

Reporting Suspected Maltreatment (Abuse, Neglect and Exploitation) of a **Vulnerable Adult** (AXIS on County Road E)

Course #AA134

**245A.65 License holder requirements governing maltreatment of vulnerable adults.**

**Subd. 3. Orientation of mandated reporters.** The license holder shall ensure that each new mandated reporter, as defined in section 626.5572, subdivision 16, who is under the control of the license holder, receives an orientation within 72 hours of first providing direct contact services as defined in section 245C.02, subdivision 11, to a vulnerable adult and annually thereafter.

The orientation and annual review shall inform the mandated reporters of:

- the reporting requirements and definitions in sections 626.557 and 626.5572;
- the requirements of this section;
- the license holder's program abuse prevention plan, and;
- and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.

History: 1997 c 248 s 34; 2003 c 15 art 1 s 33; 2007 c 112 s 23,24

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

**Definitions.**

Scope. For the purpose of section 626.557, the following terms have the meanings given them, unless otherwise specified.

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 caregiving relationship; or

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

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.

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.

Common entry point. "Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

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, and 256B.0627.

(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.

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

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.

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.

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.

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

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

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.

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.

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

Amendment: The definition of "serious maltreatment" was amended to include neglect when it results in criminal sexual conduct against a child or vulnerable adult. Serious maltreatment is a disqualification. Prior to this amendment, if a caregiver was found responsible for neglect that resulted in a client becoming a victim to criminal sexual conduct, this neglect did not meet the definition of serious maltreatment. [Laws of Minnesota 2004, chapter 288, article 1 section 38 (will be codified under Minnesota Statutes, section 245C.02, subdivision 18)].

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.

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 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:

(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 caregiving relationship; or

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

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

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

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

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

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

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

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

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

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

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

**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.

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

**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.

**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, and 256B.0627; 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.

### **Procedure:**

#### **Reporting Suspected Maltreatment**

All knowledge of suspected abuse, neglect or exploitation of an individual served by AXIS will be reported immediately (within 24 hours) by the mandated reporter, by one of the following methods:

1) the mandated reporter will make an internal report by communicating this to the primary contact person, Licensed Foster Care Provider and completing an Incident Report and ), or;

2) the mandated reporter will make an external report directly to the appropriate outside authority (e.g., common entry point), or;

3) the mandated reporter may choose to make an internal report to the AXIS primary contact person and an external report to the appropriate outside authority.

The secondary contact person (Director of Program Services) shall receive the internal report when there is reason to believe that the primary contact person (Licensed Foster Care Provider) is involved in the alleged or suspected maltreatment. If the primary contact person is involved in the alleged or suspected maltreatment:

1) the mandated reporter will make an internal report by completing the Incident Reporting Form and communicating this to the secondary contact person Director of Program Services), or;

2) the mandated reporter will make an external report directly to the appropriate outside authority (e.g., common entry point), or;

3) the mandated reporter may choose to make a report to both the AXIS secondary contact person and the appropriate outside authority.

The primary contact person, upon receipt of alleged maltreatment, will begin to conduct an investigation and forward the report to an appropriate outside authority such as the common entry point. If the primary contact person is involved in the alleged or suspected maltreatment, the secondary contact person, upon receipt of the alleged maltreatment, will begin to conduct an investigation and forward the report to an appropriate outside authority such as the common entry point. Mandated reporters who make good faith reports are immune from retaliation. When an internal report is made in which maltreatment is alleged, the mandated reporter shall be notified of the status of the report of suspected maltreatment' within 2 working days of his/her report in a manner that protects the confidentiality of the reporter.

The confidential written or email response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by AXIS on whether to report the incident to the common entry point, then the mandated reporter may report externally.

AXIS will not prohibit a mandated reporter from reporting externally and AXIS will not retaliate against a mandated

reporter who reports an incident to the common entry point in good faith. The confidential written or email notice by AXIS will inform the mandated reporter of this protection from retaliatory measures by AXIS against the mandated reporter for reporting externally.

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:

- 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;
- interviews with the person reporting the incident and any witnesses to the incident;
- 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;
- interview with the person reported as perpetrating the suspected abuse, neglect or exploitation including a written response to the allegation;
- records of any previous abuse, neglect or exploitation, and;
- 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 DHS Commissioner if they request it.

Original reports will be maintained in confidence at the facility.

State law requires that all mandated reporters must report incidents of abuse, neglect & exploitation. A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure to report.

The **primary contact person (Licensed Foster Care Provider)** will use the Incident Reporting Form to review internal and external reports for purposes of evaluation as to whether:

- (a) related policies and procedures were followed;
- (b) whether the policies and procedures were adequate;
- (c) whether there is a need for additional staff training;
- (d) whether the reported event is similar to past events with vulnerable adults or the services involved, and;
- (e) whether there is a need for corrective action by AXIS to protect the health and safety of vulnerable adults.

Based upon 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, if any.

**The secondary contact person (Director of Program Services) shall conduct the review when there is reason to believe that the primary contact person (Licensed Foster Care Provider) is involved in the alleged or suspected maltreatment.**

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:

Common Entry Point (report to the County in which the consumer resides)

- Ramsey County Common Entry Point: (651) 266-4012
- Dakota County Common Entry Point: (651) 554-6000
- Scott County Common Entry Point: (952) 445-7751
- Hennepin County Common Entry Point (612)-348-8526

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

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

DHS - Division of Licensing: (for any serious injuries or deaths of a consumer), Fax completed Death or Serious Injury Report Fax Transmission Form and the Serious Injury Report or Death Report Form to (651) 431-7673. You may contact the DHS Licensing Intake person by calling (651) 431-6500.

Office of Ombudsman for Mental Health and Mental Retardation (for serious injury or death of a consumer). Fax completed Death or Serious Injury Report Fax Transmission Form and the Serious Injury Report or Death Report Form to (651) 296-1021.

Cooperation with DHS and any other outside authority is mandatory.

### **Internal Reviews**

**The primary contact person (Licensed Foster Care Provider) will conduct the internal reviews. The secondary contact person (Director of Program Services) will conduct the reviews when there is reason to believe that the primary contact person (Program Coordinator) is involved in the alleged or suspected maltreatment.**

**AXIS shall ensure that an internal review is completed and that corrective action is taken as necessary to protect the health and safety of vulnerable adults when the facility has reason to know that an internal or external report of alleged or suspected maltreatment has been made.**

Internal reviews and final reports shall be documented and 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. Internal review summaries are accessible to the commissioner upon the commissioner's request.

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 in each facility. Copies shall be made available upon request to individuals.