

The Michigan Model Vulnerable Adult Protocol

MI-MVP

A Model Protocol for

Joint Investigations of Vulnerable Adult Abuse,

Neglect and Exploitation



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I. Introduction

Abuse of vulnerable adults is one of the fastest growing crimes in Michigan. A National Institute of Justice study found that 11 percent of elder adults reported they had been abused, neglected or exploited.¹ A research brief prepared for the National Center on Elder Abuse shows that adults with a disability have a disproportionate risk of abuse compared to adults without a disability.² Considering this information, it is estimated as many as 90,000 vulnerable Michiganders may be victimized yearly. Regrettably, only a small percentage of these incidents are brought to the attention of protective services, law enforcement or victim services professionals. Many reasons contribute to underreporting, including fear, shame, lack of awareness, an inability to report, and not wanting the abuser to be jailed. Vulnerable adult abuse often results in devastating losses: declines in physical and emotional health, loss of income or life savings, diminished quality of life and others.

The Michigan Model Vulnerable Adult Protocol (MI-MVP) is a blueprint for communities to implement for the purpose of reducing harm and victimization of vulnerable adults through a coordinated team approach and applies to situations described in Section 400.11(a-f) of the Social Welfare Act, as amended. This model protocol will aid in systemic changes and ensure reports are appropriately reviewed, investigated and prosecuted and will ensure victims are effectively referred to necessary social and health services.

Michigan is comprised of 83 counties. Each has its own unique set of resources and sociocultural, economic, ethnic and educational composition - as well as differing priorities and needs. MI-MVP is intended to provide a framework of suggested “best practices” for investigating cases of suspected vulnerable adult abuse that each county can customize to match its needs and resources and to strengthen relationships between local law enforcement, adult protective services, prosecutors, aging and human services organizations, emergency service providers, medical professionals and others involved in serving vulnerable adults.

MI-MVP is designed to be adapted at the local level. Variations of this model are expected to meet the individual needs of each jurisdiction. Partners should also anticipate changes to their local protocols as teams grow and change.

The investigation of vulnerable adult abuse is complex, involving civil, social welfare, criminal and administrative systems, as well as medical and service provider networks and programs. MI-MVP follows the proven formula of the Michigan Department of Human Services (DHS) Child Abuse Investigative Model Protocol in describing the roles and functions of the primary investigative entities that are critical to effective investigations and provision of victim services.

¹ Acierno R, Hernandez MA, Amstadter AB, Resnick HS, Steve K, Muzzy W, et al. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study. *American Journal of Public Health*, 100(2), 292-297.

² Center of Excellence on Elder Abuse and Neglect, University of California, Irvine. Research Brief, Abuse and Adults with a Disability. N.p.: National Center on Elder Abuse, 2012. Web. 15 May 2013.

II. Purpose

Public Act 175 of 2012 [Social Welfare Act, MCL 400.11(b)] requires DHS, Michigan State Police (MSP), the Michigan Attorney General (AG), Michigan Office of Services to the Aging (OSA) and a long-term care (LTC) representative to develop a model protocol for investigating vulnerable adult abuse, neglect and exploitation. MI-MVP is intended to simplify and standardize the identification, investigation and prosecution of vulnerable adult abuse in Michigan through improved coordination between adult protective services, law enforcement, prosecutors and other professionals engaged in vulnerable adult abuse cases and investigations.

Key points when using the MI-MVP:

- The purpose of the MI-MVP is to assist local communities in protecting, investigating and serving older and vulnerable persons and investigating victimization of these individuals through increased collaboration.
- This is a model for local communities to customize and adapt, as needed, based on local resources and needs.
- Michigan statute clearly defines a vulnerable adult as an individual age 18 and older who is unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age.
- Research demonstrates that vulnerable adult abuse is frequently part of the larger dynamic of family violence where the perpetrator is most often someone close to, related to or in a close relationship with the victim.
- Vulnerable adults, even those with cognitive limitations, retain the right to make their own choices and decisions unless and until they have been determined mentally incapacitated by a court of law.

III. Goals

The overriding philosophy of MI-MVP is to consider, first and foremost, what is best for vulnerable adults while respecting their capacity for self-determination. The following goals are the basis for this protocol:

- A. **To ensure** vulnerable adult abuse, neglect and exploitation cases are effectively investigated and prosecuted.
- B. **To reduce** trauma and provide protection and continued support for abuse victims and their families.
- C. **To improve** cooperation among professionals and agencies and to develop a common goal and methodology of improved management of adult abuse cases, including limiting the number of times a vulnerable adult is interviewed.
- D. **To encourage** open communication between all parties to resolve difficulties that may arise in the investigation of vulnerable adult abuse.
- E. **To increase** awareness and reporting of vulnerable adult abuse cases.
- F. **To promote** training for all professionals covered by MI-MVP.
- G. **To encourage** early and continued coordination and inclusion between Adult Protective Services (APS), law enforcement and prosecutors to promote efficient investigations.
- H. **To urge** consideration of the opinions and advice of all agencies involved in protecting and serving the vulnerable adult before any final decisions are made.

IV. The Social Welfare Act and Its Requirements

The Social Welfare Act, MCL 400.11, provides the following definitions:

- (a) “Abuse” means harm or threatened harm to an adult’s health or welfare caused by another person. Abuse includes, but is not limited to, nonaccidental physical or mental injury, sexual abuse, or maltreatment.
- (b) “Adult in need of protective services” or “adult” means a vulnerable adult not less than 18 years of age who is suspected of being or believed to be abused, neglected or exploited.
- (c) “Exploitation” means an action that involves the misuse of an adult’s funds, property, or personal dignity by another person.
- (d) “Neglect” means harm to an adult’s health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult’s health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, and this act shall not require any medical care or treatment in contravention of the stated or implied objection of that person.
- (e) “Protective Services” includes, but is not limited to, remedial, social, legal, health, mental health, and referral services provided in response to a report of alleged harm or threatened harm because of abuse, neglect or exploitation.
- (f) “Vulnerable” means a condition in which the adult is unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age.

Mandatory Reporters

Although any individual may report to APS, the Social Welfare Act requires certain professionals to make an oral report of vulnerable adult abuse, neglect or exploitation to the Department of Human Services when they suspect or have reasonable cause to believe that an adult has been abused, neglected or exploited. Mandatory reporters must contact the state-wide Centralized Intake for Abuse and Neglect hotline at **1-855-444-3911**.

Section 11a(1) of the Social Welfare Act provides a list of specific professionals who are mandated to report to APS. (See, MCL 400.11a):

- A. All persons who are employed, licensed, registered or certified to provide and employees of persons employed, licensed, registered or certified to provide:
 - 1. Health care services including physicians, nurses, aides, hospital staff, etc.
 - 2. Educational services including teachers, administrators, counselors, etc.
 - 3. Social Welfare providers, including social work administrators, supervisors, caseworkers, etc.
 - 4. Mental health services including psychologists, counselors, agency administrators, supervisors, caseworkers, etc.
 - 5. Other human services including those providing information and referral, services to the aging, adult day care, etc.
- B. Law enforcement officers.
- C. County medical examiner and employees of the county medical examiner.

Note: See Appendix A for information on Release/Disclosure of Protected Health Information.

The identity of any person filing an APS report with DHS is confidential and subject to disclosure only with consent from the source or by judicial process per MCL 400.11c(1).

V. Coordinated Investigative Team Approach

- A. Every county or region should have a coordinated investigative team approach when responding to allegations of vulnerable adult abuse, neglect or exploitation. While each team will be structured and operated differently, based on the needs of its county, the implementation of MI-MVP will drive each team's objectives.
- B. The local prosecuting attorney (PA) or designee and the director of the county DHS or designee should lead the local coordinated investigative team. The following activities should be completed by the leader(s) of the local team:
 - 1. Develop written protocols with team members outlining each member's roles. This should include a signature page signed by all members indicating their agreement with the written protocols. (See Appendix B for example signature page.)
 - 2. Conduct periodic reviews of the local protocol with all members, making changes as needed. New signatures should be obtained whenever changes to the protocol are made.
 - 3. Provide training on the local protocol, as necessary (for example: new team members, changes to the local protocol, etc.).
- C. The primary purpose of an investigative team is to ensure the coordination of procedures and practices of the partner agencies.
- D. The duties and responsibilities of each team should include:
 - 1. Regular meetings to increase team member communication.
 - 2. Facilitation and support of each team member's role.
 - 3. Coordination of information sharing.
 - 4. Ensuring team members respect and comply with their respective agency and/or statutory rules regarding confidentiality.
 - 5. Oversight to increase awareness of and compliance with the law and best practices outlined in MI-MVP.
- E. Local investigative teams should include the following core members:
 - 1. APS.
 - 2. Law enforcement.
 - 3. Prosecuting attorney.

- F. Investigative teams should include, but not be limited to, the following professionals:
1. Medical professionals.
 2. Aging services providers.
 3. Community mental health providers.
 4. Emergency services providers.
 5. Educational providers.
 6. LTC providers.
 7. Probate Court.
 8. Financial Institutions.
 9. Bureau of Children and Adult Licensing (BCAL).
- G. The roles of team members should be determined by the local investigative team. Not every case will require the participation of all team members.
- H. All designated team members should be provided with a contact phone number list that includes after-hours emergency contacts. This list should be maintained and distributed by the team coordinator.
- I. The local investigative team should strive to:
1. Coordinate investigations.
 2. Conduct thorough and objective investigations.
 3. Minimize trauma to the victim.
 4. Respect the rights of the alleged perpetrator.
- J. Team investigation objectives:
1. Interview the vulnerable adult, conducting joint interviews whenever possible.
 2. Interview all witnesses, conducting joint interviews whenever possible.
 3. Offer assistance in obtaining any necessary emergency services.
 4. Collect and preserve evidence.
 5. Interview the alleged perpetrator.
 6. Obtain current and historical medical information.
 7. Coordinate efforts with APS, law enforcement, the prosecutor, courts and service providers in offering available services to benefit the vulnerable adult.
 8. Assess the vulnerable adult's capacity to make informed decisions whenever the vulnerable adult refuses necessary services or chooses to remain in an unsafe or unstable situation.

VI. General Legal Principles

- A. No interview should be conducted in the presence of the perpetrator, whenever possible.
- B. Confidentiality is imposed by law upon DHS and is requested of all investigative partners.
- C. The identity of an Adult Protective Services (APS) referral source is confidential unless DHS/APS is given written consent of that person or by judicial process.
- D. If admission to an adult's dwelling is denied, the county DHS may seek the assistance of law enforcement to secure a search warrant as provided in 1966 PA 189, MCL 780.651 to 780.658.
- E. DHS must report to law enforcement any criminal activity it believes to be occurring upon receipt of an oral report as provided in MCL 400.11a(5).
- F. Upon request by the county DHS, local law enforcement shall cooperate with the county department in an investigation of suspected abuse, neglect or exploitation as provided in MCL 400.11b(2).
- G. DHS is prohibited from conducting APS investigations in certain settings as provided in MCL 400.11f. See Section XIV.

VII. Adult Protective Services

The Social Welfare Act mandates DHS to provide APS investigation and intervention to vulnerable adults who are at risk of harm from abuse, neglect and exploitation.

A. DHS Centralized Intake (CI) for Abuse and Neglect receives initial complaint/referral and enters the information on the Adult Services Comprehensive Assessment Program (ASCAP) system.

1. CI manager reviews the referral information and routes to the local office APS supervisor or after-hours, on-call staff for determination.

B. The local DHS supervisor reviews the referral information and:

1. Determines there is reasonable belief that an adult is vulnerable and is being harmed or is at risk of harm due to the presence or threat of abuse, neglect or exploitation and:

- a. Assigns an APS investigator.
- b. If referral involves an individual in a setting where another agency also has investigative authority, forwards the referral to the appropriate entity.
- c. Sends acknowledgement letter to referral source indicating the referral was assigned.

Note: A joint investigation may be required.

2. Determines there **is not** a reasonable belief that an adult is vulnerable and being harmed or is at risk of harm due to the presence or threat of abuse, neglect or exploitation.

- a. Sends acknowledgement letter to referral source indicating the referral was denied and why:
 - i. Allegations already investigated.
 - ii. Complaint does not meet the criteria required for an APS investigation.
 - iii. The complaint is the responsibility of another investigative authority and APS has no investigative jurisdiction.
- b. If the referral involves an individual of whom another agency has investigative authority, forwards the referral to the appropriate entity.

3. As provided in MCL 400.11a(5), DHS shall make a report to law enforcement any criminal activity it believes to be occurring.

Note: This may occur at any point during APS involvement.

C. Local DHS APS investigator receives assigned referral.

1. Initiates the investigation within the required priority response time.
 - a. Immediate face-to-face interview with vulnerable adult if risk of imminent danger.
 - b. Contact by phone or in person with either the vulnerable adult or a collateral person (who is not the referral source) within 24 hours.
 - c. Face-to-face interview with the vulnerable adult within 72 hours (no risk of imminent danger).
2. Initiates emergency court action, if necessary.
 - a. MCL 400.11b(6): "...The county department may petition for a finding of incapacity and appointment of a guardian or temporary guardian as provided in section 5303 or 5312 of the estates and protected individuals code, 1988 PA 386, MCL 700.5303 and 700.5312, and may petition for the appointment of a conservator as provided in section 5401 of the estates and protected individuals code, 1988 PA 386, MCL 700.5401, for a vulnerable adult."
3. Begins initial assessment of the vulnerable adult's capabilities and needs upon initial face-to-face contact. APS also determines other information and individuals needed to support its case findings (relatives, neighbors, support system, physicians, service providers, and others).
4. Begins development, in conjunction with the vulnerable adult or responsible party, of a service plan to address identified short-term and/or long-term needs.
 - a. APS will offer or refer for available services based on identified needs.

Note: Persons who are capable of making informed decisions may refuse any or all offered services.

5. Determine whether or not the referral allegations are substantiated or unsubstantiated based upon the information available.
6. DHS may provide a copy of the written report to law enforcement and the prosecuting attorney (referral source information must be redacted).

VIII. Law Enforcement

Michigan law enforcement agencies are dedicated to quality law enforcement and public safety services and are an essential partner in the prevention of vulnerable adult abuse, neglect and exploitation.

- A. Law enforcement receives information on vulnerable adult abuse crimes in several different ways:
 - 1. Emergency: Law enforcement centralized intake for emergencies is 911. The 911 center takes the necessary information and dispatches law enforcement and emergency services accordingly.
 - 2. Non-emergency: Citizens may report crimes that are not emergencies to the police agency where the crime was committed.
 - 3. APS will report to law enforcement by contacting central dispatch or by an agreed upon manner by the local DHS and law enforcement.
- B. Law enforcement's first concern is safety. Once the safety of the vulnerable adult is established, law enforcement will conduct an investigation.
- C. When law enforcement encounters abuse, neglect or exploitation of a vulnerable adult, it will contact APS.
 - 1. Law enforcement will make an oral/verbal report immediately to CI (**1-855-444-3911**), indicating if APS involvement is needed immediately.
 - 2. If law enforcement determines that emergency placement is necessary, law enforcement will call CI (**1-855-444-3911**).
- D. In cases of abuse, neglect, and exploitation, law enforcement will coordinate with APS during the investigation.
- E. Law enforcement will provide APS and the prosecuting attorney with relevant information and police reports necessary for APS to complete the State of Michigan reporting requirements.
- F. Law enforcement will inform APS and the prosecuting attorney when any case involving a vulnerable adult is referred to the Michigan attorney general or the United States attorney.
- G. The Mozelle Senior or Vulnerable Adult Medical Alert Act, MCL 28.711 et seq., also known as the Silver Alert, took immediate effect June 19, 2012. This act provides an official response to reports of certain missing persons; allows for the broadcast of information related to those missing individuals; and provides civil immunity to broadcasters and newspapers that notify the public of such incidents.

1. When law enforcement receives a report that a vulnerable adult is missing, it shall prepare a report as soon as possible, including any and all identifying information that would help locate the individual.
2. Law enforcement may enter the “missing vulnerable adult” information in the Law Enforcement Information Network (LEIN).
3. Law enforcement will forward a “Be on the Lookout” (BOL) to all area law enforcement agencies. This report should be sent to any location requested by the reporting person, providing that the request is reasonable.
4. Law enforcement will forward the “missing vulnerable adult” information to one or more media broadcaster(s) in the area.

IX. Prosecuting Attorney

Prosecuting attorneys are responsible for prosecuting crimes that occur within their jurisdiction as well as acting as advocates for victims of crimes. Because of their position, prosecuting attorneys have a critical role in preventing and prosecuting crimes against vulnerable adults.

- A. The prosecuting attorney should take a leadership role with his or her local investigative team and:
1. Develop and implement a local protocol in coordination with other investigative agencies and partners.
 2. Review investigations for best practices, as well as identify roadblocks that hinder investigations and prosecutions of vulnerable adult abuse/neglect and exploitation. Present appropriate recommendations when identified.
 3. Meet the standard policy recommended by the National District Attorneys Association, which states:

“...whenever practical, the creation of a special elder abuse unit within the prosecutor’s office or the designation of a specially trained prosecutor to handle elder abuse cases.” When the establishment of a designated elder abuse unit is not feasible, prosecutors should still receive training on an individual basis in the identification, investigation and prosecution of these cases.
 4. Assign a person for team members to contact with questions regarding criminal or legal issues relating to vulnerable adults.
 5. Promote awareness of the local investigative protocol.
 6. Meet with financial institutions, hospitals and other medical care/treatment entities to discuss methods for requesting, receiving and sharing information in compliance with privacy laws.
- B. Determine if special accommodations are required based on the victim’s needs throughout the criminal process.
- C. Provide the victim or his/her responsible party with a copy of the crime victim’s rights.
- Note:** If the legal guardian is the suspect, contact APS to discuss appropriate legal remedy.
- D. Make efforts to reduce the number of court appearances for the vulnerable adult as allowed by law.

X. Attorney General

Attorney general special agents are certified Michigan law enforcement officers with full police powers in the State of Michigan.

A. Health Care Fraud Division (HCFD)

1. Referrals to the Health Care Fraud Division are received either online at **www.michigan.gov/ag** or **“HOTLINE” at 1-800-24-ABUSE (22873)**.
2. Agents are charged, in part, with the following:
 - a. Investigating patient abuse, neglect and death events that occur in licensed LTC facilities, which are nursing homes, adult foster care and homes for the aged.
 - i. Review Licensing and Regulatory Affairs (LARA)-Bureau of Health Care Services (BHCS) regulation and licensing federal and state violations to determine validity and merit for criminal investigation.
 - ii. Partner efforts with BHCS to identify focus facilities.
 - iii. Partner with other law enforcement and emergency services providers in the identification and prosecution of complaints to augment the scope of local jurisdictions.
 - b. Investigating financial exploitation and misappropriation of resident funds in LTC facilities.
 - i. Identify the person(s) charged with the responsibility to manage the funds of a relative, friend or assigned guardianship of a long-term care resident.
 - ii. Prosecution of person(s) found to have misappropriated/embezzled funds and property for personal gain.
 - c. The HCFD lacks jurisdiction in cases in which the victim resides in a private residence.

B. Criminal Division

1. Agents are charged with investigating criminal acts committed by persons, entities, corporations and State of Michigan departments and agencies. This is inclusive of crimes outside the jurisdictional limits of the HCFD.

C. Consumer Protection Division

1. This division provides a resource website for seniors (www.seniorbrigade.com/) that has information on multiple areas of interest to older adults:
 - a. Health care.
 - b. Financial matters.
 - c. Consumer protection.
 - d. Veteran affairs.

XI. Bureau of Children and Adult Licensing/DHS

The DHS Bureau of Children and Adult Licensing (BCAL) is responsible for the licensing and regulation of all adult foster care homes (AFC) and homes for the aged (HA). This includes specialized programs for developmentally disabled and/or mentally ill persons residing in adult foster care homes. BCAL also investigates complaints alleging violations of AFC or HA administrative rules and statutes.

A. BCAL's Complaint Intake Unit receives complaints via:

1. Online form.
2. Mail.
3. Phone/Intake: **1-866-856-0126**.

Note: Information regarding the referral source is confidential and will not be released unless court-ordered.

B. Inter-Agency Agreement for the Provision of Adult Protective Services:

Mandatory agreements between BCAL, APS and local community mental health services programs (CMHSP) have been established to coordinate investigative efforts of abuse/neglect/exploitation of adults in licensed AFC and HA facilities. These are signed agreements between the BCAL director, the local DHS director and the local CMHSP director which outline the roles and responsibilities of each agency when investigating allegations of abuse, neglect and exploitation of CMHSP recipients in BCAL-licensed settings.

XII. Office of Recipient Rights

The Michigan Department of Community Health Office of Recipient Rights (ORR) was established under the Michigan Mental Health Code, P.A. 258 of 1974. The functions and responsibilities of ORR are outlined in MCL 330.1754.

- A. Under the Mental Health Code, ORR has full access to programs and services operated by or under contract with the Department of Community Health, unless other recipient rights systems are authorized under the Mental Health Code.
- B. ORR is charged with protecting the rights of and providing advocacy services to recipients of public mental health services. This includes residents of AFC and HA facilities contracted to provide care and supervision for mental health recipients.
- C. ORR may conduct coordinated investigations with APS, law enforcement and BCAL in licensed AFC and HA facilities when the alleged rights violations are of a criminal nature or are regarding abuse, neglect or exploitation. Sharing of information between APS, BCAL and ORR is permissible under the specific terms of the Inter-Agency Agreement for the Provision of Adult Protective Services.

XIII. Emergency Medical Services

Emergency medical services (EMS) providers respond to falls, lift assists, medical episodes or injuries, alarms, transfers and calls by others relating to self-neglect, abuse and welfare. EMS providers may be municipal, county or privately incorporated and are frequently the initial contact with vulnerable adults suspected of being abused, neglected or exploited. EMS providers may find the resource card, included with the MI Protocol, to be a valuable tool. See Appendix C.

EMS providers should:

- A. Contact law enforcement if the scene indicates criminal activity.
- B. Contact law enforcement or the public health department if the residence appears uninhabitable or there are safety/environmental concerns.
- C. Contact fire department personnel should the vulnerable adult or premises present indications of fire danger or entrapment.
- D. When there are numerous calls for service to one location for the same vulnerable adult that appear unwarranted or the adult's health or home conditions are deteriorating, contact the following:
 1. APS if single family dwelling or unlicensed assisted living.
 2. Law enforcement or attorney general if nursing home.
 3. BCAL if AFC or HA facility.
- E. Before leaving a scene or encounter, document measures needed to ensure the safety and protection of an abused, neglected or threatened vulnerable adult and follow up with appropriate referrals.
- F. Contact APS when safety concerns outweigh the vulnerable adult's insistence upon living without apparently needed supervision or refusal of needed services.
- G. Contact law enforcement if the vulnerable adult appears abused, neglected or intimidated by a roommate(s), relative(s), caregiver(s), friend(s) or guardian.
- H. Document if an alleged perpetrator/caregiver does not leave or refuses to allow the vulnerable adult to disclose information without the presence or intervention of the alleged perpetrator/caregiver.
- I. Other considerations for EMS providers:
 1. Document the condition and capacity of the vulnerable adult and his/her surroundings:

- a. Is the vulnerable adult confined or restricted to bed (not medically needed) or is he/she without restraint and ambulatory?
- b. Are the vulnerable adult's senses (sight, feel, taste and hearing) impaired?
- c. Are the vulnerable adult's basic needs such as food, water, medications (prescribed or over the counter) and medical care available or are they being denied?
- d. Does the vulnerable adult express that his/her basic needs are withheld unless he/she complies with threats or promises?

2. Medical Records

With every medical call, obtain a medical history and a Medical Records Release from the vulnerable adult, guardian or designated medical power of attorney. The medical history is critical to any investigation and should include:

- a. How and who provided the medical information (adult, guardian, POA, etc.).
- b. Indicators of authenticity, i.e. do records appear to have been altered.
- c. Corroborating documents.
- d. The medical provider(s) and hospital(s) of record.

Note: Medicare and Medicaid recipient verification can be obtained through DHS, HHS-OIG and the HCFD of the Michigan attorney general.

3. In the setting of a nursing home, HA, or AFC obtain:

- a. A resident "face sheet" (includes admission date, emergency contact and medical history information).
- b. Resident care plan, resident and/or guardian file with the transfer sheet, physician order and nurse's notes.
- c. Transfer or physician order/certification sheet.

4. In the setting of a private residence, assisted living or senior apartment obtain:

- a. Indicators of authenticity of the records, i.e. do they appear to have been altered to benefit the keeper of records.
- b. Medical history, including written documentation and who provided the history (adult, caregiver, relative, power of attorney, guardian, etc.).

Do Not Rely on Someone Else to Report: In addition to reporting to APS, you are to comply with your company's reporting policies and procedures. Relaying information to an employer or a medical receiving entity does not guarantee protection efforts to a vulnerable adult.

XIV. Investigative Responsibility Based on Client Setting

Suspected abuse in licensed settings, including AFC, HA and LTC facilities, may not fall under the jurisdiction of APS. MCL 400.11f(1), (2) and (3) outlines the investigative entity based on the location, alleged perpetrator and allegations. Mandatory reporters should be aware that reporting to any of the agencies listed below may not relieve you of your responsibility to report to APS.

Note: Suspicion of criminal activity in any setting must be reported to law enforcement (Section 1150B of the Social Security Act, as established by section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010; P.A. 368 of 1978, MCL 333.21771).

The following describes the reporting and investigative authority in licensed settings:

A. Nursing Home

1. Alleged perpetrator is facility staff/personnel:
 - a. LARA, BHCS.
 - b. Attorney General HCFD.
2. Alleged perpetrator is not facility staff/personnel:
 - a. APS.
 - b. Attorney General HCFD.
 - c. LARA, BHCS.

B. AFC/HA

1. AFC/HA with no specialized funding:
 - a. BCAL.
 - b. APS.
2. Contracted Community Mental Health AFC/HA:
 - a. BCAL.
 - b. APS.
 - c. ORR.

C. Unlicensed Congregate Setting (Assisted Living, Room & Board home, etc.)

1. APS.
2. BCAL may investigate to determine if the setting requires a license.

D. County medical care facilities, freestanding surgical outpatient facilities, hospitals

1. LARA, BHCS.

Note: The Long-Term Care Ombudsman Program (LTC Ombudsman) addresses quality of care and quality of life issues for residents of nursing homes, AFC facilities and HA facilities. Any concerns in these settings may also be reported to the LTC ombudsman by calling: 1-866-485-9393. See Section XV.

XV. Investigative Partners

The following sections address specific investigative partners, some of whom are mandatory reporters to APS, and are meant to be guidelines for circumstances where involvement of APS/law enforcement/attorney general/prosecuting attorney may be necessary and useful.

A. Aging Services

Michigan has a network of services for vulnerable and older adults. This network includes 16 regional area agencies on aging and county councils or commissions on aging. The support of providers in the aging network is valuable for investigators who are encouraged to contact aging services when working vulnerable adult abuse cases.

1. Aging services include, but are not limited to: LTC Ombudsman, home and chore services, meals, legal assistance, home and community-based Medicaid waiver services, benefit assistance, transportation and housing guidance, disease prevention and health promotion services, and other services designed to ensure vulnerable adults live free from abuse and harm in the setting of their choice whenever possible.
2. Aging and victim service providers offer support and guidance to investigators by providing available services to the vulnerable adult, guiding the victim through health and benefit systems, supporting community coordination activities, and are a resource for elder abuse information and prevention services.

B. Long Term Care Ombudsman Program

The federal government established the LTC ombudsman to help residents of LTC facilities who have concerns and complaints about their care or services they receive. The Michigan LTC ombudsman comprises a State LTC Ombudsman Office and a network of local ombudsmen.

Ombudsmen work with residents of licensed long-term care facilities to resolve problems and complaints, including allegations of abuse, neglect and exploitation. Ombudsmen also work to promote high quality care for residents. LTC facilities include licensed nursing homes, HA's, hospital LTC units, and AFC's. Ombudsmen may also provide assistance in unlicensed assisted living facilities.

1. Access Authority of Long Term Care Ombudsmen [42 USC 3058g(b)] [MCL 400.586i]. Ombudsmen have the authority to:
 - a. Enter any facility.
 - b. Communicate privately, and without restriction, with any resident who consents.

2. Access to Records [42 USC 3058g(b)(1)B)(C)(D)]. Ombudsmen have access the following resident records:
 - a. Medical records.
 - b. Social records.

Note: Ombudsmen must be given permission from the resident or legal representative to access resident records. If the legal representative of a resident refuses to give permission, the ombudsman may receive authority from the state LTC ombudsman to access resident records.

3. Other records accessible to ombudsmen include:
 - a. LTC facility administrative records, policies and documents.
 - b. LTC licensing and certification records maintained by the state.

Note: To reach an ombudsman, call **1-866-485-9393**.

C. Long-Term Care Providers

LTC providers are integral members of a coordinated community response to vulnerable adult abuse, neglect and exploitation. LTC settings may be licensed or unlicensed. Most fall under the category of mandatory reporters under the Social Welfare Act.

Suspicion of criminal activity in any setting must be reported to law enforcement [Section 1150B of the Social Security Act, as established by section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010].

The Public Health Code (P.A. 368 of 1978, as amended), in MCL 333.21771, provides reporting protocol and protections for staff of licensed nursing homes when there is suspected abuse, mistreatment or neglect of nursing home patients. See Appendix D.

D. Fire Services

Fire services conduct fire code inspections and respond to reports of fires or smoke detector alarms. As first responders, they may engage with and identify vulnerable adults who appear to be victims of abuse, neglect and exploitation. Fire services should:

1. Contact law enforcement if the scene indicates criminal activity.
2. Contact law enforcement or public health department if the residence appears uninhabitable or there are safety/environmental concerns.

3. When there are repeated calls for service to one location and the adult's health or home conditions are deteriorating, fire/EMS contacts the following:
 - a. APS if single family dwelling or unlicensed assisted living.
 - b. Law enforcement or attorney general HCFD if nursing home.
 - c. BCAL if AFC or HA.
4. Before leaving a scene or encounter, document measures needed to ensure the safety and protection of an abused, neglected or threatened vulnerable adult and follow up with appropriate referrals.
5. Contact APS when safety concerns outweigh the vulnerable adult's insistence upon living without apparently needed supervision or refusal of needed services.
6. Contact law enforcement if the vulnerable adult appears abused, neglected or intimidated by a roommate(s), relative(s), caregiver(s), friend(s) or guardian.

E. Medical Providers

Medical providers are key partners in the identification and protection of vulnerable adults who may be victims of abuse, neglect and exploitation. They have access to valuable information regarding the individual's health and abilities, and often the individual's trusted relationships/caregivers. It is essential for an investigative team to invite and include members of the medical community to the team to access their insight and expertise.

F. Community Mental Health Services Programs (CMHSP)

CMHSP's provide individuals with a mental health diagnosis and/or developmental disability with an array of services including case management, assessment, advocacy and crisis intervention. CMHSP's are frequently integral partners when investigating allegations of abuse, neglect and exploitation of vulnerable adults with a mental illness or developmental disability. CMHSP's often have medical and mental health information regarding individuals who come to the attention of team members or may have the ability to provide needed intervention and/or services.

G. Probate Court

The county probate courts handle mental health, guardianship, conservatorship and protection order petitions along with other duties. The probate judge determines the competencies and abilities of a vulnerable adult to make important life decisions (for example: medical care, mental health services, living arrangements, financial matters, etc.). The probate judge, or his/her designee, is a valuable member of any investigative team as he/she provides expertise on the abilities of the court to intervene when an individual's competency to make informed decisions presents as compromised.

H. Financial Institutions

Financial institutions provide assistance to virtually all members of our society through checking accounts, loans, certificates of deposit, etc. Financial institution staff may be the first to note unusual activity in a vulnerable adult's accounts or financial transaction habits. While they are not mandatory reporters, they are valuable partners in preserving the assets of vulnerable adults in the prosecution of financial exploitation.

Appendix A

Release or Disclosure of Protected Health Information/Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Review of health care records is often a necessary component of an investigation of suspected abuse, neglect or exploitation of a vulnerable adult. Health care providers frequently cite privacy and confidentiality restrictions imposed by federal law, namely the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended, as a barrier preventing ready access to private health information by investigators. While a detailed discussion of HIPAA is beyond the scope of this protocol, it is recommended that implementation of this protocol involve discussions with hospitals, health care facilities, physicians and other health care providers, legal counsel for providers, local governments and agencies, and the local courts to improve lawful access to health records during an investigation. It is recommended each local or county government seek advice from counsel with experience in HIPAA and its accompanying regulations.

In general, **health records are most easily obtained with express consent** of the subject of the investigation. Criteria for a valid consent include the following: written in plain language, includes a description of the information to be disclosed that identifies the information in a specific and meaningful fashion, provides the name or other specific identification of the person(s) or entity authorized to make the disclosure, provides the name or other specific identification of the person(s) or entity to whom the provider may make the disclosure, a description of each purpose of the disclosure (“at the request of the individual” if not further detailed), an expiration date or an expiration event, and the dated signature of the individual who is the subject of the protected health information. The consent must also contain statements adequate to place the individual on notice of the individual’s right to revoke the authorization in writing, any exceptions to the right to revoke, and a description of how the individual may revoke the authorization.

Absent consent to release of health care records from the patient, investigators often rely upon search warrants and other lawful methods to obtain health care records. The HIPAA statutes and regulations provide limited exceptions to the general rule prohibiting disclosure of health records without consent in 45 CFR §164.512. Specific HIPAA exceptions relevant to this protocol that allow release of private health information **without consent or an opportunity for the individual to agree or object** include:

1. Uses and disclosures required by law: A covered entity may disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

Michigan law mandates reporting of cases of suspected vulnerable adult abuse, neglect, and exploitation by “any person who is employed, licensed, registered, or certified to provide health care” and the mandatory report must include “the name of the adult and a description of the abuse, neglect, or exploitation”; “the adult’s

age and the names and addresses of the adult's guardian or next of kin, and of the persons with whom the adult resides, including their relationship to the adult" if possible; and mandatory disclosure of "other information available to the reporting person that may establish the cause of the abuse, neglect, or exploitation and the manner in which the abuse, neglect, or exploitation occurred or is occurring." MCL 400.11a. Michigan law thus allows a mandatory reporting health care provider to broadly disclose not only demographic information but "other information available" to investigators of suspected vulnerable adult abuse and Michigan's statute voids the overarching physician-patient privilege as to such disclosures.

2. Disclosures about victims of abuse, neglect or domestic violence.

HIPAA permits disclosure of health information of abuse victims, stating "a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence": 1) To the extent the disclosure is required by law and disclosure complies with the requirements of the law, 2) If the individual agrees to the disclosure, or 3) To the extent the disclosure is expressly authorized by statute or regulation and the covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or if the individual is unable to consent because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to consent. In all of the preceding, the provider must promptly inform the individual that a disclosure required by law has been or is being made, unless the provider believes, in the exercise of professional judgment, that the patient might be subject to serious harm by such notice or, the provider would be informing a personal representative they reasonably believe is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the patient.

3. Disclosures for judicial and administrative proceedings

Under HIPAA, a provider may disclose protected health information in the course of any judicial or administrative proceeding first in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by the order (such as a search warrant or court-issued subpoena); and second in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, provided written notice and opportunity to object to release has been given to the subject of the information or a qualified protective order

covering the information has been obtained. Notice and the protective order may be given or obtained either by the person requesting the information or by the provider releasing the information.

4. Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official under one or more of the following conditions: 1) pursuant to process and as required by law, except laws covering child or adult abuse or neglect (the subjects to other specific exceptions to HIPAA), including release based on court-issued order, warrant, summons, or subpoena; grand jury subpoena, or administrative request or demand authorized by law; 2) for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person; 3) in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime; 4) about an individual who has died for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct; 5) information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity; and 6) a health care provider providing emergency health care in response to a medical emergency, other than on the premises of the provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to the commission and nature of a crime; the location of such crime or of the victim(s) of such crime; and the identity, description, and location of the perpetrator of such crime. Each of the preceding disclosures to law enforcement personnel are the subject of procedural and substantive restrictions further detailed in HIPAA regulations.

Appendix B: Sample Partner Signature Page

This protocol is hereby agreed to and approved by the following agencies. This protocol may be amended as deemed necessary with the approval of the signing agencies:

Name: _____ Date: _____

Agency: _____

Appendix D

PUBLIC HEALTH CODE (EXCERPT) Act 368 of 1978

333.21771 Abusing, mistreating, or neglecting patient; reports; investigation; retaliation prohibited; exception to report requirement; time frame for reporting.

Sec. 21771.

- (1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.
- (2) A nursing home employee who has reasonable suspicion of an act prohibited by this section shall report the suspicion to the nursing home administrator or nursing director and to the department in the manner required by subsection (8). A nursing home administrator or nursing director who has reasonable suspicion of an act prohibited by this section shall report the suspicion by telephone to the department and 1 or more law enforcement entities in the manner required by subsection (8).
- (3) Any individual may report a violation of this section to the department.
- (4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who has reasonable suspicion of an act prohibited by this section shall report the suspicion to the department and 1 or more law enforcement entities in the manner required by subsection (8).
- (5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the individual making the report to submit a written report or to supply additional information, or both.
- (6) A nursing home employee, licensee, or nursing home administrator shall not evict, harass, dismiss, or retaliate against a patient, a patient's representative, or an employee who makes a report under this section.
- (7) An individual required to report an act or a reasonable suspicion under subsections (2) to (4) is not required to report the act or suspicion to the department or 1 or more local law enforcement entities if the individual knows that another individual has already reported the act or suspicion as required by this section.
- (8) An individual required to report a reasonable suspicion of an act prohibited by this section shall report the suspicion as follows:
 - (a) If the act that causes the suspicion results in serious bodily injury to the patient, the individual shall report the suspicion immediately, but not more than 2 hours after forming the suspicion.

(b) If the act that causes the suspicion does not result in serious bodily injury to the patient, the individual shall report the suspicion not more than 24 hours after forming the suspicion.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2012, Act 174, Imd. Eff. June 19, 2012

Popular Name: Act 368

Appendix E

Statutes Cited Within MI-MVP

User Note: This index lists the short title of the statutes that are referenced in the MI-MVP. Statutes that are cited in their entirety, within the index, appear in bold print. Michigan statutes listed here are current as of May 2013. For updates to legislation, see: www.legislature.mi.gov.

Code of Federal Regulations:

Sec. 1150 Social Security Act [42 U.S.C. 1320b-25]. Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities.

42 U.S.C. 3058g. State Long-Term Care Ombudsman program.

42 U.S.C. 3058g(b) et Seq. Procedures for Access.

Public Law 111-148-March 23, 2010. The Patient Protection and Affordable Care Act.

Michigan Compiled Laws:

MCL 28.711 et seq. Mozelle Senior or Vulnerable Adult Medical Alert Act.

MCL 330.1754. State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.

MCL 333.21771. Abusing, mistreating, or neglecting patient; reports; investigation; retaliation prohibited; exception to report requirement; time frame reporting.

MCL 400.11. Definitions

MCL 400.11a. Reporting abuse, neglect, or exploitation of adult; oral report; contents of written report; reporting criminal activity; construction of section.

(1) A person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services; a law enforcement officer; or an employee of the office of the county medical examiner who suspects or has reasonable cause to believe that an adult has been abused, neglected, or exploited shall make immediately, by telephone or otherwise, an oral report to the county department of social services of the county in which the abuse, neglect, or exploitation is suspected of having or believed to have occurred. After making the oral report, the reporting person may file a written report with the county department. A person described in this subsection who is also required

to make a report pursuant to section 21771 of the public health code, Act No. 368 of the Public Acts of 1978, as amended, being section 333.21771 of the Michigan Compiled Laws and who makes that report is not required to make a duplicate report to the county department of social services under this section.

(5) The county department shall report to a police agency any criminal activity that it believes to be occurring, upon receipt of the oral report.

MCL 400.11b. Investigation; purpose; basis; providing licensee with substance of allegations; response to allegations; cooperation of local law enforcement officers; investigation not to be in place of investigation of suspected criminal conduct; scope of investigation; in-person interview; search warrant; availability of protective services; collaboration with other agencies; petition for finding of incapacity and appointment of guardian or temporary guardian; petition for appointment of conservator; report; providing copy of report to state department and prosecuting attorney.

(2) Upon a request by the county department, local law enforcement officers shall cooperate with the county department in an investigation of suspected abuse, neglect, or exploitation. However, the investigation required by this section shall not be in place of an investigation by the appropriate police agency regarding suspected criminal conduct arising from the suspected abuse, neglect, or exploitation.

(6) In the course of an investigation, the county department shall determine if the adult is or was abused, neglected, or exploited. The county department shall make available to the adult the appropriate and least restrictive protective services, directly or through the purchase of services from other agencies and professions, and shall take necessary action to safeguard and enhance the welfare of the adult, if possible. The county department also shall collaborate with law enforcement officers, courts of competent jurisdiction, and appropriate state and community agencies providing human services, which services are provided in relation to preventing, identifying, and treating adult abuse, neglect, or exploitation. If the abuse, neglect, or exploitation involves substance abuse, the county department shall collaborate with the local substance abuse coordinating agency as designated by the office of substance abuse services in the department of community health for a referral for substance abuse services. The county department may petition for a finding of incapacity and appointment of a guardian or temporary guardian as provided in section 5303 or 5312 of the estates and protected individuals code, 1998 PA 386, MCL 700.5303 and 700.5312, and may petition for the appointment of a conservator as provided in section 5401 of the estates and protected individuals code, 1998 PA 386, MCL 700.5401, for a vulnerable adult.

MCL 400.11c. Confidentiality of identity of person making report; immunity from civil liability; presumption; extent of immunity; abrogation of privileged communication; exception.

(1) The identity of a person making a report under section 11a or 11b shall be confidential, subject only to disclosure with the consent of that person or by judicial process. A person acting in good faith who makes a report or who assists in the implementation of sections 11 to 11b, 11d to 11f, and this section shall be immune from civil liability which might otherwise be incurred by making the report or by assisting in the making of the report. A person making a report or assisting in the implementation of sections 11 to 11b, 11d to 11f, and this section shall be presumed to have acted in good faith. The immunity from civil liability extends only to an act performed under sections 11 to 11b, 11d to 11f, and this section, and shall not extend to a negligent act which causes personal injury or death.

MCL 400.11f. Certain actions and investigations prohibited; report; interdepartmental agreements; coordinating investigations; agreement establishing criteria.

(1) The state department shall not take any action pursuant to sections 11 to 11e in the case of a person who is residing in a state funded and operated facility or institution, including but not limited to a correctional institution, mental hospital, psychiatric hospital, psychiatric unit, or a developmental disability regional center.

(2) The state department shall not investigate suspected abuse, neglect, or any other suspected incident pursuant to sections 11 to 11e if the department of public health has investigative and enforcement responsibility for the incident pursuant to section 20201, 21771, or 21799a of the public health code, Act No. 368 of the Public Acts of 1978, as amended, being sections 333.20201, 333.21771, and 333.21799a of the Michigan Compiled Laws. The state department shall refer a report of suspected abuse or neglect in an institution governed by those sections to the department of public health.

(3) Sections 11 to 11e do not preclude the director from entering into interdepartmental agreements to carry out the duties and responsibilities of the state department under sections 11 to 11e in state funded and operated facilities or institutions, or to coordinate investigation in state licensed facilities under contract with a state agency in order to avoid duplication of effort among state agencies having statutory responsibility to investigate.

MCL 780.651 to 780.685. Search Warrants

Appendix F

Glossary of Abbreviations

Adult Foster Care	AFC
Adult Protective Services.....	APS
Adult Services Comprehensive Assessment Program	ASCAP
Be on the Lookout	BOL
Bureau of Children and Adult Licensing	BCAL
Bureau of Health Care Services/LARA.....	BHCS
Centralized Intake for Abuse and Neglect (CPS/APS)	CI
Community Mental Health Services Program.....	CMHSP
Emergency Medical Services	EMS
Home for the Aged.....	HA
Health Care Fraud Division/AG	HCFD
Health Insurance Portability and Accountability Act of 1996	HIPAA
Long-Term Care.....	LTC
Law Enforcement.....	LE
Law Enforcement Information Network	LEIN
Michigan Department of Attorney General	AG
Michigan Compiled Law	MCL
Michigan Department of Human Services	DHS
Michigan Office of Services to the Aging	OSA
Michigan State Police	MSP
Office of Recipient Rights	ORR
Prosecuting Attorney	PA



Department of Human Services (DHS) will not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your area.