shall refer all cases of serious bodily injury to an vulnerable adult known or suspected to be the result of abuse, neglect, or exploitation to local law enforcement, the department of justice or to the county attorney for possible criminal prosecution. The commissioner or his or her authorized representative

shall also report other cases of abuse, neglect, or exploitation to local law enforcement, the department of justice, or the office of the county attorney for possible criminal prosecution if there is reason to believe a crime has been committed.

Source. 1989, 7:1. 1995, 310:175, 183. 2002, 36:5, eff. July 1, 2002.



The Commissioner of Health and Human Services should provide protective services to anyone who has suffered from abuse, neglect or exploitation. And he/she is obligated to report serious bodily injury to local law enforcement.

161-F:52 Guardianship. – If all other remedies are exhausted, the commissioner or his authorized representative may seek to have a guardian or conservator appointed by the probate court, pursuant to RSA 464-A, for any adult who is in need of protective services.

Source. 1989, 7:1. 1995, 310:183, eff. Nov. 1, 1995.



If need be, the Commissioner may have the probate court appoint a guardian to an adult in need of protective services.

161-F:53 Entry of Premises. – If either an vulnerable adult reported or suspected of being abused, neglected, or exploited refuses, or a caretaker or caregiver refuses, to allow the representative of the department entrance to the premises for the purpose of investigating a report of abuse, neglect, or exploitation, the probate court, in the county where the adult is found, upon a finding of probable cause, may order an authorized representative of the commissioner, a police officer, or other authorized individual to enter said premises in furtherance of such investigation.

Source. 1989, 7:1. 1995, 310:175, 183, eff. Nov. 1, 1995.



If a caregiver or the individual suspected of being abused, neglected, or exploited refuses to allow a department investigator into their home, then the probate court may order that a police officer or authorized individual enter the home if there is good reason

161-F:54 Court Ordered Examination. – The probate court, at any time, may order a proposed ward to submit to a medical or psychiatric examination to be completed within 30 days by a licensed psychologist, licensed psychiatrist or physician, or local community mental health center. A written report of such examination shall be forwarded to the court and shall contain, but not be limited to, the proposed ward's disease or disability, if any, the proposed ward's present mental status, and the prognosis. If the proposed ward objects to the evaluation, the probate court having jurisdiction shall be notified in writing within 5 days after notification of the time and place of such evaluation, and the court shall hold a hearing to consider the objection prior to ordering such evaluation or, upon good cause shown, may excuse the proposed ward from the provisions of this section.

Source. 1989, 7:1. 1998, 234:4, eff. Oct. 31, 1998.



The court may require you to undergo a medical or psychiatric examination as part of the investigation. If you object the court will be notified. There will be a hearing to consider your objection. The court will then order an evaluation or excuse you from the requirement.

161-F:55 Rulemaking. – The commissioner shall adopt such rules under RSA 541-A as are necessary to carry out the purpose of this subdivision, including, but not limited to, rules relative to access to records under RSA 161-F:49.

Source. 1989, 7:1. 1995, 310:183, eff. Nov. 1, 1995.

161-F:56 Access to Information. – In the course of an investigation conducted pursuant to this subdivision, the department's authorized representative may make any inquiries and obtain such information as is necessary to further such investigation. The department's authorized representative may review and photocopy any books, files, medical records, financial records, photographs or other records on any medium of an alleged victim of abuse, neglect, or exploitation. In the event any person or agency refuses to allow the department access to materials necessary to further its investigation, the probate court, upon a finding of probable cause, may order the person or agency to release its records to the department.

Source. 1989, 7:1. 1995, 310:114. 2002, 36:6, eff. July 1, 2002.



The Department can request copies of any and all records needed to establish the facts. The person has the right to refuse, but the court may decide that the materials are essential to the investigation and order the person to hand over the records.

161-F:57 Access to Files; Confidentiality. – The files maintained by the department which relate to investigations of alleged instances of abuse, neglect, or exploitation shall be disclosed only with the written consent of the victim, or his guardian or attorney, or if such disclosure is required by court or administrative order. Nothing in this section shall be construed to prohibit the disclosure of information gathered pursuant to an investigation to a service provider as may be necessary to devise or implement a service plan, to a facility and the appropriate licensing authority or authorities for an incident occurring within a facility, as defined in RSA 151, to the extent necessary to protect the victim or other facility residents or to comply with state or federal law, to local law enforcement, the department of justice, or a county attorney, pursuant to RSA 161-F:51, II, or to any court in any proceeding where the welfare of the alleged victim or actions of a fiduciary acting on behalf of an alleged victim are at issue.

Source. 1989, 7:1. 1995, 310:175. 2002, 36:7, eff. July 1, 2002.



None of the information that you provide during the investigation may be shared without your permission.

