

Minnesota Department of **Human Services**

**GUIDELINES
TO THE INVESTIGATION OF
VULNERABLE ADULT MALTREATMENT**

**A Training Manual for County
VA Investigators and Adult Protection Workers**

July 2007

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Introduction

The ***Minnesota Department of Human Services Guidelines to the Investigation of Vulnerable Adult Maltreatment*** was created by the Minnesota Department of Human Services to aid county workers in the investigation of vulnerable adult reports. The manual provides guidance on the Vulnerable Adult Act including [information on interviewing](#) vulnerable adults and alleged perpetrators, [organizing an investigation](#), [assessment tools](#) and more. It is a collection of materials obtained and adapted from a variety of resources: previous trainings for Minnesota APS workers, assessments and training manuals used in other states, the [Minnesota Vulnerable Adult Statute](#), the Minnesota Department of Human Services [Rule](#), books and videos pertinent to adult protection investigations.

The *Minnesota Department of Human Services Guidelines to the Investigation of Vulnerable Adult Maltreatment* was compiled and written by Gretchen Scheffel, MSW, Circle of Life Aging Services, LLC under an contractual agreement with the Minnesota Department of Human Services, Bev Asher, Adult Protection, MN Department of Human Services, and Barbara Doherty, Adult Protection, MN Department of Human Services.

“Perhaps the starkest difference is that whereas children and younger victims of domestic violence are generally healthy and not expected to die, older people often have numerous underlying medical problems, and functional dependencies and are assumed to be more vulnerable to stressors causing death. Thus, when a younger person dies of unexplained causes, the cause of death is almost always carefully analyzed. The death of an older person, however, is rarely as carefully scrutinized, if at all, regardless of risk factors or indications of possible [abuse](#) or [neglect](#). In addition, old age often brings medical conditions and physiological attributes that may mimic or mask the markers of elder abuse and neglect, further complicating the analysis and detection.

Despite these many complexities, a recent study – one of the few in the area – most clearly underscores the importance of increasing our understanding of these phenomena. The study (Lachs et al., 1998) demonstrates that elder abuse and neglect significantly shorten older ‘victims’ lives, even controlling for all other factors. Incidents of mistreatment that many would perceive as minor can have a debilitating impact on the older victim. A single episode of victimization can “tip over” an otherwise productive self-sufficient older person’s life. In other words, because older victims usually have fewer support systems and reserves – physical, psychological, and economic – the impact of abuse and neglect is magnified, and a single incident of mistreatment is more likely to trigger a downward spiral leading to loss of independence, serious complicating illness, and even death. “

- Elder Mistreatment; Abuse, Neglect, and Exploitation in an Aging America –
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Reaching a Higher Standard of Practice: Professional Issues in Adult Protective Services

Promoting Ethical Professional Practice

Each professional practice generates ethical dilemmas for which no easy solutions exist. Furthermore, it is often difficult even to identify those issues critical to the individuals involved, let alone those relevant in responsible decision-making. Like other professionals, Adult Protective Services (APS) caseworkers must also deal with tough ethical conflicts. Some are intrinsic to Adult Protective Services, while others are common to all professionals who work with vulnerable people.

Ethical problems arise for a variety of reasons. Sometimes developments in a field create problems which are entirely new to the profession. For example, the emergence of new methods for resuscitating cardiac arrest patients raised new questions for medical staff they had not considered before: When is resuscitation helping a patient and when is it only prolonging the dying process? Should resuscitation be given automatically to all patients or are there some who should never receive it?

Sometimes ethical dilemmas emerge because the profession develops greater sophistication about the issues at stake. For example, consider the case of sexual abuse by counselors and therapists. Until quite recently, most professionals believed that adult clients who entered sexual relationships with their counselor/therapist did so as informed and voluntary partners. However, our understanding about issues of power has improved, especially in the counseling setting. And the work of domestic violence specialists has broadened our understanding about the special problems which victims of sexual violence experience. Given these new understandings, most professional associations now state that any sexual contact with clients is unethical since clients can never be regarded as free and un-coerced agents.

Most often, ethical dilemmas arise because the professionals involved find that they must sometimes choose between several principles which they value deeply. In such a quandary, the professional must choose one principle over another. The classic example of such a conflict in Adult Protective Services is the conflict between the responsibility to promote individual autonomy of clients and the responsibility to protect clients from harm. Every APS caseworker can illustrate how difficult sorting out those two responsibilities is in the context of individual lives.

The following illustrate several ethical problems which routinely arise in Adult Protective Services and about which caseworkers should be especially alert.

Personal and professional assessments. The first step in promoting an ethically responsible professional practice is separating personal values from professional assessments. Every individual has personal judgments, or influence decisions. But [personal biases](#) should never affect judgments about another's life and well-being. So a responsible professional is always alert to those personal considerations which

influence professional assessments. These have no place in professional decision-making which affects clients' lives.

The responsible professional is self-critical. They recognize the importance of continuing reflection upon one's assessments. Conversations with colleagues and with collateral contacts are helpful strategies for self-assessment, and to prevent the entry of personal bias.

The responsible caseworker also remembers that outside factors can skew professional judgment. For example, overwork or resentment can tempt the caseworker into taking shortcuts which do not promote the client's good. Fear of litigation affects decision-making adversely. Additionally, caseworkers sometimes refer a client to the mental health network not out of the client's need but out of the caseworker's desire to protect themselves against possible liability.

A prudent caseworker is also alert to their own preferences and the way in which their preferences may creep into judgments about what another needs. While privacy may be a high value for the caseworker, it may be inconsequential to an elder who customarily shares their bed with kin. Finally, we also unknowingly allow cultural stereotypes and judgments to color assessments about others. As each person thoroughly acculturated to one particular world view, it is extremely hard to separate bias from personal difference. Since most caseworkers are from the dominate white culture, it is vital that they strive for sensitivity to the way in which those biases might affect their judgment.

Awareness of difference. No human being is exactly the same as another; so each case will have its uniqueness. It is impossible, then, to develop generic descriptions which fit every reality. Furthermore, no protocol, however carefully devised, will fit each care perfectly. This means that the responsible protective services worker will be alert to differences. They will recognize that each client is unique and every family's reality is different from all others. Thus they will be prepared to be responsive by adapting strategies to individual needs.

The responsible caseworker knows that stress indicators do not apply to all families equally. There is no universal standard by which pain can be measured. Nor are there specific breaking points which can be applied to every caretaking family. Care plans must be adapted to the unique needs of each family.

The ethical social worker will be attentive to issues of power in their practice. Every social service client is vulnerable in the general sense of that word. By that, it is meant that every client's autonomy and sense of self is at risk because they are experiencing a special crisis which affects well-being, sense of self, self-esteem. It is this crisis which brings the client to the caseworker's attention. When in crisis, one's personal power is eroded. When clients are in crisis and ask others for help, they, in turn, want to express their appreciation by being helpful, or they may fear being turned down. So they will do more than they may wish to assist the caseworker, even to the point of agreeing to services they would rather refuse. Often they are unaware of their civil rights.

In Adult Protective Services, client vulnerability is expressed in special ways. Because APS responds to abuse and neglect, APS caseworkers are more likely to work with clients who have become accustomed to being victimized.

Whenever possible, promoting empowerment rather than continuing dependence is an important issue. Those clients who have been dependent for their basic needs upon the Minnesota Department of Human Services for most of their lives (as is the case with many developmentally disabled) have special needs. The APS caseworker needs to recognize that these clients may have developed a long-term dependency upon state workers. Thus, these clients may fear that unwillingness to cooperate in an APS investigation may have other consequences in their lives which they do not wish to risk. As in any other social services setting, the caseworker should be reflective about the way in which they intentionally or inadvertently use power to coerce or direct clients' behaviors.

Hearing secrets. While conducting an APS investigation, the caseworker is on a fact-finding mission, gathering information to determine if abuse or neglect exists, who the perpetrator is, and the client's competency. In the course of the investigation, caseworkers ask many questions which to them are prosaic, even routine, to an APS investigation, yet require respondents to share very private information. Individuals may share that private information because they fear their refusal to answer questions will indict them as perpetrators. Or clients may share secrets they prefer to keep because they fear that they will lose services they need and which they believe the caseworker is empowered to give or take away. The responsible caseworker will be attentive to these factors which affect the responses of clients and their families. So the caseworker will be alert to the client's fear that their refusal of services or unwillingness to answer questions during investigation could result in the loss of benefits or removal from the home.

Most victims feel shame about their abuse; this is especially the case when the abuser is a relative. It is extremely important that caseworkers ask only those questions which are necessary to the investigation, taking care to minimize the shame of the victim and the intrusiveness of the questions. Furthermore, when a victim's power is eroded, control of information about the rape or the financial exploitation may be the only power they have left. Viewed in this light, it is important to recognize that the victim's only remaining power may be in determining who gets the information from them and when. That power should be protected, not violated by a brusque or deadline-conscious caseworker. Observing and respecting the victim's timetables and needs may prolong, even subvert, the investigation but, in the long run, may be face-saving, healing, and empowering.

Finally, the APS caseworker needs to reflect upon their own motives for asking the kinds of questions posed to the victim. How much information is truly needed to complete an investigation? How much information only feeds the caseworker's voyeurism and further exacerbates the victim's feeling of powerlessness?

Role conflicts. It is very important that professionals always present themselves accurately to their clients. This is important for several reasons. First, no client can

assess an offer of service fairly without being clear about the goals of the service provider in promoting that service. For example, hospitals concerned primarily with improving their profit margin are unlikely to put the patient's interest first; this is a critical piece of information for any patient considering admission into that hospital. So too, the agency, which is primarily interested in head counts and demonstrating efficient utilization of services, may not serve clients well. It is important to recognize that there are usually institutional needs being served in any given case; **but the client's needs must always come first.** When that is not the case, the staff is not faithful to the vision of serving others with integrity.

All professionals must strive to realistically analyze the assumptions they bring to their work and the goals they have for their clients. A sound and responsible relationship depends on the caseworker's ability to be both honest with self about goals and assumptions and clear in communicating these to clients. So, more and more, counselors now begin work with a new client by developing a clear contract, stating clearly their goals in this counseling relationship and the assumptions and values they bring as a counselor. Only then can the counselee fairly assess the appropriateness of the services this counselor offers and evaluate the counselor's fit in their life.

Adult Protective Services has evolved out of the tradition of social welfare. That tradition involves two concerns: 1) responding to the suffering and needs of individuals; and 2) correcting the conditions which generate those needs. It is a legacy of caring and nurturing a healing profession. When an individual becomes a caseworker, they enter this legacy of caring and nurturing; they enter a healing profession. But when a caseworker accepts a position in Adult Protective Services, they also step into another very different role – that of an investigator with the power of the state to enter others' lives. This is both a police function and a bureaucratic one. The police function flows out to the statutory requirement to respond to calls about alleged abuse and neglect and to investigate them. The bureaucratic role is driven by the stated procedures as set forth by the Statute and Rule.

So we have identified three very different roles which the APS worker carries out simultaneously: nurturing, investigator, and mediator. They are not compatible; they often are in conflict. Each APS caseworker must be realistic about those roles; only then can they present themselves honestly and accurately to potential clients and be truly aware of the impact of those different roles in their practice.

Above all, when an APS caseworker approaches new clients, it is important for them to bear in mind that the way they regards themselves may not be the way in which the client sees them. Adult Protective Services caseworkers regard themselves as nurturers and enablers, individuals working in the social welfare tradition. But they must also recognize that they carry the mantle of the state and have police powers to enter the lives of others. So the client may only see the badge of the state, invisible though quite real. These are very different roles. It is only fair that clients should understand these very different aspects of the social worker's position.

The concern for liability. The concern for liability is a real one; it permeates professional practice everywhere. It is understandable that APS caseworkers, like

professionals in other settings, should be concerned with their own practice, asking: How can I protect myself and my agency from malpractice suits? Of course, the best protection against liability is an excellent practice. This means being familiar with the Minnesota Statutes and Rules which set forth the APS mandate and its limits, and doing exactly what is required and no more.

But there is an ethical issue with regard to liability. Adult Protective Services caseworkers must guard against taking actions which really only address their own fear of liability and do nothing to promote a client's well-being. Such actions are not usually in the interests of the client. Sometimes, for example, a mental health professional refers a case to APS knowing full well that the client does not meet the definition of a vulnerable adult. The referral has been made because the mental health worker wants to ensure that they are protected against liability should a suit ever arise. Similarly, there are occasions when an APS caseworker calls the mental health network for a mental health assessment, knowing full well that the client is merely eccentric, not a candidate for involuntary commitment. They make the call because the community is irate about the case. By calling the mental health professional, they create a paper trail demonstrating that they have done everything within reason in the case, and then some. But such responses feed staff paranoia about liability and unnecessarily intrude upon the lives of clients.

Living with the Gray

We live in an imperfect and changing world. No statute and no set of policies, however carefully developed, can ever address the infinite variety of human need and the complexities of real lives. Adult Protective Services caseworkers are on the front lines of a new field, one which works a difficult balance between promoting autonomy and protecting vulnerable people. It will always be an uneasy balance because so many cases fall somewhere in the middle; he is competent in most ways, but signs all checks anyone presents to him; or she is competent some days, and some days not.

There are no perfect solutions; indeed, for some cases no satisfactory solutions exist at all. Some clients will always refuse services which caseworkers are certain could ease their lives. And it is very difficult to close a case because a client regards a chore worker as an intrusion worse than living with roaches or vermin. Then there are the cases in which no answer seems to fit, no plan is really the right answer. Sorting out these difficult cases takes skill, patience and creativity.

Adult Protection Services is hard work and calls for a continuing process of exploring what one can realistically offer a needy client who really doesn't fit the system. Making the system adapt to that special need takes creativity. It is professionally courageous to take responsibility for the difficult-to-call decision. And it takes personal courage to walk away from a client who will not accept a carefully devised management plan and all offered options but prefers to continue living with their abusive family.

It is important to remember, in those times, the vision which draws one to the field of protective services – helping those who are vulnerable and promoting their empowerment. A caseworker usually cannot change the realities of another's life. But by providing needed information and offering choices, the caseworker empowers the

client – whether the client accepts the choices or uses the information or not. Sometimes empowerment means learning only this: that one has the power to say no. After all, freedom means the power to say yes or no to options offered.

Finally, being a professional involves more than satisfactorily fulfilling the policies set forth in a manual. It means providing the services which the Rules set forth, of course. But being a professional also means continually reflecting on one's practice, changing practice as new understanding develops and being responsive to diverse client needs and values.

The Law and the Rule

Minnesota's Vulnerable Adults Act was originally adopted in 1980; it was substantially revised and updated in 1995. The law covers several key points: who is considered a vulnerable adult; how maltreatment is defined; who is required to report any known or suspected maltreatment and where to call to make the report; which agencies must investigate; the penalties for committing maltreatment or failing to report; and what the appeal process is if any of the parties involved in the case are not satisfied with its outcome.

The vulnerable adult law contains both civil and criminal provisions; this allows the penalty to be tailored to fit the specific situation. The main difference between civil maltreatment and criminal maltreatment is that in criminal cases there is evidence that the perpetrator committed the harm knowingly or with the intent to do harm.

The [Minnesota Vulnerable Law](http://www.revisor.leg.state.mn.us/stats/626/557.html) can be found in its entirety at:
<http://www.revisor.leg.state.mn.us/stats/626/557.html>

The [definitions](http://www.revisor.leg.state.mn.us/stats/626/5572.html) can be found at:
<http://www.revisor.leg.state.mn.us/stats/626/5572.html>

It is typical for APS statutes to include provisions which may be used to provide services to adults who are unable to consent to receive the services. APS statutes, as well as other pertinent statutes and rules, may be used to ensure that essential life-saving services are provided. If an adult lacks the capacity to consent to receive protective services, these services may be ordered by a court on an involuntary basis through an emergency order or through the appointment of a guardian.

Rule 9555.7100 - 7700

The Minnesota Rule that directs the actions of local county social services agencies describes the requirements for accepting reports of maltreatment, providing emergency protective services and investigating the maltreatment allegations.

[Rule 9555.7100 - 7700](http://www.r.leg.state.mn.us/arule/9555/7100.html) can be found in entirety in the appendix and at:

<http://www.r.leg.state.mn.us/arule/9555/7100.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7200.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7300.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7400.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7500.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7600.html>
<http://www.revisor.leg.state.mn.us/arule/9555/7700.html>

The Principles of Adult Protection

- ☞ When interests compete, the adult client is the only person you are charged to serve; not the community concerned about safety, the landlords concerned about property, citizens concerned about crime or morality, families concerned about their own health or finances.
- ☞ When interests compete, the adult client is in charge of decision-making until she or he delegates responsibility voluntarily to another, or the court grants responsibility to another.
- ☞ A person can choose to live in harm or even self-destructively, provided she or he is competent to choose, does not harm others and commits no crimes. Freedom is more important than safety.
- ☞ In serving the adult client, the full range of social work skills must be used to assure the client is fully aware of alternatives and can make an informed choice, and understands consequences of choice.
- ☞ Protection of adults seeks to achieve simultaneously and in order of importance: freedom, safety, least disruption of life-style and least restrictive care alternative.



Common Entry Point

626.557 Reporting of maltreatment of vulnerable adults.

Subdivision 1. **Public policy.** The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.

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

Per legislative directive, each local Board of County Commissioners is required to [designate a common entry point](#) in their county that will be available 24 hours a day/7 days a week. The statewide list of common entry points is listed in the [Appendix A](#).

- Jurisdiction: When a Common Entry Point (CEP) designated agency receives a report where the jurisdiction may be in question, established protocol requires the CEP to accept the report and take responsibility for forwarding it to the appropriate licensing agency, county, and law enforcement agency.
- Frequently, several jurisdictions can be involved in financial exploitation allegations. The adult protection staff in the county where the victim resides has responsibility for any immediate protective measures. Usually the jurisdiction for criminal investigation is based on where the financial transactions occurred. Responsibility for completing a full vulnerable adult investigation can be negotiated between counties depending on which law enforcement agency takes the lead in investigation. Upon completion of the civil investigation, the county agency shall complete a [DHS #2494](#) (under construction) and send the name of any substantiated perpetrator to the [Background Studies Unit](#) at the Minnesota Department of Human Services Licensing Division.

The common entry point accepts reports of alleged maltreatment of vulnerable adults that OCCUR in their county—the jurisdiction is not based on county of residence. If the allegation is one of financial exploitation, the local law enforcement jurisdiction may be different depending on where the alleged financial exploitation took place. In this situation, the local county agency (where the Vulnerable Adult (VA) resides) would retain the responsibility for immediate protective services, if required, but can forward the police report to the appropriate law enforcement department. It is advisable for the CEP worker or the APS investigator to contact the local social services agency in the other county to let them know of any contact with their sheriff or police.

CEP Intake Report Instructions

All of the information on the CEP Intake Report Form is important and helpful in understanding our clients' and our programs' needs. **However, the following bolded items are most essential.**

DATE of intake.

SECTION A:

VA's race. Do not guess. Fill in the appropriate code on the CEP Intake Report Form.

WH: Caucasian

AF: African-American, not of Hispanic origin; a person having origins in any of the black racial groups of Africa.

HI: A person of Mexican, Puerto Rican, Cuban, Central or South American origin, regardless of race.

AI: American Indian or Alaskan Native; a person having origins in the original peoples of North American and who maintain cultural identification through tribal affiliation or community recognition.

AS: Asian American/Pacific Islander; a person having origins in any of the peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, Japan, Korea, the Philippines, Samoa and the Hawaiian Islands.

OT: Includes all other persons except "Unknowns."

UK: VA's race is not known.

VA's date of birth.

VA's gender.

VA's status (check only one)

- **Functional VA:** A vulnerable adult because of infirmity that impairs VA's ability to adequately care for self **AND** protect self from maltreatment.
- **Categorical VA:** A vulnerable adult because of the type of services received (non-residential services or resident of a facility).

VA's disability (check all that apply)

SECTION B:

Is caller the Designated Facility Reporter?

SECTION D:

Location of the incident.

SECTION E:

Incident involves allegation of maltreatment? Check this box if the report is going to be forwarded on for review for investigation determination.

SECTION F:

Maltreatment Checklist Guide:

Please check and circle all that apply. **It is important to fill out the guide so accurate data may be collected.**

SECTION G:

Alleged Perpetrator's (AP's) Gender.

AP's age.

AP's date of birth.

AP's race.

AP's relationship to VA.

SECTION J:

Is there suspected criminal activity?

Type of crime.

Was a police report made?

Was CEP Intake Report Form sent to police?

Is there a need for Adult Protection Services?

Referred to Lead Investigative Agency? (It is important for accurate data purposes to check which investigative lead agency will receive this report if it is being forwarded for investigation.)

Department of Health?

Department of Human Services/Licensing?

County? (specify county)

County (It is critical that you enter your county code so we know which county this data is from)

What Office of Health Facility Complaints (OHFC) Needs in a Report

For alleged maltreatment in: facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, or boarding care homes.

1. Collect as much information as possible (on the **CEP Intake Report Form**) about the alleged perpetrator, how the facility is protecting the residents, etc.
2. Complete as much of the information on the **COMMON ENTRY POINT (CEP) INTAKE REPORT FORM, Vulnerable Adult Maltreatment Report**, as possible.
For example:
 - a. Telephone numbers with area codes
 - b. Contact telephone numbers for reporters and complainants
 - c. If reporter is a facility employee, is the employee reporting on behalf of the facility or filing a complaint
3. Complete a **CEP Intake Report Form** for each call received. For example, if a report is received from the facility related to an incident and then a call is received from the relative related to the same incident, complete a **CEP Intake Report Form** for each call.
4. If a call is received involving issues other than maltreatment in hospitals, nursing homes, boarding care homes, home care providers or home health agencies, please refer the caller to Office of Health Facility Complaints (OHFC) at **(651) 215-8713 or 1-800-369-7994**.
5. Please obtain the legal name and full address of the facility, spelling out acronyms. Access the online database to look up facilities licensed by the Health Department at the Minnesota Department of Health's web site at www.health.state.mn.us and under **Quick Link** choose from the pull down list "Licensed health care providers."

Reports of possible maltreatment, abuse, neglect, exploitation, and unexplained injuries involving nursing homes, hospitals, home health agencies, licensed home care providers or boarding care homes should be forwarded to the [Office of Health Facility Complaints](#).

These reports include, but are not limited to the following:

1. Sexual Assault should be **immediately** sent to OHFC and the police. Instruct the facility to contact the police immediately so that evidence can be collected and appropriate exams completed.
2. Physical abuse by staff, relatives, visitors.

3. Unexplained injuries, such as fractures, large skin tears, and bruises, especially those that are in unusual areas, such as the perineum, breasts, upper inner thigh, should be forwarded to OHFC promptly.
4. Staff taking and using credit cards, checks, and/or money from patients/residents.
5. Neglect: Obtain information about the nature of the neglect that the facility is reporting, e.g., did the facility staff fail to follow the resident's care plan, physician's order, the facility's policies and procedures, etc.

Examples of reports of neglect OHFC **are required to receive** are, but not limited to:

- According to the resident care plan, the resident is to be transferred by two staff. One nursing assistant decides to transfer the resident alone, resulting in the resident falling and suffering a fracture.
- Upon admission to a nursing home, a resident who has a history of congestive heart failure, has a physician's order for Lasix, a diuretic, 20 mgms twice daily. The order is not transcribed correctly at the time of admission and the resident receives only one dose of Lasix daily. The resident subsequently develops congestive heart failure and requires hospitalization. Since the facility did not follow the physician's orders, the CEP Intake Report Form should be sent to OHFC.
- A client, who resides in an assisted living facility, receives care from a home care provider. The client develops a bedsore, which worsens with time. Staff fail to notify the physician or implement interventions to prevent further breakdown.
- Other neglect issues that should be forwarded to OHFC include issues related to dehydration, pain management, nutrition, decubitus, changes in condition, etc.

Examples of incidents related to falls that **do not** require reports to OHFC:

- A resident who is independent with a walker falls while walking in the hall. The resident is using her walker at the time.
- A resident did not put on call light or yell for assistance, but got out of bed on her own, falls and suffers a fractured hip.
- A resident puts on call light for assistance but no one answers the light; the resident gets out of bed, falls but does not suffer an injury.
- Falls which are not witnessed. Just because the fall is not witnessed does not make this a reportable issue. There has to be suspected or known neglect or abuse associated with the fall.
- Single mistake/medication errors (see [Appendix F](#))

Address

Office of Health Facility Complaints, Golden Rule Building, 85 E 7th Place, Suite 300,
PO Box 64970, St. Paul, MN 55164-0970

Phone: **(651) 215-8702**

Fax: **(651) 215-8712**

http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_008627.hcsp

What the Minnesota Department of Human Services (DHS) Licensing Division Needs in a Report

For alleged maltreatment in: programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, chemical health programs, or personal care provider organizations.

1. Please ensure that all information on each page of the **COMMON ENTRY POINT (CEP) INTAKE REPORT FORM, Vulnerable Adult Maltreatment Report** is completed whenever possible. If the reporter does not know the requested information, document **“not known”** for that particular item.
2. On page number one, please include the birth date and diagnosis for the vulnerable adult. Identify area codes for telephone numbers and ask the reporter to identify the telephone number at which they can most likely be reached. When the reporter is a facility employee, always identify if the employee is reporting on behalf of the facility or is reporting without facility awareness.
3. On page number two, under **DESCRIPTION OF INCIDENT**, it would be helpful if the CEP obtained as much information as possible about the incident by asking the reporter the following:
 - What happened? Who was involved, including any witnesses?
 - Was there any harm to the vulnerable adult? If so, what was the harm?
 - What action did the facility take in response to the incident for both the vulnerable adult(s) and the staff person(s) involved?
 - For unexplained injuries, please ask the reporter if the vulnerable adult has a history of the injury; if there are any medical or behavioral issues that could cause the injury; and, what the facility’s plan is to lessen the possibility of reoccurrence.
 - For any reports of sexual or physical abuse where the alleged perpetrator is known to be still working, ask if law enforcement is investigating and how the facility is protecting the vulnerable adults.
4. On page number four, please obtain the alleged perpetrator’s home address and telephone number.
5. If the CEP receives a report from the facility related to an incident and then receives a call(s) from another licensed facility or other persons, **please complete a CEP Intake Report Form for each call**. Please identify the name and telephone number of the person from the CEP who received the report.

Address

Department of Human Services, Licensing Division

5N Human Services Building

444 Lafayette Road N, St. Paul, MN 55155-3842

Phone: (651) 297-4123

Fax: (651) 297-1490

http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_008627.hcsp

Emergency Protective Services

The following is taken from the Minnesota [Rule](#), Chapter 9555, Minnesota Department of Human Services.

9555.7400 EMERGENCY PROTECTIVE SERVICES.

The local social services agency shall offer emergency and continuing protective services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abuse or neglected vulnerable adult.

Emergency protective services may include:

Joint visit with public health and/or law enforcement for purpose of determining whether a 911 call or an emergency transport hold can be initiated.

When the CEP or law enforcement request immediate response, enlist another co-worker or public health nurse to make the site visit with you. Emergency transport holds can be initiated on site by a mental health professional, a public health official or law enforcement.

Evidence of mental incapacity, including dementia, are criteria for the transport hold to a medical facility for evaluation by a physician who can then admit the person for [72 hours of observation](#).

Removal of an alleged perpetrator using the domestic abuse statute.
[Domestic Abuse Act](#)

Allowing [probable cause arrests](#) for domestic violence; immunity from liability:

Appearance in family court on behalf of the victim to seek an order for protection or restraining order. [Order For Protection](#) (Subd. 4):

In cases of self-neglect, emergency contacts with neighbors or family members who could provide immediate food, shelter, transportation to medical care and/or supervision may be necessary.

All of the above actions and collateral contacts are specifically listed in the statute as a means of providing immediate protection

Investigations

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 1. Duty to accept and investigate complaints.

The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 2. Time limits to initiate investigations.

The local social services agency shall begin to investigate all complaints within the following time limits:

- A. The local social services agency shall conduct an **immediate** on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life-threatened or likely to experience physical injury due to abuse or abandonment.
- B. The local social services agency shall begin its investigation within **24 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.
- C. The local social services agency shall begin its investigation within **72 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subpart 4. Investigations not related to a facility.

When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

- A. discussion with the alleged victim;
- B. discussion with the reporter or any corroborating contacts as necessary;
- C. discussion with the alleged perpetrator;
- D. discussion with the physician or other professionals; and
- E. examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Notice of Privacy Practices

**This replaces the Tennessee Warning and Hipaa

This information is available in other forms to people with disabilities by calling your county worker. For TDD users, contact your county worker through the Minnesota Relay at 711 or 1-800-627-3529. For the Speech-to-Speech relay, call 1-877-627-3848.

This notice describes how medical information and other private information about you may be used and disclosed and how you can get access to this information. Please review it carefully.

You have privacy rights under the Minnesota Government Data Practices Act and the federal Health Insurance Portability and Accountability Act (HIPAA). These laws protect your privacy, but also let us give information about you to others if a law requires it or allows it. We may tell you before we give the information.

Why do we ask you for this information?

- To tell you apart from other people with the same or similar name.
- To decide what you are eligible for.
- To help you get medical, mental health, financial or social services.
- To decide if you can pay for some of your services.
- To make reports, do research, do audits, and evaluate our programs.
- To investigate reports of people who may lie about the help they need.
- To decide about out-of-home care and in-home care for you or your children.
- To collect money from other agencies, like insurance companies, if they should pay for your care.
- To decide if you or your family needs protective services.
- To collect money from the state or federal government for help we give you.

Do you have to answer the questions we ask?

Generally, the law does not say you have to give us this information. We need your social security number in order to give you some kinds of financial help or child support enforcement.

What will happen if you do not answer the questions we ask?

We need information about you to tell if you can get help from any program. Without the information, we may not be able to help you. If you give us wrong information on purpose, you can be investigated and charged with fraud.

With whom may we share the information about you?

We may give information about you to the following agencies, if they need it for investigations or to help you or help us help you. We don't always share information about you with these people, but the law says we may share information with them. If you have questions about when we give these people information, ask your worker.

- US Department of Agriculture
- US Department of Health and Human Services
- US Department of Labor
- US Citizenship and Immigration Services
- Internal Revenue Service
- Social Security Administration
- Minnesota Department of Employment and Economic Development
- Minnesota Department of Education
- Minnesota Department of Human Rights
- Minnesota Department of Human Services
- Minnesota Department of Labor and Industry
- Minnesota Department of Public Safety

- Minnesota Department of Revenue
- Minnesota Department of Veterans Affairs
- Minnesota Historical Society
- American Indian tribes, if your family is in need of human services at a tribal reservation
- Higher education coordinating board
- State hospitals or long-term care facilities
- State and federal auditors
- Court officials
- Anyone under contract with the Minnesota Department of Human Services or US Department of Health and Human Services, or the county social services agency
- Local and state health departments
- County human services boards
- Child or adult protection teams
- People who investigate child or adult protection
- Other human services offices, including child support enforcement offices
- Fraud prevention and control units
- Employees or volunteers of any welfare agency who need the information to do their jobs
- County attorney, attorney general or other law enforcement officials
- Mental health centers
- Ombudsman for families
- Ombudsman for mental health and mental retardation
- County Advocates for Minnesota Managed Health Care Programs
- Guardian, conservator or person who has power of attorney for you
- Local collaborative agencies
- Community food shelves or surplus food programs
- Health care providers
- School districts
- Schools and other institutions of higher education
- Coroner/medical examiner if you die and they investigate your death
- Hospitals if you, a friend, or relative has an emergency and we need to contact someone
- Others who may pay for your care
- Insurance companies to check health care benefits you or your children may get
- Managed care organizations about your health care or benefits
- Credit bureaus
- Creditors
- Collection agencies, if you do not pay fees you owe to us for services
- Anyone else to whom the law says we can give the information. You have the right to information we have about you.
- You may ask if we have any information about you and get copies. You may have to pay for the copies.
- You may give other people permission to see and have copies of private information about you.
- Unless we get special written permission from you, we will only use your health information for the purposes listed on this form.
- You may question the accuracy of any information we have about you.
- You have the right to ask us to share health information with you in a certain way or in a certain place. For example, you may ask us to send health information to your work address instead of your home address. You must make this request in writing. You do not have to explain the basis for your request. If we find that your request is reasonable, we will grant it.
- You can ask us to restrict uses or disclosures of your health information. Your request must be in writing. You must explain what information you want to restrict from being disclosed and to whom you want these restrictions to apply. You can request to end these restrictions at any time by calling us or by writing to us. We are not required to agree to your restrictions.
- You have the right to receive a record of the people or organizations that we have shared your health information with. We must keep a record of each time we share your health information for six years from the date it was shared. It will NOT include those times when we have shared your information in order to treat you, pay or bill for your health care services or to run our programs. If you want a copy of this record, you must send a request in writing to our Privacy Official.
- If you do not understand the information, you may ask your worker to have it explained to you. You can ask DHS for another copy of this notice.

What are our responsibilities under this notice?

We may change our privacy policy in the future. We might do this, for example, because privacy laws change and require us to change our practices. When we change our privacy rules we will publish them on our web-site at: <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-3979-ENG>. Until we publish new privacy rules we will abide by the terms of this notice.

What if you believe the information we have about you is wrong?

Send your concerns in writing, telling us why the information is not accurate or complete. You may send your own explanation of the facts you disagree with. Your explanation will be attached any time that information is shared with another agency.

What privacy rights do children have?

If you are under 18, parents may see information about you and allow others to see this information, unless you have asked that this information not be shared with your parents or it involved medical treatment for which parental consent was not required. You must make this request in writing and say what information you want withheld and why. If the agency agrees that sharing the information is not in your best interest, the information will not be shared with your parents. If the agency does not agree, the information will be shared with your parents if they ask for it. When parental consent for medical treatment is not required, information will not be shown to parents unless the health care provider believes failing to share the information would jeopardize your health.

What if you believe your privacy rights have been violated?

You may complain if your privacy rights have been violated. You cannot be denied service or treated badly because you have made a complaint. If you believe that your medical privacy was violated by your doctor or clinic, a health insurer, a health plan, or a pharmacy, you may send a written complaint either:

- Directly to that organization, or
- To the federal office of Civil Rights at:
US Department of Health and Human Services
Office for Civil Rights - Region V
233 N Michigan Avenue, Suite 240
Chicago, IL 60601
(312) 886-2359 (Voice)
(312) 353-5693 (TTY/TDD)
(312) 886-1807 (Fax)

If you think that the Minnesota Department of Human Services has violated your privacy rights you may send a written complaint to the U.S. Department of Health and Human Services at the address above, or to:

Privacy Official
Minnesota Department of Human Services
444 Lafayette Road N
St. Paul, MN 55155-3813

Sign below to indicate that you have received this privacy notice.

Acknowledgment of Receipt of Notice of Privacy Practices

I hereby acknowledge my receipt of this Notice of Privacy Practices. I understand that if I have any questions about the information of this form, I can ask my case worker or other appropriate agency personnel.

Applicant signature	Date
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Organizing the Investigation

It is important that the investigation of an alleged incident of maltreatment be organized, thorough and unbiased. A worker should always consider that the information gathered may be used in a court hearing at some point so needs to be as complete as possible.

Prepare and Plan – 10 Steps, Use the Investigation Worksheets

- 1) Review the information on the CEP Intake Report form (and any other documents received) and note any questions or items that need clarification.
 - Location of the incident
 - Allegation(s)
 - Witness(es)
 - Information on the VA's impairment(s)
 - Any safety concerns that will need to be addressed immediately
 - The relationship between the victim and the perpetrator
- 2) Research prior reports and/or investigations.
 - Search for similar/related information/allegations
 - Make note of the prior investigator and contact them
 - Make note of additional collateral contacts
 - Make note of the VA's insight: attitude, time span of the prior case, any information, capacity, mental health issues, clues
 - Make note of the disposition and resolution of prior case
 - Wrap up research and relate any information to current case, document
- 3) Contact the reporter.
 - Verify that the reporter knows a case has been opened
 - Ask questions that have surfaced so far, as to clarify information
 - Obtain more specific information if necessary
 - Assess the attitude of the reporter in regards to the VA
 - Inquire about additional contacts
 - Ask about support systems
 - Obtain reporter's impression of VA's decision-making skills
 - Inquire about special needs
 - Inquire about Power of Attorney/Guardianship or Conservatorship and their involvement with the VA
- 4) Determine what, if any, documents are needed for the investigation and request them as necessary.
- 5) Plan the face-to-face visit(s).
- 6) Conduct necessary interviews.
- 7) Process the interviews.

- 8) Refocus on allegation(s), needs and resolutions.
 - It is pertinent that the allegation(s), actual need(s), and resolution all mesh and make sense.
 - Review the investigation worksheet and case notes to ensure the best resolution.
 - Staff the case if necessary.
 - Was the protective need resolved?
- 9) Community Coordination
 - Make referrals as necessary to community resources. ([Appendix E](#) - important links)
 - Allow for ownership: encourage the VA to independently access needed services. (This allows the VA to gain confidence in their problem-solving skills and may encourage them to take action to resolve future problems on their own.)
 - Offer services in the least restrictive manner.
- 10) Case Closure.

See information on making a determination and closing cases on [page 84](#).

Inspection of the Premises

It is important to visit the site where the alleged incident of maltreatment occurred as soon as possible after the incident, even if it is felt that the physical location of the incident may have no bearing on the facts surrounding the incident itself. A view of the location is often important for determining the ability of the witnesses to observe the incident, and to assess the plausibility of the incident occurring as it was reported. Even if the visit to the site proves to be of little value, if there is an eventual hearing relating to the case, the opposing attorney will be unable to state that the investigation was not thorough. Determine if it is necessary for law enforcement to inspect the premises as well (try to determine this *before* going out) and conduct the inspection jointly. Anticipate if there may be evidence that may need to be preserved.

View the location of the incident with one or more eyewitnesses to the incident. Ask witnesses for a detailed explanation of the physical positions of various persons involved and a demonstration of how the incident occurred. If possible, measure or estimate the distances of witnesses from the location of the incident. A witness' ability to see or hear the details of the incident may be crucial to the case.

Has the physical site of the incident changed at all since the incident took place? Look for obstacles eyewitnesses may have had in viewing the incident or any difficulty in hearing because of the setting or proximity to the incident. View any equipment that may be relevant such as wheelchairs, hospital beds, or other medical equipment. Consider whether a picture of the physical location may be helpful if they have not already been taken.

Evidence

It is essential to secure any evidence available at the time the incident occurs. Work with law enforcement to gather and preserve evidence. Possible evidence that should be/have been collected:

Evaluation of victim's body, take photos if appropriate (see below). The victim may try to cover up injuries with clothing, look for inappropriate clothing for the weather (ie. a turtleneck in the summer):

- Make note of bruises (especially bruises made by suspect's fingers or hands grabbing, shaking, pinching the victim).
- Assess the victim's hand and forearms for defensive injuries and look for injuries on parts of the body that wouldn't be expected.
- Be particularly aware of the following fractures: skull (concussion – look for bleeding from ears or complaints of head hurting), jaw, nasal, neck, collar bone, hips or legs, separation of shoulder, spiral fractures of long leg and arm bones (spiral fractures are generally not the result of usual accidents), finger and hands.
- Make note of lacerations and abrasions.

Evaluation of the suspect:

- Size, weight, age, physical condition
- Rings, watchbands, belts used
- Injuries on hands, scratches on hands, arms or face
- Any known history of abuse or abusive behavior

Instruments of physical assault (think about what COULD have caused the injury):

- Belts, straps, curtain rods, thermometer cases, wheelchair accessories, etc.
- Restraining devices

Clothing and bedding that may contain evidence: blood, semen, other body fluids, hair or tissue may be on these items.

Photos or videotape of injuries:

- Both long and close-up shots should be taken to establish the injuries recorded were on the victim.
- Follow-up photographs are recommended to show the developed bruises, inflammation, or swelling that developed a day after fresh injuries are sustained.

Photos of evidence:

- Photos showing the condition of clothing or bedding: tears, missing buttons, broken zippers, stains, blood, indications of clothing being bunched or wrinkled.
- If taking photos, show a scale by using a ruler in the photograph for any impression marks that appear to have been made by a striking instrument such as hand or finger impressions, bite impressions, belt buckle or ring impressions, burn marks, etc.
- Have a witness such as a nurse or doctor present and include the witness in as many photos as possible. The witness should sign a statement indicating their presence during the entire photography session.

Obtaining Documents

Try to obtain all records relevant to the allegations. The worker should have a good understanding of the type of document, who prepared it, when it was prepared and how it is relevant to the case. Make sure the records are relating to the time period of the incident and that they are LEGIBLE! See investigation worksheet for a list of potential documents that may be relevant. The following is an explanation of *why* some of the documents may be necessary.

Police reports: This document must be obtained. The police report will have information that will guide the investigation. There may be information that the police already obtained, so, to avoid duplication, it is important to obtain it and read it carefully. A worker may want to interview the officer or officers that were involved in the case.

Medical records: They may be used to demonstrate the medical history of the vulnerable adult, document injuries or evidence of a sexual assault, have a record of the plan for care and/or follow-up. Medication lists should be obtained from the vulnerable adult's physician. In addition, in the course of interviewing the vulnerable adult and/or their caregiver, a list of medications should also be obtained.

Facility or home care: Most investigations that are conducted by the county will not involve facilities or home care agencies because they are handled by either the Minnesota Department of Health or the Minnesota Department of Human Services. However, there may be an unusual case that may involve gathering evidence from a facility or home care agency. If the case involves a staff person from a facility or agency, it is relevant to obtain all information relating to them including their personnel file. The schedules and time cards are used to prove the staff person was working at the time of the incident.

Financial: Financial records are extremely important when conducting an investigation of financial exploitation. Often these cases are joint investigations with law enforcement. Determine who will obtain the financial records for the investigation; the county worker or law enforcement. Agree on which documents need to be obtained and who is gathering which documents.

Investigating the Four Components of Maltreatment

Abuse, Neglect, Financial Exploitation and Self-Neglect

What the Rule says:

9555.7300 COMPLAINT INVESTIGATION BY LOCAL SOCIAL SERVICES AGENCIES.

Subpart 1. **Duty to accept and investigate complaints.** The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

(Subpart 3. No longer relevant because it relates to facilities)

Subpart 2. **Time limits to initiate investigations.** The local social services agency shall begin to investigate all complaints within the following time limits:

- A. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life-threatened or likely to experience physical injury due to abuse or abandonment.
- B. The local social services agency shall begin its investigation within 24 hours for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.
- C. The local social services agency shall begin its investigation within 72 hours for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subpart 4. **Investigations not related to a facility.** When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

- A. discussion with the alleged victim;
- B. discussion with the reporter or any corroborating contacts, as necessary;
- C. discussion with the alleged perpetrator;

- D. discussion with the physician or other professionals; and
- E. examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Subpart 5. **Investigations by agencies which are not in the county of financial responsibility.** When a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility, the local social services agency of the host county shall:

- A. investigate the complaint in accordance with subpart 3 and determine whether the complaint is substantiated, inconclusive, or false;
- B. notify each relevant licensing agency, the police or sheriff, and the county of financial responsibility;
- C. consult with the county of financial responsibility, unless the host county must take immediate emergency measures and representatives of the county of financial responsibility are not available;
- D. take whatever measures are necessary to correct the situation or to remove the adult from the facility and notify the county of financial responsibility of the actions taken to correct the situation or of the removal of the adult from the facility; and
- E. complete and transmit all required written forms and findings to appropriate agencies.

The local social services agency of the county of financial responsibility shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult.

Subpart 6. **Use of outside experts.** When it is investigating alleged abuse or neglect of a vulnerable adult, the local social services agency shall consult persons with appropriate expertise if the local agency believes that it lacks the expertise necessary for making judgments pertaining to the allegations. This consultation may include matters of physical health, mental health, specialized treatment such as behavior modification, geriatrics, or other matters.

Subpart 7. **Investigations after initial complaint assessment.** If upon the initial assessment required by subparts 1 to 6 there appears to be substance to a complaint, the local social services agency shall attempt to determine the following:

- A. the risk posed if the vulnerable adult remains in the present circumstances;

- B. the current physical and emotional condition of the vulnerable adult, including the history or pattern of abuse or neglect or related prior injuries;
- C. the name, address, age, sex, and relationship of the alleged perpetrator to the vulnerable adult; and
- D. in a complaint of neglect, the relationship of the caretaker to the vulnerable adult, including the agreed-upon roles and responsibilities of the caretaker and the vulnerable adult.

Domestic Abuse in Later Life Tips for Working with Victims

Ask About Abuse

Lead into questions about abuse with a statement such as: “Because many people I work with are hurt by family members, I ask questions about relationships and abuse”.

The questions may include:

- How are things going with your spouse (or adult child)?
- Are you getting out with our friends?
- Are you afraid of your spouse (or other family member)?
- Have you ever been hit, kicked, or hurt in any way by a family member?
Does anyone threaten you or force you to do things you do not want to do?
- Have you ever been forced to do sexual acts you did not wish to do? Is this going on now?

If yes, ask for more information and ask questions such as “how are you staying safe?”

If no, state that “If a family member ever does hurt you or you know someone who is being hurt, there are people who can help. Feel free to contact me for information if you ever need it.”

RED FLAGS (Things to listen and watch for)

From a potential victim

- Has repeated “accidental” injuries
- Appears isolated
- Says or hints at being afraid
- Considers or attempts suicide
- Has history of alcohol or drug abuse (including prescription drug)
- Presents as a “difficult” patient or client
- Has vague, chronic complaints
- Is unable to follow through on treatment plans or medical care. May miss appointments.
- Exhibits severe depression

From a potential abuser

- Is verbally abusive to staff in public, or is charming and friendly to service providers
- Says things like “he’s difficult,” “she’s stubborn,” he’s so stupid,” or “she’s clumsy”
- Attempts to convince others that the family member is incompetent or crazy
- Is “overly attentive” to the family member
- Controls the family member’s activities
- Refuses to allow interview or exam to take place without being present
- Talks about the family member as if he or she is not a person

Wisconsin Coalition Against Domestic Violence

Interventions: At Least Do No Harm

Do everything possible to give a victim a sense of **hope** by:

- Believing the account of the abuse
- Saying that abuse can happen to anyone and the victim is not to blame
- Planning for safety or finding someone who can
- Offering options and giving information about resources or finding someone who can
- Allowing the victim to make decisions about next steps (returning power to the victim)
- Keeping information shared by the victim confidential
- Documenting the abuse with photographs, body maps, and victim statements.

Do not do anything that further **isolates, blames, or discourages** victims, such as:

- Telling the victim what to do (e.g., “you should leave immediately”)
- Judging a victim who returns to an abusive relationship
- Threatening to or ending services if a victim does not do what you want
- Breaking confidentiality by sharing information with the abuser or other family members
- Blaming the victim for the abuse (“if only you had tried harder or done this, the abuse might not have happened”)
- Reporting abuse to the authorities without permission from the victim (unless mandated by law). If you are a mandated reporter, tell the victim what you are doing and why. Help the victim with safety planning or find someone who can.
- Documenting opinions (“he’s drunk and obnoxious” or “she’s hysterical and overreacting”). These statements are opinions and may not be accurate. However, they can be used against a victim in court.

Do not collude with the abuser and give them more power and control by:

- Accepting excuses from the abuser and supporting the violence (“I can understand how much pressure you are under.” “These things happen.”)
- Blaming alcohol/drug use, stress, anger, or mental illness for the abuse. Abusers must be held accountable for their actions before they will change their behavior.
- Minimizing the potential danger to the victim or yourself if you offer help. Arrange for appropriate security for the victim and your staff when working with a potentially lethal batterer (e.g., has made homicidal/suicidal threats or plans, owns weapons).

Do work collaboratively

- To learn more about potential interventions, contact local domestic abuse and/or sexual assault, victim/witness, or adult protective services/elder abuse agencies.
- With the victim’s permission, refer to appropriate agencies for assistance.
- Use experts in a variety of fields as case consultants on difficult cases. Bring challenging cases to a multi-disciplinary teams for review. Ensure client confidentiality.

PHYSICAL/SEXUAL ABUSE

Physical/Sexual Abuse

The specific Minnesota [criminal abuse statutes](#) are contained in the appendix of this manual. This section will focus on the investigation process and the different roles and responsibilities that are designated to county social services, law enforcement and the health care system.

The [Vulnerable Adults Act](#) places responsibility for investigating incidents alleging abuse, neglect or financial exploitation with county social services, licensing agencies, and law enforcement. Each investigating agency has a different focus.

The Act and [Rule](#) direct the coordination and cooperation of the agencies in the notification process and during the investigation phase. The Act permits a free exchange of information among these agencies to assist the investigation of the reported incident.

In rare instances in which abuse or neglect is believed to be the cause of death of a vulnerable adult, the county coroner/medical examiner must be notified and becomes part of the investigative process.

While the process of investigations varies depending on the given situation, some clarifications are included about the roles of county social services, licensing agencies, law enforcement and county attorneys.

- **Social services** – has the responsibility to assure the personal safety of the victim of abuse or neglect. All directives in the Act to social services clearly point to that responsibility.
- **Licensing or regulatory agencies** – have the responsibility to determine if any licensing violation was involved in the reported incident. Licensing agencies include the [Minnesota Department of Health](#), [Department of Human Services' Division of Licensing](#), and all the regulatory boards that license individual health care personnel.
- **Law enforcement** – has the responsibility to determine and investigate if the reported incident involved any criminal violation.
- **The county attorney has two roles in the adult protection system.**
 - **Counselor** – Providing advice to the agency and the caseworker. Assisting in the preparation of materials and activities that may have legal consequences. In this role, the county attorney is not involved in the actual casework process.
 - **Representative** – Becoming part of the agency's plan and advancing that plan within the appropriate legal framework.

The Vulnerable Adult (VA) Act and Rules cite the use of experts within the casework process, and the county attorney may well be one of these experts to advise the agency on the legality of certain processes and activities of the agency.

The VA Act and Rules also direct the county attorney to represent the agency in matters of conservatorship and guardianship when such is appropriate to protect the vulnerable adult from serious harm. The VA Act and Rules directs that the county pay the legal fees of indigent persons involved in guardianship/conservatorship matters.

Violations of the criminal sexual conduct statutes, assault statutes, and prostitution statutes are defined as “abuse” in the Vulnerable Adults Act. Exploitation of a vulnerable adult and caretaker neglect may also result in some chargeable criminal offense. In all these instances social services and law enforcement will share the investigative processes, and the county attorney clearly is the office to present the charges before the appropriate court.

- **Health care** – Within the protective services framework, public health, home health, private medical practitioners, county health officers and community hospitals have important functions. They may fill these three distinct functions:
 - **Reporting:** Health services, especially public health/home health, may be one of the first to identify the need for protective services.
 - **Evaluating:** Expert advice in assessment of health deficits and needed services to prevent abuse/neglect. In this way, the health professional becomes a part of the investigating “team,” with the county social services agency providing the mandated lead investigating role.
 - **Providing Care:** The social services case management plan will undoubtedly call on several community services. Home health and other health services may be a part of the overall protective services. It is essential that coordination of services and positive communication among services be maintained to achieve the greatest benefit for the vulnerable adult client.

Investigations

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 1. Duty to accept and investigate complaints.

The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 2. Time limits to initiate investigations.

The local social services agency shall begin to investigate all complaints within the following time limits:

- A. The local social services agency shall conduct an **immediate** on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life-threatened or likely to experience physical injury due to abuse or abandonment.
- B. The local social services agency shall begin its investigation within **24 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.
- C. The local social services agency shall begin its investigation within **72 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subpart 4. Investigations not related to a facility.

When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

- A. discussion with the alleged victim;
- B. discussion with the reporter or any corroborating contacts as necessary;
- C. discussion with the alleged perpetrator;
- D. discussion with the physician or other professionals; and
- E. examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Physical/Emotional/Sexual Abuse Investigation Resource

Abuse is defined as hitting, slapping, kicking, pinching, biting, or corporal punishment, use of repeated or malicious oral, written, or gestured language, assault, battery, any sexual contact or penetration between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility, use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, forced separation of the VA from other persons against their will, assault with a deadly weapon or force likely to produce great bodily injury, or unreasonable physical constraint, sexual assault, or prolonged or continual deprivation of food or water. Physical abuse also includes use of a physical or chemical restraint or psychotropic medication for punishment, for a period beyond that for which the medication was ordered, or for any purpose not authorized by the physician.

Investigation Process

Assess Urgency

A. Look for signs of imminent danger including: → **If a problem is identified, consider the following actions:**

- ◆ Alleged perpetrator's proximity and access to the VA
- ◆ VA's physical, emotional or financial dependence on alleged perpetrator
- ◆ A recent change in the VA's environment or situation
- ◆ Inadequate care or support in the home
- ◆ Prior incidents of abuse, neglect or domestic violence
- ◆ A recent threat that places the VA at immediate risk
- ◆ VA is unable to advocate for or protect themselves
- ◆ A need for an Order for Protection
- ◆ A physical injury that is readily visible
- ◆ VA expresses significant emotional distress
- ◆ VA need for immediate medical care
- ◆ VA's cognitive deficits place them at immediate risk for further abuse

Immediate face-to-face visit to complete an assessment
 Contact law enforcement
 Call 911
 Consult with supervisor
 Call VA's doctor
 Obtain immediate consult with PHN
 Arrange for care - formal or informal
 Consider a transport hold if the VA is a danger to self or others

Assess Client

B. Consider the following: → **If a problem is identified, consider the following actions:**

- ◆ Relationship between the VA and spouse, caregiver, significant other or alleged perpetrator
- ◆ VA's willingness to cooperate with APS
- ◆ VA's vulnerability to further abuse
- ◆ VA's receptiveness to care
- ◆ Impact of medication on VA's cognitive and physical status
- ◆ VA's ADL functioning
- ◆ VA's history of physical injuries
- ◆ Pattern of VA's prior injuries
- ◆ VA's history of, or current evidence of, alcohol or substance abuse
- ◆ VA's history of self-injurious behaviors
- ◆ VA's ability and willingness to pay for appropriate level of care
- ◆ VA's ability to access medical care
- ◆ VA's competence, judgment and insight
- ◆ VA's history of mental illness
- ◆ VA's support system
- ◆ Frequency of visitors

Offer [domestic violence/sexual assault](#) resources to VA
 Contact law enforcement
 Assist VA to obtain an [Order for Protection](#)
 Enlist help from family, friends, neighbors etc.
 Provide care giving resources to VA
 Refer VA to counseling resources
 Encourage VA to see physician
 Provide education regarding concerns, options and resources available
 Make a referral to CADI or EW/AC
 Establish a safety plan with VA
 Encourage VA to ready an emergency kit that includes cash, clothes, keys and medication
 Establish a rapport and trusting relationship with the VA
[Complete an MMSE](#)
 Discuss level of care needs and placement options with physician and VA
 Request a joint visit with PHN
 Contact the VA's physician to obtain info about VA and past injuries
 Refer VA to appropriate resources, i.e. Meals on Wheels, home care, etc.
 Public Conservator, Home Care, Legal Services, SSI, Medical Assistance
 Arrange for transportation for medical evaluation or treatment

Assess Injury

C. Consider the following:

- ◆ Location, color, and possible source of injury
- ◆ VA's explanation for the injury
- ◆ VA's ADL functioning and the possibility that injury was result of a fall
- ◆ Extent of medical treatment for injury

→ If a problem is identified, consider the following actions:

- Arrange for transportation so the VA can get a forensic exam and medical treatment
- Take photographs of injury
- Contact law enforcement
- Assist client to obtain an [Order for Protection](#)
- Enlist help from family, friends, neighbors, etc.
- Provide care giving resources to client
- Encourage client to see physician and obtain medical treatment
- Facilitate hospitalization
- Discuss plausibility of cause of injury with the client
- Provide education regarding concerns, options and resources available
- Establish a safety plan with client
- Encourage client to ready an emergency kit that includes cash, clothes, keys and medication
- Request a joint visit with PHN for injury evaluation
- Contact the client's physician to discuss injury
- Encourage client to ask the caregiver or AP to leave the home

Assessment tool to determine age of bruises

Bruises

Red	Immediate
Purple/Black	Soon After
Green	Days 4-5
Yellow	Days 7-10
Resolution	Days 14-15

Camps

Violet	Immediate
Blue	Day 3
Green	Days 5-7
Yellow	Days 8-10
Resolution	Days 13-19

Glaister

Bruises Older adults bruise more readily than younger people, and they are also at greater risk for a variety of injuries that lead to bruising. For this reason, it is often difficult to distinguish between bruises and other injuries or situations which may suggest abuse.

Bilateral bruises These types of bruises are rarely obtained accidentally. These bruises are on both sides of the body – for example, on the top of both shoulders, both sides of the face or inside both thighs.

“Wrap-around” bruises These bruises are also unlikely to be accidental. These are bruises which encircle the older person's arms, legs, or torso. This type of bruising may indicate that the older person has been physically restrained.

For more information on the age of bruises, please refer to the following resources:

Camps, F. E., Robinson A.E., Lucas B.G.B. Gradwohl's Legal Medicine. (1976) 3rd ed. Bristol: John Wright and Sons Ltd.
Glaister J., Rentoul E. Medical Jurisprudence and Toxicology. (1973) Edinburgh and London: E&S Livingstone Ltd.

Assess Caregiver or Alleged Perpetrator (AP)

D. Consider the following: —————→

- ◆ Caregiver's or AP's ability to provide appropriate level of care
- ◆ Caregiver's or AP's history of, or current evidence of, alcohol or substance abuse
- ◆ Caregiver's or AP's motivation for providing care, i.e. financial, guilt, legal status
- ◆ Caregiver's or AP's level of stress
- ◆ Caregiver's or AP's opportunity for respite
- ◆ Caregiver's or AP's criminal history or history of violent behavior
- ◆ Caregiver's or AP's dependence on VA's income
- ◆ Caregiver's or AP's access to weapons
- ◆ Current or past restraining orders against caregiver or AP
- ◆ Caregiver's or AP's history of making threats
- ◆ Caregiver's or AP's history of mental illness

If a problem is identified, consider the following actions:

Contact law enforcement
Provide resources for caregiver training
Refer to caregiver support services
Complete a thorough financial assessment (refer to financial exploitation investigation tool)
Assist VA to secure assets
Review POA, Trust or other legal documents
Arrange for respite services
Assist VA to obtain an Order for Protection
Encourage VA to accept emergency shelter
Establish a safety plan with VA
Encourage VA to leave the home
Make a referral to the Public Guardian or Public Conservator
Refer VA to legal services

Assess Environment

E. Consider the following: —————→

- ◆ Evidence in the environment of a struggle
- ◆ Safety of current living environment
- ◆ Length of time that client has resided in current environment
- ◆ Availability of weapons in the environment

If a problem is identified, consider the following actions:

Take photographs of environment
Contact law enforcement
Complete an SOC 343
Assist client to obtain an EPO, TRO or Kick Out Order
Provide POS to safeguard client
Enlist help from family, friends, neighbors, etc.
Provide education regarding concerns, options and resources available
Refer client to home repair services
Encourage client to leave the home and offer resources for emergency shelter
Encourage client to remove weapons from the home
Assist client to establish a safety plan
Encourage client to ready an emergency kit that includes cash, clothes, keys and medication

Documentation of Investigation

- [Data](#) collected by the county social services agency while performing duties as a lead agency are considered welfare data under 13.46.
- Each agency may document the findings of their investigation of maltreatment according to their established record-keeping procedures. There is no state model at this time.
- Complete the 2494 and submit a copy to Bev Asher, Minnesota Department of Human Services, Adult Protection Unit, PO Box 64976, St. Paul, MN 55164-0976.

NEGLECT

Caregiver Neglect

Caregiver is defined in [MS626.5572](#) as: Caregiver means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract or by agreement.

The following is taken from "[A Fact Sheet on Caregiver Stress and Elder Abuse](#)" published by the [National Center on Elder Abuse](#) (NCEA).

"Most people who need help with daily activities as a result of a disabling condition or illness get the help they need from family members or friends. Some receive help from paid caregivers who work for agencies or independently. Despite the significant physical and emotional demands of providing care, the overwhelming majority of caregivers are meeting the challenge; many are doing an excellent job. But reports of abuse by caregivers are not uncommon and appear to be on the rise. This fact sheet responds to frequently asked questions about caregiver stress and abuse.

What is a caregiver?

The term refers to anyone who routinely helps others who are limited by chronic conditions. "Formal" caregivers are volunteers or paid employees connected the social service or health care systems. The term "informal caregiver" refers to family members and friends who are the primary source of care for nearly three-quarters of the impaired older adults who live in community. Caregivers assist with such basic tasks as bathing, dressing, preparing meals and shopping. Some have the added responsibilities of administering medications, making sure that an immobile person is turned frequently to avoid developing pressure sores and other tasks related to the older person's illness or disability.

What is caregiver stress and why is it harmful?

Some stress is normal. In the past it was believed that the more care a person provided, the more likely they were to experience stress. Now it is known that not all caregivers are created equal. Some, who provide high levels of care, experience no stress, while others who provide relatively little care experience high levels of stress. Many experts believe that these differences can be explained by subjective factors such as how caregivers feel about providing care, their current and past relationships to those they care for, and their coping abilities. Some caregivers find certain behaviors by care receivers to be particularly stressful, including aggression, combativeness, wandering and incontinence. Others report that they experience stress because they do not get enough rest, privacy, support or time for themselves.

Are there “red flags” to watch for?

Drawing from what is currently known about caregiver abuse, the following factors may be cause for concern:

The caregiver:

- fears that he will become violent
- suffers from low self-esteem
- perceives that they are not receiving adequate help or support from others
- views care giving as a burden
- experiences emotional and mental “burnout,” anxiety or severe depression
- feels “caught in the middle” by providing care to children and elderly family members at the same time
- has “old anger” toward the care receiver that can be traced back to their relationship in the past

The care receiver:

- is aggressive or combative
- is verbally abusive
- exhibits disturbing behaviors such as sexual “acting out” or embarrassing public displays

The caregiver and the care receiver:

- live together
- had a poor relationship prior to the onset of the illness or disabling condition
- are married and have a marital relationship that is characterized by conflict

What can be done?

Reducing the risk of elder abuse by caregivers will require the efforts of caregivers, agencies and the community.

Caregivers can:

- get help; making use of social and support services, including support groups, respite care, home delivered meals, adult day care and assessment services, can reduce the stress associated with abuse
- learn to recognize their “triggers,” those factors that cause them the greatest stress or anxiety
- learn to recognize and understand the causes of difficult behaviors and techniques for handling them more effectively
- develop relationships with other caregivers; caregivers with strong emotional support from other caregivers are less likely to report stress or to fear that they will become abusive
- get healthy; exercise, relaxation, good nutrition and adequate rest have been shown to reduce stress and help caregivers cope

- hire helpers; attendants, chore workers, homemakers or personal care attendants can provide assistance with most daily activities (Caregivers who cannot afford to hire helpers may qualify for public assistance.)
- plan for the future; careful planning can relieve stress by reducing uncertainty, preserving resources and preventing crises; a variety of instruments exist to help plan for the future including powers of attorney, advanced directives for health care, trusts and wills

Agencies can:

- carefully screen caregivers and patients for the risk factors associated with caregiver abuse
- provide caregivers with information and support to lower their risk
- provide instruction to caregivers (through materials, classes, websites or support groups) in conflict resolution and how to deal with difficult behaviors such as violence, combativeness and verbal abuse
- promote better coordination between agencies that offer protection to victims and those that offer services to caregivers; this can be achieved through cross-disciplinary training, interagency protocols and multidisciplinary teams

Neglect by caregivers can take many forms and can range in level of serious harm to the vulnerable adult. One of the most frequently occurring types of neglect is inadequate supervision of the vulnerable adult and disagreement about what the caregiver can reasonably be expected to do in terms of ensuring safety of the vulnerable adult.

Use of restraints, locking the vulnerable adult in a bedroom or within the home are not appropriate responses to a person who is confused and wanders. It is difficult to get a geriatric assessment that can determine level of capacity in terms of self-preservation and thus the level of supervision required. However, the home care plan for the vulnerable adult does need to specifically address supervision and provisions for additional caregivers if that is indicated.

Investigations

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 1. Duty to accept and investigate complaints.

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9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 2. Time limits to initiate investigations.

The local social services agency shall begin to investigate all complaints within the following time limits:

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- C. The local social services agency shall begin its investigation within **72 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subpart 4. Investigations not related to a facility.

When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

- A. discussion with the alleged victim;
- B. discussion with the reporter or any corroborating contacts as necessary;
- C. discussion with the alleged perpetrator;
- D. discussion with the physician or other professionals; and
- E. examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Neglect

Investigation Resource

Neglect is defined as 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.

“Self-neglect is the result of an adult’s inability, due to physical and/or mental impairments or diminished capacity, to perform essential self-care tasks including: providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, emotional well-being and general safety; and/or managing financial affairs.”
National Association of Adult Protective Services Administrators. Conducted by Virginia Department of Social Services. “A National Study of Self-Neglecting Adult Protective Services Clients.” 1991.

Investigation Process

Assess Urgency

- A. Look for signs of imminent danger including:** —————→ **If any of these factors exist, consider the following actions:**
- ◆ Immediate medical need
 - ◆ Alone and unable to care for self
 - ◆ Judgment of caregiver grossly impaired
 - ◆ Lack of food, clothing, shelter or utilities
 - ◆ Caregiver will not allow APS access to VA
 - ◆ Significant structural hazard i.e. faulty wiring or gas leak
- Call doctor
 - Consult supervisor
 - Contact law enforcement
 - Call 911
 - Obtain immediate consult with PHN
 - Consider a transport hold if the VA is a danger to self or others
 - Arrange for care - formal or informal

Assess Client

- B. Look for signs and symptoms of neglect including:** —————→ **If any of these factors exist, consider the following actions:**
- ◆ Situation not related to lifestyle preferences
 - ◆ Poor physical appearance
 - ◆ Impaired ADL functioning
 - ◆ Inability to manage own finances
 - ◆ Inability to make decisions and direct care
- Call doctor
 - Arrange for VA to be seen by doctor
 - Request that doctor order Home Health to assess for health care
 - Involve family as VA allow
 - Consult supervisor
 - Consult with PHN
 - Arrange for care - formal or informal
 - Assist VA to obtain POA, rep. payee, or money management services
 - Advise family members to file for conservatorship
 - Make a referral to CADI or EW/AC
 - Link VA to appropriate community resources
 - Assist VA to obtain food, clothing, or appropriate housing
 - Offer assistance with placement in appropriate level of care
 - Administer one or more tools to assess competency and decision-making: Tools used:

Assess Caregiver

C. Look for signs and symptoms of neglect by caregiver including:—►If any of these factors exist, consider the following actions:

- | | |
|---|--|
| <ul style="list-style-type: none">◆ Displays knowledge deficits and poor insight related to VA's care◆ Displays physical limitations which hinder care of VA◆ Displays mental/emotional inability to care for VA◆ Indications of substance abuse◆ Indications of inappropriate motivation or intent related to care of the VA◆ Unwilling to accept services to help VA◆ Relates legal obligations as reason for care giving role◆ Indications that caregiver isolates the VA physically or through medication◆ Relates unwillingness to spend VA's financial resources for VA's care◆ Nature or history of relationship with VA is questionable◆ Relates history of criminal activity or unstable mental illness◆ Relates dependency on VA's financial resources | <ul style="list-style-type: none">Call doctor to discuss care giving arrangements and obtain level of care recommendationsConsult with PHNInvolve other family members in VA's care as VA allowsOffer VA alternatives to current care giving arrangementConsult supervisorLink VA to appropriate community resourcesArrange for care - formal or informalInvolve law enforcementOffer alternatives for money managementProvide resources for caregiver trainingLink caregiver to caregiver support servicesRefer to respite servicesOffer assistance with placement of VA in appropriate level of care |
|---|--|

Assess Environment

D. Look for signs of neglect including:—► If any of these factors exist, consider the following actions:

- | | |
|--|--|
| <ul style="list-style-type: none">◆ Filth◆ Dirt◆ Pungent odors◆ Fire and safety hazards◆ Inadequate food◆ Inoperable appliances, bathroom facilities, or utilities◆ Excessive clutter◆ Infestation◆ Lack of adaptive devices/equipment◆ Excessive number of animals◆ Inability to care for animals◆ Excessive heat or coolness in environment | <ul style="list-style-type: none">Consult supervisorContact county code enforcementContact animal controlContact city building and safety departmentConsult with law enforcementInvolve family as client allowsContact property managementContact tenant legal servicesContact homeowners associationTake picturesRefer to appropriate community resourcesContact HUD Section 8 Housing |
|--|--|

Documentation of Investigation

- [Data](#) collected by the county social services agency while performing duties as a lead agency are considered welfare data under 13.46.
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FINANCIAL EXPLOITATION

Financial Abuse and Exploitation

Financial exploitation - MN Statute 609.2335, subd. 1 (1) is defined as:

- In breach of fiduciary duty recognized elsewhere in law, intentionally fails to use financial resources of the vulnerable adult for food, clothing, shelter, healthcare, therapeutic conduct or supervision.
- Subd. 1 (2) In the absence of legal authority, acquires possession or control of the vulnerable adult's property through undue influence, harassment, or duress; or, forces, compels, coerces or entices the vulnerable adult against their will to perform services for profit of another.

Fiduciary - In breach of fiduciary obligation, defendant must have fiduciary duty to the vulnerable adult.

- The Power of Attorney – is the most common. They shall exercise the power in the same manner as an ordinarily prudent person would in their own affairs and shall have the interests of the principal utmost in mind (§523.21)
- Gifts to the Power of Attorney are limited to \$10,000 per year – the principal should know of the gift and consent to it (§subd.8(2))
- Guardian or Conservator – Look to estate and probate law for duty of fiduciary. They have no immunization from claims of fraud and self-dealing.
- Responsible Party – (Under §144.6501) This is a person with access to resident's income. They agree to apply resident's income and assets to pay for the resident's care. They also apply for medical assistance on behalf of a resident.
- Trustee – They cannot purchase or deal in the trust property. Self-dealing is a breach of their duty. The Restatement Second of Trust states that a trustee has a duty to administer a trust solely in the interests of the beneficiary. (§170 (1). *Schug v. Michael*, 245 N.W. 2d587, 591 (Minn. 1976) "Trustee has a duty to take and keep control of trust property, to preserve trust property and to keep trust property separate from his own." *In re Watland*, 300 N.W. 195, 200 (Minn. 1941), holding trustees are "bound to maintain and preserve the corpus of the trust estate."
- Failure to use resources for a vulnerable adult – Intentional failure to use financial resources of a vulnerable adult for a vulnerable adult. The most common are failure to pay nursing home bills; failure to pay other medical bills; and failure to keep the vulnerable adult's home in working condition.

Common concerns arising in vulnerable adult financial abuse involve issues regarding:

1) the relationship between the vulnerable adult and supposed perpetrator; and 2) biological factors that may impair the victim's ability to know and understand what was happening. If a relationship was manipulated in order to defraud or financially exploit the victim, it is important to determine whether the psychological and social elements of undue influence were present. If there was no misuse of a relationship, then the financial abuse is usually considered to be a form of theft or consumer fraud – ex. identity theft, Internet scams, embezzlement, etc.

Because illness, disability, and medication use is common within the elderly population, it is often necessary to determine whether the victim's mental capacity or competency is (or was) impaired. Medical expertise is not always required to make this determination.

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- D. discussion with the physician or other professionals; and
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The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Understanding Power of Attorney

What you should know

A Power of Attorney is a legal document in which you give another person legal authority to act for you. The Power of Attorney can cover simple tasks like writing or endorsing checks. It can also involve more complex matters like selling real estate.

The Power of Attorney can be very specific or very general. You can authorize just one task, like selling a car. Or, you can give your agent the power to do everything you can now do for yourself. Your attorney will be able to help you understand how you can tailor the Power of Attorney to fit your wishes and needs.

Choosing your agent

You can give Power of Attorney to anyone you choose. Your agent does not have to be an attorney. Choose someone you can trust. It might be your daughter or your brother, sister or spouse. Be sure to ask an attorney to draw up the documents.

Do not be concerned that your agent will "take over" or that you will not be able to make your own decisions. Think of a Power of Attorney as giving someone a second set of keys. You will still have your own keys, but your agent will have keys, too. You can take the agent's keys back any time you want, by revoking the Power of Attorney.

Types of Power of Attorney

There are four types of Power of Attorney. The type you choose will depend on how much authority you want your agent to have; when you want your agent to start acting on your behalf; and when you want your agent's authority to come to an end.

Limited Power of Attorney. Through a limited Power of Attorney you authorize another person to do specific things for you for a limited period of time, or in certain circumstances. The limited Power of Attorney ends if you become incapacitated or die. It also could end at a time that you specify in the document.

General Power of Attorney. A general Power of Attorney gives another person the authority to do whatever you can do. Think very carefully before signing this type of document. It should be used sparingly. This document ends when you become incapacitated or die.

Durable Power of Attorney. A durable Power of Attorney authorizes your agent to continue to act for you after you become incapacitated. This document ends at your death. It can take effect as soon as you sign it.

Springing Power of Attorney. A springing Power of Attorney can be written so it goes into effect if you become incapacitated. Be very careful to define clearly exactly how others will determine that the "springing event" has occurred.

Financial and Medical Powers of Attorney. You will probably want separate Powers of Attorney for finances and health care. Within each legal document, you specify the terms your chosen agent must follow in carrying out your wishes.

A durable Financial Power of Attorney allows your agent to carry out financial tasks for you when you cannot do so. This might include paying your bills, managing your property, and handling other money matters.

A durable Medical Power of Attorney lets your agent make medical decisions for you when you can't make these decisions.

Financial Exploitation Investigation Resource

Financial exploitation is defined as 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. A person engages in unauthorized expenditure of funds entrusted to the actor by the VA which results or is likely to result in detriment to the vulnerable adult; or fails to use the financial resources of the VA to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the VA, and the failure results, or is likely to result, in detriment to the VA. In the absence of legal authority a person willfully uses, withholds, or disposes of funds or property of a VA; 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 VA; acquires possession or control of, or an interest in, funds or property of a VA through the use of undue influence, harassment, duress, deception, or fraud; or forces, compels, coerces, or entices a VA against the VA's will to perform services for the profit or advantage of another.

Investigation Process Assess Urgency

A. Assess urgency upon receipt of referral:

- ◆ Upon initial contact, assess immediate risk - i.e. loss of assets within 24 hours or significant loss in a short period of time or on an on-going basis.

If immediate risk exists, consider the following actions:

- Consult with supervisor or financial specialist
- Call law enforcement

Assess Assets

B. Identify all assets:

- ◆ Real estate
- ◆ Bank accounts
- ◆ Stocks
- ◆ Bonds
- ◆ Safe deposit box
- ◆ Retirement/pension accounts
- ◆ IRA's
- ◆ Mutual funds
- ◆ Jewelry
- ◆ Art
- ◆ Coins
- ◆ Collectibles
- ◆ Cash in home

If assets exist, consider the following actions:

- Check names on accounts
- Confirm client's SSN and DOB
- Request and review income tax returns, investment and bank account statements.
- Determine what documents the VA signed that have placed assets in the alleged perpetrator's control (i.e. POA, bank signature cards, title transfer documents)

C. Determine if there is a Trust:

- ◆ Check the CEP form
- ◆ Check bank accounts
- ◆ Ask family
- ◆ Check with the VA's attorney, or any other responsible parties about existence of a Trust.



If there is not a Trust

1. Identify responsible party - consider family, friends, lawyer, accountant, POA, clergy, medical personnel, stock broker, financial advisor, realtor, co-signer, representative payee, private fiduciary, conservator.
2. If VA is unable to protect assets and manage finances, consider options including closing at risk accounts, open new accounts, representative payee, bill paying service, cancel credit cards, refer to private fiduciary, recommend conservatorship, enlist help from family members, talk with attorney for recommendations, POA, establishment of a Trust, direct deposit, or medical evaluation for competency

If there is a Trust

1. Locate Trust in the home - look for a binder
2. Confirm identity of successor trustee
3. Check for amendments - how many, dates?
4. Identify who drew the Trust
5. Identify which assets are in the Trust
6. Check for POA's and Will that are usually in the same binder
7. Recommend amending Trust if appropriate
8. Check with Doctor about VA's capacity to remain as trustee
9. If alleged perpetrator is trustee, suggest resignation if there has been mismanagement of resources
10. Recommend that family request an accounting of the Trust

D. Assess the consequences to VA of financial loss:

- ◆ Consider VA's ability to provide own food, clothing, shelter
- ◆ Loss of utilities
- ◆ Inability to purchase medications
- ◆ Loss of real estate (close of escrow or release of check from escrow)
- ◆ Loss of documents or valuables in a safe deposit box
- ◆ ATM card lost or stolen
- ◆ Checks missing from checkbook
- ◆ Bank statements not available

If any of the listed consequences exist, consider the following actions:

- Document the losses in case notes
- Include the emotional impact of the financial difficulties
- Collect proof of losses such as shut off notices, foreclosure notices, bank fees assessed, etc.
- Obtain samples of the VA's and the alleged perpetrator's signatures

E. Evaluate VA's mental capacity and ability to protect assets:

- ◆ Consider VA's knowledge and comprehension of income, assets, and account balances
- ◆ Does the VA have testimonial capacity?
- ◆ Consider score on MMSE, if available
- ◆ What is VA's ADL status?
- ◆ Is the VA literate?
- ◆ Contact family members, friends, service providers to obtain MH evaluations and history

Consider the following indicators of incapacity:

- VA gives money away inappropriately
- Makes frequent withdrawals
- Excessive credit card activity
- Loans have been taken out recently
- Overdrafts on bank accounts
- Sweepstakes, lottery or contest participation
- VA carries large amounts of cash
- Unpaid bills
- Utility shutoff notices
- Un-cashed checks
- VA is disorganized
- Incomplete check register
- VA cannot find checkbook or bank statements
- VA cannot report source and amount of income
- VA cannot account for recent loss of assets

Undue Influence in Litigation

Disputes involving wills and trusts, pre-nuptial agreements, elder abuse, domestic violence, fraud and financial exploitation, many sexual offenses, and, occasionally, homicide, often involve issues of coercion, duress, inappropriate manipulation and undue influence.

IDEAL describes those psychological and social factors that commonly co-exist in undue influence situations. These factors are:

Isolat**I**on

Depend**D**ency

Emotional manipulation and/or exploitation of vulnerability

Acquies**A**cence

Loss

“Isolation” - This refers to isolation from pertinent information, friends, relatives, or usual advisors. Causes include: medical disorders; a history of poor relationships with others; perpetrator interference; geographic changes (e.g. travel); and technological isolation (e.g. loss of telephone services).

“Dependency” - This refers to dependence upon the perpetrator, such as for physical support, emotional factors or information.

“Emotional manipulation” - This usually manifests as promises, threats, or a combination of both, regarding issues of safety and security, or companionship and friendship. “Exploitation of a vulnerability” may overlap with emotional manipulation, and also includes behaviors such as providing alcohol to an alcoholic in exchange for benefits; having a vision-impaired person sign a legal document; or misrepresenting documents and their consequences to the cognitively impaired.

“Acquiescence” - This refers to the victim’s apparent consent or submission.

“Loss” - In cases involving monetary assets, this refers to *inter vivos* financial loss. In cases involving violence, this refers to physical harm.

Results of Using the **IDEAL** Protocol:

To date, statistics show that hundreds of cases have been evaluated using IDEAL. In cases brought to civil litigation and probate, all of the first four factors (I-D-E-A) were found to co-exist more than 95% of the time when there was a finding of undue influence. This may reflect, in part, the understanding that if any single factor is lacking, the combination of any remaining three may reflect a socially acceptable relationship. In such cases, idiosyncrasies in local statutes and case law have sometimes nonetheless provided for a finding of undue influence. The fifth item, “loss”, has been a component in some civil and probate cases, and appears to be a necessary component in criminal prosecution when undue influence is also considered a matter of criminal law.

Case example:

The following is a true case, although extreme in its clarity. The issue of undue influence is obvious, but the case is presented to help show how a fact pattern is considered within the IDEAL protocol:

Mr. Jones is an affluent, 88 year-old retired professor. His beloved wife of 60 years died two years ago, and since then he has been very lonely. Mr. Jones has a good and loving relationship with his three adult children, and though they live in other states, he speaks with each every week. Mr. Jones moved to a retirement community four years earlier, and because of his wife's illness and subsequent death, he has no significant social contacts in his current community. His long-time friends live several hundred miles away. Mr. Jones has multiple medical problems – diabetes, heart disease, high blood pressure, and difficulty walking due to arthritis – but has no apparent cognitive impairment.

Mr. Jones meets Ms. Smith, a 62 year-old divorced woman. She moves into his home six months later. She provides physical care in the form of preparing meals, cleaning the house, taking him to physician appointments, and ensuring he takes his medications properly. During the next six months, Ms. Smith begins asking for “tokens of appreciation” and purchases a new car, wardrobe, and jewelry with Mr. Jones' money. She also demands that he give her his late wife's jewelry, which he had intended to give to his grandchildren. At the same time, Mr. Jones stops telephoning his children, and they in turn find it more and more difficult to speak with him. Ms. Smith is now the only person to answer the telephone, and when the children call they often are told their father is unavailable or does not feel well enough to talk. Eventually, they are not allowed to speak to him at all. Two months later, after repeated angry exchanges with Ms. Smith, the eldest child receives a telephone message from Mr. Jones. In the message, Mr. Jones says, “She says I cannot call any of you anymore. If I do she will leave me and she says that at my age no one else will care for me, and that I will be alone. The same thing will happen if I stop giving her money. I know what she is doing, but I was so lonely after your mother died. I couldn't bear to be that lonely again. I just hope that I can hold back enough money so she will stay until I die.”

These were Mr. Jones' last words to his children. He subsequently changed his estate plan – bequeathing everything to Ms. Smith.

Applying IDEAL to these facts:

Isolation - Mr. Jones' children and friends live far away, he has no significant social contacts in his current living environment, his mobility is limited due to illness, Ms. Smith intercepts his telephone calls, and he is not allowed to talk to his children.

Dependency - Mr. Jones is emotionally dependent upon Ms. Smith, and she provides for his physical needs (food, cleaning, appointments, medicine).

Emotional manipulation/Exploiting a weakness - Ms. Smith threatens to abandon Mr. Jones using his fear of loneliness.

Acquiescence - Mr. Jones agrees to Ms. Smith's demands because he is frightened of being lonely, dependent upon her, and isolated from other social contacts and family. As a result, he gives her money and property, and makes her the sole beneficiary of his estate.

Loss - Mr. Jones suffers financial losses because of Ms. Smith's threats and coercion. In this case, although criminal charges might have been pursued in some jurisdictions (e.i. for elder abuse), the issue of "loss" was used only to support civil litigation.

Caveats and Suggestions:

1. Although it may seem obvious – do not rely only upon the litigants for information. IDEAL is more effective if there are corroborating statements and observations by 3rd-parties, circumstantial evidence, and/or self-incriminating statements by the litigants. A case may be argued without such corroboration, but the use of IDEAL would be quite limited.

2. If more sophisticated analysis is needed, an expert should be contacted for advice regarding the development of both general and specific manipulation tactics, their relative impact, and assessment of pertinent cognitive issues (note: impaired cognition is common, but is not essential). These topics require extensive individual attention.

Also, be cautious when retaining an expert on the issues of manipulation or undue influence. These are specialized fields and very few people are actual experts. Unfortunately, many well-intentioned mental health professionals claim this expertise without knowing how much training and knowledge is necessary.

3. Some attorneys report successful use of IDEAL without employing associated experts. In these cases, the attorney uses the information obtained through IDEAL to craft a powerful and compelling argument – for either settlement or trial.

Mental Capacity and Competency

Competency: is a legal term, defined as: "duly qualified: having sufficient capacity, ability, or authority" [Black's Law Dictionary].

Mental capacity: is a functional term that may be defined as: the "mental (or cognitive) ability to understand the nature and effects of one's acts." It refers to the victim's ability to give knowledgeable consent.

Undue influence: refers to a form of manipulation or deception used to gain assets without the true consent of the victim. Undue influence is the result of a *relationship* between the victim and the abuser. There is no "mental test" for undue influence.

Note: *"Undue influence" and "mental capacity" are separate issues. Undue influence may exist without mental impairment; and mental impairment may exist without undue influence. Both address the issue of vulnerability. If a person takes advantage of a person's vulnerability to obtain assets, the act often can be prosecuted as a crime.*

Evidence: Evidence of undue influence can be obtained by listing all pertinent events in the relationship between the victim and the perpetrator. These events by themselves may not appear significant, but taken together they can demonstrate a *pattern of behavior* revealing the existence of the I-D-E-A-L conditions in the relationship.

Information about pertinent events should come from a variety of sources, including the following:

- Victim statements
- Family member statements
- Medical records
- Observations of investigators, as contained in their *written reports*.
- Caregivers, friends and neighbors
- Service personnel, such as delivery drivers, hairdressers, bank tellers, etc.

Remember, the most convincing information usually comes from people who have no standing in the case.

Medical records: People are more vulnerable to manipulation when they have certain psychological or medical conditions, such as dementia. It is important to document all medical conditions and medications. When documenting medications, include doses and times taken. It is also important to obtain the person's medical records. Medical experts who have specialized training in assessment of mental capacity may then be contacted to provide detailed assessment, as needed.

Criminal or civil remedies? Some financial abuse cases may be addressed through civil remedies in addition to, or in lieu of, criminal prosecution. Civil remedies may include litigation or petitions to Probate court for conservatorship or guardianship.

- pages 53-56 taken from website of Bennett Blum, MD,
(http://www.bennettblummd.com/elder_abuse_financial.html)

Documentation of Investigation

- [Data](#) collected by the county social services agency while performing duties as a lead agency are considered welfare data under 13.46.
- Each agency may document the findings of their investigation of maltreatment according to their established record-keeping procedures. There is no state model at this time.
- Complete the 2494 and submit a copy to Bev Asher, Minnesota Department of Human Services, Adult Protection Unit, PO Box 64976, St. Paul, MN 55164-0976.

SELF-NEGLECT

Self-Neglect

“An Elder is a person who deserves respect and honor and whose work it is to synthesize wisdom from long life experience and formulate this into a legacy for future generations.” The great law of the Iroquois Confederacy indicated “in our every deliberation we must consider the impact of our decision on the next seven generations.” That is a long way from today's value of instant gratification, but is one that can provide for the healing of the nations and of the planet.

Self-Neglect and CEP

One of the most frequently asked questions about reports of self-neglect is how to track the receipt of a report, assign it for investigation and document the findings.

“Self-neglect is the result of an adult's inability, due to physical and/or mental impairments or diminished capacity, to perform essential self-care tasks including: providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, emotional well-being and general safety; and/or managing financial affairs.”

National Association of Adult Protective Services Administrators. Conducted by Virginia Department of Social Services. “A National Study of Self-Neglecting Adult Protective Services Clients.” 1991.

The Minnesota Vulnerable Adult Statute does not specifically define “self-neglect.” In 626.557, Subd. 17, “Neglect” is defined as:

- (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 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.

The role of the Common Entry Point worker is to receive the report from the reporter and forward it to the appropriate investigative agency. The criteria to forward reports to lead investigative agencies include:

- 1) The alleged victim is considered a vulnerable adult as defined by the law. (Reporting - <http://www.revisor.leg.state.mn.us/stats/626/557.html> 626.557 Subd. 21)

- 2) Maltreatment has allegedly occurred to the vulnerable adult. Maltreatment is defined in the law as abuse, neglect or financial exploitation. (M.S.626.5572 Subd. 15) <http://www.revisor.leg.state.mn.us/stats/626/5572.html>

In cases of self-neglect, the CEP worker is concerned about the definition of neglect as stated above. **Self-neglect is considered a category of maltreatment.**

If a self-neglect report is received by the county as lead agency (after it is forwarded by the CEP) the decision to investigate or to regard as a voluntary adult protective services case will usually be determined by the severity of the self-neglect, the competence of the self-neglecting vulnerable adult and the need to collect data from collateral sources.

At times it may be necessary for the CEP worker to forward a case of self-neglect to a lead investigative agency without all necessary information to determine whether the victim is indeed a vulnerable adult and if the victim is competent and choosing to self-neglect. The lead investigative agency will have the authority to obtain information to determine the VA status and assess for competency when the case is assigned for investigation.

Considerations in Self-Neglect Cases

Investigating self-neglect reports is, many times, challenging to the Adult Protection worker. The following are some issues/questions that should be considered:

1. Does the person meet the definition of a “vulnerable adult” according to the statute? This is not always easy to determine and can be somewhat subjective.
2. Does the VA have the capacity to make decisions about how basic needs are met (or not met) and how and where he/she would like to live? Use assessment tools, interviews with the VA and with others involved to determine capacity. If the VA agrees, use formal cognitive testing conducted by a mental health professional.
3. Is the living environment safe? It may be necessary to have city or county inspectors to determine whether a home meets basic fire safety requirements or other public safety requirements under city or county ordinances.
4. Have there been *changes* in the VA’s ability to care for themselves recently or have they been living in the same manner for quite sometime?
5. Collect data, information from as many sources as possible (family, neighbors, friends, doctors, hospitals). The worker has the authority to obtain information because it is an *investigation*.
6. If a VA is determined to have capacity to make decisions, their decisions must be respected as long as the living environment is safe. The APS worker could decide, as long as the VA agrees, to open the case as an “APS on-going” case

after the completion of the investigation in order to maintain contact with the VA. Assess for and offer services to help with the VA's needs.

Self-Determination

APS workers often struggle with a person's right to determine how to (or whether to) care for one's self. It is also difficult to witness people choosing to live in homes that are dirty, infested with rodents or bugs, full of garbage and other clutter. It is easy for a worker to become cynical and "numb" emotionally when dealing with difficult self-neglect cases.

As hard as it may be for a worker to stand by and observe a situation because the VA can make their own decisions, there are ways to handle the emotions that workers experience. It may be helpful to discuss the case with a supervisor or staff the case with colleagues to confirm that the appropriate determination has occurred and the case is on the right track. Discussing the conditions and how it affected a worker's feelings may assist the worker in feeling okay about the case.

Investigations

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 1. Duty to accept and investigate complaints.

The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

9555.7300 Complaint Investigation by Local Social Services Agencies.

Subpart 2. Time limits to initiate investigations.

The local social services agency shall begin to investigate all complaints within the following time limits:

- A. The local social services agency shall conduct an **immediate** on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life-threatened or likely to experience physical injury due to abuse or abandonment.
- B. The local social services agency shall begin its investigation within **24 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.
- C. The local social services agency shall begin its investigation within **72 hours** for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subpart 4. Investigations not related to a facility.

When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

- A. discussion with the alleged victim;
- B. discussion with the reporter or any corroborating contacts as necessary;
- C. discussion with the alleged perpetrator;
- D. discussion with the physician or other professionals; and
- E. examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Self-Neglect Investigation Resource

Neglect is defined as 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.

"Self-neglect is the result of an adult's inability, due to physical and/or mental impairments or diminished capacity, to perform essential self-care tasks including: providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, emotional well-being and general safety; and/or managing financial affairs."

National Association of Adult Protective Services Administrators. Conducted by Virginia Department of Social Services. "A National Study of Self-Neglecting Adult Protective Services Clients." 1991.

Investigation Process Assess Urgency

- A. Look for signs of imminent danger including:** —————→ **If any of these factors exist, consider the following actions:**
- ◆ Immediate medical need
 - ◆ Alone and unable to care for self
 - ◆ Judgment of caregiver grossly impaired
 - ◆ Lack of food, clothing, shelter or utilities
 - ◆ Caregiver will not allow APS access to VA
 - ◆ Significant structural hazard i.e. faulty wiring or gas leak
- Call doctor
 - Consult supervisor
 - Contact law enforcement
 - Call 911
 - Obtain immediate consult with PHN
 - Consider a transport hold if the VA is a danger to self or others
 - Arrange for care - formal or informal

Assess Client

- B. Look for signs and symptoms of neglect including:** —————→ **If any of these factors exist, consider the following actions:**
- ◆ Situation not related to lifestyle preferences
 - ◆ Poor physical appearance
 - ◆ Impaired ADL functioning
 - ◆ Inability to manage own finances
 - ◆ Inability to make decisions and direct care
- Call doctor
 - Arrange for VA to be seen by doctor
 - Request that doctor order Home Health to assess for health care
 - Involve family as VA allows
 - Consult supervisor
 - Consult with PHN
 - Arrange for care - formal or informal
 - Assist VA to obtain POA, rep. payee, or money management services
 - Advise family members to file for conservatorship
 - Make a referral to CADI or EW/AC
 - Link VA to appropriate community resources
 - Assist VA to obtain food, clothing, or appropriate housing
 - Offer assistance with placement in appropriate level of care
 - Administer one or more tools to assess competency and decision-making: Tools used:

Assess Environment

D. Look for signs of neglect including:	→ If any of these factors exist, consider the following actions:
◆ Filth	Consult supervisor
◆ Dirt	Contact county code enforcement
◆ Pungent odors	Contact animal control
◆ Fire and safety hazards	Contact city building and safety department
◆ Inadequate food	Consult with law enforcement
◆ Inoperable appliances, bathroom facilities or utilities	Involve family as client allows
◆ Excessive clutter	Contact property management
◆ Infestation	Contact tenant legal services
◆ Lack of adaptive devices/equipment	Contact homeowners association
◆ Excessive number of animals	Take pictures
◆ Inability to care for animals	Refer to appropriate community resources
◆ Excessive heat or coolness in environment	Contact HUD Section 8 Housing

Documentation of Investigation

- [Data](#) collected by the county social services agency while performing duties as a lead agency are considered welfare data under 13.46.
- Each agency may document the findings of their investigation of self-neglect according to their established record-keeping procedures. There is no state model at this time.
- Complete the 2494 and submit a copy to Bev Asher, Minnesota Department of Human Services, Adult Protection Unit, PO Box 64976, St. Paul, MN 55164-0976.

Interview Questions and Information to Obtain

When interviewing, always keep in mind the six most important questions: **WHO**, **WHAT**, **WHEN**, **WHERE**, **WHY** and **HOW**. The following guide may be helpful but it is not intended to cover all possible questions.

- WHO:**
- is the owner of the property
 - is the victim
 - discovered the incident
 - reported the incident
 - may be a witness to the incident
 - had a motive
 - was involved
 - should be interviewed
 - had access
 - controls the property
 - is involved
 - is at the scene investigating/assisting
 - responded first
 - must be notified
- WHAT:**
- crime was committed
 - are the elements of crime present
 - equipment is involved
 - tools or equipment will be needed
 - knowledge or skills are necessary
 - was the motive
 - evidence is present
 - property is missing/removed
 - property can be recovered
 - evidence should be secured
 - is unusual
 - what does the victim say
 - are the witnesses saying
 - must be done
 - did the first responders observe on arrival
 - are safety concerns
 - any possible causes
- WHEN:**
- was the incident discovered
 - did the incident occur
 - was the incident reported
 - did the first responders arrive

WHERE: did the incident occur/proper location identification
 was the victim/owner/witnesses at the time of the occurrence
 is the evidence located
 are the witnesses
 should the evidence be taken
 is the suspect(s)

WHY: did the incident occur
 was the incident reported or not reported
 was there a delay in reporting
 were those involved eager or reluctant
 did the worker or law enforcement take certain actions

HOW: did the incident occur
 was the incident discovered
 was the incident reported

Interview Skills

Preparation:

1. Review information relevant to the interview.
2. Outline the questions to ask, ***write them down!*** Remember to make the questions unbiased and open-ended where appropriate.
3. Try to obtain as much information as possible about the person(s) to be interviewed.
4. Schedule the interview with the VA at a time that is good for them.

General guidelines:

1. Conduct interviews in person if at all possible. Speak to each person alone, if possible.
2. Government agencies must give the [Notice of Privacy Practices](#). Inform the person of the purpose and intended use of the requested data, whether the individual may refuse or is legally required to supply the requested data, any known consequence arising from supplying or refusing to supply private or confidential data and the identity of other persons or entities authorized by state or federal law to receive the data.
3. Establish rapport at the start of the interview. Explaining the process (not only of the interview but the whole VA process) and the *reason* for the interview (how it fits into the investigation) will help address questions and possibly reduce anxiety of the person being interviewed. Start with non-emotional questions.
4. Meet in a private room or area with no interruptions, make sure the interviewee is comfortable.
5. It is ok to take notes during the interview, make them short and use words to help recall later what was said.
6. Keep an open mind that is receptive to all information regardless of its nature. The goal is to seek the truth not to substantiate maltreatment. Always respect the person interviewed!
7. If an interviewee quotes an individual, be sure to find out if the quote is an *exact* quote or a paraphrase. Ask for details of the facial expression and tone of voice of the individual making the statement.
8. If it appears the person did not understand the question, re-word it but be careful not to “suggest” the answer. However, leading questions can be helpful to refresh a person’s memory or to test a previous assertion.
9. Have the interviewee define the terms they use, especially when a term is vague, ambiguous, subjective or technical. Get correct spellings.
10. Stay alert to possible unreported allegations.
11. Ask short, simple, open-ended questions in order for the person to describe what happened in their own words.

12. Sometimes victims are very anxious, find out why. Is the victim:

- fearing retaliation
- afraid of institutionalization (in a nursing home or mental health ward)
- concerned about looking helpless or losing independence
- feeling like “it was all their fault”
- worried about “getting someone in trouble”
- afraid of being perceived as a bad caregiver/spouse/parent

13. The “Don’t” list:

- Don’t argue with the interviewee
- Don’t discount a complaint/allegation because the victim refuses to cooperate
- Don’t discount the victim’s information because they appear confused
- Don’t discuss the victim as if they are not in the room
- Don’t make judgmental comments about the suspect
- Don’t stereotype the victim or witnesses because of age, sex, economic class, mannerisms, race, religion or sexual preference
- Don’t express boredom, embarrassment or be threatened by what the person is saying
- Don’t drift off into a remote association with what the person is saying
- Don’t react automatically; think carefully about responses
- Don’t jump in with a reaction/comment when you think you understand what the person is saying; **always** allow them to finish

Interviewer instructions:

- Remember to always be professional and neutral in demeanor
- Be sympathetic, cordial, polite and sincere
- Be interested and listen carefully
- Have patience, let the person finish what they are saying
- Treat them with decency and **respect**
- Sit upright, frontally aligned, leaning forward
- Avoid slouching
- Neat, well groomed, no distracting clothing or scented personal products
- No hats, sunglasses, distracting hair or hair accessories
- Maintain eye contact
- Avoid staring
- Show interest but pay attention to facial expressions
- Pay attention to hand gestures, avoid strong or negative gestures
- Open palms and arms.
- Use medium voice tone, firm but not aggressive or angry
- Make it conversational
- Avoid sarcasm and skepticism
- Pay attention to words used, talk at the intellectual level of person interviewed
- Be confident in demeanor and approach
- Repeat back what is said
- Be persistent

Communication:

(see “[Interviewing with Special Populations](#)” for more information on communicating)

- Make sure the interviewee has their glasses, hearing aids (turned on, batteries that work), or any other necessary assistive devices
- Use a translator if necessary but always remember to speak to the interviewee
- Make sure the person interviewed can clearly see your face

Body Language

Truthful:

- Upright, frontally aligned
- Lean forward
- Open, casual and natural
- Smooth changes in posture

Non-Truthful:

- Slouches
- Rigid body position and movement
- No frontal alignment
- Barriers, such as arms, legs, hands, fingers, etc.
- Rapid posture changes to relieve stress
- Lack of interest
- Head and body slump; praying/defeated position

Non-truthful subjects will become involved in all types of body activity to reduce tension. Look for the following changes:

- Moves chair away
- Attempts to stand or leave
- Variety of physical activities like bouncing leg up and down, picking at nails, “jittery”

Watch the timing of different gestures in relation to the question asked. *Delay gestures* (gives the suspect time to think) include:

- Rubbing
- Scratching
- Picking or pulling at various parts of the body
- Licking lips
- Clearing throat
- Coughing
- Sniffing
- Sweating
- Moves chair away
- Attempts to stand or leave
- Variety of physical activities like bouncing leg up and down, picking at nails. “jittery”

Victim Interviews

1. Explain the purpose of the interview.
2. Provide the victim with simple choices for how the interview will proceed. For example, “May I call you by your first name or do you prefer that I use your last name?” Give choices as to where to do the interview, if they want an advocate or someone else present (not the alleged perpetrator).
3. Express support, friendliness. Sit in a relaxed manner.
4. Use caution in talking about trivial information in an attempt to ease into the interview.
5. Allow the victim to sit above the interviewer if possible.
6. Encourage victims to interrupt at any time to ask questions, include a fact or correct a mistake.
7. Use eye contact frequently but don’t stare.
8. Speak slowly, use short sentences and leave short pauses between sentences.
9. Monitor the victim’s body language.
10. Take breaks when needed.
11. Reassure the victim that this is a team effort. “We need to review this information together.”
12. Reassure the victim that their case is being taken seriously and handled professionally.
13. The interviewer should take responsibility for what they will do, “I am going to talk with your friend who saw what happened.”

Sexual Assault Interviews

1. Do not use terminology that the victim may not be familiar with.
2. Identify the terms the victim uses for different parts of the body.
3. Do not correct the victim if they use street terms or slang, i.e., “he forced me to give him head...”
4. Clarify the victim’s definition by using clear terms, i.e. “Are you saying that he forced you to put your mouth on his penis?”
5. What **not** to say:
 - Everything is going to be all right.
 - Don’t cry.
 - You shouldn’t feel that way.
 - I know how you feel.
 - You must get on with your life.
 - I promise I’ll get this guy and he’ll go to prison for a long time.

Cognitive Interview Technique

Four General Methods to Jog Memory (explain all four before the interview):

1. **Reconstruct the circumstances** – surrounding environment, rooms, location of furniture, vehicles, weather, lighting, nearby people, objects, odors. The interviewer should “see and feel” what they saw and felt.
2. **Report everything** – explain that some people hold back information because they do not know if it will be important. Ask the victim/witness not to edit anything.
3. **Recall the events in different order** – Try reverse order or start with the part that had the biggest impact and go forward and backward in time
4. **Change perspectives** – the witness or victim is instructed to place themselves in the role of a prominent character and think about what they saw.

The Cognitive Interview technique was researched and created by Professor Edward Geiselman, Psychology Department at UCLA in the late 1980's. It has since been used across the world and there are entire courses for law enforcement (and other investigators) to learn the technique. The technique does not just focus on the facts (who, what, when, where, why and how) but also captures the feelings of the victim/witness and what the victim/witness was thinking at different points during the incident. The studies show a significant increase in the amount of information gathered from a victim/witnesses using this technique versus a traditional interview.

Examples of questions:

- “What were you thinking?”
- “Tell me about your reactions?”
- “And then what happened?”
- “Tell me more about that.”

Interviewing with Special Populations

The first step in interviewing persons from cultures or that have disabilities other than one's own, is to analyze biases or assumptions that may be present.

Where Do Biases Begin?

Reaction to people from different cultures is influenced by many factors:

1. One's own personal experiences with people from different backgrounds.
2. Information about people from a particular culture that was learned through one's own family, peers, the media, popular culture, school, religious institutions and so on.
3. The ability to recognize the sharing of any values, goals, and ways of doing things with people of a different culture.
4. Whether people from different cultures have any control over the things that make them different from others.
5. How much power one believes people of different cultures have in society and any laws or special programs we know about that affect how people of a particular culture or that have a particular disability are treated.

Self-Quiz: What Are Your Assumptions?

Ask Yourself . . .

- What are the different cultures in my community? (Include categories such as various ethnic groups, people with disabilities, new immigrants, residents of public housing, and any other relevant groupings.)
- What characteristics first come to mind when I think of each group?
- Where did these impressions come from? (peers, family, media, religion, etc.) How reliable are these sources?
- How do I treat people based on these impressions?
- Can I remember a time when someone made assumptions about me based on a group I belong(ed) to? How did it make me feel?

How to Build a Buffer Against Bias

- **Be aware of your assumptions.**

Everyone is biased in one way or another. The key is to notice when a judgment is made — positive or negative — about a victim, witness or perpetrator, and then figure out what the judgment is based upon.

- **Be aware of cultural differences.**

Everything regarding time, personal space, body language, voice volume, small talk, and so on — is shaped by our culture. Most Caucasian Americans feel eye contact is an important part of communication. Yet people from many cultures, including some Asians, Native Americans, Africans, and Hispanics/Latinos, do not make eye contact like Caucasian Americans do — in some cultures, in fact, making eye contact is considered an insult.

How Culture Affects Behavior

1. **Speaking up:** Sociologists draw a distinction between high-context societies in which there are many rules and people say less, and low context societies that depend on explicit verbal messages.
2. **Tracking time:** There are also different cultural takes on time: monochronic, meaning that people do one thing at a time and adhere to schedules, and polychronic, in which people do several things at a time, put interpersonal needs over schedules, and may view time as an invasion of self.
3. **Physical self:** Culture shapes the kinds of gestures used — for example, beckoning someone is offensive in some cultures — and the amount of personal space needed to feel comfortable differs.
4. **Personal interaction:** Cultures also contribute to how cooperation, competition, and discipline is viewed.

Investigators should not discount the *value* of an interview with victims who are cognitively impaired, severely mentally ill, or others that have significant disabilities. Not only does it give the investigator some perspective on how vulnerable the victim is to maltreatment, valuable information concerning the incident of maltreatment can be gained.

There are significant differences in communication styles across cultures that will affect interviews conducted as part of an investigation. Use caution to NEVER ASSUME that just because a person may be from a specific culture that they will act in a certain manner!

Cognitively impaired, severely mentally ill – See “[GUIDELINES TO INTERVIEWING ADULTS WITH COGNITIVE AND/OR VERBAL IMPAIRMENT](#)” in this chapter. Speak slowly and clearly, be patient and repeat the questions as necessary. Re-word questions as necessary. Use simple language and vocabulary but remember to speak to the person as an ADULT, not a child. Do not assume that because the victim is not *a/ways* oriented to time and place, they were not oriented at the time of the incident. Consider waiting to interview the person when they are having a “good day.” Also consider that different times of the day may be better than others as far as being able to understand a conversation.

Deaf or hard of hearing* - Allow lip-reading and repeat questions if necessary. Use an interpreter if the person is fluent in sign-language. Remember to speak to the person being interviewed, not to the interpreter. Use written questions if necessary.

Blind* – Allow the person to describe what they heard, felt, smelled, in detail. Do not speak loudly unless the person is also hard of hearing!

Different cultures - Many cultures treat their elders in a different manner than Caucasian-American. This will affect choices that are made concerning the location and manner of care for the elder. For example, a family from Laos may care for an elder in their home, utilizing many family members and possibly with some avoidance of Western medicine. It may be difficult in a case such as this to determine if neglect is occurring or if it is an adherence to a cultural norm. If there are a number of persons from a specific culture that a worker is encountering, further study of the culture may be necessary to have a good understanding of cultural norms, communication styles, etc.

* Remember: deafness and blindness do not necessary make someone a vulnerable adult.

Guidelines to Interviewing Adults with Cognitive and/or Verbal Impairments

1. The client's level of functioning may vary across different developmental domains. Knowing the "mental age" of a client may not provide all information to adequately assess the client.
2. Obtain as much information as possible before the interview:
 - a) What communicative deficits are present?
 - b) How does the client communicate best: verbal, visual or other means?
3. Does the client have a secondary mental health diagnosis? If so, is the condition stable, is the client taking medications as prescribed?
4. Consult with collateral contacts: teachers, parents, caregivers, therapist. Obtain their assistance in developing an interview strategy. Are there any behavioral signs you need to be aware of that reflect the client's level of anxiety? Are there any triggers that will evoke anxiety, hostility, anger?
5. For [sexual abuse](#) cases: What is the client's level of sexual knowledge and experience? Has there been a history of abuse?
6. If you need an interpreter or other professional to assist in the interview, be sure to make them fully aware their role and its attendant limitations. A forensic interview is much different than a therapy or work interaction.
7. Once in the interview, take time to assess the client's language skills. Often these appear superficially mature. Have the client repeat back their understanding of instructions and comments. Ask them to provide a narrative account of a recent event in their life (unrelated to the investigation).
8. A high level of anxiety may often be present. Be observant regarding how this may present itself. Be prepared to intervene to distract and calm the client. Anxiety may be exhibited through verbal or behavioral means.
9. Do not introduce the topic of abuse until the client's level of functioning has been determined.
10. This population often experience self-esteem issues. Be aware of how questions or comments are phrased to avoid the perception of being critical or that the client has failed in some way.
11. Consent: Assess the client's level of sexual knowledge and sophistication. Did the client understand what they were consenting to do?
12. Assess the client's state of mind at the time when the incident occurred.
13. Establish the relationship between the alleged perpetrator and the client. Was it one of power, authority, and control? Was the client intimidated or manipulated? Was it a seduction?
14. What did the client do, if anything, to resist or convey thoughts and feelings at the time of the incident? Was there anything that prevented them from resisting or conveying thoughts or feelings?

Use communication aids such as photos, dolls, drawing materials on hand to assist with interviewing this type of client.

Guidelines to Interviewing Older Adult Victims

1. Treat the older adult with the utmost respect.
2. Understand that the victim may be frightened, ashamed or fearful. Try to gain their trust by starting out with non-threatening questions. Then proceed to a more difficult area.
3. Understand the victim's reluctance to reveal abuse or to accuse a trusted friend or relative.
4. Interview the victim first and separately from the alleged perpetrator.
5. Interview the victim in a relaxing, quiet environment.
6. Ask clear, direct questions and be blunt about dealing with issues of violence. Allow enough time for the victim to respond.
7. Assume the victim's statements are true and correct (until they are proved otherwise).
8. Make it clear that the abuse was wrong and that it was not the fault of the victim.
9. Ask how you can best help the victim.
10. Assure the victim that they are not alone and that help is available.

Victim Needs

A large part of any adult protection investigation is the assessment of the needs for the victim of maltreatment or alleged maltreatment. The assessment tools provided in this manual should help determine the needs of the victim, however, some resources are listed below that may be relevant.

Barriers

Often, barriers to using services exist, especially for persons of color. Cultural attitudes and expectations influence whether or not older people or their families use social services. In comparison with non-minorities, for example, fewer minorities are institutionalized. Among groups that place a strong value on familial responsibility, caring for an elderly family member is expected. Failure to do so may cause great shame to the elder as well as the person charged with their care. Other barriers to using services include:

- Lack of knowledge of available services
- Language
- Distrust of service providers/institutions
- Lack of cultural sensitivity to the needs of minority elderly

Right to Refuse

There are times when a victim may refuse services. A determination must be made as to the seriousness of the situation and whether it may warrant intervention against the VA's wishes. This is a difficult task and requires consultation with a supervisor and possibly others including law enforcement, the county attorney or other stakeholders. The Vulnerable Adult statute addresses this issue:

9555.7600 ACTIONS ON BEHALF OF A VULNERABLE ADULT WHO REFUSES SERVICES.

If a vulnerable adult who is the victim of abuse or neglect by a caretaker refuses an offer of services from a local social services agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

- A. a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to Minnesota Statutes, section [518B.01](#);
- B. guardianship or conservatorship pursuant to Minnesota Statutes, sections [525.539](#) to [525.6198](#), or guardianship or conservatorship pursuant to Minnesota Statutes, chapter 252A;
- C. a hold order or commitment pursuant to the Minnesota Hospitalization and Commitment Act, Minnesota Statutes, chapter 253A; or
- D. a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under Minnesota Statutes, chapter 609.

Resources

Minnesota Coalition for Battered Women

They can assess the situation, refer to local domestic violence program. Local programs can assist the victim in filing an order for protection.

<http://www.mcbw.org/>

1-800-289-6177 (statewide)

Crisis Line: 651-646-0994 (in metro area)

National Domestic Violence Hotline

They will assess the situation, refer to local domestic violence programs and other local resources (ie. legal aid, etc.). Has 24-hour access to the language line for non-speaking victims.

1-800-799-SAFE (7233)

<http://www.ndvh.org/>

Advocacy/Support Groups for Older Women Who are Victims of Domestic Violence

The following are the known support groups for older battered women. There may be other programs not listed below. Contact the local domestic violence program to obtain additional information about support groups and other services for older adults that are victims of domestic violence.

Cornerstone Advocacy Services

Bloomington, MN

Business: (952) 884-0376

Crisis line: (952) 884-0330

<http://www.cornerstonedv.com/>

St. Paul Domestic Abuse Intervention Project

St. Paul, MN

Business: (651) 645-2824

Crisis line: (651) 645-2824

<http://www.stpaulintervention.org/>

Area served: St. Paul and Ramsey County

W.I.N.D.O.W. Victim Services

Hinckley, MN

Business: (320) 384-7113

Crisis line: (320) 384-7113

Area served: Pine and Kanabec Counties

Other Social Services

Referrals to other social services depends on the assessed needs of the individual (and family) and services available in their local area. A useful statewide resource is the Senior LinkAge Line™:

1-800-333-2433

TDD/TTY users call the Minnesota Relay Service at **1-800-627-3529** or by dialing **711**, or **1-877-627-3848** (Speech-to-Speech relay service).

After the Investigation

Final Dispositions

626.557 Subd. 8. **Final disposition.** "Final disposition" is the determination of an investigation by a lead 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 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.

Final
Disposition

1. The county shall complete the required disposition paperwork (Form 2494) to the Adult Protection unit of the Minnesota Department of Human Services (DHS). Send perpetrator information to the DHS licensing division.
2. The lead agency shall notify the perpetrator of their reconsideration and appeal rights.
3. The county shall notify appropriate licensing boards for *substantiated reports only*.
4. Close the VA investigation case that included the CEP Intake Report form and investigation paperwork, following required case closing procedures. If the VA will be continuing to receive APS, reopen the case as an "Adult Protection Ongoing" case.

Notification of Findings Letters

To meet the requirements of the VA Law, notification letters must be sent to clients, guardians, and interested persons of their right to request review of an administrative reconsideration. Perpetrators of maltreatment should receive the Notice of Right of Reconsideration and Appeal of a Perpetrator of Maltreatment letter. The vulnerable adult, or interested person(s), should receive the Notice of Right of Reconsideration and Review of a Vulnerable Adult or Interested Person letter.

Samples of these letters can be found in the [Appendix O](#).

Case Closing Considerations

After the investigation and final disposition is determined, a worker has several options for the case:

- 1) **Close the case:** The county shall complete the required disposition paperwork (Form 2494) to the Adult Protection unit of the Minnesota Department of Human Services. Send perpetrator information to the DHS licensing division. No further services are needed from the county for the VA.
- 2) **Transfer the case to another unit within the county:** The VA is in need of additional services from the county social services. The VA investigation case must be closed prior to reopening the case under a different service.
- 3) **Open the case for VA Targeted Case Management:** The VA is in need of ongoing case management services from adult protection. Refer to *Considerations for Targeted Case Management*, [DHS Bulletin 02-56-17](#).
- 4) **Open the case for ongoing APS services:** The VA is in need of ongoing case management services from adult protection but does not meet the criteria for Targeted Case Management.

Due Process

The following is a brief overview of the due process applicable to licensing actions ordered by DHS, **as well as county licensing agencies**.

1. Maltreatment: If an individual license holder is determined culpable for maltreatment of a minor under Minnesota Statutes, section 626.556 or maltreatment of a vulnerable adult under [section 626.557](#), the license holder first has the right to request an administrative reconsideration of this determination. If DHS conducted the investigation and determined maltreatment, the reconsideration review is conducted by the Division of Licensing's Legal Unit. If the county agency conducted the investigation and determined maltreatment, the review is conducted by the county. [See](#) Minnesota Statutes, sections 626.556, subd. 10i and 626.557, subd. 9d.

If the maltreatment determination is affirmed upon reconsideration, or the agency did not respond to the request for reconsideration within the prescribed timelines, the individual license holder has a right to a hearing under Minnesota Statutes, section 256.045, which is commonly referred to as fair hearing. These hearings are conducted by DHS human services appeals referees.

<http://www.revisor.leg.state.mn.us/stats/256/045.html>

2. Disqualification: An individual must be disqualified under Minnesota Statutes, [section 245A.04](#), subdivision 3d, on the basis of a conviction of a listed crime, an admission or a preponderance of evidence of commission of a disqualifying crime, being found culpable for serious or recurring maltreatment of a minor or vulnerable adult, and for failure to report maltreatment. The county licensing agencies are delegated the responsibility to conduct background studies on individuals affiliated with family child care and foster care and to disqualify individuals in accordance with subdivision 3d. The disqualified individual has the right to request reconsideration of a disqualification under Minnesota Statutes, section 245A.04, subdivision 3b. The reconsideration review is conducted by DHS' Legal Unit, unless the disqualification is based on a current county maltreatment determination. In this case, the county agency conducts a consolidated reconsideration of both its maltreatment and disqualification determinations. Likewise, if the individual is disqualified by DHS based on a DHS determination of serious or recurring maltreatment, and if the individual requests reconsideration of both determinations, a consolidated reconsideration will be conducted. <http://www.revisor.leg.state.mn.us/stats/245A/04.html>

If the disqualification is not set aside or rescinded upon reconsideration under Minnesota Statutes, section 245A.04, subdivision 3b, the disqualified individual next has a right to a fair hearing under [section 256.045](#). This is true for disqualifications based on a preponderance of evidence, serious or recurring maltreatment, and failure to report maltreatment. Individuals who are disqualified based on a conviction or admission do not have a fair hearing right and may petition the Court of Appeals for a Writ of Certiorari. Just as the reconsideration review of a disqualification based

on serious or recurring maltreatment is consolidated, if an individual requests a fair hearing regarding a maltreatment determination and a disqualification based on serious or recurring maltreatment, a single hearing will be conducted under section 256.045 including both determinations in the referee's scope of review.

3. Licensing sanctions: DHS has the authority to issue a variety of licensing sanctions based on the nature, severity, or chronicity of the violations. Correction orders and conditional licenses are ordered pursuant to Minnesota Statutes, [section 245A.06](#). Minnesota Statutes, [section 245A.07](#) authorizes the issuance of license revocations, suspensions, fines, and temporary immediate suspensions. License holders who are issued a correction order or a conditional license have the right to request administrative reconsideration of the order, which is conducted by the Division of Licensing's Legal Unit. A license holder who has been issued a license revocation, suspension, or a fine has the right to a contested case hearing under Minnesota Statutes, chapter 14. A license holder whose license has been temporarily immediately suspended has the right to an expedited contested case hearing under chapter 14. These contested case hearings are conducted by an administrative law judge with the Office of Administrative Hearings.

One of bases for the issuance of a licensing sanction against an individual license holder may be a disqualification under Minnesota Statutes, section 245A.04, subdivision 3d, which has not been set aside following reconsideration under section 245A.04, subdivision 3b, or the individual did not request such reconsideration. An individual license holder who is disqualified and the disqualification has not been set aside or a variance granted, may not have direct contact with individuals receiving services and may not be a license holder.

As discussed above, an individual license holder may be disqualified based on a determination that the individual was culpable for serious or recurring maltreatment of a minor or vulnerable adult. In the event that a license revocation, suspension, or fine is based on a maltreatment determination and/or a disqualification which has not been set aside, and the individual requests a contested case hearing, all determinations will be included within the scope of the contested case hearing. In such cases, a separate fair hearing regarding the maltreatment determination and/or disqualification is not conducted under Minnesota Statutes, section 256.045.

Data Requirements

I. Statutory References and Definitions

Minn. Stat. § [626.557](#) - Reporting of Maltreatment of Vulnerable Adults

Minn. Stat. § [626.5571](#) - Adult Protection Team

Minn. Stat. § [13.46](#), subd. (3) and (4) - Welfare System Investigations of Licensed Facilities

It is the public policy of the State of Minnesota to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment. To achieve this end, the law requires certain persons (known as "mandated reporters") to report suspected abuse and requires reporting information about alleged maltreatment of vulnerable adults to a "common entry point," established in each of the 87 counties. A "common entry point" is the entity responsible for receiving reports of suspected maltreatment.

II. Classification

Data involving maltreatment of a vulnerable adult generally is private, confidential, or protected nonpublic depending on the activity, status, and data subject. There are also specific provisions for sharing data about maltreatment of vulnerable adults.

III. Additional Considerations

A. Active and Inactive Investigation - All data on individuals obtained during an active investigation is confidential. Data obtained on vendors or agencies during an active investigation is protected nonpublic data. Minn. Stat. § 13.46, subd. 3. The Vulnerable Adult Maltreatment Act contains specific requirements about disclosure of such data. Minn. Stat. § 626.557. Data on individuals collected during a licensing agency's investigation becomes private data when the investigation becomes inactive, unless it is submitted to a court involved in prosecuting the alleged perpetrator. This data, however, may be released to the public if the personal identifiers are removed. Data derived from private or confidential data on individuals from which the personal identifiers have been removed is generally considered to be public.

Inactive investigative data maintained by agencies other than the licensing agency is public data, unless the data would ordinarily be classified as not-public or the release of the data would jeopardize some other ongoing investigation. Minn. Stat. §§ 13.39, subd. 3, or 13.82, subd. 5. If the data is submitted to a court or hearing examiner, it becomes public data. Data not on individuals, such as licensees, generally becomes public when the investigation becomes inactive.

B. Multidisciplinary Adult Protection Teams - Counties may establish adult protection teams, of which the core team members include the following entities or their designees: county welfare director, county sheriff, county attorney, health care representatives and vulnerable adult advocate groups. Additional members, based upon

professional interest, can be added to the Adult Protection Team at the discretion of the county.

All members of an adult protection team may discuss public data and develop resources for intervention, prevention, and treatment surrounding maltreatment of vulnerable adults. Core members of the adult protection team may also discuss private data about individuals allegedly subjected to maltreatment. Private data may only be shared with other members if the data subject has given consent or the sharing of private data is permissible under another law. Minn. Stat. § 626.5571, subd. 3.

C. Common Entry Point - A "common entry point" is the entity responsible for receiving the report of suspected maltreatment. Immediately after discovering suspected maltreatment of a vulnerable adult, a mandated reporter must inform the common entry point of the alleged maltreatment. The report must include, in part, a description of the incident, the alleged victim, the disability, any other witnesses, and the name and relationship of the alleged perpetrator. The reporter may also disclose not-public data as defined in Minn. Stat. § 13.02, subd. 8a, and private or confidential data from medical records to the extent necessary to comply with mandated reporter law.

D. Name of Reporter - The names of reporters are considered confidential and may only be shared with the consent of the reporter, when ordered by the court, or upon a written finding by a court that the report was false and made in bad faith. For more details, see Minn. Stat. § 626.557, subd. 12b(c). Notwithstanding any other provision in law, the Commissioner shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and retardation upon the request of the ombudsman. Minn. Stat. 13.46, subd. 3 (b) <http://www.revisor.leg.state.mn.us/stats/13/46.html>.

E. Final Disposition and Fair Hearing - Upon conclusion of the investigation, each licensing agency must prepare a final disposition report of the agency's investigation which includes the name of the facility, the nature of the reported abuse or neglect or other violations of the maltreatment law, pertinent information obtained from medical or other records, the investigator's name, a summary of the investigative findings, and a statement of whether the report was found to be substantiated, inconclusive or false and action taken by the agency.

This report must be written in a manner that protects the identity of the reporter and the vulnerable adult and may not contain the name or, to the extent possible, the identity of the alleged perpetrator or those interviewed during the investigation. A determination of maltreatment against an individual or facility may be appealed to the Commissioner of Human Services for a fair hearing. Any data considered by the referee must be made available to all parties to the hearing.

F. Name of the Victim and Name of the Perpetrator - While the investigation is active, the names of the victim and alleged perpetrator and anyone else interviewed are confidential. The names become private when the investigation terminates. This private information may be released if the personal identifiers can be removed.

G. Investigative Memoranda - The commissioners of health and human services (**only the lead agencies of DHS and OHFC, NOT the counties**) are required to prepare investigative memoranda.

****Subdivision 12b.** (County Data) was amended during the 2005 Legislative session. It now states that county social service agencies must maintain private data on individuals, but are not required to prepare an investigation memorandum related to maltreatment of vulnerable adults.

During the investigation, all data are confidential or protected nonpublic. When the investigation is concluded, some information becomes public, for example, name of the facility, nature of the alleged maltreatment, identity of the investigator, and other facts. Minn. Stat. § 626.557, subd. 12b(b) defines what data in the report are public and not-public upon conclusion of the investigation.

H. Exchange of Information - The data obtained in the investigation of the abuse or neglect of a vulnerable adult may be shared as necessary between lead agencies, prosecuting authorities and law enforcement agencies.

I. Data Destruction - Data from an investigation must be destroyed on a schedule specified by law. Minn. Stat. § 626.557, subd. 12b(d). Depending on whether the report of maltreatment was false, inconclusive, substantiated or not investigated, the reports must be destroyed within two years, four years, seven years and two years, respectively, from the date the finding or report was made. A common entry point must destroy its reports of maltreatment within three years from the date of receiving the report.

J. Notification of Other Affected Parties - A lead agency may notify other affected parties if the agency has reason to believe maltreatment has occurred and that dissemination of the information will safeguard the well being of the affected parties or dispel wide-spread rumor.

K. Chemical Dependency Treatment Facilities - There is no provision in the chemical dependency regulations for the reporting of vulnerable adult maltreatment. However, the Vulnerable Adult Maltreatment Reporting Act requires employees in facilities with patients covered by the Act to seek consent from the patient to disclose suspected maltreatment. In addition, the chemical dependency regulations allow dissemination of information to law enforcement prosecuting authorities for crimes committed at the facility, which includes suspected maltreatment in the facilities.

Sharing data with State Ombudsman for Mental Health and Mental Retardation

Amendments in 2002 legislation now require the Commissioner of Human Services to provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under Minnesota Statutes, section 626.556 or section 626.557, to the Ombudsman for Mental Health and Retardation upon the request of the ombudsman.

Exchange of data with Department of Corrections

Amendments in 2002 legislation now allows the Commissioner of Human Services to exchange non public data with the Department of Corrections for the purposes of completing background studies pursuant to Minnesota Statutes, section 241.021.

MN Statute 256.9742, subd. 5, Access to State Records

“The ombudsman or designee (excluding volunteers) has access to data of a state agency necessary for the discharge of the ombudsman’s duties, including records classified confidential or private under Chapter 13, or any other law. The data requested must be related to a specific case and is subject to section 13.03, subd. 4. If the data concerns an individual, the ombudsman or designee shall first obtain the individual’s consent. If the individual cannot consent and has no legal guardian, then access to the data is authorized by this section.

Subd. 4, Change in Classification of Data; Effect of Dissemination Among Agencies.

(a) The classification of data in the possession of any entity shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating ore receiving entity.

(b) If data on individuals is classified as both private and confidential by this chapter, or any other statute or federal law, the data is private.

(c) To the extent that government data is disseminated to a government entity by another government entity, the data disseminated shall have the same classification in the hands of the entity receiving it as it had in the hands of the entity providing it.

(d) If a government entity disseminates data to another government entity, a classification provided for by law in the hands of the entity receiving the data does not affect the classification of the data in the hands of the entity that disseminates the data.

Timeline for Reports/Data/Investigation

<u>Time</u>	<u>Action</u>
Immediately	Mandated reporter learns about or witnesses maltreatment and makes a report to the CEP.
Immediately	The CEP worker will coordinate immediate APS if needed.
Immediately	The CEP worker will immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.
24 Hours	If the VA is not in need of immediate care or protection but is allegedly abused, the investigation shall begin within 24 hours.
72 Hours	If the VA is not in need of immediate care or protection and is not allegedly abused but <i>is</i> allegedly <i>neglected</i> , the investigation shall begin within 72 hours.
5 Days	The county shall notify the reporter that it has received the report and of its initial disposition within 5 working days of the receipt of the report provided that the notification will not endanger the VA. If the report involves a VA that has an open case with the county social service agency, the CEP worker must notify the case manager of the report with the reporters name redacted.
60 Days	The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation.

Staffing Cases

At times a worker may have gathered all the necessary information/evidence and is unsure of how to proceed with the case. It may be helpful to discuss and problem-solve (“staff”) the case with a supervisor and/or other workers. When staffing a case, a worker should be prepared in order to make the experience as efficient and effective as possible.

A worker may consider the following questions and list in preparation to staff a case:

- 1) Prepare a brief summary of the case including the major theme and players of the case. It is not necessary to include too many details.
- 2) Bring the case file to the staffing in case there are questions requiring reference to the file.
- 3) Once the summary of the case is presented, ask for *specific* feedback – this will help focus the discussion. Consider the following questions: Why do I need assistance? What is it I am unsure about or need feedback on?
- 4) Do not leave the staffing without getting your questions answered. You may be required to bring the focus back to answering (or at least obtaining some guidance to) your specific issues.

Sometimes cases are still unclear even after staffing them. The VA law has many areas where it is left up to the judgment of the investigator. In such cases, investigators must do the best in gathering evidence, staffing the case and then making a decision. A worker will be much more confident in the final decision on a case when the investigation has been thorough and all the tools available to them have been utilized.

Appendix A

COMMON ENTRY POINT Location & Phone List

1/10/06

County	CEP Location	Day	Phone Evening/Weekend	TTY
AITKIN	Aitkin County Health & Human Services	(218) 927-7200 (800) 328-3744	(218) 927-2138 Sheriff's Dept.	
ANOKA	Anoka County Human Services	(763) 422-7168	(651) 291-4680 Red Cross	(763) 323-6166
BECKER	First Link: Sarah Kemp	(701) 235-3620	(701) 235-3620	(701) 235-3620
BELTRAMI	Beltrami County Adult Services	(218) 333-8300	(218) 751-9111 Law Enforcement	
BENTON	Benton County Human Services	(320) 968-5087	(320) 968-7201 Sheriff's Dept.	
BIG STONE	Big Stone County Sheriff's Department	(320) 839-3558	(320) 839-3558	(320) 839-6161
BLUE EARTH	Blue Earth County Human Services	(507) 389-8319	(507) 625-9034	
BROWN	Brown County Family Services	(507) 354-8246	(507) 233-6720 Sheriff's Dept.	(507) 354-8246
CARLTON	Carlton County Public Health and Human Services	(218) 879-4511 (888) 818-4511	(218) 384-4185 Sheriff's Dept.	(218) 878-2540
CARVER	Carver County Social Services	(952) 361-1600	(952) 443-3631 Emergency Social Services	
CASS	Cass County Health & Human Services	(218) 547-1340	(218) 547-1424 Law Enforcement	
CHIPPEWA	Chippewa County Family Services	(320) 269-6401	(320) 269-2121 Sheriff's Dept.	
CHISAGO	Chisago County Health & Human Services	(651) 213-0375	(651) 291-6795 Red Cross	
CLAY	First Link: Sarah Kemp	(701) 235-3620	(701) 235-3620	(701) 235-3620
CLEARWATER	Clearwater County Sheriff's Department	(218) 694-6226	(218) 694-6226 Sheriff's Dept.	
COOK	Cook County Public Health & Human Services	(218) 387-3620	(218) 387-3030 Law Enforcement	
COTTONWOOD	Cottonwood County Family Service Agency	(507) 831-1891	(507) 831-1375 Sheriff's Dept.	
CROW WING	Crow Wing County Social Services	(218) 824-1140	(218) 829-4749 Law Enforcement	
DAKOTA	Dakota County Social Services	(651) 554-6000	(952) 891-7171 Crisis Line	(800) 627-3529
DODGE	Dodge County Human Services	(507) 635-6170	(507) 635-6200 Sheriff's Dept.	(507) 635-6200
DOUGLAS	Douglas County Social Services	(320) 762-2302	(320) 762-8151 Law Enforcement	(800) 627-3529
FARIBAULT	Faribault County Human Service Center	(507) 526-3265	(507) 526-3265	(507) 526-3265
FILLMORE	Fillmore County Dept. of Social Services	(507) 765-2175	(507) 765-3874 Sheriff's Dept.	
FREEBORN	Freeborn County Department Human Services	(507) 377-5400	(507) 377-3081 bkup: (507) 373-2940	(507) 377-5519
GOODHUE	Goodhue County Social Services	(651) 385-3232	(651) 385-3155 Sheriff's Dept.	(651) 385-3190
GRANT	Grant County Social Services	(218) 685-4417	(218) 685-5303 Sheriff's Dept.	
HENNEPIN	Hennepin County Adult Protection Services	(612) 348-8526	(612) 348-8526	(612) 348-8672
HOUSTON	Houston County Human Services	(507) 725-5811	(507) 725-3379 Sheriff's Dept.	
HUBBARD	Hubbard County Social Services	(218) 732-1451	(218) 732-3331 Law Enforcement	
ISANTI	Isanti County Family Services	(763) 689-8146	(763) 689-2141 Sheriff's Dept.	
ITASCA	Itasca County Health & Human Services	(218) 327-2941	(218) 327-2941	(218) 327-5549
JACKSON	Jackson County Human Services	(507) 847-4000	(507) 847-4420 Sheriff's Dept.	
KANABEC	Kanabec County Family Services	(320) 679-6350	(320) 679-2141 Sheriff's Dept.	
KANDIYOHI	Kandiyohi County Family Services	(320) 231-6232	(320) 235-2244 Sheriff's Dept.	(320) 231-7076
KITTSOON	Kittson County Welfare Dept.	(800) 422-0863 Crisis Line	(800) 422-0863 Crisis Line	
KOOCHICHING	Koochiching County Community Services	(218) 283-7000	(218) 283-4416 Law Enforcement	(218) 283-7062
LAC QUI PARLE	Lac qui Parle County Sheriff	(320) 598-3720	(320) 598-3720	

County	CEP Location	Day	Phone Evening/Weekend	TTY
LAKE	Lake County Human Services	(218) 834-8401	(218) 834-8385 Sheriff's Dept.	
LAKE OF THE WOODS	Lake of the Woods County Social Services	(218) 634-2642	(218) 634-1143 Law Enforcement	
LE SUEUR	LeSueur County Human Services	(507) 357-8288	(507) 357-2251	
LINCOLN	Lincoln, Lyon & Murray Human Services	(507) 694-1452	(507) 694-1664 Sheriff's Dept.	(507) 694-1452
LYON	Lincoln, Lyon & Murray Human Services	(507) 537-6747	(507) 537-7000 Sheriff's Dept.	(507) 537-6747
MAHNOMEN	Mahnomen County Human Services	(218) 935-2568	(218) 935-2255 Sheriff's Dept.	
MARSHALL	Marshall County Law Enforcement Center	(218) 745-5411	(218) 745-5411	(800) 657-3529
MARTIN	Human Services of Faribault-Martin Counties	(507) 238-4757	(507) 238-4481 Law Enforcement	
MC LEOD	McLeod Social Service Center	(320) 864-3144	(320) 864-3134 Sheriff's Dept.	(320) 864-3144
MEEKER	Meeker County Social Services	(320) 693-5300	(320) 693-5400 Law Enforcement	
MILLE LACS	Mille Lacs County Family Services	(320) 983-8208	(320) 983-8257 Sheriff's Dept.	
MORRISON	Morrison County Social Services	(320) 632-2951	(320) 632-9233 Sheriff's Dept.	(800) 627-3529
MOWER	Mower County Human Services	(507) 437-9700	(507) 437-9400 LEC Dispatch	
MURRAY	Lincoln, Lyon & Murray Human Services	(507) 836-6144	(507) 836-6168 Sheriff's Dept.	
NICOLLET	Nicollet County Social Services	(507) 931-6800 (800) 247-5044	(507) 931-1570 Sheriff's Dept.	
NOBLES	Nobles County Family Services Agency	(507) 372-2157	(507) 372-2136 Law Enforcement	
NORMAN	Norman County Social Services	(218) 784-5400	(800) 422-0863 NorthWest Med.Ctr.	
OLMSTED	Olmsted County Community Services	(507) 285-7009	(507) 281-6248 Crisis Receiving Unit	
OTTER TAIL	Otter Tail County Human Services	(218) 998-8166	(218) 988-8555 Law Enforcement	
PENNINGTON	NW Medical Center	(218) 683-4350	(218) 683-4350	(218) 683-4350
PINE	Pine County Health & Human Services	(800) 450-7263	(800) 629-3930 Sheriff's Dept.	(800) 627-3529
PIPESTONE	Pipestone County Sheriff's Department	(507) 825-6700	(507) 825-6700	
POLK	Polk County Social Services	(218) 281-3127	(218) 281-0431 Law Enforcement	
POPE	Pope County Family Services	(320) 634-5750	(320) 634-5411 Sheriff's Dept.	(320) 634-5750
RAMSEY	Ramsey County Human Services	(651) 266-4012	(651) 291-6795 Red Cross	711
RED LAKE	Red Lake County Social Services	(218) 253-4131	(218) 253-2996 Sheriff's Dept.	
REDWOOD	Redwood County Human Services	(507) 637-4050	(507) 637-4036 Sheriff's Dept.	
RENVILLE	Renville County Sheriff's Department	(320) 523-1161	(320) 523-1161	(320) 523-3783
RICE	Rice County Social Services	(507) 332-6115	(800) 422-1286	(507) 332-6248
ROCK	Rock County Family Service Agency	(507) 283-5070	(507) 283-5000 Sheriff's Dept.	(507) 283-5070
ROSEAU	Roseau County Social Services	(218) 463-2411	(218) 463-1421 Law Enforcement	
ST. LOUIS	St. Louis County Social Service Department	(218) 726-2164 (800) 450-9777	(218) 726-2164 or (877) 474-4290	(218) 726-2222
SCOTT	Scott County Human Services	(952) 445-7751	(651) 291-4680 Red Cross	
SHERBURNE	Sherburne County Social Services	(763) 241-2600	(763) 241-2500 Sheriff's Dept.	
SIBLEY	Sibley County Human Services	(507) 237-4000	(507) 237-4330 Sheriff's Dept.	
STEARNS	Stearns County Human Services	(320) 656-6225	(320) 656-6000	(320) 656-6204
STEELE	Steele County Human Services	(507) 444-7500	(507) 451-8232 Law Enforcement	
STEVENS	Stevens County Human Services	(320) 589-7400	(320) 589-1155 Sheriff's Dept.	
SWIFT	Swift County Human Services	(320) 843-3160	(320) 843-3133 Law Enforcement	

County	CEP Location	Day	Phone		TTY
			Evening/Weekend		
TODD	Todd County Social Services	(320) 732-4500	(320) 732-2157 Law Enforcement		(320) 732-4500
TRAVERSE	Traverse County Sheriff's Department	(320) 563-4244	(320) 563-4244		
WABASHA	Wabasha County Social Services	(651) 565-3351	(651) 565-3361 Sheriff's Dept.		
WADENA	Wadena County Social Services	(218) 631-7605	(218) 631-7600 Sheriff's Dept.		
WASECA	Waseca County Human Services	(507) 835-0560	(507) 835-0500 Sheriff's Dept.		
WASHINGTON	Washington County Community Services	(651) 430-6484	(651) 291-6795 Red Cross		(651) 430-6455
WATONWAN	Watonwan County Human Services	(507) 375-3294	(507) 375-3121 Law Enforcement		
WILKIN	Wilkin County Family Service Agency	(218) 643-8013	(218) 643-8544 Sheriff's Dept.		
WINONA	Winona County Human Services	(507) 457-6200	(507) 457-6368 Law Enforcement		
WRIGHT	Wright County Human Services	(763) 682-7400	(612) 490-8569		
YELLOW MEDICINE	Yellow Medicine County Family Service Center	(320) 564-2211	(320) 564-2130 Sheriff's Dept.		

Appendix B

METROPOLITAN ADULT MALTREATMENT CONSORTIUM (MAMC) Agreement for Intake and Assessment of VA Reports Revisions Accepted: May 2004

Purpose: This agreement is to guide assignment decisions between counties in areas not addressed by the Reporting of Maltreatment of Vulnerable Adult Statute. Interpretation should maximize client service and use common sense.

General Policy:

1. The Common Entry Point (CEP) first contacted will receive the report, determine the lead agency and a need for protective services and make the appropriate referrals. A CEP will not refer the reporter to another CEP. The CEP who receives and takes the report will send a copy of the report to the CEP in the county where the maltreatment occurred.
2. Adult Protection Services (APS) in the county where the incident occurs shall be responsible for completing the maltreatment assessment, if the report meets that county's assignment criteria.
3. When a vulnerable adult active with Adult Protection Services moves into a new county and a new report of maltreatment is received, the new county is responsible for investigating any incidents that occur within their jurisdiction. Regardless of whether a referral from the old county was received, the new county would be responsible for the initiation of any protective services needed.
4. Law enforcement in the jurisdiction where the incident occurred may ask for assistance from Adult Protection Services in order to team the case during the investigation process. Notification will be made to the county where the victim currently resides or to the county from which the victim is receiving social services if different from where the incident occurred.
5. When a maltreatment allegation of a vulnerable adult occurs during a visit to another county, the county where the incident occurred shall complete the assessment. Ongoing protective services, if needed, will be provided to the victim by the county where the victim currently resides.
6. For financial exploitation cases:
 - a. If the location of the maltreatment is known, APS in that county will conduct the investigation, if the report meets the county's assignment criteria, and will work with the local law enforcement.
 - b. If the criminal jurisdiction of the maltreatment is unclear, the county where the victim resides will complete the assessment as well as provide protective services. The county where the victim resides will coordinate with law enforcement and county attorney staff in counties where criminal charges might be brought and may ask for the advice and assistance of APS in those counties.

In exceptional situations, management staff may need to determine who should be the primary county. The CEP for each county will know the names of the management staff person and back up who will interpret this agreement.

7. If a metro county has a disagreement with a second metro county and this agreement does not present clear resolution, the disputants will contact a third county management staff. Discussion will take place by conference call. The conclusions reached during the conference call shall result in a binding agreement between the two counties.

Appendix C (This replaces the Tennesen Warning and Hipa) Notice of Privacy Practices

This information is available in other forms to people with disabilities by calling your county worker. For TDD users, contact your county worker through the Minnesota Relay at 711 or 1-800-627-3529. For the Speech-to-Speech relay, call 1-877-627-3848.

This notice describes how medical information and other private information about you may be used and disclosed and how you can get access to this information. Please review it carefully.

You have privacy rights under the Minnesota Government Data Practices Act and the federal Health Insurance Portability and Accountability Act (HIPAA). These laws protect your privacy, but also let us give information about you to others if a law requires it or allows it. We may tell you before we give the information.

Why do we ask you for this information?

- To tell you apart from other people with the same or similar name.
- To decide what you are eligible for.
- To help you get medical, mental health, financial or social services.
- To decide if you can pay for some of your services.
- To make reports, do research, do audits, and evaluate our programs.
- To investigate reports of people who may lie about the help they need.
- To decide about out-of-home care and in-home care for you or your children.
- To collect money from other agencies, like insurance companies, if they should pay for your care.
- To decide if you or your family needs protective services.
- To collect money from the state or federal government for help we give you.

Do you have to answer the questions we ask?

Generally, the law does not say you have to give us this information. We need your social security number in order to give you some kinds of financial help or child support enforcement.

What will happen if you do not answer the questions we ask?

We need information about you to tell if you can get help from any program. Without the information, we may not be able to help you. If you give us wrong information on purpose, you can be investigated and charged with fraud.

With whom may we share the information about you?

We may give information about you to the following agencies, if they need it for investigations or to help you or help us help you. We don't always share information about you with these people, but the law says we may share information with them. If you have questions about when we give these people information, ask your worker.

- US Department of Agriculture
- US Department of Health and Human Services
- US Department of Labor
- United States Citizenship and Immigration Services
- Internal Revenue Service
- Social Security Administration
- Minnesota Department of Employment and Economic Development
- Minnesota Department of Education
- Minnesota Department of Human Rights
- Minnesota Department of Human Services
- Minnesota Department of Labor and Industry
- Minnesota Department of Public Safety

- Minnesota Department of Revenue
- Minnesota Department of Veterans Affairs
- Minnesota Historical Society
- American Indian tribes, if your family is in need of human services at a tribal reservation
- Higher education coordinating board
- State hospitals or long-term care facilities
- State and federal auditors
- Court officials
- Anyone under contract with the Minnesota Department of Human Services or US Department of Health and Human Services, or the county social services agency
- Local and state health departments
- County human services boards
- Child or adult protection teams
- People who investigate child or adult protection
- Other human services offices, including child support enforcement offices
- Fraud prevention and control units
- Employees or volunteers of any welfare agency who need the information to do their jobs
- County attorney, attorney general or other law enforcement officials
- Mental health centers
- Ombudsman for families
- Ombudsman for mental health and mental retardation
- County Advocates for Minnesota Managed Health Care Programs
- Guardian, conservator or person who has power of attorney for you
- Local collaborative agencies
- Community food shelves or surplus food programs
- Health care providers
- School districts
- Schools and other institutions of higher education
- Coroner/medical examiner if you die and they investigate your death
- Hospitals if you, a friend, or relative has an emergency and we need to contact someone
- Others who may pay for your care
- Insurance companies to check health care benefits you or your children may get
- Managed care organizations about your health care or benefits
- Credit bureaus
- Creditors
- Collection agencies, if you do not pay fees you owe to us for services
- Anyone else to whom the law says we can give the information. You have the right to information we have about you.
- You may ask if we have any information about you and get copies. You may have to pay for the copies.
- You may give other people permission to see and have copies of private information about you.
- Unless we get special written permission from you, we will only use your health information for the purposes listed on this form.
- You may question the accuracy of any information we have about you.
- You have the right to ask us to share health information with you in a certain way or in a certain place. For example, you may ask us to send health information to your work address instead of your home address. You must make this request in writing. You do not have to explain the basis for your request. If we find that your request is reasonable, we will grant it.
- You can ask us to restrict uses or disclosures of your health information. Your request must be in writing. You must explain what information you want to restrict from being disclosed and to whom you want these restrictions to apply. You can request to end these restrictions at any time by calling us or by writing to us. We are not required to agree to your restrictions.
- You have the right to receive a record of the people or organizations that we have shared your health information with. We must keep a record of each time we share your health information for six years from the date it was shared. It will NOT include those times when we have shared your information in order to treat you, pay or bill for your health care services or to run our programs. If you want a copy of this record, you must send a request in writing to our Privacy Official.
- If you do not understand the information, you may ask your worker to have it explained to you. You can ask DHS for another copy of this notice.

What are our responsibilities under this notice?

We may change our privacy policy in the future. We might do this, for example, because privacy laws change and require us to change our practices. When we change our privacy rules we will publish them on our web site at: <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-3979-ENG>. Until we publish new privacy rules we will abide by the terms of this notice.

What if you believe the information we have about you is wrong?

Send your concerns in writing, telling us why the information is not accurate or complete. You may send your own explanation of the facts you disagree with. Your explanation will be attached any time that information is shared with another agency.

What privacy rights do children have?

If you are under 18, parents may see information about you and allow others to see this information, unless you have asked that this information not be shared with your parents or it involved medical treatment for which parental consent was not required. You must make this request in writing and say what information you want withheld and why. If the agency agrees that sharing the information is not in your best interest, the information will not be shared with your parents. If the agency does not agree, the information will be shared with your parents if they ask for it. When parental consent for medical treatment is not required, information will not be shown to parents unless the health care provider believes failing to share the information would jeopardize your health.

What if you believe your privacy rights have been violated?

You may complain if your privacy rights have been violated. You cannot be denied service or treated badly because you have made a complaint. If you believe that your medical privacy was violated by your doctor or clinic, a health insurer, a health plan, or a pharmacy, you may send a written complaint either:

- Directly to that organization, *or*
- To the federal office of Civil Rights at:
US Department of Health and Human Services
Office for Civil Rights - Region V
233 N Michigan Avenue, Suite 240
Chicago, IL 60601
(312) 886-2359 (Voice)
(312) 353-5693 (TTY/TDD)
(312) 886-1807 (Fax)

If you think that the Minnesota Department of Human Services has violated your privacy rights you may send a written complaint to the US Department of Health and Human Services at the address above, or to:

Privacy Official
Minnesota Department of Human Services
444 Lafayette Road N
St. Paul, MN 55155-3813

Sign below to indicate that you have received this privacy notice.

Acknowledgment of Receipt of Notice of Privacy Practices

I hereby acknowledge my receipt of this Notice of Privacy Practices. I understand that if I have any questions about the information of this form, I can ask my case worker or other appropriate agency personnel.

Applicant signature	Date
---------------------	------

Appendix D1

GERIATRIC DEPRESSION SCALE

Person interviewed: _____ Date: _____

Interviewer: _____

Circle yes or no. Instruct the elder that the answer must be “yes” or “no”, whichever is closest to how they feel.

- | | | | |
|----|--|------------|-----------|
| 1. | Are you basically satisfied with your life? | Yes | No |
| 2. | Do you often get bored? | Yes | No |
| 3. | Do you often feel helpless? | Yes | No |
| 4. | Do you prefer to stay home rather than going out and doing new things? | Yes | No |
| 5. | Do you feel pretty worthless the way you are now? | Yes | No |

If less than 2 have answers in “bold”, STOP.

If 2 or more have answers in “bold”, continue with the remaining questions.

- | | | | |
|-----|--|------------|-----------|
| 6. | Have you dropped many of your activities and interests? | Yes | No |
| 7. | Do you feel that your life is empty? | Yes | No |
| 8. | Are you in good spirits most of the time? | Yes | No |
| 9. | Are you afraid that something is going to happen to you? | Yes | No |
| 10. | Do you feel happy most of the time? | Yes | No |
| 11. | Do you feel you have more problems with memory than most? | Yes | No |
| 12. | Do you think it is wonderful to be alive? | Yes | No |
| 13. | Do you feel full of energy? | Yes | No |
| 14. | Do you feel that your situation is hopeless? | Yes | No |
| 15. | Do you think that some people are better off than you are? | Yes | No |

TOTAL CIRCLED IN **BOLD** _____

A SCORE OF 6 OR ABOVE WARRANTS REFERRAL TO A PHYSICIAN FOR FURTHER EVALUATION FOR DEPRESSION.

Reference:

Hoyl, MT, Alessi, CA, Harker, JO et al, Journal of the American Geriatrics Society, 47:873-878, 1999.

Sheikh JI, Yesavage JA: (1986) Clin Gerontol 165-173.

Appendix D2

The Safety Assessment Scale

A Home Safety Assessment Test

Dr. Louise Poulin de Courval, a McGill Professor and researcher of Family Medicine at the Cote-des-Neiges CLSC, has developed a Safety Assessment Scale to help caregivers assess the dangers of people with dementia who live at home. The Safety Assessment Scale is available online at www.clsc-cote-des-neiges.qc.ca/sas.

For further information or if you plan to use the scale for research purposes, please contact Louise Poulin de Courval at lpoulind@ssss.gouv.qc.ca.

Appendix D3

Mini Mental Status Exam

SCORE

ORIENTATION TO TIME:	1. What is the : Year? Month? Date? Day? Season?	_____ _____ _____ _____ _____	0-1 0-1 0-1 0-1 0-1
ORIENTATION TO PLACE:	2. Where are we now: County (or zip code)? State? Town or City? This place? Room?	_____ _____ _____ _____ _____	0-1 0-1 0-1 0-1 0-1
NEW LEARNING/ REGISTRATION:	3. Name these 3 objects: BALL, CUP, MIRROR <i>Taking one second to say each. Tell the client to try to remember these objects because you are going to ask the client to recall them later on. Then ask the client to repeat all three after you have said them. The first trial determines the score. Give 1 point for each correct answer. Repeat the answers until the patient learns all 3, up to a maximum of 6 trials.</i> Record # of trials: _____	_____	0-3
ATTENTION AND CONCENTRATION:	4. Ask the client to spell WORLD backwards. Score 1 point for each letter in the correct position.	_____	0-5
RECALL:	5. Ask for the names of the 3 objects learned in Question 3. Score 1 point for each correct answer.	_____	0-3
NAMING:	6. Point to a pencil and a watch. Have the patient name them as you point. Score 1 point for each correct answer.	_____	0-2
REPETITION/ APHASIA:	7. Have the client repeat: "No ifs, ands, or buts." Allow only one trial.	_____	0-1
COMPREHENSION/ APRAXIA:	8. Have the client follow a 3-stage command. The following instructions should be given: <i>Please listen to the instructions that I am going to give you. Then I want you to follow the instructions.</i> "Take the paper in your right hand. Fold the paper in half. Put the paper on the floor."	_____	0-3

READ & FOLLOW INSTRUCTIONS:	9. Have the client read and follow the command: "Close your eyes."	_____	0-1
ABILITY TO WRITE & COMPREHEND:	10. Ask the client to write a complete sentence of his or her own choice. The sentence must have a subject and verb and make sense. It doesn't need to have punctuation, the correct verb tense, or correct spelling.	_____	0-1
SPATIAL REASON/ VISUAL-SPATIAL SKILLS:	11. Show the client the diagram below. Ask the client to reproduce the diagram. To be considered correct, the diagram must have 2 figures, each with 5 connecting sides. The two figures must have one intersecting angle, (not necessarily the same intersecting angle depicted in the original).	_____	0-1
	TOTAL SCORE:	_____	30

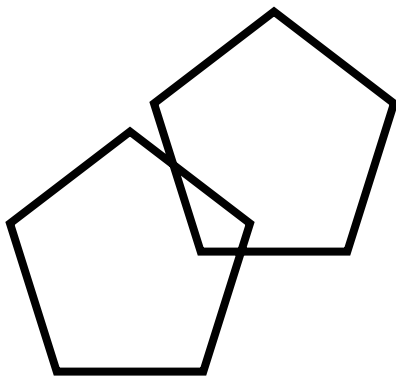
Scoring:

24-30 Uncertain Cognitive Impairment

18-23 Mild to Moderate Cognitive Impairment

0-17 Severe Cognitive Impairment

CLOSE YOUR EYES



Normative Data on the MMSE

Cognitive performance as measured by the MMSE varies within the population by age and educational level. There is an inverse relationship between MMSE scores and age, ranging from a median of 29 for those 18 to 24 years of age, to 25 for individuals 80 years of age and older. The median MMSE score is 29 for individuals with at least 9 years of schooling, 26 for those with 5 to 8 years of schooling, and 22 for those with 0 to 4 years of schooling.

The results in the following table (from Crum et al., 1993) can be used to compare your patient's MMSE score with those determined from a population reference group based on age and educational level.

	Age													
Education	18-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74	75-79	80-84	>84
4th grade	22	25	25	23	23	23	23	22	23	22	22	21	20	19
8th grade	27	27	26	26	27	26	27	26	26	26	25	25	25	23
High School	29	29	29	28	28	28	28	28	28	28	27	27	25	26
College	29	29	29	29	29	29	29	29	29	29	28	28	27	27

Selected References on the MMSE

1. Folstein MF, Folstein, SE and McHugh PR (1975) Mini-Mental State: A practical method for grading the state of patients for the clinician, *Journal of Psychiatric Research*, 12: 189-198.
2. Anthony JC, LeResche L, Niaz U, VonKorff MR and Folstein MF (1982) Limits of the mini-mental state as a screening test for dementia and delirium among hospital patients. *Psychological Medicine*, 12: 397-408.
3. Cockrell JR and Folstein MF (1988) Mini Mental State Examination (MMSE), *Psychopharmacology*, 24: 689-692.
4. Crum RM, Anthony JC, Bassett SS and Folstein MF (1993) Population-based norms for the mini-mental state examination by age and educational level, *JAMA*, 18: 2386-2391.

Important Links

Health Licensing Boards:

http://www.ombudmhm.state.mn.us/who/who_sec6.htm

National Center on Elder Abuse: <http://www.elderabusecenter.org>

Legal Services Offices in Minnesota:

<http://www.luminet.net/~smrlswi/mnlegaid.htm>

Adult Day Care/Foster Care Licensing (DHS):

http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_017167.hcsp

DHS Website: <http://www.dhs.state.mn.us/default.htm>

CEP's in Minnesota: <http://www.mnaging.org/services/cepd.html>

Information for Counties: <http://www.dhs.state.mn.us/county/default.htm>

DHS Licensing: <http://www.dhs.state.mn.us/Licensing/default.htm>

MDH: www.health.state.mn.us

Minnesotahelp.info website: <http://www.minnesotahelp.info>

DHS APS Unit: <http://www.dhs.state.mn.us/agingint/services/adultpsu.htm>

VAA Statute: <http://www.revisor.leg.state.mn.us/stats/626/557.html>

VAA Definitions: <http://www.revisor.leg.state.mn.us/stats/626/5572.html>

Ombudsman MH/MR: <http://www.ombudmhm.state.mn.us>

Ombudsman for Older Americans:

<http://www.dhs.state.mn.us/agingint/services/ombuds.htm>

For more information on the VA Law (MN State Bar Association):

<http://www.mnbar.org/adultabu.htm>

The Directory of Crime Victim Service Programs in Minnesota

<http://www.ojp.state.mn.us/MCCVS/SearchDirectory/Search.asp>

National Adult Protective Services Association

<http://www.naapsa.org/Membership/benefits.htm>

Minnesota Coalition for Battered Women

They can assess the situation, refer to local domestic violence program. Local programs can assist the victim in filing an order for protection.

<http://www.mcbw.org/>

1-800-289-6177 (statewide)

Crisis Line: 651-646-0994 (in metro area)

National Domestic Violence Hotline: 1-800-799-SAFE (7233)

They will assess the situation, refer to local domestic violence programs and other local resources (ie. legal aid, etc.). Has 24-hour access to the language line for non-speaking victims.

Advocacy/Support Groups for Older Women Who Are Victims of Domestic Violence

The following are the known support groups for older battered women. There may be other programs not listed below. Contact the local domestic violence program to obtain additional information about support groups and other services for older adults that are victims of domestic violence.

Cornerstone Advocacy Services

Bloomington, MN

Business: (952) 884-0376

Crisis line: (952) 884-0330

<http://www.cornerstonedv.com>

St. Paul Domestic Abuse Intervention Project

St. Paul, MN

Business: (651) 645-2824

Crisis line: (651) 645-2824

<http://www.stpaulintervention.org>

Area served: St. Paul and Ramsey County

WINDOW Victim Services

Hinckley, MN

Business: (320) 384-7113

Crisis line: (320) 384-7113

Area served: Pine and Kanabec Counties

WEB SITES: AGING AND DISABILITY

Aging:

Administration on Aging

<http://www.aoa.dhhs.gov> – federal; primary source for federal policies and programs, updates on activities.

The National Council on the Aging

<http://www.ncoa.org> – news of interest to older people with a policy, advocacy and legislative focus.

The American Association of Retired Persons

<http://www.aarp.org> – member benefits, organizations' position on issues, information and research updates.

Today's Caregiver

<http://www.caregiver.org> – an online magazine that provides support and information to caregivers.

Institute of Gerontology at Wayne State University

<http://iog.wayne.edu> – research reports, special studies.

Minnesota Department of Human Services, Aging Initiative

<http://www.dhs.state.mn.us/agingint> – state “safety net” programs for older Minnesotans; link to Project 2030 data and reports.

Minnesota Board on Aging home page

<http://www.mnaging.org> – consumer-focused information on services and resources for older people in Minnesota.

Disability

National Council on Disability

<http://www.ncd.gov/index/html> – information on disabilities including access to publications and reports.

National Institute on Disability and Rehabilitative Research

<http://www.ed.gov/offices/OSERS/NIDRR> – in depth information on publications and research.

National Organization on Disability

<http://www.nod.org> – consumer-focused information and referral.

National Rehabilitation Information Center

<http://www.cais.com/naric> – another site for information on disability.

West Virginia Research & Training Center

<http://www.icdi.wvu.edu> – consumer-focused information on employment as well as links to related web sites.

Demographics**U.S. Bureau of Census**

<http://www.census.gov/cdrom/lookup> – 1990 data for the United States.

U.S. Census Bureau home page

<http://www.census.gov/index.html> – central access to Census data, collection issues, 2000 Census, and reports.

Health**Health Care Financing Administration home page**

<http://www.hcfa.gov> – general clearinghouse for information on Medicare, Medicaid and other federal health programs.

National Institutes of Health

<http://chid.nih.gov> – Combined Health Information Database.

Healthfinder

<http://www.healthfinder.gov> – consumer-focused information on health and human services information from the federal government.

The Alzheimer's Association home page

<http://www.alz.org> – consumer-focused facts and information on Alzheimer's and related cognitive disorders, local contacts.

Law**Thomas**

<http://thomas.loc.gov> – Texts of proposed and current bills and laws; congressional record.

National Senior Citizens Law Center

<http://www.nsclc.org> – home page.

General

Office of Disability, Aging and Long-Term Care Policy

<http://aspe.os.dhhs.gov/daltcp/home.htm> – Department of Health & Human Services; a lot of information on policy studies and evaluation.

Medicare

<http://www.medicare.gov> – US government clearinghouse for Medicare information, fraud and abuse.

Social Security Administration

<http://www.ssa.gov> – US government clearing house for questions and information about Social Security.

Center on Budget and Policy Priorities

<http://www.cbpp.org> – non-profit policy research organization, evaluation of federal policies and programs.

Fedworld

<http://www.fedworld.gov> – consumer-focused inventory of all types of information distributed by the federal government.

Government Printing Office

<http://www.access.gpo.gov> – quick access to many federal documents.

Urban Institute home page

www.urban.org/index.html – research and information from national non-profit policy organization; focus on health care and social policies, new federalism, minority communities.

Commonwealth Fund home page

<http://www.cmwf.org/> – non-profit research foundation focused on health and social issues

Appendix F

Specific Issues: Single Mistake/Med Errors

Subd. 3a. The following events **are not required** to be reported under this section:

(d) Events occurring in a facility that result from an individual's error in the provision of therapeutic conduct to a vulnerable adult, as provided in section 626.5572, subdivision 17, paragraph ©, clause (4).

Subd. 17 Neglect.

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

(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; or

(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.

Licensed Facilities: Requirement to report incidents

Legislation in 2002 directed agencies licensed by DHS to report incidents as defined in MS245B.02 to the resident's legal representative. Some facilities may believe that they also have to report incidents to the CEP; but the reporting of maltreatment as defined in 626.557 remains the same. Some incidents, but not all, would also be defined as maltreatment, and therefore require a CEP report.

Appendix G

Penalties, Crimes, Consequences

Falsified Reports

(Minn. Stat. 626.557, subd. 6)

Reporters of maltreatment may not be identified, retaliated against or penalized for making a report in good faith. The law protects both voluntary and mandatory reporters who make reports they believe are true.

However, an individual, facility, program or service that *intentionally makes a false report* can be sued for any actual damages suffered by the accused person or facility, for up to \$10,000 in punitive damages and for attorney's fees.

Criminal Failure to Report

(Minn. Stat. 609.234, subd. 1)

Elements:

- Mandated reporter
- Knows or has reason to believe that a VA is being or has been maltreated
- Intentionally fails to make a report
- Knowingly provides false, deceptive or misleading information
- Intentionally fails to provide all material circumstances surrounding incident which reporter knows

Penalty:

- 90 Days/ \$700

The charges against a mandated reporter increase to a gross misdemeanor if the reporter knew the maltreatment caused or contributed to the vulnerable adult's death or caused great bodily harm and he or she did not report or only partially reported the incident.

(Minn. Stat. 609.234, subd. 2)

Elements:

- Mandated reporter
- Knows or has reason to believe a VA is being or has been maltreated
- Intentionally fails to make a report, AND
- Mandated reporter knows the maltreatment caused or contributed to the death or great bodily harm of a VA, AND
- Mandated reporter intentionally failed to report to protect his/her own interests

Penalty:

- 1 Year/ \$3,000

Retaliation Against Person who Makes a Report

Retaliation is forbidden against any person who reports maltreatment in good faith. (Retaliation is also forbidden against any vulnerable adult who may be the subject of the report.) The law presumes that certain adverse actions taken against the person within 90 days of the report's filing date is retaliation. These actions include, but are not limited to, discharge or transfer from a care facility, reduction in pay, or any restriction placed on one's rights.

- Any facility, program, service or person who does retaliate may have to pay actual damages, punitive damages up to \$10,000, and attorney fees.

The law offers protection to vulnerable adults, but it is rarely a simple matter to set things right when you have been harmed. The investigation may seem to take too long, the findings may seem too vague, and the penalty may not seem severe enough. And yet, the legal protections for and interventions on behalf of vulnerable adults have improved substantially in the past 10-20 years.

The penalties and consequences handed down in a vulnerable adult case depend on many factors, including whether the allegations were substantiated, the nature of the problem, the nature of the evidence and the seriousness of the harm.

For example, there are many possible fines and terms of imprisonment for *criminally abusing* a vulnerable adult. The exact penalty depends on how severely the person was injured and other factors. The crimes, statute references, elements, exemptions and penalties for crimes of maltreatment are listed below.

Criminal Abuse

(Minn. Stat. 609.2325, subd. 1a)

Elements:

- Caregiver is the actor
- Must intend to produce physical or mental pain or injury
- Subjects VA to an aversive deprivation procedure or unreasonable confinement or involuntary seclusion

Exemptions:

- Therapeutic conduct
- Specified health care decision

Penalties, in cases of:

- Death: 15 years/ \$30,000
- Great bodily harm: 10 years/ \$20,000
- Substantial bodily harm: 5 years/ \$10,000
- Less than substantial bodily harm: 1 year/ \$3,000

Criminal Abuse – Sexual Contact

(Minn. Stat. 609.2325, subd. 1b)

Elements:

- Caregiver, facility staff person, person providing services in a facility
- Engages in sexual contact or penetration, not fitting other sexual conduct crimes
- Victim is a resident, patient or client of a facility

Exemptions:

- VA who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence
- Engages in consensual sexual contact if a consensual sexual personal relationship existed prior to the care giving relationship or the caregiver is a personal care attendant

Penalty: Up to 1 year/ \$3,000

Other statute cites for Criminal Sexual Conduct in the first through fifth degree can be found at: Minn. Stat. 609.342 – 609.3451.

Criminal Neglect

(Minn. Stat. 609.233)

Elements:

- Caregiver
- Intentionally fails to provide a VA with necessary food, clothing, shelter, health care or supervision
- Knowingly permits conditions to exist which result in abuse or neglect

Exemptions:

- Specified healthcare decision
- Consensual sexual contact under certain conditions

Penalty:

- Up to 1 year/ \$3,000

Criminal Financial Exploitation

Elements:

(Minn. Stat. 609.2335, subd. 1(1))

- Actor breaches fiduciary obligation
- Intentionally fails to use financial resources of the VA to provide food, clothing shelter, health care, therapeutic conduct or supervision for the VA

(Minn. Stat. 609.2335, subd. 1(2))

- In absence of legal authority
- Uses undue influence to acquire possession or control of an interest in funds or property of a VA

Penalties:

(Minn. Stat. 609.2335, subd. 1(1) and Minn. Stat. 609.2335, subd. 1(2))

- Greater than \$35,000: 20 Years/ \$100,000
- Greater than \$2,500: 10 Years/\$20,000
- Greater than \$500: 5 Years/\$10,000
- Greater than \$200: 1 Year/\$3,000
- \$200 or less: 90 Days/\$700

(Minn. Stat. 609.2335, subd. 1(3))

Elements:

- In absence of legal authority
- Forces, compels, coerces or entices VA against VA's will to perform services for profit or advantage of another

Penalty:

- 1 Year/ \$3000

Fifth Degree Assault

(Minn. Stat. 609.224, subd. 2c)

Elements:

- Caregiver commits an act with intent to cause fear in VA of immediate bodily harm or death
- Caregiver intentionally inflicts or attempts to inflict bodily harm upon a VA

- *Penalty:*
- 1 Year/ \$3,000

Disorderly Conduct

(Minn. Stat. 609.72, subd. 3)

Elements:

- Actor is caregiver who knows or has reasonable grounds to know that conduct will alarm or tend to alarm, anger, or disturb others or provoke an assault or breach of the peace, AND
- Engages in brawling or fighting, OR
- Disturbs an assembly or meeting, OR
- Engages in offensive, obscene, abusive, boisterous or noisy conduct, OR
- Engages in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger or resentment in others, AND
- Victim is a VA

Penalty:

- 1 Year/ \$3,000

There are many types of penalties, depending on the individual facts of the case:

- A violation of the state nursing home requirement to provide residents with “adequate, kind and considerate treatment at all times” can result in a penalty against the facility of \$350 per day. This penalty may be assessed even if a particular vulnerable adult’s complaint about maltreatment is not substantiated.
- Failure to immediately report suspected maltreatment may result in a fine of \$250.
- Any nursing assistant who has a substantiated finding of abuse, neglect or misappropriation of funds, goes on record with the Nursing Assistant Registry (kept by the Facility and Provider Compliance Division at the Minnesota Department of Health) and may not work directly with vulnerable adults in a care facility again.

Other actions you may pursue as help and support:

- Contact your local long-term care ombudsman.
- Contact the Probate Court to take action against a neglectful conservator or guardian.
- Some vulnerable adults who have been harmed have sued care and service providers under personal injury statutes. Others have tried to get compensation for theft of personal property through their county’s Conciliation Court.
- Call the Attorney’s General Office for consultation and help on a case.

**** Please note:** The issues and laws related to this topic are complex and do change. This Guide provides only an overview. For more detailed information or an interpretation of an individual situation, you may want to consult the law itself or an attorney.

Social Worker Safety

It is recommended that counties have written protocols defining procedures workers are to follow in at-risk situations, including seeking the assistance of law enforcement.

Safety issues have always been a crucial component of social work practice, especially with the recognition that every APS case has the potential for confrontation. At times social workers unintentionally discount the nature of APS intervention and the VA's view of their role when confronting adult protective services issues. Difficulties may occur at any point in the APS process. Threats and volatile situations, however, are more likely to occur during the investigative assessment, during crisis situations, and when a significant action is taken; (e.g., removal of a VA for safety or hospitalization or the decision to pursue a conservator petition).

With a social worker's safety and well-being as a primary goal in the threatening situations which are confronted on a day-to-day basis, each county social service department should take responsibility for assuring safety for all staff. This includes:

1. Strengthening the awareness of job-related safety precautions;
2. Teaching work-related, as well as personal self-protection skills;
3. Broadening the understanding of law enforcement's role as it relates to Adult Protective Services; and
4. Familiarizing APS social workers with the importance of attitude and professionalism as it relates to safety.

The first step in ensuring social worker safety is to assess the risk of the situation before the initial contact. Before social workers conduct the first contact with a VA or alleged perpetrator, they need to assess the risk to themselves. Questions social workers should consider include the following:

1. Is there a previous history of domestic violence or other violent behavior toward others?
2. Does the complaint indicate the possibility of a family member or VA being mentally ill, using drugs, or being physically aggressive?
3. Are there firearms or other weapons noted in the intake report?
4. Is the VA's geographic location extremely isolated or dangerous?
5. Is this a second or multiple complaint involving the VA?

6. Is the initial contact scheduled after normal working hours?
7. Are there any vicious animals on or near the premises?

After answering these questions, a decision should be made as to whether or not to call upon law enforcement or another social worker for assistance with initiating the investigation.

A social worker's appearance, verbal and nonverbal statements, and demeanor can impact the response from the VA, alleged perpetrator(s) and others involved in the case. In confrontational situations, if the social worker appears calm (verbally and nonverbally), has control of the situation without being intimidating, and uses anger reduction techniques, they will probably be able to defuse the situation. The following information should provide some direction in these situations.

Approaching the irate VA or other person

When a VA, alleged perpetrator or other person is hostile or verbally abusive, remember to do the following:

Maintain a calm disposition so that feelings of anxiety, fear, anger, etc. do not interfere with the ability to communicate effectively. All statements should be made in a very clear, simple, and direct manner.

Be assertive so that the social worker's involvement in the situation is viewed as clearly professional and not personal. Avoid taking responses personally and responding defensively.

Show respect by speaking to the person and not at them. Be directive, not authoritative. Present alternatives in a positive manner.

Request help when needed! If a VA or other individual becomes aggressive, make attempts to calm them. Otherwise, seek assistance from the nearest allies.

Avoid touching, whether it is in a calming or protective manner, without explaining your actions. If a person attacks, use only enough force to restrain the person. Try to get the person or yourself to separate/different locations. Remove yourself from the immediacy of the hostile situation.

Guardianship/Conservatorship

What is guardianship?

A legal arrangement under which one person, a guardian who is appointed by a court, has the legal right and duty to care for another, the ward, because of the ward's inability to legally act on his or her own behalf due to minority or mental or physical incapacity. Black's Law Dictionary 707 (6th ed. 1990). A guardian has the powers and duties over the ward's person. [MS 524.5-313](#), also <http://www.revisor.leg.state.mn.us/stats/524/5-313.html>

What is conservatorship?

A conservatorship is similar to a guardianship except that the conservator who has been appointed by the court has powers and duties over the incapacitated person's estate. [MS 524.5-418](#)

Who are wards and protected persons?

Wards who have had guardians appointed are minors or incapacitated adults who are impaired to the extent lacking sufficient understanding or capacity to make or communicate responsible personal decisions and who have demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety. [MS 524.5-310](#). Protected persons are those individuals who have had conservators appointed for them because they lack similar capacity and have demonstrated behavioral deficits regarding their estate or financial affairs. [MS 524.5-401](#)

Who serves as guardian or conservator?

Whoever the court determines is in the best interests of the ward or protected person. The factors considered are the current guardian, kinship, and the reasonable preference of the ward or protected person. The court is required to act in the best interest of the incapacitated person when considering who to appoint as guardian or conservator. [MS 524.5-309](#). Guardians and conservators must also submit to a criminal history and maltreatment records background check unless they are a government entity, bank, or a parent of a person with mental retardation. [MS 524.5-118 subd. 1.](#)

What are the powers and duties of a guardian or conservator?

Guardians and conservators must exercise their powers in the best interest of the ward or protected person. The powers and duties of a guardian or those which the court may grant to a conservator include, but are not limited to:

Powers and duties of the person:

1. The power to have custody of the ward and the power to establish a place of abode.
2. The duty to provide for the ward's care, comfort and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements.
3. The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects.
4. The power to give any necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment or service.
5. The power to approve or withhold approval of any contract, except for necessities, which the ward may make or wish to make, if no conservator had been appointed for the ward.
6. The duty and power to exercise supervisory authority over the ward.
7. The power to apply for government assistance on behalf of the ward, if no conservator has been appointed for the ward. [MS 524.5-313](#)

Powers and duties of the estate:

The duty to pay the reasonable charges for the support, maintenance, and education of the protected person.

1. The duty to pay out of the protected person's estate all just and lawful debts of the protected person.
2. The duty to possess and manage the estate, collect all debts and claims in favor of the protected person and invest all funds not needed for debts, charges, and the management of the estate in accordance with the Prudent Investor Rule.
3. The power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make.
4. The power to apply for government assistance on behalf of the protected person. [MS 524.5-418](#)

How is a guardianship or conservatorship established?

Any person may petition for the appointment of a guardian or conservator. [MS 524.5-303](#). A petition requesting appointment is filed in the probate court of the county of residence of the proposed ward or protected person. The court will appoint an attorney to represent the proposed ward or protected person if neither the proposed ward or protected person or others provide counsel. [MS 524.5-304 \(b\)](#); [524.5-406 \(b\)](#). A court hearing is required and notice of it must be served at least 14 days before the hearing personally upon the proposed ward or protected person and by mail upon the spouse, parents, adult children, brothers and sisters, health care agent or proxy pursuant to a health care directive or living will, or if none of the aforementioned are alive or can be located, on the nearest kindred, the administrative head of any hospital, nursing home, or home care agency of which the person is a patient, resident, or client, any adult who has lived with the ward or protected person for more than six months, and a government agency paying or asked to pay benefits to the ward or protected person. [MS 524.5-308](#); [524.5-404](#).

The proposed ward or protected person shall be present at the hearing unless that person waives the right to appear in person or is not able to attend by reason of a medical condition as evidenced by a written statement from a licensed physician. If after the hearing the court finds that a guardian or conservator is needed, and no less restrictive alternative is appropriate, then a court will issue an order. At the hearing, the court may order the conservator of the estate to post a bond before the letters of conservatorship are issued. Letters of guardianship or conservatorship are evidence of the guardian's or conservator's authority to act on behalf of the ward or protected person.

What are the requirements of guardians and conservators after appointment?

Within two months of appointment, a conservator of the estate must file in the court an inventory of the protected person's real and personal property. [MS 524.5-419](#). A court order, after hearing and notice, is required before a conservator of the estate may sell, mortgage, or lease real property of the protected person. [MS 524.5-418 A](#). The guardian must give notice by mail to the ward and interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or other personal effects. [MS 524.5-313 \(c\) \(3\)](#).

Within 30 days of the anniversary of the appointment date, the conservator of the estate shall file an annual accounting with the court. [MS 524.5-420](#). Every guardian or conservator shall annually serve notice to the ward and protected person of the right to petition for restoration of capacity, discharge of guardian or conservator, or modification of the orders of guardianship or conservatorship. [MS 524.5-310 \(e\)](#); [524.5-409 \(e\)](#). The

guardian shall annually file a report regarding the ward's personal well-being with the court within 30 days of the anniversary date of the appointment. [MS 524.5-308 \(d\)](#).

Appendix J

Minnesota Statutes 2005

253B.05 Emergency admission.

Subdivision 1. **Emergency hold.** (a) Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, mentally retarded or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) If the proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. The statement of information must include, to the extent available, direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145, and advance psychiatric directives under section [253B.03](#), subdivision 6d.

(c) The examiner's statement shall be: (1) sufficient authority for a peace or health officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in conclusory language, and (3) of sufficient specificity to provide an adequate record for review. If danger to specific individuals is a basis for the emergency hold, the statement must identify those individuals, to the extent practicable. A copy of the examiner's statement shall be personally served on the person immediately upon admission and a copy shall be maintained by the treatment facility.

Subd. 2. **Peace or health officer authority.** (a) A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation of the person's behavior, or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or psychiatric treatment, that the person is mentally ill or mentally retarded and in danger of injuring self or others if not immediately detained. A peace or health officer or a person working under such officer's supervision, may take a person who is believed to be chemically dependent or is intoxicated in public into custody and transport the person to a treatment facility. If the person is intoxicated in public or is believed to be chemically dependent and is not in danger of causing self-harm or harm to any person or property, the peace or health officer may transport the person home. The peace or health officer shall make written application for admission

of the person to the treatment facility. The application shall contain the peace or health officer's statement specifying the reasons for and circumstances under which the person was taken into custody. If danger to specific individuals is a basis for the emergency hold, the statement must include identifying information on those individuals, to the extent practicable. A copy of the statement shall be made available to the person taken into custody.

(b) As far as is practicable, a peace officer who provides transportation for a person placed in a facility under this subdivision may not be in uniform and may not use a vehicle visibly marked as a law enforcement vehicle.

(c) A person may be admitted to a treatment facility for emergency care and treatment under this subdivision with the consent of the head of the facility under the following circumstances: (1) a written statement shall only be made by the following individuals who are knowledgeable, trained, and practicing in the diagnosis and treatment of mental illness or mental retardation; the medical officer, or the officer's designee on duty at the facility, including a licensed physician, a registered physician assistant, or an advanced practice registered nurse who after preliminary examination has determined that the person has symptoms of mental illness or mental retardation and appears to be in danger of harming self or others if not immediately detained; or (2) a written statement is made by the institution program director or the director's designee on duty at the facility after preliminary examination that the person has symptoms of chemical dependency and appears to be in danger of harming self or others if not immediately detained or is intoxicated in public.

Subd. 2a. Repealed, 1997 c 217 art 1 s 118

Subd. 2b. **Notice.** Every person held pursuant to this section must be informed in writing at the time of admission of the right to leave after 72 hours, to a medical examination within 48 hours, and to request a change to voluntary status.

The treatment facility shall, upon request, assist the person in exercising the rights granted in this subdivision.

Subd. 3. **Duration of hold.** (a) Any person held pursuant to this section may be held up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays after admission. If a petition for the commitment of the person is filed in the district court in the county of the person's residence or of the county in which the treatment facility is located, the court may issue a judicial hold order pursuant to section [253B.07](#), subdivision 2b.

(b) During the 72-hour hold period, a court may not release a person held under this section unless the court has received a written petition for release and held a summary hearing regarding the release. The petition must include the name of the person being held, the basis for and location of the hold, and a statement as to why the hold is improper. The petition also must include copies of any written documentation under subdivision 1 or 2 in support of the hold, unless the person holding the petitioner refuses to supply the documentation. The hearing must be held as soon as practicable and may be conducted by means of a telephone conference call or similar method by which the

participants are able to simultaneously hear each other. If the court decides to release the person, the court shall direct the release and shall issue written findings supporting the decision. The release may not be delayed pending the written order. Before deciding to release the person, the court shall make every reasonable effort to provide notice of the proposed release to:

(1) any specific individuals identified in a statement under subdivision 1 or 2 or individuals identified in the record who might be endangered if the person was not held;

(2) the examiner whose written statement was a basis for a hold under subdivision 1; and

(3) the peace or health officer who applied for a hold under subdivision 2.

(c) If a person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (d) as soon as the treatment facility determines the person is no longer a danger to themselves or others. Notice must be provided to the peace officer or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.

(d) If a treatment facility releases a person during the 72-hour hold period, the head of the treatment facility shall immediately notify the agency which employs the peace or health officer who transported the person to the treatment facility under this section.

(e) A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive emergency hold order under this section may not be issued.

Subd. 4. **Change of status.** Any person admitted pursuant to this section shall be changed to voluntary status provided by section [253B.04](#) upon the person's request in writing and with the consent of the head of the treatment facility.

Appendix K
[Minnesota Statutes 2005, Table of Chapters](#)
[Table of contents for Chapter 609](#)

609.341 Definitions.

Subdivision 1. **Scope.** For the purposes of sections 609.341 to [609.351](#), the terms in this section have the meanings given them.

Subd. 2. **Actor.** "Actor" means a person accused of criminal sexual conduct.

Subd. 3. **Force.** "Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Subd. 4. **Consent.** (a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim's testimony is not required to show lack of consent.

Subd. 5. **Intimate parts.** "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. **Mentally impaired.** "Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

Subd. 7. **Mentally incapacitated.** "Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

Subd. 8. **Personal injury.** "Personal injury" means bodily harm as defined in section [609.02](#), subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. **Physically helpless.** "Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because

of a physical condition, or (c) unable to communicate non-consent and the condition is known or reasonably should have been known to the actor.

Subd. 10. **Position of authority.** "Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.

Subd. 11. **Sexual contact.** (a) "Sexual contact," for the purposes of sections [609.343](#), subdivision 1, clauses (a) to (f), and [609.345](#), subdivision 1, clauses (a) to (e), and (h) to (m), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

(i) the intentional touching by the actor of the complainant's intimate parts, or

(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or

(iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or

(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.

(b) "Sexual contact," for the purposes of sections [609.343](#), subdivision 1, clauses (g) and (h), and [609.345](#), subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

(i) the intentional touching by the actor of the complainant's intimate parts;

(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;

(iii) the touching by another of the complainant's intimate parts; or

(iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts.

(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

Subd. 12. **Sexual penetration.** "Sexual penetration" means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

(2) any intrusion however slight into the genital or anal openings:

(i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;

(ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or

(iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

Subd. 13. **Complainant.** "Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

Subd. 14. **Coercion.** "Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

Subd. 15. **Significant relationship.** "Significant relationship" means a situation in which the actor is:

(1) the complainant's parent, stepparent, or guardian;

(2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Subd. 16. **Patient.** "Patient" means a person who seeks or obtains psychotherapeutic services.

Subd. 17. **Psychotherapist.** "Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 18. **Psychotherapy.** "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 19. **Emotionally dependent.** "Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

Subd. 20. **Therapeutic deception.** "Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

Subd. 21. **Special transportation.** "Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults, handicapped, or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

Subd. 22. **Predatory crime.** "Predatory crime" means a felony violation of section [609.185](#) (first-degree murder), [609.19](#) (second-degree murder), [609.195](#) (third-degree murder), [609.20](#) (first-degree manslaughter), [609.205](#) (second-degree manslaughter), [609.221](#) (first-degree assault), [609.222](#) (second-degree assault), [609.223](#) (third-degree assault), [609.24](#) (simple robbery), [609.245](#) (aggravated robbery), [609.25](#) (kidnapping), [609.255](#) (false imprisonment), [609.498](#) (tampering with a witness), [609.561](#) (first-degree arson), or [609.582](#), subdivision 1 (first-degree burglary).

HIST: 1975 c 374 s 2; 1977 c 130 s 8; 1979 c 258 s 9-11; 1981 c 51 s 1; 1982 c 385 s 1; 1982 c 469 s 9; 1984 c 525 s 3; 1984 c 588 s 5,6; 1985 c 24 s 3,4; 1985 c 286 s 14; 1985 c 297 s 1-5; 1986 c 351 s 6,7; 1986 c 444; 1987 c 198 s 1-3; 1987 c 347 art 1 s 22; 1988 c 413 s 1; 1989 c 290 art 4 s 11; 1993 c 326 art 4 s 17-19; 1994 c 636 art 2 s 30-33; 1995 c 226 art 2 s 18; 1998 c 367 art 3 s 5,6; 2001 c 210 s 21; 2002 c 379 art 1 s 106; 2002 c 381 s 1; 2003 c 118 s 22; 2005 c 136 art 2 s 10,11

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Appendix L

Office of Ombudsman for Older Minnesotans

**“Enhancing the Quality of Life and the Quality of Services for Adults
through Advocacy, Education and Empowerment”**

What Is the Office of Ombudsman for Older Minnesotans?

This office handles complaints about the health, safety and rights of long-term care consumers and offers resources and consultation about services. An Ombudsman is an independent consumer advocate who investigates complaints, resolves disputes and advocates for reform at no charge to the consumer. This office is a service of the Minnesota Board on Aging.

Who Do We Serve?

- Residents of nursing homes and boarding care homes
- Residents of other adult care homes i.e. assisted living/Housing With Services or foster care
- Persons receiving in-home services
- Medicare beneficiaries with hospital access or discharge concerns
- Anyone seeking consultation about long-term care services

How Can We Help?

Ombudsmen handle complaints and problems relating to

- Quality Care/Services
- Rights Violations
- Access to Services
- Service Termination
- Discharge or Eviction
- Public Benefit Programs

Office of Ombudsman for Older Minnesotans

PO Box 64971

St. Paul, MN 55164-0971

1-800-657-3591 or 651-431-2555

Visit our website: www.mnaging.org or visit: www.MinnesotaHelp.Info

Forms Of Abuse In Later Life*

Physical Abuse

Description: use of physical force that may result in bodily injury, physical pain, or impairment.

Behaviors include but are not limited to:

- Acts of violence such as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, scratching, biting, grabbing, throwing, twisting, burning and/or use of weapons (e.g. household objects, knives, guns) against the victim.
- Holding another person against their will.
- For persons with disabilities, additional behaviors may include inappropriate handling, over-use of restraints, inappropriate behavior modification, using medication to sedate person for care provider convenience, withholding necessary care or medication, or limiting access to adaptive aids essential for daily living.

Sexual Abuse/Assault

Description: nonconsensual sexual contact of any kind. Sexual contact with any person incapable of giving consent is also considered sexual abuse.

Behaviors include but are not limited to:

- Unwanted touching, all types of sexual assault or battery, such as rape, sodomy, coerced nudity and sexually explicit photographing.
- Coerced or forced sex the victim does not want (e.g., sex with third parties, physically painful sex, sexual activity they find offensive, verbal degradation during sex, viewing sexually violent material) or at a time they do not want it (e.g., when exhausted, when ill, when asleep).
- Unwarranted, intrusive, and/or painful procedures in caring for the victim's genitals or rectal area. This includes application or insertion of creams, ointments, thermometers, enemas, catheters, fingers, soap, washcloths, or other objects when not medically prescribed and unnecessary for the health and well being of the individual (WCASA/Ramsey Klawnsnik, 1999).
- Attacking victims' genitals with blows or weapons.
- Denying victim protection against sexually transmitted diseases.

“Sexual abuse gives victims the message they cannot control what happens to their bodies. For some victims this sexual violation is profound and may be difficult to discuss. Some victims are unsure whether this sexual behavior is really abuse, while others see it as the ultimate betrayal” (Ganley, 1995).

*Descriptions are a combination of examples from Ganley, 1995; NCEA Website, WCADV and WCASA materials). National Clearinghouse on Abuse in Later Life and Pennsylvania Coalition Against Domestic Violence (2002)

Psychological abuse

Description: infliction of anguish, pain, or distress through verbal or nonverbal acts. Behaviors include but are not limited to:

Threats of violence and harm

- Threats against the victim or others important to the victim.
- Suicide or homicide/suicide threats.
- Violence towards others (e.g., neighbors, family members).

Attacks against property or pets / service animals and other acts of intimidation

- Attacks against property, prized possessions, and pets/service animals.
- Intimidation through screaming, driving recklessly, stalking, or putting the victim under surveillance.

Emotional Abuse

- Repeated verbal attacks against the victim's worth as an individual or role as a parent, family member, friend, co-worker, or community member.
- Verbal attacks emphasizing the victim's vulnerabilities (reading/language abilities, size, disabilities, immigration status, or sexual orientation).
- "Mind games" or sleep deprivation to undercut the victim's sense of reality.
- Humiliating the victim in front of family, friends or strangers. Perpetrators may repeatedly claim that victims are crazy, incompetent, and unable "to do anything right".
- Treats victim like a servant or a child. Makes all decisions.
- Silent treatment.
- Threatening institutional placement.
- Hiding or destroying important documents.
- Threatening to call INS.
- Lying about the victim's immigration status.

Isolation

- Controlling victim's time, activities and contact with others.
- Distorting reality by lying or withholding information. Through incremental isolation, some perpetrators increase psychological control to determine reality for the victims.
- Acting jealous and interpreting social/support networks. Some perpetrators act very possessive about their victim's time and attention.
- Dominating treatment decisions by speaking for the victim and intercepting communications from caseworkers and other potential helpers.
- Cutting off contact with family, friends and visitors.
- Behaving offensively with victim's friends/family so victim cuts off contact with others.
- Isolating the victim from anyone who speaks the same language.
- Not allowing the victim to learn English.

National Clearinghouse on Abuse in Later Life and Pennsylvania Coalition Against Domestic Violence (2002)

Appendix N

Recognizing Sexual Abuse of Older Adults TYPES

Covert

1. Sexual Harassment
 - a. Name calling
 - b. Ridicule of body parts
 - c. Performing sex acts in front of elder
 - d. Indecent exposure
 - e. Suggestive talk between others
2. Threats
 - a. To put elder in nursing home
 - b. To injure elder
 - c. To withhold food, water, or needed medication
 - d. To isolate from friends, family, church

Overt

1. Elders forced to view pornographic movies or printed material
2. Elder forced to listen to objectionable music
3. Lewd language used in front of elder
4. Indecent exposure
5. Offender forces the elder to perform sex acts

Physically Intrusive Acts

1. Any unwanted touch
2. Unwanted oral sexual contact
3. Unwanted genital sexual contact
4. Anal rape with penis, fingers, or objects
5. Forced intercourse

Extreme Cases

1. Allowing others sexual access to elders (swapping or prostituting)
2. Sadism
3. Ritual abuse
4. Using elder in pornography

DEVELOPED BY NORTH SHORE HORIZONS, TWO HARBORS, MN

Sexual Abuse of Older Adults

Indicators

Physical Indicators

- ✚ Trauma around genitals, rectum, or mouth (bruising, bleeding, injury, infection, redness, pain)
- ✚ Presence of sexually-transmitted disease (particularly if the older adult is not engaged in consenting sexual activity)
- ✚ Injury to face, neck, chest, abdomen, thighs, buttocks

PSYCHOSOCIAL INDICATORS

- | | |
|--|--|
| ✚ Post-traumatic Stress Disorder | ✚ Self-destructive behaviors |
| ✚ Fear, anxiety, mistrust | ✚ Suicidal ideation |
| ✚ Shame, humiliation | ✚ Poor self-esteem |
| ✚ Strong, ambivalent feelings toward beloved other | ✚ Coded disclosure of sexual abuse |
| ✚ Extreme upset when bathed, toileted, changed | ✚ Direct disclosure of sexual abuse |
| ✚ Phobic behavior; mistrust of others | ✚ Aggressive behavior |
| ✚ Disturbed peer interaction | ✚ Regressive behavior |
| ✚ Depression or blunted affect | ✚ Nightmares, night terrors, sleep disturbance |

Developed by North Shore Horizons, Two Harbors, MN

Who Abuses?

1. Spouse

- ❖ Long-term or later-life marriage
- ❖ Live-in partner

2. Grown children and/or grandchildren

- ❖ Males – more likely abuser
- ❖ Females – less likely and less severe forms

3. Siblings

- ❖ Males – brother is healthier, physically stronger, not necessarily younger
- ❖ Females – the abuse is usually less severe

4. Boarder, friend or unrelated caregiver

- ❖ Male – usually in a position of power
- ❖ Female – less often, also in a position of power

5. Multiple Perpetrators

Developed by North Shore Horizons, Two Harbors, MN

Appendix O

Sample Notification Letters

Letter to Perpetrator

Re: Notification of Findings of Vulnerable Adult Investigation

Dear _____:

We are writing to inform you of the results of our Adult Protection investigation.

Our findings are (inconclusive, false, substantiated) for (physical abuse, neglect, financial exploitation) of KK by you as perpetrator. (Note: pick one of the findings and one of the maltreatments. If there are multiple findings of maltreatment, list them separately.)

A notification of your rights of reconsideration and appeal is stated on the reverse side of this letter. (Note: only send letter with rights of reconsideration and appeal if the maltreatment was substantiated.)

Sincerely, _____

Notice of Right of Reconsideration and Appeal of a Perpetrator of Maltreatment

This notification of your rights of reconsideration and appeal is required and given pursuant to Minn. Stat. § 626.557, Subd. 9c(f) of the Reporting of Maltreatment of Vulnerable Adults Act.

As stated in this letter, our agency has determined and substantiated that you maltreated a vulnerable adult.

I. Right of Reconsideration

If you disagree with this final disposition, you may request that our agency reconsider it. You must request reconsideration in writing **WITHIN 15 DAYS** of receiving this letter. Address your request for reconsideration to the worker named in the attached letter, and state your reasons for the requested change.

II. Right of Appeal

If our agency denies your request for reconsideration and refuses to change its final disposition or fails to act upon your request within fifteen days of receiving it, you are entitled to a fair hearing under Minn. Stat. § 256.045. To request a hearing, you must write to the Minnesota Department of Human Services, Appeals Division, 444 Lafayette Road, St. Paul, MN 55155, with a copy to _____ (insert your supervisor's name) _____ County (insert your address) , within thirty days after

receiving written notice of our agency's refusal to change our final disposition or within thirty days of our failure to act upon your request, whichever is earlier.

Letter to Voctom

Re: Notification of Findings of Vulnerable Adult Investigation

Dear _____:

We are writing to inform you of the results of our Adult Protection investigation. Our findings are substantiated for (financial exploitation, abuse, neglect) of you by SM as perpetrator. (Note: if there were multiple incidents of maltreatment, you would add another sentence, such as: Our findings are (inclusive, false, substantiated) for neglect of you by MM as perpetrator.)

A notification of your rights of reconsideration and review is stated on the reverse side of this letter.

Sincerely,

Notice of Right of Reconsideration and Review of a Vulnerable Adult or Interested Person

This notification of your rights of reconsideration and review is required and given pursuant to Minn. Stat. §626.557, Subd. 9c(f) of the Reporting of Maltreatment of Vulnerable Adults Act.

As stated in this letter, our agency has investigated a report of maltreatment of you as a vulnerable adult, and made a final disposition regarding that report.

I. Right of Reconsideration

If you or an interested person acting on your behalf (1) disagree with that final disposition, you or an interested person may request reconsideration of that final disposition. The request for reconsideration must be made in writing **WITHIN 15 DAYS** of receiving this letter. Your letter requesting reconsideration should be addressed to the worker named in this letter and should state why you disagree with our final disposition.

II. Right of Review

If our agency a) denies the request for reconsideration and refuses to change its final disposition, b) fails to act on it within fifteen days, or c) you or an interested person contest a reconsidered disposition, you or an interested person may submit a Request for Review by the Maltreatment review Panel (2). The Request for Review must be submitted in writing to the Vulnerable Adult Maltreatment Review Panel, Adult

Protection Unit, Division of Aging and Adult Services, Department of Human Services, at PO Box 64976, St. Paul, MN 55164-0976; and a copy sent to _____, Supervisor, _____ County Adult Protection Services (address) _____ within thirty days of your receipt of notice of a denial of your request for reconsideration or of a reconsidered disposition. The Request for Review must specifically identify the aspects of the agency determination with which you or the interested person are dissatisfied.

(1) "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agency appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in §245A.02, Subd. 13, such persons being a spouse, a parent, a natural or adopted child or stepchild, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian.

(2) The commissioner of human services has established a review panel for purposes of reviewing lead agency determinations regarding maltreatment of a vulnerable adult in response to requests received under § 626.557, Subd. 9d, Para. (b).

- a) If a vulnerable adult or an interested person acting on behalf of the vulnerable adult requests a review, the panel will review the request at its next quarterly meeting. If the next quarterly meeting is within ten days of the panel's receipt of the request for review, the review may be delayed until the next subsequent meeting. The panel shall review the request and may review any other data on the investigation maintained by the agency that are pertinent and necessary to its review of the final disposition. If more than one person requests a review under this section with respect to the same final disposition the review panel shall combine the requests into one review.
- b) Within thirty days of the review under this section, the panel shall notify the lead agency and the vulnerable adult or interested person who requested the review as to whether the panel agrees with the final disposition or whether the lead agency must reconsider the final disposition. If the panel determines that the lead agency must reconsider the final disposition, the panel must make specific investigative recommendations to the agency. Within thirty days the lead agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition.

Appendix P

Minnesota Statutes 2005, Table of Chapters

Table of contents for Chapter 626

626.557 Reporting of maltreatment of vulnerable adults.

Subdivision 1. **Public policy.** The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.

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

Subd. 2. Repealed, 1995 c 229 art 1 s 24

Subd. 3. **Timing of report.** (a) 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 report the information to the common entry point. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section [626.5572](#), subdivision 21, clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section [626.5572](#), subdivision 17, paragraph

(c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead agency will determine or should determine that the reported error was not neglect according to the criteria under section [626.5572](#), subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead agency information explaining how the event meets the criteria under section [626.5572](#), subdivision 17, paragraph (c), clause (5). The lead agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Subd. 3a. **Report not required.** The following events are not required to be reported under this section:

(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 disclosure in a manner which conforms to federal requirements. 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 aggression and self-abusive behavior to facilitate review by licensing agencies and county and local welfare agencies.

(c) Accidents as defined in section [626.5572](#), subdivision 3.

(d) Events occurring in a facility that result from an individual's error in the provision of therapeutic conduct to a vulnerable adult, as provided in section [626.5572](#), subdivision 17, paragraph (c), clause (4).

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

Subd. 4. **Reporting.** A mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content 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. A mandated reporter may disclose not public data, as defined in section [13.02](#), and medical records under section [144.335](#), to the extent necessary to comply with this subdivision.

Subd. 4a. **Internal reporting of maltreatment.** (a) Each facility shall establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported. If a facility has an internal reporting procedure, a mandated reporter may meet the reporting requirements of this section by reporting internally. However, the facility remains responsible for complying with the immediate reporting requirements of this section.

(b) A facility with an internal reporting procedure that receives an internal report by a mandated reporter shall give the mandated reporter a written notice stating whether the facility has reported the incident to the common entry point. The written notice must be provided within two working days and in a manner that protects the confidentiality of the reporter.

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the common entry point, then the mandated reporter may report externally.

(d) A facility may not prohibit a mandated reporter from reporting externally, and a facility is prohibited from retaliating against a mandated reporter who reports an incident to the common entry point in good faith. The written notice by the facility must inform the mandated reporter of this protection from retaliatory measures by the facility against the mandated reporter for reporting externally.

Subd. 5. **Immunity; protection for reporters.** (a) A person 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, subdivision 7.

(b) A person employed by a lead agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might

result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

Subd. 6. **Falsified reports.** A person or facility who 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.

Subd. 7. **Failure to report.** A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in this subdivision imposes vicarious liability for the acts or omissions of others.

Subd. 8. **Evidence not privileged.** No evidence regarding the maltreatment of the vulnerable adult shall be excluded in any proceeding arising out of the alleged maltreatment on the grounds of lack of competency under section [595.02](#).

Subd. 9. **Common entry point designation.** (a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point.

The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment.

The common entry point shall use a standard intake form that includes:

- (1) the time and date of the report;
- (2) the name, address, and telephone number of the person reporting;
- (3) the time, date, and location of the incident;
- (4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;
- (5) whether there was a risk of imminent danger to the alleged victim;
- (6) a description of the suspected maltreatment;
- (7) the disability, if any, of the alleged victim;
- (8) the relationship of the alleged perpetrator to the alleged victim;

(9) whether a facility was involved and, if so, which agency licenses the facility;

(10) any action taken by the common entry point;

(11) whether law enforcement has been notified;

(12) whether the reporter wishes to receive notification of the initial and final reports; and

(13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The common entry point is not required to complete each item on the form prior to dispatching the report to the appropriate investigative agency.

(d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

(f) The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

(g) When a centralized database is available, the common entry point has access to the centralized database and must log the reports in on the database.

Subd. 9a. **Evaluation and referral of reports made to a common entry point unit.** The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

(3) if the report references alleged or suspected maltreatment and there is no immediate need for adult protective services, the common entry point shall notify the appropriate lead agency as soon as possible, but in any event no longer than two working days;

(4) if the report does not reference alleged or suspected maltreatment, the common entry point may determine whether the

information will be referred; and

(5) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies and the ombudsman established under section [245.92](#). Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead agency shall complete the investigative process for reports within its jurisdiction. Any other lead agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead agency shall obtain the results of any investigation conducted by law enforcement officials. The lead agency has the right to enter facilities and inspect and copy records as part of investigations. The lead agency has access to not public data, as defined in section [13.02](#), and medical records under section [144.335](#), that are maintained by facilities to the extent necessary to conduct its investigation. Each lead agency shall develop guidelines for prioritizing reports for investigation.

Subd. 9c. **Lead agency; notifications, dispositions, and determinations.** (a) Upon request of the reporter, the lead agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section [626.5572](#), subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(d) The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition within 60 calendar days, the lead agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's legal guardian, when known, if the lead agency knows them to be aware of the investigation and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(e) Within ten calendar days of completing the final disposition, the lead agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's legal guardian, if known unless the lead agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for older Minnesotans, or the ombudsman for mental health and mental retardation, as appropriate.

(f) The lead agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section [256.021](#).

(g) The lead agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing

boards. These reports must include the names of substantiated perpetrators. The lead agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

(h) In order to avoid duplication, licensing boards shall consider the findings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(i) The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Subd. 9d. **Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** (a) Except as provided under paragraph (e), any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian. If mailed, the request for reconsideration must be postmarked and sent to the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections [245C.14](#) and [245C.15](#), may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections [245C.16](#) and [245C.17](#). If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the lead agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section [256.045](#), may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section [256.021](#) if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section [245A.02](#), subdivision 13.

(e) If an individual was disqualified under sections [245C.14](#) and [245C.15](#), on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections [245C.21](#) to [245C.27](#), reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or if the disqualification is not set aside under sections [245C.21](#) to [245C.27](#), the individual may request a fair hearing under section [256.045](#). If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section [245A.05](#) or a licensing sanction under section [245A.07](#), the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts [1400.8505](#) to [1400.8612](#). As provided for under section [245A.08](#), the scope of the contested case hearing shall

include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing shall not be conducted under paragraph (b). When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section. If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section [626.5572](#), subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section [245C.31](#).

Subd. 9e. **Education requirements.** (a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas: (1) information collection and preservation; (2) analysis of facts; (3) levels

of evidence; (4) conclusions based on evidence; (5) interviewing skills, including specialized training to interview people with unique needs; (6) report writing; (7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies; (8) human relations and cultural diversity; (9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation; (10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation; (11) the methods by which lead agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and (12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(c) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the common entry point staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(d) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall conduct regional training for law enforcement personnel regarding their responsibility under this section.

(e) Each lead agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead agency investigator.

A lead agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available.

All lead agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

Subd. 10. **Duties of county social service agency.** (a) Upon receipt of a report from the common entry point staff, the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult. In cases of suspected sexual abuse, the county social service agency shall

immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment. When necessary in order to protect the vulnerable adult from further harm, the county social service agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The county social service agency may also investigate to determine whether the conditions which resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

(b) County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section [13.02](#), and medical records under section [144.335](#), that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

(c) When necessary in order to protect a vulnerable adult from serious harm, the county social service agency shall immediately intervene on behalf of that adult to help the family, vulnerable adult, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section [518B.01](#);

(2) the appointment of a guardian or conservator pursuant to sections [524.5-101](#) to [524.5-502](#), or guardianship or conservatorship pursuant to chapter 252A;

(3) replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections [524.5-101](#) to [524.5-502](#); or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section [524.5-502](#) and chapter 563.

In proceedings under sections [524.5-101](#) to [524.5-502](#), if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or protected person even if the action is adverse to the county's interest. Any person retaliated against

in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Subd. 10a. Repealed, 1995 c 229 art 1 s 24

Subd. 11. Repealed, 1995 c 229 art 1 s 24

Subd. 11a. Repealed, 1995 c 229 art 1 s 24

Subd. 12. Repealed, 1995 c 229 art 1 s 24

Subd. 12a. Repealed, 1983 c 273 s 8

Subd. 12b. **Data management.**

(a) **County data.**

In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section [13.46](#). Notwithstanding section [13.46](#), subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section [13.02](#). The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section [13.02](#). Notwithstanding section [138.163](#), the common entry point shall destroy data three calendar years after date of receipt.

(b) **Lead agency data.** The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section [13.02](#). Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

(i) the name of the facility investigated;

(ii) a statement of the nature of the alleged maltreatment;

(iii) pertinent information obtained from medical or other records reviewed;

(iv) the identity of the investigator;

(v) a summary of the investigation's findings;

(vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;

(vii) a statement of any action taken by the facility;

(viii) a statement of any action taken by the lead agency;
and

(ix) when a lead agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

(i) the name of the vulnerable adult;

(ii) the identity of the individual alleged to be the perpetrator;

(iii) the identity of the individual substantiated as the perpetrator; and

(iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) **Identity of reporter.** 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.

(d) **Destruction of data.** Notwithstanding section [138.163](#), data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

(1) data from reports determined to be false, two years after the finding was made;

(2) data from reports determined to be inconclusive, four years after the finding was made;

(3) data from reports determined to be substantiated, seven years after the finding was made; and

(4) data from reports which were not investigated by a lead agency and for which there is no final disposition, two years from the date of the report.

(e) **Summary of reports.** The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) **Record retention policy.** Each lead agency must have a record retention policy.

(g) **Exchange of information.** Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section [13.02](#), if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section [256.021](#) if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) **Completion time.** Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) **Notification of other affected parties.** A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) **Federal requirements.** Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Subd. 13. Repealed, 1995 c 229 art 1 s 24

Subd. 14. **Abuse prevention plans.** (a) Each facility, except home health agencies and personal care attendant services providers, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of: (1) the person's susceptibility to abuse by other individuals, including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

(c) If the facility, except home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

Subd. 15. Repealed, 1995 c 229 art 1 s 24

Subd. 16. **Implementation authority.** (a) By September 1, 1995, the attorney general and the commissioners of health and human services, in coordination with representatives of other entities that receive or investigate maltreatment reports, shall develop the common report form described in subdivision 9. The form may be used by mandated reporters, county social service agencies, law enforcement entities, licensing agencies, or ombudsman offices.

(b) The commissioners of health and human services shall as

soon as possible promulgate rules necessary to implement the requirements of this section.

(c) By December 31, 1995, the commissioners of health, human services, and public safety shall develop criteria for the design of a statewide database utilizing data collected on the common intake form of the common entry point. The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

(d) By September 1, 1995, each lead agency shall develop the guidelines required in subdivision 9b.

Subd. 17. **Retaliation prohibited.** (a) A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) In addition to any remedies allowed under sections [181.931](#) to [181.935](#), any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to \$10,000, and attorney's fees.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

- (1) discharge or transfer from the facility;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services;
- (4) restriction or prohibition of access to the facility or its residents; or
- (5) any restriction of rights set forth in section [144.651](#).

Subd. 18. **Outreach.** The commissioner of human services shall maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

Subd. 19. Repealed, 1995 c 229 art 1 s 24

HIST: 1980 c 542 s 1; 1981 c 311 s 39; 1982 c 393 s 3,4; 1982 c 424 s 130; 1982 c 545 s 24; 1982 c 636 s 5,6; 1983 c 273 s 1-7; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1985 c 150 s 1-6; 1985 c 293 s 6,7; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c

110 s 3; 1987 c 211 s 2; 1987 c 352 s 11; 1987 c 378 s 17; 1987 c 384 art 2 s 1; 1988 c 543 s 13; 1989 c 209 art 2 s 1; 1991 c 181 s 2; 1994 c 483 s 1; 1994 c 636 art 2 s 60-62; 1Sp1994 c 1 art 2 s 34; 1995 c 189 s 8; 1995 c 229 art 1 s 1-21; 1996 c 277 s 1; 1996 c 305 art 2 s 66; 2000 c 465 s 3-5; 1Sp2001 c 9 art 5 s 31; art 14 s 30,31; 2002 c 289 s 4; 2002 c 375 art 1 s 22,23; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2004 c 146 art 3 s 45; 2004 c 288 art 1 s 80; 2005 c 98 art 2 s 17; 2005 c 136 art 5 s 5; 1Sp2005 c 4 art 1 s 55,56

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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. 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 [525.539](#) to [525.6199](#), 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

(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 care giving relationship; or

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

Subd. 4. **Caregiver.** "Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subd. 5. **Common entry point.** "Common entry point" 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 assistant services under the medical assistance program as authorized under sections [256B.04](#), subdivision 16, [256B.0625](#), subdivision 19a, [256B.0651](#), and [256B.0653](#) to [256B.0656](#).

(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 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 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; 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. 10. **Immediately.** "Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

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 agency's determination of whether the report will be assigned for further investigation.

Subd. 13. **Lead agency.** "Lead agency" is the primary administrative agency responsible for investigating reports made under section [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, chemical health programs,

or personal care provider organizations.

(c) The county social service agency or its designee is the lead agency for all other reports.

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:

(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 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 sexual contact with:

- (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the care giving relationship; or

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

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.** "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 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 assistant services under the medical assistance program as authorized under sections [256B.04](#), subdivision 16, [256B.0625](#), subdivision 19a, [256B.0651](#), and [256B.0653](#) to [256B.0656](#); or

(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.

HIST: 1995 c 229 art 1 s 22; 2000 c 319 s 3; 1Sp2001 c 9 art 14 s 32; 2002 c 252 s 23,24; 2002 c 379 art 1 s 113; 2004 c 146 art 3 s 46

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Appendix R

Minnesota Rules, Table of Chapters Table of contents for Chapter 9555

9555.7100 SCOPE.

Parts 9555.7100 to [9555.7700](#) govern the investigation and reporting of maltreatment of vulnerable adults and some aspects of the emergency and continuing protective social services required to be furnished by local social services agencies under Minnesota Statutes, section [626.557](#).

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

9555.7200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts [9555.7100](#) to [9555.7700](#), the following terms have the meanings given them.

Subp. 2. **Abuse.** "Abuse" means:

A. any act which constitutes a violation of Minnesota Statutes, section [609.322](#) related to prostitution;

B. any act which constitutes a violation of Minnesota Statutes, sections [609.342](#) to [609.345](#) related to criminal sexual conduct; or

C. the intentional and non-therapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

Subp. 3. **Caretaker.** "Caretaker" means an individual or facility which has responsibility for the care of a vulnerable adult as a result of family relationship, or which has assumed responsibility for all or a portion of the care of the vulnerable adult voluntarily, by contract, or by agreement. A person who has assumed only financial responsibility for an adult is not a caretaker.

Subp. 4. **County of financial responsibility.** "County of financial responsibility" means the county designated as the county of financial responsibility.

Subp. 5. **Facility.** "Facility" means a hospital or other entity required to be licensed pursuant to Minnesota Statutes, sections [144.50](#) to [144.58](#); a nursing home required to be licensed pursuant to Minnesota Statutes, section [144A.02](#); an agency, residential or nonresidential program required to be licensed pursuant to Minnesota Statutes, chapter 245A; a mental health program receiving funds pursuant to Minnesota Statutes, section [245.61](#); and any entity required to be certified for participation in titles XVIII or XIX of the Social Security Act, United States Code, title 42, section 1395 et seq.

Subp. 6. **False.** "False" means disproved to the satisfaction of the investigating agency.

Subp. 7. **Host county.** "Host county" means the county in which a facility is located.

Subp. 8. **Impairment of mental or physical function or emotional status.** "Impairment of mental or physical function or emotional status" means a condition which includes being substantially unable to carry out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working; being unable to protect oneself from hazardous or abusive situations without assistance; a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life; substantial difficulty in engaging in the rational decision-making process, and inability to weigh the possible benefits and risks of seeking assistance; a condition in which an individual is so fearful, so ashamed, so confused, or so anxious about the consequences of reporting that that individual would be unable or unlikely to make a responsible decision regarding whether or not to report abuse or neglect.

Subp. 9. **Licensing agency.** "Licensing agency" means:

A. the commissioner of health, for a facility which is required to be licensed or certified by the Department of Health;

B. the commissioner of human services for programs required by Minnesota Statutes, chapter 245A to be licensed;

C. any licensing board which regulates persons pursuant to Minnesota Statutes, section [214.01](#); and

D. the Minnesota Department of Health if the human services occupation of the alleged perpetrator is credentialed pursuant to Minnesota Statutes, section [214.13](#) or [149.02](#).

Subp. 10. **Local social services agency.** "Local social services agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

Subp. 11. **Neglect.** "Neglect" means failure by a caretaker to supply or to ensure the supply of necessary food, clothing, shelter, health care, or supervision for a vulnerable adult.

Subp. 12. **Report.** "Report" means any verbal or written report of abuse or neglect of a vulnerable adult received by the local social services agency, police department, county sheriff, or licensing agency.

Subp. 13. **State agency.** "State agency" means the Minnesota Department of Human Services.

Subp. 14. **Substantiated.** "Substantiated" means proved to the satisfaction of the investigating agency.

Subp. 15. **Vulnerable adult.** "Vulnerable adult" means any person 18 years of age or older:

A. who is a resident or patient of a facility;

B. who receives services at or from a program required to be licensed pursuant to Minnesota Statutes, chapter 245A; or

C. who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

Subp. 16. **Inconclusive.** "Inconclusive" means a report which cannot be substantiated or disproved to the satisfaction of the investigating agency.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)

HIST: L 1984 c 654 art 5 s 58; 13 SR 1448; L 2003 1Sp14 art 11 s 11
Current as of 12/29/05

9555.7300 COMPLAINT INVESTIGATION BY LOCAL SOCIAL SERVICES AGENCIES.

Subpart 1. **Duty to accept and investigate complaints.** The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

Subp. 2. **Time limits to initiate investigations.** The local social services agency shall begin to investigate all complaints within the following time limits:

A. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life-threatened or likely to experience physical injury due to abuse or abandonment.

B. The local social services agency shall begin its investigation within 24 hours for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.

C. The local social services agency shall begin its investigation within 72 hours for complaints alleging, or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

Subp. 3. **Investigations related to a facility.** When an investigation involves an alleged incident or situation related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint. This investigation shall include the following activities when necessary to make an accurate assessment, but activities specified in items A, C, and E need not occur on the site of the facility:

A. discussion with the reporter;

B. discussion with the facility administrator or responsible designee;

C. discussion with the physician or other professionals, or any corroborating contacts as necessary;

D. contact with the alleged victim;

E. discussion with the alleged perpetrator;

F. examination of the physical conditions or the psychological climate of the facility; and

G. inspection of the alleged victim's record.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

Subp. 4. **Investigations not related to a facility.** When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

A. discussion with the alleged victim;

B. discussion with the reporter or any corroborating contacts, as necessary;

C. discussion with the alleged perpetrator;

D. discussion with the physician or other professionals; and

E. examination of the physical conditions or the

psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Subp. 5. **Investigations by agencies which are not in the county of financial responsibility.** When a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility, the local social services agency of the host county shall:

A. investigate the complaint in accordance with subpart 3 and determine whether the complaint is substantiated, inconclusive, or false;

B. notify each relevant licensing agency, the police or sheriff, and the county of financial responsibility;

C. consult with the county of financial responsibility, unless the host county must take immediate emergency measures and representatives of the county of financial responsibility are not available;

D. take whatever measures are necessary to correct the situation or to remove the adult from the facility and notify the county of financial responsibility of the actions taken to correct the situation or of the removal of the adult from the facility; and

E. complete and transmit all required written forms and findings to appropriate agencies.

The local social services agency of the county of financial responsibility shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult.

Subp. 6. **Use of outside experts.** When it is investigating alleged abuse or neglect of a vulnerable adult, the local social services agency shall consult persons with appropriate expertise if the local agency believes that it lacks the expertise necessary for making judgments pertaining to the allegations. This consultation may include matters of physical health, mental health, specialized treatment such as behavior modification, geriatrics, or other matters.

Subp. 7. **Investigations after initial complaint assessment.** If upon the initial assessment required by subparts 1 to 6 there appears to be substance to a complaint, the local social services agency shall attempt to determine the following:

A. the risk posed if the vulnerable adult remains in the present circumstances;

B. the current physical and emotional condition of the vulnerable adult, including the history or pattern of abuse or neglect or related prior injuries;

C. the name, address, age, sex, and relationship of the alleged perpetrator to the vulnerable adult; and

D. in a complaint of neglect, the relationship of the caretaker to the vulnerable adult, including the agreed-upon roles and responsibilities of the caretaker and the vulnerable adult.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

9555.7400 EMERGENCY PROTECTIVE SERVICES.

The local social services agency shall offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

9555.7500 CLASSIFICATION OF COMPLAINTS.

Within 90 days of receiving the initial complaint, the local social services agency shall assess, make a finding, and classify all complaints as either substantiated, false, or inconclusive. At the conclusion of the assessment, the alleged victim of maltreatment and the alleged perpetrator shall be notified in writing as to whether the complaint was substantiated, false, or inconclusive.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

9555.7600 ACTIONS ON BEHALF OF A VULNERABLE ADULT WHO REFUSES SERVICES.

If a vulnerable adult who is the victim of abuse or neglect by a caretaker refuses an offer of services from a local social services agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

A. a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to Minnesota Statutes, section [518B.01](#);

B. guardianship or conservatorship pursuant to Minnesota Statutes, sections [525.539](#) to [525.6198](#), or guardianship or conservatorship pursuant to Minnesota Statutes, chapter 252A;

C. a hold order or commitment pursuant to the Minnesota Hospitalization and Commitment Act, Minnesota Statutes, chapter 253A; or

D. a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under Minnesota Statutes, chapter 609.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

9555.7700 REPORTS TO THE STATE AGENCY.

Subpart 1. **Initial report.** Every incident of abuse or neglect reported to the local social services agency shall be reported to the social services division of the state agency on forms provided by the state agency. The local agency shall send the completed report form to the state agency within 20 days of receiving the complaint, whether or not the classification of the report has been determined according to part [9555.7500](#).

Subp. 2. **Subsequent report.** When the classification of the report has been determined or if the classification has changed subsequent to the time of the initial report to the state agency, the local agency shall advise the state agency in writing of the correct information. The local agency shall do this within 90 days of when the local agency received the complaint.

Subp. 3. **Data privacy.** Reports to the social services division of the state agency are for statistical purposes only. The identity of the vulnerable adult and of the perpetrator shall not be included on the copy of the report sent to the state agency.

STAT AUTH: MS s [256E.05](#) subd 1; [626.557](#)
Current as of 12/29/05

Appendix S

Minnesota Statutes 2005, Table of Chapters Table of contents for Chapter 518B

518B.01 Domestic Abuse Act.

Subdivision 1. **Short title.** This section may be cited as the Domestic Abuse Act.

Subd. 2. **Definitions.** As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section [609.713](#), subdivision 1; criminal sexual conduct, within the meaning of section [609.342](#), [609.343](#), [609.344](#), [609.345](#), or [609.3451](#); or interference with an emergency call within the meaning of section [609.78](#), subdivision 2.

(b) "Family or household members" means:

(1) spouses and former spouses;

(2) parents and children;

(3) persons related by blood;

(4) persons who are presently residing together or who have resided together in the past;

(5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections [257.51](#) to [257.74](#). In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction

between the parties; and, if the relationship has terminated, length of time since the termination.

(c) "Qualified domestic violence-related offense" has the meaning given in section [609.02](#), subdivision 16.

Subd. 3. **Court jurisdiction.** An application for relief under this section may be filed in the court having jurisdiction over dissolution actions, in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged domestic abuse occurred. There are no residency requirements that apply to a petition for an order for protection. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence in the action in the same manner and subject to the same limitations provided in section [518.13](#). Actions under this section shall be given docket priorities by the court.

Subd. 3a. **Filing fee.** The filing fees for an order for protection under this section are waived for the petitioner. The court administrator, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff or other law enforcement or corrections officer is unavailable or if service is made by publication, without requiring the petitioner to make application under section [563.01](#). The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.

Subd. 3b. **Information on petitioner's location or residence.** Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

Subd. 4. **Order for protection.** There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member personally or by a family or household member, a guardian as defined in section [524.1-201](#), clause (20), or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a petition on the minor's own behalf against a spouse or former spouse, or a person with whom the minor has a child in common, if the court determines that the minor has

sufficient maturity and judgment and that it is in the best interests of the minor.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief must state whether the petitioner has ever had an order for protection in effect against the respondent.

(d) A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under chapter 257, 518, 518A, 518B, or 518C. The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under subdivision 6, paragraph (a), clause (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

(e) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(f) The court shall advise a petitioner under paragraph (e) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to section [563.01](#) and shall assist with the writing and filing of the motion and affidavit.

(g) The court shall advise a petitioner under paragraph (e) of the right to serve the respondent by published notice under subdivision 5, paragraph (b), if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

(h) The court shall advise the petitioner of the right to seek restitution under the petition for relief.

(i) The court shall advise the petitioner of the right to request a hearing under subdivision 7, paragraph (c). If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing.

(j) The court shall advise the petitioner of the right to request supervised parenting time, as provided in section [518.175](#), subdivision 1a.

Subd. 5. **Hearing on application; notice.** (a) Upon receipt of the petition, the court shall order a hearing which

shall be held not later than 14 days from the date of the order for hearing unless an ex parte order is issued.

(b) If an ex parte order has been issued under subdivision 7 and the petitioner seeks only the relief under subdivision 7, paragraph (a), a hearing is not required unless:

- (1) the court declines to order the requested relief; or
- (2) one of the parties requests a hearing.

(c) If an ex parte order has been issued under subdivision 7 and the petitioner seeks relief beyond that specified in subdivision 7, paragraph (a), or if the court declines to order relief requested by the petitioner, a hearing must be held within seven days. Personal service of the ex parte order may be made upon the respondent at any time up to 12 hours prior to the time set for the hearing, provided that the respondent at the hearing may request a continuance of up to five days if served fewer than five days prior to the hearing which continuance shall be granted unless there are compelling reasons not to.

(d) If an ex parte order has been issued only granting relief under subdivision 7, paragraph (a), and the respondent requests a hearing, the hearing shall be held within ten days of the court's receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date no more than five days later.

(e) If for good cause shown either party is unable to proceed at the initial hearing and requests a continuance and the court finds that a continuance is appropriate, the hearing may be continued. Unless otherwise agreed by the parties and approved by the court, the continuance shall be for no more than five days. If the court grants the requested continuance, the court shall also issue a written order continuing all provisions of the ex parte order pending the issuance of an order after the hearing.

(f) Notwithstanding the preceding provisions of this subdivision, service on the respondent may be made by one week published notice, as provided under section [645.11](#), provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff or other law enforcement or corrections officer was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under

this paragraph is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under paragraph (d).

Subd. 6. **Relief by the court.** (a) Upon notice and hearing, the court may provide relief as follows:

(1) restrain the abusing party from committing acts of domestic abuse;

(2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(3) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;

(4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. Findings under section [257.025](#), [518.17](#), or [518.175](#) are not required with respect to the particular best interest factors not considered by the court. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan under section [518.1705](#) as part of an action for an order for protection;

(5) on the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services, including requiring the abusing party to successfully complete a domestic abuse counseling program or educational program under section [518B.02](#);

(8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated

to the party restrained in open court;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to pay restitution to the petitioner;

(11) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and

(12) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff, constable, or other law enforcement or corrections officer as provided by this section.

(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate. When a referee presides at the hearing on the petition, the order granting relief becomes effective upon the referee's signature.

(c) An order granting the relief authorized in paragraph (a), clause (1), may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

(d) An order granting the relief authorized in paragraph (a), clause (2) or (3), is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

(e) If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

(f) An order for restitution issued under this subdivision is enforceable as civil judgment.

Subd. 6a. **Subsequent orders and extensions.** Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order. The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(1) the respondent has violated a prior or existing order for protection;

(2) the petitioner is reasonably in fear of physical harm from the respondent;

(3) the respondent has engaged in acts of harassment or stalking within the meaning of section [609.749](#), subdivision 2; or

(4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

Subd. 7. **Ex parte order.** (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;

(3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and

(4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. When signed by a referee, the ex parte order becomes effective upon the referee's signature. Upon request, a hearing, as provided by this section, shall be set. Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this subdivision must include a notice advising the respondent of the right to request a

hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Subd. 8. **Service; alternate service; publication; notice.** (a) The petition and any order issued under this section shall be served on the respondent personally. In lieu of personal service of an order for protection, a law enforcement officer may serve a person with a short form notification as provided in subdivision 8a.

(b) When service is made out of this state and in the United States, it may be proved by the affidavit of the person making the service. When service is made outside the United States, it may be proved by the affidavit of the person making the service, taken before and certified by any United States minister, charge d'affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in the other country, including all deputies or other representatives of the officer authorized to perform their duties; or before an office authorized to administer an oath with the certificate of an officer of a court of record of the country in which the affidavit is taken as to the identity and authority of the officer taking the affidavit.

(c) If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means, or by publication, which publication must be made as in other actions. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent.

The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-ordered publication.

(d) A petition and any order issued under this section, including the short form notification, must include a notice to the respondent that if an order for protection is issued to protect the petitioner or a child of the parties, upon request of the petitioner in any parenting time proceeding, the court shall consider the order for protection in making a decision regarding parenting time.

Subd. 8a. **Short form notification.** (a) In lieu of personal service of an order for protection under subdivision 8, a law enforcement officer may serve a person with a short form notification. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the ex parte order for protection or order for protection was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short form notification must be in bold print in the following form:

The order for protection is now enforceable. You must report to your nearest sheriff office or county court to obtain a copy of the order for protection. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the order for protection or this short form notification.

(b) Upon verification of the identity of the respondent and the existence of an unserved order for protection against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short form notification.

(c) When service is made by short form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays, and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

Subd. 9. Assistance of sheriff in service or execution.

When an order is issued under this section upon request of the petitioner, the court shall order the sheriff or constable to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection. If the application for relief is brought in a county in which the respondent is not present, the sheriff shall forward the pleadings necessary for service upon the respondent to the sheriff of the county in which the respondent is present. This transmittal must be expedited to allow for timely service.

Subd. 9a. Service by others. Peace officers licensed by the state of Minnesota and corrections officers, including, but not limited to, probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve an order for protection.

Subd. 10. Right to apply for relief. (a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Subd. 11. Modification of order. Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Subd. 12. Real estate. Nothing in this section shall affect the title to real estate.

Subd. 13. Copy to law enforcement agency. (a) An order for protection and any continuance of an order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.

(b) If the applicant notifies the court administrator of a change in the applicant's residence so that a different local law enforcement agency has jurisdiction over the residence, the order for protection and any continuance of an order for protection must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. If the applicant notifies the new law enforcement agency that an order for protection has been issued under this section and the applicant has established a new residence within that agency's

jurisdiction, within 24 hours the local law enforcement agency shall request a copy of the order for protection from the court administrator in the county that issued the order.

(c) When an order for protection is granted, the applicant for an order for protection must be told by the court that:

(1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the applicant;

(2) the reason for notification of a change in residence is to forward an order for protection to the proper law enforcement agency; and

(3) the order for protection must be forwarded to the law enforcement agency having jurisdiction over the new residence within 24 hours of notification of a change in residence, whether notification is given to the court administrator or to the local law enforcement agency having jurisdiction over the applicant's new residence.

An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

Subd. 14. **Violation of an order for protection.** (a) A person who violates an order for protection issued by a judge or referee is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), whenever an order for protection is granted by a judge or referee or pursuant to a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the respondent or person to be restrained knows of the existence of the order, violation of the order for protection is a misdemeanor. Upon a misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A violation of an order for protection shall also constitute contempt of court and be subject to the penalties provided in chapter 588.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision during the time period between a previous qualified domestic violence-related offense conviction and the end of the five years following discharge from sentence for that offense. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding section [609.135](#), the court must impose and

execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person knowingly violates this subdivision:

(1) during the time period between the first of two or more previous qualified domestic violence-related offense convictions and the end of the five years following discharge from sentence for that offense; or

(2) while possessing a dangerous weapon, as defined in section [609.02](#), subdivision 6.

Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section [609.135](#), the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

(e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The probable cause required under this paragraph includes probable cause that the person knows of the existence of the order. If the order has not been served, the officer shall immediately serve the order whenever reasonably safe and possible to do so. An order for purposes of this subdivision, includes the short form order described in subdivision 8a. When the order is first served upon the person at a location at which, under the terms of the order, the person's presence constitutes a violation, the person shall not be arrested for violation of the order without first being given a reasonable opportunity to leave the location in the presence of the peace officer. A person arrested under this paragraph shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

(f) If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will commit a further violation of the provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's

residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed \$10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

(g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation, or in the county in which the alleged violation occurred, if the petitioner and respondent do not reside in this state. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

(h) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.

(i) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.

A peace officer is not liable under section [609.43](#), clause (1), for a failure to perform a duty required by paragraph (e).

(j) When a person is convicted under paragraph (b) or (c) of violating an order for protection and the court determines

that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(k) Except as otherwise provided in paragraph (j), when a person is convicted under paragraph (b) or (c) of violating an order for protection, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(l) Except as otherwise provided in paragraph (j), a person is not entitled to possess a pistol if the person has been convicted under paragraph (b) or (c) after August 1, 1996, of violating an order for protection, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(m) If the court determines that a person convicted under paragraph (b) or (c) of violating an order for protection owns or possesses a firearm and used it in any way during the commission of the violation, it shall order that the firearm be summarily forfeited under section [609.5316](#), subdivision 3.

Subd. 15. **Admissibility of testimony in criminal proceeding.** Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.

Subd. 16. **Other remedies available.** Any proceeding under this section shall be in addition to other civil or criminal remedies.

Subd. 17. **Effect on custody proceedings.** In a subsequent custody proceeding the court must consider a finding in a proceeding under this chapter or under a similar law of another state that domestic abuse has occurred between the parties.

Subd. 18. **Notices.** Each order for protection granted under this chapter must contain a conspicuous notice to the respondent or person to be restrained that:

(1) violation of an order for protection is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment of up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment of up to five years or a fine of up to \$10,000, or both;

(2) the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person; in no event is the order for protection voided;

(3) a peace officer must arrest without warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from a residence; and

(4) pursuant to the Violence Against Women Act of 1994, United States Code, title 18, section 2265, the order is enforceable in all 50 states, the District of Columbia, tribal lands, and United States territories, that violation of the order may also subject the respondent to federal charges and punishment under United States Code, title 18, sections 2261 and 2262, and that if a final order is entered against the respondent after the hearing, the respondent may be prohibited from possessing, transporting, or accepting a firearm under the 1994 amendment to the Gun Control Act, United States Code, title 18, section 922(g)(8).

Subd. 19. **Recording required.** Proceedings under this section must be recorded.

Subd. 20. **Statewide application.** An order for protection granted under this section applies throughout this state.

Subd. 21. **Order for protection forms.** The state court administrator, in consultation with the Advisory Council on Battered Women and Domestic Abuse, city and county attorneys, and legal advocates who work with victims, shall develop a uniform order for protection form that will facilitate the consistent enforcement of orders for protection throughout the state.

Subd. 22. **Domestic abuse no contact order.** (a) A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding for:

(1) domestic abuse;

(2) harassment or stalking charged under section [609.749](#) and committed against a family or household member;

(3) violation of an order for protection charged under subdivision 14; or

(4) violation of a prior domestic abuse no contact order charged under this subdivision.

It includes pretrial orders before final disposition of the case and probationary orders after sentencing.

(b) A person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

(c) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

Subd. 23. Prohibition against employer retaliation.

(a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this chapter. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

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Appendix T

Minnesota Statutes 2005, Table of Chapters Table of contents for Chapter 629

629.341 Allowing probable cause arrests for domestic violence; immunity from liability.

Subdivision 1. **Arrest.** Notwithstanding section [629.34](#) or any other law or rule, a peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that within the preceding 12 hours the person has committed domestic abuse, as defined in section [518B.01](#), subdivision 2. The arrest may be made even though the assault did not take place in the presence of the peace officer.

Subd. 2. **Immunity.** A peace officer acting in good faith and exercising due care in making an arrest pursuant to subdivision 1 is immune from civil liability that might result from the officer's action.

Subd. 3. **Notice of rights.** The peace officer shall tell the victim whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include furnishing the victim a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection from domestic abuse. The order could include the following:

(1) an order restraining the abuser from further acts of abuse;

(2) an order directing the abuser to leave your household;

(3) an order preventing the abuser from entering your residence, school, business, or place of employment;

(4) an order awarding you or the other parent custody of or parenting time with your minor child or children; or

(5) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

The notice must include the resource listing, including telephone number, for the area battered women's shelter, to be designated by the Department of Corrections.

Subd. 4. **Report required.** Whenever a peace officer investigates an allegation that an incident described in subdivision 1 has occurred, whether or not an arrest is made, the officer shall make a written police report of the alleged incident. The report must contain at least the following

information: the name, address and telephone number of the victim, if provided by the victim, a statement as to whether an arrest occurred, the name of the arrested person, and a brief summary of the incident. Data that identify a victim who has made a request under section [13.82](#), subdivision 17, paragraph (d), and that are private data under that subdivision, shall be private in the report required by this section. A copy of this report must be provided upon request, at no cost, to the victim of domestic abuse, the victim's attorney, or organizations designated by the Minnesota Crime Victims Services Center, the Department of Public Safety, or the commissioner of corrections that are providing services to victims of domestic abuse. The officer shall submit the report to the officer's supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made.

Subd. 5. **Training.** The Board of Peace Officer Standards and Training shall provide a copy of this section to every law enforcement agency in this state on or before June 30, 1983.

Upon request of the Board of Peace Officer Standards and Training to the Bureau of Criminal Apprehension, at least one training course must include instruction about domestic abuse. A basic skills course required for initial licensure as a peace officer must, after January 1, 1985, include at least three hours of training in handling domestic violence cases.
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Appendix U

Date:.....

VULNERABLE ADULT REPORT OF INVESTIGATION:

Final Disposition:	Substantiated.. xxxxxx.....	Abuse.....
	Inconclusive.....	Neglect by caregiver.....
	False.....	Self-Neglect... xxxxxx
		Financial Exploitation.....

Vulnerable Adult Status:

Ann Olson, an 85 year old woman is a vulnerable adult per MS626.5572 Subd.21

“VULNERABLE ADULT” means any person 18 years of age or older who:

(4) regardless of residence.....

- (i) that impairs the individual’s ability to provide adequately for
- (ii) because of the dysfunction or infirmity and the need for assistance.....

Ann has recently had a stroke and was living alone in her own home and was now unable to transfer unassisted from chair to toilet. Ann was also showing signs of significant memory impairment and confusion. She did not appear to have had any food or liquids for the past day or so. Upon discharge from the rehabilitation facility two weeks prior to the report she had been able to transfer and her niece had stayed with her for the first week. The home health aid who made the report believes Ann may have suffered a subsequent stroke in the past couple of days. Because of Ann’s impaired functioning she fits the definition of a vulnerable adult.

Findings: _____ County Adult Protection conducted an investigation regarding the allegation of self-neglect by Ann Olson. MS626.5572 subd.17

“NEGLECT” means

- (a) the failure.....
- (1)reasonable and necessary.....
- (2)which is not the result of.....
- (b) the absence or likelihood of absence of care or services.....

The result of the investigation of self-neglect is substantiated against Ann Olson. MS626.5572 subd 19

“SUBSTANTIATED” means a preponderance of the evidence shows that an act meets the definition of maltreatment has occurred.

_____ Adult Protection Investigator made an emergency protective services visit to the home the afternoon the report was made by the home health aid. After a call to Ann’s physician, authorization for transport was given by the doctor and an ambulance was called to bring Ann to the local hospital emergency room.

Subsequent testing revealed the Ann's second stroke had been significantly more severe and she would need longer rehabilitation therapies. At this time Ann was unable to participate in her own care plans and she had not prepared an advanced health care directive. Ann's niece agreed to be named in an emergency guardianship petition filed by the county attorney under the protective services defined in MS626.557 sub 10. "seek guardianship" under MS524.5-311.

After several days in the hospital, Ann was transferred to -----Rehab Unit and future care will depend on her progress.

Ann will be followed by Adult Protection until the Emergency guardianship is either dismissed or a full guardianship hearing is held.

Report prepared by
.....
.....

Appendix V

Common Courtesies when Interacting with People with Disabilities

Changing attitudes

People with disabilities are *people* first. Their disabilities should come second. Yes, the disabilities are part of them, but are not the most important aspect.

People with disabilities are like everyone else. They may look, move or act differently sometimes, but they strive toward similar goals. They do not want to be treated differently, but instead want the same things in life that everyone else does -- to be loved, appreciated, respected and productive.

Recent changes in laws, policies and attitudes have opened opportunities for people with disabilities to pursue education, recreation and employment in the mainstream of community life.

As we increasingly find ourselves in situations involving people with disabilities, we need to enhance understanding and communication in everyday interactions. This brochure can help.

Language - A powerful tool

"Handicapped man confined to wheelchair..." "Girl stricken with cerebral palsy..." Words and phrases such as these help to shape incorrect perceptions of people with disabilities. Negative attitudes are often the greatest barrier for people with disabilities to overcome. Even the word "handicap" itself is considered insulting -- and should be avoided. "Handicap" is derived from "cap in hand," a phrase associated with beggars.

When speaking or writing, always refer to the person first and not his or her disability. Do not say "a blind person" or "afflicted with blindness." Instead, refer to "a person who is blind", or "a person with blindness." Be sensitive when choosing words. Grouping individuals together as "the mentally retarded" or "the handicapped" puts the focus on the disability, not on the individual. "People with disabilities" or "individuals who use wheelchairs" places people first.

The following are some more respectful and descriptive words.

A person with/with a/who has:

- blindness
- cerebral palsy
- communication disorder
- deaf
- developmental disability
- disability
- epilepsy
- hearing impairment

- paraplegia
- psychiatric disability
- seizure disorder
- unable to speak
- visual impairment
- wheelchair-user

Adapted from: The Indiana Governor's Planning Council for People with Disabilities

Terms to Avoid

Words can hurt. They can project images that are inaccurate and damaging to a person. Many people use words that focus on characteristics rather than on the person as a whole. When speaking or writing about a person with a disability keep the following in mind:

Afflicted: A person has or is affected by a disability, not afflicted.

Confined: Prisoners are confined; people are not confined to wheelchairs. Use "wheelchair user or person who uses a wheelchair."

Crippled or crippler: Neither of these terms is appropriate. Use "person with a disability".

Disease: Many disabilities have nothing to do with disease. It's better to say "condition".

Drain & Burden: "Added responsibility" or "challenge" are more positive.

Poor: Disability has nothing to do with how wealthy one is.

Victim: A person with a disability was neither sabotaged nor necessarily in a car wreck.

Unfortunate: What's unfortunate is that this word is often used to describe people with disabilities.

Source: BNA, Easter Seals, Rochester Institute of Technology

The following are some courtesies to consider when in the company of a person who has a disability.

When communicating with:

- **People with Hearing Impairments**
- Get the persons attention before speaking. Call out the person's name, tap the person on the shoulder, or wave.
- Key the person into the topic. They need to know what the subject is to be able to pick up words that will help them follow the conversation.
- Speak slowly and clearly, but do not yell, exaggerate, or over pronounce.
- Exaggeration can distort lip movements. Short sentences are easier to understand.
- Look directly at the person when speaking. Avoid turning away.
- Do not place anything in your mouth when speaking.
- Maintain eye contact with the person. If an interpreter is present, continue to speak directly to the person with the hearing impairment.
- Use the words "I" and "you" when communicating with an interpreter, not "tell him".

People with Speech Impairments

- Give 100% of your attention when talking to a person who has difficulty speaking. Be encouraging rather than correcting.
- Be patient rather than speak for the person.
- Ask short questions that require short answers or a nod or shake of the head.

Wheelchair Users

- Place yourself at the wheelchair user's eye level when talking to a person in a wheelchair for more than a few minutes.
- Consider distance, weather conditions, and physical obstacles such as stairs, curbs, and steep hills when giving directions to a person in a wheelchair.
- Avoid leaning or hanging on a person's wheelchair. This could be interpreted as an invasion of one's personal space.
- Do not push the wheelchair unless asked.
- Do not patronize people in wheelchairs by patting them on the head.

People with Visual Impairments

- Allow the person to take your arm when offering assistance to a person with a visual impairment.
- Greet a person with a severe loss of vision by touching their arm and identifying yourself and others who may be with you.
- Be clear in giving directions, such as, "The door is five steps ahead of you".
- Keep doors open or closed. A half-opened door is a hazard.
- Place the person's hand on the back or arm of the chair when offering assistance to a person with a visual impairment.

In General

- *Relax.* Don't be embarrassed if you happen to use common expressions such as "See you later" or "I've got to be running".
- Offer assistance to a person with a disability if you feel like it, but wait until your offer is accepted before you help.
- Be considerate of the extra time it might take for a person with a disability to get things done or said.
- Use the word "disability" rather than "handicap" because a disabling condition may or may not be handicapping.

How you can help in eliminating barriers confronting people with disabilities.

- Understand the need for accessible parking and leave it for those who need it.
- Encourage participation of people with disabilities in activities by making sure that the activity is accessible.
- Speak up when negative words or phrases are used in connection with disabilities.
- Accept people with disabilities as individual human beings with the same needs and feelings you might have.

- Avoid attaching labels to people with or without disabilities. For example, the word "normal" is acceptable when referring to statistical norms or averages but not as a label for a person who has no disability.

Adapted from: BNA, Easter Seals, Rochester Institute of Technology

Ten Commandments of Etiquette

The following "Ten Commandments of Etiquette for Communicating with People with Disabilities" will help you communicate more effectively with people with disabilities. (Some of this same information is presented elsewhere in this document.)

1. When talking with a person with a disability, speak directly to that person rather than through a companion or sign language interpreter.
2. When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. (Shaking hands with the left hand is an acceptable greeting.)
3. When meeting a person who is visually impaired, always identify yourself and others who may be with you. When conversing in a group, remember to identify the person to whom you are speaking.
4. If you offer assistance, wait until the offer is accepted. Then listen to or ask for instructions.
5. Treat adults as adults. Address people who have disabilities by their first names only when extending the same familiarity to all others. Never patronize people who use wheelchairs by patting them on the head or shoulder.
6. Leaning on or hanging on to a person's wheelchair is similar to leaning or hanging on to a person and is generally considered annoying. The chair is part of the personal body space of the person who uses it.
7. Listen attentively when you're talking with a person who has difficulty speaking. Be patient and wait for the person to finish, rather than correcting or speaking for the person. If necessary, ask short questions that require short answers, a nod or shake of the head. Never pretend to understand if you are having difficulty doing so. Instead, repeat what you have understood and allow the person to respond.
8. When speaking with a person who uses a wheelchair or a person who uses crutches, place yourself at eye level in front of the person to facilitate the conversation.
9. To get the attention of a person who is deaf, tap the person on the shoulder or wave your hand. Look directly at the person and speak clearly, slowly and expressively to determine if the person can read your lips. For those who do lip read, be sensitive to their needs by placing yourself so that you face the light source and keep hands, cigarettes and food away from your mouth when speaking.

10. Relax. Don't be embarrassed if you happen to use accepted, common expressions such as "See you later," or "Did you hear about that?" that seem to relate to a person's disability. Don't be afraid to ask questions when you're unsure of what to do.

Sources: The President's Committee on Employment of People with Disabilities; Guidelines to Reporting and Writing About People with Disabilities, produced by the Media Project, Research and Training Center on Independent Living, 4089 Dole, University of Kansas, Lawrence, KS 66045; and Ten Commandments of Etiquette for Communicating with People with Disabilities, National Center for Access Unlimited, 155 North Wacker Drive, Suite 315, Chicago, IL, 60606.

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