

# Bulletin

August 7, 2009

Minnesota Department of Human Services -- P.O. Box 64941 -- St. Paul, MN 55164-0941

## OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- County VAA lead investigative agencies
- Minnesota Dept. of Health, Office of Health Facility Complaints

## ACTION/DUE DATE

Please read and comply with requirements as appropriate.

## EXPIRATION DATE

August 7, 2011

## 2009 Legislative Changes to the Vulnerable Adult Act

### TOPIC

Changes to Minnesota's Vulnerable Adult Act (VAA).

### PURPOSE

The purpose of this bulletin is to inform of changes to the Vulnerable Adult Act [Minnesota Statutes, sections 626.557 & 626.5572 (2009)] which the Minnesota Legislature passed during the 2009 Legislative Session.

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## **I. INTRODUCTION/BACKGROUND**

The 2009 Minnesota Legislature made revisions to the Vulnerable Adults Act (VAA), Minnesota Statutes, sections 626.557 and 626.5572. These revisions and amendments tackle the growing problem of financial exploitation of vulnerable adults, streamline the adult maltreatment reporting system to expedite responses, clarify the lead investigative agency for personal care assistants (PCA's), simplify adult protection data retention requirements, clarify the definition of who is protected, and standardizes investigations.

## **II. LEGISLATIVE CHANGES AND REQUIRED COUNTY ACTIONS**

### **A. Permission for Nursing Facilities, Boarding Care Homes, and Hospital Swing Beds to Report Electronically to the Common Entry Point (CEP)**

Effective August 1, 2009 a boarding care home that is licensed under, Minnesota Statutes, sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under, Minnesota Statutes, section 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under, Minnesota Statutes, sections 144.50 to 144.58 and has swing beds certified under Code of Federal Regulations (CFR), title 42, section 482.66, may submit a report electronically to the common entry point instead of submitting an oral report. The report may be a duplicate of the initial report the facility submits electronically to the commissioner of health to comply with the reporting requirements under CFR, title 42, section 483.13.

#### **1. Current Law**

Current reporting requirements in Minnesota Statutes, section 626.557 state that 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.

#### **2. Legislative Addition to Current Law**

Effective August 1, 2009, an exception to the oral report is made for boarding care home that is licensed under Minnesota Statutes, sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under Minnesota Statutes, section 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under Minnesota Statutes, sections 144.50 to 144.58 and has swing beds certified under CFR, title 42, section 482.66. These providers may submit a report electronically to the common entry point.

#### **3. Actions Required**

- Effective August 1, 2009 each county designated common entry point must make available to Minnesota Department of Human Services, Adult Protection Unit and to the above mentioned providers, in their county, a secure fax number and/or encrypted email address where the vulnerable adult maltreatment reports can electronically be sent.

- Reports must be screened by the common entry point to assess if report involves a suspected crime. If a report involves a suspected criminal activity, then the report must be forwarded to the appropriated law enforcement entity.
- Reports must be entered by the common entry point into the statewide database, Social Service Information System (SSIS), and a copy is to be forwarded electronically to the Lead Agency, Minnesota Department of Health – Office of Health Facility Complaints.

## **B. Voluntary Reporting by Financial Institutions**

Effective August 1, 2009 language is amended to Minnesota Statutes, section 626.557 Subd. 5 and 5a encouraging financial institutions to report suspected financial exploitation of vulnerable adults and to cooperate with investigations by confirming and clarifying financial institutions immunity from legal liability when they report in good faith.

### **1. Current Law**

Minnesota Statutes, section 626.557 Subd. 5 defines the policy for immunity; protection for reporters.

### **2. New Law**

Amends Minnesota Statutes, section 626.557 Subd. 5 to provide language to ensure immunity; protection of reporters to include business's, such as financial institutions, by defining person as a natural person or any form of business or legal entity. Minnesota Statutes, section 626.557 Subd. 5 is amended to read:

“(e) For purposes of this subdivision, "person" includes a natural person or any form of a business or legal entity.”

Additional language added to Minnesota Statutes, section 626.557 Subd. 5a. to provided financial institutions with permissive language to share financial records with lead agencies, law enforcement or prosecuting authority. Language reads:

“Subd. 5a. **Financial institution cooperation.** Financial institutions shall cooperate with a lead agency, law enforcement, or prosecuting authority that is investigating maltreatment of a vulnerable adult and comply with reasonable requests for the production of financial records as authorized under Minnesota Statutes, section 13A.02, subdivision 1. Financial institutions are immune from any civil or criminal liability that might otherwise result from complying with this subdivision.”

### **3. Actions Required**

No action is required

## **C. Lead Agency Definition**

Effective August 1, 2009, county social service agencies are now designated as the lead investigative agency when a report involves vulnerable adult receiving services from an unlicensed personal care provider organization.

### **1. Current Law**

Within the definition of lead agency the county social service agency or its designee is the lead agency for all other reports, including investigations of individual unlicensed personal care attendants.

### **2. New Law**

Statute is amended to clarify county as the lead agency for investigating vulnerable adult allegations when the alleged perpetrator is affiliated with an unlicensed personal care provider organization (PCPO). Language is amended to read:

“Minnesota Statutes, section 626.5572 Subd. 13. **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, or chemical health programs.

(c) The county social service agency or its designee is the lead agency for all other reports, including reports involving vulnerable adults receiving services from an unlicensed personal care provider organization under section 256B.0659.”

### **3. Actions Required**

- Effective July 1, 2009, county adult protection is responsible for investigating alleged maltreatment when the alleged perpetrator is affiliated with an unlicensed PCPO. Most often these are personal care assistants (PCA's).
- Perpetrator data, entered into the Social Service Information System (SSIS) by the common entry point and county adult protection, must indicate the “role” of the perpetrator as “Personal care provider”.
- Counties, as lead agencies, must provide to the commissioner of human services, background studies unit, substantiated perpetrator information. Please indicate in the comment section of the Substantiated Perpetrator Reporting Form if the perpetrator is a PCA. (form attached)

### **D. Definition of Functional Vulnerable Adult**

Effective August 1, 2009 the definition of vulnerable adult is modified to further clarify who is defined as a vulnerable adult in Minnesota Statutes, section 626.5572, subdivision 21 by replacing “need for assistance” with the language, “need for care or services”. Care and services is then further defined to include health, safety, welfare, or maintenance of individual. Also the language is amended to say, individual self. The addition of individual self to the vulnerable adult definition clarifies that self neglect is a criteria for determining if a person is considered a vulnerable adult.

**1. Current Law**

A functional vulnerable adult as defined in Minnesota Statutes, section 626.5572 Subd 21 (4) (ii): because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

**2. New Law**

A functional vulnerable adult as defined in Minnesota Statutes, section 626.5572 Subd 21 (4) (ii): because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment. (b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

**3. Actions Required**

No action is required

**E. Standards of Investigations for Lead Agencies**

Effective August 1, 2009 language is added to Minnesota Statutes, section 626.557 Subd. 10b. to the lead agency investigation guidelines. The language is taken from Minnesota Rule and placed in statute to allow for clear and consistent attention to minimum standards that must be met in an investigation.

**1. Current Law**

Minnesota Statutes, section 626.557 Subd 9b states that each lead agency shall develop guidelines for prioritizing reports for investigation. And Minnesota Rule, part 9555.7300 complaint investigations by local social services agencies, subp. 4 Investigations not related to a facility defines what an investigation shall include.

**2. New Law**

Additional language, taken from Minnesota Rule, part 9555.7300 subp. 4, amended to Minnesota Statutes, section 626.557 to establish a minimum standard for investigating allegations of vulnerable adult maltreatment.

"Minnesota Statutes, section 626.557 Subd. 10b. **Investigations; guidelines.** Each lead agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead agency shall conduct the following activities, as appropriate:  
(1) interview of the alleged victim;  
(2) interview of the reporter and others who may have relevant information;  
(3) interview of the alleged perpetrator;  
(4) examination of the environment surrounding the alleged incident;  
(5) review of pertinent documentation of the alleged incident; and  
(6) consultation with professionals."

**3. Actions Required**

- o Guidelines for prioritizing of reports and investigation guidelines is in current

Minnesota Statute (section 626.557 Subd 9b) and standards for investigation exists in Minnesota (9555.7300 Subp. 3 and Subp. 4) therefore, no action is required.

## **F. Coordination of Investigation**

Effective August 1, 2009, Minnesota Statutes, section 626.557 is amended to clarify that agencies and persons involved in a vulnerable adult maltreatment investigation cooperate in coordination of the investigation.

### **1. Current Law**

Minnesota Statutes, section 626.557 Subd. 9b. Response to reports. Requires that any other lead agency, county adult protective agency, licensed facility or law enforcement shall cooperate and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized.

### **2. New Law**

Minnesota Statutes, section 626.557 Subd. 9b. Response to reports. Is amended to read:

“A lead agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g).”

### **3. Actions Required**

- To the extent possible those entities which are involved with a vulnerable adult maltreatment report are to cooperate in that investigation.

## **G. Federal Grants to Establish and Maintain a Centralized Common Entry Point**

Effective August 1, 2009, the commissioner of human services may seek federal grants to establish and maintain a centralized common entry point system for vulnerable adult maltreatment reports.

### **1. New Law**

Federal grants to establish and maintain the vulnerable adult common entry point system. Language reads:

#### **“FEDERAL GRANTS TO ESTABLISH AND MAINTAIN A SINGLE COMMON ENTRY POINT FOR REPORTING MALTREATMENT OF A VULNERABLE ADULT.**

(a) The commissioner of human services shall seek federal funding for activities to design, implement, maintain, and evaluate the common entry point for reports of suspected maltreatment made pursuant to Minnesota Statutes, section 626.557. The purpose of the federal grant funds is to establish a common entry point with a statewide toll-free telephone number and Web-based system to report known or suspected abuse, neglect, or exploitation of a vulnerable adult. (b) A common entry point must be operated in such a manner as to enable the common entry point staff to:

- (1) operate pursuant to Minnesota Statutes, section 626.557, subdivisions 9,

paragraph (b), and 9a;

(2) when appropriate, refer calls that do not allege abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; and

(3) immediately identify and locate prior reports of abuse, neglect, or exploitation.

(c) A common entry point must be operated in such a manner as to enable the commissioner of human services to:

(1) track critical steps in the investigative process to ensure compliance with all requirements for all reports;

(2) maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation;

(3) serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation;

(4) set standards, priorities, and policies to maximize the efficiency and effectiveness of the common entry point; and

(5) develop a system to manage consumer complaints related to the common entry point.

(d) The commissioner of human services may take the actions necessary to design and implement the common entry point in paragraph (a). Funds awarded by the federal government for the purposes of this section are appropriated to the commissioner of human services.”

## 2. Actions Required

No action required.

## H. Private Right of Action

Effective August 1, 2009, Minnesota Statutes, section 626.557, Subd. 20 is amended to create a cause of action for financial exploitation; damages. This amendment would allow the vulnerable adult to collect damages and recover attorney's fees.

### 1. New Law

A vulnerable adult victim of financial exploitation can file a private right of action, against the perpetrator, to recover damages and reasonable administrative costs.

Language reads:

“Subd. 20. **Cause of action for financial exploitation; damages.** (a) A vulnerable adult who is a victim of financial exploitation has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or \$10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.”

## **2. Actions Required**

No action required.

## **I. Adult Protection Data Retention**

Effective January 1, 2008 all adult protection data is collected, stored and maintained electronically in a statewide database. This includes: Common Entry Point maltreatment reports, adult protection intake, and adult protection findings data. The data collected has varying retention periods. Amended language simplifies data retention periods in the statewide data base and conforms to federal law.

### **1. Current Law**

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in Minnesota Statutes, section 13.02.

Notwithstanding Minnesota Statutes, section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

Data from vulnerable adult maltreatment reports determined to be false or have no disposition must be destroyed two years after finding is made.

### **2. New Law**

Effective August 1, 2009, common entry point data and maltreatment report findings data shall be maintained according to Statute and then destroyed unless otherwise directed by federal requirements.

Data from vulnerable adult maltreatment reports determined to be false or have no disposition must be maintained for three years after finding is made and then destroyed unless otherwise directed by federal requirements. Minnesota Statutes, section 626.557, subdivision 12b, is amended to read:

“Subd. 12b. Data management.

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall maintain data for three calendar years after date of receipt and then destroy the data unless otherwise directed by federal requirements.

Data from vulnerable adult maltreatment reports determined to be false or have no disposition are maintained at least a period of three years.

Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be maintained under the following schedule and then destroyed unless otherwise directed by federal requirements:

- (1) data from reports determined to be false, maintained for three years after the finding was made;
- (2) data from reports determined to be inconclusive, maintained for four years after the finding was made;
- (3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and
- (4) data from reports which were not investigated by a lead agency and for which there is no final disposition, maintained for three years from the date of the report.”

### **3. Actions Required**

- Workgroup destruction dates are currently set within the Social Service Information System (SSIS) to this new retention schedule. Adjustment requests by agency staff are no longer required to modify the destruction date of individual workgroups.
- Cases with more than one report will be set to comply with the report having the latest destruction date. Example: Workgroup number one is found to be inconclusive (4 year retention) and workgroup number two in that same case is found to be substantiated (7 year retention), then the destruction date for each workgroup is seven years from the end date of workgroup number two.
- Documents in hard files should always be destroyed on the same schedule as SSIS data.

## **III. LEGAL REFERENCES**

Laws of Minnesota, 2009, section 626.557, subdivision 4 (a) and (b)

Laws of Minnesota, 2009, section 626.557, subdivision 5 (e) and 5a

Laws of Minnesota, 2009, section 626.557, subdivision 13 (b) and (c)

Laws of Minnesota, 2009, section 626.557, subdivision 21 (4) (ii)

Laws of Minnesota, 2009, section 626.557, subdivision 10b

Laws of Minnesota, 2009, section 626.557, subdivision 9b

Laws of Minnesota, 2009, section 626.557, subdivision 20

Laws of Minnesota, 2009, section 626.557, subdivision 12b

[Laws of Minnesota, 2009, Chapter 119, Section 19. Effective August 1, 2009.](#)

[Laws of Minnesota, 2009, Chapter 159, Effective August 1, 2009](#)

[Laws of Minnesota, 2009, Chapter 79, Effective July 1, 2009](#)

## **IV. AMERICANS WITH DISABILITIES ACT (ADA) ADVISORY**

This information is available in alternative formats to individuals with disabilities by calling (651) 431-2600 (voice). TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency's ADA coordinator.