

## **SELECT HOME CARE SERVICES, INC** **VULNERABLE ADULT TRAINING-MANDATED REPORTING**

### **Purpose**

The purpose of this training is to provide general knowledge to our employees regarding their role as a mandated reporter. Upon completing this training, employees should be able to identify situations that require reporting, how to report as well as the consequences of not reporting.

### **Vulnerable Adult Definition**

#### **A Vulnerable Adult is:**

Minnesota Statute (MS 626.5572, subd. 21) defines 'vulnerable adult' as any person 18 years of age or older who:

#### **Categorical:**

(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 MS 245A.01 to 245A.15

Exception: a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program, is on a court hold order for commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter MS 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 MS 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections MS 256B.04, subdivision 16, MS 256B.0625, subdivision 19a, MS 256B.0651, and MS 256B.0653 to 256B.0656 or

#### **Functional:**

(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; and

(ii) Because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment

### **The who, what and where of mandated reporting**

Hopefully, all people who witness or suspect maltreatment will report the abuse. However, mandated reporters are a special group required to report suspected maltreatment.

Mandated reporters are professionals identified by law who **MUST** make a report if they have reason to believe that the abuse, neglect, or financial exploitation of a vulnerable adult has occurred. "Mandated reporter" means a professional or professional's delegate while engaged in:

- o Social services
- o Law enforcement
- o Education
- o **Direct care**
- o Licensed health and human services professionals (MS 214.01, subdivision 2)
- o Employment in a licensed facility
- o Medical examiner or coroner activities

### **MAARC Reporting Call Center**

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Effective July 1, 2015, the Minnesota Adult Abuse Maltreatment Center (MAARC) is the new state-wide common entry point for accepting reports of suspected maltreatment of vulnerable adults.

The MAARC toll-free phone number is: **844-880-1574** and are available 24/7 to accept reports from the general public and mandated reporters. A web-based reporting tool is also available 24/7 for mandated reporters to make a report at [mn.gov/dhs/reportadultabuse/](http://mn.gov/dhs/reportadultabuse/).

### **Definitions overview**

#### **Maltreatment**

Maltreatment means abuse, neglect, or financial exploitation as defined below:

- Abuse is physical, emotional, or sexual (MS 656.5572, subd. 2)
- Neglect is the failure to provide for food, clothing, shelter, medical care and/or supervision (MS 626.5572, subd. 17)
- Financial Exploitation is the misuse of a funds, assets or property or the failure to use the vulnerable adult's financial resources to care for the vulnerable adult, which results in or is likely to result in detriment to the vulnerable adult (MS 626.5572, subd. 9)

#### **Abuse**

Abuse means an act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of these statutes:

- Assault in the first through fifth degrees (MS 609.221 to 609.224)
- The use of drugs to injure or facilitate crime (MS 609.235)
- The solicitation, inducement, and promotion of prostitution (MS 609.322)
- Criminal sexual conduct in the first through fifth degrees (MS 609.342 to 609.3451)

#### **Types of abuse**

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:

- Hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult
- 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
- 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
- Use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under MS 245.82
- Any sexual contact or penetration as defined in MS 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility

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- 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.

**More definitions**

**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:

- 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
- 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 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.

**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 (MS 144.6501, subdivision 1d), 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.

**Reporting maltreatment**

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A report means a statement concerning all the circumstances known to the reporter at the time the statement is made surrounding the alleged or suspected maltreatment of a vulnerable adult.

It starts with a phone call:

A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately (as soon as possible, but within 24 hours) make an oral report of the information to the MAARC reporting center.

### **Information needed**

Information that will be helpful to have on hand when making a report includes:

- Name, age and address of the vulnerable adult
- Your name and contact information (are you calling on the behalf of a facility or personally making the complaint)
- Brief description of the situation and the vulnerable adult
- Any evidence of previous maltreatment
- Location of the incident and any other information that you believe might be helpful in investigating the suspected maltreatment
- Current injuries, medical problems, or behavioral problems
- Names of relatives or concerned parties in or outside the home
- Name and address of alleged perpetrator
- Explain how you know about the situation, your relationship to the vulnerable adult
- Contacting law enforcement
- Mandated reporters may also make a report to law enforcement if they suspect a vulnerable adult has been sexually or physically assaulted, or if they have reasonable cause to believe that an act has caused fear of imminent harm.

### **When a report is NOT required to be made to MAARC**

A report is not required for any of the following events:

(a) A circumstance where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected maltreatment, unless the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclose in a manner which conforms to federal requirements.

Note: Facilities whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected maltreatment from each patient or resident, or a guardian, conservator, or legal representative, upon the patient's or resident's admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected maltreatment shall immediately seek consent to make a report.

(b) Verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior by these persons does not constitute abuse unless the behavior causes serious harm. The operator of the facility or a designee shall record incidents of aggressions and self-abusive behavior to facilitate review by licensing agencies and county and local welfare agencies.

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(c) Accident as defined in MS 626.5572, subd. 3, which mean 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; and

(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.

(d) Events occurring in a facility that result from an individual's error in the provision of therapeutic conduct as provided in MS 626.5572, subd. 17, paragraph (c), clause (4).

(e) Nothing in this section shall be construed to require a report of financial exploitation, as defined in MS 626.5572, subd. 9, solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

**Maltreatment investigations**

- The maltreatment report is distributed from the MAARC call center to the lead investigative agency within two business days of receipt of the report. If there is any reason to believe that a crime has been committed, law enforcement shall initiate a response immediately.

**Conducting maltreatment investigations**

- There are three agencies that can take the lead in conducting the maltreatment investigation. MS 626.5572, Subd. 13 defines the LEAD AGENCY as:

- The primary administrative agency responsible for investigating reports made under section MS 626.557.

(a) The Department of Health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, or boarding care homes.

(b) The Department of Human Services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs or chemical health programs.

(c) The county social service agency or its designee is the lead agency for all other reports, including reports involving vulnerable adults receiving services from an unlicensed personal care provider organization under section MS 256.0659 (Laws of Minnesota, 2009, Chapter 79, Effective July 1, 2009).

**Confidentiality for mandated reporters**

As a reporter, your identity is considered confidential and may not be disclosed.

EXCEPTION: The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

**Immunity**

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A person (including any form of a business or legal entity) who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subd. 7 (MS 626.557 subd. 5(a)).

**Failure to report**

A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in MS 626.557 subd. 7 imposes vicarious liability for the acts or omissions of others. Additionally, an individual may be disqualified from providing direct contact services for failing to make a required report (MS 245C.15, subd. 4(b)). Facilities that fail to make mandated reports may be subject to a fine.

**False reports**

A person or facility that intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to \$10,000 and attorney's fees (MS 626.557 subd. 6).

This is an adaptation of the MN DHS Vulnerable Adult training, for the full training, visit: <http://www.dhs.state.mn.us/DSDTraining/WebManRpt/default.htm>