

Maltreatment of Vulnerable Adults Reporting and Internal Review Policy Merrick, Inc.

1.00 Purpose:

The purpose of this policy is to detail the administration procedures used to enforce the requirements of Minnesota's Vulnerable Adult Act and Minnesota Statutes (MS), Section 245A.65.

2.00 Application:

This policy applies to each client receiving services from Merrick, Inc., and any individual who is either employed by, volunteers, or has a service agreement with Merrick, Inc.

3.00 Policy Statement:

Action shall be taken to reduce or eliminate the likelihood of maltreatment, but does not preclude a client's right to risk in habilitation programming and to engage in the process of establishing typical patterns of activity. Merrick, Inc., will cooperate to the fullest extent possible with the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC) and the Lead Administrative Agency in the process of minimizing risks, and with the reporting and investigating of suspected maltreatment.

4.00 Procedures:

4.10 Reporting suspected maltreatment of a vulnerable adult:

4.11 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 time initial knowledge that the incident occurred has been received.

4.20 Making an external or an internal report:

4.21 You may make an external report by calling the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC) @ 844-880-1574 or using the online reporting tool @ mn.gov/dhs/reportadultabuse.

4.22 Internal Reports can be made to the following Merrick, Inc., designated internal reporters:

- At the 3210 site, reports can be made to a Program Director or a Program Support Manager.
- At the ADS site, reports can be made to the Program Training and Resource Director or the Support Services Coordinator-ADS.

4.23 If the person in 4.22 is involved in the alleged or suspected maltreatment, you must report to another Merrick, Inc., designated internal reporter who is not involved in the alleged or suspected maltreatment.

4.30 Internal report:

4.31 When an internal report is received, a Merrick, Inc., designated internal reporter is responsible for deciding if a report to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC) is required and, if required, calling the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC). If that person is involved in the suspected maltreatment, another Merrick, Inc., designated internal reporter will assume responsibility for deciding if the report must be forwarded to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC).

4.32 The report to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/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.

If you have reported internally, you must receive, within two working days, a written notice that tells you whether or not your report has been forwarded to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/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 Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC), you may still make an external report to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC). It must also inform you that you are protected against retaliation by the program if you make a good faith report to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC).

4.40 What to report:

4.41 Definitions of maltreatment of vulnerable adults are contained in Minnesota Statutes, section [626.5572](#) and are attached to this policy.

4.42 An external or internal report should contain enough information 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.

4.50 Failure to Report:

4.51 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.

4.60 Internal Review:

4.61 When the program knows that an internal or external report of 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.

4.62 The internal review must include an evaluation of whether:

4.621 related policies and procedures were followed;

- 4.622 the policies and procedures were adequate;
 - 4.623 there is a need for additional staff training;
 - 4.624 the reported event is similar to past events with the vulnerable adults or the services involved; and
 - 4.625 there is a need for corrective action by the program to protect the health and safety of vulnerable adults.
- 4.63 The internal review will be completed within 30 calendar days of the report to the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC).
- 4.64 The internal review must be made accessible to the Commissioner immediately upon the Commissioner's request for internal reviews regarding maltreatment.
- 4.70 Primary and secondary person or position to ensure internal reviews are completed:
- 4.71 Internal Reviews are conducted by:
- At the 3210 site, internal reviews of allegations of maltreatment can be conducted by a Program Director or an individual designated by the Executive Director.
 - At the ADS site, internal reviews of allegations of maltreatment can be conducted by the Program Training and Resource Director, the Support Services Coordinator-ADS, or an individual designated by the Executive Director.
- 4.72 If a person in a position listed above is involved in the alleged or suspected maltreatment, the internal review will be completed by another Program Director for the 3210 site or an alternate person for the ADS site. If necessary, for either site the Executive Director will designate a person to conduct the review.
- 4.80 Documentation of the internal review:
- 4.81 The program must document completion of the internal review and provide documentation of the review to the DHS upon the commissioner's request.
- 4.90 Corrective action plan:
- 4.91 Based on the results of the internal review, the program must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or the program, if any.
- 4.100 Orientation for persons receiving services
- 4.101 The program shall provide an orientation of the internal and external reporting procedures to all persons receiving services. The orientation shall include the telephone number for the Common Entry Point/Minnesota Adult Abuse Reporting Center (CEP/MAARC). A person's legal representative must be notified of the orientation.

4.102 The program shall provide this orientation for each new person within 24 hours of admission, or if persons who would benefit more from a later orientation, the orientation may take place within 72 hours.

4.200 Staff training

4.201 The program 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, sections [626.557](#) and [626.5572](#), the requirements of Minnesota Statutes, section 245A.65, the program's program abuse prevention plan, and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.

4.202 The program 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.

THIS REPORTING POLICY SHALL BE POSTED IN A PROMINENT LOCATION, AND BE MADE AVAILABLE UPON REQUEST.

Definitions of Maltreatment of Vulnerable Adults MINNESOTA STATUTES, SECTION 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. 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, 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.

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. 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 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).