

MN Vulnerable Adults



Role of Adult Protection
And
Reporting Suspected Maltreatment

Categorical Vulnerable Adult

626.5572 Subd. 21

- ▶ A person, 18 years of age or older, who is a:
 - ▶ Resident or inpatient of a facility; hospital, nursing home, ICFDD, residential or non-residential facility regulated by MDH or DHS,
 - ▶ Not in Emergency Department, have to be admitted
- ▶ Or
 - ▶ Receives services from a facility or service regulated under 245A (including PCA)
- ▶ Or
 - ▶ Recipient of home care or hospice services from provider regulated by MDH under 144A; includes Customized Living
 - ▶ Receiving waived services or having a case manager does not make a person a vulnerable adult.

Functional Vulnerable Adult 626.5572 Subd. 21

- ▶ A person 18 years of age or older who, regardless of residence or service has an:
 - ▶ impairment or disability, and because of this impairment has:
 - ▶ an impaired ability to meet basic needs
- ▶ ***And***
 - ▶ an impaired ability to protect self from maltreatment

What is Maltreatment

- ▶ Abuse (physical, sexual, emotional or mental)
 - ▶ Hitting, slapping, sexual contact, oral or written gestures, etc
- ▶ Neglect (caregiver or self)
 - ▶ Failure to provide for basic needs: food, clothing, shelter, health care or supervision, absence of essential services, etc
- ▶ Financial Exploitation (with or without legal relationship)
 - ▶ Failure to spend for the benefit of the VA, unauthorized spending, withholding or disposing funds, etc
- ▶ Accidents are not considered maltreatment

Abuse 626.5572 Subd. 2.

- ▶ Physical Assault *1st -5th Degree
- ▶ Criminal Sexual Conduct* 1st -5th Degree
- ▶ Any sexual contact by facility staff or licensed provider
- ▶ Use of drugs to injure or to facilitate a crime;
Inducement/solicitation/promotion of prostitution

Abuse continued

- ▶ Physical Conduct which produces pain, injury, emotional distress ex. hitting, kicking, pinching, biting, corporal punishment
- ▶ Emotional: Repeated or malicious oral, written, or gestured language or treatment that would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening
- ▶ Mental: Unauthorized aversive/deprivation procedures; unreasonable confinement/seclusion

Types of Neglect

Self Neglect

- ▶ Absence or likelihood of the absence of care or services, including food, shelter, clothing, health care or supervision a reasonable person would deem essential to maintain health, safety or comfort

Caregiver Neglect

- ▶ Failure or omission by caregiver to supply a VA with necessary care or services; food, shelter, clothing, health care or supervision
- ▶ Failure or omission to maintain VA's health or safety

Caregiver-Neglect or Self-Neglect

Caregiver Neglect

- ▶ Paid Caregiver
- ▶ PCA
- ▶ Verbal or Written Agreement to Provide the Necessary Care or Service the VA is Alleged to Not be Receiving or assumed responsibility of all or a portion for the care of a VA voluntarily.

Self Neglect

- ▶ Family has not Assumed Responsibility to Provide the Necessary Care or Service the VA is Alleged to Not be Receiving
- ▶ VA with Capacity, Refuses Family Provision of Necessary Care or Service

Financial Exploitation

FIDUCIARY

- ▶ Conservator/Power of Attorney
- ▶ Unauthorized use of funds which results in detriment to the vulnerable adult
- ▶ Failure to use vulnerable adult's assets to provide for needs which is likely to result in detriment to the vulnerable adult.

ANY PERSON-W/O FIDUCIARY OBLIGATION

- ▶ Willful use, withholding or disposal of a vulnerable adult's assets
- ▶ 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
- ▶ Acquires control of a vulnerable adult's assets through undue influence, harassment, duress, deception or fraud
- ▶ Forces, compels, coerces or entices a vulnerable adult to perform services for the advantage of another

Reporting

- ▶ When in doubt, make a report
- ▶ Minnesota Adult Abuse Reporting Center
 - ▶ 1-844-880-1574
- ▶ Mandated Reporters (only) can submit online reports at
 - ▶ <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6303-ENG>
- ▶ State-wide common entry point available 24 hours a day, 7 days a week

Who is a Mandated Reporter

626.5572 Subd. 16

- ▶ A Professional or professional's delegate while engaged in:
 - ▶ Social Services
 - ▶ Law Enforcement
 - ▶ Education
 - ▶ The care of vulnerable adult
 - ▶ Any occupation referred to in section 214.01, subd.2 (Health-related licensing board)
 - ▶ An employee of a rehab. facility
 - ▶ A person providing services in a facility
 - ▶ A person that performs the duties of the medical examiner or coroner.
 - ▶ Employee MDH or DHS licensed facility/service
 - ▶ MA Enrolled Provider

Reporting Requirements

- ▶ A mandated reporter shall immediately (24 hrs.) make an oral/written report to the MN Adult Abuse Reporting Center (MAARC)
 - ▶ Suspected maltreatment
 - ▶ Unexplained Injury
- ▶ A mandated reporter may disclose not public data
- ▶ Reporting requirements may be met by an internal reporting procedure

Protections for Good Faith Reporters - Minnesota Statute

- ▶ Reporters identity may not be disclosed unless the reporter consents or by court order
- ▶ Ability to disclose not public data 626.557 Subd. 4
- ▶ Immunity from civil or criminal liability resulting from reporting or participating in the investigation if acting in good faith
- ▶ Protection from employer retaliation for good faith reporting

Financial Institution Reporting

- ▶ **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

Gramm-Leach-Bliley Act (Federal)

Even without client consent, APS is authorized under the federal Gramm-Leach-Bliley Act to obtain a bank customer's records, because APS falls under the law's exceptions in that:

- ▶ 1) the purpose of viewing the records is to prevent actual or potential fraud, and
- ▶ 2) APS is authorized under state law to carry out civil investigations
- ▶ ***National Adult Protective Services Association letters to assist states in obtaining bank records during APS investigations
<http://www.napsa-now.org/get-informed/banks-and-aps/>

Exemptions from Reporting

- ▶ Federal law that prohibits release of information without patient consent
- ▶ Resident to resident abuse or self abuse not causing serious harm
- ▶ Accidents as defined in MN Statute 626.5572 Subd. 3
 - ▶ "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.
- ▶ Events in facilities that result from individual error in provision of therapeutic conduct
- ▶ When no maltreatment has occurred

Penalty for Failure to Report

- ▶ A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in MS 626.557 Subd. 7 imposes vicarious liability for the acts or omissions of others. Additionally, an individual may be disqualified from providing direct contact services for failing to make a required report (MS 245C.15, Subd. 4(b)). Facilities that fail to make mandated reports may be subject to a fine
- ▶ Criminal charges for failing to report are possible
- ▶ Loss of job

Minnesota Adult Abuse Reporting Center (MAARC)

- ▶ 24/7 reporting available
- ▶ 911, for crime in progress or if police or ambulance are needed; then return for reporting
- ▶ Operated under DHS

What Does MAARC Report Entail?

- ▶ WHO? Reporter, Alleged Perpetrator, VA, Witnesses, 1st Hand Reporter
- ▶ WHEN? Details of the incident date and time
- ▶ WHERE? Specifics as to location, address, and phone
- ▶ WHAT? All details pertaining to the incident you are reporting
- ▶ Impacts of maltreatment on VA
- ▶ Immediate risk of repeat maltreatment or serious harm to VA and
- ▶ Current protection plan

MAARC Mandated Reporter Web Reporting

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6303-ENG>

Refer to the [MAARC Mandated Reporter Guide](#) for information on using the web-based reporting system.

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Reporter/Information Source

First Name *	Middle Name	Last Name *				
<input type="text"/>	<input type="text"/>	<input type="text"/>				
Address Type *	Street Address *	Apt/Unit#	City *	State *	Zip Code * +4	County
Select one ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select ▼	<input type="text"/>	Select one ▼ +
Phone Type *	Phone Number *	Extension				
Select one ▼	<input type="text"/>	<input type="text"/>	+			
Email Type	Email Address					
Select one ▼	<input type="text"/>	+				

Yes No Does the Reporter/Information Source wish to receive notification of the status of the report? *

Yes No Is this information being entered by a member of Law Enforcement, MDH, DHS or County on behalf of a reporter as required by MN Stat. 626.557, Subd. 9(e)? *

First Name	Last Name					
<input type="text"/>	<input type="text"/>					
Phone Type	Phone Number	Extension				
Select one ▼	<input type="text"/>	<input type="text"/>	+			
Email Type	Email Address					
Select one ▼	<input type="text"/>	+				

Are you the Designated Facility Reporter for a DHS licensed provider or a MDH licensed provider? *

Yes, MDH licensed provider Yes, DHS licensed provider No Don't know

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Who are the Lead Investigative Agencies (LIA)?

MAARC Referral to Lead Investigative Agency (civil investigation)

- ▶ MN Department of Human Services; Licensing
- ▶ MN Department of Health; Health Regulation Division
- ▶ County Adult Protective Services
- ▶ Local Law Enforcement

Intake/Screening Process

- ▶ All reports received at the county are screened by county adult protection screening team.
 - ▶ To determine if VA- person has to meet criteria before an investigation can be screened in
 - ▶ To determine if maltreatment occurred
- ▶ Using County Prioritization Guidelines
 - ▶ Is there a role for APS
 - ▶ Is there a Case Manager involved

Lead Investigative Agency

- ▶ Initial disposition within 5 business days
- ▶ Notify reporter initial disposition (if reporter asked for it)
- ▶ Final Disposition within 60 days (does not go to the reporter)

Emergency Protective Services

- ▶ The county social service agency is responsible for providing emergency services to stop maltreatment and prevent further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult
- ▶ Law enforcement required to cooperate
- ▶ EPS is different than conducting an investigation and is done regardless of the LIA

Emergency Protective Services

- ▶ Immediate- within 24 hours
- ▶ Person is not safe or will not be safe
- ▶ Current danger-suggests injury or death will occur generally within a weeks time
- ▶ Loss of Health- ex. Hypothermia, dehydration, environmental hazard
- ▶ Recent Sexual Assault- within several weeks for which VA has not received medical attention
- ▶ Serious Injury- injuries that would be considered serious by a physician
 - ▶ ex. Bone fracture, head injury, 2nd to 3rd degree burns, near drowning, suicide attempt

Investigation Process

- ▶ Starts with a screened in MAARC report
- ▶ Coordinate with law enforcement if necessary
- ▶ Contact reporter and collateral contacts
- ▶ Interview VA; refer for necessary services
- ▶ Interview alleged perpetrator and alleged victim

Investigation continued

▶ Collect data

- ▶ Previous services, previous reports, police reports

- ▶ Medical information, home care agencies, banks, neighbors, reporter, guardian, relatives, fire department, ambulance

▶ Make Determination (60 days)

Duties of the County APS

Adult Protection is charged with offering services in least restrictive manner to:

- ▶ Prevent further maltreatment
- ▶ Safeguard the vulnerable person
- ▶ In the event of a Sexual Assault; immediate medical exam
- ▶ Seek authority to remove vulnerable person
- ▶ Determine if other vulnerable adults are in jeopardy

Duties of the County APS Continued

- ▶ Assist with obtaining a restraining order to remove the perpetrator from the VA's residence
- ▶ Guardianship/Conservatorship
- ▶ Referral for criminal prosecution

Final Dispositions

- ▶ **Substantiated** – preponderance of evidence shows maltreatment occurred- over 51%
- ▶ **False** – preponderance of evidence shows maltreatment did not occur
- ▶ **Inconclusive** – less than preponderance of evidence to show that maltreatment did or did not occur
- ▶ No determination made
 - ▶ Investigation not possible (unable to locate client, client refuses investigation)
 - ▶ Determined not a VA

Penalties for Substantiated Maltreatment

- ▶ Loss of right to work in a facility or agency
- ▶ Loss of professional license
- ▶ Fines
- ▶ Criminal penalties

Other Protective Measures

- ▶ Referral for in-home services
- ▶ Referral for MNCHOICES
- ▶ Referral for community services including case management
- ▶ Assistance in obtaining needed services, such as health care, transportation, cash assistance, credit counseling, food basket, etc

Guardianship/Conservatorship

- ▶ Will only be considered if substantiated maltreatment occurred
- ▶ Less restrictive alternatives have been explored
- ▶ No responsible others are available, willing or able to assist
- ▶ **BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS**
 - ▶ MN Statute 524.5-120
 - ▶ Examples, drinking, driving, forcing to take medications
- ▶ Guardianship is not used for the sole purpose to change behaviors

Guardianship Exclusions

- ▶ MAARC report cannot be made for the sole purpose of requesting guardianship/conservatorship
- ▶ Initiation of emergency medical procedures
- ▶ For the sole purpose to assist in managing affairs
- ▶ As follow-up to commitment when no maltreatment is present, unless the case managers initiates
- ▶ Property or financial transactions to facilitate payment of nursing home costs
- ▶ For the sole purpose of admittance to a facility such as nursing homes and specialized hospitals

For More Information

- ▶ MN DHS Website:

- ▶ <http://www.dhs.state.mn.us>

- ▶ MN Dept. of Health Website:

- ▶ <http://www.health.state.mn.us>

- ▶ MN Statutes chapter 626.557:

- ▶ <http://www.leg.state.mn.us/leg/statutes.asp>

Thank you for your interest

Coreen Graham

Clay County Social Services

Adult Protection

218-299-7154

Coreen.graham@co.clay.mn.us

Tracy Lundon

Clay County Social Services

Adult Protection

218-299-7824

Tracy.Lundon@co.clay.mn.us