

SAMPLE Policy for Reporting Maltreatment of Vulnerable Adults

It is the policy of **[Adult Foster Care Provider]** to report all instances of alleged or suspected maltreatment of vulnerable adults (VA's) to the appropriate protective services department in accordance with MN Statute.

Maltreatment of VA's includes:

- Neglect by caregivers/others
- Financial exploitation
- Self-neglect
- Physical abuse
- Verbal abuse
- Emotional abuse
- Sexual abuse

All caregivers will be trained in the role and expectations of mandated reporters and the Vulnerable Adults Act. All persons receiving services and/or their legal representatives will receive orientation within 24 hours of admission.

The Common Entry Point (CEP) for Wright County is Wright County Human Services Intake at 763-682-7481.

Reports may be made to the CEP or internally to **[primary person]**.

If the reporter believes that administration is involved in the suspected maltreatment, the CEP should be contacted directly or contact **[secondary person]**.

Any internal report of suspected maltreatment of a VA should be documented on an incident report form.

Administration is responsible for forwarding internal incident reports regarding suspected maltreatment of VA's to the CEP.

If an internal report is made, the reporter will be provided a written notice within 2 business days stating whether the administration has reported the incident to the CEP. This written notice will note that the reporter may report directly to the CEP if reporter is not satisfied with the action taken by the administration. The written notice will also note that the administration is prohibited from retaliating against a mandated reporter who reports an incident to the CEP in good faith.

Internal review of incidents will include:

- Whether policies and procedures were followed
- Whether policies and procedures were adequate
- Whether there is a need for additional staff training
- Whether the incident is similar to past events with the VA
- Whether there is a need for further action to be taken by the administration or staff to protect the health and safety of vulnerable adults.

When required, internal reviews will be completed and determined by administration and a second person with sensitivity to gender and comfort level. Internal reviews will be documented and made accessible to the commissioner upon the commissioner's request.

[Attach Definitions and Internal Review Policy]

DEFINITIONS

"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.

"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.

"Financial exploitation" means:

- (a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:
 - (1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or
 - (2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.
- (b) In the absence of legal authority a person:
 - (1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;
 - (2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;
 - (3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or
 - (4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.
- (c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

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

"Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by:

- (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or
- (2) a caregiver.

"Vulnerable adult" means:

- (a) any person 18 years of age or older who:
 - (1) is a resident or inpatient of a facility;
 - (2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is 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 assistant 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.

SAMPLE Internal Review Policy Questions

1. Regarding the incident in question, were policies and procedures followed?
2. Are current policies and procedures adequate?
3. Is there a need for additional staffing?
4. Have similar events occurred with this Vulnerable Adult?
5. Is there is a need for further action to be taken by the administration or staff to protect the health and safety of the vulnerable adult?

Sample Letter to Reporter re: Internal Report

Date **[within 2 days of internal report]**

Dear **[reporter's name]**,

[Adult Foster Care Provider] received your internal report of suspected maltreatment of **[Vulnerable Adult's initials]**. The administration **[has or has not]** reported the incident to the Common Entry Point (CEP). If you are not satisfied with the action taken by the administration, you may report directly to the CEP. **[Adult Foster Care Provider]** is prohibited from retaliating against a mandated reporter who reports an incident to the CEP in good faith.

Thank you for your report.
[Adult Foster Care Provider]