

# Mandatory Reporting Requirements: The Elderly North Dakota

*Last Updated: April 2023*

Question	Answer
Who is required to report?	<ul style="list-style-type: none"> <li>• For any vulnerable adult, when acting in his or her official or professional capacity, any:               <ul style="list-style-type: none"> <li>• Medical, mental health professional or personnel;</li> <li>• Law enforcement officer;</li> <li>• Firefighter;</li> <li>• Member of the clergy (except a member of the clergy is not required to report if the information is received in the capacity of spiritual adviser); or</li> <li>• Caregiver.</li> </ul> </li> <li>• For any adult with developmental disabilities or mental illness, any of the following:               <ul style="list-style-type: none"> <li>• Every medical, mental health, or developmental disabilities professional;</li> <li>• Educational professional;</li> <li>• Police or law enforcement officer; or</li> <li>• Caretaker.</li> </ul> </li> <li>• An individual in the position of a long-term care ombudsman is <u>not</u> a mandated reporter of suspected abuse or neglect.</li> <li>• Any person not required to report who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, <u>may</u> report the information to the department of human services or the department of human services' designee or to an appropriate law enforcement agency.</li> </ul>
When is a report required and where does it go?	<p><b>When is a report required?</b></p> <ul style="list-style-type: none"> <li>• Knowledge that a vulnerable adult has been subjected to abuse or neglect;</li> <li>• Observation of a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, and/or</li> <li>• Knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness is abused, neglected, or exploited.</li> </ul> <p><b>Where does it go?</b></p> <ul style="list-style-type: none"> <li>• A local North Dakota Protection and Advocacy Project (available at: <a href="http://www.ndpanda.org">www.ndpanda.org</a>) office or its toll-free abuse hotline (1-800-472-2670). Also, reports should be made to the local regional human services center.               <ul style="list-style-type: none"> <li>• Local centers can be found at: <a href="http://www.nd.gov/dhs/locations/regionalhsc/">http://www.nd.gov/dhs/locations/regionalhsc/</a>.</li> </ul> </li> <li>• See also: <a href="http://www.nd.gov/dhs/info/pubs/docs/aging/fact-sheet-vulnerable-adults-protective-services.pdf">http://www.nd.gov/dhs/info/pubs/docs/aging/fact-sheet-vulnerable-adults-protective-services.pdf</a></li> </ul>

What definitions are important to know?

- **“Abuse”** means any of the following:
  - Willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation of a vulnerable adult;
  - Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
  - Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
  - Rape or sexual assault of a developmentally disabled or mentally ill person;
  - Corporal punishment or striking of a developmentally disabled or mentally ill person;
  - Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
  - Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
- **“Adult”** includes a minor emancipated by marriage.
- **“Caregiver”** means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
- **“Caretaker”** means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person’s care.
- **“Developmental disability”** means a severe, chronic disability which:
  - Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down Syndrome;
  - Is manifested before the person attains age 22;
  - Is likely to continue indefinitely;
  - Results in substantial functional limitations in 3 or more areas of major life activity (self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency); and
  - Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- **“Educational professional”** means a professional providing educational services either at a school, academy, or other educational facility, or at a private facility or residence, as a teacher, professor, tutor, aide, administrator, or other education professional.
- **“Exploitation”**, when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
  - The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;

- The use of the services of a person with developmental disabilities or mental illness without just compensation; or
- The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with developmental disabilities or mental illness.
- **“Financial Exploitation”** means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means
- **“Medical or mental health professional or personnel”** means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, tier 1 through tier 4 mental health professional as defined under [section 25-01-01](#), emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.
- **“Medical, mental health, or developmental disabilities professional”** means a professional providing health care or services to persons with developmental disabilities or mental illnesses, on a full-time or part-time basis, on an individual basis or at the request of a caretaker, and includes a physician, medical examiner, coroner, dentist, optometrist, chiropractor, nurse, physical therapist, mental health professional, hospital personnel, nursing home personnel, congregate care personnel, social worker, or any other person providing medical, mental health, or developmental disabilities services.
- **“Mental illness”** means a significant mental illness or emotional impairment as determined by a mental health professional.
- **“Neglect”** means any of the following:
  - Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
  - Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;
  - Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
  - Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
  - Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
  - Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness;
  - Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility

	<p>providing care and services for persons with developmental disabilities or mental illnesses; and</p> <ul style="list-style-type: none"> <li>• Failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.</li> <li>• <b>“Report”</b> means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness.</li> <li>• <b>“Services or services for an individual with a developmental disability”</b> means services provided by any public or private agency, organization, or institution, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability.</li> <li>• <b>“Vulnerable adult”</b> means an adult who has a substantial mental or functional impairment.</li> </ul>
<p>What timing and procedural requirements apply to reports?</p>	<ul style="list-style-type: none"> <li>• Report can be oral or written.</li> <li>• Timing requirements not specified in statute, simply states “as soon as possible”.</li> </ul>
<p>What information must a report include?</p>	<ul style="list-style-type: none"> <li>• Report regarding a vulnerable adult must include: <ul style="list-style-type: none"> <li>• Name, age and residence address of the alleged vulnerable adult;</li> <li>• Name and residence of the caregiver, if any;</li> <li>• Nature and extent of the alleged abuse or neglect or the conditions or circumstances that would reasonably be expected to result in abuse or neglect;</li> <li>• Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and</li> <li>• Any other information that in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect and the identity of the individual responsible for the alleged abuse or neglect.</li> </ul> </li> <li>• Not specified for reports with respect to those with developmental disabilities or mental illness.</li> </ul>
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> <li>• A person not otherwise required to report who has reasonable cause to believe that a vulnerable adult, or a person over the age of 18 who has substantial mental or functional impairment, has been subjected to abuse or neglect, <i>may</i> report the information (see N.D. Cent. Code §§ 50-25.2-03 for method of reporting).</li> <li>• A person who willfully fails to report the abuse, neglect, or exploitation of any person with developmental disabilities or mental illness, if required to report, is guilty of an infraction. An infraction may be punishable by a fine of up to \$1,000. Any person convicted of an infraction who has, within 1 year prior to commission of such infraction, been previously convicted of an infraction may be sentenced as though convicted of a class B misdemeanor, punishable by a maximum of 30 days’ imprisonment, a fine of up to \$1,500, or both.</li> <li>• An individual other than the alleged perpetrator participating in good faith in the making of a report, assisting an investigator, furnishing information to an advocate or other employee of the committee, or in providing protective services, is immune from any liability, civil or criminal, that otherwise might result from the reporting of the alleged case of abuse, neglect, or exploitation.</li> <li>• An adult recipient of services, or, if the recipient is a minor or under guardianship, the recipient’s guardian</li> </ul>

	<p>or parent must be given the opportunity to refuse generally accepted mental health or developmental disability services, including medication, unless those services are necessary to prevent the recipient from causing serious harm to the recipient or to others. The facility director shall inform a recipient or guardian or parent of a minor who refuses generally accepted services of alternate services available, the risks of those alternate services, and the possible consequences to the recipient of the refusal of generally accepted services.</p>
Statutory citation(s):	N.D. Cent. Code §§ 12.1-32-01, 25-01.2-01, 25-01.3-01, 25-01.3-04, 25-01.3-12, 50-25.2-01, 50-25.2-03, 50-25.2-10.