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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ADMINISTRATIVE
HEARINGS

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULE OF THE DEPARTMENT
OF PUBLIC WELFARE GOVERNING THE
ADMINISTRATION AND PROVISION OF
PROTECTIVE SERVICES TO VULNERABLE
ADULTS (12 MCAR § 2.221)

STATEMENT OF NEED AND
REASONABLENESS

DPW 5x4, No. 8
File No. DPW-82-006-4
Date 10/17/81

The purpose of this rule is to aid in the implementation of Subdivision 10 of Minn. Stat. §626.557, Reporting of Maltreatment of Vulnerable Adults. The statute became effective January 1, 1981.

The Department is committed to the need for establishing standards which will ensure the protection of those adults who are particularly vulnerable to abuse or neglect because of physical or mental disability or because of emotional factors which prevent their seeking assistance for themselves.

With the advent of child abuse and neglect reporting laws in recent years, we have become more fully aware of the scope of child abuse and neglect in this country. Similarly, as more states pass laws mandating the reporting of abuse or neglect of vulnerable adults, there is a growing awareness and concern about the amount and scope of adult abuse and neglect.

Minnesota has always prided itself on its commitment to providing social services to its citizens. It is in this spirit that our Department joins the demand sweeping across this nation to better protect those unable to protect themselves...the elderly, the disabled, and those persons too concerned about the consequences of reporting maltreatment to do anything about their plight without some assistance.

This Department, along with numerous representatives of the community and county agencies, believes that time and experience are needed to reveal the scope of the adult maltreatment problem in Minnesota as well as to reveal the capacity of local agencies to respond. Who are the adults in need, and which needs can present resources meet? In the interest of allowing time for learning from the experiences of local agencies, this rule has been kept as simple and as unrestrictive as possible. The definition of "vulnerable adult" has been allowed to remain broad since the tapes of legislative proceedings reveal the legislative intent that it be broad. The other statutory definitions have not been expanded upon. County agencies are given room for making judgments, for we trust in their commitment to providing services as best as they can. As experience teaches us what is reasonable, what is feasible, what we can or cannot do, then we will shape the program to address the realities of needs and resources. In short, the intent here is to be as responsive as possible to complaints of adult maltreatment, with the long range plan of modifying the rule when we know more about adult maltreatment and about our system's capacity to respond to the problem.

- A. Applicability. The need for this statement is to make clear that the provisions of this rule govern only those particular protective services to adults which are required by Minn. Stat. §626.557. The proposed rule does not attempt to encompass the whole broad scope of an adult protective services program, a program which could be interpreted to include supportive services such as day care or homemaking services or recreation services, to name only a few.

B. Definitions

1. 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. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The phrases "related to prostitution" and "related to criminal sexual conduct" are added in order to familiarize the reader with the subject area of the statutes cited.
2. CARETAKER: The first sentence is the definition 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. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The need for the second sentence is to reemphasize the fact that the law did not intend that there be intervention in relationships involving only financial dependency. The law is clear that an adult is a vulnerable adult due to either being a resident of or receiving services from certain facilities or due to impairment of mental or physical function or emotional status. Being financially supported by another person does not constitute impairment or vulnerability and, therefore, the person providing financial support is not a caretaker.
3. FACILITY: 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 is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.
4. FALSE: The term "false" is used in the statute. The term "unsubstantiated" is used in the rule. The need for defining "false" is because the statute does not define the term and agencies must understand the term in order to carry out their responsibilities. The need for including the term "false" in the list of definitions is to make clear that "false" and "unsubstantiated" mean the same thing. The reason for using the term "unsubstantiated" in the rule is given in #12 (page 9) in the discussion of the definition of "unsubstantiated".
5. HOST COUNTY: The need for this definition is because this term is used in the rule, and it is necessary for the reader to understand the term in order to understand the rule requirements. The term is reasonable since it is the one traditionally used and understood by county agencies to mean that particular county in which a facility is located, and it would be confusing to county agencies to use any other term.
6. IMPAIRMENT OF MENTAL OR PHYSICAL FUNCTION OR EMOTIONAL STATUS: The statutory definition of "vulnerable adult" includes a person "who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status". It is necessary to provide this set of guides as to the meaning of impairment of mental or physical function or emotional status in order to clarify which adults come under the statute as "vulnerable adults" so that local agencies will investigate and provide protection for these adults.

To assure understanding of who the vulnerable adults are with whom the statute is concerned, the definition includes material from Department of Health, Education and Welfare (now DHHS) Federal Regulations entitled "Nondiscrimination on Basis of Handicap", (Federal Register, May 4, 1977), which implement Section 504 of P.L. 93-112, the Rehabilitation Act of 1973 as well as recommendations from mental health and social services professionals.

While there are some who might wish to define "emotional status" as meaning persons with present or past diagnosed "emotional or mental conditions" or "emotional or mental illness", the Department is convinced that there was clear intent by the legislature for using a broader approach. A review of the legislative tapes reveals discussions supporting this contention. In the March 4, 1980, meeting of the Criminal Law Subcommittee of the Senate Judiciary Committee, a question was asked about whether the definition of vulnerable adult is "overbroad". The response was that it is broad but that this is intentional because in the past, too many cases of abuse and neglect were not reported. The broad and extensive definition is to assure that maltreated adults who are unable to fend for themselves will not be "missed". When concern was raised in the committee about there being more "paperwork", the answer was given that too little paper has been generated because maltreatment has not been reported. Rather than the potential reporter deliberating as to whether a person is a vulnerable adult, thereby failing to report many maltreated persons, the intent of the authors and drafters of the bill was to err on the side of over-reporting rather than under-reporting. Further support for the author's intent can be inferred from the author's explanation to the committee that even though the functional definition for vulnerable adult in Minn. Stat. §626.557, subd. 2 (b)(3) would probably be sufficient to cover all vulnerable adults, the law defines all residents or users of facilities as vulnerable adults regardless of their condition in order to ensure broad coverage. The purpose of including all three parts of the definition was to make it easier for those receiving reports to have easy guidelines and ready justification for considering an adult as covered under the act.

Another reason for the broad definition being used here is that numerous county staff as well as many community advocates believe that we should allow ourselves the benefit of time and experience to learn what the real needs are and to learn the limits of our own capacity to respond. A broad definition accomplishes this by requiring local agencies as well as mandated reporters to report and respond to most allegations of adult maltreatment. This goal is necessary and reasonable because this gives our state the opportunity to learn what the needs are so that we can make future decisions about the program. Because the purpose of this law was to protect adults who cannot protect themselves, we want to learn who these individuals are and what our social services system can reasonably be expected to do to meet their needs. We know from the experiences of states which now have reporting laws similar to ours that there is an unanticipated amount of maltreatment of the elderly who are not in facilities and who are not physically or mentally impaired in the traditional sense. These elderly are in need of our services and it was the intent of the legislation that they have services.

The broad definition for "vulnerable adult" is, therefore, reasonable in that it carries out the legislative intent and assures that those adults in Minnesota who are being victimized and are in need of outreach by the social services system will be served. There are some who have expressed concern that there will be a deluge of "battered wife" reports, but there is not likely to be an outpouring of domestic disputes to be dealt with as a result of this law. The so-called "battered wife" is often capable of reporting abuse or neglect without assistance and would therefore not be classified as a "vulnerable adult". (Minn. Stat. §626.557, subd. 2 (b)(3) requires that to be a vulnerable adult, two factors must be in play: being unable or unlikely to report maltreatment without assistance because of impairment of mental or physical function or emotional status.) Our goal is to help those who are unable to seek assistance for themselves. If we were at this time to shape our definition of "vulnerable adult" to exclude the "battered wife" who is not able to seek assistance for herself, we would be excluding a large number of elderly victims as well.

7. LICENSING AGENCY: 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. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.
8. LOCAL SOCIAL SERVICES AGENCY: The need for this definition is because the term is used frequently in the rule and the reader must understand the meaning of the term in order to understand the rule requirements. It is necessary for county agencies to understand the rule requirements in order for them to fulfill their responsibilities as required by the law.
9. NEGLECT: With the exception of the phrase "or to ensure the supply 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. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The added phrase referred to above is needed because not all caretakers are responsible for the direct supply of the item(s) 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.
10. REPORT: 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. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

11. STATE AGENCY: This definition is included because the term is used frequently in the rule and the reader must understand the meaning of this term in order to understand the rule requirements. It is necessary for county agencies to understand the rule requirements in order for them to fulfill their responsibilities as required by the law.
12. UNSUBSTANTIATED: The reason for using the term "unsubstantiated" in the rule rather than the word "false", which is used in the statute, is because local agencies associate the word "false" with a determination of improper motive on the part of the reporter. It is clear from an examination of the statute that the legislature did not intend to require a finding of improper motive in order to label a report as false. The statutory inference is that "false" means disproved to the satisfaction of the agency without regard to the reporter's intent (See Minn. Stat. §626.557, subdivisions 4 and 12). Since reports which have been disproved by the agencies have traditionally been labelled as "unsubstantiated", the term "unsubstantiated" is used here.
13. VULNERABLE ADULT: 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 is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

C.1.: The law requires local agencies to investigate allegations of abuse or neglect. This requirement is needed in order to assure that counties understand whose responsibility it is to process complaints so that all complaints are investigated. It would be unfortunate if a resident of County "A", five miles from home in County "B", were not to have suspected maltreatment investigated because County "A" and County "B" were not clear as to which county is responsible. It is reasonable to require a county agency to accept those complaints which pertain to individuals allegedly maltreated within the geographic bounds of that particular county. It is reasonable because the county which is closest to the alleged incident can more quickly expedite the investigation. In addition, the jurisdiction of local law enforcement agents, who are also mandated to investigate the complaint, is limited to the geographic area in which an incident occurs.

C.2.a., b., and c: The law requires prompt response to complaints of abuse or neglect, so it is necessary to set out specific time-lines in order to ensure that these duties will be carried out. The various time-frames are reasonable because county agencies have limited resources for conducting investigations and it would be impossible for them to investigate all complaints "immediately". The differentiation of the time-lines laid out is to ensure response to complaints which is proportionate to the severity of harm. The time-frames used are identical to those required in DPW Rule 207 (12 MCAR §2.207) for the reporting of child maltreatment. County agencies have requested that the same time-frames be used for responding to reports of adult maltreatment since counties have found these to be appropriate in responding to child maltreatment and believe that they are as appropriate for responding to alleged adult maltreatment.

C.3.: The reason for requiring an on-site visit where alleged maltreatment in a facility is reported is because it would be very difficult and perhaps impossible to ascertain the validity of this kind of complaint by any other means, such as by telephone. The alleged victim is unlikely to provide information to a stranger calling on the phone, especially since that vulnerable adult might be fearful of the consequences of revealing information about the facility or about a facility employee. There is a need for privacy if accurate information is to be obtained, and there are many situations where there is no opportunity for privacy for a phone conversation; in a facility there may never be a time when no staff person is in the building. A vulnerable adult might not ever be able to speak by phone and be sure that no one overhears the conversation. In addition, the on-site visit is necessary for determining whether other vulnerable adults are at risk, for it is just as impractical and difficult to conduct a facility-wide investigation by phone. The obtaining of accurate information is necessary for the local agency to carry out its responsibilities under the law. Therefore, the on-site visit to a facility is needed and reasonable.

The word "include" is used because the activities need not be limited to those listed.

The phrase "where necessary to make an accurate assessment" is needed to allow for discretion by the investigator; there are circumstances which would make it unnecessary to carry out all of the actions. For example: after discussion with the alleged victim, it might be determined that the allegation is unsubstantiated and no longer necessary to explore further, or discussion with the victim may prove that the allegation is substantiated and it is therefore unnecessary to examine any records. It is recognized that there may be situations in which only one action is appropriate or needed, while other situations may require all of the actions and more.

The listing of activities may not include all that may be done to determine whether a vulnerable adult has been abused or neglected, but it is reasonable because it includes the more customary activities for ascertaining the validity of a complaint. The list of activities is needed because many county staff often depend solely on statute and rule to guide their activities and the activities listed have proven to be the effective ones for performing an adequate investigation.

C.4.: The statute requires the local agency to investigate a complaint in order to offer emergency and protective social services for purposes of preventing abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Unlike a complaint about alleged maltreatment in a licensed facility, this standard does not require that there be an on-site visit to investigate a complaint. The reason for this is that county staff have stated that, while they can see no way of adequately investigating a complaint about someone in a facility without an on-site visit, there are numerous situations regarding complaints of maltreatment outside of facilities in which counties have been able to screen out complaints by telephone, thereby saving themselves an on-site visit. Examples of this might include repeated calls from an overzealous neighbor or from a crank caller, or calls about domestic disputes in which the alleged victim may make it very clear by phone that outside intervention is not welcomed. The Department is confident that local agencies will not abuse this option and that local agencies will be sensitive to the many cases in which abused or neglected persons may be too fearful of the consequences of reporting to reveal information on the telephone. Consideration here has been given to the fact that local agencies have limited

resources, and it is hoped that this opportunity for screening may free their time for providing more in-depth services to those vulnerable adults in need of the agency's services. The fact that an on-site visit is not mandated here does not relieve agencies from the requirement in C.2.a. that mandates an immediate on-site visit when it is alleged that a vulnerable adult is life threatened and likely to experience physical injury due to abuse or abandonment.

C.4.a., b., and c.: This listing may not be inclusive of all that may need to be done to determine whether an allegation of maltreatment is valid, but it is necessary to outline what is included in an investigation because the law requires local agencies to investigate and directs the Commissioner to develop rules to implement this requirement. It is reasonable to include the obtaining of a first-hand account from the alleged victim, the alleged perpetrator, and the reporter in order to determine the validity of the allegation. It is necessary for the local agency to determine the validity of the allegation in order to carry out the agency's responsibility under the law.

C.5.: This is needed to assure that there is clear understanding as to which county is responsible for an investigation of a complaint so that all complaints are certain to be investigated as is required by the law. It is reasonable, for practical reasons of time and distance, that the county in which an allegation of maltreatment occurs to investigate the complaints. Frequently vulnerable adults reside hundreds of miles from their county of financial responsibility, and the county closest to the alleged incident can more quickly conduct the investigation. Because of distance, it may be impossible for the county of financial responsibility to investigate and take protective measures immediately. In addition, since the jurisdiction of local law enforcement agents is limited to the geographic area in which maltreatment occurs, it is reasonable and necessary for the host county to carry out all investigatory and protective responsibilities so that it may collaborate with local law enforcement. The use of the phrase, "shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult" means that the financially responsible county is responsible for the ongoing planning and services to the vulnerable adult, but may delegate these to the host county by mutual agreement. The authority behind the ongoing responsibility of the financially responsible county is in the Community Social Services Act in Chapters 256E.08, subd. 7 and 256E.08, subd. 1, as amended by the laws of Minnesota, 1981, Chapter 355. The delegation of the delivery of ongoing services to a county other than the one of financial responsibility is a commonly used practice among county agencies.

C.6.: The law requires that a county agency investigate in order to determine whether there has been abuse or neglect. A county worker may not be able to do this alone. When the county worker has insufficient expertise to make an accurate determination of abuse or neglect, it may be necessary for the worker to consult an expert in order to carry out his or her responsibilities under the law. A county worker may lack sufficient knowledge in health sciences or specialized therapeutic treatment modes to make judgments as to what constitutes abuse or neglect. An example of this may be an allegation that a nursing home resident is neglected due to the nursing home staff giving medications at a time not exactly prescribed on the medication container. The county worker would most likely need to consult with a physician in order to ascertain neglect. Similarly, an

allegation that certain behavior modification techniques constitute abuse should be discussed with persons knowledgeable about the field of behavior modification to gain a sense of whether or not the techniques fall within the parameters of acceptable behavior modification practices.

C.7.: This requirement is needed and reasonable because the information gained may help the county worker to know what steps to take to provide protection and services to the vulnerable adult, and this is necessary because the law requires the county agency to provide protection and to take measures to prevent further harm.

D.: This is identical to the requirement in 12 MCAR §2.207, the child protection rule. This 90-day requirement is reasonable because the investigation and classification of a complaint should be done with all due speed in order to allow for provision of protective services and to prevent further harm to a vulnerable adult, and this is necessary because the law requires the county agency to provide protection and to take measures to prevent further harm. Ninety days has, from experience with the child maltreatment reporting law, been a sufficient amount of time for the classification of a report.

It is reasonable that the subjects of a report - the alleged victim(s) and the alleged perpetrator(s) - know what the agency has determined regarding the complaints. Minn. Stat. §15.165, subd. 4, of the Minnesota Government Data Practices Act provides that a person can contest the accuracy or completeness of public or private data concerning himself. This rule requirement is reasonable because it assures that the subject of a report will know that there is data pertaining to him so that he can exercise his right under the Data Practices Act if he so chooses.

E.: The county agency's role is to protect the vulnerable adult from further abuse or neglect and to insure that the welfare of the abused or neglected vulnerable adult will be safeguarded and enhanced. Subdivision 10 of the statute mandates the local agency to seek the authority to remove a vulnerable adult from a caretaker in whose care abuse or neglect occurs when necessary in order to protect the vulnerable adult from further harm. The various options listed provide guidance as to what avenues may be taken by a local agency to prevent further harm to a victim of maltreatment. Although some of these options don't involve removal from the caretaker, they accomplish the prevention of further harm by resorting to less drastic measures than the removal of the victim. If one of the options works to prevent further harm, then removal of the vulnerable adult would be unnecessary. The movement of an elderly person from one setting to another can be a drastic measure, and such persons are known to deteriorate with such action. If, as an example, the perpetrator can be removed utilizing the Domestic Abuse Act, this would act to prevent further harm and accomplish the same purpose: separating the caretaker from the vulnerable adult.

F.: The need for this requirement is to provide the state agency with statistical information so that the state agency and the Minnesota state legislature may establish standards and provide the necessary tools to meet identified needs. This is necessary in order to supervise county agencies and provide technical assistance so that they can carry out their responsibilities under the law. This 20-day requirement has been required in DPW Rule 207 (12 MCAR §2.207), and the Department has received reports on child maltreatment with few problems or complaints. The Social Services Division of the state agency is specified as the recipient of the report.

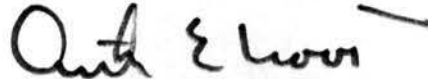
The reason and need for this is distinguish the reports sent to the state agency that are for statistical purposes only, (the report sent to the Social Services Division), from those sent to the state agency which are for other purposes, (the two reports sent to the Licensing Division of the state agency).

The 20-day requirement is reasonable because it provides the state information within a time-frame not too distant from the time of the particular case activity so that the state agency may offer and provide direction and technical assistance to the local agency.

F.2.: This requirement is needed and reasonable for it assures that the state agency will have accurate statistical data. Not all reports will be complete in 20 days. This allows county agencies to complete and, if necessary, correct reports.

F.3.: This is reasonable because the Minnesota Government Data Practices Act, Minn. Stat. §15.163, Subd. 3 requires that only information on individuals which is necessary for the administration of an authorized program should be collected. Since the state agency has no need for the names of alleged victims or perpetrators of maltreatment in order to carry out its supervisory responsibilities, it will not collect that additional data.

The Department does not plan to utilize any outside expert witnesses to testify on its behalf at the hearing.



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