



September 1, 2015

Abuse Prevention Policy for Vulnerable Adults

It is the intent of Opportunity Services, Inc. to do everything reasonably possible to insure the safety and well being of each of its participants.

It is also the policy of Opportunity Services, Inc. to comply fully with Minnesota statutes and to cooperate with the State Department of Human Services or other authorities in the course of any investigation regarding vulnerable persons.

This policy will be implemented in conjunction with other Opportunity Services policies, procedures and training requirements.

Policy Distribution

1. A copy of this policy will be included in all employee handbooks, administrative manuals, and Board notebooks.
2. A copy of this policy will be available upon request to any mandated reporter, client, and client representative.

Any aversive and deprivation procedures that have not been authorized are abusive.

Training (Staff)

- A. Agency policies specify and regulate forms of discipline and behavioral management techniques which may be implemented in programming; in-service training will be provided for staff on rules concerning control and discipline of the participants in their charge.
- B. All new employees will receive specific training according to the Agency's Policy during their initial orientation. Orientation of staff, temporary staff, volunteers, students, and interns to abuse prevention and reporting requirements will be completed within 72 hours of working or volunteering at the Agency.

Program Assessment (Staff)

- A. Annually as part of determining staff development goals, an assessment of training for staff in the area(s) of abuse prevention, mandated reporting, or related topics will be made by the President and program coordinators.

A plan will be developed to include training sessions for staff in area(s) to be identified.

- B. All new employees will receive specific training according to the Opportunity Services Policy during their initial orientation. Orientation of substitute/temporary staff, volunteers, students, and interns to abuse prevention and reporting requirements will be completed within three days of working or volunteering at Opportunity Services.

A review of the reporting requirements will be completed within 72 hours of beginning initial employment/assignment and thereafter once annually.

Risk Management Plan

- A. As a part of each Opportunity Services participant's individual program plan (IAPP), the interdisciplinary team will develop and implement a plan for risk management.

This plan shall contain an assessment of the participant's susceptibility to abuse (either by a non-disabled or disabled peer)/neglect, including self-abuse. The plan shall give a statement of specific measures designed to minimize the risk(s) of abuse/neglect which will be implemented while at Opportunity Services and when in the community. This plan will be reviewed at least annually at the participant's interdisciplinary team, and necessary revisions made.

- B. Any client who has behaviors which evidence a "clear and present" danger to self or others shall have a behavioral program written which incorporated a client and staff protection plan. Clear & present danger is defined as any behavior or group of behaviors which causes severe physical injury requiring medical treatment or has caused in excess of \$300 in property damage as measured by actual or estimated cost of repair or replacement.
- C. All participant accident/injury incidents are to be documented on an accident report. Marks/injuries/incidents of unknown (or of questionable) origin will be documented promptly in the Opportunity Services Report Log and reported to Senior Management. All accident and injury report forms will be copied to the guardian, residential provider, case manager and the administrative office within 24 hours. Each accident report will be reviewed and appropriate action taken.

Refer to attached Accident/Incident form for reporting information.

- D. All Accident/Incidents will be forwarded to the Administrative Office for review. If it is an Accident/Incident that is significant in nature it will be review by the assigned manager. All Accident/Incidents will follow both internal and external reporting procedures as defined in the Safety Emergency Procedures. It is the responsibility of the assigned manager to follow up on the data and to take facility corrective action(s) to reduce/eliminate participant risk and/or hazards within a reasonable time.

Internal Reporting of Maltreatment of Participants

- A. Reporting abuse or neglect of a participant is the responsibility of:
1. All staff of Opportunity Services are mandated reporters
 2. All persons providing care or services to Opportunity Services clients are mandated reporters.
 3. Any parent, relative or friend of a participant attending Opportunity Services may submit but is not a mandated reporter.

Penalty:

Any employee, volunteer, or other person(s) under the supervision/direction of Opportunity Services, Inc. who intentionally abuses or neglects a vulnerable participant, or knowingly permits conditions to exist which result in the abuse or neglect of a vulnerable participant, or who fails to make a report may be charged according to Statute 609.23 and will be dismissed from Opportunity Services.

Retaliation:

Any person making a report in good faith shall have immunity from any civil liability resulting from making the report and from retaliation by Opportunity Services, Inc. Good Faith is defined as the person believes that abuse or neglect has occurred by what they have observed or been told by a vulnerable adult.

A person who deliberately and maliciously makes a false report shall be liable for civil suit and punitive damages. It will be grounds for immediate employment termination. Opportunity Services may not retaliate against a vulnerable participant on whom a report is made. Opportunity Services must not demit the client or provide any negative consequence to the client because a report was filed.

- B. Person(s) required to report must do so:
1. If you have knowledge of the abuse or neglect of a vulnerable participant;
Refer to "Definitions of Abuse"
 2. If you have reasonable cause to believe that a vulnerable participant is being, or has been abused/neglected;
 3. If you have knowledge that a vulnerable participant has sustained a physical injury which is not reasonably explained by the history of injuries provided in the participant's case history or medical record.

- C. Any person(s) or mandated reporter(s) shall make an oral (verbal) report immediately or within 24 hours after the provider becomes aware of the abuse or neglect.
- D. A written report must be submitted within 24 hours of the initial verbal report of suspected maltreatment.

Please refer to attached forms for reporting requirements

- E. Both oral and written reports are to be made to:
 1. The Opportunity Services President (Primary), OR
 2. The Opportunity Services Manager (Secondary), OR
 3. Reports may be made directly to an outside investigative authority, OR
 4. Staff members may make reports to the Minnesota Adult Abuse Reporting Center(MAARC).

The secondary person must be involved when there is reason to believe that the primary person was involved in the alleged or suspected abuse.

The MAARC must be staffed 24 hours. MAARC includes a statewide Common Entry Point.

To make a report to MAARC call 1-844-880-1574 or online at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-6303-ENG>

- State needs to access Emergency Social Services to report abuse or neglect of a vulnerable adult.

1. Staff members are encouraged to make reports to the entity, which they are comfortable reporting to; it is critical to make the report. The entity you report the suspected abuse is responsible for investigating your report.
- F. Suspected Maltreatment reports will be communicated either verbally or written to the consumers, legal guardian, and case manager within 24 hours unless these parties are suspects of the abuse/neglect report. Opportunity Services will disclose the nature of the activity or occurrence reported, the agency that received the report, and the telephone number of MN Department of Human Services-Licensing Division—651-296-3971. Please see attached form for reporting requirements.
 - G. The Community Support Manager (primary) is responsible for forwarding immediately to the Minnesota Adult Abuse Reporting Center(MAARC), County Social Services department, or other local investigative authorities, the report of suspected abuse/neglect filed internally. The secondary person (Senior Manager) must be involved when there is reason to believe that the primary person was involved in the alleged or suspected abuse.

The secondary person will be responsible for forwarding the report to the Minnesota Adult Abuse Reporting Center(MAARC), County Social Services department, or other local investigative authorities, the report of suspected abuse/neglect filed internally if the primary person was involved in the alleged or suspected abuse.

- H. Mandated reporters will be contacted directly or by phone when their report has been forwarded to an outside authority by Opportunity Services. They shall be informed, similarly, as to the disposition/conclusions of any internal investigation conducted due to their report.
- I. Mandated reporters will receive a written notice within two working days, which explains they may report externally without retaliation if reported in good faith and whether the facility has reported the incident to the Minnesota Adult Abuse Reporting Center(MAARC).

Internal Investigation

- A. The President, or designee, shall assign an appropriate manager to conduct the internal review and investigation of abuse/neglect reports. The investigator of the alleged abuse/neglect shall not be in any aspect involved in the reported abuse/neglect. The secondary person must be involved when there is reason to believe that the primary person was involved in the alleged or suspected abuse.

Please refer to attached forms for investigation and reporting requirements

Appropriate disciplinary action will be taken if warranted as a result of the investigation.

- B. A summary of the internal investigation will include persons involved, persons interviewed, conclusions and findings, an evaluation of whether the reported event is similar to past events with the vulnerable adult/services involved and actions taken.
- C. Opportunity Services will develop, document and implement a corrective action plan, based upon on the results of the review, designed to correct current lapses and prevent future lapses in performance by individuals or the license holder.
- D. Opportunity Services, Inc. will cooperate with outside authorities in the course of the investigation.

Internal Maintenance of Reporting Records

- A. Records and data will be maintained regarding internal reviews and investigations of cases of abuse/neglect for seven years.
- B. Undocumented records of reports, which are found to be false or unsubstantiated, shall be maintained for five years.
- C. All reports shall be available upon request to the Commissioner at any time.



Client Incident/Accident Report

Name of person: _____ Program: _____

Date of incident: _____ Time of day: _____

Specific place: _____

Name of witnesses: _____

Explanation of what happened (Cause, contributing factors, parts of body affected, etc.):

(Place any additional information on the following page)

Was this persons CSSP addendum implemented? _____ Yes _____ No

Were OS policies and procedures followed? _____ Yes _____ No

How might this incident have been prevented? (patterns for similar incidents, needed training, corrective action needed)

Treatment given: _____

Medical treatment needed: Yes or No _____ Outcome: _____

Signature of employee giving report: _____

Job title: _____ Date filed: _____

Serious Injury/Death by DHS Definition: Phone calls to team & Ombudsman & DHS faxed within 24 hours. Staff Initials: _____

All other Incidents/Accidents by DHS Reporting Definition: Phone Calls and Mailed to team within 24 hours. Staff Initials: _____

Minor Incident/Accidents: Mailed to team within 24 hours. Staff Initials: _____

Others to be notified: Staff must date and initial

	<u>Date</u>	<u>Initial</u>	<u>Property Damage</u>
Supervisor: _____	_____	_____	Item: _____
Administrative Office: _____	_____	_____	Cost: _____
Residence: _____	_____	_____	Payee: _____
Case Manager: _____	_____	_____	Man. Review: _____
Guardian: _____	_____	_____	
DHS& Ombudsman: _____	_____	_____	

Supervisor review: _____ Staff initials

Administrative review: _____ Recommendations: Yes/No _____ Staff Initials

(Please attach summary if necessary)

**Agency Receiving Maltreatment Report
OPPORTUNITY SERVICES
ABUSE/NEGLECT INCIDENT REPORT**

Name of Vulnerable Client:

Location of Incident:

Pertinent date(s) and time(s):

Description of nature of suspected abuse/neglect:

Any history of abuse/neglect:

Name & address of person who allegedly abused/neglected client:

Medical findings & treatment given (if any):

Date/Time of verbal report made to External Investigative Agencies:

Time _____ Date _____

Reported to: Name _____

Opportunity Services _____

Date/Time of written notification

Time _____ Date _____

Required Report to (within 24 hrs):

Report made elsewhere? Check all that apply:

_____ Consumer Case Manager

_____ Other _____ County Social Services

_____ Consumers Legal Guardian

_____ Residence _____ Police Department

Unless they are involved in suspected abuse.

Other information which might be helpful in investigation of report:

Date Filed: _____ Reporter: _____

Date Received: _____ Reporter's Address: _____

President: _____

Action Taken:

CONFIDENTIAL

MN Department of Human Services-Licensing Division—651-296-3971
NOTICE OF STATUS OF REPORT OF
SUSPECTED MALTREATMENT

TO: _____ (Mandated Reporter)

FROM: _____

On _____, at _____, a report of suspected maltreatment was received from you.
(date) (time)

This report was (was not) forwarded to _____ on _____.
(date) (Minnesota Adult Abuse Reporting Center(MAARC))

for further evaluation and investigation of the suspected maltreatment.

If you are not satisfied with the action taken by Opportunity Services, you may choose to contact the _____ directly.
(Minnesota Adult Abuse Reporting Center(MAARC))

As required by Minnesota Statutes, section 626.557, you are hereby notified that this facility may not prohibit you from choosing to report this or any other incident to an external agency. This facility may not take retaliatory action against any mandated reporter who reports an incident to the Minnesota Adult Abuse Reporting Center(MAARC) in good faith.

Minnesota Statutes, section 626.557, subdivision 17, states:

1. A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.
2. In addition to any remedies allowed under sections 181.931 to 181.935, any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to \$10,000, and attorney's fees.
3. There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited too:
 - a. Discharge or transfer from the facility;
 - b. Discharge from or termination of employment;
 - c. Demotion or reduction in remuneration for services;
 - d. Restriction or prohibition of access to the facility or its residents; or

e. Any restriction of rights set forth in section 144.651.

Date _____

Opportunity Services - Internal Investigation

Location program:

Date of incident:

Date of completed investigation:

Name of client:

Status of client:

Nature of abuse/neglect:

Interviewer:

Position:

Administrative signature and review:

Summary of investigation (address each statement):

Summary of outcome of investigation

Compliance and Adequacy of Opportunity Services Policies & Procedures

Additional staff training needed

Corrective actions needed to protect health and safety of vulnerable adults

Review for pattern or similarity to past events with the vulnerable adult/services involved

Corrective action plan to correct current lapses and prevent future lapses

Attach individual investigations

Reports sent to:

____ County Vulnerable Adult Division

____ Administrative Office

____ Social Services

____ Police

____ Other _____

Opportunity Services - Internal Investigation

Interviewer:

Address:

Date of interview:

Interview with:



Reporting Map

Internal Report of Maltreatment

- ☐ Oral Report (Immediately)
 - ☐ To Nancy, President
or
 - ☐ To Manager _____
 - ☐ Written Report within 24 hours
 - ☐ Forwarded to President or designee
 - ☐ Report forwarded to MN Adult Abuse Reporting Center(MAARC) P: 1-844-880-1574 or via web at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6303-ENG>
 - ☐ Mandated Reporter notified directly or by phone that report was forwarded
 - ☐ Report communicated to: (within 24 hours)
 - ☐ Consumer
 - ☐ Guardian
 - ☐ Case Manager
 - ☐ Other: _____
 - ☐ President or designee assign appropriate senior Manager for internal investigation
 - ☐ Notice of Status of Report of Suspected Maltreatment within 2 days to Mandated Reporter
 - ☐ Copy maintained with internal report
 - ☐ Assigned Senior Manager completes internal investigation and all required forms personally
- OR**
- ☐ Assigned Senior Manager assigns internal investigation to _____ to complete investigation and all required forms.
 - ☐ Mandated Reporter and clients team will be notified of conclusions
 - ☐ Corrective actions implemented
 - ☐ Report and investigation will be maintained at Administrative Office in Red Wing

External Report of Maltreatment

- ☐ _____ received notification from _____ on _____ date.
 - ☐ Notification forwarded to President or designee
 - ☐ President or designee assign appropriate Senior Manager for the internal investigation
 - ☐ Assigned Senior Manager completes internal investigation and all required forms personally
- OR**
- ☐ Assigned Senior Manager assigns internal investigation to _____ to complete investigation and all required forms
 - ☐ Assigned Senior Manager will report investigation to President with appropriate forms
 - ☐ Corrective actions implemented
 - ☐ Report and investigation will be maintained at Administrative Office in Red Wing

Definitions of Abuse

DEFINITIONS OF ABUSE

VULNERABLE ADULT LAW

Minnesota Statutes 1996, 626.5572

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 section 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, punching, 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.

STAT AUTH: MS s 245.825

Hist: 11 SR 2408; 18 SR 1141

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED

Subpart 1. Restrictions. An aversive or deprivation procedure must not:

- (A) ***be implemented with a child in a manner that constitutes sexual abuse, neglect, or physical abuse as defined in Minnesota Statutes, section 626.556, which governs the reporting of maltreatment of minors;***
- (B) ***be implemented with an adult in a manner that constitutes abuse or neglect as defined in Minnesota Statutes, section 626.557, which governs the reporting of maltreatment of vulnerable adults;***
- (C) ***restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, or necessary clothing as mandated by Minnesota Statutes, section 245.825, or to any protection required by state licensing standards and federal regulations governing the program; or***

(D) deny the person ordinary access to legal counsel and next of kin as mandated by Minnesota Statutes, section 245.825.

Subp. 2. Prohibitions. The actions or procedures listed in items A to I are prohibited:

(A) using corporal punishment such as hitting, pinching, or slapping;

(B) speaking to a person in a manner that ridicules, demeans, threatens, or is abusive;

(C) requiring a person to assume and maintain a specified physical position or posture as an aversive procedure, for example, requiring a person to stand with the hands over the person's head for long periods of time or to remain in a fixed position;

(D) placing a person in seclusion;

(E) totally or partially restricting a person's senses, except as expressly permitted in part 9525.2740, subpart 1;

(F) presenting intense sounds, lights, or other sensory stimuli as an aversive stimulus;

(G) using a noxious smell, taste, substance, or spray, including water mist, as an aversive stimulus;

(H) using room time out in emergency situations; and

(I) denying or restricting a person's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the person's functioning. When the temporary removal of the equipment or device is necessary to prevent injury to the person or others or serious damage to the equipment or device, the equipment or device must be returned to the person as soon as possible.

Subp. 3. Faradic shock. Emergency use of faradic shock as an aversive stimulus is prohibited. Use of faradic shock as an aversive stimulus is permitted only when all of the following conditions are met:

- (A) *the target behavior is extreme self-injury that threatens irreparable bodily harm;***
- (B) *it can be documented that other methods of treatment have been tried and were unsuccessful in controlling the behavior;***
- (C) *a state or federal court orders the use of faradic shock;***
- (D) *use of faradic shock ordered by a court is implemented in accordance with parts 9525.2750 and 9525.2760; and***
- (E) *a plan is in effect to reduce and eliminate the use of faradic shock with the person receiving it.***

- (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 525.539 to 525.6199, 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. 3. **Accident.** “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.

Subd. 4. **Caregiver.** “Caregiver” means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subd. 5. **Minnesota Adult Abuse Reporting Center(MAARC).** “Minnesota Adult Abuse Reporting Center(MAARC)” means the entity designated by each county responsible for receiving reports under section 626.557.

Subd. 6. **Facility.** (A) “Facility” means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a hospice provider licensed under section 144A.75 to 144A.755; or 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, and 256B.0627.

(B) For home care providers and personal care attendants, the term “facility” refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client’s home or other location at which services are rendered.

Subd. 7. **False.** “False” means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

Subd. 8. **Final disposition.** “Final disposition” is the determination of an investigation by a lead agency that a report of maltreatment under Laws 1995, chapter 229, is substantiated, inconclusive, false, or that no determination will be made. When a lead agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

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. 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 section 253B.03, or 525.539 to 525.6199, 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 sexual contact with:

- (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to 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 investigative 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 investigative agency's determination of mitigating factors under section [626.557](#), [subdivision 9c](#), paragraph (c).

Subd. 18.Report.

"Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

[§](#)

Subd. 19.Substantiated.

"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

[§](#)

Subd. 20.Therapeutic conduct.

"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.

[§](#)

Subd. 21.Vulnerable adult.

(a) "Vulnerable adult" means any person 18 years of age or older who:

- (1) is a resident or inpatient of a facility;
 - (2) receives services required to be licensed under chapter 245A, 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 offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under section [256B.0625](#), subdivision 19a, [256B.0651](#), [256B.0653](#), [256B.0654](#), [256B.0659](#), or [256B.85](#); 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.

History:

[1995 c 229 art 1 s 22](#); [2000 c 319 s 3](#); [1Sp2001 c 9 art 14 s 32](#); [2002 c 252 s 23](#),²⁴; [2002 c 379 art 1 s 113](#); [2004 c 146 art 3 s 46](#); [2006 c 212 art 3 s 41](#); [2007 c 112 s 57](#); [2008 c 326 art 2 s 15](#); [2009 c 79 art 6 s 20](#),²¹; art 8 s 75; [2009 c 119 s 17](#); [2009 c 142 art 2 s 48](#); [2011 c 28 s 16](#),¹⁷; [2012 c 216 art 9 s 32](#); [2013 c 108 art 8 s 58](#); [2014 c 262 art 4 s 9](#); art 5 s 6; [2015 c 78 art 6 s 26-28](#)
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Abuse Orientation

Customer: _____ Date: _____

Admission Date: _____

I have read and understand Opportunity Service's abuse and internal reporting procedures.

Customer Signature Date

Legal Representative Signature Date