



# Iowa Department of Human Services

Terry E. Branstad  
Governor

Kim Reynolds  
Lt. Governor

Charles M. Palmer  
Director

October 14, 2011

## GENERAL LETTER NO. 16-G-28

ISSUED BY: Bureau of Child Welfare and Community Services,  
Division of Adult, Children and Family Services

SUBJECT: Employees' Manual, Title 16, Chapter G, **DEPENDENT ADULT PROTECTIVE SERVICES**, Title page, revised; Contents (page 2), revised; and pages 31, 35, 52 through 68, 81, 82, 96, 102, 103, and 104, revised.

### Summary

Chapter 16-G is revised to:

- ◆ Add requirements for DHS to personally serve petitions and court orders for emergency protective services to dependent adults and to mail a copy to their power-of-attorney for health care or relative.
- ◆ Add to who has access to dependent adult abuse information for background checks.
- ◆ Change where rejected intakes are kept from the local office to the Centralized Service Intake Unit.
- ◆ Delete the "Substitute Medical Decision-Making Board" section, since the law authorizing that board has been repealed.
- ◆ Update legal reference.

### Effective Date

Upon receipt.

### Material Superseded

This material replaces the following pages from Employees' Manual, Title 16, Chapter G:

<u>Page</u>	<u>Date</u>
Title page	September 25, 2009
Contents (page 2)	July 9, 2010
31	September 25, 2009
35, 52-54	July 9, 2010
55-68, 81	September 25, 2009
82	July 9, 2010
96, 102-104	September 25, 2009

**Additional Information**

Refer questions about this general letter to your area social work administrator.

Revised October 14, 2011

Employees' Manual  
Title 16  
Chapter G

# DEPENDENT ADULT PROTECTIVE SERVICES



Iowa Department  
of Human Services

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### **Collateral Contact Interviews**

**Legal reference:** Iowa Code section 235B.3(9)

You may want to interview other persons who have information concerning the allegation of abuse of the dependent adult. You may request information from any person who may have knowledge of the alleged incident. This includes, but is not limited to, the county attorney, a social services provider, a financial representative, or a person who is a mandatory reporter.

That person must cooperate and assist, upon your request. If the person objects due to confidentiality laws, provide form 470-3326, *Dependent Adult Abuse Information Request*, which quotes your legal right to obtain the requested information:

“The Department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, or a social services agency in the state... shall cooperate and assist in the evaluation upon the request of the Department.” Iowa Code, Section 235.B.3, subsection 7.

If the person fails to provide the necessary information that you require to complete your evaluation or assessment, you may need to request assistance from the county attorney to obtain a court order.

### **HIPAA Policy for DHS Protective Services**

**Legal reference:** 45 CFR 164.512

There are exemptions under the Health Insurance Portability and Accountability Act (HIPAA) that give you the authority to ask for and be given necessary medical information to complete your dependent adult abuse evaluation or assessment.

See Employees’ Manual 1-C, [Disclosures About Victims of Abuse or Neglect](#).

Complete form 470-3326, *Dependent Adult Abuse Information Request*, and either mail it or give it directly to medical personnel who have medical information you need to complete your report. See 16-G-Appendix, form 470-3326, [Dependent Adult Abuse Information Request](#).

Determine the accuracy of the allegations, in part, through the gathering and evaluation of physical and documentary evidence. Evidence includes, but is not limited to:

- ◆ [Descriptions](#)
- ◆ [Photographs or X-rays](#)
- ◆ [Medical and mental health examinations](#)
- ◆ [Payment for examinations and expenses](#)
- ◆ [Financial records](#)

These categories are further described below.

### **Descriptions**

Describe the dependent adult and any relevant conditions and objects you examine during the course of the evaluation or assessment. Example:

Describe the injuries on the dependent adult and the chair the dependent adult was supposed to have fallen out of when injured.

When possible, link the description to the allegation. Example:

Where are the injuries on the dependent adult?  
Exactly how did the dependent adult fall to sustain such injuries?  
How low to the floor is the chair?  
Are there any hard wood surfaces on the chair that could cause injury?  
Is there a table or other piece of furniture near the chair that the dependent adult could have fallen against if the dependent adult did, in fact fall from the chair?  
Is there carpeting on the floor next to the chair? Is the carpet thick or thin?

### **Photographs or X-rays**

There is no authorization for reimbursement for a Department protective services worker to take photographs or X-rays of a dependent adult or order them to be taken.

With the consent of the dependent adult or legal guardian, you may take photographs at your own expense to be used in an abuse evaluation or assessment. There may be local administrative procedures for reimbursement.

Extensions may be requested in 10-day increments only, except under unusual circumstances where it is known a longer time period is necessary. Extensions may be granted for a maximum of 30 working days. No more than three extensions shall be granted.

The maximum number of days there are to complete a report is 110, including 20 days for all reports and a maximum three possible extensions with a maximum of 30 days per extension, for a total of 90 additional extension days. (20 + 90 = 110 days.)

Request an extension in SODA (System on Dependent Adults) as follows:

1. Choose the number of days on the "Extension" drop down box on the Evaluation tab near the top of the screen.  
SODA only allows you to choose "30 days." However your supervisor may approve a lower number of days depending on the reasons you need for the extension.
2. Choose an "Extension Reason" from the drop down box.
3. Click on the "Request Extension" button.

An email will automatically be sent to your supervisor. Form 470-0627, *Dependent Adult Abuse Report Request for Extension*, will automatically be stored in "Documents."

When your supervisor approves an extension of time to complete the report, complete and send form 470-3246, *Dependent Adult Protective Extension Notification*, to notify the subject of the report of the extension of time.

### **Addenda**

**Legal reference:** 441 IAC 176.6(5)

Submit an addendum to the report when any of the following occur:

- ◆ New information about the allegation becomes available that would alter the finding, conclusion, or recommendation of the original report.
- ◆ An alleged perpetrator who was previously unavailable comes forward and requests an interview to address the allegation of the report.
- ◆ A final appeal decision modifies any portion of a report. Submit an addendum reflecting the appeal decision within 60 days of the decision.
- ◆ Documentation related to a report arrives after the report is completed and filed.

If you decide to change the original report, take the following steps:

- ◆ Prepare an addendum to delete, add, or provide corrected information to the original report. Include new or corrected information in the addendum. Extensive changes may require submission of an entire corrected report, rather than referencing the original in an addendum.
- ◆ Transmit the addendum or revised report to the county attorney, using form 470-0688, *Dependent Adult Abuse Evaluation or Assessment Report*. Check the "addendum" section under "type of report" on the "Evaluation" screen in SODA. Identify the section of the original report being supplemented or corrected.
- ◆ Notify the subjects of the evaluation or assessment, the mandatory reporter (if applicable), and any other person who has received a copy of the original report of the changes, using form 470-2444, *Adult Protective Notification*, in SODA.
- ◆ If there is an open service case, notify the assigned caseworker of the changes to the original report.

### **Forms and Correspondence**

After completing the assessment or evaluation report, you are responsible for:

- ◆ [Notifying subjects and others of the outcome.](#)
- ◆ [Notifying the facility of problems with policy or procedure \(if applicable\).](#)
- ◆ Sending a copy of the completed report to the county attorney's office.

#### **Notice of Outcome to Subjects and Others**

**Legal reference:** 441 IAC 176.10(9) and (10)

Make reasonable attempts to notify subjects of a report verbally of the evaluation or assessment outcome. Do this as soon as you have completed the report.

Use form 470-2444, *Adult Protective Notification*, in SODA to provide written notice of the results of a dependent adult abuse evaluation or assessment to:

- ◆ All subjects of the evaluation or assessment, including:
  - The dependent adult victim.
  - The guardian of the dependent adult victim.
  - The alleged perpetrator.

- ◆ All mandatory reporters who reported suspected abuse that has been evaluated or assessed.
- ◆ A DHS worker who conducted a courtesy interview for the case at the request of the assigned worker.

Complete and send this notice when you complete the report, or whenever you submit an addendum. When a victim has cognitive difficulties and would not comprehend the content of the notification, send the notice addressed to the guardian and the dependent adult.

Inform subjects of a report and the mandatory reporter who made the report (if applicable) of their right to obtain a copy of dependent adult abuse information, included in the report.

### **Notice of Problems With Agency or Facility Policy or Practice**

While completing an evaluation or assessment in an agency, program, or facility, you may discover problems with policy, practice, or compliance with licensing, approval, accreditation, or registration rules. If so, after completing the evaluation or assessment, you must send a notice to the agency, program, or facility about those problems.

This notice is required regardless of whether the abuse allegations are founded, confirmed, not registered, or unfounded. For instructions on completing the Notice to Facility and a sample letter, see Comm. 195, [Facility, Agency, and Program Evaluation Handbook](#).

## **Delivery of Protective Services**

The dependent adult may voluntarily accept services of the Department or other community agencies to address the problems identified in the evaluation or assessment. Court intervention is required to appoint a legal representative for the dependent adult or to compel the dependent adult to accept mental health or substance abuse services. If no other services are available or acceptable to an at-risk adult, you may need to continue periodic protective visits.

Protective services are described in the following sections:

- ◆ [Voluntary dependent adult abuse services](#)
- ◆ [Caretakers who have power of attorney for health care](#)
- ◆ [District court intervention](#)
- ◆ [Periodic visits](#)

### **Voluntary Dependent Adult Abuse Services**

**Legal reference:** 441 IAC 176.6(7)

You may offer dependent adult abuse services regardless of the conclusion of the report. You may offer services in cases where abuse is unfounded but a significant potential for abuse is identified for any dependent adult in the home.

Explain to the dependent adult that the Department does not have legal authority to compel the acceptance of protective services. When you are recommending services, make an effort to prepare the dependent adult for the treatment worker's expected contact.

The dependent adult abuse evaluation or assessment is the beginning of the case planning and assessment procedure. A comprehensive case plan is not required for dependent adult abuse evaluations or assessments. However, the case plan is required for all other dependent adult abuse protective services.

You are responsible for providing an assessment to the treatment or services unit. This may be included in the abuse report, the written referral to services, or a transfer memo.

When protective services are accepted, the length of time that service is provided is limited by policy governing the specific service. Terminate treatment services as soon as:

- ◆ The case plan requirements that affect the protection of the dependent adult are met, or
- ◆ The dependent adult withdraws or refuses further treatment services.

### **Dependent Adult Abuse Protective Services Case Plan**

Include in the dependent adult abuse protective services case plan the following:

- ◆ Assessment:
  - The mental and physical challenges that prevent the person from being independent.
  - The services needed to protect the dependent adult or assist the adult towards independence.

- ◆ Financial eligibility:
  - Dependent adult protection, social casework, and adult support may be provided without regard to income to dependent adults who are determined by an evaluation or assessment to be at risk of abuse.
  - All other services provided to dependent adults who have been determined to be at risk of abuse can be provided only if the dependent adult meets the financial eligibility guidelines of the service that is being provided.

Some counties provide local purchased services to dependent adults at risk of abuse without regard to income. Check for local resources.

- ◆ Complete the rest of the case plan according to instructions currently in place for all case plans. Generally the case plan will include:
  - Expected outcomes of the case plan.
  - Specific services and who will provide them.
  - Responsibilities and action steps for all persons included in the case plan, including the dependent adult.
  - Reassessment and revision.

### **Caretakers Who Have Power of Attorney for Health Care**

**Legal reference:** Iowa Code sections 144B.4(1) and (2)

A caretaker who has the power of attorney for health care decisions for the dependent adult and is not a relative may be violating Iowa Code section 144B.4, which prohibits designation of the following as the attorney in fact to make health care decisions for a person under a durable power of attorney for health care:

- ◆ A health care provider who is attending the person on the date of the designation.
- ◆ An employee of a health care provider that is attending the person on the date of designation unless the employee is related to the person by blood, marriage, or adoption within the third degree of consanguinity.

This law does **not** apply to all other powers of attorney, which concern financial, not health care matters. (See Iowa Code Chapter 633B, "Powers of Attorney.") There is no legal prohibition against caretakers being given power of attorney for financial matters whether related or not.

If you discover a caretaker who is not a relative as described above and has power of attorney for health care decisions for a dependent adult, notify the county attorney and include this information in your evaluation of the abuse allegation.

Because this is in violation of the law, another person will need to be designated with power of attorney for health care decisions for the dependent adult. Relay this information to the dependent adult if the dependent adult appears competent to comprehend it. If not, make a referral to the local DHS service unit, case management, or other local agencies that could arrange for a new power of attorney for health care decisions.

Attempt to determine if the person with the power of attorney for health care decisions is performing in that capacity for any other dependent adults that the person is providing care for and who are not a relatives as described above. If so:

- ◆ Contact the county attorney's office, as the person may be in violation of the law; and
- ◆ Make a referral to the Intake Unit on any other dependent adults for whom the person may have power of attorney for health care. It is reasonable to assume the caretaker may be exploiting the other dependent adults.

### **District Court Intervention**

**Legal reference:** Iowa Code sections 235B.3(7), 235B.17, 235B.18, and 235B.19; 441 IAC 176.6(8), 176.6(9), 176.6(10)

Supervisory approval is required in making a decision about pursuing court action. Determine whether the court should be involved in a particular case based on these factors:

- ◆ Is the adult competent to make decisions regarding personal and financial affairs?
- ◆ If the adult appears to be incompetent, is the condition temporary or permanent?
- ◆ Has the adult exhibited behaviors that were life threatening to self or to others?
- ◆ Has a caretaker prevented an abused dependent adult from receiving services?
- ◆ Does an abused dependent adult who lacks capacity to consent need emergency services or protection from a perpetrator?

- ◆ Does the dependent adult appear to lack the capacity to make decisions concerning finances?
- ◆ Does the dependent adult appear to be making financial decisions that are not in the adult's best interests?

The decision to pursue court action is not necessarily based on a finding that a dependent adult is abused. The evaluation or assessment may reveal a circumstance which does not constitute dependent adult abuse, but which requires court intervention. When legal intervention is necessary, consider the least restrictive legal option that is in the best interest of the dependent adult. Legal interventions discussed in this chapter include:

- ◆ [Court-ordered interventions](#)
- ◆ [Emergency orders for protective services](#)
- ◆ [Guardianship](#)
- ◆ [Conservatorship](#)
- ◆ [Substance abuse commitment](#)
- ◆ [Mental health commitment](#)

Legal options that are less restrictive and available in Iowa are:

- ◆ Conditional guardian or conservator
- ◆ Temporary conservatorship during an evaluation or assessment
- ◆ Temporary guardian or conservator
- ◆ Emergency temporary guardian or conservator
- ◆ Power of attorney
- ◆ Representative payee
- ◆ Standby guardian

Information on representative payees can be obtained from any Social Security Administrative office. Consult your county attorney for information on less restrictive legal options. Legal options for persons who have mental retardation are found in Iowa Code Chapter 222.

#### **Legal Counsel Appointed for Dependent Adult**

**Legal reference:** Iowa Code Section 235B.3(7)"c"

In every case involving dependent adult abuse substantiated by the Department that results in a judicial proceeding on behalf of the dependent adult, the court shall appoint legal counsel to represent the dependent adult in the proceedings.

The court may also appoint a guardian ad litem to represent the dependent adult, if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem.

Before legal counsel or a guardian ad litem is appointed, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement.

If, on the basis of that financial statement, the court deems that the dependent adult or the responsible person is able to bear all or a portion of the cost of a legal counsel or guardian ad litem, the court shall so order. When the dependent adult or the responsible person is unable to bear the cost of legal counsel or guardian ad litem, the expense shall be paid out of the court expense fund.

### **Court-Ordered Interventions**

**Legal reference:** Iowa Code Sections 235B.17, 235B.18, and 235B.19

You may petition the court for orders to prohibit the caretaker from interfering with the provision of protective services to a dependent adult who has agreed to protective services. Present your petition to the court in the county where the dependent adult lives. The petition must allege specific facts sufficient to demonstrate that the dependent adult needs protective services and consents to receive them and that the caretaker refuses to allow provision of the services.

The judge must find by clear and convincing evidence that the dependent adult is in need of protective services and consents to receive them and that the caretaker refused to allow the services.

If you determine that a dependent adult is a victim of abuse, and lacks the capacity to consent, you may petition the court for:

- ◆ Protective services for the dependent adult
- ◆ Emergency protective services, including:
  - Removing the dependent adult to safer surroundings.
  - Provision of medical services.

- Provision of other services to remove the conditions creating danger to health or safety of the dependent adult.
- Temporary restraining orders to prevent third persons from specific acts. (See [Emergency Order for Protective Services](#).)
- Suspension of powers granted to a guardian or conservator and subsequent appointment of new temporary guardian or conservator pending a decision by the court on whether the powers of the initial guardian or conservator should be reinstated or whether the initial guardian or conservator be removed.

If a caretaker who is the guardian or conservator of a dependent adult is interfering with the provision of protective services to the dependent adult, the need for the protective services takes precedence over the guardian or conservator's legal ability to prevent the services from being provided. Therefore, even though there is a legal guardian or conservator for the dependent adult, proceed with the petition if it has been determined the dependent adult is in need of protective services.

Before you request the assistance of your county attorney, acquire the facts for the petition. The petition shall state the following information as far as is known:

- ◆ Specific verified information sufficient to demonstrate that the dependent adult:
  - Is in need of protective services.
  - Lacks capacity to consent to the receipt of services (except when the request is for a court order to prohibit the caretaker from interfering with the dependent adult who has agreed to receiving services).
- ◆ The name, date of birth, and address of the dependent adult who needs services.
- ◆ The nature of the dependent adult abuse.
- ◆ The protective services required.
- ◆ The name and address of the caretaker if the caretaker is refusing to allow the provision of services.

After you petition the court for an order authorizing the provision of protective services for an abused dependent adult who lacks capacity to consent, the court shall:

- ◆ Set the case for hearing within 14 days of the filing of the petition.
- ◆ Send notice to the dependent adult at least five days before the hearing.
- ◆ If the judge determines that the dependent adult lacks capacity to waive the right of counsel, the court may appoint a guardian ad litem for the dependent adult.
- ◆ If the petition is to prevent the caretaker from interfering with the provision of services, send notice to the caretaker at least five days before the hearing.

At the hearing, if the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and lacks capacity to consent to the receipt of protective services, the judge may issue an order authorizing the provision of protective services.

The order may include the designation of a person to be responsible for performing or obtaining protective services on behalf of the dependent adult or otherwise consenting to the receipt of protective services on behalf of the dependent adult.

Within 60 days of the appointment of a person to be responsible for performing or obtaining protective services, the court shall conduct a review to determine if a petition for guardianship should be initiated for good cause shown, in accordance with Iowa Code Section 633.552. The court may extend the 60-day period for an additional 60 days. At the end of the period, the court shall conduct a review to determine if a petition for guardianship shall be initiated.

A dependent adult may not be committed to a mental health facility using a petition for protective services. A determination by the court that a dependent adult lacks the capacity to consent to the receipt of services does not affect incompetency proceedings for guardianship or any other proceedings. Incompetency proceedings for any other actions, such as guardianship, do not have a conclusive effect on the question of capacity to consent to the receipt of protective services.

NOTE: An abused dependent adult who lacks capacity to consent may receive court-ordered protective services only if that person is eligible for already existing or available services.

### **Emergency Order for Protective Services**

**Legal reference:** Iowa Code Section 235B.19 as amended by 2011 Iowa Acts, House File 649, section 91

When you petition the court for an emergency order authorizing protective services, the court may order emergency services. More than likely, the court will set a date for a hearing within 14 days of the filing of the petition for the court order.

To obtain an emergency order without a hearing, you must be able to verify the information contained in the request for the emergency order. The most expedient method is an affidavit describing the emergency, signed by you, and notarized by a notary public.

If that is not possible, you may use witness statements. Try to get statements from persons who are at the scene of the abuse with you, such as the law enforcement officer, public health nurse, relative of the dependent adult, or neighbor.

If a notary public is not available and no witnesses are willing to sign a statement, you can explain the situation to the judge. The judge may be willing to issue an emergency order without witnesses or an affidavit signed by a notary public. It is in your best interests to have the affidavit signed by a notary public and to have witnesses sign statements.

If that is not possible, you may use witness statements. Try to get statements from persons who are at the scene of the abuse with you, such as the law enforcement officer, public health nurse, relative of the dependent adult, or neighbor.

If a notary public is not available and no witnesses are willing to sign a statement, you can explain the situation to the judge. The judge may be willing to issue an emergency order without witnesses or an affidavit signed by a notary public. It is in your best interests to have the affidavit signed by a notary public and to have witnesses sign statements.

Follow directions outlined in [Court-Ordered Interventions](#):

- ◆ Before you provide information to the county attorney to petition the court for you, or
- ◆ If you are petitioning the court without the assistance of the county attorney.

When requesting an emergency order for protective services, you must determine if the dependent adult has a guardian or a durable power-of-attorney for health care. If so, the name and address of that person must be added to the petition for the purpose of mailing this person a copy of the court order.

If the dependent adult does not have someone legally making decisions on the adult's behalf, determine the name and address of the dependent adult's spouse, a child, grandchild, sibling, aunt, uncle, niece, nephew or cousin (in that order of priority) for the purpose of mailing this person a copy of the court order.

You are responsible for notifying this person even if this person is suspected of being the caretaker responsible for the abuse. (See [Emergency Services Petition Served on Dependent Adult.](#))

The court may find probable cause to believe that:

- ◆ The abuse presents an immediate threat to the dependent adult's health or safety or results in irreparable harm to the dependent adult's physical or financial resources or property, and
- ◆ The dependent adult lacks the capacity to consent to the receipt of services.

If so, the court may issue an emergency court order to:

- ◆ Remove the dependent adult to safer surroundings.
- ◆ Provide medical services.
- ◆ Provide other available services necessary to remove conditions creating the danger to health or safety. This includes the services of law enforcement officers or emergency services personnel.
- ◆ Suspend powers granted to a guardian or conservator and subsequent appointment of new temporary guardian or conservator pending a decision by the court on whether the powers of the initial guardian or conservator should be reinstated or whether the initial guardian or conservator be removed.

The court may find probable cause to believe that:

- ◆ Dependent adult abuse has occurred and is either ongoing or is likely to reoccur,
- ◆ The abuse presents an immediate threat to the dependent adult's health or safety of or results in irreparable harm to the dependent adult's physical or financial resources or property, and
- ◆ The dependent adult lacks the capacity to consent to the receipt of services.

In those circumstances, the court may issue an emergency order enjoining the caretaker from any of the following:

- ◆ Removing the dependent adult from the care or custody of another.
- ◆ Committing dependent adult abuse on the dependent adult living at the dependent adult's residence.
- ◆ Contacting the dependent adult in person or by phone.
- ◆ Selling, removing, or otherwise disposing of the dependent adult's personal property.
- ◆ Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest.
- ◆ Negotiating any instruments payable to the dependent adult.
- ◆ Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property.
- ◆ Exercising any powers on behalf of the dependent adult through representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the dependent adult's behalf.
- ◆ Engaging in any other specified act which, based upon the facts alleged, would constitute harm or a threat of imminent harm to the dependent adult or would cause damage to or the loss of the dependent adult's property.

The emergency order expires at the end of 72 hours from the time of the order, unless the 72-hour period ends on a Saturday, Sunday or legal holiday. In that case, the order is automatically extended to four p.m. on the first succeeding business day. An order may be renewed for not more than 14 additional days.

The court may modify or terminate the emergency order on the petition of the Department, the dependent adult, or any person interested in the dependent adult's welfare.

If a judge is not available to obtain an emergency order, you may:

- ◆ Contact law enforcement to remove the dependent adult to safer surroundings.
- ◆ Arrange for the provision of medical examination, treatment if indicated.
- ◆ Arrange for the provision of or provide other available services necessary to remove conditions creating the immediate danger to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult.

When it has been necessary to arrange for emergency protective services without a court order, you must obtain an order not later than 4:00 p.m. on the first succeeding business day after the date on which protective or other services are provided.

If you do not obtain an emergency order within the prescribed period, you must cease providing protective services and, if necessary, arrange for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

A person, agency, or institution acting in good faith in removing a dependent adult or in providing services, and an employer of or person under the direction of such a person, agency, or institution, has immunity from any civil or criminal liability that might otherwise be incurred as the result of the removal or provision of services.

You do not have the authority to arrange for the provision of services to persons who are not otherwise eligible for the services or for using services that do not currently exist or are otherwise available.

"Arranging for provision of services" **does not** mean authorizing specific services to be provided. Your responsibility is to make referrals to local provider agencies (usually through phone calls). These agencies will determine if the dependent adult is eligible for the services and specifically what services are needed to remove the conditions creating the immediate danger to the dependent adult's health or safety.

“Arranging for the provision of medical treatment” **does not** mean giving or denying consent to any specific treatment. Your responsibility is arranging for the dependent adult to get to medical personnel or getting medical personnel to the dependent adult (in most circumstances by a phone call to local law enforcement or to 911). Professional medical personnel will authorize specific treatment.

### **Emergency Services Petition Served on Dependent Adult**

**Legal reference:** Iowa Code section 235B.19 as amended by 2011 Iowa Acts, House File 649, section 91

If a judge issues an order for emergency services, you must serve a copy of the petition and the order authorizing protective services:

- ◆ In person to the dependent adult. Leave a copy of the petition and order authorizing protective services with the dependent adult.
- ◆ By mail to one of the following competent adults in the following priority:
  - An attorney in fact named by the dependent adult as a durable power of attorney power for health care pursuant to Iowa Code chapter 144B.
  - The dependent adult’s spouse.
  - The dependent adult’s children.
  - The dependent adult’s grandchildren.
  - The dependent adult’s siblings.
  - The dependent adult’s aunts or uncles.
  - The dependent adult’s nieces or nephews.
  - The dependent adult’s cousins.

Deliver other copies of the petition and orders in the following manner:

- ◆ In a sealed envelope,
- ◆ Addressed to the person being served at the person’s last known post office address,
- ◆ Deposited in a mail receptacle provided by the United States Postal Service,
- ◆ Within three days after filing the petition and receiving the orders.

When the top-priority person available listed above has been served a copy of the petition and any order authorizing protective services, it is not necessary to serve a copy to any of the others listed.

Complete form 470-5067, *Record of Emergency Protective Court Orders Served*, after you have served the petition and court order to the dependent adult in person and to the person's power-of-attorney for health care or relative by mail. Add to the form if further orders are issued by the court. File the form in the dependent adult's case file.

After the emergency petition for protective services has been filed, the Department and all persons served notices of the petition are prohibited from all of the following actions without prior court approval:

- ◆ Selling, removing, or otherwise disposing of the dependent adult's personal property.
- ◆ Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from an account containing securities in which the dependent adult has an interest.

### **Appointment of Temporary Guardian**

**Legal reference:** Iowa Code section 235B.19(4)

If, after consulting with your supervisor, you believe the best interests of the dependent adult can be served by requesting a temporary guardian, contact your county attorney. The county attorney makes the request for a court order to the appropriate court.

If during an evaluation you discover evidence that leads you to believe the dependent adult's health or safety is in danger and the dependent adult lacks capacity to consent to services, the court may order the appointment of a temporary guardian without notice to the dependent adult or the dependent adult's attorney. The following conditions must be met:

- ◆ It clearly appears from the specific facts shown in the affidavit or the by the verified petition that:
  - The dependent adult's decision making capacity is so impaired that the person is unable to care for personal safety or to attend to or provide for basic necessities; or
  - Immediate and irreparable injury, loss, or damage will result to the dependent adult before the dependent adult or the dependent adult's attorney can be heard in opposition.

- ◆ The Department certifies to the court in writing any efforts made to give notice or the reasons supporting that notice not be required.
- ◆ The Department files with the court a request for a hearing on the petition for the appointment of a temporary guardian.
- ◆ The Department certifies the notice of petition, order, and all filed reports and affidavits will be sent to the dependent adult by personal service within the time period the court directs but not more than 72 hours after entry of the order of appointment.

A hearing on the petition for the appointment of a temporary guardian will be held within the time period prescribed by the court. If the Department does not proceed with a hearing on the petition, the court on the motion of any party or on its own motion may dismiss the petition.

All of the information needed for a verified petition of an involuntary guardian must be in the petition for a temporary guardian. See [Involuntary Guardianship](#). The county attorney will assist you with any questions you have regarding the process to request a court order and obtain the information needed.

The order of appointment of the temporary guardian will expire as prescribed by the court, within 30 days unless extended by the court for good cause.

### **Appointment of Temporary Conservator**

**Legal reference:** Iowa Code section 235B.19(4)

During an evaluation, you discover evidence that leads you to believe the dependent adult's resources are in danger of being exploited due to the dependent adult's lack of capacity to consent or incompetency. If so, consider petitioning the court for a temporary conservatorship. A temporary conservator can freeze the assets of the dependent adult to prevent further exploitation of the resources, if that is found to have been occurring.

If there is probable cause to believe that a dependent adult who lacks capacity to consent is causing irreparable harm to that person's physical or financial resources or property, the county attorney may request a temporary conservatorship without notice to the dependent adult or the dependent adult's attorney.

When you want to include information from a document that includes information not related to the abuse allegation, do the following:

- ◆ Review the document.
- ◆ Summarize the information related to the abuse allegation.
- ◆ Add the summarized information to your written report.
- ◆ Clearly, identify the source of the information in the report.
- ◆ Destroy the document or return it to the person who provided it.

Information contained in the document that becomes necessary for legal actions can be obtained from the person who wrote the report by subpoena from the court.

### **Sealing and Expungement of Reports**

**Legal reference:** Iowa Code Section 235B.9

When you complete the report, destroy any notes you created during the course of the assessment. Retain assessment and evaluation case records according to the conclusions in the report:

- ◆ **Founded evaluation reports.** The Central Abuse Registry seals founded dependent adult abuse evaluation reports when ten years have elapsed since the last founded evaluation report on the dependent adult or the perpetrator.  
  
The Registry notifies the local office of the expungement of founded information on form 470-0688, *Dependent Adult Abuse Evaluation or Assessment Report*. When you receive the notice of expungement, take action to destroy local office copies of the record as directed.
- ◆ **Founded assessment reports**, which include self-denial of critical care (no caretaker) and confirmed, not registered reports of physical abuse or denial of critical care by a caretaker: Founded assessment reports are kept in local office case records. They become part of service cases. Service cases are kept five years from the date the case is closed and then destroyed.
  - The local office destroys **self-denial of critical care** reports that are founded five years from the date the abuse was founded or the case is closed, according to state retention policies. (*RECORDS MANAGEMENT MANUAL*, Records Retention and Disposition Schedule series SOC 23, P/w/RM 7/Soc23)

- The local office destroys **confirmed, not registered** reports of physical abuse or denial of critical care by a caretaker that are five years from the date the abuse was confirmed, unless there is a subsequent report with the same person responsible for abuse within the five years.

If there is a subsequent report **within the five years**, the report is kept in the local office for **ten years** from the date of the subsequent report and then sealed. Follow local procedure for sealing case records.

File sealed reports in a separate file, marked "Sealed Dependent Adult Abuse Reports." (Sealed reports can be accessed only by court order.)

- ◆ **Unfounded evaluation and assessment reports.** Destroy unfounded dependent adult abuse evaluation or assessment reports five years after it is determined that the report is unfounded. Follow local procedure for destroying unfounded case records.

The Registry maintains statistics on the number of unfounded evaluation reports and expunges the identifying information five years from the date it is determined that the report is unfounded.

- ◆ **Rejected intakes.** Intake reports that are reject for evaluation or assessment for failing to meet the definition of dependent adult abuse shall be kept in the Centralized Service Intake Unit for three years and then expunged.

The Central Abuse Registry will approve release of dependent adult abuse information from reports to the following people:

	<b>Founded</b>	<b>Assessment</b>	<b>Unfounded</b>
<b>◆ Others</b>			
Researcher	Yes	No	No
Registry and Department personnel	Yes	Yes	Yes
Person under contract with Department to carry out the duties of the Registry	Yes	Yes	Yes
Department of Justice for victim assistance	Confirm existence of report & referral date	Confirm existence of report & referral date	No
Another state's adult protection agency evaluating or treating the dependent adult	Necessary information	No	No
Attorney representing the Department	Yes	Yes	Yes
Designated protection and advocacy agency	Yes	No	No
State Ombudsman/Citizen's Aide Office	Yes	Yes	Yes
Long-term care resident's advocate	Yes	Yes	Yes
Substitute decision-making board, guardian, conservator, or service provider	Yes	Yes	No
For employee background checks:	Yes	No	No
Health care facility administrator	Yes	No	No
Administrator of agency providing care to a dependent adult in another state	Yes	No	No
Superintendent of a school district	Yes	No	No
Department of inspections and Appeals	Yes	No	No
Nursing student programs	Yes	No	No
Board of Educational Examiners	Yes	No	No
Department of Aging	Yes	No	No
Iowa Veterans Home (for volunteers)	Yes	No	No
Certified nurse aid program	Yes	No	No
Juvenile detention or shelter program	Yes	No	No

- ◆ The superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for the purposes of a volunteer or employment record check.
- ◆ The Department of Inspections and Appeals for the purposes or record checks of applicants for employment with the Department of Inspections and Appeals.
- ◆ An administrator of a licensed hospital, if the data concerns a person employed or being considered for employment by the hospital.
- ◆ The long-term care resident's advocate, if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility. The advocate also has access to unfounded information if it has been demonstrated the unfounded information is necessary for the protection of a dependent adult.
- ◆ An employee of the state or local Office of Substitute Decision Maker who has been appointed by the court as a guardian or conservator of the dependent adult victim or the person designated responsible for performing or obtaining protective services on behalf of a dependent adult.
- ◆ An employee of a nursing student program for the purpose of completing an abuse background check on prospective students.
- ◆ The Board of Education Examiners for the purpose of determining whether a license, certificate, or authorization should be issued, denied, or revoked to employees, including teachers and coaches, of the Board of Education.
- ◆ The Iowa Veterans Home for the purpose of conducting a background check on volunteers or potential volunteers at the Iowa Veterans Home.
- ◆ The administrator of a certified nurse aide program if the data relates to a record check of a student of the program performed pursuant to Iowa Code section 135C.33.
- ◆ The administrator of a juvenile detention or shelter care home if the data relates to a record check of an existing or prospective employee, resident, or volunteer for or in the home.

"Necessary information" consists of a minimum of disposition data as defined in this chapter. It may be expanded to include the entire dependent adult abuse report.

When releasing dependent adult abuse information to someone who has access under Iowa Code section 235.6, you may withhold the name of the person who reported the abuse if you believe the disclosure of that person's identity would be detrimental to the person who made the report.

Registry and other Department personnel and the long-term care resident's advocate also have access to **unfounded** dependent adult abuse information when necessary in the performance of their duties. Department personnel do not need to complete form 470-0612, *Request for Dependent Adult Abuse Registry Information*, to access dependent adult abuse information.

Researchers receive only that information necessary to implement the research design. No details identifying any subject of an evaluation or assessment are released to a researcher unless they are essential to the research. All individually identified information must be removed from any intermediate or final research report.

Information released to the Department of Justice for purposes of establishing eligibility for payment of victim's assistance shall be limited to the existence of a report and the referral date of the report.

When you receive requests for information from another state, send the requester form 470-0612. Upon return of the completed form, verify the requester's identity by telephone contact and then forward the request to the Central Registry.

When necessary, this process can be expedited by referring the requester directly to the Central Abuse Registry. The Central Registry will verify the requester's identity by telephone contact and will release necessary information to the other state by telephone. Written dependent adult abuse information may be forwarded to the requesting state with a form 470-0612 attached for return to the Central Registry.

### **Background Checks in Facilities and Waiver Agencies**

**Legal reference:** Iowa Code Section 235B.6(2)(c) and 235B.6(2)(e)

The administrator or the administrator's designee in a health care facility or a medical assistance home- and community-based services waiver agency may request dependent adult abuse information directly from the Central Registry for the purpose of hiring staff or continued employment of staff. The Registry will disseminate the information to the administrator or the administrator's designee.

“Necessary information” consists of a minimum of disposition data. “Necessary information” may be expanded to include the entire dependent adult abuse report.

When releasing dependent adult abuse information to a health care facility or waiver agency, you may withhold the name of the person who reported the abuse if you believe the disclosure of that person’s identity would be detrimental to the person who made the report.

For health care facility checks, the Registry will notify the person requesting the information whether the report is still within the time period that an appeal request can be accepted, whether the report is under appeal, or whether the period for appeal has passed (i.e., the report is final).

The hiring authority of a Department-operated health care facility that provides direct care requests dependent adult abuse information directly from the Central Registry for the purpose of determining continued employability of a person employed, with or without compensation.

The Registry disseminates the information to the personnel office of the Department. The personnel office will redisseminate the information to the hiring authority only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, it will notify the hiring authority that no job-related dependent adult abuse information is available. If the Central Registry and local office files contain no information, the hiring authority will be so informed.

### **Background Checks for Employers Without Other Access**

| **Legal reference:** Iowa Code section 235B.6(2)

Agencies that don’t otherwise have access to dependent adult abuse information that request background checks on prospective employees may request a background check from the Central Abuse Registry by following the instructions below.