

## 8.

### Maltreatment of Vulnerable Adults Reporting and Internal Review Policy

#### A. Plan

1. Meridian Services, Incorporated is concerned with providing quality services to adults who are mentally and otherwise disabled adults. A commitment to the prevention of abuse and neglect of our Persons served has been an integral part of our program. Persons served, served by Meridian Services, Incorporated are vulnerable due to their various disabilities. Because of this, Meridian Services, Incorporated has established, and will review and enforce, a written abuse prevention plan. Specific measures taken to reduce the risk of abuse or neglect are outlined in the program abuse prevention plan, Risk Management Plan, and individual abuse prevention plan. Provisions for reporting abuse or neglect, investigation, record keeping and review are also detailed.
2. This policy is in compliance with the Vulnerable Adults Act, Minnesota Statutes 626.557, as defined in the original act passed in 1980 and amendments passed in 1982, 1983, 1985, 1997, 1999, 2000, 2001, 2002, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2013, 2013, 2016

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## B. Vulnerable Adult Definitions

1. "Vulnerable Adult" means any person eighteen (18) years of age or older and:
  - a. Who is a resident or inpatient of a facility;
  - b. Who received services at or from a facility required to be licensed to serve adults pursuant to sections 245 A.01 to 245 A .15, except persons receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court –hold order for commitment, or 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).
  - c. Who 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 assistance services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, 256B.0653 to 256B.0656, and 256B.0659: or
  - d. Who 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 impaired ability to protect the individual's self from maltreatment.
  - e. For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

2. "Caretaker" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, or by contract or agreement.

"Mandated Reporter" means a professional or professional's delegate while engaged in social services; law enforcement; education; the care of vulnerable adults; any of the occupations referred to in section 214.01, subdivision 2; an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; and employee or person providing services in a facility as defined in subdivision 6; or a person that performs the duties of the medical examiner or coroner. A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained must report.

3. "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 609.332; 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 and deprivation procedures, 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 and 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 situations 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 524.5-313, 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 parentally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by;
    1. A vulnerable adult or person acting on behalf of a vulnerable adult, including an involved family member, to consent or refuse consent for therapeutic conduct; or
    2. A caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

- f. For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.
  - g. For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:
    - 1. A person, including a facility staff person, when a consensual sexual personal relationship existed prior to the care giving relationship.
    - 2. A personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the care giving relationship.
4. "Neglect" means:
- a. The failure or omission by a caretaker to supply the 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.
      - a. Definition of an Accident: 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.
      - b. Definition of Therapeutic conduct: 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.

- b. The absence or likelihood of absence of care or services, including but not limited to necessary 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 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 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not 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 intentions vulnerable adult or with the expressed of the vulnerable adult;
  - 3. The vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with: (i) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the care giving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the care giving relationship; or
  - 4. An individual 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. The 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), (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).
5. "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, 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;
    - 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 of supervise financial management for a vulnerable adult except as otherwise required by law.
6. Report: "Report" means a statement concerning all the circumstances surrounding the allege or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter in the time the statement is made.



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## C. Procedures for Reporting

### 1. Policy:

It is the Policy of this DHS licensed provider Meridian Services, Incorporated to protect the adults served by this program who are vulnerable to maltreatment and to require the reporting procedure of suspected maltreatment of vulnerable adults.

### 2. Procedure:

#### a. Who Should Report Suspected Maltreatment of a Vulnerable Adult:

All employees of Meridian Services, Incorporated who suspect that maltreatment is occurring will take immediate action to stop the suspected maltreatment, including calling the police.

Staff are Mandated to Report

1. Any case or suspected case of maltreatment
2. Any injury not reasonably explained by the vulnerable adult's history of injuries.
3. Any case of vulnerable adult to vulnerable adult abuse in the form of verbal or physical aggression, emotional distress or self-injurious behavior if it causes harm.
4. Any error in therapeutic, where or not there is harm.

Mandated Reporter: As a mandated reporter, if you know or suspect that a vulnerable adult has been maltreated, you must report it immediately. Immediately means as soon as possible, but no longer than 24 hours from the knowledge of the incident occurred has been received.

- b. Where to Report- You can make an external or an internal report
1. You may make an external report to the Minnesota Adult Abuse Reporting Center/MAARC at **844-880-1574**
  2. You may make an internal report to your supervisor.
  3. The supervisor will report this information at once to the appropriate Program Director or Program Administrator. The Program Administrator will report this information to the Chief Operating Officer.
  4. If this person is involved in the alleged or suspected maltreatment, you must report to the Program Administrator or Chief Operating Officer.

c. Internal Report

1. When an internal report is received, the Chief Operating Officer is responsible for deciding if a report to the Minnesota Adult Abuse Reporting Center/MAARC is required, If that person involved in the suspected maltreatment, the Chief Executive Officer will assume responsibility for deciding if the report must be forwarded to the Minnesota Adult Abuse Reporting Center/MAARC.
2. The Program Administrator or Chief Operating officer will contact the Minnesota Adult Abuse Reporting Center/MAARC.
3. The report to the Minnesota Adult Abuse Reporting Center/MAARC must be as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.
4. In the event that the alleged or suspected maltreatment constitutes a criminal act, including, but not limited to assault, sexual assault, theft, etc. the Program Administrator or Chief Operating Officer will report the information to the police, verbally, as soon as possible, but no longer than twenty-four (24) hours from the time initial knowledge that the criminal act occurred.

5. If you have reported internally, you will receive, within two working days, a written notice from the Quality Assurance Administrator that tells you whether or not your report has been forwarded to the Minnesota Adult Abuse Reporting Center/MAARC. The written notice must be given to you in a manner that protects your confidentiality as a reporter. It shall inform you that if you are not satisfied with the action taken by the facility on whether to report the incident to the Minnesota Adult Abuse Reporting Center/MAARC, you may still make an external report to the Minnesota Adult Abuse Reporting Center/MAARC. It must also inform you that you are protected against retaliation by the program if you make a good faith report to the Minnesota Adult Abuse Reporting Center/MAARC.
- d. External Reporting Procedures:
1. All employees of Meridian Services, Incorporated who suspect that maltreatment is occurring will take immediate action to stop the suspected maltreatment, including calling the police.
  2. All employees who have a reasonable suspicion that maltreatment of a vulnerable adult has occurred will immediately report the suspicions to either their immediate supervisor or to outside authorities.
  3. If the employee chooses to report directly to outside or external authorities, they will contact the Minnesota Adult Abuse Reporting Center/MAARC, local law enforcement, or Department of Human Services.
  4. The report to the Minnesota Adult Abuse Reporting Center/MAARC must be as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.
- e. What to Report:
1. Definitions of maltreatment of vulnerable adults are contained in Minnesota Statutes, section 626.5572. (Current definitions are attached to this policy).
  2. An external or internal report should contain enough information to identify the vulnerable adult, the caregiver, the nature and extent of the unsuspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believed might be helpful in investigating the suspected maltreatment.

3. In the event that the alleged or suspected maltreatment constitutes a criminal act, including, but not limited to assault, sexual assault, theft, etc. The information will be reported to the police, as well as the Minnesota Adult Abuse Reporting Center/MAARC, verbally, as soon as possible, but no longer than 24 hours from the time initial knowledge that the criminal act occurred.
- f. **Failure to Report:** A mandated reporter who negligently or intentionally fails to report suspected maltreatment of a vulnerable adult is liable for damages caused by the failure to report.
- g. **Falsified Reports:** A person or facility who intentionally makes a false report shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to \$10,000 and attorney fees.
- h. **Internal Review;**
  1. When Meridian Services, Incorporated has reason to know that an internal or external report of all alleged or suspected maltreatment has been made, the program must complete an internal review and take corrective action, if necessary, to protect the health and safety of vulnerable adults. Internal Reviews must be completed within 30 calendar days.
  2. The internal review must include an evaluation if 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 event is similar to past events with the vulnerable adults of the services involved; and
    - e. There is a need for corrective action by the license holder to protect the health and safety of vulnerable adults.
  3. **Primary and Secondary Person or Position to Ensure Internal Reviews are completed**
    - a. The internal review will be completed by the Quality Assurance Administrator
    - b. If this individual is involved in the alleged or suspected maltreatment, internal review will be completed by the Chief Operation Officer.

4. All employees will cooperate with investigations conducted internally by Quality Assurance.
5. Meridian Services, Incorporated, standard procedure is to suspend without pay any employee accused of committing a violation of the Minnesota Vulnerable Adult Act. Meridian Services will make every effort to conduct a speedy investigation. All employees are expected to cooperate with the investigation process. It may be grounds for termination if an employee fails to cooperate with the investigation process. It may be grounds for termination if an employee fails to cooperate with the investigation process. Any suspended employee may not return to work until they have been interviewed and the investigation process is completed, If the investigation determines that it is appropriate to do so the employee will be allowed to return to their normal work schedule.
6. The Quality Assurance Representative will call and set up interviews with the individuals that need to be interviewed for the investigation. Whenever possible Quality Assurance will interview the mandated reporter and any other witnesses first, prior to interviewing the alleged perpetrator. The interviews should take place in person, unless it is determined that a phone call interview will be sufficient.
7. Quality Assurance will begin the interview by asking general questions. As the interview progresses the questions should get more specific to the incident at hand. The interview questions should not be questions that lead the interviewee. It is the intent to get all personal accounts of the incident. The interview will be documented by Quality Assurance.
8. A report made by a mandated reporter is considered confidential and will not be discussed with anyone other than the supervisors responsible for the review and with those assisting with the investigations, both internally and externally.
9. Mandated reporters do not have access to the information relating to the investigation. Access to that information is limited to the supervisors responsible for the investigation and to those assisting with the investigation, both internally and externally.
10. All employees will cooperate fully during all internal and external investigations.

i. Documentation of internal review:

1. Meridian Services, Incorporated must document completion of the internal review and provide documentation of the review to DHS immediately upon the commissioner's request. When requested the internal review will also be sent to the county social service Agency (MINNESOTA ADULT ABUSE REPORTING CENTER/MAARC), Department of Human Services Investigation Unit, Chief Operating Officer, and the Chief Executive Officer. The original report will be filed securely with the original Vulnerable adult report.
2. The Quality Assurance representative of a designee will serve as the contact of Meridian Services, Incorporated with all outside investigating authorities. The Quality Assurance Representative along the appropriate Program administrator will ensure that all employees cooperate with all outside agencies,

j. Corrective Action Plan:

1. Based on the results of the internal review, Meridian Services, Incorporated must develop, document, and implement a corrective action plan designed to correct lapses and prevent future lapses in performance by individuals or the program, if any.
2. Once the reports and reviews have been completed or received, the Quality Assurance Representative, will review the findings of every investigation with the Chief Operating Officer and Program Administrator. They will also share these findings with the Chief Executive Officer and Chief Program Administrator together they will determine the plan of corrections or action to be taken. The action to be taken may include:
  - a. A personal note to the staff person regarding the specific incident.
  - b. A retraining in the related area of the policy or procedure that was not followed by the staff person
  - c. The transfer of a staff person to a different program or site location
  - d. Termination

- e. Any other conclusion as determined by the Chief Executive Officer (CEO), Chief Operating Officer (COO) or Chief Administrative Officer (CAO).
- f. The Chief Executive Officer (CEO), Chief Operating Officer (COO) or Chief Administrative Officer (CAO) will inform Quality Assurance of their decision so that it may be added to the conclusions of the internal investigation
- g. The Chief Operating Officer or Program Administrator will ensure that the implementation plan is completed and will provide evidence to the Quality Assurance Representative of its completion.

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## D. Orientation for Person Receiving Services

1. In order to promote understanding of the Vulnerable Adults Act by Persons served, Meridian Services, Incorporated will provide orientation and training to Persons served and representatives in a manner familiar to each individual.
2. Meridian Services, Incorporated shall provide an orientation to the internal and external procedures to all persons receiving services. The orientation shall include the telephone number for the Minnesota Adult Abuse Reporting Center/MAARC. A person's legal representative must be notified of the orientation.
3. Orientation and training to Persons served and representatives will be provided, the following procedure:
  - a. Meridian Services, Incorporated shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.
  - b. A orientation to the program abuse prevention plan will be provided to each Persons served, in a means familiar to them, within twenty-four (24) hours of admission.
  - c. The Persons served, and their personal representative if involved, will be asked to sign a form stating they have been in informed of their rights under the Vulnerable Adults Act, and understand the material. The orientation will be documented in the Persons served plan file by Direct Service Staff.



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## E. Staff Orientation and Training

1. In order to ensure that employees understand their responsibilities and the rights of Persons served under the Vulnerable Adults Act, Meridian Services, Incorporated will provide appropriate orientation and training to all employees (Mandated Reporters),
2. Orientation and training will be provided, using the following procedure:
  - a. Prior to employment, prospective applicants will be screened to determine if they have the background and characteristics suitable for working with people with developmentally disabilities.
  - b. Meridian Services, Incorporated shall ensure that each new mandated reporter receives an orientation within 72 hours of first providing direct contact services to a vulnerable adult and annually thereafter. The orientation and annual review shall inform the mandated reporter of the reporting requirements and definitions under Minnesota Statutes, section 626.557 and 626.5572, the requirements of Minnesota Statutes, section 245A.65, the programs program abuse prevention plan and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.
  - c. Opportunities will be available for questions, and a copy of these policies will be maintained in all Meridian Services, Incorporated offices and sites, to ensure that employee training is an ongoing process.
  - d. Meridian Services, Incorporated must document the provision of this training, monitor implementation by staff, and ensure that the policy is readily accessible to staff, as specified under Minnesota Statutes, section 245A.04, subdivision 14.
  - e. After initial orientation, and after annual training, employees will be requested to sign a form indicating they have been informed about their responsibilities as mandated reporters and the procedures outlined in this policy.

- f. Employees will be brought up to date as changes occur in the Vulnerable Adults Act.
- g. Meridian Services, Incorporated will maintain a list of persons providing services to Persons served who meet the definition of mandated reporters.

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## F. Employee Rights

1. All employees will be informed of employee rights during their Vulnerable Adult training.
2. Employee Rights:
  - a. Employees may bypass the internal reporting procedure and report directly to outside authorities.
  - b. Persons who make a false report in bad faith are liable in a civil suit for actual and punitive damages set by the court or jury.
  - c. The name of the reporter will be disclosed only upon a finding that the report was false and was made in bad faith.
  - d. Persons who make reports in good faith have immunity from civil liability.
  - e. An organization is prohibited from retaliation against any person who makes a report in good faith.
3. This reporting policy shall be posted in a prominent location, and be made available upon request.

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#### G. Minnesota Adult Abuse Reporting Center/MAARC Phone Numbers

1. Minnesota Adult Abuse Reporting Center/MAARC for Vulnerable Adult Maltreatment Reports (this number is in service at all hours):  
  
1-844-880-1574
  
2. The Office of Ombudsman and the Department of Human Services Licensing Division needs to be contacted immediately regarding issues of serious injury or death of a Persons served. Refer to section 3D Promotion of Persons served Health and Safety for definitions of what constitutes a serious injury.
  - a. Office of Ombudsman:  
  
651-757-1800  
Fax: 651-797-1950
  
  - b. Department of Human Services Licensing Division:  
  
651-431-6500  
Fax: 651-431-7673

Legal Authority: Minn. Stat. §§§§§ 626.557; 626.5572; 245A.65; 245A.04, subd. 14; 245D.09, subd. 4 (5)

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## H. Minnesota Statues

### 626.5572 DEFINITIONS.

#### Subdivision 1. **Scope.**

For the purpose of section [626.557](#), the following terms have the meanings given them, unless otherwise specified.

#### Subd. 2. **Abuse.**

"Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

(1) assault in the first through fifth degrees as defined in sections [609.221](#) to [609.224](#);

(2) the use of drugs to injure or facilitate crime as defined in section [609.235](#);

(3) the solicitation, inducement, and promotion of prostitution as defined in section [609.322](#); and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections [609.342](#) to [609.3451](#).

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section [245.825](#).

(c) Any sexual contact or penetration as defined in section [609.341](#), between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections [144.651](#), [144A.44](#), chapter 145B, 145C or 252A, or section [253B.03](#) or 524.5-313, 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.

**Subd. 3. Accident.**

"Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

(1) is not likely to occur and which could not have been prevented by exercise of due care; and

(2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

**Subd. 4. Caregiver.**

"Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

**Subd. 5. Minnesota Adult Abuse Reporting Center/MAARC.**

"Minnesota Adult Abuse Reporting Center/MAARC" means the entity designated by each county responsible for receiving reports under section [626.557](#).

**Subd. 6. Facility.**

(a) "Facility" means a hospital or other entity required to be licensed under sections [144.50](#) to [144.58](#); a nursing home required to be licensed to serve adults under section [144A.02](#); a residential or nonresidential facility required to be licensed to serve adults under sections [245A.01](#) to [245A.16](#); a home care provider licensed or required to be licensed under section [144A.46](#); a hospice provider licensed under sections [144A.75](#) to [144A.755](#); or a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections [256B.04](#), [subdivision 16](#), [256B.0625](#), [subdivision 19a](#), [256B.0651](#) to [256B.0656](#), and [256B.0659](#).

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

**Subd. 7. False.**

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

**Subd. 8. Final disposition.**

"Final disposition" is the determination of an investigation by a lead investigative 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 investigative agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

**Subd. 9. Financial exploitation.**

"Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section [144.6501](#), a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deMinnesota Adult Abuse Reporting Center/MAARction, 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 exMinnesota Adult Abuse Reporting Center/MAARct as otherwise required by law.

**Subd. 10. Immediately.**

"Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

**Subd. 11. Inconclusive.**



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

**Subd. 12. Initial disposition.**

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

**Subd. 13. 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](#).

**Subd. 14. Legal authority.**

"Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

**Subd. 15. Maltreatment.**

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

**Subd. 16. Mandated reporter.**

"Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section [214.01, subdivision 2](#); (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

**Subd. 17. Neglect.**

"Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

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

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections [144.651](#), [144A.44](#), chapter 145B, 145C, or 252A, or sections [253B.03](#) or [524.5-101](#) to [524.5-502](#), refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;  
or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual 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).

**Subd. 18. Report.**

"Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

**Subd. 19. Substantiated.**

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

**Subd. 20. Therapeutic conduct.**

"Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

**Subd. 21. Vulnerable adult.**

(a) "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](#), exMinnesota Adult Abuse Reporting Center/MAARCt that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-hold order for commitment, or 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 assistance services under the medical assistance program

as authorized under sections [256B.04, subdivision 16](#), [256B.0625, subdivision 19a](#), [256B.0651](#), [256B.0653](#) to [256B.0656](#), and 256B.0659; 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 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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## **626.557 REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.**

### **Subdivision 1. Public policy.**

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

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

### **Subd. 2.**

[Repealed, [1995 c 229 art 1 s 24](#)]

### **Subd. 3. Timing of report.**

(a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a

physical injury which is not reasonably explained shall immediately report the information to the Minnesota Adult Abuse Reporting Center/MAARC. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

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

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

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

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the Minnesota Adult Abuse Reporting Center/MAARC.

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

(e) A mandated reporter who knows or has reason to believe that an error under section [626.5572, subdivision 17](#), paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead investigative agency will determine or should determine that the reported error was not neglect according to the criteria under section [626.5572, subdivision 17](#), paragraph (c), clause (5), the reporter or facility may provide to the Minnesota Adult Abuse Reporting Center/MAARC or directly to the lead investigative agency information explaining how the event meets the criteria under section [626.5572, subdivision 17](#), paragraph (c), clause (5). The lead investigative agency shall consider this information when making an initial disposition of the report under subdivision 9c.

### **Subd. 3a. Report not required.**

The following events are not required to be reported under this section:

(1) A circumstance where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected maltreatment, unless the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected maltreatment from each patient or resident, or a guardian, conservator, or legal representative, upon the patient's or resident's admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected maltreatment shall immediately seek consent to make a report.

(2) Verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior by these persons does not constitute abuse unless the behavior causes serious harm. The operator of the facility or a designee shall record

incidents of aggression and self-abusive behavior to facilitate review by licensing agencies and county and local welfare agencies.

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

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

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

#### Subd. 4. **Reporting.**

(a) ExMinnesota Adult Abuse Reporting Center/MAARCt as provided in paragraph (b), a mandated reporter shall immediately make an oral report to the Minnesota Adult Abuse Reporting Center/MAARC. The Minnesota Adult Abuse Reporting Center/MAARC may accept Minnesota Adult Abuse Reporting Center/MAARCt electronic reports submitted through a Web-based reporting system established by the commissioner. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The Minnesota Adult Abuse Reporting Center/MAARC may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. A mandated reporter may disclose not public data, as defined in section [13.02](#), and medical records under sections [144.291](#) to [144.298](#), to the extent necessary to comply with this subdivision.

(b) A boarding care home that is licensed under sections [144.50](#) to [144.58](#) and certified under Title 19 of the Social Security Act, a nursing home that is licensed under section [144A.02](#) and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under sections [144.50](#) to [144.58](#) and has swing beds certified under Code of Federal Regulations, title 42, section [482.66](#), may submit a report electronically to the Minnesota Adult Abuse Reporting Center/MAARC instead of submitting an oral report. The report may be a duplicate of the initial report the facility submits electronically to the commissioner of health to comply with the reporting requirements under Code of Federal Regulations, title 42, section [483.13](#). The commissioner of health may modify these reporting requirements to include items required under paragraph (a) that are not currently included in the electronic reporting form.

***[See Note.]***

#### Subd. 4a. **Internal reporting of maltreatment.**

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

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

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the Minnesota Adult Abuse Reporting Center/MAARC, then the mandated reporter may report externally.

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

#### **Subd. 5. Immunity; protection for reporters.**

(a) A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section [609.234](#) or [626.557, subdivision 7](#).

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

(c) A person who knows or has reason to know a report has been made to a Minnesota Adult Abuse Reporting Center/MAARC and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, exMinnesota Adult Abuse Reporting Center/MAARCt as provided in subdivision 12b.

(e) For purposes of this subdivision, "person" includes a natural person or any form of a business or legal entity.

#### **Subd. 5a. Financial institution cooperation.**



Financial institutions shall cooperate with a lead investigative agency, law enforcement, or prosecuting authority that is investigating maltreatment of a vulnerable adult and comply with reasonable requests for the production of financial records as authorized under section [13A.02, subdivision 1](#). Financial institutions are immune from any civil or criminal liability that might otherwise result from complying with this subdivision.

**Subd. 6. Falsified reports.**

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

**Subd. 7. Failure to report.**

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

**Subd. 8. Evidence not privileged.**

No evidence regarding the maltreatment of the vulnerable adult shall be excluded in any proceeding arising out of the alleged maltreatment on the grounds of lack of competency under section [595.02](#).

**Subd. 9. Minnesota Adult Abuse Reporting Center/MAARC designation.**

(a) The commissioner of human services shall establish a Minnesota Adult Abuse Reporting Center/MAARC effective July 1, 2014. The Minnesota Adult Abuse Reporting Center/MAARC is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The Minnesota Adult Abuse Reporting Center/MAARC must be available 24 hours per day to take calls from reporters of suspected maltreatment. The Minnesota Adult Abuse Reporting Center/MAARC shall use a standard intake form that includes:

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

(8) the relationship of the alleged perpetrator to the alleged victim;  
(9) whether a facility was involved and, if so, which agency licenses the facility;  
(10) any action taken by the Minnesota Adult Abuse Reporting Center/MAARC;  
(11) whether law enforcement has been notified;  
(12) whether the reporter wishes to receive notification of the initial and final reports; and  
(13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The Minnesota Adult Abuse Reporting Center/MAARC is not required to complete each item on the form prior to dispatching the report to the appropriate lead investigative agency.

(d) The Minnesota Adult Abuse Reporting Center/MAARC shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead investigative agency, those agencies shall take the report on the appropriate Minnesota Adult Abuse Reporting Center/MAARC intake forms and immediately forward a copy to the Minnesota Adult Abuse Reporting Center/MAARC.

(f) The Minnesota Adult Abuse Reporting Center/MAARC staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

(g) The commissioner of human services shall maintain a centralized database for the collection of Minnesota Adult Abuse Reporting Center/MAARC data, lead investigative agency data including maltreatment report disposition, and appeals data. The Minnesota Adult Abuse Reporting Center/MAARC shall have access to the centralized database and must log the reports into the database and immediately identify and locate prior reports of abuse, neglect, or exploitation.

(h) When appropriate, the Minnesota Adult Abuse Reporting Center/MAARC staff must refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might resolve the reporter's concerns.

(i) A Minnesota Adult Abuse Reporting Center/MAARC must be operated in a manner that enables the commissioner of human services to:

(1) Track critical steps in the reporting, evaluation, referral, response, disposition, and investigative process to ensure compliance with all requirements for all reports;

(2) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation;

(3) Serve as a resource for the evaluation, management, and planning of preventative and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation;

(4) Set standards, priorities, and policies to maximize the efficiency and effectiveness of the Minnesota Adult Abuse Reporting Center/MAARC; and

(5) Track and manage Persons served complaints related to the Minnesota Adult Abuse Reporting Center/MAARC.

(j) The commissioners of human services and health shall collaborate on the creation of a system for referring reports to the lead investigative agencies. This system shall enable the commissioner of human services to track critical steps in the reporting, evaluation, referral, response, disposition, investigation, notification, determination, and appeal processes.

**[See Note.]**

**Subd. 9a. Evaluation and referral of reports made to Minnesota Adult Abuse Reporting Center/MAARC unit.**

The Minnesota Adult Abuse Reporting Center/MAARC must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the Minnesota Adult Abuse Reporting Center/MAARC determines that there is an immediate need for adult protective services, the Minnesota Adult Abuse Reporting Center/MAARC agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the Minnesota Adult Abuse Reporting Center/MAARC shall immediately notify the appropriate law enforcement agency;

(3) the Minnesota Adult Abuse Reporting Center/MAARC shall refer all reports of alleged or suspected maltreatment to the appropriate lead investigative agency as soon as possible, but in any event no longer than two working days; and

(4) if the report contains information about a suspicious death, the Minnesota Adult Abuse Reporting Center/MAARC shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman for mental health and developmental disabilities established under section [245.92](#). Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

**Subd. 9b. Response to reports.**

Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the Minnesota Adult Abuse Reporting Center/MAARC notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency,

county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section [13.02](#), and medical records under sections [144.291](#) to [144.298](#), that are maintained by facilities to the extent necessary to conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation.

**Subd. 9c. Lead investigative agency; notifications, dispositions, determinations.**

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

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

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

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

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

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

(d) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study

disqualification standards under section [245C.15, subdivision 4](#), and the licensing actions under section [245A.06](#) or [245A.07](#) apply.

(e) The lead investigative agency shall complete its final disposition within 60 calendar days. If the lead investigative agency is unable to complete its final disposition within 60 calendar days, the lead investigative agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's guardian or health care agent, when known, if the lead investigative agency knows them to be aware of the investigation; and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead investigative agency is unable to complete its final disposition by a subsequent projected completion date, the lead investigative agency shall again notify the vulnerable adult or the vulnerable adult's guardian or health care agent, when known if the lead investigative agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. The lead investigative agency must notify the health care agent of the vulnerable adult only if the health care agent's authority to make health care decisions for the vulnerable adult is currently effective under section [145C.06](#) and not suspended under section [524.5-310](#) and the investigation relates to a duty assigned to the health care agent by the principal. A lead investigative agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

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

(g) If, as a result of a reconsideration, review, or hearing, the lead investigative agency changes the final disposition, or if a final disposition is changed on appeal, the lead investigative agency shall notify the parties specified in paragraph (f).

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

(i) The lead investigative agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead investigative agency may not provide investigative memoranda for inconclusive or false reports to the appropriate

licensing boards unless the lead investigative agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

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

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

**Subd. 9d. Administrative reconsideration; review panel.**

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

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

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

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

(e) If an individual was disqualified under sections [245C.14](#) and [245C.15](#), on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections [245C.21](#) to [245C.27](#), reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section [256.045](#). If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section [245A.05](#) or a licensing sanction under section [245A.07](#), the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section [245A.08](#), the scope of the contested case hearing must include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section [256.045](#). ExMinnesota Adult Abuse Reporting Center/MAARCt for family child care and child

foster care, reconsideration of a maltreatment determination under this subdivision, and reconsideration of a disqualification under section [245C.22](#), must not be conducted when:

(1) a denial of a license under section [245A.05](#), or a licensing sanction under section [245A.07](#), is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections [626.556, subdivision 10i](#), and [626.557, subdivision 9d](#), and reconsideration of the disqualification shall be conducted under section [245C.22](#). In such cases, a fair hearing shall also be conducted as provided under sections [245C.27](#), [626.556, subdivision 10i](#), and [626.557, subdivision 9d](#).

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

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

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

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use



the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section [245C.31](#).

**Subd. 9e. Education requirements.**

(a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead investigative agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas: (1) information collection and preservation; (2) analysis of facts; (3) levels of evidence; (4) conclusions based on evidence; (5) interviewing skills, including specialized training to interview people with unique needs; (6) report writing; (7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies; (8) human relations and cultural diversity; (9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation; (10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation; (11) the methods by which lead investigative agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and (12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioner of human services shall conduct an outreach campaign to promote the Minnesota Adult Abuse Reporting Center/MAARC for reporting vulnerable adult maltreatment. This campaign shall use the Internet and other means of communication.

(c) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(d) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the Minnesota Adult Abuse Reporting Center/MAARC staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(e) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall conduct regional training for law enforcement personnel regarding their responsibility under this section.

(f) Each lead investigative agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead investigative agency investigator.

A lead investigative agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available.

All lead investigative agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

***[See Note.]***

**Subd. 10. Duties of county social service agency.**

(a) Upon receipt of a report from the Minnesota Adult Abuse Reporting Center/MAARC staff, the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult. The county shall use a standardized tool made available by the commissioner. The information entered by the county into the standardized tool must be accessible to the Department of Human Services. In cases of suspected sexual abuse, the county social service agency shall immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment. When necessary in order to protect the vulnerable adult from further harm, the county social service agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The county social service agency may also investigate to determine whether the conditions which resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

(b) County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section [13.02](#), and medical records under sections [144.291](#) to [144.298](#), that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

(c) When necessary in order to protect a vulnerable adult from serious harm, the county social service agency shall immediately intervene on behalf of that adult to help the family, vulnerable adult, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section [518B.01](#);

(2) the appointment of a guardian or conservator pursuant to sections [524.5-101](#) to [524.5-502](#), or guardianship or conservatorship pursuant to chapter 252A;

(3) replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections [524.5-101](#) to [524.5-502](#); or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section [524.5-502](#) and chapter 563.

In proceedings under sections [524.5-101](#) to [524.5-502](#), if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or protected person even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Subd. 10a.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 10b. **Investigations; guidelines.**

Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead investigative agency shall conduct the following activities, as appropriate:

- (1) interview of the alleged victim;
- (2) interview of the reporter and others who may have relevant information;
- (3) interview of the alleged perpetrator;
- (4) examination of the environment surrounding the alleged incident;
- (5) review of pertinent documentation of the alleged incident; and
- (6) consultation with professionals.

Subd. 11.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 11a.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 12.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 12a.

[Repealed, [1983 c 273 s 8](#)]

Subd. 12b. **Data management.**

(a) In performing any of the duties of this section as a lead investigative agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section [13.46](#). Notwithstanding section [13.46, subdivision 1](#), paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section [13.02](#). The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the Minnesota Adult Abuse Reporting Center/MAARC are confidential data on individuals or protected nonpublic data as defined in section [13.02](#). Notwithstanding section [138.163](#), the Minnesota Adult Abuse Reporting Center/MAARC shall maintain data for three calendar years after date of receipt and then destroy the data unless otherwise directed by federal requirements.

(b) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section [13.02](#). Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;
- (vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;
- (vii) a statement of any action taken by the facility;
- (viii) a statement of any action taken by the lead investigative agency; and
- (ix) when a lead investigative agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

- (i) the name of the vulnerable adult;
- (ii) the identity of the individual alleged to be the perpetrator;
- (iii) the identity of the individual substantiated as the perpetrator; and
- (iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) After the assessment or investigation is completed, the name of the reporter must be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, exMinnesota Adult Abuse Reporting Center/MAARCt that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) Notwithstanding section [138.163](#), data maintained under this section by the commissioners of health and human services must be maintained under the following schedule and then destroyed unless otherwise directed by federal requirements:

(1) data from reports determined to be false, maintained for three years after the finding was made;

(2) data from reports determined to be inconclusive, maintained for four years after the finding was made;

(3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and

(4) data from reports which were not investigated by a lead investigative agency and for which there is no final disposition, maintained for three years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) Each lead investigative agency must have a record retention policy.

(g) Lead investigative agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section [13.02](#), if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting

authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead investigative agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section [256.021](#) if the data are pertinent and necessary for a review requested under that section. Notwithstanding section [138.17](#), upon completion of the review, not public data received by the review panel must be destroyed.

(h) Each lead investigative agency shall keep records of the length of time it takes to complete its investigations.

(i) A lead investigative agency may notify other affected parties and their authorized representative if the lead investigative agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead investigative agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Subd. 13.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 14. **Abuse prevention plans.**

(a) Each facility, exMinnesota Adult Abuse Reporting Center/MAARCt home health agencies and personal care attendant services providers, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of: (1) the person's susMinnesota Adult Abuse Reporting Center/MAARCtibility to abuse by other individuals, including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

(c) If the facility, exMinnesota Adult Abuse Reporting Center/MAARCt home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the

risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

Subd. 15.

[Repealed, [1995 c 229 art 1 s 24](#)]

Subd. 16. **Implementation authority.**

(a) By September 1, 1995, the attorney general and the commissioners of health and human services, in coordination with representatives of other entities that receive or investigate maltreatment reports, shall develop the common report form described in subdivision 9. The form may be used by mandated reporters, county social service agencies, law enforcement entities, licensing agencies, or ombudsman offices.

(b) The commissioners of health and human services shall as soon as possible promulgate rules necessary to implement the requirements of this section.

(c) By December 31, 1995, the commissioners of health, human services, and public safety shall develop criteria for the design of a statewide database utilizing data collected on the common intake form of the Minnesota Adult Abuse Reporting Center/MAARC. The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

(d) By September 1, 1995, each lead investigative agency shall develop the guidelines required in subdivision 9b.

Subd. 17. **Retaliation prohibited.**

(a) A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) In addition to any remedies allowed under sections [181.931](#) to [181.935](#), any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to \$10,000, and attorney fees.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against

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

- (1) discharge or transfer from the facility;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services;
- (4) restriction or prohibition of access to the facility or its residents; or
- (5) any restriction of rights set forth in section [144.651](#).

**Subd. 18. Outreach.**

The commissioner of human services shall maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

**Subd. 19.**

[Repealed, [1995 c 229 art 1 s 24](#)]

**Subd. 20. Cause of action for financial exploitation; damages.**

(a) A vulnerable adult who is a victim of financial exploitation as defined in section [626.5572](#), subdivision 9, has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or \$10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.

**Subd. 21. Contested case hearing.**

When an appeal of a lead investigative agency determination results in a contested case hearing under chapter 245A or 245C, the administrative law judge shall notify the vulnerable adult who is the subject of the maltreatment determination and, if known, a guardian of the vulnerable adult appointed under section [524.5-310](#), or a health care agent designated by the vulnerable adult in a health care directive that is currently effective under section [145C.06](#), and whose authority to make health care decisions is



not suspended under section [524.5-310](#), of the hearing. The notice must be sent by certified mail and inform the vulnerable adult of the right to file a signed written statement in the proceedings. A guardian or health care agent who prepares or files a written statement for the vulnerable adult must indicate in the statement that the person is the vulnerable adult's guardian or health care agent and sign the statement in that capacity. The vulnerable adult, the guardian, or the health care agent may file a written statement with the administrative law judge hearing the case no later than five business days before commencement of the hearing. The administrative law judge shall include the written statement in the hearing record and consider the statement in deciding the appeal. This subdivision does not limit, prevent, or excuse the vulnerable adult from being called as a witness testifying at the hearing or grant the vulnerable adult, the guardian, or health care agent a right to participate in the proceedings or appeal the administrative law judge's decision in the case. The lead investigative agency must consider including the vulnerable adult victim of maltreatment as a witness in the hearing. If the lead investigative agency determines that participation in the hearing would endanger the well-being of the vulnerable adult or not be in the best interests of the vulnerable adult, the lead investigative agency shall inform the administrative law judge of the basis for this determination, which must be included in the final order. If the administrative law judge is not reasonably able to determine the address of the vulnerable adult, the guardian, or the health care agent, the administrative law judge is not required to send a hearing notice under this subdivision.

### **History:**

[1980 c 542 s 1](#); [1981 c 311 s 39](#); [1982 c 393 s 3,4](#); [1982 c 424 s 130](#); [1982 c 545 s 24](#); [1982 c 636 s 5,6](#); [1983 c 273 s 1-7](#); [1984 c 640 s 32](#); [1984 c 654 art 5 s 58](#); [1985 c 150 s 1-6](#); [1985 c 293 s 6,7](#); [1Sp1985 c 14 art 9 s 75](#); [1986 c 444](#); [1987 c 110 s 3](#); [1987 c 211 s 2](#); [1987 c 352 s 11](#); [1987 c 378 s 17](#); [1987 c 384 art 2 s 1](#); [1988 c 543 s 13](#); [1989 c 209 art 2 s 1](#); [1991 c 181 s 2](#); [1994 c 483 s 1](#); [1994 c 636 art 2 s 60-62](#); [1Sp1994 c 1 art 2 s 34](#); [1995 c 189 s 8](#); [1995 c 229 art 1 s 1-21](#); [1996 c 277 s 1](#); [1996 c 305 art 2 s 66](#); [2000 c 465 s 3-5](#); [1Sp2001 c 9 art 5 s 31](#); [art 14 s 30,31](#); [2002 c 289 s 4](#); [2002 c 375 art 1 s 22,23](#); [2002 c 379 art 1 s 113](#); [2003 c 15 art 1 s 33](#); [2004 c 146 art 3 s 45](#); [2004 c 288 art 1 s 80](#); [2005 c 56 s 1](#); [2005 c 98 art 2 s 17](#); [2005 c 136 art 5 s 5](#); [1Sp2005 c 4 art 1 s 55,56](#); [2006 c 253 s 21](#); [2007 c 112 s 55,56](#); [2007 c 147 art 7 s 75](#); [art 10 s 15](#); [2009 c 119 s 11-16](#); [2009 c 142 art 2 s 46,47](#); [2009 c 159 s 107](#); [2010 c 329 art 2 s 6](#); [2010 c 352 art 1 s 23](#); [2010 c 382 s 81](#); [2011 c 28 s 9-14,17](#); [2012 c 216 art 9 s 30,31](#); [2013 c 63 s 17](#); [2013 c 108 art 2 s 41-43](#); [art 8 s 57](#)