



VULNERABLE ADULT POLICY

I. Purpose

The purpose of this policy is to establish guidelines for the external and internal reporting and investigation of maltreatment of vulnerable adults.

This policy is intended to set forth procedures implementing the “Vulnerable Adult Act” Minnesota Statute [Sec.626.557](#) & [Sec.626.5572](#).

II. Position Statement

Steps shall be taken to reduce or eliminate the likelihood of maltreatment, 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 maltreatment. TSE will assure that all knowledge and written reports regarding incidents of abuse and neglect are communicated to the appropriate authorities.

III. Orientation for Employees and Persons Served

- A. 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.
- B. 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.
- C. All persons served by TSE and/or their representative 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.

IV. Definitions

- 1. **“Vulnerable Adult”**: for the purpose of this policy all persons served by TSE are considered vulnerable adults, regardless of the type or severity of their disabilities
- 2. **“Caregiver”**: is defined as an individual or facility who has responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement. Caregiver does not include an unpaid caregiver who provides incidental care.
- 3. **“Accident”** is defined as 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

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

4. **“Therapeutic conduct”** is defined as 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, employee, or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration
- B. A caregiver

5. **“Maltreatment”** is defined as abuse, neglect, or financial exploitation of a vulnerable adult, all of which are defined in Minnesota Statutes, [section 626.5572](#).

6. **“Abuse”** is defined as:

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
- 2. The use of drugs to injure or facilitate crime
- 3. The solicitation, inducement, and promotion of prostitution
- 4. Criminal sexual conduct in the first degrees

***A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.**

B. Conduct that is not an accident or therapeutic which produces or would be expected to produce physical pain, injury, or emotional distress including, but not limited to:

- 1. Hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult
- 2. Use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or disparaging, derogatory, humiliating, harassing, or threatening treatment of a vulnerable adult
- 3. 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, unless authorized under applicable licensing requirements or Minnesota Rules, chapter 9544.

C. Any sexual contact or penetration, between a service provider and a client receiving services.

D. Forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult’s will to perform services for the advantage of another

➤ **Abuse does not include*:**

- when the vulnerable adult, or a person with authority to make health care decisions for the vulnerable adult, refuses consent or withdraws consent to any therapeutic conduct
- when the vulnerable adult, or a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith depends upon spiritual means or prayer for treatment or care in lieu of medical care, provided that this is consistent with the prior practice, belief, or expressed intentions of the vulnerable adult

*Incidents meeting criteria of abuse must be reported to the MAARC to be able to determine exclusion

7. **“Neglect”**: refers to neglect by a caregiver or self-neglect. See definitions below:

A. **“Caregiver Neglect”** means 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:

- i. 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
- ii. not the result of an accident or therapeutic conduct

B. **“Self Neglect”** means neglect by a vulnerable adult of their own food, clothing, shelter, health care, or other services that are not the responsibility of a caregiver which a reasonable person would deem essential to obtain or maintain the vulnerable adult’s health, safety, or comfort

➤ ***Neglect does not include****:

- when the vulnerable adult, or a person with authority to make health care decisions for the vulnerable adult, refuses consent or withdraws consent to any therapeutic conduct
- when the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith depends upon spiritual means or prayer for treatment or care in lieu of medical care, provided that this is consistent with the prior practice, belief, or expressed intentions of the vulnerable adult
- when an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that does not result in injury or harm requiring medical or mental health care
- when 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:
 - the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult
 - 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
 - the error is not part of a pattern of errors by the individual
 - if in a facility, the error is immediately reported and recorded internally in the 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 the actions required are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

* Incidents meeting criteria of neglect must be reported to the MAARC to be able determine exclusion

8. **“Financial exploitation”** is defined as:

A. In a 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, a person:

1. 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
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. It also includes the following actions taken without legal authority:

1. Willful use, withholding, or disposal of a vulnerable adult's funds or property
2. Obtaining 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
3. Acquiring possession or control of, or an interest in, a vulnerable adult's funds or property through the use of undue influence, harassment, duress, deception, or fraud
4. Forcing, compelling, coercing, or enticing a vulnerable adult, against the vulnerable adult's will, to perform services for the profit or advantage of another

V. Reporting Maltreatment

A. Maltreatment that requires reporting:

A mandated reporter must immediately (within 24 hours) make a report of the following to the Minnesota Adult Abuse Reporting Center (MAARC). The MAARC is also referred to as The Common Entry Point

- any action that constitutes maltreatment (abuse, neglect, or financial exploitation)
- if a vulnerable adult has sustained a physical injury that is not reasonably explained
- an error that occurred in the provision of therapeutic conduct to a vulnerable adult, resulting in injury or harm, which reasonably requires the care of a physician
- if a vulnerable adult was admitted to a facility from another facility, and the reporter has reason to believe the vulnerable adult was maltreated at the previous facility
- if the reporter suspects that maltreatment has occurred prior to an individual's admission to a facility, and the individual is a vulnerable adult who has a physical or mental disability that impairs the individual's ability to adequately care for himself or herself without assistance
- Verbal or physical aggression between vulnerable adults or self abusive behavior that caused serious harm*
 - *Serious harm includes fractures, dislocations, evidence of internal injuries, head injuries with loss of consciousness, lacerations involving tendon or organs, 2nd or 3rd degree burns, frostbite, irreversible mobility or avulsion of teeth, injuries to the eye ball, ingestion of a foreign substance and objects that are harmful, near drowning, heat exhaustion, all other injuries considered serious by a physician

A reporter is *not* required to report the following:

- a circumstance in which federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected maltreatment, unless the vulnerable adult or the vulnerable adult's legal representative has consented to the disclosure
- verbal or physical aggression between patients, residents, or clients of a facility, or self-abusive behavior, unless the behavior causes serious harm
- accidents
- events occurring in a facility that result from an individual's error in the provision of therapeutic conduct to a vulnerable adult, that do not result in injury or harm requiring medical or mental health care
- if the reporter knows or has reason to know that a report has already been made to the common entry point, the Minnesota Adult Abuse Reporting Center (MAARC)

- Cases not reported to the MAARC will be reported per Incident Report protocol and reviewed by the TSE Services Coordinator, Director of Program Services and licensing agencies

B. Role of the Reporter

All TSE employees are mandated reporters. All persons other than mandated reporters may and shall report incidents of maltreatment. Any mandated reporter who has knowledge or reason to believe verbal or emotional abuse, physical abuse, the abuse of rights or neglect of a vulnerable adult will immediately report the information

C. Reporting Procedure

Timeline:

- (a) ***A report will be made to the MAARC 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
- (b) Within 72 hours, a “TSE, Inc Internal Vulnerable Adult Report” will be completed for internal review

How to Report:

- **Option 1:** Online or oral report will be made by the mandated reporter to the Minnesota Adult Abuse Reporting Center (MAARC)
 - The MAARC website address is: <http://www.mn.gov/dhs/reportadultabuse/>
 - The MAARC phone number 844-880-1574. The phone number is also listed on TSE phone lists at each community resource center
 - An internal report will also be written by the reporter and reviewed by the Director of Program Services or Services Coordinator
- **Option 2:** Oral or written report will be made by the mandated reporter to the Services Coordinator or Director of Program Services. The Services Coordinator or Director of Program Services will in turn make the report to the Minnesota Adult Abuse Reporting Center (MAARC)
 - If a report is made on behalf of a TSE Employee, a “TSE, Inc Written Notice to Mandated Reporters” form 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
- **Option 3:** Oral or written report will be made by the mandated reporter to outside investigative authorities without making an internal report.

** The President/Chief Executive Officer will be given the verbal and/or written reports, and will report to the MAARC, in the absence of the Director of Program Services or Services Coordinator, or if the Director of Program Services or Services Coordinator are the alleged perpetrator.

C. Investigation:

1. When an internal or external report has been made of potential maltreatment, the Director of Program Services or Services Coordinator is responsible for:
 - a. the internal review and investigation

- b. contacting the appropriate outside investigative agency
 - i. Ombudsman and Department of Human Services Licensing Division, if serious injury or death occurred
 - ii. OSHA, if a work-related death or injury occurred
- c. preparing all necessary reports
- d. ensuring necessary corrective action is taken to protect the health and safety of the vulnerable adult

2. In the event that the Director of Program Services 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 internal review upon the commissioner's request.

3. Internal investigation of a report of suspected maltreatment will be completed within 30 days and will include the following activities, as appropriate:

- a. interview of the vulnerable adult;
- b. interview of the reporter and others who may have relevant information;
- c. interview of the individual or facility alleged responsible for maltreatment
- d. review of records and pertinent documentation of the alleged incident
- e. examine the environment surrounding the alleged incident
- f. consult with professionals
- g. review that related policies and procedures were followed
- h. review that policies and procedures were adequate
- i. determine if additional staff training is needed
- j. determine if the reported event is similar to past events with the vulnerable adult or the services involved
- k. identify and take corrective action and implement measures designed to reduce the risk of further occurrence of this error and similar errors
- g. communicate with state, federal, tribal and other agencies including:
 - i. service providers
 - ii. case managers
 - iii. ombudsman
 - iv. support persons for the vulnerable adult

4. The lead investigative agency may decide not to conduct an interview of a vulnerable adult, reporter, or witness if:

- (1) the vulnerable adult, reporter, or witness declines to have an interview with the agency or is unable to be contacted despite the agency's diligent attempts
- (2) an interview of the vulnerable adult or reporter was conducted by law enforcement or a professional trained in forensic interview and an additional interview will not further the investigation
- (3) an interview of the witness will not further the investigation
- (4) the agency has a reason to believe that the interview will endanger the vulnerable adult

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 the 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 is 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) Consequences of retaliation: 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:

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

VII. Falsified Reports

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.

VIII. Failure to Report

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.

IX. Retention/storage/disposition

All Vulnerable Adult Reports will be filed separate from a vulnerable adult's personnel file. Vulnerable Adult Reports will be stored indefinitely.

X. TSE Abuse Prevention Plans

A. The Program 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 community resource center 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
 - 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
 - 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
 - iv. any needed modification of the physical plant or environment that have been identified as a result of the assessment
 - 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
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

XI. 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:

- 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.
- 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.
- 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.