

# Dependable Home Health Care

## POLICY AND PROCEDURE ON REPORTING AND REVIEW OF MALTREATMENT OF VULNERABLE ADULTS

### I. PURPOSE

The purpose of this policy is to establish guidelines for the internal and external reporting and the internal review of maltreatment of vulnerable adults.

### II. POLICY

Staff who are mandated reporters must report all of the information they know regarding an incident of known or suspected maltreatment, either internally or externally, in order to meet their reporting requirements under law. All staff of the company who encounter maltreatment of a vulnerable adult will take immediate action to ensure the safety of the person(s) served. Staff will define maltreatment of vulnerable adults as abuse, neglect, or financial exploitation and will refer to the definitions from Minnesota Statutes, section 626.5572 at the end of this policy. Staff are to conduct themselves in a supportive and respectful manner which does not maltreat Vulnerable Adults.

Staff will refer to the *Policy and Procedure on Reporting and Review of Maltreatment of Minors* regarding suspected or alleged maltreatment of persons 17 years of age or younger.

### III. PROCEDURE

- A. Staff of the company who encounter maltreatment of a vulnerable adult, age 18 or older, will take immediate action to ensure the safety of the person or persons as well as the safekeeping of their funds and property. If a staff knows or suspects that a vulnerable adult is in immediate danger, they will call "911."
- B. If a staff knows or suspects that maltreatment of a vulnerable adult has occurred, they must make a report immediately (within 24 hours) internally to the company or externally to the Minnesota Adult Abuse Reporting Center. Should the staff choose to make a report directly to an external agency, they must make the report by notifying the Minnesota Adult Abuse Reporting Center.
- C. To make a report internally to the company, staff must make a verbal report to their supervisor or Quality Assurance Manager. The Quality Assurance Manager is the primary individual responsible for receiving internal reports of maltreatment and for forwarding internal reports to the Minnesota Adult Abuse Reporting Center. If there are reasons to believe that the Quality Assurance Manager is involved in the alleged or suspected maltreatment, the Executive Director is the secondary individual responsible for receiving internal reports of maltreatment and for forwarding internal reports to the Minnesota Adult Abuse Reporting Center.
- D. To make a report externally to the Minnesota Adult Abuse Reporting Center staff can call **844-880-1574** or report at [mn.gov/dhs/reportadultabuse/](http://mn.gov/dhs/reportadultabuse/).
- E. When reporting the alleged or suspected maltreatment, either internally or externally, staff will include as much information as known and will cooperate with any subsequent investigation.
- F. For internal reports of suspected or alleged maltreatment, the person who received the report will:
  1. Contact the Minnesota Adult Abuse Reporting Center if the report is determined to be suspected or alleged maltreatment.
  2. Ensure an *Incident and Emergency Report* has been completed.
  3. Inform the case manager within 24 hours of reporting maltreatment, unless there is reason to believe that the case manager is involved in the suspected maltreatment. The person who received the report will disclose to the case manager the:
    - a. Nature of the activity or occurrence reported
    - b. The agency that received the report

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4. Complete and mail the *Notification to an Internal Reporter* to the home address of the staff who reported the maltreatment within two working days in a manner that protects the reporter's confidentiality. The notification must indicate whether or not the company reported externally Minnesota Adult Abuse Reporting Center. The notice must also inform the staff that if the company did not report externally and they are not satisfied with that decision, they may still make the external report to the Minnesota Adult Abuse Reporting Center themselves. It will also inform the staff that they are protected against any retaliation if they decide to make a good faith report to the Minnesota Adult Abuse Reporting Center on their own.
- G. When the company has knowledge that an internal or external report of alleged or suspected maltreatment has been made, an internal review will be completed. The Quality Assurance Manager is the primary individual responsible for ensuring that internal reviews are completed for reports of maltreatment. If there are reasons to believe that the Quality Assurance Manager is involved in the alleged or suspected maltreatment, the Executive Director is the secondary individual responsible for ensuring that internal reviews are completed.
- H. The *Internal Review* will be completed within 30 calendar days. The person completing it will:
1. Ensure an *Incident and Emergency Report* has been completed.
  2. Contact the lead investigative agency if additional information has been gathered.
  3. Coordinate any investigative efforts with the lead investigative agency by serving as the company contact, ensuring that staff cooperate, and that all records are available.
  4. Complete an *Internal Review* which will include the following evaluations 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 license holder to protect the health and safety of the vulnerable adult(s)
  5. Complete the *Alleged Maltreatment Review Checklist* and compile together all documents regarding the report of maltreatment.
- I. Based upon the results of the internal review, the company will develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by staff or the company, if any.
- J. Internal reviews must be made accessible to the commissioner immediately upon the commissioner's request for internal reviews regarding maltreatment.
- K. The company will provide an orientation to the internal and external reporting procedures to all persons served and/or legal representatives. This orientation will include the telephone number and website for the Minnesota Adult Abuse Reporting Center. This orientation for each new person to be served will occur within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.
- L. Staff will receive training on this policy, MN Statutes, section 245A.65 and sections 626.557 and 626.5572 and their responsibilities related to protecting persons served from maltreatment and reporting maltreatment. This training must be provided within 72 hours of first providing direct contact services and annually thereafter.

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## MINNESOTA STATUTES, SECTION 626.5572 DEFINITIONS

### Subdivision 1. **Scope.**

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

### 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. 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](#); and
- (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;
- (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; and
- (4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section [245.825](#).

(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; or

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

### 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; or
  - (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; or
  - (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. 17. **Neglect.**

"Neglect" means:

- (a) 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; and
  - (2) which is not the result of an accident or therapeutic conduct.
- (b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health

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care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(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; or
  - (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or
- (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; or
  - (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or
- (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; or
- (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; and
  - (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 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 agency's determination of mitigating factors under section [626.557, subdivision 9c](#), paragraph (c).