

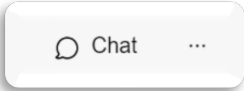


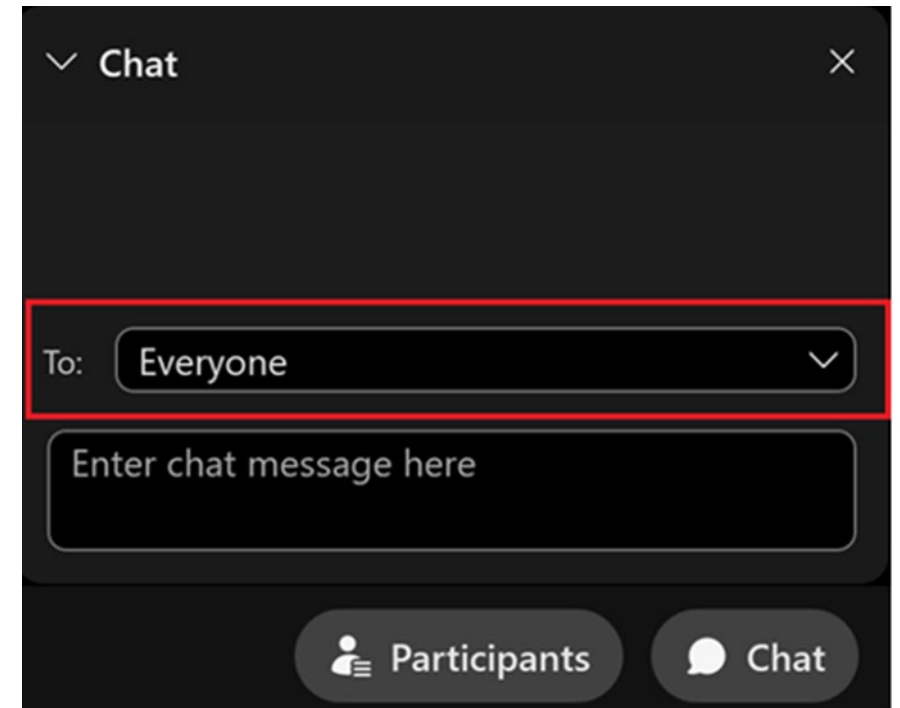
How to Conduct an Internal Investigation

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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.**



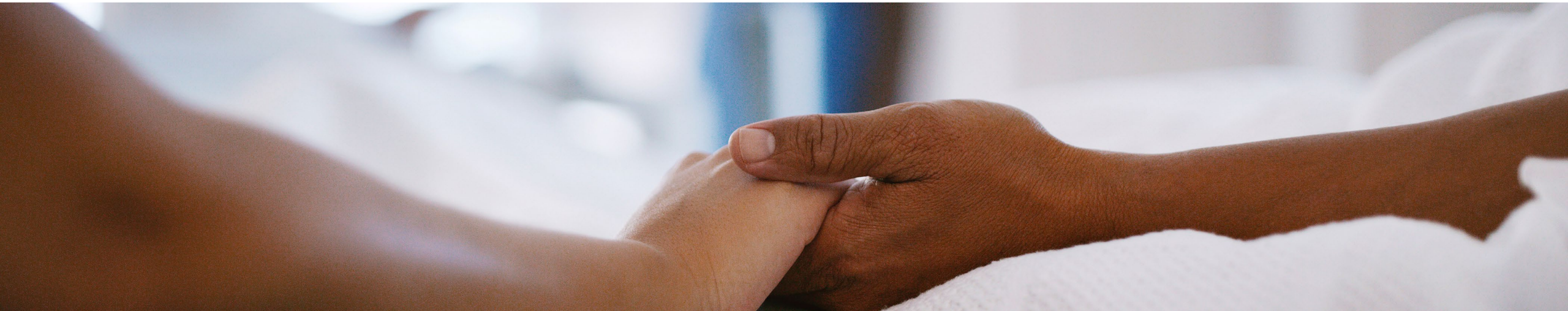
About the Presenters

Matt Heffron, JD, NREMT. - Mr. Heffron is an attorney with over fifteen years of experience in health care regulation, including legal and investigative positions at the Minnesota Board of Nursing, Minnesota Board of Medical Practice, and the Office of Health Facility Complaints (OHFC) at MDH. Prior to law school, he worked as an emergency medical technician for a rural ambulance service and critical access hospital. In addition to his law degree and EMT license, he holds an MA in Public Administration and a Graduate Certificate in Health Care Ethics. He is also a retired Army intelligence officer with multiple overseas deployments. Mr. Heffron is a national certified investigator.

Rhylee Gilb, RN. Ms. Gilb is a Registered Nurse with over a decade of clinical experience, mostly in long term care as a case manager in nursing homes and assisted livings. Prior experience also includes acute home care setting with pediatric clients requiring tracheostomy, vent care, and specialized wound care training. She has been a special investigator for three years, conducting investigations of allegations of maltreatment and compliance complaint surveys for the home care and assisted living statutes. Since 2018, she has been an investigator supervisor, managing a team of special investigators. Ms. Gilb is a national certified investigator.

- Describe the different types of maltreatment.
- Learn the different types of evidence.
- Identify interview best practices.





What is Maltreatment?

Maltreatment is defined as **abuse, neglect, and financial exploitation**;
[definitions in MN Statute 626.5572](#)

- Abuse (physical, sexual, verbal, and abusive treatment)
 - Hitting, slapping, sexual contact, oral or written gestures, etc.
 - Confinement, seclusion, restraints
- Neglect
 - Failure to provide care and services which are reasonable and necessary
- Financial Exploitation
 - Unauthorized spending, withholding or disposing funds, theft of personal property
 - Drug diversion

Abuse: Part a (Criminal Violations)

- Assault 1st -5th Degree
- Use of drugs to injure or facilitate a crime
- Prostitution offenses
- Criminal Sexual Conduct 1st -5th Degree



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

Abuse: Part b

“Conduct which is **not an accident or therapeutic conduct**...which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:”

- “hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult”
- “use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening”
- “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 unless authorized under applicable licensing requirements or Minnesota Rules, chapter 9544”

Sexual abuse can be either:

- Criminal sexual conduct, under the definitions described above, which center around nonconsensual sexual conduct or penetration, or
- “Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility”
- Later in the statute, there is an exception that it is not abuse if a vulnerable adult who is **not impaired** in judgment or capacity, by their own impairment or by undue influence, engages in sexual contact with a staff person when a **consensual relationship existed prior** to the caregiving relationship

Sexual Abuse Definitions

Sexual contact:

- Intentional touching by the perpetrator of the complainant's intimate parts
- Using coercion or inducement to cause the victim to touch someone's intimate parts
- To include touching of the clothing covering the intimate parts
- "Intentional touching with seminal fluid or sperm"

Intimate parts "includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being" (defined in MN Statute 609.341)

Sexual penetration

- "sexual intercourse, cunnilingus, fellatio, or anal intercourse"
- "any intrusion however slight into the genital or anal openings" by any body part or object

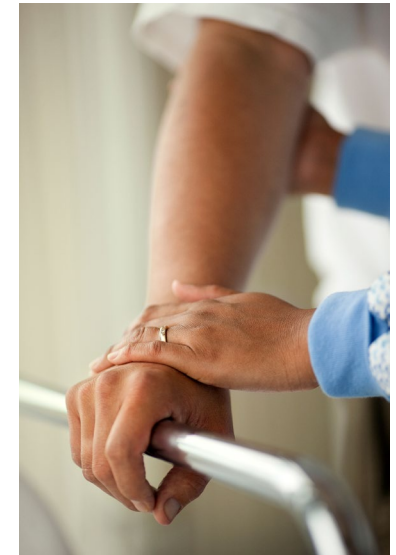
"**Caregiver neglect**" means the failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to food, clothing, shelter, health care, or supervision which is:

- ✓ 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

- ✓ which is not the result of an accident or therapeutic conduct.

*There is a separate definition for self-neglect.



Neglect Exceptions



- Refusals
- Selects spiritual care
- Consensual sexual activity (by those with capacity to consent)
- Error in therapeutic conduct with no harm
- Error in therapeutic conduct with harm, but meets the six requirements:
 - Timely care
 - Return to baseline
 - Not part of pattern of errors
 - Appropriately reported
 - Action taken by facility to reduce risk of recurrence
 - All the above adequately documented

Financial Exploitation

In breach of a fiduciary obligation recognized elsewhere in law:

➤ Unauthorized expenditure of funds entrusted,

or

➤ Fails to use resources of the VA to provide for food, shelter, clothing, health care or supervision,

and

➤ Failure likely to result in detriment to VA

In the absence of legal authority, a person:

Willfully uses, withholds, or disposes of funds or property of a vulnerable adult,

or

Acquires possession or control of, or an interest in, funds or property of a vulnerable adult using undue influence, harassment, duress, deception, or fraud



Evidence Gathering

Types of Evidence Collection For An Internal Investigation

Observation

- First-hand witness of observable facts and actions.

Documentation

- Handwritten or electronic record(s) to identify specific facts collected at the time the incident/event occurred.

Interview

- Actors, Witness and Professional Expert testimony of the allegation.

Observations – Physical Assessment

Assessing the resident for injury or physical evidence of abuse or neglect.



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- ❑ Looking at their skin/body for injury, bruises, cuts/tears, abrasions, redness/pressure wounds/excoriation
- ❑ Changes in their behaviors or non-verbals
- ❑ A facility nurse is not a Sexual Assault Nurse Examiner (SANE) nurse for physical assessment with a sexual abuse allegation.

Observations – Physical Environment (1)

Abuse Allegations

- ❑ Equipment, furniture, etc. that could reasonably cause the injury
- ❑ Are there devices that could be used as a restraint?
- ❑ Are there locations or rooms that could be used as involuntary confinement?
- ❑ Assessing where the incident occurred to determine if the investigative interviews corroborate with the story.



Observations – Physical Environment (2)

Neglect Allegations

- Physical evidence cares are not provided, i.e., soiled incontinent products, linen, clothing, furniture, medications found and not consumed, etc.
- Staff care audits.

Neglect of Supervision (resident to resident)

- Environment conducive or proximal for interaction to occur or evoke interaction between the residents.
- Audits of staff execution of safety checks.

Observations – Physical Environment (3)



Financial Exploitation (money or property)

- The physical storage of money or property and accessibility

Financial Exploitation (drug diversion)

- Storage of controlled medications for accessibility
- Medication cards/bottles for removal or tampering

Purpose of Collecting Records:

- Gathering evidence through records and evaluating whether those documents and records support or refute an allegation.
- Records may be internal and/or external.



Documentation Examples

Internal Facility Records

- Resident records (MAR/TAR, assessments, Service Plan/Service Delivery Records, progress notes, etc.)
- Facility Policy and Procedures
- Staff Training records
- Staff communication notes/emails
- Narcotic Logs
- Security/Video footage
- Photographs
- Staff Schedule, Staff payroll or clock in/out records

External Records

- Hospital/Clinic records
- Therapy (PT/OT/ST) records
- SANE exam
- Law Enforcement report
- Equipment Manufacturer directions
- Financial Institution Records
- Copies of checks
- Pharmacy Records

What records should I gather?

- Evidence the facility/staff member was acting in or not acting in good faith.
- Evidence the facility/staff member was following or not following a reasonable plan of care and/or facility policy.
- Evidence the facility/staff member was following reasonable or erroneous orders.
- Evidence the facility/staff member was compliant or not compliant with regulatory standards and/or professional standards.
- Evidence the facility staff or individual was or was not adequately trained and competent, determine if there was a pattern of errors.
- Evidence that supports if the allegation was true or false.

Investigative Interviews

Purpose of Interviews:

- First-hand account of incident(s)
- Professional expert analysis and professional judgement, standards and expectations of an incident



* Professional Experts are described as having some unique or greater education/experience than that required of employees in regular classified service

Who should I interview?

- ✓ The Vulnerable Adult (VA)
- ✓ The Alleged Perpetrator (AP), if suspected maltreatment was the act or responsibility of an individual person
- ✓ Witness to the incident
- ✓ Professional expert staff
- ✓ External Witnesses (family, visitor, physicians, transportation driver, etc.)

In General, Questions should be:

- ✓ Open minded
- ✓ Open ended, i.e. “Please describe...”
- ✓ Require the interviewee to elaborate
- ✓ TED = Tell, Explain, Describe
- ✓ Simple words used - should be easily understood
- ✓ Long-winded questions may be misinterpreted
- ✓ You should ask questions in chronological or other systematic order, not randomly



Vulnerable Adult Interviews: G-ICE

Vulnerable Adults should be interviewed with the considerations of cognitive challenges/diagnoses, trauma, generational and cultural views.

Use the interview style **G-ICE**:

G = General Overview (“Tell me what happened.”, let them go through the whole story”)

I = Isolate (Go back to specific incident, “Tell me more about that.”)

C = Continue through the incident (When they get to the incident, ask “What happened next?”)

E = Elicit details (Get detailed information about the incident i.e. What was said?; Explain the motions.; Where did it occur?; Where were you injured/touched?; How did it make you feel?)

Vulnerable Adult Interviews - Tips

Interview Tips for Vulnerable Adults

- Interview them in a space they feel comfortable.
- Introduce yourself, explain the purpose of the interview (helpful to let them know the purpose is to make sure they are safe) and elicit consent, “Can we have a conversation about what happened?”
- Adjust: if the VA needs a break, or they prefer/require a certain time of day, make sure basic needs are met (eat, toilet), etc.
- Conduct interviews in private unless the individual requests the presence of another person.

Interview Tips for an Alleged Perpetrator or suspected Alleged Perpetrator:

- Get an initial account of the incident prior to placing them on administrative leave.
- Consider how much to tell the AP regarding the allegation to allow the AP to free share information.
- Use the same G-ICE interview technique with the AP.
- Ask open ended questions that will elicit the information from the AP.
- Bring the AP back for a second interview after collecting more evidence.

Alleged Perpetrator Interviews



- Ask the AP to respond to the evidence that implicates them, without revealing the sources.
- Ask the AP if there is anyone who can support their position regarding the allegations.
- Ask the AP if there are any documents or other physical evidence that supports their position.

Witness Interviews (1)

- Ask about dates and times and how the interviewee knows this information.
- Ask if there were any witnesses, or any other persons nearby. If so, make attempts to interview those persons.
- Get details of injuries (location, color, size, type).
- Have interviewees demonstrate what happened if pertinent and possible.
- Ask interviewees who else they have spoken to about the incident and if they have any notes about the incident.
- Ask open ended questions.



Witness Interviews (2)

- Ask for documentation to prove actions they took. Do not tell someone you feel like they are lying or untruthful.
- If applicable, ask for physical evidence, photos, video, recordings, documents, etc.
- Give interviewees your contact information so that they may contact you after the interview if they have additional information.
- Ask the interviewees at the end of each interview if there is anything else that they think is important that they would like to share with you.
- **DO NOT** ask anyone to define a statutory definition: Example what a VA is, types of maltreatment, etc.
- **DO** ask what the policy and procedure of how something should be done.

Physical Abuse: ask details about action (closed fist, open fist, audible slap, facial expressions with motions of threat or raised voice, specific language, etc.)

Sexual Abuse: be very specific with VA, AP, and witness once providing details. Example: vaginal intercourse, rectal intercourse, digital penetration, touching specific body parts, over clothing, under clothing, any dialogue exchanged, what happened after, how long did the assault last, anything inappropriate prior or after, etc.



Questions?

Thank You!

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