

VULNERABLE ADULTS MALTREATMENT REPORTING AND INTERNAL REVIEW POLICY



Policy

It is the policy of Living Well Disability Services to protect the adults served by this program who are vulnerable to maltreatment and to require the reporting of suspected maltreatment of vulnerable adults.

Procedures

A. Who should report suspected maltreatment of a vulnerable adult

As a mandated reporter, if you know or suspect that a vulnerable adult has been maltreated, you must report it immediately from the time the initial knowledge that the incident occurred was received. For ICF homes, report immediately. For non-ICF homes, report as soon as possible (immediately) but no longer than 24 hours from the time the initial knowledge.

B. Where to report - You can make an external or an internal report.

1. You may make an external report to the Minnesota Adult Abuse Reporting Center (MAARC) (in effect July 1, 2015) by calling **1-844-880-1574** (this number is available 24 hours a day, 7 days a week, every day of the year) or by reporting online at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6303-ENG>

2. You may make an internal report to Program Manager/Designated Administrator or Regional Director.

If this person is involved in the alleged or suspected maltreatment, you must report to Chief Operating Officer or Chief Executive Officer.

C. Internal report

1. When an internal report is received, the Program Manager/Designated Administrator or Regional Director is responsible for deciding if a report to the MAARC is required. If that person is involved in the suspected maltreatment, the Chief Operating Officer or Chief Executive Officer will assume responsibility for deciding if the report must be forwarded to the MAARC.

2. Upon knowledge of an incident of maltreatment, a report must be made to the MAARC immediately.

3. If a report has been made internally, the person taking the report must give the mandated reporter a written notice that tells the mandated reporter whether or not the report has been forwarded to the MAARC. The written notice must be given to the mandated reporter within 2 working days in a manner that protects their confidentiality as a reporter. It shall inform the mandated reporter that if they are not satisfied with the action taken by the facility on whether to report the incident to the MAARC, that they may still make an external report to the MAARC. It must also inform the mandated reporter that they are protected against retaliation by the organization if they make a good faith report to the MAARC.

- D. What to report
1. Definitions of maltreatment of vulnerable adults are contained in Minnesota Statutes, section [626.5572](#). Current definitions are attached to this policy. ICF licensed homes must also report injuries of unknown source that meet definitions appendix.
 2. An external or internal report should contain enough information to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment.
- E. Failure to Report
- A mandated reporter who negligently or intentionally fails to report suspected maltreatment of a vulnerable adult is liable for damages caused by the failure to report.
- F. Internal Review
1. When Living Well Disability Services has reason to know that an internal or external report of alleged or suspected maltreatment has been made, the organization must complete an internal review and take corrective action, if necessary, to protect the health and safety of vulnerable adults.
 2. The internal review must include an evaluation of whether:
 - a. related policies and procedures were followed.
 - b. the policies and procedures were adequate.
 - c. there is a need for additional staff training.
 - d. the reported event is similar to past events with the vulnerable adults or the services involved.
 - e. there is a need for corrective action by the organization to protect the health and safety of vulnerable adults.
 3. The internal review must be completed within 5 working days.
- G. Primary and secondary person or position to ensure internal reviews are completed
- The internal review will be completed by Program Manager/Designed Administrator or Regional Director.
- If this individual is involved in the alleged or suspected maltreatment, the internal review will be completed by Chief Operating Officer or Chief Executive Officer.
- H. Documentation of the internal review
- Living Well Disability Services must document completion of the internal review and provide documentation of the review to the DHS upon the commissioner's request.
- I. Corrective action plan
- Based on the results of the internal review, the organization must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or the program, if any.

- J. Orientation for persons receiving services
1. Living Well Disability Services shall provide an orientation to the internal and external reporting procedures to all persons receiving services. The orientation shall include the telephone number for the MAARC. A person's legal representative must be notified of the orientation.
 2. Living Well Disability Services shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.

- K. Staff training
- Living Well Disability Services shall ensure that each new mandated reporter receives an orientation within 72 hours of first providing direct contact services to a vulnerable adult and annually thereafter. The orientation and annual review shall inform the mandated reporter of the reporting requirements and definitions under Minnesota Statutes, sections [626.557](#) and [626.5572](#), the requirements of Minnesota Statutes, section [245A.65](#), the home's program abuse prevention plan, and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.

Living Well Disability Services must document the provision of this training, monitor implementation by staff, and ensure that the policy is readily accessible to staff, as specified under Minnesota Statutes, section [245A.04](#), subdivision 14.

THIS REPORTING POLICY SHALL BE POSTED IN A PROMINENT LOCATION, AND BE MADE AVAILABLE UPON REQUEST.

Legal Authority: Minn. Stat. §§§§§ [626.557](#); [626.5572](#); [245A.65](#); [245A.04](#), subd. 14; [245D.09](#), subd. 4 (5)

Maltreatment Definition: cruel or violent treatment of a person or animal: mistreatment

Mistreatment Definition: to treat (someone or something) badly: maltreatment

626.5572 DEFINITIONS of Maltreatment of Vulnerable Adults.

Subdivision 1.Scope.

For the purpose of section [626.557](#), the following terms have the meanings given them, unless otherwise specified.

Subd. 2.Abuse.

"Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

- (1) assault in the first through fifth degrees as defined in sections [609.221](#) to [609.224](#)
- (2) the use of drugs to injure or facilitate crime as defined in section [609.235](#)
- (3) the solicitation, inducement, and promotion of prostitution as defined in section [609.322](#)
- (4) criminal sexual conduct in the first through fifth degrees as defined in sections [609.342](#) to [609.3451](#).

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

- (1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult.
- (2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening; or
- (3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult unless authorized under applicable licensing requirements or Minnesota Rules, chapter 9544.

(c) Any sexual contact or penetration as defined in section [609.341](#), between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections [144.651](#), [144A.44](#), chapter 145B, 145C or 252A, or section [253B.03](#) or [524.5-313](#), refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct.

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

(g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship.

(2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subd. 3. Accident.

"Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

(1) is not likely to occur and which could not have been prevented by exercise of due care.

(2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

Subd. 4. Caregiver.

"Caregiver" means an individual or facility who has responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement. Caregiver does not include an unpaid caregiver who provides incidental care.

Subd. 5. MAARC- Minnesota Adult Abuse Reporting Center

"MAARC" means the entity designated by each county responsible for receiving reports under section [626.557](#).

Subd. 6. Facility.

(a) "Facility" means a hospital or other entity required to be licensed under sections [144.50](#) to [144.58](#); a nursing home required to be licensed to serve adults under section [144A.02](#); a residential or nonresidential facility required to be licensed to serve adults under sections [245A.01](#) to [245A.16](#); a home care provider licensed or required to be licensed under section [144A.46](#); a hospice provider licensed under sections [144A.75](#) to [144A.755](#); or a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections [256B.04](#), [subdivision 16](#), [256B.0625](#), [subdivision 19a](#), [256B.0651](#) to [256B.0656](#), and [256B.0659](#).

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

Subd. 7. False.

"False" means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

Subd. 8. Final disposition.

"Final disposition" is the determination of an investigation by a lead investigative agency that a report of maltreatment under Laws 1995, chapter 229, is substantiated, inconclusive, false, or that no determination will be made. When a lead investigative agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

Subd. 9. Financial exploitation.

"Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult.

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult.

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subd. 10. Immediately.

"Immediately" means as soon as possible based on safety of individuals. For non-ICF homes, the definition of immediately is 'as soon as possible but no longer than 24 hours from the time initial knowledge of incident'.

Subd. 11. Inconclusive.

"Inconclusive" means there is less than a preponderance of evidence to show that maltreatment did or did not occur.

Subd. 12. Initial disposition.

"Initial disposition" is the lead investigative agency's determination of whether the report will be assigned for further investigation.

Injury of Unknown Origin.

- a) Was not witnessed by any person **and** the source of the injury could not be explained by the person receiving services **and**
- b) the injury raises suspicions of possible abuse or neglect because of the extent of the injury **or** the location of the injury or the number of injuries observed **or** the incidence of injuries over time.

Subd. 13. Lead investigative agency.

"Lead investigative agency" is the primary administrative agency responsible for investigating reports made under section [626.557](#).

(a) The Department of Health is the lead investigative agency for facilities or services licensed or required to be licensed as hospitals, home care providers, nursing homes, boarding care homes, hospice providers, residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Health for the care of vulnerable adults. "Home care provider" has the meaning provided in section [144A.43, subdivision 4](#), and applies when care or services are delivered in the vulnerable adult's home, whether a private home or a housing with services establishment registered under chapter 144D, including those that offer assisted living services under chapter 144G.

(b) The Department of Human Services is the lead investigative agency for facilities or services licensed or required to be licensed as adult day care, adult foster care, community residential settings, programs for people with disabilities, family adult day services, mental health programs, mental health clinics, chemical dependency programs, the Minnesota sex offender program, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Human Services.

(c) The county social service agency or its designee is the lead investigative agency for all other reports, including, but not limited to, reports involving vulnerable adults receiving services from a personal care provider organization under section [256B.0659](#).

Subd. 14. Legal authority.

"Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

Subd. 15. Maltreatment.

"Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Subd. 16. Mandated reporter.

"Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section [214.01, subdivision 2](#); (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

Subd. 17. Neglect.

"Neglect" means neglect by a caregiver or self-neglect:

(a) "Caregiver neglect" means the failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult.

(2) which is not the result of an accident or therapeutic conduct.

(b) “Self- neglect” means neglect by a vulnerable adult of the vulnerable adult’s own food, clothing, shelter, health care, or other services that are not the responsibility of a caregiver which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections [144.651](#), [144A.44](#), chapter 145B, 145C, or 252A, or sections [253B.03](#) or [524.5-101](#) to [524.5-502](#), refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct.

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship.

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care.

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult.

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition.

(iii) the error is not part of a pattern of errors by the individual.

(iv) if in a facility, the error is immediately reported as required under section [626.557](#), and recorded internally in the facility.

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors.

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead investigative agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead investigative agency's determination of mitigating factors under section [626.557, subdivision 9c](#), paragraph (f).

Subd. 18. Report.

"Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subd. 19. Substantiated.

"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

Subd. 20. Therapeutic conduct.

"Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

Subd. 21. Vulnerable adult.

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

(1) is a resident or inpatient of a facility.

(2) receives services at or from a facility required to be licensed to serve adults under sections [245A.01](#) to [245A.15](#), except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-hold order for commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4).

(3) receives services from a home care provider required to be licensed under section [144A.46](#); or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections [256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, 256B.0653](#) to [256B.0656](#), and 256B.0659.

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision.

(ii) because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment.

(b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

Designated Administrator/Program Manager

(a) “Designated administrator” is a Program Manager or on-call Program Manager responsible for managing and overseeing a facility.

(b) “Program Manager” is a designated administrator responsible for managing and overseeing a facility.

Working Days

Working days are defined as Monday through Friday.