

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
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ADMINISTRATIVE
HEARINGS

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULE OF THE DEPARTMENT
OF PUBLIC WELFARE GOVERNING THE
STANDARDS FOR THE PROTECTION OF
VULNERABLE ADULTS IN LICENSED
FACILITIES (12 MCAR §2.010)

STATEMENT OF NEED AND
REASONABLENESS

- A. Applicability. The need for this statement is to make clear that the provisions of this rule govern only those programs i.e., agencies, nonresidential and residential facilities providing services to adults which are required to be licensed by the Department of Public Welfare. The proposed rule does not encompass programs licensed by the Department which serve children or programs that are not under the jurisdiction of the Public Welfare Licensing Act.
- B. Definitions:
1. a., b. and c. ABUSE: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule, and it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. The phrases "related to prostitution" and "related to criminal sexual conduct" are added to familiarize the reader with the subject area of the statutes cited.
 2. AGENCY: This definition is needed to clearly identify those programs which are required to be licensed by the Department of Public Welfare that provide services to clients but may not provide services in a specific physical plant that is operated by the agency. The term is used in the rule when the requirement applies only to agencies.
 3. CLIENT: This term is necessary to define because it is used in the rule to indicate those persons who are receiving services at or from a licensed program. The term is reasonable because it is commonly used by programs to describe such persons, is commonly used in other rules, and it makes the rule more readable than repeating vulnerable adult throughout the rule.
 4. CLIENT REPRESENTATIVE: This term needs to be defined because it is a generic term which is used in place of a variety of terms such as relative, family member and guardian; using "client representative" eliminates the need to repeat all the words it includes whenever the term is used in the rule.
 5. FACILITY: This definition is needed to clearly identify those programs which are required to be licensed by DPW that provide services in a specific physical plant operated by that program. The term is used in the rule when a requirement applies only to facilities.
 6. GOVERNING BODY: This definition is necessary to account for the variety of organizational structures affected by this rule.

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7. INTERDISCIPLINARY TEAM: This definition is needed to specify the disciplines or persons who are to be involved, according to the program rule under which a program is licensed, in developing individual program or treatment plans. There are variations among the program rules in the requirements for who is involved in such plans. By relating the definition to the program rule, consistency in responsibility for the individual abuse and neglect prevention plans and the program or treatment plans can be achieved.
8. INVESTIGATIVE AUTHORITY: This definition is needed because it is used in the rule to indicate those agencies and departments who need to be notified and who have investigating responsibilities. It is reasonable to use this term because it makes the rule more readable than repeating local police department, or county sheriff, social service agency, licensing agency, or certifying agency.
9. MANDATED REPORTER: This definition is needed because it clarifies for the program which mandated reporters are affected by the provisions of this rule. It excludes those persons defined in Minn. Stat. §626.557, Section 1, Subd. 3, who are not employees of a program or who are not providing services in or to a program.
10. NEGLECT: With the exception of the phrase "or ensure the provision of..." This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and because it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. The added phrase referred to above is needed because not all caretakers are responsible for the direct supply of the items listed but remain responsible for ensuring that the item(s) are supplied, and failure to carry out this responsibility is neglect because the end result for the vulnerable adult is the same, absence of the supply of necessary food, clothing, shelter, health care or supervision.
11. PROGRAM: This definition is needed because it is used in the rule to indicate that all agencies and facilities which are required to be licensed by the Department of Public Welfare and which are subject to the provisions of the Vulnerable Adults Act are under the umbrella term program. It is used in the rule when facility and agency requirements are the same.
12. VULNERABLE ADULT: This definition is the one used in Minn. Stat. §626.557, except that it excludes Section 1, Subd. 2, (b) (3) because that part does not pertain to this rule.

C.1.: The law requires each program to develop a written abuse prevention plan. Although the law does not specifically require a neglect prevention plan, it is necessary and reasonable to include neglect in the requirement for the plan. The Vulnerable Adults Act focuses on both abuse and neglect throughout the Act. Neglect is a reportable offense, requires investigation, and carries penalties for commission and failure to report. Therefore, extending prevention plans to include an assessment and plan for minimizing the risk of neglect is consistent with the Act.

Requiring prevention planning in the area of neglect protects the clients of the program. The failure of a caretaker to ensure that clients receive necessary food, clothing, shelter, health care and supervision can result in a life-threatening situation. Examples of such situations may include: a client who is not monitored in the time-out room according to the policies and procedures developed by the program, a client who refuses medication and is not helped to deal with the situation, or a client who frequently wanders from the program and sometimes is found in the middle of the street or other hazardous areas.

Under Section 1, Subd. 11, licensing agencies have the authority to issue orders and take actions, with respect to the license of the program, that are designed to prevent further abuse or neglect of vulnerable adults. Since the licensing orders or actions may include the requirement that individual programs address issues of neglect in writing, it is reasonable to require that neglect be addressed in the initial prevention plan. It has been our experience that issues of neglect are identified far more frequently than issues of actual abuse, and that neglect may indeed lead to instances of abuse.

The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the plan development, it places the responsibility at the highest level of authority.

Minnesota Statutes §626.557, Section 1, Subd. 16, states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule.

C.2.a., b. and c.: The law requires that the plan includes an assessment of the physical plant, the environment and the population, and a description of the specific measures to be taken to minimize the risk of abuse. The requirement for the assessment of the physical plant for each facility and each site when living arrangements are provided by an agency is reasonable because these physical plants are under the control of the program.

The timetable for implementing corrective action is added to ensure that when corrections are necessary they be done in a timely manner. This is reasonable because programs are accustomed to time frames for corrective action from local and state licensing and monitoring agencies. The use of timetables is also reasonable because it clearly sets forth the obligations and expectations of all parties. No specific timelines are established in the rule because of the wide variety of modifications which may be necessary to minimize abuse or neglect. The program is expected to establish reasonable timelines and to document the rationale for those timelines.

C.3.a., b. and c.: The assessment factors are needed and reasonable to include because they clarify what must be covered, at minimum, in the assessment. Because of the many situations and circumstances represented by the different types of programs affected by this rule, there is no attempt to identify all factors that must be addressed by an individual program. The factors listed may be helpful in stimulating discussions which will identify additional factors which are pertinent to the individual program.

The specific minimum factors included in this section were chosen because, in the judgment of the Department of Public Welfare, these factors are common to all programs, can reasonably be assessed, and should provide a minimum base for determining a client's vulnerability. Abuse or neglect of clients is frequently related to one or more of these factors.

C.4.: The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the plan review, it places the responsibility at the highest level of authority.

This requirement for plan review is needed to account for changes which may occur during the year and to reaffirm the program's commitment to the plan. It is reasonable to expect a program to address any changes through appropriate revisions since the plan is designed to provide a comprehensive method to prevent neglect and abuse of clients.

C.5.: This provision is needed to provide opportunities for clients and client representatives to know and understand, as fully as possible, that there is a plan, its purpose and how they can use it to minimize the risk of abuse and neglect to clients. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule. The 24-hour requirement for new clients is reasonable to assure that the initial orientation is given promptly.

C.6.: This is needed so that staff, clients, client representatives as well as volunteers and visitors have ready access to the plan and can refer to it to minimize risk to clients. It is reasonable to have it posted, in sites controlled by the program, because this plan of distribution is less cumbersome and less expensive than providing a copy to each person.

D.1.: The law requires the program to develop an individual abuse prevention plan. The need for and reasonableness for adding neglect to the individual plan requirements is the same as the reasons for adding neglect to the program plan as identified in Section C.1.

The requirement to implement plans is necessary and reasonable to assure more than paper compliance with the provisions of the rule and to meet the intent of the Law.

By specifically charging the interdisciplinary team with development of the individual abuse and neglect prevention plan, it places the responsibility on the same persons responsible for the development of the individual program plan. It is reasonable to expect the interdisciplinary team to develop the individual neglect and abuse prevention plan because of their knowledge of the client and their involvement in the development of the individual program plan.

For clients already receiving services at or from a program on the effective date of this rule it is reasonable to set timelines for compliance. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as individual program plans, 60 days is a reasonable requirement for meeting this item of the rule.

For clients who begin receiving services at or from a program after the effective date of the rule, it is necessary to have a time frame for the development of the individual plan to minimize the risk of abuse and neglect. It is reasonable to set the time frame for the plan development to coincide with the development of the client's initial individual program plan to help ensure coordination with that plan and also for administrative efficiency.

D.2.a., b. and c.: Minn. Stat. §626.557, Section 1, Subd. 14 (b) requires the individual abuse prevention plan to include an assessment of the client's susceptibility to abuse and a statement of the specific measures to be taken to minimize the risk of abuse, including self-abuse. Requiring the plan to be a part of the individual program plan is needed to help ensure consistency in development of the plans. This requirement will help ensure implementation since staff will be using a single plan and staff are already familiar with implementing individual program plans.

There may be clients for whom the program abuse and neglect prevention plan may be sufficient to minimize the risk of abuse or neglect. For such clients, it is reasonable that no specific measures need to be included in the individual program plan. The documentation is needed to provide evidence to substantiate that all clients were individually assessed, and to provide evidence to substantiate the findings of the assessment for inspectors, licensors and so forth.

D.3.: Requiring a review, evaluation and revision is necessary and reasonable to help ensure continued appropriateness of the plan for each client. The requirement that the review and evaluation be done as part of the review of the clients individual program plan helps achieve efficient administration and deployment of resources by avoiding a separate review and evaluation.

The annual review by the interdisciplinary team ensures continued involvement by persons knowledgeable about the client's needs.

D.4.: Requiring the client, whenever possible, to be involved in plans affecting the client is consistent with current practice in many human services. It is consistent with program rules that require such participation in the development of the individual program plans. Through such involvement, the client is more likely to cooperate with the implementation of the plan because he or she helped to develop the plan. The client representative may provide additional information about the client's needs and advocacy for the client in the development of the plan. Greater accountability by the program may be achieved through the client representative's involvement with and knowledge of the plan. This is particularly important when the client cannot participate in developing the plan.

Documentation is needed to substantiate for inspectors, licensors and so forth, the reason why it was not possible for a client or client representative to participate in the development of the plan.

E.1.: The law requires that each program shall establish and enforce a written procedure for ensuring that all cases of suspected abuse or neglect are reported promptly and for ensuring that all cases of suspected abuse and neglect are promptly investigated.

The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the establishment and enforcement of these written procedures, it places the responsibility at the highest level of authority.

To meet the requirements of Minn. Stat. §626.557, Section 1, Subd. 15 it is necessary that the written policies and procedures include suspected or alleged cases of abuse and neglect to clarify what must be reported by mandated reporters, regardless of whether the results of the internal investigation and review indicate that actual abuse or neglect occurred.

E.2.: Because of the various types of programs that must comply with this rule, reporting processes may differ. However, it is reasonable and necessary to require that the process be in writing, including how and when to report, so that all program staff will know their responsibilities. Minn. Stat. §626.557, Section 1, Subd. 3 requires a mandated reporter to report when he or she has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. This information is duplicated in the rule because it is crucial to the ability of a person affected by the rule to clearly understand the requirements of when to report.

The law provides that persons other than mandated reporters may report voluntarily. It is reasonable to include such information in policies and procedures to ensure that staff, as mandated reporters, are aware of the law and may be in a position to provide appropriate information to non-mandated reporters.

It is necessary to specify that reports may be made directly to investigative authorities and that mandated reporters are aware of their responsibility for making reports to ensure that mandated reporters comply with the law regardless of the action taken by the facility.

Minn. Stat. §626.557, Section 1, Subd. 15 requires that "all cases of suspected abuse or neglect are reported promptly to a person required by this section to report abuse and neglect..." It is necessary to require identification of the person so that the Division of Licensing can verify that the person is a mandated reporter. Identification of the person who is to forward reports is needed and reasonable to clearly specify responsibility for that action to help ensure that such action is taken. Notifying the initial reporter of that action is needed to assure the reporter that his responsibility to report has been fulfilled.

The requirements for the content of the report are the same as the requirements of Minn. Stat. §626.557, Section 1, Subd. 4 with the additional requirements of the name and address of the alleged perpetrator and the pertinent dates and times. These additional requirements are needed to help ensure the Division of Licensing has appropriate and complete information on which to base its investigation.

E.3.: Minn. Stat. §626.557, Section 1, Subd. 15 requires each program to have written procedures to ensure that all reports are promptly investigated. The intent of the law seems to be that each program do its own investigation, since a program could not ensure that other authorities charged with investigating would act promptly.

Identification of the person is needed to clearly specify responsibility for action to help ensure that such action is taken.

It is necessary to require that a person, other than one suspected of abuse or neglect, do the investigation to avoid conflict of interest which may affect the accuracy and objectivity of that investigation.

E.4.: It is reasonable to require that the records as specified are maintained to document that appropriate action has been taken by the program to minimize abuse and neglect. Further, these records should be useful in the revision of the abuse and neglect prevention plans. Availability of such records will assist investigative authorities in determining if appropriate action has been taken.

E.5. and 6.: These requirements are needed to help ensure that the Department will be provided with all necessary and pertinent information to complete its responsibilities as specified in Minn. Stat. §626.557.

E.7.: This requirement is needed to provide opportunities for clients and client representatives to know and understand, as fully as possible, that there is an internal reporting system, its purpose and how it is implemented to minimize the risk of abuse and neglect.

Minn. Stat. §626.557, Section 1, Subd. 16 states that facilities that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule.

It is reasonable to specify a time frame of 24-hours to ensure that the orientation is given and is given promptly. The 24-hours is designated because clients are admitted to facilities at various times of the day. For instance, if a client is admitted in the evening hours, it may well be more practical that the orientation take place during day time hours. However, it is necessary to assure that the client receives the orientation as soon after admission as possible in order to minimize the risk of abuse or neglect.

E.8.: The requirement that the program post copies of the internal reporting policies and procedures at each site it controls is needed to ensure mandated reporters, clients and client representatives have continued access to the information, and the requirement is reasonable because it eliminates the expense of making unnecessary copies. Having copies available upon request provides opportunities for a more extensive review of the policies and procedures so that they know how to report abuse or neglect.

F.1. and 2.: Orientation of reporters is needed because of the complexities of the reporting requirements and the penalties for failing to report. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule. New mandated reporters are required to have the orientation no later than the first shift worked to ensure that reporters are aware of the requirements of the law and the responsibilities involved so that all cases of abuse and neglect are promptly reported. Informing staff that persons not mandated to report suspected abuse and neglect and requiring staff to provide information is reasonable for helping ensure that suspected abuse and neglect is properly reported.

Training is needed and reasonable because changes may occur during the year and also, the complexities of the materials demand a refresher course. An annual requirement is reasonable because programs are accustomed to an annual review of policies and procedures and an annual training and development plan.

F.3.: The law states that all persons providing services in or to a program are mandated to report. A list of persons providing service will identify who, in addition to employees, must receive orientation and training, and will provide appropriate documentation for inspectors, licensors and so forth.

The Department plans to have Marge Wherley, Residential Program Consultant, Mental Health Division, Hennepin County, testify as an expert witness. Ms. Wherley served as chairperson of the Task Force which advised the Department in developing the rule. Ms. Wherley will testify on common practices and experiences in the human service field as they relate to provisions in the rule.

Date:

May 18 1982

Arthur E. Noot

ARTHUR E. NOOT
COMMISSIONER

CL-01

In the Matter of the Proposed
Adoption of the Department of
Public Welfare Rule Governing
the Standards for the Protection
of Vulnerable Adults in Licensed
Facilities (12 MCAR §2.010)

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, Vicki Sleeper, do hereby declare that I have examined the rule and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Vicki Sleeper
Special Assistant Attorney General

Dated: 11/22/82