

1 Department of Public Welfare

2 Support Services Bureau

3

4 Adopted Rule Concerning the Investigation and Reporting of

5 Maltreatment of Vulnerable Adults in DPW Facilities (12 MCAR S

6 2.010)

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8 Rule as Adopted

9 12 MCAR S 2.010 Reporting maltreatment of vulnerable adults in
10 licensed facilities.

11 A. Applicability. Rule 12 MCAR S 2.010 applies to
12 residential and nonresidential programs providing services to
13 adults and programs required to be licensed pursuant to
14 Minnesota Statutes, sections 245.781 to 245.812 to provide
15 services to adults who are handicapped by reason of mental
16 retardation, mental illness, chemical dependency, or physical
17 handicap.

18 B. Definitions. As used in 12 MCAR S 2.010, the following
19 terms have the meanings given them.

20 1. Abuse. "Abuse" means:

21 a. Any act which constitutes a violation of Minnesota
22 Statutes, section 609.322, related to prostitution;

23 b. Any act which constitutes a violation of Minnesota
24 Statutes, sections 609.342 to 609.345, related to criminal
25 sexual conduct; or

26 c. The intentional and nontherapeutic infliction of
27 physical pain or injury, or any persistent course of conduct
28 intended to produce mental or emotional distress.

29 2. Agency. "Agency" means any individual, organization,
30 association, or corporation which regularly provides services to
31 adults and is licensed by the Department of Public Welfare
32 pursuant to Minnesota Statutes, sections 245.781 to 245.812, for
33 gain or otherwise, regularly provides needed social service or
34 counseling services for clients who may be living in their own
35 homes or which receives clients unable to remain in their own

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1 homes and places them in alternate living situations, and is
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 3 required to be licensed to provide these services for adults
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 5 pursuant to Minnesota Statutes, sections 245.781 to 245.812 who
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 7 are handicapped by reason of mental retardation, mental illness,
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 9 chemical dependency, or physical handicap.
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6 3. Client. "Client" means a vulnerable adult, as defined
 7 in ~~is~~ any person 18 years of age or older who is a resident of a
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 9 facility or who receives services at or from a program.
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9 4. Client representative. "Client representative" means
 10 any family member, legal guardian, or other interested person
 11 acting or speaking in place of a client or on behalf of a client.
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12 5. Facility. "Facility" means a residential or
 13 nonresidential facility providing services to adults and
 14 licensed by the Department of Public Welfare pursuant to
 15 Minnesota Statutes, sections 245.781 to 245.812 required to be
 16 -----
 17 licensed to provide services to adults who are handicapped by
 18 -----
 19 reason of mental retardation, mental illness, chemical
 20 -----
 21 dependency, or physical handicap.
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19 6. Governing body. "Governing body" means the
 20 individual, corporation, partnership, voluntary association, or
 21 other public or private organization legally responsible for the
 22 operation of a day care or residential facility or service or
 23 agency.
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24 7. Interdisciplinary team. "Interdisciplinary team"
 25 means the individuals from the various disciplines which are
 26 required by Department of Public Welfare licensing rules to be
 27 involved in program and treatment planning. If only one person
 28 is designated by the rule under which the program is licensed to
 29 develop the individual program plan with the client, this person
 30 shall consult with members of other disciplines as required by
 31 that licensing rule to be involved in developing the individual
 32 program or treatment plan If the licensing rule designates only
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 34 one person to develop the individual program plan with the
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 36 client, but requires that this person consult with members of
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 38 other disciplines in developing the individual program or
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 40 treatment plans, this designated person must also consult with
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1 members of these disciplines in developing the individual abuse
2 prevention plans. The designated person plus these consulting
3 members shall be considered the "interdisciplinary team" for
4 purposes of 12 MCAR S 2.010.

5 8. Investigative authority. "Investigative authority"
6 means the local police department, county sheriff, local welfare
7 agency, or appropriate licensing or certifying agency.

8 9. Mandated reporter. "Mandated reporter" means each
9 employee of a program and each person providing client-related
10 services in or to a program a person specified in Minnesota
11 Statutes, section 626.557, subdivision 3.

12 10. Neglect. "Neglect" means failure by a caretaker to
13 supply or to ensure the supply of necessary food, clothing,
14 shelter, health care, or supervision for a client.

15 11. Program. "Program" means a residential or
16 nonresidential facility or an agency providing services to
17 adults and licensed by the Department of Public Welfare pursuant
18 to Minnesota Statutes, sections 245.781 to 245.812 required to
19 be licensed pursuant to Minnesota Statutes, sections 245.781 to
20 245.812 to provide services to adults who are handicapped by
21 reason of mental retardation, mental illness, chemical
22 dependency, or physical handicap.

23 12. Vulnerable adult. "Vulnerable adult" means any
24 person 18 years of age or older who is a resident of a facility
25 or who receives services at or from a program.

26 C. Program abuse and neglect prevention plan.

27 1. Requirement. The program's governing body shall
28 establish and enforce a written abuse and neglect prevention
29 plan. This plan shall be completed within 60 days of the
30 effective date of this rule.

31 2. Plan contents. The plan must contain the following
32 information:

33 a. An assessment of the population, the environment
34 and physical plant for of each facility and for of each site
35 when where living arrangements are provided by an agency, and
36 its environment, identifying the factors which may encourage or

1 permit abuse or neglect;

2 b. A description of the specific steps which will be
3 or have been taken to minimize the risk of abuse or neglect
4 identified in any of the assessed areas, including physical
5 plant repairs and modifications responsive to problems in the
6 program's environment where necessary A description of any
7 identified corrective action that will be taken, based on the
8 assessment, including training staff, adjusting staffing
9 patterns, or initiating new procedures or any needed
10 modifications of the physical plant or environment that have
11 been identified as a result of the assessment; and

12 c. A timetable for the implementation of any
13 identified corrective actions that will need to be taken, such
14 as training staff, initiating new procedures, or adjusting
15 staffing patterns to minimize the risk of abuse.

16 3. Assessment factors.

17 a. The assessment of the population shall include an
18 evaluation of the following factors: the age, sex, mental
19 functioning, physical and emotional health or behavior of
20 clients, the need for specialized programs of care for clients,
21 the need for training of staff to meet identified resident
22 needs, and the existence of a documented history of abuse or
23 neglect of clients and the knowledge a program may have
24 regarding previous abuse that is relevant to minimizing risk of
25 abuse for clients.

26 b. The assessment of the physical plant, if required,
27 for each facility and for each site when living arrangements are
28 provided by an agency shall include an evaluation of the
29 following factors: the condition and design of the building as
30 it relates they relate to the safety of the clients and the
31 existence of areas in the building which are difficult to
32 supervise.

33 c. The assessment of the environment, if required, for
34 each facility and for each site when living arrangements are
35 provided by the agency shall include an evaluation of the
36 following factors: the location of the program in a particular

1 neighborhood or community, the type of grounds surrounding the
2 building, the type of internal programming, and the program's
3 staffing patterns, and the existence of a documented history of
4 abuse or neglect by staff.

5 4. Plan review. The program's governing body shall
6 review the plan at least annually using the assessment factors
7 in the plan and any reports of abuse or neglect that have
8 occurred. The governing body shall revise the plan, if
9 necessary, so that it reflects the results of the review.

10 5. Plan orientation for clients. The program shall
11 provide for its clients a general orientation to the program
12 abuse and neglect prevention plan. Client representatives shall
13 have the opportunity to be included in the orientation. The
14 program shall provide this initial orientation within 60 days
15 after the effective date of this rule, and, thereafter, for each
16 new client within 24 hours of admission. The program shall
17 provide for its clients in a means familiar to them, a general
18 orientation to the program abuse prevention plan, unless a
19 determination has been made that a client is unable to
20 comprehend the orientation and the reason is documented in the
21 individual abuse prevention plan. Client representatives shall
22 have the opportunity to be included in the orientation, and for
23 clients unable to comprehend, client representatives shall have
24 the opportunity to receive the orientation in place of the
25 client. When their identities are known, client representatives
26 must be notified when the orientation will take place. The
27 program shall provide this initial orientation within 60 days
28 after the effective date of this rule, and thereafter, for each
29 new client within 24 hours of admission or for clients who would
30 benefit more from a later orientation, the orientation may take
31 place within 72 hours. The need for this delay shall be
32 documented at the time of admission.

33 6. Plan distribution. The program shall post a copy of
34 the plan in a prominent location in the facility and at each
35 site when living arrangements are provided by an agency and have
36 a copy available for review by clients, client representatives,

1 and mandated reporters upon request.

2 D. Individual abuse and neglect prevention plan.

3 1. Requirement. The client's interdisciplinary team
4 shall develop an individual abuse and neglect prevention plan,
5 and this plan shall be implemented for each client. The team
6 shall develop a plan for each current client within 60 days
7 after the effective date of this rule and, thereafter, for each
8 new client as part of the initial individual program plan, as
9 required by the Department of Public Welfare rule under which
10 the program is licensed.

11 2. Plan contents. The plan must be a part of the
12 client's individual program plan and must include the following
13 information:

14 a. An assessment of the client's susceptibility to
15 abuse, including self-abuse and neglect;

16 b. A statement of the specific measures which will be
17 taken to minimize the risk of abuse and neglect to the
18 individual client when the individual assessment indicates the
19 need for specific measures in addition to the general measures
20 specified in the program abuse and neglect prevention plan. The
21 program has the responsibility to take all reasonable measures
22 to minimize the risk of abuse to its clients. These measures
23 shall include specific actions the program will take if the
24 client is susceptible to abuse within the scope of licensed
25 services. These measures shall also include referrals the
26 program may reasonably make if the client is susceptible to
27 abuse outside the scope of licensed services; and

28 c. Documentation of results of the individual
29 assessment when it does not indicate the need for specific
30 measures in addition to the general measures specified in the
31 program abuse and neglect prevention plan.

32 3. Plan review. The review and evaluation of the
33 individual abuse and neglect prevention plan shall be done as
34 part of the review of the client's individual program plan. The
35 interdisciplinary team shall review the abuse and neglect
36 prevention plans at least annually, utilizing the individual

1 assessment and any reports of abuse or neglect relating to the
2 client. The plan shall be revised to reflect the results of
3 this review.

4 4. Client participation. Whenever possible, the client
5 shall participate in the development of the individual abuse and
6 neglect prevention plan. The client shall have the right to
7 have a client representative participate with or for the client
8 in the development of the plan. If the client or client
9 representative does not participate, the reasons shall be
10 documented by the team in the plan.

11 E. Internal reporting and investigation system and records.

12 1. Establishment. The program's governing body shall
13 establish and enforce internal written reporting and
14 investigating policies and procedures for abuse and neglect,
15 including suspected or alleged abuse and neglect. The same
16 policies and procedures shall apply in all cases, regardless of
17 the results of the internal investigation. The program shall
18 develop the internal reporting and investigation system within
19 60 days after the effective date of 12 MCAR S 2.010.

20 2. Reporting. The policies and procedures must include a
21 process for the mandatory reporting of abuse or neglect of
22 vulnerable adults clients. The policies and procedures must
23 specify how reports are to be made and provide for all reports
24 to be made promptly when a mandated reporter has reasonable
25 cause to believe that a client is being or has been abused or
26 neglected, or has knowledge that a client has sustained a
27 physical injury which is not reasonably explained by the
28 client's history of injuries. The policies and procedures shall
29 also contain a provision that persons other than mandated
30 reporters may and should report incidents of abuse or neglect
31 and shall identify the persons to whom internal reports should
32 be made. The procedure shall specify that reports may be made
33 directly to the outside investigative authorities or to the
34 person designated by the program or both. The person
35 responsible for forwarding internal reports to outside
36 authorities shall be clearly identified. All mandated reporters

1 shall be informed of their responsibility to ensure that their
2 report reaches the appropriate outside investigative
3 authorities. Reporters shall be informed when a report has been
4 forwarded and to whom it has been forwarded. Reports shall
5 include the following information:

- 6 a. The name and location of the client and the program;
- 7 b. The nature of the abuse or neglect;
- 8 c. Pertinent dates and times;
- 9 d. Any history of abuse or neglect;
- 10 e. The name and address of the reporter;
- 11 f. The name and address of the alleged perpetrator;

12 and

- 13 g. Any other information that might be helpful in
14 investigating the abuse or neglect.

15 3. Investigation. The policies and procedures shall
16 include identification of the person responsible for the
17 internal review and investigation of abuse or neglect. However,
18 if the person responsible for the review and investigation is
19 suspected of committing the abuse or allowing the neglect,
20 another person shall be designated to conduct the review and
21 investigation.

22 4. Records. The policies and procedures shall include a
23 provision requiring that records are maintained regarding the
24 internal review and investigation of cases of abuse and
25 neglect. These records shall contain a summary of the findings,
26 persons involved, persons interviewed, persons and investigating
27 authorities notified, conclusions and any actions taken. The
28 records shall be dated and authenticated by signature and
29 identification of the person doing the review and investigation.

30 5. Communication. The policies and procedures shall
31 include a provision requiring the communication of all knowledge
32 and written information regarding incidents of abuse or neglect
33 to the Department of Public Welfare.

34 6. Cooperation. The policies and procedures shall
35 include a provision requiring the cooperation of the program
36 with the department in the course of the investigation.

1 7. Orientation for clients. The program shall provide
2 for its clients an orientation to the internal reporting
3 system. Client representatives shall have the opportunity to be
4 included in the orientation. The program shall provide this
5 initial orientation within 60 days after the effective date of
6 this rule and, thereafter, for each new client within 24 hours
7 of admission. The program shall provide for its clients, in a
8 means familiar to them, an orientation to the internal reporting
9 system, unless a determination has been made that a client is
10 unable to comprehend the orientation and the reason is
11 documented in the individual abuse prevention plan. Client
12 representatives shall have the opportunity to be included in the
13 orientation, and for clients unable to comprehend, client
14 representatives shall have the opportunity to receive the
15 orientation in place of the client. When their identities are
16 known, client representatives must be notified when the
17 orientation will take place. The program shall provide this
18 initial orientation within 60 days after the effective date of
19 this rule, and thereafter for each new client within 24 hours of
20 admission or for clients who would benefit more from a later
21 orientation, the orientation may take place within 72 hours. The
22 need for this delay shall be documented at the time of admission.

23 8. Distribution of copies. The program shall post a copy
24 of the internal reporting policies and procedures in a prominent
25 location in the facility or at the offices of an agency and have
26 it available upon request to mandated reporters, clients, and
27 client representatives.

28 F. Personnel requirements.

29 1. Orientation of reporters. Within 60 days after the
30 effective date of this rule, the program shall inform mandated
31 reporters about the requirements of Minnesota Statutes, section
32 626.557, the provisions of 12 MCAR S 2.010, and all internal
33 policies and procedures related to vulnerable adults clients.
34 All staff shall be informed that individuals, other than those
35 mandated to report, may report suspected cases of abuse or
36 neglect to the appropriate investigative authorities and that

1 staff must provide information to those requesting it regarding
2 the procedure for contacting the authorities. Thereafter, the
3 program shall provide this orientation for new mandated
4 reporters no later than during the first shift worked within 72
5 hours of employment. -----

6 2. Training. The program shall conduct in-service
7 training at least annually for mandated reporters to review
8 Minnesota Statutes, section 626.557, the provisions of 12 MCAR S
9 2.010, and all internal policies and procedures related to
10 vulnerable adults clients. -----

11 3. List of persons providing services. The program shall
12 establish and maintain a current list of persons who provide
13 services in or to the program who meet the definition of a
14 mandated reporter.