



MANDATED REPORTING OF MALTREATMENT OF VULNERABLE ADULTS: WHAT IS REQUIRED?

In Minnesota, sexual assault advocates are NOT automatically mandated reporters of the maltreatment of vulnerable adults. But because the status of mandated reporter follows the individual, if a sexual assault advocate is a mandated reporter of maltreatment of vulnerable adults due to *another* employment or volunteer position, she is also a mandated reporter while engaged as a sexual assault advocate. See Minn. Stat §626.557

Who is a Mandated Reporter:

A professional or professional's delegate engaged in:

- Social services;
- Law enforcement;
- Education;
- The care of vulnerable adults;
- Any occupation regulated under a health related licensing board;
- An employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation;
- An employee of or person providing services in a licensed facility such as a nursing home, residential or nonresidential facility, hospice, personal care attendant, or home care provider; OR
- A person performing duties of the medical examiner or coroner

*Sexual assault advocates do not fall into any of these categories. They are not mandated reporters unless the individual is a mandated reporter from another employment or volunteer position. If your program has a connection to a county program such as social services or corrections, check with that program to decide whether you are a mandated reporter under that profession.

Who is a Vulnerable Adult:

See Minn. Stat. §626.5572 Subd. 21

A vulnerable adult is a person 18 years or older who

- Is a resident or inpatient of a facility (such as a hospital, nursing home, adult services, home care provider, hospice, etc) OR
- Receives services from an adult services facility (except for persons with chemical dependency, mental illness, or sexually psychopathic or sexually dangerous personalities) OR
- Receives services from a home care provider or personal care assistant OR
- Regardless of receiving services, possesses a physical, mental, or emotional infirmity or dysfunction that impairs the person's ability to provide adequately for his/her own care without assistance AND has an impaired ability to protect him/herself from maltreatment.

*The term "vulnerable adult" as a legal term is not used at all in the criminal sexual conduct statute, which punishes sexual contact or penetration with a person who is "mentally impaired."

What Must Be Reported:

Abuse

Maltreatment of a vulnerable adult: abuse, neglect, or financial exploitation

Abuse includes but is not limited to:

- Assault as defined by Minnesota statute
- The use of drugs to injure or facilitate crime
- Solicitation, inducement, or promotion of prostitution
- **Criminal sexual conduct**
- Action that meets the elements of a crime, regardless of whether there are criminal proceedings
- Hitting, slapping, kicking, pinching, biting, corporal punishment
- Use of repeated or malicious oral, written, or gestured language that would be considered disparaging, humiliating, or threatening
- Use of unauthorized aversive or deprivation procedures, unreasonable confinement, or involuntary seclusion
- **Sexual contact or penetration between facility staff and client**
- Forcing or coercing to perform services for another's advantage

Conduct which is not abuse:

- Consensual sexual contact between a vulnerable adult, "who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence" AND
- A person, including a facility staff person, when a consensual personal relationship existed **prior** to care giving, OR
- A personal care attendant, **regardless** of when the consensual personal relationship began

Neglect

Neglect includes but is not limited to:

- Failure or omission of a caregiver to provide reasonable services or care which is not the result of an accident or therapeutic conduct;
- Absence or likely absence of care or services which a reasonable person would deem essential

Conduct which is not neglect:

- See conduct which is not abuse above;
- The vulnerable adult or a person with authority to make health care decisions refusing consent to any therapeutic conduct, or treating by spiritual means, provided it is consistent with prior practice/belief of the vulnerable adult;
- An individual makes an error in the provision of therapeutic conduct that does not result in injury or harm, or results in injury or harm and the necessary care is provided in a timely fashion, so long as the vulnerable adult's health status may be restored, the error is not part of a pattern, it is reported, remedied, and documented

Financial Exploitation

A facility or caregiver is not required to provide or supervise financial management for a vulnerable adult unless otherwise required by law.

Financial exploitation includes but is not limited to:

- A breach of a fiduciary obligation recognized in law;
- Unauthorized expenditure of funds;
- Failure to use the vulnerable adult's financial resources to provide necessities where failure is likely to result in detriment;
- In the absence of legal authority:
 - Using, withholding, or disposing of funds or property;
 - Obtaining services to the vulnerable adult's detriment;
 - Acquiring possession, control, or interest in funds or property through undue influence, harassment, or duress;
 - Forces, compels, coerces, or entices a vulnerable adult to provide services for another

To the extent possible reports should include the following information:

- Content sufficient to identify the vulnerable adult and caregiver;
- Nature and extent of suspected maltreatment;
- Any evidence of previous maltreatment;
- Your name and address (it will remain confidential);
- Time, date, and location of the incident;
- Other information you believe may be helpful in an investigation

Where do I report:

- Each county has a designated local common entry point responsible for receiving reports and available 24 hours a day.
- Upon receiving a report, the common entry point makes an assessment and involves appropriate agencies such as Law Enforcement, Adult Protection, the Minnesota Department of Health, and the Department of Human Services.
- After the appropriate agencies are involved, an investigation is completed and a finding issued.

When and how must I report:

- Upon knowing or having reason to believe that abuse, neglect, or financial exploitation has occurred, **immediately** make an oral report to the common entry point. The common entry point may also require a written report.
- The mandated reporter must make the report *herself*. Referring the issue to a supervisor is not sufficient.
- When in doubt about whether the incident was already reported, report it. Nothing prohibits multiple reports of the same incident.

Breaking Confidentiality:

Remember that you have a duty of confidentiality to your clients. If you are a mandated reporter with a client who is vulnerable, but not classifiable as a vulnerable adult, you may not disclose information obtained from or about your client without their permission.

Why must I report?

A mandatory reporter who fails to report is civilly liable for damages caused by the failure.

What can I do?

- When questions about mandatory reporting arise, contact your common entry point for advice, keeping identities confidential.
- It is not your duty to investigate or collect factual information about a particular situation. It is your duty to report when mandated.
- Every agency should have a system or policy in place for mandatory reporting situations. It is advisable that supervisory staff be made aware when an advocate makes a report.

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