

Reporting Suspected Maltreatment of a **Vulnerable Adult** - Reporting Plan, Internal Review Procedure and Definitions (Vulnerable Adults Maltreatment Reporting and Internal Review Policy - AXIS)
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Record 2100

Rationale

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

Policy

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.

Reporting and Internal Review Procedure:

All knowledge of and written information about alleged or suspected abuse, neglect, financial exploitation, injury of unknown origin of a client, or, physical aggression of one client to another client served by Axis, will be reported immediately by the mandated reporter, by one of the following methods:

- 1) the mandated reporter will make an internal report by completing the First Report of Incident and communicating this to the designated nurse (primary contact person) and administrator immediately, and make an oral report immediately to the common entry point, or;
- 2) the mandated reporter will make an external oral report directly to the appropriate outside authority (e.g., common entry point) immediately and to the Axis Administrator immediately.

“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.

When the administrator is not on duty, the Director of Program Services will be acting in the administrator's absence.

Axis expects that such reporting is always made to the administrator unless the administrator is suspected to be involved in the mistreatment, neglect or injury) and that the administrator will ensure that the appropriate State officials are notified. In any instance where a staff member is concerned that the administrator may have been involved in an incident of mistreatment, neglect, abuse or injury, the staff member will make a report to the Director of Program Services.

The secondary contact person (Program Supervisor) shall be involved when there is reason to believe that the primary contact person (designated nurse) is involved in the alleged or suspected maltreatment.

If the primary contact person is involved in the alleged or suspected abuse, neglect, financial exploitation, injury of unknown origin of a client, or, physical aggression on one client to another client served by Axis:

1) the mandated reporter will make an internal report by completing the First Report of Incident and communicating this to the secondary contact person (Program Supervisor) and immediately to the Axis Administrator, and make an external oral report immediately to the common entry point, or;

2) the mandated reporter will make an external oral report directly to the appropriate outside authority (e.g., common entry point) immediately and Axis Administrator immediately.

The primary or secondary contact person, upon receipt of alleged or suspected abuse, neglect, financial exploitation, **injury of unknown origin of a client**, or, physical aggression of one client to another client served by Axis, will report to the administrator immediately and the appropriate outside authority such as the common entry point immediately and other required contacts such as the legal guardian and county case manager. Reporters who make good faith reports are immune from retaliation. When an internal report is made in which maltreatment is alleged, the mandated reporter(s) shall be given a copy of the confidential "*Notice of status of report of suspected maltreatment*" or email equivalent within 2 working days of their report. The Notice shall include the statement that the reporter has the right to report the alleged maltreatment to an external agency and that Axis cannot retaliate against the reporter.

Note: An "injury of unknown origin of a client" 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 **suspensions** 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:

- 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 appropriate authority if they request it.

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

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. Reports to the outside authority by the primary contact person requires a response to the initial reporter, that the Common Entry Point (CEP) 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 the CEP. The "*Notice of Status of report of suspected maltreatment*" form or an e-mail equivalent notice will be used.

The secondary contact person (Program Supervisor) 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.

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 Common Entry Point:

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

- Ramsey County : Day - (651) 266-4012 Evening/Weekend - (651) 291-6795
- Dakota County : Day - (651) 554-6000 or (651) 554-6424 Evening/Weekend - (952) 891-7171
- Scott County: Day - (952) 445-7751 Evening/Weekend - (952) 496-8484
- Hennepin County: (612)-348-8526 Evening/Weekend - (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)

Reporting of Serious injuries or deaths - ICF-IID Homes

Serious injuries or deaths of individuals who live in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID) 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.

1. 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:

2. Minnesota Department of Health - Office of Health Facility Complaints (OHFC) by calling 651-201-4201.

Reporting of Serious injuries or deaths - Individuals receiving waiver services (Axis Alternatives, Inc. Clients)

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 a individual. If it is a 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.

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.

Cooperation with DHS and any other outside authority is mandatory.

Internal Reviews

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 documentation provided to the commissioner by AXIS may consist of a completed checklist that verifies completion of each of the requirements of the review.

Results of all investigations must be reported to the administrator or designee within five (5) working days of the incident.

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.

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.

626.5572 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;

Clarifying note: Physical aggression by one vulnerable adult to another needs to be communicated immediately to the Axis Administrator, nurse and immediately to the common entry point (oral report).

(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;

Clarifying note: Any allegation from a client that s/he has been verbally abused by a caregiver, needs to be communicated immediately to the Axis Administrator and orally to the common entry point immediately.

(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 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.

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 investigative agency. "Lead investigative agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead investigative agency for facilities or services licensed or required to be licensed as hospitals, home care providers, nursing homes, boarding care homes, hospice providers, residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Health for the care of vulnerable adults. "Home care provider" has the meaning provided in section 144A.43, subdivision 4, and applies when care or services are delivered in the vulnerable adult's home, whether a private home or a housing with services establishment registered under chapter 144D, including those that offer assisted living services under chapter 144G.

(b) The Department of Human Services is the lead investigative agency for facilities or services licensed or required to be licensed as adult day care, adult foster care, community residential settings, programs for people with disabilities, family adult day services, mental health programs, mental health clinics, chemical dependency programs, the Minnesota sex offender program, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Human Services.

(c) The county social service agency or its designee is the lead investigative agency for all other reports, including, but not limited to, reports involving vulnerable adults receiving services from a personal care provider organization under section 256B.0659.

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: 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: 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.

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 investigative 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 investigative 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 care or services, the individual has an impaired ability to protect the individual's self from maltreatment. (b) For purposes of this subdivision, "care or services" means care for the health, safety, welfare, or maintenance of an individual.

(b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

History: 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; 2006 c 212 art 3 s 41; 2007 c 112 s 57; 2008 c 326 art 2 s 15; 2009 c 79 art 6 s 20,21; art 8 s 75; 2009 c 119 s 17; 2009 c 142 art 2 s 48; 2011 c 28 s 16,17; 2012 c 216 art 9 s 32; 2013 c 108 art 8 s 58

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