

## SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, Vermont Legal Aid and Disability Rights Vermont (“DRV”) have brought an action for mandamus under Vermont Rule of Civil Procedure 75 on behalf of Community of Vermont Elders, DRV, Southwestern Vermont Council on Aging, and Senior Solutions, captioned *C.O.V.E., et al., v. A.H.S., et al.*, Docket No. 768-12-11 Wncv (the “lawsuit” or the “litigation”); and

WHEREAS, Defendants dispute the standing of Plaintiffs to bring this action and generally and specifically deny the allegations that Defendants have violated their statutory obligations under Chapter 69 of Title 33 of the Vermont Statutes and any attendant policies or practices; and

WHEREAS, nothing in this Agreement is intended to, nor shall be construed as, an admission of liability; and

WHEREAS, Plaintiffs and Defendants are involved in the discovery phase of the litigation as of the date of this Agreement; and

WHEREAS, it is mutually advantageous for both parties to settle this dispute without further litigation;

NOW THEREFORE, in consideration for the terms described below, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **I. DEFINITIONS**

- A. “APS Advisory Subcommittee” shall mean the subcommittee of the DAIL Advisory Board with that name. The Subcommittee advises the Department regarding the prevention of abuse, neglect and exploitation of vulnerable adults in Vermont and makes policy and procedure recommendations to the Commissioner.
- B. “Commissioner” shall mean the Commissioner of the Department of Disabilities, Aging & Independent Living.
- C. “Department” shall mean the Department of Disabilities, Aging & Independent Living.
- D. “Parties” shall mean Plaintiffs Community of Vermont Elders, DRV, Southwestern Vermont Council on Aging, and Senior Solutions and Defendants Agency of Human Services, Secretary Douglas Racine,

Department of Disabilities, Aging & Independent Living, and Commissioner Susan Wehry.

- E. “Panel” shall mean the independent group tasked with performing a quarterly file review of APS files for the purpose of continuous quality improvement, as described in Section IV and Exhibit D of this Agreement.

## II. PROCEDURE

- A. Execution of Release: Simultaneous with the execution of this Settlement Agreement, Plaintiffs shall execute a Release in favor of the Defendants in the form attached as Exhibit A to this Agreement.
- B. Dismissal of Action with Prejudice: In accordance with Vermont Rule of Civil Procedure 41(a)(1), upon the execution of this Agreement and Release, the Parties shall execute a Stipulation of Dismissal of the litigation with prejudice and without costs, in the form attached as Exhibit B, which Defendants will file with the Court.
- C. Effective Date of the Agreement: This Agreement shall become effective upon the final execution of this Agreement and Release and the filing and entry of the Stipulation of Dismissal of the litigation by the Court, in accordance with Vermont Rule of Civil Procedure 41(a). For the purposes of this Agreement, the date the Court approves the dismissal shall be the “Settlement Date.”
- D. Filing with the Court: Upon execution of this Agreement, Release and Stipulation of Dismissal, Defendants shall file a copy of this Agreement, along with Exhibits C and D, attached hereto, as an addendum to the stipulated dismissal.

## III. UPDATE OF APS POLICY AND PROCEDURE MANUAL

The Commissioner will cause the APS Policy and Procedure Manual to be updated to reflect specific current practices that are being adopted as official APS policy within thirty (30) days of the Settlement Date. This update will include the changes listed in “Revisions to Adult Protective Services Policy and Procedure Manual,” attached as Exhibit C. APS shall train its staff on the policy changes set out in Exhibit C within 60 days of the Settlement Date. APS shall inform DCF intake staff of any applicable policy changes set out in Exhibit C and offer training on these changes to DCF intake staff in a timely manner.

#### **IV. IMPLEMENTATION OF APS FILE REVIEW PANEL**

Consistent with the terms, conditions, requirements and procedures described and enumerated in the “Adult Protective Services File Review Panel” document, attached as Exhibit D and hereby incorporated into this Settlement Agreement, the Commissioner will ensure that the Panel is timely constituted and sufficiently supported to carry out its functions as described in Exhibit D.

#### **V. MONITORING AND REPORTING**

- A. The Plaintiffs shall select and the Commissioner shall recommend two of the following individuals for appointment as full members on the DAIL Advisory Board, to serve on the APS Advisory Subcommittee: the Executive Director of DRV, the Executive Director of COVE, the Executive Director of Southwestern Vermont Council on Aging, and the Executive Director of Senior Solutions. The Commissioner shall recommend the remaining two individuals to serve as ad hoc members of the APS Advisory Subcommittee. In the event that any one of these individuals is not appointed by the Governor, or a previously appointed individual resigns and must be replaced, the Parties shall select a suitable replacement for recommendation by mutual agreement.
- B. APS shall provide a copy of this Settlement Agreement and the associated Exhibits to the APS Advisory Subcommittee within 30 days of the Settlement Date. APS shall provide a copy of the revised policy manual incorporating the policy changes in Exhibit C to the APS Advisory Subcommittee upon adoption. APS shall notify the APS Advisory Subcommittee when it has completed training of APS staff regarding the policy changes. APS shall notify the APS Advisory Committee when the File Review Panel has been established and when the review of the first quarter has begun.

#### **VI. REMEDIES AND EXPIRATION OF AGREEMENT**

This Settlement Agreement shall remain in effect until the shorter of either: (1) APS has proven compliance with applicable benchmarks laid out in Exhibit D for four consecutive quarters and the panel members have no substantial concerns with the APS program based on file review; or (2) the panel has reviewed files for six consecutive quarters or for 18 months from the date of the panel’s first file-review meeting. During that time, either party may commence an action to enforce the terms of this Settlement Agreement, including attached Exhibits incorporated herein, provided however:

- A. The party has complied with any applicable procedure prescribed in the Settlement Agreement or an Exhibit incorporated herein.
- B. The party has made good faith efforts to resolve the dispute without litigation;
- C. Any action for breach of this agreement shall be filed in the State of Vermont Superior Court, Washington Unit, Civil Division; and
- D. The remedy available in any such action shall be specific performance. In no event can any party seek attorneys' fees or costs associated with such an action.

## VII. MISCELLANEOUS

- A. Negotiation and Drafting of Document: This Agreement is a document which both Parties have negotiated and drafted; therefore, the general rule of construction interpreting a document against the drafter shall not be applied in any future interpretation of this Agreement.
- B. Entire Agreement: This Agreement, including Exhibits A-D, represents the entire and only Agreement between the parties. All prior agreements, representations, statements, negotiations and understandings shall have no effect.
- C. Amendments: No changes, modifications or amendments to the terms and conditions of this Agreement shall be effective unless reduced to a writing signed by both Parties.
- D. Governing Law: The law of the State of Vermont shall govern any dispute regarding this Agreement.

## VIII. AUTHORITY

The undersigned representatives of the Parties certify that each is fully authorized by the Party he or she represents to enter into the terms and conditions of this Settlement Agreement and to execute and bind that Party to it.

By the signatures below, and for the consideration contained herein, the Parties agree to be bound by the terms and conditions of this Agreement.

**DISABILITY RIGHTS VERMONT**

141 Main Street

Suite 7

Montpelier, Vermont 05602

By:  \_\_\_\_\_

For Plaintiff Disability Rights Vermont

STATE OF VERMONT

SS.:

COUNTY OF Washington

At Montpelier, in said county, this 27 day of August, 2013,  
personally appeared AJ Ruben on behalf of Disability Rights Vermont  
and acknowledged that the foregoing instrument has been subscribed by him for  
Disability Rights Vermont as his free act and deed and in accordance with authority  
granted to him by Disability Rights Vermont.

Before me,   
Notary Public

My commission expires: 2/10/15

VERMONT LEGAL AID  
264 North Winooski Avenue  
Burlington VT, 05402

By: Barbara Prine

For Plaintiffs Community of Vermont Elders, Southwestern Vermont Council on Aging, and Senior Solutions

STATE OF VERMONT

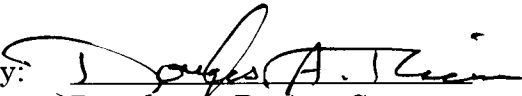
COUNTY OF Chittenden <sup>SS.:</sup>

At Burlington, in said county, this 27<sup>th</sup> day of August, 2013, personally appeared Barbara Prine on behalf of Vermont Legal Aid and acknowledged that the foregoing instrument has been subscribed by her for Plaintiffs Community of Vermont Elders, Southwestern Vermont Council on Aging, and Senior Solutions as her free act and deed and in accordance with authority granted to her by Plaintiffs Community of Vermont Elders, Southwestern Vermont Council on Aging, and Senior Solutions.

Before me, [Signature]  
Notary Public

My commission expires: 2/10/15

STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
208 Hurricane Lane, Suite 103  
Williston, VT 05495

By:   
Douglas A. Racine, Secretary  
For the State Defendants

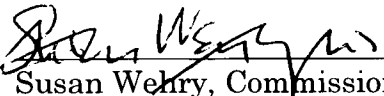
STATE OF VERMONT  
SS.:  
COUNTY OF Chittenden

At Williston, in said county, this 23rd day of August, 2013,  
personally appeared Douglas Racine on behalf of the Vermont Agency of Human  
Services and acknowledged that the foregoing instrument has been subscribed by  
him for the Vermont Agency of Human Services as his free act and deed and in  
accordance with authority granted to him by Vermont Agency of Human Services.

Before me,   
Notary Public

My commission expires: 2/10/2015

STATE OF VERMONT  
DEPARTMENT OF DISABILITIES, AGING & INDEPENDENT LIVING  
103 South Main Street  
Weeks Building  
Waterbury, Vermont 05671

By:   
Susan Wehry, Commissioner  
For the State Defendants

STATE OF VERMONT  
SS.:  
COUNTY OF Ch. Helden

At W. Wiston, in said county, this 26th day of August, 2013,  
personally appeared Susan Wehry on behalf of the Vermont Department of  
Disabilities, Aging & Independent Living and acknowledged that the foregoing  
instrument has been subscribed by her for the Vermont Department of Disabilities,  
Aging & Independent Living as her free act and deed and in accordance with  
authority granted to her by Vermont Department of Disabilities, Aging &  
Independent Living.

Before me,   
Notary Public

My commission expires: 2/10/2015



**RELEASE**

TO ALL TO WHOM THESE PRESENTS SHALL COME  
OR MAY CONCERN:

GREETINGS: KNOW YE, that I, Barbara Prine, as authorized agent for Releasors Community of Vermont Elders, Southwestern Vermont Council on Aging, and Senior Solutions, possessing sufficient authority from each above-named Releasor, for and in consideration of the commitments and promises made by the Agency of Human Services, Secretary Douglas Racine, the Department of Disabilities, Aging & Independent Living, and Commissioner Susan Wehry, the Releasees, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever discharge, and by these presents do for Releasors, their successors and assigns, remise, release, and forever discharge the Releasees, their officers, agents, employees, and insurers, of and from any and all manner of action and actions, grievances, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which Releasors ever had, now have or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release, specifically, any and all claims for injunctive relief, damages, costs and/or for attorneys' fees in connection with, arising out of, or related to any of the claims actually asserted, or which could have been asserted, whether known or unknown, by Releasor against any of the defendants in the state action entitled *COVE, et al. v. AHS, et al.*, Docket No. 768-12-11 Wncv.

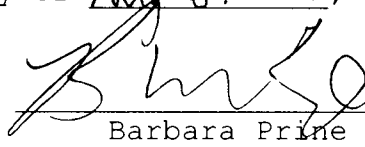
Releasors Community of Vermont Elders, Southwestern Vermont Council on Aging, and Senior Solutions are expressly not waiving their ability, individually or collectively, to bring suit over issues related to Releasees' contracts with and funding of Releasors' programs and services for seniors, specifically state grant numbers #03460-6-1912 and #03460-6-1913.

I expressly acknowledge that the commitments made pursuant hereto are the compromise of a claim disputed both as to liability and relief. It is not, and shall not be deemed to be, an admission of liability, which liability is expressly reserved and denied.

Final Settlement Agreement  
August 13, 2013

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

27<sup>th</sup> day of August, 2013.

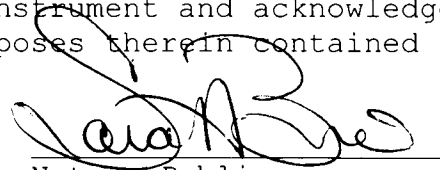
  
Barbara Prime

Agent for Releasors  
Community of Vermont  
Elders, Southwestern  
Vermont Council on  
Aging, Senior Solutions

STATE OF VERMONT )  
COUNTY OF Chittenden ) SS.;

On this the 27<sup>th</sup> day of August, 2013, before  
me personally appeared

Barbara W. Prime,  
known to me (or satisfactorily proven) to be the person whose  
name she subscribed to the foregoing instrument and acknowledged  
that she executed the same for the purposes therein contained as  
her free acts and deeds.

  
Notary Public

My commission expires 2/10/15

**RELEASE**

TO ALL TO WHOM THESE PRESENTS SHALL COME  
OR MAY CONCERN:

GREETINGS: KNOW YE, that I, A.J. Ruben, as authorized agent for Releasor Disability Rights Vermont, possessing sufficient authority from the above-named Releasor, for and in consideration of the commitments and promises made by the Agency of Human Services, Secretary Douglas Racine, the Department of Disabilities, Aging & Independent Living ("DAIL"), and Commissioner Susan Wehry, the Releasees, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever discharge, and by these presents do for Releasor, its successors and assigns, remise, release, and forever discharge the Releasees, their officers, agents, employees, and insurers, of and from any and all manner of action and actions, grievances, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which Releasor ever had, now has or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release, specifically, any and all claims for injunctive relief, damages, costs and/or for attorneys' fees in connection with, arising out of, or related to the claim actually asserted, or any other claim which could have been asserted, whether known or unknown by Releasor against any of the defendants in the state action entitled *COVE, et al. v. AHS, et al.*, Docket No. 768-12-11 Wncv. This waiver does not extend to unrelated claims against departments of the Agency of Human Services other than DAIL.

Except as a vehicle to reinstate the claims brought in this lawsuit, Releasor is expressly not waiving its ability to bring suit based on Constitutional, statutory or common law claims against Defendants on behalf of any individuals for past, current or future harm suffered by those individuals, even when those individuals may be, or have been, qualified to receive services from Adult Protective Services.

I expressly acknowledge that the commitments made pursuant hereto are the compromise of a claim disputed both as to liability and relief. It is not, and shall not be deemed to be, an admission of liability, which liability is expressly reserved and denied.

Final Settlement Agreement  
August 13, 2013

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

27 day of August, 2013.

[Signature], Agent for Releasor  
A.J. Ruben Disability Rights  
Vermont

STATE OF VERMONT )  
COUNTY OF Washington ) SS.;

On this the 27 day of August, 2013, before me personally appeared AJ Ruben, known to me (or satisfactorily proven) to be the person whose name he subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained as his free acts and deeds.

[Signature]  
Notary Public

My commission expires 2/10/15

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 768-12-11 Wncv

COMMUNITY OF VERMONT ELDERS, )  
DISABILITY RIGHTS VERMONT, )  
SOUTHWESTERN VERMONT )  
COUNCIL ON AGING, and )  
SENIOR SOLUTIONS )  
Plaintiffs, )

v. )

AGENCY OF HUMAN SERVICES, )  
and DOUG RACINE )  
in his official capacity, and the )  
DEPARTMENT OF DISABILITIES, )  
AGING AND INDEPENDENT LIVING, )  
and Dr. SUSAN WEHRY )  
in her official capacity, )  
Defendants. )

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to V.R.C.P. 41(a), the parties who have appeared in this action stipulate that Plaintiffs' action, Docket No. 768-12-11 Wncv, against the Agency of Human Services and all other named defendants shall be, and is hereby, Dismissed With Prejudice. A copy of the settlement agreement and associated exhibits C & D is attached to this Order.

The parties shall bear their own costs.

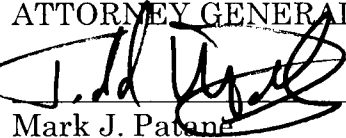
Approved as to form:

DATED at Montpelier, Vermont this 27<sup>th</sup> day of August, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

  
Mark J. Patena  
Todd W. Daloz  
Assistant Attorneys General  
Attorneys for Defendants  
109 State Street  
Montpelier, Vermont 05609-1001  
(802) 828-3176

DATED at Montpelier, Vermont this 27 day of August, 2013.

DISABILITY RIGHTS VERMONT

By:

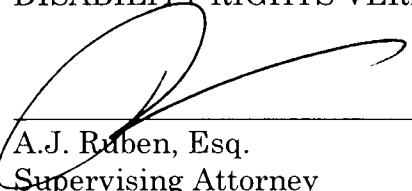
  
A.J. Ruben, Esq.  
Supervising Attorney  
Attorney for Plaintiff DRV  
141 Main St., Suite 7  
Montpelier, VT 05602  
(802) 229-1359

EXHIBIT B

DATED at Burlington, Vermont this 27<sup>th</sup> day of August, 2013.

COMMUNITY OF VERMONT  
ELDERS, SOUTHWESTERN  
VERMONT COUNCIL ON AGING,  
SENIOR SOLUTIONS

By:

  
Barbara Prine, Esq.

Disability Law Project

Michael Benvenuto, Esq.

Senior Citizens Law Project

Attorneys for Plaintiffs Community of

Vermont Elders, Southwestern

Vermont Council on Aging, and Senior

Solutions

Vermont Legal Aid, Inc.

P.O. Box 1367

Burlington, VT 05402

SO ORDERED: \_\_\_\_\_ DATE \_\_\_\_\_  
SUPERIOR COURT JUDGE

**REVISIONS TO ADULT PROTECTIVE SERVICES POLICY AND PROCEDURE MANUAL**

The amendments to the Adult Protective Services Policy and Procedure Manual detailed herein reflect current and past practices of the APS program. These practices will be operationalized as formal policy, in the form noted below, within 30 days of the Settlement Date.

**NOTE:** New language is generally noted by an underline and deleted language with a ~~strikethrough~~.

**Closed Contacts**

*Reference:* APS Policy and Procedure, Section IV – Intake, Screening and Disposition of Reports

- In opening paragraph:

The APS Program Specialist or designated staff person will accept reports of abuse, neglect and exploitation by telephone, facsimile transmission or through online, E-mail submission. The Program Specialist ~~will~~ shall make every effort to obtain the necessary information from the reporter to ensure an accurate ~~assessment~~ intake is completed and entered into the Harmony database.

- In Section IV(A) –

**A. Process for Receipt and Disposition of Reports:**

1. Reports to APS may be made orally or in writing.
2. APS will accept anonymous reports.
3. A toll-free reporting line will be maintained and staffed by APS during normal business hours to receive reports.
4. Voice mail messages left on the APS voice messaging system will generally be returned by the Program Specialist within eight business hours. See § IV(A)(8), below.
5. The Program Specialist will make every effort to ensure that all information obtained is complete and accurate
6. In those instances in which the event that the reporter describes is an emergency, the Program Specialist or designated staff person will instruct the caller to call 9-1-1.
7. In those instances in which the reporter describes a situation in which the health and safety of the alleged victim is in immediate jeopardy and/or they are at immediate risk of serious harm, the Program Specialist or



designated staff person will instruct the caller to contact the local police or the Vermont State Police, whichever is applicable.

8. All intakes shall be completed and a determination made:
  - A. Within 48 hours of receipt of the report, if no additional information is needed to complete the Intake .
  - B. Within four (4) business days, if the initial report provides insufficient information to complete the Intake.
  - C. If the report provides insufficient information for a complete Intake, the Program Specialist shall make two (documented) attempts to contact the Reporter by phone within 48-hours of receipt of the report.

➤ In Section IV (B)

**B. Commencement of an Investigation**

1. Within 48 hours of receipt of a report, the Program Specialist commences the investigation as follows:

- a) If the report is incomplete as received, the Program Specialist will:
  - i. Contact the reporter or victim, and
  - ii. Using a standardized decision-making tool Conduct a structured, in-depth telephone interview to determine:
    - a. Whether the alleged victim for whom a report has been made is a vulnerable adult as defined by relevant law.
    - b. Whether the facts reported meet the statutory definition(s) for abuse, neglect or exploitation as defined by law.
- b) If the report is complete as received and appears to meet the statutory requirements regarding vulnerability and abuse, neglect or exploitation, the Program Specialist will open the report for investigation and assign it to an investigator.
- c) Assigning a report that is incomplete as received for a field screen, as detailed in sections IV(C)(1)(b) and IV(C)(2)(b).

➤ In Section IV(C)

**C. Disposition: Intakes Closed as Contacts:**

1. Determination of vulnerability:
  - a) If the alleged victim for whom a report has been made does not satisfy the statutory definition of vulnerable adult, the intake will not be accepted for investigation and will be closed as a Contact.
  - b) Subject to subsection 2(a), below, if the information provided by the reporter is inconclusive or insufficient to make a determination of

vulnerability, the intake will be assigned for a field screen to determine vulnerability.

2. Determination of abuse, neglect or exploitation:

a) If the allegation on behalf of an alleged victim does not meet the statutory definition(s) of abuse, neglect or exploitation, it will not be accepted for investigation and will be closed as a Contact.

b) Subject to subsection 1(a), above, if the information provided by the reporter is inconclusive or insufficient to make a determination about whether abuse, neglect or exploitation occurred, the intake will be assigned for a field screen to make a determination.

3. If the allegation does satisfy the statutory provisions of Title 33, Chapter 69 the case will be opened and assigned to a field investigator to complete the investigation.

4. If APS:

A. Receives a report with insufficient information to proceed with a screening and disposition, including no identified victim and/or information on how to reach the victim, the Program Specialist:

1. Shall make two attempts by telephone to reach the Reporter and gather more information, to complete the Intake.
2. Shall use other available contact information included in the Report to reasonably attempt to contact the reporter if the attempts to contact the Reporter via phone are unsuccessful.
3. Shall send a determination letter to the Reporter stating that the Intake was screened out because the Report provided insufficient information to proceed with an investigation if all attempts to contact the Reporter are unsuccessful. The letter shall also state that should more information be provided, the decision whether to investigate may be revisited.

B. Receives a report that is not facility-based, with an identified victim and allegation(s) of abuse, neglect or exploitation, but that has no identified perpetrator, the Program Specialist shall make a diligent effort to contact the Reporter to gather this information. If the staff is not successful in reaching the Reporter, the report may be:

1. Opened for a full investigation; or
2. Closed and appropriate referrals may be made to law enforcement and/or other services.

C. Receives a report that is facility-based, with an identified victim and allegation(s) of abuse, neglect or exploitation, but has no identified perpetrator or identifying information for the perpetrator,

the Program Specialist shall refer the report to the Survey and Certification Unit for screening and disposition. See § IV(J), below.

- Add a new sub-section Section IV(F) (with a re-lettering of subsequent sub-sections – NOT NOTED BELOW):

**F. Supervisory Review:**

Supervisory staff shall review a representative sample of all open and closed intakes for:

1. Accuracy and complete information within the report;
2. To ensure appropriate determination status re: statutory requirements;
3. To consult with or provide guidance to the Program Specialist when:
  - A. an initial determination or other question arises; or
  - B. may reverse the determination disposition of the Report.

- Re-write of Section IV(I)(J)

**I.-J. Facility-Based Resident-to-Resident or Patient-to-Patient Reports:**

~~1. APS will accept and screen reports of resident to resident or patient to patient abuse when:~~

~~—— a) The alleged incident results in significant injury to either party that requires medical attention;~~

~~—— and/or~~

~~e) Non-consensual sexual activity has been reported.~~

~~2. All reports of resident to resident or patient to patient incidents will be referred to Survey and Certification for investigation as a Complaint.~~

1. APS will screen all reported incidents of facility-based resident-to-resident or patient-to-patient abuse; and
2. Will open reported incidents for full investigation when:
  - A. The alleged victim reports they have been abused, neglected or exploited by another resident; and/or
  - B. The alleged incident requires that either party receive medical treatment; and/or
  - C. Non-consensual sexual activity occurs between two residents; and/or

- D. There is a pattern of repeated abuse between the alleged perpetrator and one or more alleged victims.
3. A copy of the reported incident shall be referred to the Survey and Certification Unit within 48-hours of receipt.

**Interview with the Victim**

*Reference: APS Policy and Procedure, Section VI – Conducting an Investigation*

- In Section VI(C)

**C. Investigative Requirements:**

1. A visit to the reported victim's place of residence or place of custody, and to the location of the reported abuse, neglect or exploitation.
2. Interviews with all relevant witnesses to the alleged abuse, neglect or exploitation who are available.
3. An interview with the reporter.
4. An interview with the reported victim, shall occur without the reported perpetrator present, and which interview may take place without the approval of the vulnerable adult's parents, guardian or caregiver, but cannot take place over the objection of the reported victim. Interviews with the alleged victim shall generally occur in person.
5. An opportunity for the person who allegedly abused, neglected or exploited the vulnerable adult to be interviewed.
6. As appropriate, an offer of protective service(s) in cases where there is ~~a substantiated finding of evidence that~~ abuse, neglect or exploitation occurred.
7. A written report describing all evidence obtained and recommending a finding of substantiated or unsubstantiated, to be submitted to DAIL's Commissioner or designee.
8. A completed hard file copy, with all required forms and reports, submitted to the APS Program Chief for review.

**Case Closure Timeline**

*Reference: APS Policy and Procedure, Section VII – Conclusion of the Investigation*

In Section VII(A):

- A. Requirements for Timely Investigations: APS staff shall complete all investigative tasks within sixty (60) days for cases involving abuse and neglect, and within ninety (90) days for cases involving financial exploitation.

**Coordinated Treatment Plan**

*Reference:* APS Policy and Procedure, Section VII – Conclusion of the Investigation

In Section VII(E)

**E. Assessment at Case Conclusion:** At the conclusion of ~~the~~ all investigations the APS Investigator will review any protective service actions taken during the course of the investigation and determine whether the victim has need for any additional assistance or referrals.

Decisions regarding provision of protective services ~~or other services~~, will be based upon assessment of the vulnerable adult's needs and preferences. The Investigator will gather sufficient information to identify the client's:

1. Current services, such as medical treatment, mental health counseling, medications, public benefits such as Medicaid, 3 Squares VT, Area Agency on Aging (AAA) assistance.
2. Living arrangements.
3. Financial management assistance, such as but not limited to a representative payee, guardian.
4. Support systems, including family, friends and community service providers.
5. Legal issues, such as the need for a court action, such as a guardianship, restraining order, durable power of attorney.
6. Assistance with treatment needs, such as managing behaviors, social functioning; and/or
7. Education, vocational and rehabilitative services.

If the investigation produces evidence that the vulnerable adult has been abused, neglected or exploited, the Investigator shall arrange for provision of protective services in accordance with a written coordinated treatment plan. A summary of the services and plan shall be included in the Investigative Summary Report, in the Investigative results sub-section. All actions taken by APS to implement a coordinated treatment plan shall be documented in the Harmony database as they occur.

➤ In Section VII(F)

**F. Compliance Checklist/~~Protective Services~~ and/or Summary: Protective Services; Coordinated Treatment Plan: At the case conclusion the Investigator ~~will utilize the Compliance Checklist to~~ shall indicate in the case record within the Investigative Summary report whether one or more protective services were offered or provided to the victim ~~and~~, whether the victim accepted or declined these services, as indicated in the coordinated treatment plan.**

Protective services may include but are not limited to: guardianship; counseling; securing safe/sanitary living conditions; temporary restraining order; protection of financial or other assets; securing a Power of Attorney; etc.

~~The Checklist of services includes:~~

- ~~a) Increased supervision~~
- ~~b) Counseling~~
- ~~c) Guardianship~~
- ~~d) Petition for successor guardian~~
- ~~e) Securing safe and sanitary living conditions~~
- ~~f) Temporary Restraining Order (TRO)~~
- ~~g) Financial and/or other assets protected~~
- ~~h) Dissolution of a Power of Attorney (POA)~~
- ~~i) Secured a new POA~~

ADULT PROTECTIVE SERVICES FILE REVIEW PANEL

Pursuant to the controlling terms of the Settlement Agreement, attached hereto, the Parties agree to be bound by the terms, conditions, requirements and procedures governing the File Review Panel and its review process herein described.

**Definitions:**

For the purposes of this document, the enumerated terms will be defined as follows:

- (1) “APS Advisory Subcommittee” shall mean the subcommittee of the DAIL Advisory Board with that name. The Subcommittee advises the Department regarding the prevention of abuse, neglect and exploitation of vulnerable adults in Vermont and make policy and procedure recommendations to the Commissioner.
- (2) “Closed contact” or “closed as a contact” shall mean the decision not to commence an investigation into an allegation of abuse, neglect or exploitation of a vulnerable adult received by APS because the allegation does not meet the statutory definition of “vulnerable adult” or “abuse”, “neglect” or “exploitation,” or falls within a policy exception identified in the Policy Manual.
- (3) “Closed contact file” shall mean the Harmony database file and the original faxed, online, or emailed report of abuse, neglect or exploitation, including any documents provided as part of that report.
- (4) “Closed investigatory file” shall mean an investigatory file of an allegation where APS has concluded the investigation and made a recommendation to substantiate or unsubstantiate the allegations made in the report.
- (5) “Commissioner” shall mean the Commissioner of the Department of Disabilities, Aging & Independent Living.
- (6) “Defendants” shall mean the Agency of Human Services, Secretary Douglas Racine, the Department of Disabilities, Aging & Independent Living, and Commissioner Susan Wehry.
- (7) “Department” shall mean the Department of Disabilities, Aging & Independent Living.

- (8) “Established Benchmark” shall mean a benchmark listed as a “Benchmark” in this document or recommended by the panel based on its file review and adopted by the Commissioner.
- (9) “Incomplete Report” or “incomplete-as-received report” shall mean an allegation of abuse, neglect or exploitation of a vulnerable adult, received by APS via email, on-line report, letter, telephone or fax, that does not provide sufficient information to make a determination as to vulnerability, abuse, neglect or exploitation, or otherwise lacks sufficient contact information to commence an investigation.
- (10) “Investigatory File” shall mean the Harmony database file of an opened investigation of abuse, neglect or exploitation of a vulnerable adult, along with any additional documentation central to the investigation.
- (11) “Parties” shall mean Plaintiffs Community of Vermont Elders, Disability Rights Vermont, Southwestern Vermont Council on Aging, and Senior Solutions and Defendants the Agency of Human Services, Secretary Douglas Racine, the Department of Disabilities, Aging & Independent Living, and Commissioner Susan Wehry.
- (12) “Plaintiffs” shall mean Community of Vermont Elders, Disability Rights Vermont, Southwestern Vermont Council on Aging, and Senior Solutions.
- (13) “Receipt of the report” or “receipt of the incomplete report” shall mean the date and time at which a report or incomplete report arrives at APS, either via fax, telephone call, voicemail message, letter, email or on-line form.
- (14) “Report” shall mean an allegation of abuse, neglect or exploitation of a vulnerable adult, received by APS via email, on-line report, letter, telephone or fax, that APS deems sufficient to meet the statutory requirements of 33 V.S.A. § 6904.
- (15) “Triage Level” shall mean the level – 1, 2, or 3 – of risk of harm and/or need for protective services for an opened investigation, as determined by the Program Specialist (APS Policy and Procedure Manual, Section IV(E)). At previous points in time, these triage levels were designated as P1, P2 and P3.



**Composition of the Panel:**

The panel is composed of three individuals selected and replaced by agreement of the parties. The parties agree the panel will be made up of three of the six agreed-upon individuals, based on the individual's interest and availability.

The Panel will be paid by APS at the State-mandated per diem rate, and will be reimbursed for travel expenses and meals.

**Scope of the Panel's Work***Files Reviewed:*

The panel will meet quarterly starting on or about one month after the panel is constituted, but not later than December 1, 2013, to review and discuss closed APS investigatory files for the previous quarter (i.e. July, August and September 2013) and intake files for that same time period that resulted in a decision to close the contact. The panel shall determine, on an on-going basis, the number of files and closed contacts to review, but will review:

- (1) no fewer than ten and no more than 15 investigatory files resulting in a finding of substantiation;
- (2) no fewer than 15 and no more than 20 investigatory files resulting in a finding of unsubstantiation; and
- (3) 10% of the intake files that resulted in a decision to close the contact.

These files will be randomly selected from the total number of closed investigatory files and closed contacts files for the previous quarter. The panel will determine the precise manner in which the files are randomly selected, using usual and customary procedures in the field of quality management. The panel will have the authority to make reasonable requests to the APS Program Chief for additional documentation and information, if necessary, including the initial fax, email or on-line report received by APS.

Based on its review of files and recognition of trends or patterns in files, the panel may recommend additional reasonable benchmarks for areas of review where none have been provided herein, and may recommend altering existing benchmarks. Once adopted by the Commissioner, additional reasonable benchmarks will be treated in the same manner as the existing benchmarks detailed below.

*Specific Areas for Review:*

The panel will review files, specifically focusing on the following areas: (1) recognizing trends; (2) identifying opportunities for improvement; and (3) determining success at achieving established benchmarks. Performance expectations are listed as the desired goal; they are not required.

I) Screening:

- a) *Incomplete Reports*: Review and make recommendations addressing the number of allegations of abuse, neglect or exploitation of vulnerable adults that APS receives via fax, on-line, email or telephone, which APS deemed incomplete reports upon receipt.
  - i) Specifically document:
    - (1) Number of incomplete reports received as faxes.
    - (2) Number incomplete reports received as phone calls.
    - (3) Number incomplete reports received as on-line reports.
    - (4) Number incomplete reports received as email reports.
- b) *Determination of Closed Contacts*: Review reason for closed contact determinations and make recommendations thereon.
  - i) Specifically document:
    - (1) The number of closed contacts wherein the Program Specialist determined the alleged victim was not a vulnerable adult.
    - (2) The number of closed contacts wherein the Program Specialist determined there was no valid allegation of abuse, neglect or exploitation.
- c) *Contacting the Reporter*: Review of closed contacts to ensure the following benchmarks are met:
  - i) **Performance Expectation**: 100% of closed contacts based on reports containing sufficient information to contact the reporter must include at least two attempts to reach the reporter prior to closing, unless the allegations in the report fit within a policy exception identified in the Policy Manual or clearly do not meet the statutory requirement in 33 V.S.A. § 6902.

- (1) **Benchmark:** 90% of closed contacts based on reports containing sufficient information to contact the reporter must include at least two attempts to reach the reporter prior to closing, unless the allegations in the report fit within a policy exception identified in the Policy Manual or clearly do not meet the statutory requirement in 33 V.S.A. § 6902.
  - (a) **NOTE:** Facility-based resident-to-resident or patient-to-patient reports are governed by Section IV(J) of the APS Policy and Procedure Manual as amended.
  - (b) **NOTE:** APS may not call a reporter back when the report is one of self-neglect pursuant to APS Policy and Procedure Section IV(H).
- ii) **Performance Expectation:** 100% of closed contacts based on reports considered incomplete as received must include two follow-up calls to the reporter within 48 hours of receipt of the incomplete report.
  - (1) **Benchmark:** 90% of closed contacts based on reports considered incomplete as received must include two follow-up calls to the reporter within 48 hours of receipt of the incomplete report.
- iii) **Performance Expectation:** 100% of closed contacts based on incomplete-as-received reports must include a follow-up letter to the reporter and victim within five business days of receipt of the incomplete report explaining why the report was not accepted. The reporter letter must also include information regarding the reporter's appeal rights.
  - (1) **Benchmark:** 80% of closed contacts based on incomplete-as-received reports must include a follow-up letter to the reporter and victim within five business days of receipt of the incomplete report explaining why the report was not accepted. The reporter letter must also include information regarding the reporter's appeal rights.

## II) Timeliness of Investigations

- a) *Assignment and Initiation:* Review of investigatory files to ensure the following benchmarks are met:
  - i) **Performance Expectation:** 90% of complete reports alleging abuse neglect or exploitation of a vulnerable adult are assigned to a field

investigator within 48 hours of receipt (or 48 hours of completion of an incomplete-as-received report).

- (1) **Benchmark:** 80% of complete reports alleging abuse neglect or exploitation of a vulnerable adult are assigned to a field investigator within 48 hours of receipt (or 48 hours of completion of an incomplete-as-received report).
  - ii) **Performance Expectation:** 90% of cases categorized as Triage level 1 include direct contact with the alleged victim or reporter within two business days of assignment and in-person contact with the victim within five business days, unless such contact would jeopardize the health, welfare or safety of the alleged victim, or the alleged victim objects to an interview.
    - (1) **Benchmark:** 80% of cases categorized as Triage level 1 include direct contact with the alleged victim or reporter within two business days of assignment and in-person contact with the victim within five business days, unless such contact would jeopardize the health, welfare or safety of the alleged victim, or the alleged victim objects to an interview.
  - iii) **Performance Expectation:** 80% of cases categorized as Triage level 2 or 3 include direct contact with the alleged victim or reporter within five business days of assignment, unless such contact would jeopardize the health, welfare or safety of the alleged victim, or the alleged victim objects to an interview.
    - (1) **Benchmark:** 70% of cases categorized as Triage level 2 or 3 include direct contact with the alleged victim or reporter within five business days of assignment, unless such contact would jeopardize the health, welfare or safety of the alleged victim, or the alleged victim objects to an interview.
  - iv) Determine what percentage of Triage level 2 or 3 cases included in-person contact with the alleged victim within ten business days of assignment.
- b) *Closure and Determination:* Review of investigatory files to ensure the established benchmarks are met:
- i) **Performance Expectation:** 100% of investigations that are not allegations of financial exploitation are closed within 60 days of

assignment or receive a supervisory extension pursuant to APS Policy and Procedure Manual § VII(C).

(1) **Benchmark:** 90% of investigations that are not allegations of financial exploitation are closed within 60 days of assignment or receive a supervisory extension pursuant to APS Policy and Procedure Manual § VII(C).

ii) **Performance Expectation:** 100% of financial exploitation cases are closed within 90 days of assignment or receive a supervisory extension pursuant to APS Policy and Procedure Manual § VII(C).

(1) **Benchmark:** 90% of financial exploitation cases are closed within 90 days of assignment or receive a supervisory extension pursuant to APS Policy and Procedure Manual § VII(C).

iii) Review percentage of cases that receive a supervisory extension pursuant to APS Policy and Procedure Manual § VII(C) and reasons for extension.

III) Substance of Investigation

a) *Recommended Determination:* Review closed investigatory files for:

i) Reasons for investigator's determination of unsubstantiation and make recommendations thereon.

ii) Specifically determine number of files where:

(1) All relevant witnesses (AV, AP, Reporter, other staff or household members, case worker, etc.) were NOT interviewed.

(2) Alleged perpetrator was NOT interviewed.

(3) Alleged perpetrator was not substantiated because the alleged victim died or the alleged perpetrator is no longer working, volunteering or living with the alleged victim.

(4) Treatment plan or plan of care for alleged victim of medical neglect was NOT reviewed.

(5) Investigative report did NOT address all allegations of abuse, neglect or exploitation made by the reporter.

(6) Alleged victim refused to be interviewed by APS.

(7) Alleged victim requested that APS cease its investigation.

iii) Make benchmark or policy recommendations based on the above review.

#### IV) Services and Treatment

- a) *Provision of Protective Services and Referrals*: Review APS unsubstantiated cases to determine if the Harmony Investigative Summary reports include details listing protective services provided to the alleged victim or arranged for the alleged victim and any referrals made.
- b) *Written Coordinated Treatment Plan*: Review APS substantiated cases to determine if the Harmony Investigative Summary reports for these cases include a written plan detailing the provision of protective services in accordance with a written coordinated treatment plan.
- c) Make recommendations based on the above review.

#### *Panel Report:*

Following the discussion of the files reviewed, the panel will produce, with the assistance of DAIL staff, a quarterly report for the Commissioner, APS Program Chief and APS Advisory Subcommittee. The report will discuss the specific areas for review (listed above) and will make determinations on whether applicable benchmarks were met. The report will also highlight any trends or other areas of concern that may arise through file review and make recommendations as appropriate.

#### *Recommendations and Compliance with Benchmarks:*

As part of its quarterly report, the panel will include any recommendations for policy or practice changes, or new benchmarks based on its review of files and internal discussions. These recommendations will be considered by the Commissioner and by the APS Advisory Subcommittee at its next available meeting. The Commissioner, APS Program Chief, and APS Advisory Subcommittee will review all policy and practice recommendations by the panel, and the Commissioner will make a good faith effort to institute appropriate policy or practice changes, including additional benchmarks, at her sole discretion.

The panel will also list any and all areas in which APS did not meet the established benchmarks. When file review demonstrates that APS has not met an established benchmark, the panel will report its findings to the APS program chief who will formulate a remedial plan for addressing the area of need highlighted by the panel.

This plan need not be written and can include a further review of relevant files – beyond the number that the panel reviewed – to determine the extent of the problem. If further file review demonstrates compliance with the benchmark, APS staff will provide the panel with access to the relevant files.

If APS does not meet a benchmark, which the panel previously reported as missed, in the first full quarter following implementation of the remedial plan for meeting that benchmark, APS will review its original remedial plan and submit an analysis of the plan to the Commissioner along with a revised plan detailing how it will reach the established benchmark. Additionally, the Commissioner shall inform the panel, and the APS Advisory Subcommittee of the APS plan to achieve the missed benchmark(s).

If the panel determines that APS has been unsuccessful in meeting the same benchmark in three successive quarters, the panel, at its discretion, shall present a letter of complaint to the Commissioner and the APS Subcommittee based on this finding, outlining specific concerns that the finding raises. Following an opportunity for the Commissioner to respond to this letter, with a copy provided to the APS Advisory Subcommittee within 30 days, Plaintiffs may seek redress in court, under the Settlement Agreement, to review the Commissioner's response.

**Duration of Panel Review:**

The panel will continue to review files quarterly (in October, January, April, and July) as outlined above until the shorter of either:

- I) APS has proven compliance with applicable benchmarks for four consecutive quarters and the panel members have no substantial concerns with the program based on file review; or
- II) The panel has reviewed files for six consecutive quarters or for 18 months, at which point the APS Advisory Subcommittee will make a recommendation whether to continue to review files as detailed above or in some other manner.