

1 Department of Public Welfare

2

3 Adopted Rule Governing the Investigation and Reporting of
4 Maltreatment of, and Some Aspects of the Provision of Protective
5 Services to, Vulnerable Adults (12 MCAR S 2.221)

6

7 Rule as Adopted

8 12 MCAR S 2.221 Protective services by local social services
9 agencies to vulnerable adults.

10 A. Applicability. 12 MCAR S 2.221 governs the
11 administration and provision by local social services agencies
12 of the protective services to vulnerable adults which are
13 required by investigation and reporting of maltreatment of
14 vulnerable adults and some aspects of the emergency and
15 continuing protective social services required to be furnished
16 by local social services agencies under Minn. Stat. S 626.557.

17 B. Definitions. As used in 12 MCAR S 2.221, the following
18 terms have the meanings given them.

19 1. Abuse. "Abuse" means:

20 a. Any act which constitutes a violation of Minn.
21 Stat. S 609.322 related to prostitution;

22 b. Any act which constitutes a violation of Minn.
23 Stat. SS 609.342-609.345 related to criminal sexual conduct; or

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

27 2. Caretaker. "Caretaker" means an individual or
28 facility which has responsibility for the care of a vulnerable
29 adult as a result of family relationship, or which has assumed
30 responsibility for all or a portion of the care of the
31 vulnerable adult voluntarily, by contract, or by agreement. A
32 person who has assumed only financial responsibility for an
33 adult is not a caretaker.

34 3. County of financial responsibility. "County of
35 financial responsibility" means the county designated as the
36 county of financial responsibility pursuant to Minn. Stat. S

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1 256E.08, subd. 7.

2 3- 4. Facility. "Facility" means a hospital or other
3 entity required to be licensed pursuant to Minn. Stat. SS
4 144.50-144.58; a nursing home required to be licensed pursuant
5 to Minn. Stat. S 144A.02; an agency, day care facility, or
6 residential facility required to be licensed pursuant to Minn.
7 Stat. SS 245.781-245.812; a mental health program receiving
8 funds pursuant to Minn. Stat. S 245.61; and any entity required
9 to be certified for participation in Titles XVIII or XIX of the
10 Social Security Act, 42 U.S.C. 1395 et seq.

11 4- 5. False. "False" means unsubstantiated disproved to
12 the satisfaction of the investigating agency.

13 5- 6. Host county. "Host county" means the county in
14 which a facility is located.

15 6- 7. Impairment of mental or physical function or
16 emotional status. "Impairment of mental or physical function or
17 emotional status" means a condition which includes being
18 substantially unable to carry out one or more of the essential
19 major activities of daily living, such as caring for oneself,
20 performing manual tasks, walking, seeing, hearing, speaking,
21 breathing, learning or working; being unable to protect oneself
22 from hazardous or abusive situations without assistance; a
23 substantial disorder of thought or mood which significantly
24 impairs judgment, behavior, capacity to recognize reality or
25 ability to cope with the ordinary demands of life; substantial
26 difficulty in engaging in the rational decision-making process
27 and inability to weigh the possible benefits and risks of
28 seeking assistance; a condition in which an individual is so
29 fearful, so ashamed, so confused, or so anxious about the
30 consequences of reporting that that individual would be unable
31 or unlikely to make a responsible decision regarding whether or
32 not to report abuse or neglect.

33 7- 8. Licensing agency. "Licensing agency" means:

- 34 a. The Commissioner of Health, for a facility which is
- 35 required to be licensed or certified by the Department of Health;
- 36 b. The Commissioner of Public Welfare for facilities

1 required by Minn. Stat. SS 245.781-245.812 to be licensed;

2 c. Any licensing board which regulates persons
3 pursuant to Minn. Stat. S 214.01; and

4 d. Any agency responsible for credentialing human
5 services occupations The Minnesota Department of Health if the
6 human services occupation of the alleged perpetrator is
7 credentialed pursuant to Minn. Stat. S 214.13 or 149.02.

8 ~~8-~~ 9. Local social services agency. "Local social
9 services agency" means the local agency under the authority of
10 the human services board or board of county commissioners which
11 is responsible for social services.

12 ~~9-~~ 10. Neglect. "Neglect" means failure by a caretaker
13 to supply or to ensure the supply of necessary food, clothing,
14 shelter, health care, or supervision for a vulnerable adult.

15 ~~10-~~ 11. Report. "Report" means any verbal or written
16 report of abuse or neglect of a vulnerable adult received by the
17 local social services agency, police department, county sheriff,
18 or licensing agency.

19 ~~11-~~ 12. State agency. "State agency" means the Minnesota
20 Department of Public Welfare.

21 ~~12-~~ Unsubstantiated. "Unsubstantiated" means able to be
22 disproved to the satisfaction of the investigating agency.

23 13. Substantiated. "Substantiated" means proved to the
24 satisfaction of the investigating agency.

25 ~~13-~~ 14. Vulnerable adult. "Vulnerable adult" means any
26 person 18 years of age or older:

27 a. Who is a resident or patient of a facility;

28 b. Who receives services at or from a facility

29 required to be licensed pursuant to Minn. Stat. SS

30 245.781-245.812; or

31 c. Who, regardless of residence, is unable or unlikely
32 to report abuse or neglect without assistance because of
33 impairment of mental or physical function or emotional status.

34 15. Inconclusive. "Inconclusive" means a report which
35 cannot be substantiated or disproved to the satisfaction of the
36 investigating agency.

C. Complaint investigation by local social services agencies.

1. Duty to accept and investigate complaints. The local

social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

2. Time limits to initiate investigations. The local

social services agency shall begin to investigate all complaints within the following time limits.

a. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life threatened and or likely to experience physical injury due to abuse or abandonment.

b. The local social services agency shall begin its investigation within 24 hours for complaints alleging, or from which it can be inferred or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.

c. The local social services agency shall begin its investigation within 72 hours for complaints alleging, or from which it can be inferred or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

3. Investigations related to a facility. When an

investigation involves an alleged incident or situation in related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint. This investigation shall include the following

1 activities when necessary to make an accurate assessment, but
2 activities specified in a., c., and e. need not occur on the
3 site of the facility:

4 a. Discussion with the reporter;
5 b. Discussion with the facility administrator or
6 responsible designee;

7 c. Discussion with the physician or other
8 professionals, or any corroborating contacts as necessary;

9 d. Contact with the alleged victim;

10 e. Discussion with the alleged perpetrator;

11 ~~f. Discussion with other residents of the facility,~~
12 ~~unless the complaint is unsubstantiated, to determine whether~~
13 ~~the conditions which resulted in the reported abuse or neglect~~
14 ~~place other vulnerable adults in jeopardy of being abused or~~
15 ~~neglected;~~

16 ~~g. f. Examination of the physical conditions or the~~
17 ~~psychological climate of the facility; and~~

18 ~~h. g. Inspection of the alleged victim's record.~~

19 The local social services agency shall also determine
20 whether the reported abuse or neglect places other vulnerable
21 adults in jeopardy of being abused or neglected.

22 The local social services agency shall immediately send a
23 report of its findings to all other agencies notified concerning
24 the complaint in question.

25 4. Investigations not related to a facility. When an
26 investigation involves an alleged incident or situation which is
27 not related to a facility, the local social services agency
28 shall assess the validity of the complaint. This investigation
29 shall include the following activities where necessary to make
30 an accurate assessment:

31 a. Discussion with the alleged victim;

32 b. Discussion with the reporter or any corroborating
33 contacts, as necessary; and

34 c. Discussion with the alleged perpetrator;

35 d. Discussion with the physician or other
36 professionals; and

1 e. Examination of the physical conditions or the
2 -----
psychological climate of the residence.
3 -----

4 The local social services agency shall also determine
5 -----
whether the reported abuse or neglect places other vulnerable
6 -----
adults in jeopardy of being abused or neglected.
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8 5. Investigations by agencies which are not in the county
9 of financial responsibility. When a complaint involves a
10 vulnerable adult who is receiving services from a facility
11 located in a county other than the adult's county of financial
12 responsibility, the local social services agency of the host
13 county shall:

14 a. Investigate the complaint in accordance with C.3.
15 -----
and determine whether the complaint is substantiated,
16 -----
unsubstantiated inconclusive or unable to be substantiated
17 -----
false;
18 -----

19 b. Notify each relevant licensing agency, the police
20 or sheriff, and the county of financial responsibility;

21 c. Consult with the county of financial
22 responsibility, if possible unless the host county must take
23 -----
immediate emergency measures and representatives of the county
24 -----
of financial responsibility are not available;
25 -----

26 d. Take whatever measures are necessary to correct the
27 situation or to remove the adult from the facility and notify
28 -----
the county of financial responsibility of the actions taken to
29 -----
correct the situation or of the removal of the adult from the
30 -----
facility; and
31 -----

32 e. Complete and transmit all required written forms
33 and findings to appropriate agencies.

34 The local social services agency of the county of financial
35 responsibility shall then resume responsibility for ensuring
36 ongoing planning and services for the vulnerable adult.

6. Use of outside experts. When it is investigating
alleged abuse or neglect of a vulnerable adult, the local social
services agency shall consult persons with appropriate expertise
if the local agency believes that it lacks the expertise
necessary for making judgments pertaining to the allegations.

1 This consultation may include matters of physical health, mental
2 health, specialized treatment such as behavior modification,
3 geriatrics, or other matters.

4 7. Investigations after initial complaint assessment. If
5 upon the initial assessment required by 1.-6. there appears to
6 be substance to a complaint, the local social services agency
7 shall attempt to determine the following:

8 a. The risk posed if the vulnerable adult remains in
9 the present circumstances;

10 b. The current physical and emotional condition of the
11 vulnerable adult, including an assessment of prior injuries, if
12 any the history or pattern of abuse or neglect or related prior
13 injuries;

14 c. The name, address, age, sex, and relationship of
15 the alleged perpetrator to the vulnerable adult; and

16 d. In a complaint of neglect, the relationship of the
17 caretaker to the vulnerable adult, including the agreed-upon
18 roles and responsibilities of the caretaker and the vulnerable
19 adult.

20 8. Protective Services. The local social services agency
21 shall offer emergency and continuing protective social services
22 for purposes of preventing further abuse or neglect and for
23 safeguarding and enhancing the welfare of the abused or
24 neglected vulnerable adult.

25 D. Classification of complaints. Within 90 days of
26 receiving the initial complaint, the local social services
27 agency shall assess, make a finding, and classify all complaints
28 as either substantiated, unsubstantiated false, or unable to be
29 substantiated inconclusive. At the conclusion of the
30 assessment, the alleged victim of maltreatment and the alleged
31 perpetrator shall be notified in writing as to whether the
32 complaint was substantiated, unsubstantiated false, or unable to
33 be substantiated inconclusive.

34 E. Actions on behalf of a vulnerable adult who refuses
35 services. If a vulnerable adult who is the victim of abuse or
36 neglect by a caretaker refuses an offer of services from a local

1 social service services agency and in the judgment of that
 2 -----
 3 agency the vulnerable adult's safety or welfare is in jeopardy,
 4 the agency shall seek the authority to intervene on behalf of
 5 that adult. If the agency believes it to be in the adult's best
 6 interest, it shall seek or help the family or victim seek any of
 7 the following:

8 a- 1. A restraining order or a court order for removal of
 9 --
 10 the perpetrator from the residence of the vulnerable adult
 11 pursuant to Minn. Stat. S 518B.01.

12 b- 2. Guardianship or conservatorship pursuant to Minn.
 13 --
 14 Stat. SS 525.539-525.6198, or guardianship or conservatorship
 15 pursuant to Minn. Stat. ch. 252A.

16 e- 3. A hold order or commitment pursuant to the
 17 --
 18 Minnesota Hospitalization and Commitment Act, Minn. Stat. ch.
 19 253A.

20 d- 4. A referral to the prosecuting attorney for possible
 21 --
 22 criminal prosecution of the perpetrator under Minn. Stat. ch.
 23 609.

24 F. Reports to the state agency.

25 1. Initial report. Every incident of abuse or neglect
 26 reported to the local social services agency shall be reported
 27 to the Social Services Division of the state agency on forms
 28 provided by the state agency. The local agency shall send the
 29 completed report form to the state agency within 20 days of
 30 receiving the complaint, whether or not the classification of
 31 the report has been determined according to D.

32 2. Subsequent report. When the classification of the
 33 report has been determined or if the classification has changed
 34 subsequent to the time of the initial report to the state
 35 agency, the local agency shall advise the state agency in
 36 writing of the correct information. The local agency shall do
 this within 90 days of when the local agency received the
 complaint.

3. Data privacy. Reports to the Social Services Division
 of the state agency are for statistical purposes only. The
 identity of the vulnerable adult and of the perpetrator shall

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1 not be included on the copy of the report sent to the state
2 agency.