

Vulnerable Adult Law and Practice

Workbook and Study Guide

Developed by

**Sara Zoff, MSW
University of Minnesota School of Social Work**

**Barbara Doherty, Senior Program Administrator
Minnesota Department of Human Services**

**Bev Asher, Adult Protection Advisor
Minnesota Department of Human Services**

Introduction to Vulnerable Adult Study Guide

The *Vulnerable Adult Law and Practices Workbook and Study Guide* was developed as part of a University of Minnesota School of Social Work Hartford Grant Project, in collaboration with the Minnesota Department of Human Services, Aging & Adult Services Division.

The grant project advisory board of community professionals identified a compelling need for social work professionals to understand issues related to elder abuse and neglect, including an in-depth working knowledge of the Vulnerable Adult Law in Minnesota.

This workbook and study guide includes four sections:

- Section One includes definition of all sections of the Vulnerable Adult Law and a series of questions and answers to assist readers with translating definitions into practice.
- Section Two includes a review of the subdivisions included in the Vulnerable Adult Law, and questions and answers for readers to review and refer back to as needed in practice.
- Section Three includes the same information as is presented in Section II; however the answers to the review questions for each subdivision are separate. This will enable individuals to test their knowledge of the law after reading the materials.
- Section Four includes three case studies, followed by a series of questions. Readers may refer back to Sections One and Two to respond to the questions, or consult a list of websites included in this section to determine the correct responses.

The case studies and quiz questions are also excellent learning tools to use in small group discussions. It might also be helpful for individual work groups to develop case studies that reflect situations likely to occur in their work place, for further discussion.

For questions related to any part of this Workbook, please contact:

Sara Zoff at (651) 227-7104 or by e-mail at sarawz@aol.com
Or Bev Asher (651) 431-2546, TTY at 1-800-627-3529 or by e-mail at
bev.asher@state.mn.us

Vulnerable Adult Law and Practice

Section One

Vulnerable Adult Definitions: Understanding the Law

Vulnerable Adult Law and Practice

The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.

In addition, it is the policy of this state to require the reporting of suspected maltreatment of vulnerable adults, to provide for the voluntary reporting of maltreatment of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

The purpose of the Vulnerable Adult Law is to protect vulnerable adults from abuse or neglect. The reporting requirements are found in Minnesota Statute B626.557 and the related criminal provisions are found in Minnesota Statute BB609.232-234.

Why do you need to understand the Vulnerable Adult Law?

As a social worker, law enforcement or education professional or professional's delegate, individual caring for vulnerable adults, employee of a rehabilitation facility or an employee or person providing services in a facility as defined by the law or person that performs duties of the medical examiner or coroner you are, by law a *mandated reporter*. This means that it is your responsibility to understand all aspects of the vulnerable adult law and to comply with all of the provisions therein contained.

People who depend on others for care or assistance in daily living have an elevated risk of being harmed by others and an increased risk for self-neglect. Frail, elderly and disabled persons are especially at risk. Abuse, neglect and exploitation are the most common forms of harm, and may take place anywhere.

Many vulnerable adults may understand that they are being mistreated, but be reluctant to report abuse or neglect out of fear of retaliation by the caregiver or loss of care completely. They frequently do not understand that the law will protect them and make certain that their legal and human rights are restored.

Vulnerable adults may not wish to acknowledge reduced capacity for self-care out of fear that they will be "put away somewhere" and lose their freedom. They may not be aware of the number of services available to assist them with daily tasks such as housekeeping, errands, doctor's appointments, case-management and financial assistance that can be delivered to them in their own homes. If abusers include family members, vulnerable adults may fear that they will not only damage this relationship, but also place their spouse or child in legal difficulties.

Definitions within the Vulnerable Adult Law

Vulnerable Adult: A vulnerable adult is any person, 18 years of age or older who is:

- A resident or inpatient of a healthcare facility or receives services from a licensed home care provider or a person or organization that provides personal care assistance under the state's medical assistance program.
- An individual who lives at home or in a facility and is unable or unlikely to report maltreatment of him or herself because of a physical or mental infirmity or other physical, mental or emotional dysfunction that impairs a person's ability to provide adequately for his or her own care without assistance.

Care includes providing for food, shelter, clothing, health care or supervision.

A vulnerable adult is a victim of maltreatment when he or she is subjected to abuse, neglect or financial exploitation.

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

- An assault
- Use of drugs to injure or facilitate a crime.
- Solicitation, inducement and or the promotion of prostitution or any criminal sexual conduct in the first through fifth degrees.

Any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction is a violation of the law.

- Hitting slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult.
- Use of repeated or malicious oral, written, or gestured language or treatment of the vulnerable adult that would be considered disparaging, derogatory, humiliating, harassing or threatening.

- 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.
- Any sexual contact or penetration between a facility staff person or persons providing services in the facility and a resident, patient, or client of that facility.
- The act of forcing, compelling, coercing or enticing a vulnerable adult against the vulnerable adult's will to provide services for the advantage of another.

For purposes of this definition, 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 refuses 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. Please refer to the law for any questions pertaining to any situation of this sort.

Accident: A sudden, unforeseen and unexpected occurrence or event which is not likely to occur and which could not have been prevented by exercise of due care, or occurs while a vulnerable adult is receiving services from a facility and the facility and or the employee or person providing services are in compliance with the laws and rules relevant to the occurrence or event.

Caregiver: A Caregiver is 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.

Common Entry Point: A common entry point is the entity designated by each county responsible for receiving reports under this section. A list of common entry point numbers is available at <http://www.mnaging.org/services/cepd.html> or by calling, 651-431-25475563 or 651-431-2545.

Facility: For the purposes of the law a facility may be any building that houses a vulnerable adult receiving care or services, including a licensed hospital, nursing home, residential or nonresidential facility. This would also include a licensed home care provider, hospice provider or a person or organization that exclusively offers, provides or arranges for personal care assistant services under the medical assistance program. 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.

False: False means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

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.

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.

Initial Disposition: "Initial disposition" is the lead agency's determination of whether the report will be assigned for further investigation.

Lead Agency: "Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The department of health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, or boarding care homes.

(b) The department of human services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, chemical health programs, or personal care provider organizations.

(c) The county social service agency or its designee is the lead agency for all other reports.

Legal Authority: "Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

Maltreatment: "Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Mandated Reporter: "Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

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 the 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 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 agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

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.

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

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.

Vulnerable Adult: "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who 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 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; 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 assistance, the individual has an impaired ability to protect the individual from maltreatment.

Filing a Vulnerable Adult Report

A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the *common entry point* in their county.

If an individual is a vulnerable adult solely because the individual is admitted to the facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

- The individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility.
- The reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, clause (4).
- A person not required to report under the provisions of this section may voluntarily report as described above.
- Nothing in this section requires a report of known or suspected maltreatment if the reporter knows or has reason to know that a report has been made to the common entry point.
- Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

A mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. A mandated reporter may disclose not public data, as defined in section 13.02 and medical records under section 144.335, to the extent necessary to comply with this subdivision.

A common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment.

When a reporter calls they should be prepared with the following information:

- The time and date of the report.
- The name, address and telephone number of the person reporting.
- The time, date and location of the incident.
- The names of the persons involved, including but not limited to perpetrators, alleged victim and witnesses.
- Whether there was a risk of imminent danger to the alleged victim
- The description of the suspected maltreatment.
- The disability, if any, of the alleged victim
- The relationship of the alleged perpetrator to the alleged victim
- Whether a facility was involved and, if so, which agency licenses the facility.
- Any action taken by the common entry point.
- Whether law enforcement has been notified.
- Whether the reporter wishes to receive notification of the initial and final reports.
- If the report is from a facility with an internal reporting procedure, the name, mailing address and telephone number of the person who initiated the report internally.

The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed. If a report is initially made to a law enforcement agency or a lead agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

Abuse Prevention Plans

Subd. 14. **Abuse prevention plans.** (a) Each facility, except home health agencies and personal care attendant services providers, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan

for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of the person's susceptibility to abuse by other individuals, including other vulnerable adults, and a statement of the specific measures to be taken to minimize the risk of abuse to that person. For the purposes of this clause, the term "abuse" includes self-abuse.

Retaliation Prohibited

Subd. 17. **Retaliation prohibited.** (a) 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.

(b) 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.

(c) 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:

- (1) discharge or transfer from the facility;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services;
- (4) restriction or prohibition of access to the facility or its residents; or
- (5) any restriction of rights set forth in section 144.651.

The Investigation Process

The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

- Determination of immediate need for adult protective services: *Immediately notify appropriate county agency.*
- Determination of suspected criminal activity against a vulnerable adult: *Immediately notify appropriate law enforcement agency.*
- Determination that there is no immediate need for adult protective services: *Notify the appropriate lead agency as soon as possible/ within two working days.*
- Determination that the report does not reference alleged or suspected maltreatment: *Determine if any referral should be made.*
- Determination that the report includes information about a suspicious death: *Immediately refer to law enforcement and the ombudsman.*

Law enforcement is the primary agency to conduct investigations of any incident in which there is a reason to believe a crime has been committed. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency and exchange data as authorized within the law. Each lead agency shall complete the investigative process for reports within its jurisdiction. It is expected that all agencies will work together and share information, resources and expertise. The lead agency has the right to obtain results of any investigation by law enforcement and enter facilities to inspect and copy records, including access to some not public data and medical records to the extent necessary to conduct its investigation.

If a reporter requests a response, the lead agency will notify the reporter that it has received a report and provide information on the initial disposition of the report with five business days, provided that the notification will not endanger the vulnerable adult or hamper the investigation. A final disposition will be completed within 60 calendar days. At this time the vulnerable adult or the vulnerable adult's legal guardian and the facility, if any, will receive notification that the final disposition has been completed.

Mitigating Factors:

While completing the investigation and determining whether a facility or individual is the responsible party for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

- *Were the actions of the facility or caregivers in accordance with, and following the terms of an erroneous physician order, prescription, resident care plan or directive? (This is not a mitigating factor if the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan or directive and/or knows the errors were present and took no reasonable measures to correct the defect before administering care.)*
- *The comparative responsibility between the facility, other caregivers, and requirements placed upon the employee.*
- *The facility's compliance with related regulatory standards and factors such as adequacy of facility policies and procedures.*
- *The adequacy of facility training, and the adequacy of an individual's participation in the training.*
- *The adequacy of caregiver supervision.*
- *The adequacy of facility staffing levels.*
- *Consideration of the scope of the individual employee's authority.*
- *Whether the facility or individual followed professional standards in exercising professional judgment.*

The Investigation Memoranda

A final report from the lead agency will be issued in the form of a public *investigation memorandum*.

This report will be made available to the following persons:

- The vulnerable adult or the vulnerable adult's legal guardian, if known, unless the lead agency knows that the notification would endanger the well being of the vulnerable adult.
- The reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well being of the vulnerable adult.
- The alleged perpetrator, if known.
- The facility.
- The ombudsman for older Minnesotans, or the ombudsman for mental health and mental retardation, as appropriate.

At this time the lead agency shall also notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult of their appeal or review rights under the law.

If a report has been substantiated, the lead agency shall routinely provide investigation memoranda to the appropriate licensing boards, including the names of substantiated perpetrators. The lead agency may not provide investigative memoranda for inconclusive or false reports unless the lead agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Request for Reconsideration of the final disposition of maltreatment.

The following persons/parties may request the lead agency reconsider the final disposition:

- An individual or facility which a lead agency determines has maltreated a vulnerable adult.
- The vulnerable adult or an interested person acting on behalf of the vulnerable adult.

The request for reconsideration must be submitted in writing within 15 days after receipt of the final disposition.

An individual who was determined to have maltreated a vulnerable adult and who was disqualified on the basis of serious or recurring maltreatment may request reconsideration of the maltreatment determination and the disqualification, and must submit this request within 30 calendar days of the individual's receipt of the notice of disqualification.

For more information about the appeal process, refer to the law.

Education Requirements for lead agency investigators.

The commissioners of health, human services and public safety shall cooperate in the development of a joint program for education of lead agency investigators in the appropriate techniques for investigation of complaints of maltreatment. The program must include but need not be limited to the following areas:

- Information collection and preservation.
- Analysis of facts.
- Levels of evidence.
- Conclusions based on evidence.
- Interviewing skills, including specialized training to interview people with unique needs.
- Report writing.
- Coordination and referral to other necessary agencies such as law enforcement and judicial agencies.
- Human relations and cultural diversity.
- The dynamics of adult abuse and neglect with family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation.
- The protective social services that are available to protect alleged victims from further abuse, neglect or financial exploitation.
- The methods by which lead agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts.
- The data practices laws and procedures, including provisions for sharing data.

There are additional ongoing training requirements and requirements related to new reporting requirements.

Duties of a County Social Service Agency

Upon receipt of a report from the common entry point staff the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult.

In cases of suspected sexual abuse, the agency shall immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment.

When necessary to protect the vulnerable adult from further harm, the agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The agency may also investigate to determine whether the conditions that resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

County social service agencies may enter facilities and inspect and copy records as part of an investigation. The agency has access to not public data and medical records that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

In order to protect a vulnerable adult from serious harm the agency may immediately intervene on behalf of said individual by seeking any of the following remedies:

- *A restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult.*
- *The appointment of a guardian or conservator.*
- *Replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator.*
- *Referral to the prosecuting attorney for possible criminal prosecution of the perpetrator.*

The expenses of legal intervention must be paid by the county in the case of indigent persons.

Data Management

In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the agency are welfare data. All regulations under the law must be adhered to related to data collection and sharing.

The investigation memorandum must contain the following data, which are public:

- The name of the facility investigated.
- A statement of the nature of the alleged maltreatment.
- Pertinent information obtained from medical or other records reviewed.
- The identity of the investigator.
- A summary of the investigation's findings.
- A statement of whether the report was found to be substantiated, inconclusive, false or that no determination will be made.
- A statement of any action taken by the facility.
- A statement of any action taken by the lead agency.
- A statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known when a lead agency's determination has substantiated maltreatment.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data as follows:

- Data on individuals collected and maintained in the investigation memorandum.
- The name of the vulnerable adult.
- The identity of the individual alleged to be the perpetrator.
- The identity of the individual substantiated as the perpetrator.
- The identity of all individuals interviewed as part of the investigation.

Other data on individuals maintained as part of the investigation under this section are private data on individuals upon completion of the investigation.

Identity of Reporter

The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith.

This subdivision does not alter disclosure responsibilities or obligations under the rules of criminal procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

Destruction of Data

Notwithstanding section 138.163 data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

- Data from reports determined to be false, two years after the finding was made.
- Data from reports determined to be inconclusive, four years after the finding was made.
- Data from reports determined to be substantiated, seven years after the finding was made.
- Data from reports which were not investigated by a lead agency and for which there is not a final disposition, two years from the date of the report.

Summary of Reports

The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section and the resolution of those investigations. The report shall identify:

- Whether and where backlogs of cases result in a failure to conform to statutory time frames.
- Where adequate coverage requires additional appropriations and staffing.
- Any other trends that affect the safety of vulnerable adults.

Record Retention Policy: Each lead agency must have a record retention policy.

Exchange of Information

Lead agencies, prosecuting authorities and law enforcement agencies may exchange not public data if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies

investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

Completion Time: Each lead agency shall keep records of the length of time it takes to complete its investigations.

Notification of other Affected Parties

A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

Federal Requirements

Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Putting Definitions into Practice/ Questions and Answers

Q: You are faced with a situation in practice that you are not certain falls within the Vulnerable Adult Law. What should you do?

A: *You may want to refer to the statutes within the law. If you work within an agency setting, you may want to ask a supervisor to help you determine the scope of your responsibility. If you are still in doubt, always call the Common Entry Point. The intake worker who will assist you will help determine what action should be taken. It is always better to make a report!*

Q: You are just finishing up the day at work. One of your coworkers asks for some advice related to an incident that he considers to be maltreatment of a vulnerable adult. You agree that this situation should be reported. Your coworker thanks you for your input and states that he will call in the report "first thing tomorrow". What should your response be?

A: *Under the law, calls to the common entry point should be made immediately after responding to any imminent danger the vulnerable adult may be in. Your coworker should be advised to make this call prior to going home, or request a supervisor do so.*

Q: A home health care worker reports that two of the clients she sees are always arguing with each other, and calling each other nasty names. She explains that they are both in their eighties, and have been married for more than 50 years. Upon further investigation, you determine that despite the verbal sparring and name calling this couple clearly cares for each other in many ways and neither seems particularly hurt or even affected by the name calling. The husband is almost blind. His wife reads to him, helps him anytime that he might injure himself if they are out and frequently fixes special meals he enjoys. He will frequently praise her competence and care in the presence of anyone who will listen, and gives her hugs often. Family members visit frequently, as do members of the couple's church. There are no signs of any physical abuse, neglect or depression.

A: *As a social worker you should document the concerns related to arguing and name-calling. However, as it appears this is the way this couple have communicated for a long time, and neither member seem overly concerned by this situation, it would not require a report to the common entry point.*

Q: Jane went to work at the XYZ Health Care Center a week ago. On Tuesday, she witnessed a coworker slap one of the residents who wasn't cooperating while the coworker finished the resident's morning cares. Jane consults the Abuse Prevention Plan at her facility to find out what the internal reporting procedure for this situation is. The plan states that Jane should report this incident to her supervisor. Jane reported this incident to her supervisor, who said that she would take care of it. A week has gone by, and the coworker is still assisting residents. Jane would like to know what was done. What should she be able to expect from the facility she works for?

A: *By law, Jane met the reporting requirements by following the internal reporting requirements. She should have received a written notice stating if the incident was reported to the common entry point within two working days from the time of the report. Jane should have been informed that if she was not satisfied with the action taken by the facility related to a report to the common entry point that she could choose to report this incident externally. This notice should also have informed Jane that she would be fully protected from any retaliatory measures by the facility should she choose to report externally.*

Q: Alice is a personal care attendant for a young man who suffers from alcoholism and, in the past, drug abuse. While Alice has been caring for him, she has occasionally seen visitors come and go in his home. The young man never introduces these visitors, and usually visits with them in his bedroom with the door closed. Despite the fact her client is on a limited income, Alice recently found a large amount of cash stuffed in a box while she was cleaning up the apartment. Alice also found a small bag of what appeared to be cocaine in the box. Alice knows that she should report this to the police or to the common entry point, but is afraid that they may believe that she was somehow involved and that if the visitors were to find out she had made this report they may do her some harm. What protection does Alice have under the law?

A: *A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report. The identity of any reporter may not be disclosed in a good-faith report and, should Alice participate in any investigation she will also be protected.*

Q: Jacob has been caring for an elderly gentleman in the evenings for a number of months. The man pays him privately for his caregiving. The gentleman's daughter assists with his needs during the day. A week ago, the gentleman requested that Jacob fix him dinner when Jacob arrived at 8:00. Jacob asked his client why he wanted to eat again so late in the evening. Jacob's client explained that his daughter had been angry that he had an accident in bed and stated, "If he had accidents, he would just have to go to bed without supper". Upon further questioning, Jacob's client explained that this has happened on

other occasions, and that his daughter also limits how often he may drink beverages so that she will not have to assist him to the toilet so often. Jacob's client asks him not to say anything about this- that he knows his daughter just gets tired sometimes with his care and really loves him. He states that if she wasn't able to come in and help during the day he would have to go to a nursing home and vehemently does not want this to happen. Jacob has not seen any other signs of abuse, and knows that his client's daughter works at night and probably is tired during the day. Does Jacob need to report this incident?

A: *Yes, Jacob does need to report this, under the definition of abuse. In this situation Adult Protection would most likely visit with Jacob's client and his daughter and try to arrange for more daily assistance to decrease the caregiver stress Jacob's daughter is showing. A Social Service case manager might assist Jacob's client with alternatives he has not been made aware of.*

Q: Joan works at a group home serving clients with serious and persistent mental health diagnoses. She has noticed that a few of the residents are not coming down for breakfast. Joan realizes that it is important for most of her clients to eat something in the morning before they take their medications and asks them why they are not eating at least a little something. Three of the clients explain that the new cook has called them "retards" and "crazies" and threatened to poison their eggs when one of them told him that he could not talk to them like this. They are afraid of what he might do if they report him, and ask Joan not to do so. Joan knows the new cook, and thinks she can handle this herself. What should she do?

A: *Joan must follow internal reporting procedures within her facility. If any harm were to come to a resident after she "handled this" independently both she and her facility would be liable under the VA Act.*

Q: Andrew is a social worker with the Compassionate Care Agency. One night he is bowling with his regular bowling team members. One member has been out of work for some time, and is asked how things are going. The man states that it's no problem- his Dad is an alcoholic and usually passes out after dinner, if not before. The man further explains that he simply takes the cash his Dad has in his wallet, and keeps some out when he gets his Dad more from the ATM- the way he sees it " it's less money going down the drain for booze and he's doing his Dad a favor". What should Andrew do?

A: *This is financial exploitation by a family member and must be reported. Additionally, Andrew has knowledge of a vulnerable adult neglecting himself, which he would also be mandated to report.*

Q: Your neighbor occasionally takes supper over to the widowed man who lives next door to her. They have lived next door to each other for 35 years, and she knows he is very lonely since his wife passed away four years ago. Recently, her neighbor told her that he had met a new lady friend- 30 years his junior. He stated that she struck up a conversation in the grocery store up the street. He was very excited about this new friendship, stating that she would probably come to live with him soon as she was being evicted from her apartment after she lost her job. He admits that she seems to have a little problem with keeping a job and likes to gamble too much. He further shares that she has asked him to get her a cellular telephone so that they can stay in touch better- hers got disconnected- and asked him for cash a few times to "tide her over". Your neighbor is concerned that this little floozy is going to take advantage of the widowed gentleman, and asks you if there is anything that she can do?

A: *You can provide your neighbor with the number to the common entry point for your County and assure her that her name will be kept confidential.*

Q: At 9:30 in the evening your Aunt Josephine calls to tell you that she is afraid in her home and wants you to come and get her. She knows that you are a social worker, and hopes that you can explain to her son that he has to leave her home. She states that her son and his friends are using drugs in her living room, and that he told her if she told anyone, he would hurt her and lock her in her bedroom. Aunt Josephine then tells you that she thinks one of the friends has a gun with him. She sounds extremely frightened, and has had no difficulties with cognitive functioning in the past. You know that your cousin, on the other hand, has been in and out of trouble for years. What should you do?

A: *You should tell Aunt Josephine to stay in her locked bedroom, and explain that you are going to call the police to meet you at her home and escort her son out. Aunt Josephine is in imminent danger.*