

Mandated Reporting of Maltreatment of Vulnerable Adults: What is Required?

In Minnesota, sexual assault advocates and domestic abuse advocates are NOT mandated reporters of maltreatment of vulnerable adults. See Minn. Stat. §626.557 and other statutes and explanations below. For additional information see the Department of Human Services website for an online training course (www.dhs.state.mn.us) under “adult protection.”

Who is a Mandated Reporter of Abuse against Vulnerable Adults?

See Minn. Stat. §626.5572 Subd. 16

- A professional or professional’s delegate engaged in: social services, education; the care of vulnerable adults; or any occupation regulated under a health-related licensing board; or
- 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.

*The statute is silent as to whether sexual assault advocates are mandated reporters of abuse against vulnerable adults. Since advocates are not engaged in the activities named in any of the statutory categories, they are not considered mandated reporters. It is important that programs take care to ensure that job descriptions are clear that a person’s role is as an advocate, particularly when a sexual assault program has licensed professionals such as social workers on staff who are mandated reporters and who provide services to sexual assault victim/survivors.

Breaking Confidentiality

Remember that you have a duty of confidentiality to your clients and this duty is governed by funding obligations, advocate privilege, and other state law. If you are a sexual assault advocate working with a client who is a vulnerable adult under Minnesota law you may not disclose information obtained from or about your client. Although anyone can make a voluntary report (even if not a statutorily required mandated reporter) a sexual assault advocate should not disclose any information without a client's informed consent. See the SVJI fact sheets on advocate confidentiality for more information.

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 (see exceptions below), OR
- Receives services from a licensed 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" is not found in the criminal sexual conduct statute, which punishes sexual contact or penetration with a person who is "mentally impaired."

* Exceptions: 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, regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his/her own care without assistance AND impairs the person's ability protect him/herself from maltreatment. See Minn. Stat. §626.5572, Subd. 21(a)(2).

| What Must Be Reported? | Maltreatment of a vulnerable adult: abuse, neglect, or financial exploitation |
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| Abuse | <p>Abuse includes but is not limited to:</p> <ul style="list-style-type: none"> • Assault as defined by Minnesota statute; • The use of drugs to injure or facilitate crime; • Solicitation, inducement, or promotion of prostitution; • Criminal sexual conduct (first through fifth degree); • Action that meets the elements of the above crimes, regardless of whether there are criminal proceedings; • Hitting, slapping, kicking, pinching, biting, or corporal punishment; • Use of repeated or malicious oral, written, or gestured language that would a reasonable person would consider disparaging, humiliating, harassing; or threatening; • Use of any aversive or deprivation procedures, unreasonable confinement, or involuntary seclusion against will of the vulnerable adult or the legal representative of the vulnerable adult; • Sexual contact or penetration between facility staff or person providing services in a facility and a client/resident/patient; and • Forcing, coercing, enticing, or compelling a vulnerable adult to perform services against their will for another’s advantage. <p>Conduct which is not abuse:</p> <ul style="list-style-type: none"> • 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 <p>A personal care attendant, regardless of when consensual personal relationship began.</p> |

Neglect

Neglect includes but is not limited to:

- Failure or omission of a caregiver to provide 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 to obtain or maintain the vulnerable adult's health, safety, or comfort.

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 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:
 - Willfully using, withholding, or disposing of funds or property;
 - Obtaining services to the vulnerable adult's detriment and the benefit of another;
 - Acquiring possession, control, or interest in funds or property through undue influence, harassment, fraud, deception, or duress;
 - Forcing, compelling, coercing, or enticing a vulnerable adult to provide services for the profit or advantage of another.

What to report

See Minn. Stat. §626.557, subd. 4

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 such as current injuries or name of alleged perpetrator.

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| <p>Where do I report? See Minn. Stat. §626.557, subd. 9</p> | <ul style="list-style-type: none"> • Mandated reporters can use an online reporting tool, instructions for which are provided through licensing agencies, boards, and professional organizations. Complaints can be reported to the Minnesota Adult Abuse Reporting Center (MAARC) by calling (844) 880-1574 (toll free) 24 hours a day. • After completing a standard intake form, the common entry point dispatches the report to the appropriate lead investigative agency. • Check with Department of Human Services for guidelines specific to certain facilities. |
| <p>When and how must I report? See Minn. Stat. §626.557, subd. 3, 4</p> | <ul style="list-style-type: none"> • Upon having reason to believe that a vulnerable adult is being or has been maltreated, or who having knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained, immediately report to the common entry point. • The mandated reporter must make the report <i>herself</i>. 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. |
| <p>Why must I report? See Minn. Stat. §626.557, subd. 5</p> | <p>A mandatory reporter who fails to report is civilly liable for damages caused by the failure. A good faith report will be immune from civil or criminal liability.</p> |
| <p>What can I do?</p> | <ul style="list-style-type: none"> • 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 a staff member makes a report. |

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