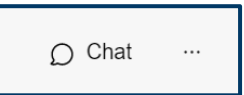


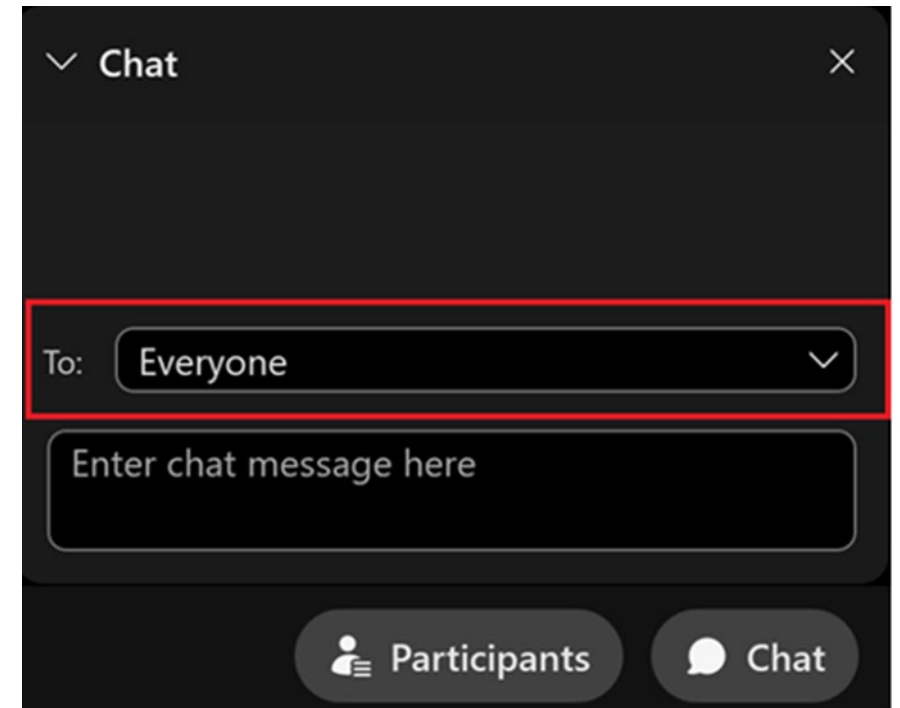


Investigations Process

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.**



- 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, to include home care providers
- 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 providers
- Other MDH licensed facilities

DHS Licensing

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

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 clients, and drug diversion

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, home care providers, 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

Background Studies

Disqualification process, appeals

Enforce

Licensing orders, follow-up visits, and fines

Investigate

Conduct maltreatment and compliance investigations

Triage

Review and assess all reports and complaints

Intake

Receive and process complaints and reports

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



Minnesota Adult Abuse Reporting Center

1-844-880-1574 • mn.gov/dhs/adult-protection

Maltreatment of vulnerable adults is a serious issue in Minnesota. It's also under-reported because people don't know what to look for; don't know how to help; or just don't want to get involved.

A vulnerable adult is someone eighteen years of age or older who has a physical, mental or emotional need that makes it hard for them to care for themselves without assistance. They can also be someone who is in a hospital, nursing home or other care facility; or someone who receives home care, licensed services, or other personal care.

Maltreatment has many forms:

ABUSE: Physical, emotional and/or sexual

NEGLECT: Failure by a caregiver to fulfill a caretaking obligation

SELF-NEGLECT: Failure by a vulnerable adult to adequately provide for their own health and safety

FINANCIAL EXPLOITATION: Use of a vulnerable adult's funds or property

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 may 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 clients and staff
- Facilitate our observation of a home visit



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

- 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
- (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)

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

Background Studies

Disqualification process, appeals

Enforce

Licensing orders, follow-up visits, and fines

Investigate

Conduct maltreatment and compliance investigations

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

Triage

Review and assess all reports and complaints

Intake

Receive and process complaints and reports

Top Five Tips

1. Protect clients from sexual contact to which they lack capacity to consent
2. When clients have systemic issues, whether falls, behaviors, altercations with other clients, 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. Keep up-to-date on background studies requirements

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

- Theft of controlled substances is a persistent problem
- You need to proactively monitor for potential diversion by your employees



- 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.

Matt Heffron, JD | State Rapid Response Operations Manager

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