

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

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- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
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For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

[Home](#) → [Model Legislation](#) → [Health and Human Services](#)

Vulnerable Adults Act

Did you know that global pharmaceutical company Bayer Healthcare was the corporate co-chair in 2011?

Summary

Vulnerable Adults Act addresses the issue of abuse and neglect of patients. This bill requires any person who knows or suspects that a patient has been abused or neglected to inform the appropriate health care officials. This legislation also fosters prompt investigation and fair disposition of such reports.

Model Legislation

{Title, enacting clause, etc}

Section 1. {Short title} This Act may be cited as the Vulnerable Adults Act.

Section 2. {Purpose} The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect; to provide safe institutional or residential services or living environments for vulnerable adults who have been abused or neglected; and to assist persons charged with the care of vulnerable adults to provide safe environments.

In addition, it is the policy of this state to require the reporting of suspected abuse or neglect of vulnerable adults, to provide for the voluntary reporting of abuse or neglect of a vulnerable adult, to require investigation of the reports, and to provide protective and counseling services in appropriate cases.

Section 3. {Definitions} As used in this Act:

(A) "Abuse" means:

- (1) any act which constitutes a violation under [cite appropriate chapter relating to criminal conduct];
- (2) nontherapeutic conduct which produces or could be expected to produce severe/additional pain or injury and is not accidental, or any repeated conduct which produces or could reasonably be expected to produce severe/additional mental or emotional distress;
- (3) any sexual contact between a faculty staff person and a resident or client of that facility;
- (4) the illegal use of a vulnerable adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of trust. Including, but not limited to, situations where a person obtains money property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud;
- (5) counseling or aiding and abetting a suicide, or procuring any lethal instrument or substance when a person knows or has reason to know that a vulnerable intends to commit suicide.

(B) "Attending physician" means the physician with the primary responsibility for the care and treatment of the patient. If there is more than one physician caring for the patient, these physicians, among themselves, shall designate the "attending physician" for purposes of this Act.

(C) "Caretaker" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed the responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

(D) "Facility" means a hospital or other entity required to be licensed pursuant to [cite appropriate chapter relating to hospitals and medical facilities]; a nursing home required to be licensed to serve adult pursuant to [cite appropriate chapter relating to nursing homes]; an agency, day care facility, or residential facility required to be licensed to serve adults pursuant to [cite appropriate chapter]; or a

home health agency certified for participation in Titles XVIII or XIX of the Social Security Act, 42 USC 1395, et seq.

(E) "Licensing Agency" means:

- (1) the [designate appropriate commissioner of health] for a facility required to be licensed or certified by the [designate appropriate department of health];
- (2) the [designate appropriate commissioner of human services] for a facility required to be licensed or certified;
- (3) any licensing board which regulates persons pursuant to [cite appropriate chapter relating to administrative procedure]; and
- (4) any agency responsible for credentialing human services occupations.

(F) "Life-resuscitating procedure" means any medical procedure or intervention that uses any means to restore a vital function of a person.

(G) "Life-sustaining procedure" means any medical procedure or intervention that uses mechanical or other artificial means to sustain, or supplant and vital function of a personal terminally ill and serves only to artificially prolong the moment of death. "Life-sustaining procedure" does not include the usual care provided to patients, which would include routine care necessary to sustain patient comfort and the usual and typical provision of nutrition which in the medical judgment of the attending physician such person can tolerate, and subject to the provisions of Section 6 of this Act.

(H) "Local law enforcement officials" refers to the local law enforcement agents or other officials assigned to investigate a specific incidence of alleged abuse.

(I) "Necessary food and water" means nutrition and hydration, irrespective of the manner of provision or assistance, sufficient to maintain the patient at his highest possible level of health as determined by his attending physician in accordance with ordinary and accepted standards of medical care, but does not include nutrition and hydration, when, in the judgments of the patient's attending physician and a second consulting physician:

- (1) the administration of nutrition or hydration will unavoidably and in itself cause severe, intractable or long-standing pain to the patient;
- (2) the administration of nutrition or hydration is not medically feasible, in that
 - (a) the patient is unable to ingest nutrients or incorporate fluids, or
 - (b) no technique or procedure is reasonably available to the attending physician for such administration; or
- (3) the death of the patient from a terminal illness imminent.

(J) "Neglect" means:

- (1) failure by a caretaker to supply the vulnerable adults with necessary food, water, clothing, shelter, health care, or supervision;
- (2) the absence or likelihood of absence of necessary food, water, clothing, shelter, health care, or supervision for a vulnerable adult; or
- (3) the absence or likelihood of absence of necessary financial management to protect adult against abuse. Nothing in the Section shall be construed to require a facility to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

(K) "Report" means any report received by local law enforcement officials, welfare agency, or licensing agency, pursuant to this Act.

(L) "Terminally ill" means the incurable condition of a person caused by injury, disease or illness, which regardless of the application of life-sustaining procedures will, within reasonable medical judgment, produce death, and where the application of life-resuscitating procedures serve only to postpone the moment of death of the person.

(M) "Vulnerable adult" means any person 18 years of age or older:

- (1) who is a resident or inpatient of a facility;
- (2) who receives services from a facility, except a person receiving out-patient services for treatment of chemical dependency or mental illness;
- (3) who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

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Section 4. {Persons mandated to report}

(A) Those persons mandated to report and incident of alleged abuse will include persons who have knowledge of the abuse or neglect of a vulnerable adult, have

reasonable cause to believe that a vulnerable adult is being or has been abused or neglected, or have knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained by the history of injuries provided by the caretaker or caretakers of the vulnerable adult. Such persons shall immediately report the information to the local law enforcement officials. Upon receiving a report, the local law enforcement officials shall immediately notify the state Department of Justice and the appropriate licensing agency or agencies. The above specifically refers to:

- (1) a professional or his delegate engaged in the care of vulnerable adults, in education, in social services, law enforcement, or in any of the regulated occupations referenced in Sections 3(E)(3) and 3(E)(4);
- (2) and employee of a rehabilitation facility certified by the [designate appropriate commissioner of vocational rehabilitation]; or
- (3) an employee of or a person providing services in a facility;
- (4) medical examiners or coroners, in instances in which they believe that a vulnerable adult has died as a result of abuse or neglect.

(B) Nothing in this section shall be construed to require the reporting or transmittal of information regarding an incident of abuse or neglect or suspected abuse or neglect if the incident previously has been reported or transmitted to the appropriate person or entity.

Written reports received by local law enforcement officials shall be forwarded immediately to the local welfare agency. The local law enforcement official may keep copies of any reports received. Copies of written reports received by a local welfare agency shall be forwarded immediately to the local law enforcement officials and the appropriate licensing agency or agencies.

Section 6. {Report not required}

(A) Where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected abuse or neglect under this Act, that person need not make a required report unless the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities whose patients or residents are covered by such a federal law shall seek consent of the disclosure of suspected abuse from each patient or resident, or his guardian, conservator, or legal representative, upon his admission to the facility. Persons are prohibited by federal law from reporting a incident of suspected abuse or neglect shall promptly seek consent to make a report.

(B) Except as provided in Section 3(A)(1), verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior of these persons does not constitute "abuse" for the purposes of Section 4 unless it causes serious harm. The operator of the facility or a designee shall record incidents of aggression and self-abusive behavior in a manner that facilitates periodic review by local law enforcement officials and licensing agencies.

(C) Nothing in this Section shall be construed to require a report of abuse, as defined in Section 3(A)(4), solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

Section 7. {Immunity from liability}

(A) A person making a voluntary or mandated report under Section 4 or participating in an investigation under this Act is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith.

(B) A person employed by a local law enforcement authority or licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with Section 12, 13, or 14 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

Section 8. {Falsified reports} A person who intentionally makes a false report under the provisions of this Act shall be liable in a civil suit for any actual damages suffered by the person or persons so reported.

Section 9. {Failure to report}

(A) A person required by this Act to report, who intentionally fails to report, is guilty of a misdemeanor.

(B) A person required to report by this ct who negligently or intentionally fails to report is liable for damages caused by the failure.

Section 10. {Evidence not privileged} No evidence regarding the abuse or neglect of the vulnerable adult shall be excluded in any proceeding arising out of the alleged abuse or neglect on the grounds of lack of competency under [cite appropriate evidentiary code section.]

Section 11. {Duties of local law enforcement officials upon receipt of a report} In carrying out these duties, the local law enforcement official shall notify

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and seek the help of the local welfare agency.

(A) The local law enforcement officials shall immediately investigate and offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Local law enforcement officials may enter facilities and inspect and copy records as part of investigations. In cases of suspected sexual abuse, the local law enforcement officials shall immediately arrange for and make available to the victim appropriate medical examination and treatment. The investigation shall not be limited to the written records of the facility, but shall include every other available source of information. When necessary in order to protect the vulnerable adult from further harm, the local law enforcement officials shall seek authority to remove the vulnerable adult from the situation in which the neglect or abuse occurred. The local law enforcement officials shall also investigate to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected and offer protective social services that are called for by its determination. In performing any of these duties, the local law enforcement officials shall maintain appropriate records.

(B) If the report indicates, or if the local law enforcement officials find, that the suspected abuse or neglect occurred at a facility, or while the vulnerable adult was or should have been under the care of or receiving services of a facility, or that the suspected abuse or neglect involved a person licensed by a licensing agency to provide care or services, the local welfare agency shall immediately notify each appropriate licensing agency, and provide each licensing agency with a copy of the report and its investigative findings.

(C) When necessary in order to protect a vulnerable adult from serious harm, the local law enforcement official shall immediately intervene on behalf of that adult to help the family, victim, or other interested person by seeking any of the following:

- (1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to [cite appropriate rule of civil procedure];
- (2) the appointment of a guardian or conservator, or guardianship or conservatorship pursuant to [cite appropriate chapter relating to guardianship];
- (3) replacement of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to [cite appropriate chapter relating to guardianship]; or
- (4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under [cite appropriate criminal procedure section].

(D) The expenses of legal intervention must be paid by the county in the case of indigent persons, under [cite appropriate section relating to indigency].

(E) In guardianship and conservatorship proceedings, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county attorney shall contract with or arrange for a suitable person or non-profit organization to provide ongoing guardianship services. If the county presents evidence to the probate court that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or conservatee even if the action is adverse to the county's best interest. Any person retaliated against in violation of this Section shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Section 12. {Notification of neglect or abuse in a facility}

(A) When a report is received that alleges abuse or neglect of a vulnerable adult while in the care of a facility required to be licensed under [cite appropriate chapter relating to day care or residential facilities], the local law enforcement officials investigating the report shall notify the guardian or conservator of a vulnerable adult under guardianship or conservatorship who is alleged to have been abused or neglected. The local law enforcement officials shall notify the person, if any, designated to be notified in case of an emergency regarding a vulnerable adult not under guardianship or conservatorship who is alleged to have been abused or neglected, unless consent is denied by the vulnerable adult. The notice shall contain the following information:

- (1) the name of the facility;
- (2) the fact that a report of alleged abuse or neglect of a vulnerable adult in the facility has been received;
- (3) the nature of the alleged abuse or neglect;
- (4) notice that the agency is conducting an investigation;
- (5) any protective or corrective measures being taken pending the outcome of the investigation; and

(6) notice that a written memorandum will be provided when the investigation is completed.

(B) In a case of alleged abuse or neglect of a vulnerable adult while in the care of a facility required to be licensed under [cite appropriate section relating to day care or residential facilities], the local law enforcement officials may also provide the information in subsection (A) to the guardian or conservator of any vulnerable adult in the facility who is under guardianship or conservatorship, and to the person, if any, designated to be notified in case of an emergency regarding any other vulnerable adult in the facility who is not under guardianship or conservatorship, unless consent is denied by the vulnerable adult, if the investigative agency knows or has reason to believe that alleged neglect or abuse has occurred.

(C) When the investigation under section 12 is completed, the local welfare agency shall provide a written memorandum to every guardian or conservator or other person notified by the agency of the investigation under subsection (A) or (B). The memorandum shall protect the identity of the reporter and the alleged victim and shall not contain the name or, to the extent possible, reveal the identity of the alleged perpetrator or those interviewed during the investigation. The memorandum shall contain the following information:

- (1) the name of the facility investigated;
- (2) the nature of the alleged neglect or abuse;
- (3) the investigator's name;
- (4) a summary of the investigative findings;
- (5) a statement of whether the report was found to be sustained, inconclusive, or false; and
- (6) the protective or corrective measures that are being or will be taken.

(D) In case of neglect or abuse of a vulnerable adult while, in the care of a facility required to be licensed under [cite appropriate sections relating to day care or residential facilities], the local law enforcement officials may also provide the written memorandum to the following individuals if the report is unsubstantiated or if the investigation is inconclusive and the report is a second or a subsequent report of neglect or abuse of a vulnerable adult while in the care of the facility:

- (1) the guardian or conservator of any other vulnerable adult in the facility who is under guardianship or conservatorship;
- (2) any other vulnerable adult in the facility who is not under guardianship or conservatorship; and
- (3) the person, if any, designated to be notified in case of an emergency regarding and other vulnerable adult in the facility who is not under guardianship or conservatorship, unless consent is denied by the vulnerable adult.

(E) In determining whether to exercise the discretionary authority granted under subsections (B) and (D), the local law enforcement officials shall not provide any notice under subsection (A) or (B) or any memorandum under subsection (C) or (D) unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Section 13. {Duties of licensing agencies upon receipt of report} A licensing agency shall investigate immediately all reports or other information which indicates that a vulnerable adult may have been abused or neglected at a facility it has licensed, or that a person it has licensed or credentialed to provide health care or services may be involved in the abuse or neglect of a vulnerable adult, or that such a facility or person has failed to comply with the requirements of this Act. Subject to the [cite appropriate administrative procedure sections], the licensing agency shall have the right to enter facilities and inspect and copy records as part of its investigations. The investigation shall not be limited to the written records of the facility, but shall include every other available source of information. The licensing agency shall issue orders and take actions designed to prevent further abuse or neglect of vulnerable adults. Such actions may include the suspension or revocation of a person's license or the facility's license.

Section 14. {Records}

(A) Each licensing agency shall maintain summary records of reports of alleged abuse or neglect and alleged violations of the requirements of this section with respect to facilities or persons licensed or credentialed by that agency. As part of these records, the agency shall prepare an investigation memorandum. The investigation memorandum shall be public record and a copy shall be provided to any public agency which referred the matter to the licensing agency for investigation. It shall contain a complete review of the agency's investigation, including, but not limited to:

- (1) the name of the facility investigated;
- (2) a statement of the nature of the alleged abuse or neglect or other violation of the requirements of this Section;

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- (3) a statement of pertinent information obtained from medical or other records reviewed;
- (4) the investigator's name;
- (5) a summary of the investigation's findings;
- (6) a statement of whether the report was found to be substantiated, inconclusive, or false; and
- (7) a statement of any action taken by the agency.

The investigation memorandum shall protect the identity of the reporter and of the vulnerable adult and may not contain the name or, to the extent possible, the identity of the alleged perpetrator or those interviewed during the investigation. During the licensing agency's investigation, all data collected pursuant to this Act shall be classified as investigative data pursuant to [cite appropriate administrative code section]. After the licensing agency's investigation is complete, the data or individuals collected and maintained shall be private data on individuals. All data collected pursuant to this Section shall be made available to prosecuting authorities and law enforcement officials, local welfare agencies, and licensing agencies investigating the alleged abuse or neglect. Notwithstanding any law to the contrary, the name of the reporter shall be disclosed only upon a finding by the court that the report was false and made in bad faith.'

(B) Notwithstanding any law to the contrary:

- (1) all data maintained by licensing agencies, treatment facilities, or other public agencies which relates to reports which, upon investigation, are found to be false may be destroyed two years after the finding is made;
- (2) all data maintained by licensing agencies, treatment facilities, or other public agencies which relates to reports which, upon investigation, are found to be inconclusive may be destroyed four years after the finding is made;
- (3) all data maintained by licensing agencies, treatment facilities, or other public agencies which relates to reports which, upon investigation, are found to be substantiated may be destroyed seven years after the finding is made.

Section 15. {Abuse prevention plans}

(A) Each facility, except home health agencies, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(B) Each facility shall develop and individual abuse prevention plan for each vulnerable adult residing or receiving services there. The plan shall contain an individualized assessment of the person's susceptibility to abuse, and a statement of the specific measures to be taken to minimize the risk or abuse to that person. For the purpose of this clause, the term "abuse" includes self-abuse.

Section 16. {Internal reporting of abuse and neglect} Each facility shall establish and enforce an ongoing written procedure in compliance with the licensing agencies' rules for insuring that all cases of suspected abuse or neglect are reported and investigated promptly.

Section 17. {Enforcement}

(A) A facility which has not complied with this Section within 60 days of the effective date of passage of temporary rules is ineligible for renewal of its license. A person who is required by Section 4 to report and who is licensed or credentialed to practice an occupation by a licensing agency, who willfully fails to comply with this Act shall be disciplined after a hearing by the appropriate licensing agency.

(B) Licensing agencies shall as soon as possible promulgate rules necessary to implement the requirements of Sections 14,15,16,17,18, and 19 (A). Agencies may promulgate temporary rules pursuant to [cite appropriate administrative procedure section].

(C) The [cite appropriate commissioner of human services] shall promulgate rules as necessary to implement the requirements of Section 12.

Section 18. {Retaliation prohibited}

(A) A facility or person shall not retaliate against any person who reports in good faith suspected abuse or neglect pursuant to this Act, or against a vulnerable adult with respect to whom a report is made.

(B) Any facility or person which retaliates against any person who reports in good faith suspected abuse or neglect is liable to that person for actual damages and, in addition, a penalty of up to \$1,000.

(C) There shall be a rebuttable presumption that any adverse action, as defined

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below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made and includes, but is not limited to:

- (1) discharge or transfer from the facility;
- (2) discharge or termination of employment;
- (3) demotion or reduction in remuneration for services;
- (4) restriction or prohibition of access to the facility or its residents; or
- (5) any restriction of rights set forth in [cite appropriate section enumerating employee rights].

Section 19. {Outreach} The [designate appropriate commissioner of human services] shall establish an aggressive program, using a variety of media, to educate those required to report, as well as the general public, about the requirements of this Act.

Section 20. {Penalty} Any caretaker, operator, employee or volunteer worker thereof, who intentionally abuses or neglects a vulnerable adult, or being a caretaker, knowingly permits conditions to exist which result in the abuse or neglect of a vulnerable adult, is guilty of a [specify misdemeanor].

Section 21. {Severability clause}

Section 22. {Repealer clause}

Section 23. {Effective date}

Were your laws repealed?

Adopted by the Health and Human Services Task Force and approved by the ALEC Board of Directors in 1987.

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