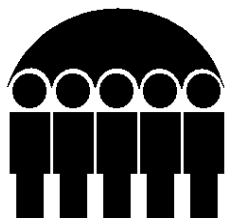


DEPENDENT ADULT PROTECTION HANDBOOK

Prepared by:
Division of Adult, Children and Family Services
Bureau of Program Support and Protective Services



Iowa
Department
of
Human Services

Comm. 96
July 1998

Table of Contents

	<u>Page</u>
SECTION 1: DEFINITIONS	1
SECTION 2: INTAKE.....	5
Referrals That Constitute an Allegation of Dependent Adult Abuse.....	5
Assessing Adult Dependency	6
Determining Who Is a Caretaker	8
If Caretaker Is Responsible for Abuse (Evaluation).....	8
If Dependent Adult Is Responsible for Self-Denial of Critical Care (Assessment)	9
Circumstances Constituting Dependent Adult Abuse.....	10
Physical Abuse.....	10
Sexual Abuse	13
Sexual Exploitation of a Dependent Adult by a Caretaker.....	13
Exploitation.....	15
Denial of Critical Care	16
SECTION 3: DETERMINING REPORT CONCLUSIONS.....	17
Founded, Unfounded, or Confirmed, Not Registered Reports	17
Finding That the Adult Is Dependent.....	19
Finding a Caretaker Responsible	19
Finding a Dependent Adult Responsible for Self-Denial of Critical Care.....	20
Founded Physical Abuse	21
Founded Physical Abuse: Assault.....	24
Founded Physical Abuse: Unreasonable Confinement or Punishment.....	25
Physical Abuse: Resources and Decision-Making Questions	26
Founded Sexual Abuse: Sexual Abuse in the First Degree	27
Founded Sexual Abuse: Sexual Abuse in the Second Degree	29
Founded Sexual Abuse: Founded Sexual Abuse in the Third Degree	31

Founded Sexual Abuse: Assault With Intent to Commit Sexual Abuse.....	32
Founded Sexual Abuse: Detention in a Brothel	33
Founded Sexual Abuse: Incest	34
Founded Sexual Abuse: Indecent Exposure	35
Founded Sexual Abuse: Sexual Exploitation by a Counselor or Therapist	36
Founded Sexual Exploitation of a Dependent Adult by a Caretaker	39
Founded Sexual Abuse: Invasion of Privacy - Nudity.....	40a
Sexual Abuse: Resources and Decision-Making Questions	40b
Founded Exploitation	41
Founded Denial of Critical Care: Failure to Provide Adequate Food.....	44
Founded Denial of Critical Care: Failure to Provide Adequate Shelter.....	46
Founded Denial of Critical Care: Failure to Provide Adequate Clothing.....	48
Founded Denial of Critical Care: Failure to Provide Adequate Medical Care.....	49
Founded Denial of Critical Care: Failure to Provide Necessary Mental Health Care.....	51
Founded Denial of Critical Care: Failure to Meet Emotional Needs Necessary for Normal Functioning.....	53
Founded Denial of Critical Care: Failure to Provide Proper Supervision.....	55
Founded Denial of Critical Care: Failure to Provide Adequate Physical Care.....	57
Confirmed Physical Abuse With Injury, Not Registered	58
Confirmed Physical Abuse With Assault, Not Registered	61
Confirmed Denial of Critical Care, Not Registered.....	63

This handbook is intended as an adjunct to Employees' Manual 16-G and 16-G-Appendix. Its purpose is to assist you in determining whether a referral of dependent adult abuse constitutes an allegation which must be evaluated or assessed. When you are assigned to do an evaluation or assessment, this handbook will also assist you in determining whether the abuse is founded, unfounded, or undetermined.

SECTION 1: DEFINITIONS

For the purpose of this handbook, the following concepts are defined:

“Assault” means:

- ◆ Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
- ◆ Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
- ◆ Intentionally pointing any firearm toward another, or displaying in a threatening manner any dangerous weapon toward another.

“Assessment” means the process of collecting and examining information concerning a dependent adult who allegedly has been denied critical care due to acts or omissions of the dependent adult, for the purpose of determining the circumstances of the dependent adult. The information is used to write the dependent adult abuse assessment report.

“Brothel” is any building, structure, part of a building or structure, or other place offering shelter or seclusion, which is principally or regularly used for the purpose of prostitution, with the consent or connivance of the owner, tenant, or other person in possession of it.

“Caretaker” means a related or unrelated person who has the responsibility for the protection, care, or custody of the dependent adult as a result of assuming the responsibility voluntarily, by contract, by employment or by order of the court.

“Counselor or therapist” means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

“Credible evidence” is evidence which a reasonable and prudent person would use as the basis for decision about the conduct of serious business affairs.

“Credible person” is a person who provides information that a reasonable and prudent person would believe to be accurate. (The perpetrator and victim may be credible persons and both need to be judged on the basis of the same factors as any other persons.) Consider the following factors, at a minimum, to determine whether a person is credible:

- ◆ Any motives the person might have for reporting false information, including the person’s interest or lack of interest in the outcome of the report.
- ◆ The ability of the person to provide thorough and internally consistent statements and explanations.
- ◆ Any physical, intellectual, mental, psychological or character trait which might preclude the person from providing accurate information.
- ◆ Consistency of information provided by the person, with known facts and circumstances, and with corroborating evidence obtained from other sources.

“Evaluation” means the process of collecting and examining information concerning a dependent adult who allegedly has been abused or denied critical care due to the acts or omissions of the caretaker, for the purpose of determining the circumstances of the dependent adult. The information is used to write the dependent adult abuse evaluation report.

“Exploitation” means the act or process of taking unfair advantage of a dependent adult or the dependent adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, by the use of theft, undue influence, harassment, duress, deception, false representation, or false pretenses.

“Intent” expresses mental action at its most advanced point, or as it actually accompanies an outward, corporal act which has been determined on. Intent shows the presence of will in the act which consummates a crime. It is the exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it.

“Mental health service” means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental or social dysfunction, including an intrapersonal or interpersonal dysfunction.

“Mentally incapacitated” means that a person is temporarily incapable of apprising or controlling the person’s own conduct due to influence of a narcotic, anesthetic, or intoxicating substance. (Iowa Code Section 709.1A) A person who is impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision making is impossible. (Black’s Law, Seventh Edition, 1999)

“Nudity” means the full or partial showing of any part of the human genitals or pubic area or buttocks, or any part of the nipple of the breast of a female, with less than opaque covering.

“Photograph or film” means any photograph, motion picture film, videotape, or any other recording or transmission of the image of a person.

“Physical injury” means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

Physical injuries which require a healing process include:

- ◆ Abrasions
- ◆ Bruises
- ◆ Burns
- ◆ Eye injuries
- ◆ Dislocations
- ◆ Hyperemia (reddening of the skin which lasts over 24 hours)
- ◆ Internal injuries including:
 - Abdominal or chest injuries
 - Brain damage
 - Other central nervous system damage
 - Subdural hemorrhage or hematoma
- ◆ Fractures
- ◆ Lacerations
- ◆ Scalds
- ◆ Sprains
- ◆ Welts

“Sex act” means any sexual contact between two or more persons by:

- ◆ Penetration of the penis into the vagina or anus;
- ◆ Contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person;
- ◆ Contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed for the practice of medicine and surgery, chiropractic, or nursing; or
- ◆ Use of artificial sexual organs or substitutes for sexual organs in contact with the genitalia or anus. (Iowa Code Section 702.17)

“Sexual abuse” means any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

- ◆ The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
- ◆ Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters. (Iowa Code, Section 709.1)

“Sexual exploitation” means any consensual or nonconsensual sexual conduct with a dependent, which includes but is not limited to:

- ◆ Kissing;
- ◆ Touching or the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals;
- ◆ A sex act, as defined in this section; or
- ◆ The transmission, display, or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for the purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation.

“Unreasonable confinement or punishment” means any legally unauthorized, medically unwarranted or improperly administered restrictions of physical movement, locking up, binding, chaining, or sedative medicating of a dependent adult.

SECTION 2: INTAKE

REFERRALS THAT CONSTITUTE AN ALLEGATION OF DEPENDENT ADULT ABUSE

The purpose of this section is to enable the person who receives referrals of suspected abuse to determine whether a referral constitutes an allegation which should be evaluated or assessed.

When a referral fails to meet the criteria for evaluation or assessment of dependent adult abuse, advise the reporter as to the reason the report is not being accepted for evaluation or assessment. Follow procedure in 16-G(1), [DEPENDENT ADULT ABUSE INTAKE](#), for rejection of the report.

You must have **supervisory approval** to **reject** a referral of dependent adult abuse.

The goal of intake is to obtain the most accurate information available so that you will be able to make an informed determination of acceptance or rejection. This section describes the elements necessary to make this determination.

Every dependent adult abuse **evaluation** must contain the following **three** elements:

- ◆ The allegation must concern a **dependent adult**.
- ◆ The circumstances alleged must be in the Iowa Code definition of **dependent adult abuse**.
- ◆ The person allegedly responsible for the abuse must be the dependent adult's **caretaker**.

Every dependent adult abuse **assessment** must contain the following **three** elements:

- ◆ The allegation must concern a **dependent adult**.
- ◆ The circumstances alleged must fit in the Iowa Administrative Code definition of **self-denial of critical care**.
- ◆ The person allegedly responsible for the abuse must be the **dependent adult**.

ASSESSING ADULT DEPENDENCY

The alleged victim must be 18 years of age or older.

The alleged victim must be dependent as a result of a physical or mental condition requiring the assistance of another.

Consider the following factors in determining if the alleged victim is dependent:

- ◆ Is the person able to protect the person's own interests?
- ◆ Is the person at substantial risk of injury, harm, or being taken advantage of financially?
- ◆ Is the person unable to perform adequately to meet minimal essential human needs?
- ◆ Does the person require assistance with activities of daily living, such as eating, grooming, taking medication, walking, toileting, dressing, food preparation, grocery shopping, or money management?
- ◆ Is the person able to obtain services necessary to meet essential human needs?

The following may be useful in making a determination regarding an adult's dependency:

Physical Factors:

- ◆ What health problems does the person have? (Include medical diagnosis if available.)
- ◆ Is the person able to complete activities of daily living (food preparation, bathing, toileting, eating, dressing) without assistance? If the person needs assistance, is it being provided?
- ◆ Is person able to communicate the person's needs to others?
- ◆ Can the person call for "help"? Is such "help" available if needed?
- ◆ Is the person able to walk with or without the assistance of a walker, wheelchair, a care provider?
- ◆ Does the existence of the person's physical problems prevent the person from obtaining the services necessary to meet essential human needs?

Mental Factors:

- ◆ Does the person have any mental problems? (Include diagnosis, if available.)
- ◆ Is the person oriented to time, place, and person?
- ◆ Is the person mentally capable of caring for the person's own interests?
- ◆ Is the person able to reason and make a conscious choice understanding the possible consequences?
- ◆ Does the existence of the person's mental health problems prevent the person from obtaining the services necessary to meet the person's needs?

Social Factors:

- ◆ Does the person have a support system?
- ◆ Do any members of the support system help the person meet the person's needs?
- ◆ How frequently does the person come into contact with others?
- ◆ Does the person live in an isolated environment, either self-imposed or due to physical or mental challenges?

Environmental Factors:

- ◆ Is the person able to maintain the person's current environment? Cleaning, cooking, grocery shopping?
- ◆ Is the person able to adequately care for self in the current environment?
- ◆ Does the person need supervision to continue living in current environment?
- ◆ Is the person living in a safe environment?
- ◆ Is the environment hazardous, is the person able to move from that environment?

Financial Factors:

- ◆ Is the person able to handle the person's own finances?
- ◆ Is someone assisting the person in taking care of finances? (Guardian, conservator, payee, friend, family, etc.?)
- ◆ Is the person able to meet the general expenses, such as medical care, personal needs, housing costs, etc.?
- ◆ Is the person able to manage personal, home, and financial affairs in the person's best interests?

Suggestions:

- ◆ Contact the mandatory or permissive reporter who made the original report by phone to assist with determining if the person is dependent.
- ◆ Consider if the person's behavior is a result of a mental or physical condition or a conscious life style choice, with an understanding of the consequences.
- ◆ Determine if the person is capable of making decisions.
- ◆ Decide if the person's basic human needs are being met.

If you can reasonably determine from the information given by the reporter that the adult is not dependent, the report is not an appropriate referral for dependent adult abuse. You may refer this matter to services, if a service need is identified.

If there isn't enough information to determine that the adult is **NOT** dependent, it may be necessary to accept the referral. If at any point you determine that the adult is not dependent, the evaluation or assessment must be concluded as an **UNFOUNDED** report. You may refer this matter to services, if a service need is identified.

Determining Who Is a Caretaker

If Caretaker Is Responsible for Abuse (Evaluation)

A "caretaker" is a related or unrelated person who has the responsibility for the protection, care, or custody of the dependent adult as a result of:

- ◆ **Assuming the responsibility voluntarily.** A person who occasionally runs errands or does nonessential tasks for a dependent adult is not considered a caretaker. However, if someone provides a needed service, such as a meal every evening, and the dependent adult depends on the person to provide that meal, then the person is considered to have "assumed the responsibility" of providing the meal and therefore is a caretaker.
- ◆ **A contract.** A person who signs a contract to provide some type of needed service to a dependent adult in return for something else, such as payment or use of something, such a room, is considered to be a caretaker.
- ◆ **Employment.** A person employed specifically for the purpose of providing a needed service to a dependent adult is a caretaker.
- ◆ **An order of the court.** A person who has an "order of the court" is a caretaker. A person who is a substitute decision maker in any capacity is a caretaker. Examples are: power of attorney, power of attorney for health care decisions, guardian, or conservator.

Persons who are ordered by the court to be substitute decision makers for a dependent adult may present themselves as being able to do whatever they wish to or for the dependent adult. However, these persons are designated as caretakers for the purposes of Iowa Code 235B and are subject to the dependent adult abuse laws as are all other persons determined to be caretakers for the purposes of this law.

To determine whether or not a person is a caretaker, consider the following:

- ◆ If the caregiver stopped providing care, would minimal essential human needs go unmet by the dependent adult?
- ◆ Would the dependent adult be at risk of injury or harm, if the caregiver discontinued care?

If you can reasonably determine that the caretaker does not meet the Iowa Code definition of caretaker, the report is not an appropriate referral for a dependent adult abuse evaluation. You may refer this matter to services, if a service need is identified.

NOTE: A caretaker who has the power of attorney for health care decisions and is not a relative may be violating Iowa Code Section 144B.4, which states:

“The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

- ◆ A health care provider attending the principal on the date of the execution.
- ◆ An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.”

If you discover a caretaker whom is not a relative as described above and is acting as power-of-attorney for health care decisions for a dependent adult, notify the county attorney. **This does not apply to power of attorney for financial matters.** There is no legal prohibition against caretakers having power of attorney for financial matters, whether related or not.

If Dependent Adult Is Responsible for Self-Denial of Critical Care (Assessment)

To determine whether the dependent adult is responsible for self-denial of critical care, consider the following:

- ◆ Consider if the dependent adult is at substantial risk of injury or harm by failing to adequately meet minimal essential human needs in the following areas: food, shelter, medical care, money management, or mental health care.
- ◆ Determine if a significant incident occurred that brought inadequacies to the attention of the reporter, or if there is a pattern of the dependent adult being responsible for self-denial of care.
- ◆ A dependent adult has the right to make unhealthy choices, as long as they are not health or life-threatening. Living in a dirty house or eating junk food is not self-denial of critical care, unless it is a danger to the health or safety of the dependent adult.
- ◆ If you determine that the dependent adult is not responsible for self-denial of critical care, this is not an appropriate referral for a dependent adult abuse assessment. It may be appropriate to refer the reporter to services or to other community resources.

CIRCUMSTANCES CONSTITUTING DEPENDENT ADULT ABUSE

Iowa Code Chapter 235B:

Iowa law recognizes five categories of dependent adult abuse:

- ◆ [Physical abuse](#)
- ◆ [Sexual abuse](#)
- ◆ [Sexual exploitation of a dependent adult by a caretaker](#)
- ◆ [Exploitation](#)
- ◆ [Denial of critical care](#)

The following sections describe the factors required for an allegation to qualify as a report of abuse in each category.

Physical Abuse

For a situation to be reportable as physical abuse, the reporter must have a reasonable belief that **four factors** are present:

- ◆ The alleged victim is a **dependent adult**.
- ◆ The dependent adult has suffered a [physical injury](#) (see definition) or injury which is at a variance with the history given of the injury, **OR unreasonable confinement, or unreasonable punishment, OR assault**.
- ◆ The injury was **nonaccidental or at variance with the history** given of it.
- ◆ The dependent adult has been injured as a result of acts of omissions of the **caretaker**.

Physical injuries suffered by a dependent adult can usually be considered **not accidental** if:

- ◆ They resulted from an act administered for the specific purpose of causing an injury.
- ◆ They were administered during the course of supervision. (Not all injuries sustained during the course of supervision are nonaccidental. It is possible to injure someone accidentally while providing supervision.)
- ◆ A prudent person would have intervened in a course of events to prevent injury.

Unreasonable Confinement or Punishment

For a situation to be reportable as unreasonable confinement or punishment, the reporter must reasonably suspect that a dependent adult was unreasonably confined or punished as the result of acts or omissions of a caretaker. This allegation includes legally unauthorized, medically unwarranted, or improperly administered:

- ◆ Restrictions of physical movement, lock up, binding, or chaining,
- ◆ Sedative medication,
- ◆ Unwarranted, humiliating, or degrading acts directed at the dependent adult.

Unreasonable confinement or punishment of a dependent adult **does not** include legally authorized, medically warranted, and properly administered:

- ◆ Restrictions of physical movement.
- ◆ Lock up, binding or chaining.
- ◆ Sedative medication
- ◆ Time outs or other medical techniques which restrict movement of the dependent adult.

Assault

For a situation to be reportable as assault, the reporter must reasonably suspect that a dependent adult was assaulted as the result of acts or omissions of the caretaker. This allegation includes any of the following:

- ◆ Any act which is intended to cause pain or injury to the dependent adult or intended to result in physical contact which will be insulting or offensive to the dependent adult, coupled with the apparent ability to execute the act.
- ◆ Any act which is intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
- ◆ Intentionally pointing any firearm toward another, or displaying in a threatening manner any dangerous weapon toward another.

An assault is an attempt or offer, with force or violence and intent, to hurt another. It must be accompanied with the ability to execute the act.

An assault may be committed without doing any actual injury to the victim. There does not need to be an injury, as there does with other physical abuse reports.

A verbal threat alone is not an assault, unless surrounding circumstances indicate the immediate intent to execute the act.

Suggested Questions:

- ◆ Is the dependent adult hospitalized? If not, is there a need for medical attention?
- ◆ Is legal action necessary to secure medical attention for the dependent adult?
- ◆ Is law enforcement already involved? If not, do they need to be?
- ◆ Was the injury not accidental?
- ◆ What is the date of the injury and how did the injury occur?
- ◆ Does the caretaker describe a protective or a threatening action?
- ◆ Were physical restraints used? If so, exactly how? Is this a proper method of restraint? Is this restraint done for the benefit of the dependent adult or the caretaker?
- ◆ Are there credible witnesses?
- ◆ Has the caretaker been trained on how to provide care?

Pay close attention to initial statements made by the caretaker.

It may be necessary to remind the medical reporter that you have a legal right to the medical information. You may have to read the medical information at the medical facility.

Crime Victim Assistance may be able to pay for any expenses incurred by the victim. (See Employees' Manual 16-G, [Payment for Examinations and Expenses.](#))

Sexual Abuse

For a situation to be reportable as sexual abuse, the reporter must reasonably suspect that three conditions are present. They are:

- ◆ The alleged victim is a **dependent adult**.
- ◆ A **sexual offense** has been committed against the dependent adult.
- ◆ The sexual offense suffered by the dependent adult has occurred as a result of acts or omissions of the **caretaker**.

There are ten categories of sexual abuse that the Department evaluates:

- ◆ Sexual abuse in the first degree (Iowa Code section 709.2)
- ◆ Sexual abuse in the second degree (Iowa Code section 709.3)
- ◆ Sexual abuse in the third degree (Iowa Code section 709.4)
- ◆ Detention in a brothel (Iowa Code section 709.7)
- ◆ Indecent exposure (Iowa Code section 709.9)
- ◆ Assault with intent to commit sexual abuse (Iowa Code section 709.11)
- ◆ Sexual exploitation of a dependent adult by a counselor or therapist (Iowa Code section 709.15)
- ◆ Invasion of privacy, nudity (Iowa Code section 709.21)
- ◆ Incest (Iowa Code section 726.2)
- ◆ Sexual exploitation of a dependent adult by a caretaker (Iowa Code section 235B.2)

Sexual Exploitation of a Dependent Adult by a Caretaker

“Sexual exploitation” means any sexual conduct with a dependent adult. This includes but is not limited to kissing, touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals or a sex act as defined in Iowa Code section 702.17.

“Sexual exploitation” also includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for the purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation.

It **does not** include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

For sexual exploitation of a dependent adult by a caretaker, the reporter must reasonably suspect that:

- ◆ The alleged victim is a dependent adult.
- ◆ The perpetrator is a caretaker providing services to a dependant adult.

Suggested Questions:

- ◆ Does the alleged victim understand the consequences of the act?
- ◆ Is the alleged victim capable of consenting to sex?
- ◆ Does the alleged victim have reason to have knowledge of sexual behavior?
- ◆ Were there any injuries?
- ◆ Were there any threats?

Exploitation

For a situation to be reportable as exploitation, the reporter must reasonably suspect that **three factors** are present. They are:

- ◆ The alleged victim is a **dependent adult**.
- ◆ The dependent adult was **exploited**. “Exploitation” means the act or process of taking unfair advantage of a dependent adult or the dependent adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, by the use of theft, undue influence, harassment, duress, deception, false representation, or false pretenses.
- ◆ The exploitation occurred as a result of acts or omissions of a responsible **caretaker**.

Suggested Questions:

- ◆ What were the consequences to the dependent adult? What happened to the dependent adult as a result of the transaction?
- ◆ What was the dependent adult’s understanding of what was to happen or how the money or resources were to be spent or used?
- ◆ Were the resources used to the benefit of the dependent adult?
- ◆ In what way did the transaction benefit the alleged perpetrator?
- ◆ What is the relationship between the dependent adult and the person who has control of the resources or took advantage of the dependent adult?
- ◆ Did the dependent adult feel threatened to participate in the transaction?
- ◆ Did the person suspected of exploiting the dependent adult provide alternatives to the transaction?

Denial of Critical Care

For a situation to be reportable as denial of critical care, there are **four factors** that must be reasonably suspected. They are:

- ◆ The alleged victim is a dependent adult.
- ◆ One of the types of denial of critical care has occurred.
- ◆ The abuse occurred as a result of acts or omissions of a responsible caretaker or the dependent adult.
- ◆ There is immediate or potential danger of injury to or death of a dependent adult.

There are **eight** types of critical care that the Department evaluates or assesses. They are:

- ◆ Denial of or failure to provide adequate food.
- ◆ Denial of or failure to provide adequate shelter.
- ◆ Denial of or failure to provide adequate clothing.
- ◆ Denial of or failure to provide adequate medical care.
- ◆ Denial of or failure to provide adequate mental health care.
- ◆ Denial of or failure to provide emotional needs necessary for normal functioning.
- ◆ Denial of or failure to provide proper supervision.
- ◆ Denial of or failure to provide adequate physical care.

It is not necessary for the reporter to know whether or not the dependent adult or the caretaker has sufficient resources to provide critical care or if medical care has been denied due to religious reasons. These factors are more properly addressed during the evaluation or assessment.

SECTION 3: DETERMINING REPORT CONCLUSIONS

When you formulate evaluation or assessment conclusions:

- ◆ Review all the information which relates to making a finding for the particular type of abuse that was alleged (including accumulated evidence and manual guidelines), and
- ◆ List the factors and supporting evidence for each factor in the “CONCLUSIONS” section of the report.

Each category of dependent adult abuse has its own unique factors. However, there are two factors which are the same for all reports:

- ◆ The alleged victim is a dependent adult. Clearly state and provide documentation why the person is or is not dependent.
- ◆ The abuse occurred as the result of acts or omissions of the caretaker or of the dependent adult. The conclusions must clearly explain why the alleged perpetrator is or is not a caretaker for the dependent adult or why the dependent adult, is responsible for self-denial of critical care.

When there is more than one type of abuse alleged, the report must address each type of abuse. The conclusions must document that the factors for each type of abuse were considered.

This section explains the standards for determining whether an allegation is founded, unfounded, or confirmed, not registered, and the conclusions necessary to show credible evidence of each factor required for founding each type of abuse.

FOUNDED, UNFOUNDED, OR CONFIRMED, NOT REGISTERED REPORTS

Founded reports must contain all of the following:

- ◆ A preponderance (more than 50%) of evidence that the allegations are true,
- ◆ Credible evidence to support the presence of each factor necessary to determine that this type of abuse occurred.

Unfounded reports must demonstrate the following:

- ◆ A preponderance (more than 50%) of evidence that the allegations are not true, or
- ◆ Insufficient evidence to conclude that the allegations are true, or
- ◆ Absence of at least one of the factors necessary to determine that this type of abuse occurred.

Confirmed, not registered reports must contain all of the following:

- ◆ A preponderance of evidence (more than 50%) of evidence the allegations are true.
- ◆ Credible evidence to support the presence of each factor necessary to determine physical abuse or denial of critical care has occurred.
- ◆ Credible evidence to support the conclusion the physical abuse or denial of critical care was minor, isolated and unlikely to reoccur.

FINDING THAT THE ADULT IS DEPENDENT

In order to found a dependent adult abuse report, the conclusions must describe clearly why the adult is dependent. Credible evidence that a person is a dependent adult may include the following:

- ◆ Documentation of the person's age or birth date.
- ◆ A credible person's verification of the person's age or birth date.
- ◆ A description of the reason the person is dependent.
- ◆ A description of what the caretaker does for the person and what the person cannot do alone.
- ◆ A medical or mental health diagnosis. Note that a diagnosis may be helpful, but does not in itself mean the adult is dependent. For example, a person diagnosed as having diabetes may or may not be able to meet basic human needs.

FINDING A CARETAKER RESPONSIBLE

To establish that the person responsible for the abuse was the caretaker of the dependent adult, describe the relationship between that person and the dependent adult.

- ◆ If the person is receiving money to provide care to the dependent adult, or if the court has ordered that the person is responsible for the dependent adult, state that in the conclusions.
- ◆ If there is a contract describing services the person is providing for the dependent adult, state that in the conclusions.
- ◆ If the person has assumed the role of the caretaker, describe specifically what the person does to provide services to the dependent adult. State in the conclusions how often the services are performed and what would happen if the person discontinued the care.

FINDING A DEPENDENT ADULT RESPONSIBLE FOR SELF-DENIAL OF CRITICAL CARE

To establish that the dependent adult is responsible for self-denial of critical care, describe in the report conclusions:

- ◆ The substantial risk of injury or harm the dependent adult has experienced due to the self-denial of critical care.
- ◆ A pattern of the dependent adult being denied essential food, shelter, clothing, supervision, physical or mental health care, or other care necessary for the dependent adult's health and welfare.
- ◆ The significant event that occurred that brought the dependent adult's situation to the attention of the reporter (especially if there is not a pattern of self-denial of critical care).

In order to found self-denial of critical care, conclusions must include a statement that the dependent adult is financially able to purchase services or has been offered financial and other reasonable means to provide services.

A dependent adult has the right to make unhealthy choices if they are not life-threatening. Living in a dirty house or eating junk food, in and of itself, is not self-denial of care.

Note: A founded report of self-denial of critical care **does not** result in the dependent adult's name going on the Registry as a founded perpetrator. The data on the report is kept in the Registry for statistical purposes, but the narrative of the report is kept in the local office in the ongoing service case, if there is one.

FOUNDED PHYSICAL ABUSE

For a situation to be founded as physical abuse, the report must include credible evidence of **four** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The dependent adult has been injured by a **caretaker** or as a result of the acts or omissions of the caretaker. Credible evidence may include one of the following:

- ◆ Admission by the dependent adult or the caretaker that the act or omission resulted in injury.
- ◆ Visual observations by a credible person of acts or omissions of the responsible caretaker which resulted in the injury.
- ◆ Establishing through circumstantial information that injuries occurred during the time the caretaker was providing care for the dependent adult, and that injuries could not have occurred in any way other than from abuse.

Factor 3. The dependent adult has suffered a **physical injury** which required a healing process. Credible evidence may include the following:

- ◆ Visual observation by a credible person, including a social worker. This information should include a precise description of the size, shape, color, type and location of the injury. (See definition of [physical injury](#) in **Definitions** section of this handbook.)
- ◆ Photograph of external visible injuries, as long as:
 - The photograph is taken by a credible person who has maintained possession.
 - The date the photograph was taken can be documented through information obtained by a credible person.
 - Identity of the subject of photograph can be determined.
 - Photograph adequately depicts the injury.

- ◆ Diagnosis or verification by a competent medical practitioner of the presence of any injury, such as:

Dislocations	Brain damage
Eye injuries	Subdural hemorrhage or hematoma
Fractures	Central nervous system damage
Sprains	Internal, abdominal, or chest injuries

Note: *Information collected from the medical practitioner should include a description of the injuries present, and if possible, the best professional judgment of the cause of the injury. For fractures and similar injuries, obtain an estimate of the amount of force necessary to cause the injury, if possible.*

Obtain information in writing. It might be necessary to remind the medical reporter that you have a legal right to the medical information. (Iowa Code 235B.3, paragraph 5.) The medical chart may be a source of written information. You may have to read the medical information at the medical facility.

- ◆ Observation of the presence of scar tissue or other bodily tissue which results from the healing of an injury, or verification of the presence of such tissue by a credible and competent person.
- ◆ X-rays or other diagnostic tests which verify the presence of injury, so long as:
 - Tests were taken by a competent professional who maintains possession.
 - The dates of tests can be documented by credible person.
 - Documentation is maintained that the tests were taken of the dependent adult who is subject of the evaluation.

Factor 4. The injury is **not accidental**, or is at variance with the history given of it.

- ◆ Not accidental means that a reasonable and prudent person would have been able to foresee that injury to a dependent adult might result from the caretaker's acts.
- ◆ When injuries occur as a result of the acts of omissions of a caretaker, consider whether the injuries could have been accidental in nature and not readily foreseen. If injuries occur, consider consulting with a physician to determine whether these injuries would have required a healing process.

- ◆ To conclude that the injury is at variance with the history given for the injury you must have credible evidence that the injury occurred in a manner which is not physically possible or which is incongruous with the injury.
- ◆ If the dependent adult assaults the caretaker and the caretaker states there was no alternative but to respond physically in self-defense, document and analyze whether or not the caretaker had other available alternates. Self-defense which results in injury to a dependent adult is not physical abuse if it can be established that the caretaker had no available alternative response to stop the dependent adult's assault.

FOUNDED PHYSICAL ABUSE: ASSAULT

For a situation to be founded as physical abuse: assault of a dependent adult, the report must include credible evidence of the following factors:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of the acts or omissions of a **caretaker**.

Factor 3. The dependent adult has suffered an **assault**, in that a person has either:

- ◆ Committed an act which is intended to cause pain or injury to the dependent adult, or which is intended to result in physical contact which will be insulting or offensive to the dependent adult, coupled with the apparent ability to execute the act, **or**
- ◆ Committed an act which is intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, insulting or offensive, coupled with apparent ability to execute the act, **or**
- ◆ Intentionally pointed any firearm toward the dependent adult, or displayed any dangerous weapon in a threatening manner toward the dependent adult.

Note: An assault is an attempt or offer, with force or violence and intent, to hurt another. It must be accompanied with the ability to execute the act.

An assault may be committed without doing any actual injury to the victim. There does not need to be an injury, as there does with other physical abuse reports. However, a verbal threat alone is not an assault, unless surrounding circumstances indicate the immediate intent to execute the act.

FOUNDED PHYSICAL ABUSE: UNREASONABLE CONFINEMENT OR PUNISHMENT

For a situation to be founded as physical abuse: unreasonable confinement or punishment of a dependent adult, the report must include credible evidence of the following factors:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as the result of acts or omissions of a **caretaker**.

Factor 3. The dependent adult has been **confined or punished** in one of the following ways without legal or medical authorization:

- ◆ Restriction of physical movement, locking up by binding or chaining, **OR**
- ◆ Medical sedation, **OR**
- ◆ Unwarranted, humiliating, or degrading acts toward the dependent adult.

Credible evidence could include:

- ◆ The use of competent legal or medical authority to show lack of basis for the act.
- ◆ Credible evidence that the act occurred.

Note: A dependent adult may receive an injury while a caretaker is attempting to restrain the dependent adult from hurting himself or others or destroying property. If the restraint technique was commensurate with the dependent adult's behavior and was warranted under the circumstances, then the incidental injury would not be considered physical abuse.

You must document and analyze:

- ◆ The behavior of the dependent adult which prompted the caretaker to use physical restraint.
- ◆ If the mechanism of restraint was sanctioned by agency guidelines or professional advice.
- ◆ The type of restraint and degree of force that was used.
- ◆ Other types of non-physical discipline which could have been used instead.
- ◆ The immediate outcome of the restraint tactic.

PHYSICAL ABUSE: RESOURCES AND DECISION-MAKING QUESTIONS

Suggested Resources

- ◆ Physician
- ◆ Visiting nurse
- ◆ Law enforcement agency
- ◆ Credible witnesses
- ◆ Multidisciplinary team
- ◆ Journals and medical books
- ◆ Specialists in mental health, mental retardation, Alzheimer's disease, developmental disabilities or brain injuries

Crime victim compensation may be able to pay for any expenses incurred by the victim.

Decision-Making Questions

- ◆ Does the dependent adult require hospitalization or medical attention?
- ◆ Does law enforcement need to be involved?
- ◆ Is legal action necessary to secure medical attention for the dependent adult?
- ◆ Was the injury not accidental?
- ◆ What is the date of the injury?
- ◆ How did the injury occur?
- ◆ What was the caretaker's initial explanation of the injury?
- ◆ Does the caretaker describe a protective or an assaultive action?
- ◆ Are witnesses really credible?
- ◆ Is there a diagnosis for a skin disorder or is the victim on medication which could make the skin susceptible to bruises?
- ◆ Has the caretaker been trained on how to give care?
- ◆ Were restraints used? If so, exactly how? Is this a proper method of restraint? Is this restraint done for the benefit of the dependent adult or the caretaker?

FOUNDED SEXUAL ABUSE: SEXUAL ABUSE IN THE FIRST DEGREE

For a situation to be founded as sexual abuse in the first degree, the report must include credible evidence of the following **five** factors.

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. A **sex act** has been committed with the dependent adult. Credible evidence may include one of the following:

- ◆ Information provided by credible perpetrator or victim. The information obtained should include a precise description of the type of sexual act which occurred.
- ◆ Observation of a sex act by a credible person. The information obtained should include a precise description of the sex act that occurred.
- ◆ Diagnosis or verification by a competent medical practitioner of the presence of genital injuries or disease which could not exist in the absence of a sex act.
- ◆ Verification by a competent professional of the presence of the perpetrator's sperm in the dependent adult's anus, mouth, vagina, or genital area.
- ◆ Verification by a competent professional of the presence of body tissue of the perpetrator on the dependent adult, or body tissue of the dependent adult on the perpetrator, which could not exist in the absence of a sex act.

Factor 4. The victim is **seriously injured**. Credible evidence shall include **BOTH** of the following:

- ◆ Credible evidence from a credible person that a **serious injury** has occurred. For the purpose of the offense, "serious injury" means disabling mental illness, or bodily injury which
 - Creates a substantial risk of death or
 - Causes permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, **AND**
- ◆ Credible evidence from a credible person that the injury occurred to the dependent adult **during the commission of the sex act**.

Factor 5. The sex act was done by **force or against the will** of the dependent adult; **OR** the dependent adult has a **mental incapacity** which precludes giving consent or having the capacity to know the right and wrong of conduct of sexual matters. Credible evidence includes one of the following:

- ◆ Credible evidence from a credible person that the sex act was done by force or against the will of the dependent adult.
- ◆ Credible evidence from a competent medical or mental health professional that:
 - The dependent adult has a mental incapacity which precludes consent, or
 - The dependent adult has a mental incapacity which precludes knowing the right and wrong of conduct of sexual matters.

FOUNDED SEXUAL ABUSE: SEXUAL ABUSE IN THE SECOND DEGREE

For a situation to be founded as sexual abuse in the second degree, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. A **sex act** has been committed with the dependent adult. Credible evidence may include one of the following:

- ◆ Information provided by a credible perpetrator or victim. Information obtained should include a precise description of the type of sex act that occurred.
- ◆ Observation of the sex act by a credible person. Information obtained should include a precise description of the type of sex act that occurred.
- ◆ Diagnosis or verification by competent medical practitioner of the presence of genital injuries or disease which could not exist in the absence of a sex act.
- ◆ Verification by competent professional of the presence of perpetrator's sperm in the dependent adult's anus, mouth, vagina, or genital area.
- ◆ Verification by a competent professional of the presence of body tissue of perpetrator on the dependent adult or body tissue of dependent adult on perpetrator, which could not have occurred in the absence of sex act.

Factor 4. **One of the following** acts occurred, based on evidence from a credible person:

- ◆ The perpetrator **displayed a deadly weapon** threateningly during commission of the sex act, **OR**
- ◆ The perpetrator **used or threatened force** which created risk of health or serious injury, **OR**
- ◆ The perpetrator was **aided or abetted by others** in committing the sex act **AND** the sex act was committed by force or against the will of the dependent adult.

Factor 5. **One of the following** conditions exists, based on evidence from a credible person:

- ◆ The sex act was done by force or against the dependent adult's will, **OR**
- ◆ The dependent adult has a **mental incapacity** which precludes giving consent or knowing the right and wrong of conduct of sexual matters.

FOUNDED SEXUAL ABUSE: FOUNDED SEXUAL ABUSE IN THE THIRD DEGREE

For a situation to be founded as sexual abuse in the third degree, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. A **sex act** has been committed with the dependent adult. Credible evidence may include one of the following:

- ◆ Information provided by credible perpetrator or victim. The information obtained should include a precise description of the type of sex act.
- ◆ Observation of the sex act by a credible person. The information obtained should include a precise description of the activity which occurred.
- ◆ Diagnosis or verification by a competent medical practitioner of the presence of genital injuries or disease which could not exist in the absence of a sex act.
- ◆ Verification by a competent professional of the presence of the perpetrator's sperm in the dependent adult's anus, mouth, vagina or genital area.
- ◆ Verification by a competent professional of the presence of body tissue of the perpetrator on the dependent adult or body tissue of the dependent adult on the perpetrator which could not have occurred in absence of a sex act.

Factor 4. The perpetrator and victim are **not cohabiting as husband and wife**. (If one spouse is living in a health care setting, the couple is not cohabitating.) Evidence must be from a credible person.

Factor 5. **One of the following** conditions exists, based on evidence from a credible person:

- ◆ The act was **done by force** or against the will of the dependent adult **OR**
- ◆ The dependent adult has a **mental incapacity** which precludes giving consent or knowing the right and wrong of conduct of sexual matters.

FOUNDED SEXUAL ABUSE: ASSAULT WITH INTENT TO COMMIT SEXUAL ABUSE

For a situation to be founded as sexual abuse: assault with intent to commit sexual abuse, the report must include credible evidence of **four** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. **One of the following acts** occurred to the dependent adult without justification, based on evidence from a credible person:

- ◆ Any act which is intended to cause **pain or injury** to the victim, or which is intended to result in physical contact which will be **insulting or offensive** to the victim, coupled with the apparent ability to execute the act, **OR**
- ◆ Any act which is intended to place the victim in **fear of immediate physical contact** which will be **painful, injurious, or offensive**, coupled with the apparent ability to execute the act, **OR**
- ◆ Intentionally **pointing any firearm** toward the victim, **or displaying any dangerous weapon** toward the victim in a threatening manner.

Note: The act is not an assault when

- ◆ The person doing any of the above and the other person are voluntarily participants in a sport, social, or other activity, not in itself criminal, **and**
- ◆ The act is a reasonably foreseeable outcome of the sport or activity and does not create an unreasonable risk of serious injury or breach of the peace.

Factor 4. The perpetrator of the act had **intent to commit sexual abuse**, based on evidence from a credible person. Credible evidence may include:

- ◆ Statements of dependent adult, the person allegedly responsible for the abuse or witnesses, or
- ◆ Circumstantial evidence which would indicate the intent of the alleged perpetrator to commit sexual abuse.

FOUNDED SEXUAL ABUSE: DETENTION IN A BROTHEL

For a situation to be founded as sexual abuse: detention in a brothel, the report must include credible evidence of **four** factors. They are:

- Factor 1.** The victim is a **dependent adult**.
- Factor 2.** The abuse occurred as a result of acts or omissions of a **caretaker**.
- Factor 3.** The person allegedly responsible for the abuse did **either of the following**:
 - ◆ **Enticed a non-prostitute** dependent adult to become an inmate of a brothel so as to engage the person in prostitution, **OR**
 - ◆ **Detained** the dependent adult in a brothel against the adult's will so as to engage the adult in prostitution.

Iowa Code Section 702.4 defines a "**brothel**" as: "Any building, structure, or part thereof, or other place offering shelter or seclusion, which is principally or regularly used for the purpose of prostitution, with the consent or connivance of the owner, tenant, or other person in possession of it."

Credible evidence may include documentation that the dependent adult was found in a place meeting this definition. It is not necessary to show that the dependent adult was detained against the adult's will if the person allegedly responsible for the abuse was the dependent adult's caretaker.

- Factor 4.** The **intent** of the person allegedly responsible for the abuse was to engage the dependent adult victim in prostitution. Credible evidence may include:
 - ◆ Statements of adult, person allegedly responsible for the abuse or witnesses, or
 - ◆ Circumstantial evidence which would indicate the intent of the person allegedly responsible for the abuse to engage the victim in prostitution.

FOUNDED SEXUAL ABUSE: INCEST

For a situation to be founded as sexual abuse: incest, the report must include credible evidence of **four** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. **Sexual intercourse** has occurred with the dependent adult. Credible evidence may include one of the following:

- ◆ Information provided by a credible person allegedly responsible for the abuse or victim. Information obtained should include a precise description of the type of activity in which the participants engaged.
- ◆ Observation of sexual intercourse by a credible person.
- ◆ Diagnosis or verification by a competent medical practitioner of the presence of genital injuries or disease which could not exist in the absence of sexual intercourse.
- ◆ Verification by a competent professional of the presence of perpetrator's sperm in the dependent adult's vagina or genital area. Or, for a female perpetrator, verification by a competent professional of the presence of the dependent adult's sperm in the perpetrator's vagina or genital area.
- ◆ Verification by competent professional of the presence of body tissue of the perpetrator on the dependent adult, or body tissue of the dependent adult on the perpetrator, which could not exist in absence of sexual intercourse.

Factor 4. The perpetrator knows the dependent adult is **related**, legitimately or illegitimately, as an ancestor, descendant, brother or sister of whole or half blood, aunt, uncle, niece, or nephew, based on evidence from a credible person.

FOUNDED SEXUAL ABUSE: INDECENT EXPOSURE

For a situation be founded as sexual abuse: indecent exposure, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. **One of the following acts** occurred, based on evidence from a credible person.

- ◆ The perpetrator exposed pubes or genitals to the dependent adult **OR**
- ◆ The perpetrator committed a sex act in view of the dependent adult.

Credible evidence may include statements of the victim, person allegedly responsible for the abuse, or witnesses that the person allegedly responsible for the abuse did expose pubes or genitals to the dependent adult or did commit a sex act with the dependent adult in the presence or view of another person or with another person in the presence or view of the dependent adult.

Factor 4. The act was done with the **intent to arouse or satisfy sexual desires** of the perpetrator or the dependent adult, **AND** that the perpetrator knows or should have known the act was **offensive** to the dependent adult. Evidence must be from a credible person.

Factor 5. The perpetrator and victim are **not cohabiting as husband and wife**. (If one spouse is living in a health care setting, the couple is not cohabitating.) Evidence must be from a credible person.

FOUNDED SEXUAL ABUSE: SEXUAL EXPLOITATION BY A COUNSELOR OR THERAPIST

For a situation to be founded as sexual abuse: sexual exploitation of a dependent adult by a counselor or therapist, the report must include credible evidence of **six** factors. They are:

Factor 1. The alleged victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Note: The counselor or therapist must have been a caretaker for the former patient or client **at the time** of the alleged abuse.

Factor 3. The alleged perpetrator is currently (or has been within the past year) a **counselor or therapist providing mental health services** to the dependent adult. Credible evidence may include statements that the dependent adult and the alleged perpetrator have now or had within the past year a counseling or therapeutic relationship from

- ◆ The dependent adult,
- ◆ The dependent adult's caretakers,
- ◆ The dependent adult's social worker, or
- ◆ Administrative staff at the facility where the dependent adult lives or receives counseling or therapy (or did so in the past).

"Counselor or therapist" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

Note: This definition includes staff in residential facilities who have the title of "counselor," "treatment worker," "therapist," "cottage parent," or other terms designating a position of authority over and responsibility for treatment services to dependent adults who are residing in the facility, even if these persons do not have professional degrees or training.

"Mental health service" means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental or social dysfunction, including an intrapersonal or interpersonal dysfunction.

Factor 4. Sexual conduct occurred between the dependent adult patient or client (or former patient or client) and the alleged perpetrator, OR there was a pattern or practice or scheme on the part of the alleged perpetrator to engage in sexual conduct with the dependent adult patient/client (or former patient/client), including the following:

- ◆ Kissing
- ◆ Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals
- ◆ A sex act. (See DEFINITIONS section of this handbook.)

Credible evidence may include:

- ◆ Statements of the dependent adult, alleged perpetrator or witnesses that at least one of the above did occur between the dependent adult and the alleged perpetrator.
- ◆ Statements of the dependent adult, alleged perpetrator or witnesses that the alleged perpetrator had been planning with the dependent adult to engage in at least one of the above.
- ◆ Written statements of the dependent adult or alleged perpetrator in the form of notes or letters to each other or to other persons which would lead a reasonable person to infer that sexual conduct between the two had happened or was being planned.

Note: In most sexual abuse cases involving caretakers and dependent adults, one of the other sexual offenses would be present. This is the only type of sexual abuse in which an alleged perpetrator may receive a conclusion of “founded” dependent adult abuse for kissing or attempting to seduce a dependent adult.

Such behavior might not be considered a sexual offense under ordinary circumstances, but in a therapeutic relationship it does take on more serious overtones. In that situation, it has exploitative and potentially damaging aspects, even if no sex act ever happens, and the dependent adult victim is not frightened or “offended” by the behavior.

Factor 5. The **intent** of the alleged perpetrator was to arouse or satisfy the sexual desires of either the counselor/therapist or the dependent adult patient/client. Credible evidence may include:

- ◆ Statements of the dependent adult, the alleged perpetrator or witnesses, or circumstantial evidence which indicates that the actions of the alleged perpetrator were performed with the dependent adult for the purpose of arousing or satisfying the sexual desires of either of them.

- ◆ Physical evidence which indicates that alleged perpetrator was sexually aroused during contact with the dependent adult, such as suggestive photographs or other depictions of the dependent adult, or letters describing the sexual feelings of the alleged perpetrator toward the dependent adult.
- ◆ Observation by persons having knowledge of the therapeutic relationship (such as others in treatment, coworkers of alleged perpetrator, the dependent adult's family, etc.) of the appearance, behavior, or statements of the alleged perpetrator which indicate a sexual rather than a professional interest in the dependent adult.

Factor 6. Evidence that the conduct of the counselor or therapist was **not part of a necessary examination or treatment** provided to the dependent adult by the counselor or therapist while acting within the scope of the practice or employment in which the counselor or therapist was engaged.

Credible evidence includes statements of the dependent adult, the alleged perpetrator, witnesses, or administrative staff at the facility that the sexual conduct which took place between the adult and the counselor or therapist was not part of a legitimate physical or sexual examination or treatment for a physical or sexual problem sanctioned by the facility and approved by the dependent adult's guardian or custodian.

FOUNDED SEXUAL EXPLOITATION OF A DEPENDENT ADULT BY A CARETAKER

For a situation to be founded as sexual exploitation of a dependent adult by a caretaker, the report must include credible evidence of **three** factors. They are:

Factor 1. The victim is a **dependent adult**,

Factor 2. The perpetrator is a **caretaker** providing services to a dependent adult.

Factor 3. **Sexual exploitation** occurred. “Sexual exploitation” means any consensual or nonconsensual sexual conduct with a dependent adult. This includes, but is not limited to:

- ◆ Kissing.
- ◆ Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.
- ◆ A [sex act](#). (See [DEFINITIONS](#) section of this handbook.)
- ◆ The transmission, display, or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for the purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation.

Note: Sexual exploitation does **not** include

- ◆ Touching which is a part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker.
- ◆ The exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship.
- ◆ Touching between spouses.

Credible evidence may include one of the following:

- ◆ Information provided by a credible perpetrator or victim. The information obtained should include a precise description of the type of sexual conduct.
- ◆ Observation of the sex act by a credible person. The information obtained should include a precise description of the type of sexual conduct.

- ◆ Diagnosis or verification by a competent medical practitioner of the presence of genital injuries or disease that could not exist in the absence of a sex act.
- ◆ Verification by a competent professional of the presence of the perpetrator's sperm in the dependent adult's anus, mouth, vagina or genital area.
- ◆ Verification by a competent professional of the presence of body tissue of the perpetrator on the dependent adult or body tissue of the dependent adult on the perpetrator which could not exist in absence of a sex act.

FOUNDED SEXUAL ABUSE: INVASION OF PRIVACY - NUDITY

For an allegation to be founded as an invasion of privacy, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker**.

Factor 3. **Invasion of privacy - nudity** has been committed with a dependent adult by a caretaker. There must be credible evidence of a caretaker who **knowingly views, photographs, or films** a dependent adult, for the purpose of arousing or gratifying the sexual desire of any person. Information obtained must include a precise description of the type of invasion of privacy that occurred. Credible evidence may include the following:

- ◆ Observation of the invasion of privacy by a credible person, or
- ◆ Copies of the photographs, or
- ◆ Copies of films, or
- ◆ Copies videotapes, or
- ◆ Any other recording or transmission of the images of a dependent adult in a state of full or partial nudity.

Factor 4. Verification by either the dependent adult if capable, or a competent professional the dependent adult had a **reasonable expectation of privacy while in the state of full or partial nudity**.

Factor 5. Verification by either the dependent adult if capable, or a competent professional the dependent adult **did not have knowledge** about and did not consent or is unable due to **mental incapacity** to consent to being viewed, photographed, or filmed.

SEXUAL ABUSE: RESOURCES AND DECISION-MAKING QUESTIONS

You may need assistance to make credible observations, decisions, and choices on whether a report of sexual abuse can be founded. The following is a list of resources:

- ◆ Attorney
- ◆ County attorney
- ◆ Credible witness
- ◆ Educator
- ◆ Homemaker
- ◆ Hospital records
- ◆ Law enforcement
- ◆ Mental health worker
- ◆ Multidisciplinary team
- ◆ Other medical records and reports
- ◆ Other physical evidence
- ◆ Physician
- ◆ Psychiatrist
- ◆ Psychologist
- ◆ Scholarly journals
- ◆ Sexual assault kit
- ◆ Textbooks or other educational materials
- ◆ Visiting nurse

Someone who works with person with specific challenges (such as mental retardation), might be helpful in conducting the interview.

Decision-Making Questions:

- ◆ Does the victim understand the consequences of the act?
- ◆ Is the victim capable of consenting to sex?
- ◆ Does the victim have reason to have knowledge of sexual behavior?
- ◆ Were there any injuries?
- ◆ Were there any threats?

FOUNDED EXPLOITATION

For a situation to be founded exploitation, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**. (The victim must be dependent at the time of the exploitation.)

Factor 2. The exploitation happened as a result of acts or omissions of a **caretaker**.

Factor 3. A dependent adult or the dependent adult's physical or financial resources were **taken advantage of** by an alleged perpetrator. Credible evidence may include any of the following:

- ◆ Information provided by a credible person that the dependent adult was:
 - Taken advantage of by the perpetrator, or
 - Unduly influenced by the perpetrator, or
 - Harassed by the perpetrator, or
 - Under duress (compulsion by threat) by the perpetrator, or
 - Deceived by the perpetrator, or
 - Falsely represented by the perpetrator, or
 - The perpetrator acted under false pretenses (claim not supported by fact)
- ◆ Evidence the dependent adult was taken advantage of or the dependent adult's physical or financial resources were not used to benefit the dependent adult.
- ◆ Evidence that a perpetrator who has legal responsibility for the dependent adult's physical or financial resources (such as conservator, payee, power of attorney) is abusing that legal responsibility.

Factor 4. A dependent adult **did not give informed consent** to the use of the dependent adult's physical or financial resources or to the transaction when the dependent adult was taken advantage of by the perpetrator.

The dependent adult did not agree to allow something to happen that was based on a full disclosure of known facts and circumstances needed to make the decision intelligently. The dependent adult did not have knowledge of risks involved or alternatives.

Credible evidence may include Information provided by a credible person that the dependent adult agreed to the transaction when the dependent adult was taken advantage of or to have the dependent adult's resources used without:

- ◆ Understanding the consequences of the transaction.
- ◆ Understanding how the money or resources would be used.
- ◆ Being told what the consequences of the transaction would be.
- ◆ Being told how exactly the money or resources would be used.
- ◆ Being given alternatives for the transaction that would not take advantage of the dependent adult.
- ◆ Being given alternative uses for the money or resources.
- ◆ Being told the risks involved in the transaction that would take advantage of the dependent adult.
- ◆ Being told the risks involved in using the money or resources.

Factor 5. The transaction was for the personal or pecuniary profit of the perpetrator.

Credible evidence may include information provided by a credible person including:

- ◆ The transaction was for the personal or financial profit of the perpetrator.
- ◆ The perpetrator would gain something from the transaction and the dependent adult would lose something personal or financial.

Resources

- ◆ County attorney, law enforcement, and clerk of court
- ◆ Social Security, Veterans Administration, retirement or pension records
- ◆ Bank statements and other financial records (including bills)
- ◆ Family attorney or accountant
- ◆ Area agency on aging
- ◆ DHS income maintenance workers
- ◆ Consumer protection through the Attorney General's office
- ◆ Long-term care ombudsman through the Department of Elder Affairs
- ◆ Legal Services Corporation of Iowa or Iowa Protection and Advocacy Services, Inc.

- ◆ Mental health expert to determine dependent adult's capability of comprehending financial transactions or other transactions that would take advantage of the dependent adult.
- ◆ Office of Substitute Decision Maker

Decision-Making Questions

- ◆ What did the dependent adult understand about how the money was to be spent?
- ◆ Were the resources used to the benefit of the dependent adult?
- ◆ What is the relationship between the dependent adult and the person who has control of the resources?
- ◆ What did the dependent adult understand about the transaction that took advantage of the dependent adult?
- ◆ Were there alternatives that were not explained to the dependent adult?
- ◆ In what way was the transaction for the personal or pecuniary benefit of the perpetrator?

It is not necessary to prove that the dependent adult was harmed or that basic needs were not met.

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE ADEQUATE FOOD

For a situation to be founded as denial of critical care: failure to provide adequate food, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.

Factor 3. The dependent adult does not have adequate **food**, based on evidence from a credible person. Credible evidence could include one of the following:

- ◆ A medical chart which documents a pattern of weight gain or loss, accompanied with observation by a credible person of the dependent adult's diet over the corresponding time period.
- ◆ A medical diagnosis provided by a credible person showing that the medical condition resulted from dietary deficiencies. The presence of the condition is circumstantial evidence.

Factor 4. There is immediate or potential **danger** to health or safety, or injury to or death of the dependent adult. Credible evidence could include a medical chart or diagnosis showing a medical condition or death resulting from diet deficiencies.

Factor 5. The caretaker or the dependent adult has **financial** means or has been offered financial means to provide adequate food.

Resources

- ◆ Visiting nurse and/or other care providers
- ◆ Physician
- ◆ Check to see if there is food in the home

Decision-Making Questions

- ◆ Does the dependent adult have the ability and the facilities to cook or prepare food?
- ◆ If there is food, is it spoiled or contaminated or passed its expiration dates?
- ◆ If the dependent adult receives mobile meals, are there empty or full meal boxes?
- ◆ Is the garbage fresh?
- ◆ Does the dependent adult use false teeth, if needed?
- ◆ Is the dependent adult maintaining weight or losing weight?
- ◆ Is the dependent adult on a special diet? If so, does the adult or caretaker understand the consequences of not following the diet?
- ◆ Does the dependent adult or caretaker have the capacity to understand the need for an adequate diet?
- ◆ Did the dependent adult have the opportunity to receive services or the funds to purchase them?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE ADEQUATE SHELTER

For a situation to be founded as denial of critical care: failure to provide adequate shelter, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.

Factor 3. The dependent adult does not have adequate **shelter**. Evidence must be from a credible person. Credible evidence could include power company records to show a pattern of lack of provision of heat, with corresponding weather records and medical estimates of effects on the dependent adult, to illustrate immediate or potential danger to the dependent adult.

Factor 4. The failure to provide adequate shelter has resulted in the dependent adult being in immediate or potential **danger** to health and safety, which could result in injury or death. Evidence must be from a credible person. Credible evidence could include:

- ◆ Medical records showing actual or potential danger to the dependent adult.
- ◆ Health department records showing actual or potential danger to the dependent adult.

Factor 5. The caretaker or the dependent adult has **financial** means or has been offered financial means to provide adequate shelter.

Resources

- ◆ Sanitary engineers
- ◆ Building inspector
- ◆ County health department
- ◆ Visiting nurse
- ◆ Care provider
- ◆ Utility company
- ◆ Fire department

Decision-Making Questions

- ◆ When looking at the home, is there
 - A life-threatening lack of heat?
 - Unsanitary conditions?
 - Hazardous conditions?
- ◆ Does the dependent adult have no shelter at all?
- ◆ Does the dependent adult understand the danger of a hazardous or unsafe environment?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE ADEQUATE CLOTHING

For a situation to be founded as denial of critical care: failure to provide adequate clothing, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.

Factor 3. The dependent adult does not have **adequate clothing** necessary for the dependent adult's health and welfare. Credible evidence may include:

- ◆ Observation and documentation by a credible person of the dependent adult's manner of dress which indicates that the clothing provided was not adequate to meet the dependent adult's needs.
- ◆ Documentation of weather records which would confirm weather conditions from which the dependent adult's manner of dress would not adequately protect the dependent adult.

Factor 4. There is immediate or potential **danger** of injury to or death of the dependent adult. Evidence must be from a credible person. Credible evidence could include observations by a credible person as to the lack of adequate clothing, weather reports, and medical estimates of potential or actual danger because of lack of adequate clothing in this situation.

Factor 5. The caretaker or the dependent adult has **financial** means or has been offered financial means to provide adequate clothing.

Resources

- ◆ Local radio station or newspaper for temperature
- ◆ Weather bureau
- ◆ Law enforcement

Decision-Making Questions

- ◆ How long was the dependent adult inadequately clothed?
- ◆ Was the caretaker aware of the dependent adult's behavior?
- ◆ Health practitioner

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE ADEQUATE MEDICAL CARE

For a situation to be founded as denial of critical care: failure to provide adequate medical care, the report must include credible evidence of **six** factors.

- Factor 1.** The victim is a **dependent adult**.
- Factor 2.** The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.
- Factor 3.** There is evidence that the dependent adult does not have **adequate medical care**. Evidence must be from a credible person. Credible evidence could include failure to follow through with necessary medical treatment as directed by a licensed physician.
- Factor 4.** There is documentation of the immediate or potential **danger** of injury or death of the dependent adult. Evidence must be from a credible person. Credible evidence could include the medical chart plus a doctor's statements to show how the medical condition could or did lead to serious illness or death because of failure to seek or follow through with necessary medical treatment.
- Factor 5.** The caretaker or the dependent adult has **financial** or other means to provide adequate medical care.
- Factor 6.** The failure to provide medical care is not based on the dependent adult's **religious** beliefs.

Resources

- ◆ Medical records
- ◆ Record of prescriptions from pharmacy
- ◆ Physician
- ◆ Visiting nurses

Decision-Making Questions

- ◆ What medications does the dependent adult have?
- ◆ What are the dates on the medications?
- ◆ How many pills does the dependent adult have left?
- ◆ How many physicians is the dependent adult going to?
- ◆ When and how many pills are taken?
- ◆ Have there been missed medical appointments?
- ◆ Does the dependent adult know about and understand the need for medical care?
- ◆ What is the level of risk if medical treatment is not sought?
- ◆ How long has the dependent adult maintained these specific religious beliefs?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE NECESSARY MENTAL HEALTH CARE

For a situation to be founded as denial of critical care: failure to provide necessary mental health care, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.

Factor 3. The dependent adult has a **serious mental health condition**. Evidence must be from a credible person. Credible evidence could include:

- ◆ Diagnosis from a credible mental health professional.
- ◆ Statements from credible witness as to behavior of the dependent adult which suggests a serious mental health condition.
- ◆ Evidence that the caretaker, if there is one, knows of or should reasonably know that the dependent adult has a serious mental health condition.

Factor 4. The responsible caretaker or dependent **adult refuses to obtain a mental health evaluation or treatment**. Credible evidence could include written documentation from a mental health professional or physician showing that a recommendation for evaluation or treatment was made. Use credible evidence to show that the caretaker or dependent adult failed to act on the recommendations.

Factor 5. The caretaker or the dependent adult has **financial** or other means to provide adequate mental health care.

Resources

- ◆ Psychiatrist
- ◆ Psychologist
- ◆ Mental health counselor
- ◆ Mental health outreach worker
- ◆ Physician
- ◆ Visiting nurse
- ◆ Day treatment program
- ◆ Law enforcement
- ◆ Ambulance reports

Decision-Making Questions

- ◆ Is the dependent adult oriented to place, time, and situation?
- ◆ Was the dependent adult informed of the need for mental health care before the referral?
- ◆ What are the long-term affects if treatment is not available or sought?
- ◆ Are there alternatives to the recommended treatment?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO MEET EMOTIONAL NEEDS NECESSARY FOR NORMAL FUNCTIONING

For a situation to be founded as denial of critical care: failure to meet emotional needs necessary for normal functioning, the report must include credible evidence of **five** factors. They are:

- Factor 1.** The victim is a **dependent adult**.
- Factor 2.** The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.
- Factor 3.** The dependent adult has **gross functioning abnormalities** resulting from a failure to meet the emotional needs of the dependent adult. Evidence must be from a credible person. Credible evidence could include:
 - ◆ Observations and documentation by a physician or mental health professional to establish existence of the condition.
- Factor 4.** The dependent adult has suffered **mental or emotional injury** resulting from the failure to meet the adult's emotional needs. Evidence must be from a credible person.
- Factor 5.** The responsible caretaker or the dependent adult has the **financial** means or has been offered the financial means to provide proper supervision.

Resources

- ◆ Psychiatrist
- ◆ Psychologist
- ◆ Physician
- ◆ Mental health counselor
- ◆ Mental health outreach worker
- ◆ Visiting nurse
- ◆ Day treatment program
- ◆ Alzheimer's Association

Decision-Making Questions

- ◆ How has the dependent adult's behavior deteriorated?
- ◆ How significant is the deterioration of the dependent adult's behavior?
- ◆ What is the link between the caretaker's behavior and the dependent adult's reaction?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE PROPER SUPERVISION

For a situation to be founded as denial of critical care: failure to provide proper supervision, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of acts or omissions of a responsible **caretaker or of the dependent adult**.

Factor 3. The dependent adult was not provided proper **supervision** which a reasonable and prudent person would exercise under similar facts and circumstances. Credible evidence could include:

- ◆ Evidence that the dependent adult does not have the ability to remove him or herself from emergency situation which might occur.
- ◆ Evidence that a caretaker was selected who was known to be incapable of ensuring the safety of the dependent adult.
- ◆ Evidence that a dependent adult was abandoned.

Factor 4. The dependent adult is in **danger** in a given situation. Evidence must be from a credible person. Credible evidence could include evidence that the dependent adult was left unattended in a bath tub, near an open flame, or in some other precarious situation.

Factor 5. The caretaker or the dependent adult has the **financial** means or has been offered the financial means to provide proper supervision.

Resources

- ◆ Medical professionals
- ◆ Mental health professionals
- ◆ Medical records
- ◆ Mental health records
- ◆ Law enforcement
- ◆ Ambulance drivers

Decision-Making Questions

- ◆ What can and can't the dependent adult do?
- ◆ In what way have the dependent adult's limitations caused threatening conditions?
- ◆ Is the dependent adult capable of self-supervision, and if so, for how long?
- ◆ What is the history of the caretaker?
- ◆ Does the caretaker know the dependent adult's challenges?
- ◆ Does the caretaker admit that the adult has limitations?

FOUNDED DENIAL OF CRITICAL CARE: FAILURE TO PROVIDE ADEQUATE PHYSICAL CARE

For a situation to be founded as denial of critical care: failure to provide adequate physical care, the report must include credible evidence of **five** factors. They are:

- Factor 1.** The victim is a **dependent adult**.
- Factor 2.** The abuse occurred as a result of acts or omissions of a **caretaker or of the dependent adult**.
- Factor 3.** The dependent adult does not have adequate **physical care**. Evidence must be from a credible person. Credible evidence could include:
 - ◆ Failure to bathe resulted in skin breakdown.
 - ◆ The dependent adult was repeatedly dropped or mishandled, resulting in injury.
- Factor 4.** There is documentation of the immediate or potential **danger** or injury to or death of the dependent adult. Evidence must be from a credible person. Credible evidence could include the medical chart plus the physician's statement to show how lack of physical care could or did lead to serious illness, injury or death.
- Factor 5.** The caretaker or the dependent adult has **financial** or other means to provide adequate physical care.

Resources

Medical records
Visiting nurses
Physician

Decision-Making Question

Do either the caretaker or the dependent adult know how to provide or obtain physical care?

CONFIRMED PHYSICAL ABUSE WITH INJURY, NOT REGISTERED

For a situation to be **confirmed, not registered** as physical abuse, the report must contain credible evidence of **seven** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. A **caretaker** has by acts or omissions injured the dependent adult. Credible evidence may include one the following:

- ◆ Admission by the dependent adult or the caretaker the act or omission resulted in an injury.
- ◆ Visual observations by a credible person of acts or omissions by the caretaker that resulted in the injury.
- ◆ Establishing through circumstantial information the injuries occurred during the time the caretaker was providing care for the dependent adult and the injuries could not have occurred in any way other than from abuse.

Factor 3. The dependent adult has suffered a minor **physical injury** that required a healing process. Credible evidence may include the following:

- ◆ Visual observation by a credible person, including a social worker. This information would include a precise description of the size, shape, color, type, and location of the injury. (See definition of physical injury in [Definitions](#) section of this handbook.)
- ◆ Photograph of external injury, as long as:
 - The photograph is taken by a credible person who has maintained possession of the photograph.
 - The date the photograph was taken can be documented through information obtained by a credible person.
 - Identity of the subject of the photograph can be determined.
 - The photograph adequately depicts the injury.
- ◆ Diagnosis or verification by a competent medical practitioner of a minor injury, such as bruises or scratches.

Note: Information collected from medical practitioners needs to include a description of the minor injury, and if possible, the best professional judgment of the cause of the injury.

Obtain information in writing. It might be necessary to remind medical professionals you have a legal right to the medical information. (Iowa Code Section 235B.3, paragraph 5.) The medical chart may be a source of written information. You may have to read the medical information at the medial facility.

- ◆ Observation of the presence of a bruise or scar tissue that results from the healing of a minor injury, or verification of the presence of such bruise or scar by a credible and competent person.

Factor 4. The minor injury is **not accidental**, or is at variance with the history given of it.

- ◆ Not accidental means a reasonable and prudent person would have been able to foresee the minor injury to a dependent adult might result from the caretaker's acts.
- ◆ When a minor injury occurs as a result of the acts or omissions of a caretaker, consider whether the minor injury could have been accidental in nature and not readily foreseen.
- ◆ To conclude the minor injury is at variance with the history given for the injury you must have credible evidence the injury occurred in a manner that is not physically possible or that is incongruous with the minor injury.
- ◆ If the dependent adult assaults the caretaker and the caretaker states there was no alternative but to respond physically in self-defense, document and analyze whether or not the caretaker had other available alternates. Self-defense that results in injury to a dependent adult is not physical abuse if it can be established the caretaker had no available alternative response to stop the dependent adult's assault.

Factor 5. The physical injury is **minor**.

Credible evidence the location and size of the injury and the force used to inflict the injury are minor.

Note: "Minor" physical injuries may include injuries such as red marks and faint bruising, taking into account the frailty of the dependent adult and the size and location of the injury. For example, grab marks on the upper arms of a sturdy, stocky dependent adult might be considered minor, but the same type of injury on a frail, very thin dependent adult would not be minor.

A dependent adult with physical limitations, but mental competence, who has an injury as the result of a non-accidental physical injury could be minor, but the same injury on a dependent adult who has physical limitations and is not mentally competent would not be minor.

Factor 6. The physical injury is **isolated**.

To find the injury is isolated, there must be credible evidence there is no record of the caretaker injuring someone before. Examples are:

- ◆ No criminal records of assault or founded dependent adult or child abuse reports.
- ◆ Credible evidence the reported incident was an isolated occurrence.

Factor 7. The physical injury is **unlikely to reoccur**.

To find the injury is unlikely to reoccur, there must be credible evidence it is not likely to reoccur. Consider the following:

- ◆ The responsible caretaker expresses remorse to the incident of abuse and receptiveness to taking classes and accepting advice on how to provide quality care to dependent adults.
- ◆ Factors contributing to the abuse are no longer present.

CONFIRMED PHYSICAL ABUSE WITH ASSAULT, NOT REGISTERED

For a situation to be confirmed, not registered as founded physical abuse with assault, the report must contain credible evidence of **six** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The abuse occurred as a result of the acts or omissions of a **caretaker**.

Factor 3. The dependent adult suffered an assault by a caretaker doing one of the following:

- ◆ Committed an act which is intended to cause pain or injury to the dependent adult, or which is intended to result in physical contact which will be insulting or offensive to the dependent adult, coupled with the apparent ability to execute the act; or
- ◆ Committed an act which is intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, insulting or offensive, coupled with the apparent ability to execute the act; or
- ◆ Intentionally pointed any firearm toward the dependent adult, or displayed any dangerous weapon in a threatening manner toward the dependent adult.

Note: An assault is an attempt or threat, with force or violence and intent, to hurt another. It must be accompanied with the ability to execute the act.

An assault may be committed without doing any actual injury to the victim. There does not have to be an injury, as there does with other physical abuse reports. However, a verbal threat alone is not an assault, unless surrounding circumstances indicate the immediate intent to execute the act.

Factor 4. The physical assault is **minor**.

Credible evidence the location and size of the injury, if there is one, and the force used to inflict the injury, if there is one, are minor.

Note: "Minor" physical injuries may include injuries such as red marks or faint bruising, taking into account the frailty of the dependent adult and the size and location of the injury. For example, grab marks on the upper arms of a sturdy, stocky dependent adult might be considered minor, but the same type of injury on a frail, very thin dependent adult would not be minor.

A dependent adult with physical limitations, but mental competence, who has an injury as the result of a physical assault could be minor, but the same injury on a dependent adult who has physical limitations and is not mentally competent would not be minor.

Factor 5. The physical assault is **isolated**.

To find the physical assault is isolated, there must be credible evidence there is no record of the caretaker assaulting or hurting someone before. Examples are:

- ◆ No criminal records of assault or founded dependent adult or child abuse reports.
- ◆ Credible evidence the reported incident was an isolated occurrence.

Factor 6. The physical assault is **unlikely to reoccur**.

To find the physical assault is unlikely to reoccur, there must be credible evidence it is not likely to reoccur. Consider the following:

- ◆ The responsible caretaker expresses remorse to the incident of assault and receptiveness to taking classes or accepting advice on how to provide quality health care.
- ◆ Factors contributing to the assault are no longer present.

CONFIRMED DENIAL OF CRITICAL CARE, NOT REGISTERED

For a situation to be confirmed, not registered as founded denial of critical care the report must contain credible evidence of **eight** factors. They are:

Factor 1. The victim is a **dependent adult**.

Factor 2. The denial of critical care occurred as a result of acts or omissions of a **caretaker**.

Factor 3. The dependent adult does not have adequate **food, shelter, clothing, medical care, mental health care, supervision, physical care, or emotional needs are not met** based on evidence from a credible person. Credible evidence could include one of the following:

- ◆ Founded denial of critical care: Failure to provide **adequate food**:
 - No edible food in dependent adult's home: either spoiled food or no food.
 - Obvious signs the dependent adult is not getting enough food, such as extreme thinness, lethargy, and confusion.
 - A medical diagnosis provided by a credible person showing a dependent adult's medical condition resulted from dietary deficiencies.
- ◆ Founded denial of critical care: Failure to provide **adequate shelter**:
 - Power company records to show lack of provision of heat or air conditioning, with corresponding weather records and medical estimates of effects on the dependent adult, to illustrate immediate or potential danger to the dependent adult.
 - Living arrangement, such as a room at a relative's home, littered with refuse or stacked with items making it unsanitary, hazardous, or difficult to move around.
 - Living arrangement has no access to a bathroom.
- ◆ Founded denial of critical care: Failure to provide **adequate clothing**: Clothing provided to the dependent adult is inadequate or inappropriate, such as no coat for warmth in winter or too many layers of clothing in the summer, to the extreme the dependent adult is placed in danger of freezing or suffocating.

- ◆ Founded denial of critical care: Failure to provide **adequate medical care**:
 - Failure to follow through with necessary medical treatment, as directed by a physician.
 - Obvious lack of medical attention, such as untreated open sores.
- ◆ Founded denial of critical care: Failure to provide **adequate mental health care**:
 - Failure to follow through with necessary mental health treatment, such as not taking medications, missing mental health professional appointments.
 - Inappropriate behavior due to the lack of adequate mental health care.
- ◆ Founded denial of critical care: Failure to provide **adequate supervision**: The dependent adult has been left alone and lacks the capacity to protect him or herself.
- ◆ Founded denial of critical care: Failure to provide **adequate physical care**:
 - The dependent adult has skin rashes or other skin problems due to failure to bath.
 - The dependent adult has serious dental problems due to failure to care for teeth.
- ◆ Founded denial of critical care: Failure to **meet emotional needs necessary for normal functioning**: The dependent adult has gross functioning abnormalities resulting from a failure to meet emotional needs, which are observed and documented by a licensed physician or mental health professional.

Factor 4. There is documentation of the immediate or potential **danger** or injury to or death of the dependent adult. Credible evidence could include:

- ◆ Medical charts or diagnosis showing a medical condition or imminent death resulting from diet deficiencies.
- ◆ Health department records showing actual or potential danger from lack of adequate shelter.
- ◆ Weather reports and medical estimates of potential or actual danger because of lack of adequate clothing.

- ◆ Medical records showing how a medical condition could lead to serious illness or death due to failure to receive adequate medical treatment.
- ◆ Documentation from a licensed mental health professional stating the potential or actual danger of a specific mental health diagnosis not receiving adequate mental health care.
- ◆ Evidence of mental or emotional injury resulting from failure to meet emotional needs from a licensed mental health professional.
- ◆ Evidence a dependent adult was left unattended and the resulting potential or actual dangers associated with the circumstances.

Factor 5. The caretaker or dependent adult has the **financial means** or has been offered the financial means to provide care.

Factor 6. The denied care is **minor**.

Credible evidence the denied care is minor. Examples of minor:

- ◆ The denied care didn't last a long time.
- ◆ The dependent adult did not die or have an injury as a result of the denied care.
- ◆ The dependent adult's medical condition was stable and not acute.
- ◆ The dependent adult was reasonably mentally healthy and competent.

Factor 7. The denied care was **isolated**.

Credible evidence the denied care was isolated. Evidence could include:

- ◆ There are no previous dependent adult abuse reports on the caretaker.
- ◆ There are no criminal or child abuse reports on the caretaker.
- ◆ The caretaker has not previously denied the dependent adult critical care.

Factor 8. The denied care is **unlikely to reoccur**.

Credible evidence the denied care is unlikely to reoccur. Evidence could include:

- ◆ The caretaker expresses remorse over behavior that led to the denied care to the dependent adult.
- ◆ The caretaker is willing to take classes and accept advise on how to provide quality care without harming the recipients.