

TSE, Inc.
VULNERABLE ADULT POLICY

I. Purpose

This policy is intended to set forth procedures implementing the “Vulnerable Adult Act” MSA Sec.626.557. The legislature established that “the policy of this state is to protect adults who, because of physical or mental disability or dependency or institutional services, are particularly vulnerable to abuse or neglect; to provide safe institutional or residential services or living environments for vulnerable adults who have been abused or neglected; and to assist person’s charged with the care of vulnerable adults to provide safe environments. In addition, it is the policy of the state to require reporting of suspected abuse, neglect or financial exploitation of vulnerable adults.” For clarification purposes, all persons served by TSE are considered vulnerable adults, regardless of the type or severity of their disabilities.

II. Position Statement

Steps shall be taken to reduce or eliminate the likelihood of abuse or neglect but which do not preclude a person’s right to risk in the process of personal development and to engage in the process of normal life patterns of activity. TSE, Inc. will cooperate to the fullest extent possible with county and state human services departments in the process of minimizing risks and with the process of reporting and investigating suspected abuse and neglect. TSE will assure that all knowledge and written reports regarding incidents of abuse and neglect are communicated to the appropriate authorities.

III. Orientation for Persons Served and Employees

A. All persons served by TSE and/or their representative will receive orientation to this policy and the Vulnerable Adult Act within 24 hours of admission. This may be delayed up to 72 hours if it is determined that the person served would benefit from a later orientation and the need for the delay is documented at the time of admission. Subsequent orientations will occur once per year prior to the persons served annual review. Orientation documentation is included in the Individual Abuse Prevention Plan, which is kept in each person’s file.

B. All parents or guardians of persons served will be informed that employees are required by law to report incidents of suspected abuse or neglect regardless of where the incident occurred. A statement of the procedure TSE will follow if an incident occurs will also be included.

C. New employees will receive information on the Vulnerable Adult Act and this policy within 72 hours of first providing direct contact to person served. Subsequent training will be conducted annually and whenever this policy is modified. TSE will maintain records documenting employee training concerning this policy, will monitor implementation by staff and ensure this policy is readily accessible to staff.

IV. Definitions

A. Maltreatment is defined as:

1. Abuse, neglect or financial exploitation as defined in this section.

B. Abuse is defined as:

1. An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding, and abetting a violation of:

a. Assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

b. The use of drugs to injure or facilitate crime as defined in section 609.235.

- c. The solicitation, inducement, and promotion of prostitution as defined in section 609.322; and
- d. Criminal sexual conduct in the first 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.

2. 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:

- a. Hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;
- b. 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;
- c. Use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult against the will of the vulnerable adult or the legal representative of the vulnerable adult; and
- d. Use of any aversive or deprivation procedures for persons with development disabilities or related conditions not authorized under 245D.

3. Any sexual contact or penetration as defined in section 609.341, between a facility staff person on a person providing services in the facility and a resident, patient, or client of that facility.

4. 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.

5. The breach of a fiduciary relationship through the use of a person or a person's property for any purpose noting the proper and lawful execution of a trust, including but not limited to situations where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud or 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.

6. A vulnerable adult is not considered to have been abused if the vulnerable adult or the legal representative refuses or withdraws consent for medical or other services as noted in Sec. 22, Subd. 2 e-g of the Vulnerable Adult Act.

C. An accident is defined as:

1. A sudden, unforeseen, and unexpected occurrence or event which:

- a. Is not likely to occur and which could not have been prevented by exercise of due care; and
- b. 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.

D. Therapeutic conduct is defined as:

1. The provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by:
 - a. 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:
 - b. A caregiver.

E. Neglect is defined as:

1. 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:
 - a. A 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
 - b. Which is not the result of an accident or therapeutic conduct.
2. 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.
3. A vulnerable adult is not considered to have been neglected if:
 - a. The vulnerable adult or the legal representative refuses or withdraws consent for medical or other services as noted in 626.5572., subd. 17c 1- 3 of the Vulnerable Adult Act; or
 - b. The incident was the result of an accident.
 - c. An individual makes an error in the provision of therapeutic conduct to a vulnerable adult which:
 - i. does not result on injury or harm which reasonably requires medical or mental health care or if it does reasonably require care, the care is sought and provided in a timely fashion as dictated by the condition of the vulnerable adult or
 - ii. 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 the pattern of errors by the individual;
 - iv. Is immediately reported and recorded internally by the employee or person providing services in the facility in order to evaluate and identify corrective action:
 - v. Corrective action is taken to reduce the risk of further occurrence of this and similar errors; and

- vi. Is sufficiently documented for review and evaluation by the facility and any applicable licensing and certification and ombudsman agency and is not a part of a pattern of errors by the individual.

(Incidents meeting the criteria in must be reported to the Common Entry Point to determine if the criteria are met to exclude the incident from a neglect finding).

F. Financial exploitation is defined as:

1. A breach of a fiduciary obligation recognized elsewhere in laws, including pertinent regulations, contractual; obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:
 - a. Engages in unauthorized expenditure of funds entrusted to them by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or
 - b. Fails to use the real or personal property or other 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 in or likely to result in detriment to the vulnerable adult.
 - c. In the absence of legal authority, a person:
 - i. Willfully uses, withholds, or disposes of funds or property of the vulnerable adult;
 - ii. Obtains for themselves or another the performance of services by a third person for the wrongful profit or advantage of themselves to the detriment of the vulnerable adult;
 - iii. Acquires possession or control of an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception or fraud; or
 - iv. Forces, compels, coerces or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.
 - v. Establishes a relationship with a fiduciary obligation to a vulnerable adult by use of undue influence, duress, force, compulsion, coercion or other enticement.

V. Reporting Maltreatment

- A. Criteria for reporting to Adult Protection:
 1. Any case, or suspected case where there is reason to believe that abuse, neglect or financial exploitation occurred; an accident or injury not reasonably explained by the vulnerable adult's history;
 2. Cases of vulnerable adult-to-vulnerable adult abuse in the form of verbal or physical aggression or self-abusive behavior if it causes "serious harm," or unless the act constitutes a violation of the criminal statues which are considered abuse. For the purpose of this policy, "serious harm" will be defined as the following:
 - a. Fracture
 - b. Dislocations
 - c. Evidence of internal injuries

- d. Head injuries with loss of consciousness
- e. Lacerations involving injuries to tendons or organs, and those for which complications are present
- f. Extensive second degree or third degree burns, and other burns for which complications are present
- g. Extensive second degree frostbite, and others for which complications are present
- h. Irreversible mobility or avulsion of teeth
- i. Injuries to the eyeball
- j. Ingestion of foreign substances and objects that are harmful
- k. Near drowning
- l. Heat exhaustion or sunstroke; and
- m. All other injuries considered serious by a physician.

(See document from the Office of the Ombudsman for more detailed descriptions)

- 3. Reports to the Common Entry Point are not required when an incident involves verbal or physical aggression without serious harm, accidents or single mistakes, and cases where the reporter knows or has reason to know that a report has already been made to the Common Entry Point. Cases not reported to the Common Entry Point will be reported per Incident Report protocol and reviewed by the TSE supervisor, Vice President and licensing agencies.

B. Role of the Reporter

- 1. All TSE employees who are engaged in the care of vulnerable adults are mandated reporters. All persons other than mandated reporters may and shall report incidents of abuse and neglect. Any mandated reporter who has knowledge or reasonable cause to believe or suspect mental abuse, physical abuse, the abuse of rights or neglect of a vulnerable adult will immediately report the information in one of three methods.

Option 1: Oral report will be made by the mandated reporter to the Common Entry Point; the phone number for the contact is posted at each site.* An internal report will also be written by the reporter and reviewed by the Vice President or Services Coordinator.**

Option 2: Oral and written reports will be made by the mandated reporter to the Vice President or Services Coordinator who will, in turn, make the necessary reports to the Common Entry Point; the phone number is posted at each site.*

Option 3: Oral report will be made by the mandated reporter to outside investigative authorities without making an internal report.

* The Common Entry Point is the Minnesota Adult Abuse Reporting Center (MAARC), 844-880-1574 or <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6303-ENG>.

** The President/Chief Executive Officer will be given the verbal and/or written reports, and will report to the Common Entry Point, in the absence of the Vice President or Services Coordinator, or if the Vice President or Services Coordinator is the alleged perpetrator.

- 2. It is the responsibility of all mandated reporters to ensure that their report reaches the appropriate outside investigative authorities. All reporters will be informed when a report has been forwarded and to whom it has been forwarded.
- 3. A mandated reporter who negligently or intentionally fails to report suspected maltreatment of a vulnerable adult is liable for damages caused by the failure to report.

4. A person or facility who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to \$10,000 and attorney fees.

C. Reporting Procedure:

1. A verbal report will be made to the Common Entry Point as soon as possible, but no later than 24 hours of initial knowledge of the alleged incident. This timeline is not one working day; if an incident occurs on a Friday, the report must be made by the next day, Saturday.
2. Within 72 hours, a written report will be completed for internal review. (See “TSE, Inc. Vulnerable Adult Report” form for contents of report.)
3. When an internal or external report has been made of potential maltreatment, the TSE Vice President or Services Coordinator is responsible for the internal review and investigation, contacting the appropriate outside investigative agency, preparing all necessary reports, and ensuring necessary corrective action is taken to protect the health and safety of the vulnerable adult. In the event that the Vice President or Services Coordinator is the alleged perpetrator, the President/Chief Executive Officer will be responsible for the internal review and investigation. TSE will provide documentation of the review to DHS upon the commissioner’s request.
4. If TSE makes the verbal report on behalf of a staff person, a written notice will be provided to the reporter, in a manner that protects their confidentiality as a reporter, within two working days, as to the action taken by TSE. (see TSE, Inc. “Notice of Status of Report of Suspected Maltreatment” form.)
5. Internal investigation of a report of suspected maltreatment will include the following activities, as appropriate:
 - a. interview of the alleged victim;
 - b. interview of the reporter and others who may have relevant information;
 - c. interview of the alleged perpetrator;
 - d. examination of the environment surrounding the alleged incident;
 - e. review of pertinent documentation surrounding the alleged incident;
 - f. evaluation of whether:
 - i. related policies and procedures were followed
 - ii. the policies and procedures were adequate
 - iii. there is need for additional staff training
 - iv. the reported event is similar to past events with the vulnerable adult or the services involved
 - v. there is a need for corrective action by TSE to protect the health and safety of vulnerable adults;
 - g. consultation with professionals.
 - h. corrective action plan to be developed and implemented that is designed to correct current lapses and prevent future lapses in performance by individuals or license holders, if any.

VI. Protection for Reporters

A. Immunity from liability:

1. A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.
2. A person employed by a lead investigative agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section

or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

3. A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

B. Retaliation prohibited:

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 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 to:
 - i. discharge or transfer from the facility;
 - ii. discharge from or termination of employment;
 - iii. demotion or reduction in remuneration for services;
 - iv. restriction or prohibition of access to the facility or its residents; or
 - v. any restriction of rights set forth in section 144.651.

VII. Retention/storage/disposition

All records will be filed in separate files and not in the records of persons served, for up to seven (7) years if the alleged abuse or neglect was substantiated, four (4) years if the findings are inconclusive, two (2) years if the alleged abuse or neglect was disproved to the satisfaction of the investigating authority agency, and two (2) years if there was an investigation of the reported incident by the outside investigation agency. This time frame also applies to all internal investigations that are conducted by TSE.

VIII. TSE Abuse Prevention Plans

A. The TSE Abuse Prevention Plan is applicable to agencies licensed by the State Department of Human Services. The TSE governing body will establish and enforce an ongoing written prevention plan.

B. The plan will contain an assessment of each training site comprised of:

1. The physical plant, to include evaluation of the following factors:
 - a. The condition and design of the building as they relate to the safety of the persons served, and
 - b. The existence of areas in the building which are difficult to supervise.
2. The TSE population to include evaluation of:
 - a. Age, sex, mental functioning;
 - b. Physical and emotional health or behavior of persons served.

- c. The need for training of staff to meet identified person's needs, and
- d. The knowledge the agency may have regarding previous abuse that is relevant to minimizing risk of abuse for persons served.

- 3. The plan will contain steps for corrective action comprised of:
 - a. Identify factors which may encourage or permit abuse;
 - b. Stating specific measures to be taken to minimize risk of abuse;
 - c. description of any identified corrective action that will be taken based the assessment including.
 - i. training employees
 - ii. adjusting staffing patterns;
 - iii. initiating new procedures, or
 - iv. any needed modification of the physical plant or environment that have been identified as a result of the assessment; and

- d. A timetable for the implementation of any identified corrective actions that needs to be taken to minimize the risk of abuse.

C. The TSE governing body will review the plan at least annually and will:

- 1. Consider assessment factors in the plan;
- 2. Consider any reports of abuse that have occurred, and
- 3. Revise the plan if necessary to reflect the results of the review.

D. TSE will distribute the plan by:

- 1. Posting it in each major training area and site;
- 2. Having a copy available in the office for review on request by persons served, their representatives and mandated reporters.

IX. Individual Abuse Prevention Plans

A. TSE will develop and implement an Individual Abuse Prevention Plan (IAPP) for all persons served.

B. An IAPP will be developed at intake, and reviewed and revised at the 45-day meeting and annually thereafter. The development, review and revision will be done by TSE and the Support Team, including the person served, as part of the person's annual planning meeting.

C. The plan will contain:

- 1. An assessment of the person's susceptibility to abuse by other individuals including other vulnerable adults, and the person's risk of abusing other vulnerable adults.

- 1. If the individual assessment shows that individualized measures are necessary, the plan will contain a statement of the individualized, specific measures which will be taken to minimize the risk of abuse to the individual person and other vulnerable adults. TSE will take all reasonable measures to minimize the risk of abuse to persons served within the scope of its services, and will identify referrals made when the individual is susceptible to abuse outside of the scope or control of TSE's services. For the purposes of this paragraph, the term "abuse" includes self-abuse.

- 2. If TSE knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to

visitors to the facility and persons outside the facility, if unsupervised. Under this section, TSE knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or from TSE's ongoing assessments of the vulnerable adult.