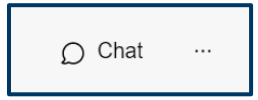
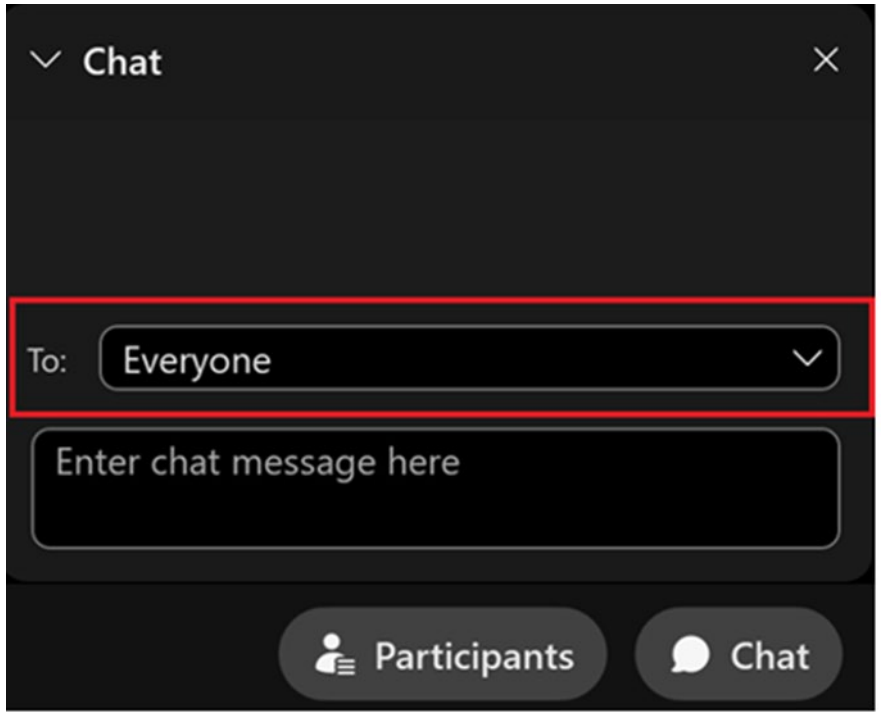
Investigations Process

Matt Heffron, JD| State Rapid Response Operations Manager

How to Ask a Question

- **Participants are muted.**
- **To ask a question** Click on the chat bubble 

to open the chat, select Everyone, and ask a question. Please note that questions sent to panelists directly will not be answered as individual chat boxes are not checked.
- **We will answer** as many questions as we can at the end of the presentation.
- **Please be respectful.**



Agenda

- Legal Background for Complaint Investigations
- Complaint Process
- Reporting Obligations
- Tips

OHFC Creation and Authority

OHFC is a result of two state laws:

- **1976.** OHFC was created by the legislature to review allegations that licensed health care facilities were not complying with regulatory standards (Minnesota Statutes 144A.51 through 54)
- **1981.** The Vulnerable Adults Act (VAA) defined MDH as a “lead investigative agency” for maltreatment in the facilities that we license and regulate (Minnesota Statutes 626.557 and 626.5572)

OHFC Authorities from Minn. Stat. 144A.53

- OHFC may investigate any complaint about an action or failure of a MN licensed health care facility
- Receive access to any documents held by those facilities
- Subpoena for documents or interviews of staff
- Enter and inspect at any time
- Interview staff
- Issue correction orders and fines

VAA Lead Investigative Agencies

- Receive reports of possible maltreatment
- Prioritize the reports and make an “initial disposition” (decision to investigate)
- Have the right to enter facilities and inspect facility records
- Coordinate and exchange information with law enforcement
- Make a final disposition (whether maltreatment is substantiated and if so, who is responsible)

Who are the Lead Investigative Agencies?

County/Tribe

- Self-neglect
- Maltreatment by family, friend, or other in the community
- PCA programs

MDH

- Assisted living
- Hospitals
- Nursing homes
- Home care
- Other MDH licensed facilities

DHS Licensing

- DHS licensed facilities
- Home and Community Based Services
- Adult Foster Care
- Child Care

Maltreatment

Abuse

Physical, sexual, verbal, abusive treatment, or restraints

Examples include hitting, sexual contact, malicious language, humiliating or threatening treatment, and any unreasonable confinement

Neglect

Failure to provide reasonable and necessary care or services, including food, shelter, health care, or supervision

Financial Exploitation

Using, withholding, or disposing of a vulnerable adult's money or property without authority

Acquiring possession of the vulnerable adult's money or property through deception or undue influence

Examples include theft from residents/clients, exploitive transactions with residents, and drug diversion

OHFC Operations

These responsibilities are primarily executed within the state operations function of the Health Regulation Division:

State Management Team

- Executive Manager – Daphne Ponds
- Regional Operations Managers – Matt Heffron, Amy Hyers, & Bob Dehler

Evaluation Team: Every three-year basic and comprehensive home care surveys, every two-year assisted living licensure surveys, and licensing order follow-ups as needed.

Rapid Response Team: All maltreatment investigations, other complaint investigations in non-federally certified facilities, temporary basic and comprehensive home care surveys, and provisional assisted living surveys.

Engineering/Health Occupational Programs/Mortuary Science Team: Survey and investigation work in respective licensing areas.

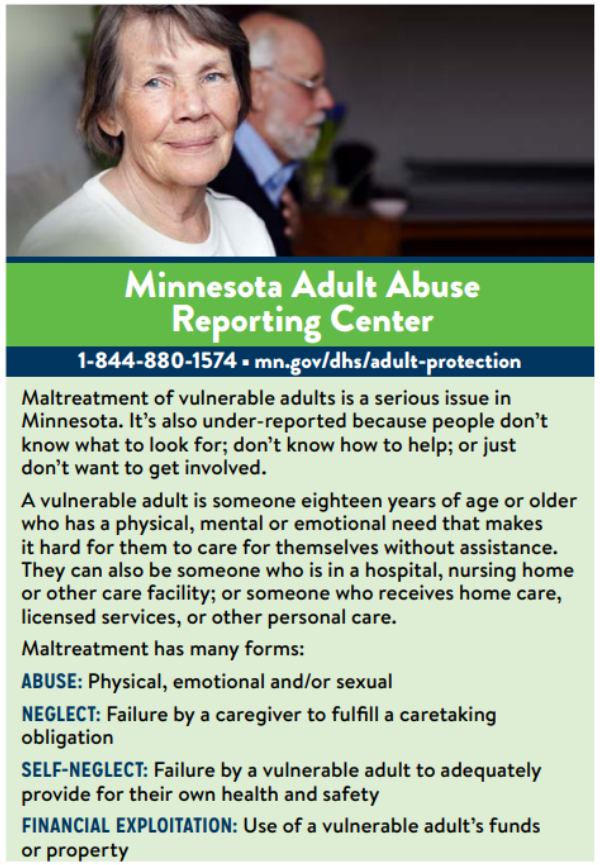
State Rapid Response

- All complaint investigations in state-licensed-only facilities (assisted living, supervised living, etc.)
  - Usually, a combined compliance and maltreatment investigation
  - In some cases, compliance issues only
- VAA/maltreatment component in federally-certified facilities
  - Nursing homes, ICFs, hospitals, etc.
  - Survey teams will conduct the federal compliance component first
- Initial surveys
  - Temporary home care licenses
  - Provisional assisted living licenses

Complaint Process

Intake of Complaints and Reports

- Minnesota Adult Abuse Reporting Center (MAARC)
  - 24 hour a day telephone reporting and web reporting
  - Use for reports of incidents in your own facility unless you are required to use NHIR
  - Always use for reporting an issue at another facility and for self-neglect
- Nursing Home Incident Reporting (NHIR) system
- Emails and letters to our office



Reporting

- The VAA requires you to report:
  - When you have reason to believe a vulnerable adult has been or is being maltreated
  - You know a vulnerable adult has sustained a physical injury which is not reasonably explained
- You are required to report as soon as possible, and within 24 hours
- When we investigate, we hold you responsible for anything that any employee knew

Triage of Complaints

- We prioritize complaints and make the required "initial dispositions" notifications
- We cannot investigate all concerns we receive
  - We try to focus on incidents where harm has occurred or is likely
  - We may prioritize other violations as the current situation requires
    - Infection control during COVID spikes
    - Discharge, closure, and transfer violations

Investigation Process

- Onsite observations
- Interviews
  - The vulnerable adult
  - Any alleged perpetrator
  - Family
  - Witnesses
- Documentation
  - Your facility
  - Outside documentation

For federal-certified providers, this is a two-step process

Investigation Process - Expectations

What you should expect from us:

- We are never going to tell you, or confirm if you guess it, the identity of the complainant
- We will make observations of how you are providing care
- We will scan in documents or ask us to send them to you
- We will do phone interviews after we leave
- We will be professional and respectful

What we expect:

- Provide documents in a timely manner
- Allow us to talk to residents and staff

Immediate Corrections

Federally-certified providers: If there is a violation which created a likelihood that serious injury, harm, impairment or death would occur, the survey team can call an **immediate jeopardy**

- It is then critical to rapidly address the concerns

State licensed providers: A correction order may be issued with a time period to correct of "**immediately**"

- If you can correct adequately to remove the immediate likelihood of harm, we may document that the immediacy is removed even if there is still a violation
- If you cannot, we will make judgments of when and how to follow up

Investigation Outcomes

You will receive two documents from us:

- ✓ **Compliance**
  - (Providers who are federally certified, this was previous/separate)
  - Deficiencies/correction orders under your licensing statute
  - May include fines depending on the scope and level
- ✓ **Maltreatment Report**
  - Narrative report stating maltreatment was substantiated, inconclusive, or not substantiated
  - If substantiated; facility or individual responsibility, or both

Determining Responsibility

The VAA requires us to consider three factors in determining responsibility:

1. Whether the actions were following an erroneous order, prescription, or care plan
2. Comparative responsibility between the facility and others, considering adequacy of facility policies, procedures, training, staffing levels, and supervision
3. Whether the facility and individuals followed professional standards and exercised professional judgment

Enforcement

- If you are a **federally-certified** provider, the CMS enforcement cycle will determine whether you need to submit a plan of correction, pay a penalty, or other actions

- For **state-licensed** only providers:
  - You have no requirement to submit your plan of correction to MDH, but you do need to document the actions you took to correct anything cited
  - If you have higher level violations, a follow up visit will be conducted to determine if you made the corrections
  - Provisional and temporary licenses: deny, grant, or conditions
  - Licensees: conditions, refuse to renew, suspend, and revoke

Background Studies

The other outcome from a **substantiated maltreatment** finding is the impact on **individuals**:

- Licensed staff will have the maltreatment finding submitted to their licensing board
- Nursing assistants will have the finding placed on the nurse-aide registry
- Unlicensed staff, including nursing assistants, will be disqualified from working in health care and human services for seven years if the maltreatment is considered serious or recurring

Complaint Process - Review

Top Five Tips

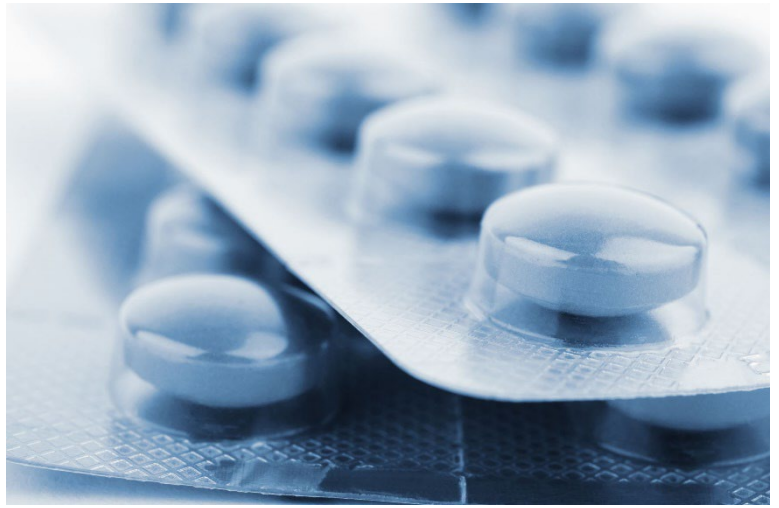
1. Protect residents from sexual contact to which they lack capacity to consent
2. When residents have systemic issues, whether falls, behaviors, altercations with other residents, etc., **keep trying new interventions** and document all those attempts
3. Have a low threshold for conducting a change of condition assessment
4. Follow best practices for preventing and detecting drug diversion
5. Give written notices when you do anything that resembles an emergency relocation, a transfer, or a termination of housing or services

Sexual Abuse

- Sexual abuse in long term care facilities happens
- If you have an allegation of staff having sexual contact with a resident, call 911, make a MAARC report, suspend the alleged perpetrator and get them out of the building, encourage a sexual assault exam, and do not wash clothing or bedding until after law enforcement is involved
- If you have residents who are having sexual contact with each other, document an assessment of their capacity to consent – **if they cannot consent, you must protect**

Drug Diversion

- Theft of controlled substances from health care facilities is a persistent problem
- Check out Prevention of Controlled Substance Diversion-Long Term Care (www.apiariconsulting.com/mn-drug-diversion)
- You need to proactively monitor for potential diversion



Discharge Notices

- You need to give written notice for terminations of services or housing, and it needs to include the content stated in the governing statute or regulation
- Remember that every nursing home and assisted living facility is a distinct license tied to the address, so you usually cannot “transfer” a resident to another location owned by your company- you may need to discharge and re-admit
- Never send someone to the hospital and then just verbally tell the hospital you are not taking them back!

Other Situations (Bonus Tips)

- ✓ Always let us know if you have a fire at your facility
- ✓ Keep up-to-date on background studies requirements
- ✓ Keep up-to-date on infection control guidelines
- ✓ If you are closing a facility, talk to MDH ***before*** you tell your residents you are closing

Summary

- OHFC conducts complaint investigations in MDH licensed facilities
  - Federally certified providers, there will be a complaint survey looking at federal compliance around the issue and then potentially a maltreatment investigation
  - Other providers, an investigator from state rapid response will conduct compliance and maltreatment investigations concurrently
- **Everyone** you serve is legally a vulnerable adult; make sure to report
- Proactive leadership, well-documented assessments, and keeping up on the standards in your license type are your best defenses

Questions???

Thank you.

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ALL Survey and Investigation Fall WebEx Series

MN Food Code

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