

Chapter 2.A Definitions

Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.

Activities of daily living (ADL) means those activities needed for self-care, such as dressing, bathing, toileting, mobility, eating, and continence.

Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee.

Administrative hearing means a due process hearing that is held to appeal a decision made by a state agency.

Adult and Child Abuse and Neglect Hotline (Hotline) means the statewide, 24-hour, toll-free number maintained by the Department for the purpose of receiving reports of suspected abuse, neglect, or exploitation of vulnerable adults.

Adult Protective Services (APS) mean those services provided by the department for the prevention, correction, or discontinuance of abuse, neglect, or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abused, neglected, or exploited vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse, neglect, or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management, housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.

Adult Protective Services Central Registry (Registry) means the system used by the Department to record the names of persons who allegedly abused, neglected, or exploited a vulnerable adult that has been substantiated through investigation.

Affidavit means a written statement of facts or opinion based upon facts, signed in the presence of a notary public or a judge or other person having authority to administer oath.

Agent means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated

Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

Attorney in fact means an adult properly designated and authorized to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact.

Bilateral Bruises- Bruises on both sides of the body – for examples, on the top of both shoulders, both sides of the face or inside both thighs. These types of bruises are rarely obtained accidentally.

Capacity to Consent means the mental ability to make a rational decision including the ability to perceive, appreciate all relevant facts and to reach a rational judgment based upon such facts.

Caregiver shall mean any person or entity which has assumed the responsibility for the care of a vulnerable adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.

Cognitively impaired means (a) to have reduced mental awareness and not be able to make correct judgments; (b) cognitive impairment or loss is a temporary or permanent change within the brain that affects a person's ability to think, reason, and learn, or a breakdown in a person's mental state that may affect his or her moods, fears, and anxieties

Collateral contact means conversations—by telephone, in-person or in writing—that the worker has with persons on behalf of the client. This includes any professional providing formal services (e.g., therapists, teachers) and others important to the client (e.g., neighbors, ministers).

Conservator means an individual or corporation appointed by a court to manage the estate, property, and/or other business affairs of an individual whom the court has determined is unable to do so for him/her.

Credible evidence means information worthy of belief by a reasonable person.

Cruel punishment shall mean punishment which intentionally causes physical injury to a vulnerable adult.

Decision-Making Capacity means a non-legal judgment of a person's ability to make decisions and to understand and communicate regarding the nature and consequences of decisions relating to the person and relating to the person's property and lifestyle, including a decision to accept or refuse services. This judgment is based on observable behavioral, cognitive, and emotional characteristics.

Dementia means (a) an irreversible condition in which a person experiences memory and other losses in mental function; (b) a progressive mental decline due to organic brain disease, causing structural changes within the brain. Diseases that cause dementia include Alzheimer's Disorder, brain injury, vascular dementia, Parkinson's disease, or Huntington's disease.

DHHS shall mean the Department of Health and Human Services.

Developmental Disability Developmental Disability is defined in the Developmental Disability Services Act as: Intellectual disability or a severe, chronic disability other than mental illness which is attributable to a mental or physical impairment that is manifested before the age of twenty-two year, is likely to continue indefinitely, and results in either 1) In the case of a person under three years of age, at least one developmental delay; or 2) In the case of a person three years of age or older, a substantial limitation in three or more of the following areas of major life activity, as appropriate for the person's age: Self-care; Receptive and expressive language development and use; Learning; Mobility; Self-direction; Capacity for independent living; and Economic self-sufficiency.

Durable with respect to a power of attorney, means not terminated by the principal's incapacity.

Emergency means a situation in which there is immediate threat to life, health, or property to the vulnerable adult which requires immediate or same day intervention.

Emergency protective custody (EPC) means that part of the mental health commitment act which permits law enforcement officers to take into custody a mentally ill dangerous person that is likely to harm his or herself or others before a mental health commitment hearing can be held.

Essential services shall mean those services necessary to safeguard the person or property of a vulnerable adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.

Executive function means higher level mental processes (as opposed to simple acts like recalling an event) such as planning for the future, organizing, and shifting attention from one topic to another.

Ex-parte means a hearing in which the court hears only one side of the controversy, such as Emergency Guardian or Emergency Conservator or when a court orders involuntary adult protective services or placement under the Adult Protective Services Act.

Exploitation means the taking of property of a vulnerable adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

False imprisonment means knowingly restraining a person without legal authority; or restraining or abducting another person under terrorizing circumstances which expose the person to the risk of serious bodily injury; or with intent to hold him or her in a condition of involuntary servitude.

Fiduciary relationship means a relationship in which one person holds a position of trust with respect to another person including a personal representative, payee, guardian, conservator, or trustee without regard to the length of the relationship or task.

Functional loss means (a) when a person has trouble performing an everyday action or is not able to perform the action at all, even though he or she used to be able to do it; (b) also called functional impairment

Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law

Grossly impaired ability to live independently or to provide self-care means an inability to consistently perform the range of practical daily living tasks or to obtain services required for basic adult functioning.

Grossly impaired behavior means a considerable inability to communicate, ambulate, to complete personal hygiene, to access food, clothing, and care and/or is in need of a high level of supervision to prevent harm to self or others.

Grossly impaired judgment means a considerable inability to make sound/safe decisions due to impairments such as perceiving reality, short-term memory, or the presence of hallucinations and/or delusions.

Guardian means the person appointed by the court for someone found by clear and convincing evidence to be incapacitated and require continuing care or supervision. Nebraska law allows for, and favors, the appointment of a limited guardian.

Types of Guardians

Full Guardian — a person appointed to make all decisions in all areas of a person's life, for example, for a minor child or a person with advanced Alzheimer's. If no Conservator is appointed, the Guardian has other specific responsibilities for the estate. See *Guardian/Conservator Financial Responsibilities*, NebGuide G1595.

Limited Guardian — a person appointed to make decisions in only those areas in which the Ward was found to be unable to handle his/her own affairs.

Emergency Temporary Guardian — if an individual is alleged to be incapacitated and an emergency exists, the court may appoint an emergency temporary Guardian to address the emergency.

Guardian ad litem means an attorney appointed by the court in guardianship hearings for the purpose of completing an investigation into the necessity of guardianship and to make recommendations to the court.

Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions.

Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration.

Hearing limitations means a person who is deaf or hard of hearing.

Imminent Danger means exposure to serious injury, pain, or death or significant harm or loss is likely to occur at any moment or is impending without intervention.

Incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision.

Incapacity (with respect to Power of Attorney) means an inability of an individual to manage property or property affairs effectively because the individual.

1. Has an impairment in the ability to receive and evaluate information or make or communicate responsible decisions even with the use of technological assistance for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or lack of discretion in managing benefits received from public funds; or

2. Is:
 - a) Missing;
 - b) Detained, including incarcerated in a penal system; or
 - c) Outside the United States and unable to return.

Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself.

Incest means any person who knowingly intermarries or engages in sexual penetration with any person who falls within the degrees of consanguinity set forth in Neb. Rev. Stat. 28-702. See Neb. Rev. Stat. 28-703. The degree of consanguinity includes acts between parents and children, grandparents and grandchildren or every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews and includes children and relations born out of wedlock.

Intellectual disability means a disability that occurs before age 18 and is characterized by significant limitations in intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills.

Instrumental activities of daily living (IADL) means those activities needed to support independent living, such as housekeeping, food preparation, use of the telephone, doing laundry, using public transportation, taking medicine, handling finances, shopping, mobility, and home maintenance.

Interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid last will and testament who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. The meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include any person or entity named as a devisee in the most recently executed last will and testament of the ward or person alleged to be incapacitated; for purposes of article 26 of the Nebraska Probate Code.

Involuntary Adult Protective Services means those services as defined in Adult Protective Services which are court-ordered as a result of an ex-parte order under the Adult Protective Services Act.

Knowingly means that a person, with respect to information:

1. Has actual knowledge of such information;
2. Acts in deliberate ignorance of the truth or falsity of such information; or
3. Acts in reckless disregard of the truth or falsity of such information

Law enforcement agency means the police department or the town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

Least restrictive alternative shall mean adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure essential services.

Legal representative means a person lawfully vested with the power and charged with the duty of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, power of attorney, trustee or other duly appointed person.

Limited guardianship means any guardianship which is not a full guardianship.

Living independently shall include, but not be limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.

Long-term care Ombudsman means one that investigates and resolves complaints of residents or families of residents in long term care residential facilities.

Mild Cognitive Impairment means an intermediate stage between the expected cognitive decline of normal aging and the more serious decline of dementia. It can involve problems with memory, language, thinking and judgment that are greater than normal age-related changes.

Mental health commitment means the involuntary commitment of persons found, by a mental health board hearing and by clear and convincing evidence, to be mentally ill and to present a substantial risk of serious harm to another person or to themselves.

Mental health professional means a person licensed to practice medicine and surgery or psychology in this state under the Uniform Credentialing Act or an advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Practice Act who has proof of current certification in a psychiatric or mental health specialty.

Mentally ill means having a psychiatric disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

Mentally ill and dangerous person means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents:

1. A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or
2. A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

Mobility limitations means a person who requires supervision of or assistance with mobility, who is chair bound or bedbound, or while still independently mobile, demonstrates an unsteady gait or difficulty in walking.

Mood Disorders means a person that experiences disorders such as Bipolar disorder or Major Depressive disorder. Symptoms include severe sadness, weight loss, fatigue, lack of interest, diminished ability to think, or extreme changes in mood, thoughts, behaviors, and energy level.

Neglect means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to

perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (1) taking prescribed medication, (2) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (3) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs.

Payee:

Protective payee means an individual assigned by the Health and Human Services System (HHSS) to receive public assistance payments on behalf of another person.

Representative payee means an individual appointed by the Social Security Administration (SSA) to receive and manage benefits administered through SSA.

Permit means to allow a vulnerable adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.

Petition means a written request filed with a court asking that it take action in a particular case.

Physical injury means damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.

Power of attorney means writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used. A power of attorney created after January 1, 2013, under the Nebraska Uniform Power of Attorney Act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Power of attorney for health care shall mean a power of attorney executed which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable.

Principal means an adult who, when competent, confers upon another adult a power of attorney for health care or a power of attorney or a durable power of attorney.

Preponderance of evidence means the greater weight of the evidence is present in order to substantiate case. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

Proper supervision means care and control of a vulnerable adult which a reasonable and prudent person would exercise under similar facts and circumstances.

Property means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest or right therein.

Protected Health Information (PHI) means any health information, including demographic information collected from an individual, that is created or received by a Health Care Provider, Health Plan, or Health Care Clearinghouse, and that relates to the individual's past, present, or future physical or mental health or condition, or the provision of or payment for that individual's health care, and that permits the identification of the individual or could reasonably be used, alone or in combination with other available information, to identify the individual.

Physical limitations means a person who has a condition that substantially impairs one or more basic physical activities such as walking, climbing stairs, reaching, lifting, or carrying.

Protected person means a minor or other person for whom a conservator has been appointed or other protective order has been made.

Protective proceeding means a *proceeding* to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.

Psychotic or thought disorders means a person that experiences disorders such as Schizophrenia, Delusional Disorder, or Brief Psychotic Disorder who has impaired thought processing or thought content. Symptoms include hallucinations, delusions, inability to analyze thoughts rationally, and flight of ideas.

Regional center means a state hospital for the mentally ill.

Report means any telephone call, personal contact, fax, email, or letter by an individual or entity to the Adult and Child Abuse and Neglect Hotline alleging abuse, neglect and exploitation of a vulnerable adult. (May also be referred to as an Intake).

Reporting Party means the person who submits information of abuse, neglect, or exploitation to the Hotline or law enforcement.

Representative Payee means an individual appointed by a government agency to receive funds on behalf of a beneficiary who is unable to manage his/her own finances.

Self-care shall include, but not be limited to, personal hygiene, eating, and dressing.

Self-neglect means that as a result of an adult's inability, due to physical and/or mental impairments or diminished capacity, s/he is unable to perform essential self-care tasks or obtain essential services to such an extent that there is actual physical injury or imminent danger of physical injury or death.

Severe cognitive impairment means clinically significant difficulties in the ability to remember, think, perceive, apply sound judgment, and adequately use deductive reasoning not attributable to a mental illness.

Sexual abuse includes sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703.

Sexual Assault means any person who subjects another person to sexual penetration or sexual contact (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct.

Sexual exploitation includes, but is not limited to, unlawful intrusion as described in section 28-311.08 and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult.

Speech limitations mean a person who has a condition that substantially impairs his or her ability to speak.

Substantial functional impairment means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.

Substantial mental impairment shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.

Sun downing means agitated or confused behavior that occurs in the late afternoon or evening; most often seen in patients with dementia

Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures.

Temporary guardian means a court or an individual appointed by the court in emergency situations. The court must specify the powers and duties of the temporary guardian in the letters of guardianship and will limit the powers and duties to those necessary to address the emergency. Temporary guardianship letters are effective for up to 90 days at which time a hearing must be held to establish a permanent guardian, if necessary.

Treatment means the support and services which will assist a subject to acquire the skills and behaviors needed to function in society so that the subject does not pose a threat of harm to others and is able to cope with his or her personal needs and the demands of his or her environment.

Undue Influence means when a person uses their role, relationship, or power to exploit or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

Unlawful Intrusion means when any person knowingly intrudes upon any other person without his or her consent or knowledge in a place of solitude or seclusion by viewing or recording, either by video, audio, or other electronic means, of a person in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

Unreasonable confinement means confinement which intentionally causes physical injury to a vulnerable adult or false imprisonment as described in section 28-314 or 28-315.

Visual limitations mean a person who is blind or has impaired vision.

Vulnerable adult shall mean any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian has been appointed under the Nebraska Probate Code.

Ward means a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority.