

**Maltreatment of Minors Reporting and Internal Review Policy  
Axis Minnesota 245D ISS**

12/15/14

**Course 133  
Record 2078**

**Rationale**

All individuals will be cared for with respect and will be protected from any abuse, neglect or exploitation.

**Policy**

Public policy: The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.

**Reporting Procedure:**

All knowledge of and written information about suspected abuse, neglect or exploitation or injuries of unknown origin of an individual served by Axis, will be verbally reported immediately to designated nurse (primary contact person) and the administrator immediately, and in writing by completing the First Report in the Incident Report Form in the computer. The secondary contact person (Program Supervisor) will be involved when there is reason to believe that the primary contact person is involved in the alleged or suspected maltreatment. A phone report to the appropriate outside authority (i.e., Child Protection) shall be made immediately by the primary or secondary contact person. The reporter may also make his/her report directly to the appropriate outside authority. Reporters who make good faith reports are immune from retaliation. Mandated reporters shall be notified of the status of the report of suspected maltreatment' within 2 working days of their report.

"Immediately" means there should be no delay between staff awareness of the allegation and reporting to the administrator unless the situation is unstable at the time the allegation comes to the attention of the staff. In this case, reporting should occur as soon as the safety of all clients is assured and all necessary emergency measures have been taken.

"Injuries of unknown origin" means:

- a. the source of the injury was not witnessed by any person, **and**;
- b. the source of the injury could not be explained by the client, **and**;
- c. the injury raises **suspicions** of possible abuse or neglect because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to

trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time.

Upon receiving the initial report of the incident, the primary or secondary contact person shall immediately initiate internal investigative procedures. Investigating procedures shall include but not be limited to:

- (a) physical examination by appropriate medical personnel if a physical injury or sexual assault is involved, including a written report of the nature and extent of the injuries;
- (b) interviews with the person reporting the incident and any witnesses to the incident;
- (c) written reports by all persons involved including place, date and time of occurrence and the nature of the nature of the suspected abuse, neglect or exploitation;
- (d) interview with the person reported as perpetrating the suspected abuse, neglect or exploitation including a written response to the allegation;
- (e) records of any previous abuse, neglect or exploitation, and;
- (f) periodic updates and a final report to the Director of Program Services as soon as possible.

Any time during the investigation, the alleged perpetrator may be dismissed from work pending further investigation.

Upon the completion of the initial investigation, the investigator shall immediately forward all the material and results of the investigation to the appropriate authority if they request it.

Original reports will be maintained in confidence at the facility or the Axis Corporate Office.

State law requires that all mandated reporters must report incidents of abuse, neglect & exploitation. Therefore, the reporter may report directly to the outside authority if they so choose. A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure to report. Reports to the outside authority by the primary or secondary contact person requires a response to the initial reporter, that Child Protection has been called. It is the agency's responsibility to assure that the report is made and must give written notice within two working days to the initial reporter whether the internal report was passed on to Child Protection. The "Notice of Status of report of suspected maltreatment" form or an e-mail equivalent notice will be used.

### **Internal Reviews**

The primary contact person (Program Supervisor) will conduct the internal reviews. The secondary contact person (Manager on Call) will conduct the reviews when there is reason to believe that the primary contact person (Program Supervisor) is involved in the alleged or suspected maltreatment.

The primary contact person (Program Supervisor) or secondary contact person (manager on call) will use the Incident Report Form to review internal and external reports for purposes of evaluation as to whether:

- (a) related policies and procedures were followed;

- (b) the policies and procedures were adequate;
- (c) there is a need for additional staff training;
- (d) the reported incident is similar to past events with the children or the services involved, and;
- (e) there is need for immediate corrective action by AXIS to protect the health and safety of children in care.

Based on the results of this review, AXIS will develop, document and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or AXIS.

AXIS shall document that the internal review has been completed and will provide this documentation showing this review was completed to the DHS Commissioner upon the Commissioner's request.

The documentation provided to the DHS Commissioner may consist of a completed checklist that verifies completion of each of the requirements of the review.

Reports should be made to the department in the county in which the maltreatment occurred. A follow-up report should be made to the person's host county, if it is different from the county in which the maltreatment occurred.

Outside reports will go to:

County Child Protection Services (report to the County in which the consumer resides):

- Ramsey County : (651) 266-4500
- Dakota County : (952) 891- 7400
- Scott County: (952) 445-7751
- Hennepin County: (612)-348-3552

**The consumer's legal representative:** (locate phone number in Contacts database)

**The consumer's case manager:** (locate phone number in Contacts database)

### **Reporting of Serious injuries or deaths - ICF/DD Homes**

Serious injuries or deaths of individuals who live in an Intermediate Care Facility for Persons with Mental Retardation or Developmental Disability (ICF/MR Home such as Axis on Belmont, Axis on Glenhill, Axis on Eldridge, Axis on Seneca, Axis on St. Michael or Axis on White Bear Ave.), must be reported to two separate agencies.

- Office of Ombudsman for Mental Health and Mental Retardation by completing and faxing two forms to them:

- "Death or Serious Injury Report - Fax Transmission Cover Sheet" to (651) 431-7673. If it is an individual's death, fax the completed "Death Report" (Document Library) to (651) 296-1021. If this is to report serious injury, you should fax the "Serious Injury Report" to the Ombudsman office at (651) 296-1021, and then a call of the death or serious injury must be made to:

- Minnesota Department of Health - Office of Health Facility Complaints by calling 651-

201-4201.

### **Reporting of Serious injuries or deaths - Individuals receiving waiver services**

Serious injuries or deaths of individuals must be reported to the DHS - Division of Licensing. Fax the completed "Death or Serious Injury Report - Fax Transmission Cover Sheet" to (651) 431-7673. The Office of Ombudsman for Mental Health and Mental Retardation must also be contacted for serious injury or death of an individual. If it is an individual death, fax the completed "Death Report" (Document Library) to (651) 296-1021. If this is to report serious injury, you should fax the "Serious Injury Report" to the Ombudsman office at (651) 296-1021.

Cooperation with DHS and any other outside authority is mandatory.

Final reports shall include original written material gathered in the investigation, names of persons involved, persons interviewed, investigating authority notified, written summary of all findings by the person conducting the investigations, and all conclusions reached and actions taken and all information relative to previous abuse. All reports shall be dated and include the signature and title of the person writing the report.

The conduct of the investigation and all records of the investigation shall be treated with utmost confidentiality.

Upon the completion of the internal investigation, a conclusion will be made and appropriate disciplinary actions may be imposed upon the employee.

The policy shall be made available to all individual's at her/his admission conference with review and documentation in their annual individual abuse prevention plan. If individuals are unable to comprehend this plan, their representative shall be given the opportunity to receive the orientation with documentation in the individual's abuse prevention plan.

Orientation to this policy must be given to all staff persons at the time of hire, and semi-annually thereafter. This policy will be posted in a prominent place (i.e., Easy AXIS) in each facility. Copies shall be made available upon request to individuals.

#### **Definitions:**

**"Accidental"** means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

- (1) is not likely to occur and could not have been prevented by exercise of due care, and;
- (2) if occurring while a child 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 of event.

**Sexual abuse:** The subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342, 609.343, 609.344, or 609.345. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse. Sexual Abuse has been expanded to include criminal sexual conduct in the fifth degree.

Person responsible for the child's care: An individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

**Neglect**: Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so, failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so, or failure to take steps to ensure that a child is educated in accordance with state law.

Neglect includes prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a non-medical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance. Neglect also means "medical neglect" as defined in section 260.015, subdivision 2a, clause (5).

Failure to provide necessary supervision or child care arrangements appropriate for a child considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child;

Cases where the parent or other person responsible for the care of the child: (a) Engages in violent behavior that demonstrates a disregard for the well being of the child as indicated by action that could reasonably result in serious physical, mental, or threatened injury, or emotional damage to the child; (b) Engages in repeated domestic assault that would constitute a violation of Minnesota Statutes, section 609.2242, subdivision 2 or 4; (c) Intentionally inflicts or attempts to inflict bodily harm against a family or household member, as defined in Minnesota Statutes, section 518B.01, subdivision 2, that is within sight or sound of the child; or (d) Subjects the child to ongoing domestic violence by the abuser in the home environment that is likely to have a detrimental effect on the well being of the child;

Chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety;

Emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care.

**Amendment - Serious maltreatment.** (a) "Serious maltreatment" means sexual abuse, maltreatment resulting in death, neglect resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury. (b) For purposes of

this definition, "care of a physician" is treatment received or ordered by a physician, physician assistant, or nurse practitioner, but does not include:

(1) diagnostic testing, assessment, or observation.;

(2) the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or

(3) a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment.

*(c) For purposes of this definition, "abuse resulting in serious injury" means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke.*

*d) Serious maltreatment includes neglect when it results in criminal sexual conduct against a child or vulnerable adult. [Laws of Minnesota 2010, chapter 329, article 1, section 14].*

*Note: What is the Impact on 245B License Holders?*

*It clarifies when neglect results in serious injury which "reasonably requires the care of a physician." This subdivision now specifically includes care by a physician assistant or nurse practitioner, but excludes an injury treated solely by applying or recommending a remedy that is available over the counter without a prescription. It also specifically excludes an injury treated with a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment. If a victim of neglect has injuries falling into one of these exclusions, the subject will no longer be disqualified for serious maltreatment.*

**Physical abuse:** Any physical or mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive and deprivation procedures that have not been authorized under section 245.825.

Physical Abuse has been clarified by delineating the following acts toward a child which constitute abuse when done in anger or without regard to the child's safety:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age 3;
- (4) striking or other actions which result in any non-accidental injury to a child under 18 months.
- (5) interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) purposely giving a child poison, alcohol, dangerous harmful or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances; or (9) unreasonable physical confinement or restraint not permitted under 609.379, including but not limited to tying, caging, or chaining.

Persons who conduct assessments or investigations of child maltreatment must take into account accepted child-rearing practices of the culture in which a child participates, which are not injurious to the child's health, welfare, and safety.

Report: Any report received by the local welfare agency, police department, or county sheriff pursuant to this section.

Facility: A day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed pursuant to sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16.

Operator: An operator or agency as defined in section 245A.02.

Commissioner: The commissioner of human services.

Assessment: Includes authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan.

Practice of social services: Includes but is not limited to employee assistance counseling and the provision of guardian ad item services.

Mental injury: An injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

Threatened injury: A statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.

Financial Exploitation: 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:

- (a) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable minor which results or is likely to result in detriment to the vulnerable minor; or
- (b) fails to use the financial resources of the vulnerable minor to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable minor, and the failure results or is likely to result in detriment to the vulnerable minor.

In the absence of legal authority a person:

- (a) willfully uses, withholds, or disposes of funds or property of a vulnerable minor;
- (b) 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 minor;
- (c) acquires possession or control of, or an interest in, funds or property of a vulnerable minor through the use of undue influence, harassment, duress, deception, or fraud; or
- (d) forces, compels, coerces, or entices a vulnerable minor against the vulnerable minor's will to perform services for the profit or advantage of another.

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

Persons mandated to report. A person who knows or has reason to believe a child is being

neglected or physically or sexually abused, or has been neglected or physically or sexually abused within the preceding three years.

Any person may voluntarily report to the local welfare agency, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse.

A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility.

Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

**“Immediately”** means there should be no delay between staff awareness of the allegation and reporting to the administrator unless the situation is unstable at the time the allegation comes to the attention of the staff. In this case, reporting should occur as soon as the safety of all clients is assured and all necessary emergency measures have been taken.

Immunity from liability: The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(a) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(b) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency or the commissioner complying with subdivision 10d; and

(c) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency or local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

Immunity is not provided to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

If a person who makes a voluntary or mandatory report prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

Retaliation prohibited: An employer of any person required to make reports shall not retaliate against the person for reporting in good faith abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

The employer of any person required to report who retaliates against the person because of a report of abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$10,000.

There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an employer of a person required to report which is involved in a report against the person making

the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

- (a) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;
- (b) discharge from or termination of employment;
- (c) demotion or reduction in remuneration for services; or
- (d) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

**Malicious and reckless reports:** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

**Failure to report:** A person mandated to report who knows or has reason to believe that a child is neglected or physically or sexually abused, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor. A parent, guardian, or caretaker who knows or reasonably should know that the child's health is in serious danger and who fails to report as required, is guilty of a gross misdemeanor if the child suffers substantial or great bodily harm because of the lack of medical care. If the child dies because of the lack of medical care, the person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both. The provision in section 609.378, subdivision 1, paragraph (a), clause (1), providing that a parent, guardian, or caretaker may, in good faith, select and depend on spiritual means or prayer for treatment or care of a child, does not exempt a parent, guardian, or caretaker from the duty to report under this subdivision.

**Maltreatment:** Any of the following acts or omissions committed by a person responsible for the child's care:

- (a) physical abuse ;
- (b) neglect;
- (c) sexual abuse; or
- (d) mental injury.

**Maltreatment has not occurred** solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

**Duties of facility operators:** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, or sexual abuse of a child in the care of that facility may be charged with a violation of section

609.378.

Serious Injury: Any harm suffered by an individual which reasonably requires the care of a physician whether or not the care of a physician was sought. The following are deemed to be serious injuries:

- fractures;
- dislocations;
- internal injury;
- head injuries with loss of consciousness;
- lacerations with nerve, tendon, or muscle damage;
- burn, second or third degree;
- frostbite, second or third degree;
- eye injury;
- dental injury that causes avulsion of teeth;
- ingestion of poison or harmful substance;
- near drowning;
- heat exhaustion or sunstroke;
- complication of previous injury, and;
- complication of medical treatment.