

9560.0222 INVESTIGATION OF REPORTS OF MALTREATMENT IN A FACILITY.

Subpart 1. **Responsibility for investigation.** The local agency shall screen reports of maltreatment to determine the need for investigation. If a report of maltreatment alleges maltreatment of a child in a facility and if the child is related by blood, marriage, or adoption to the license holder, facility staff, or volunteer of the facility, the local agency shall follow the basic requirements in part 9560.0216. The local agency must investigate a report of maltreatment in a foster care or family child care facility and in facilities licensed by the Department of Corrections when the report meets the criteria in items A to C. The commissioner has primary responsibility for investigating reports of maltreatment in facilities licensed by the commissioner, except for foster care and family day care, and must follow the procedures outlined in Minnesota Statutes, section 260E.28. The commissioner may request assistance from the local agency. When the local agency assists the commissioner, it must follow the procedures outlined in parts 9560.0216 to 9560.0234.

A report of maltreatment must be investigated when the conditions in items A to C apply:

- A. the allegations in the report constitute maltreatment as defined in part 9560.0214, subpart 18;
- B. the report contains sufficient identifying information to permit an investigation; and
- C. the report contains information that has not previously been investigated by the local agency.

The investigating agency must collect available information relevant to the investigation or assessment to ascertain whether maltreatment occurred and whether protective services are needed. Relevant information includes the information specified in Minnesota Statutes, section 260E.20, subdivision 3.

Subp. 1a. **Report to licensing agency.** A report that does not meet the criteria for investigation in subpart 1, items A to C, must be reported by the local agency as a possible licensing violation to the responsible licensing agency listed in items A to E within 48 hours after the report is received, excluding weekends and holidays.

A. Reports involving family day care must be referred to the local agency and the commissioner must also be notified.

B. Reports involving a child foster care provider whose licensure is supervised by the local agency must be referred to the local agency and the commissioner must also be notified.

C. Reports involving a child foster care provider whose licensure is supervised by a private agency licensed under parts 9545.0755 to 9545.0845 must be referred to the private agency and the commissioner must also be notified.

D. Reports about facilities that the commissioner licenses directly without delegating any licensing function to the county or a private agency must be sent to the commissioner.

E. Reports concerning facilities licensed by the Department of Corrections or the Department of Health must be sent to the department that licenses the facility.

Subp. 2. **Coordination with law enforcement.** The investigating agency shall:

A. ask a representative from a law enforcement agency to accompany the investigator to interview the child when a report of maltreatment:

- (1) indicates there is imminent danger to a child or danger to the investigator; or
- (2) alleges violation of a criminal statute involving sexual abuse, physical abuse, malicious punishment of a child, or neglect or endangerment under Minnesota Statutes, section 609.378;

B. coordinate its investigation with the law enforcement agency investigation to avoid duplication of fact finding efforts and multiple interviews; and

C. prepare an independent report of its investigation.

Subp. 3. **Coordination with licensing agencies.** The local agency shall coordinate the investigation of maltreatment within a facility with the agencies responsible for licensing the facility listed in subpart 1a.

A. The local agency shall notify the responsible licensing agencies listed in subpart 1a within 48 hours, excluding weekends and holidays, of receiving a report of maltreatment. This notification must include:

- (1) the date and time the local agency received the report;
 - (2) identification of the facility, the child or children alleged to be maltreated, and the alleged offender;
 - (3) the nature of the maltreatment and extent of any injuries to children;
 - (4) immediate treatment and protection measures being provided by the local agency;
- and
- (5) the name of the child protection worker responsible for investigating the report.

B. The local agency shall provide the responsible licensing agencies listed in subpart 1a with ongoing information as the investigation proceeds.

Subp. 4. **Notice to ombudsman for mental health and developmental disabilities.** The investigating agency shall provide the notice in subpart 3, item A, to the ombudsman for mental health and developmental disabilities when a report of maltreatment involves a child receiving residential treatment services for mental health, developmental disability, chemical dependency, or emotional disturbance.

Subp. 5. **Notice to parents, guardians, or legal custodians.** The investigating agency shall provide the following notice when reports of maltreatment within a facility have been received.

A. The investigating agency shall provide the following information to the parents, guardians, or legal custodians, including agencies responsible for placement, of any child who is reported to be maltreated by a person within a facility who is responsible for the child's care:

- (1) the name of the facility;
- (2) that a report of maltreatment of their child has been received;
- (3) the nature of the alleged maltreatment;
- (4) that an investigation is being conducted;
- (5) the protective or corrective measures currently being provided; and
- (6) that a written report will be furnished when the investigation is completed.

B. The notice required in item A must be provided before the investigating agency interviews any child who is reported to be maltreated unless:

- (1) the interview is necessary to protect children within the facility; and
- (2) the investigating agency is unable, after reasonable effort, to locate the parents.

C. The investigating agency may provide the notice required in item A to the parents, guardians, or custodians of children who are in the care of the facility who are not the subjects of the report. In making the decision to provide this notice, the agency shall consider:

- (1) whether there are reasonable grounds to believe maltreatment has occurred;
- (2) the seriousness of the maltreatment;
- (3) the number of children reported to be maltreated; and
- (4) the length of time it may take to complete the investigation.

Subp. 6. **Interviewing children.** When necessary to make the determination in subpart 10, the investigating agency in the course of the investigation shall interview any child alleged to be maltreated who is in the care of the facility and may interview any other child who is or has been in the care of the facility, or any child related by blood, marriage, or adoption to the alleged offender, or any child who resides or has resided with the alleged offender. Interviews shall be conducted and recorded according to part 9560.0220, subpart 3.

Subp. 7. **Interviewing facility staff.** The investigating agency shall begin to interview the following facility staff within 24 hours after interviewing children: the alleged offender, in a face-to-face interview, but the interview may be postponed if it jeopardizes an active law enforcement investigation; other staff members who may have knowledge of the maltreatment; supervisors of the alleged offender; and the director of the facility. The agency shall use a question-and-answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. All interviews with witnesses and collateral sources must be audiotaped whenever possible.

Staff interviews may be postponed beyond 24 hours to prevent interference with an investigation by law enforcement authorities.

Subp. 8. **Interviewing persons outside the facility.** The investigating agency shall interview the parents, guardians, or legal custodians of children who are in the care of the facility and children

no longer in the care of the facility if there is reason to believe they may have knowledge of maltreatment. The agency shall use a question-and-answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. All interviews with witnesses and collateral sources must be audiotaped whenever possible.

Subp. 8a. **Other interviews.** When necessary to make the determinations in subpart 10, the investigating agency shall interview other persons who the agency believes may have knowledge of the alleged maltreatment. The agency shall use a question-and-answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. All interviews with witnesses and collateral sources must be audiotaped whenever possible.

Subp. 9. [Repealed, 17 SR 3412]

Subp. 10. **Maltreatment determinations.** The investigating agency shall determine that maltreatment has occurred within the facility on the basis of the criteria in items A and B:

A. there is a preponderance of evidence that a child is a victim of maltreatment; and

B. the maltreatment is caused by the act or failure to act of a license holder, facility staff, or a volunteer.

In determining whether the facility or individual is the responsible party for the maltreatment, the investigating agency shall consider the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

Subp. 11. **Protective action.** If there is a determination that maltreatment has occurred or that child protective services are needed, the investigating agency shall take the following action to provide for the safety of the children within the facility.

A. The investigating agency shall provide a written report to the parents, guardians, or legal custodians, including agencies responsible for placement, of every child who is in the care of the facility or was in the care of the facility from the time of the maltreatment until the investigation is completed or the alleged offender is no longer present in the facility, whichever comes first. The

report must not disclose the names of the children who were maltreated, the reporter, the offender, or the persons interviewed during the investigation. The report must include:

- (1) the name of the facility;
- (2) the nature of the maltreatment;
- (3) the names of the investigators and agencies represented;
- (4) a summary of the results of the investigation;
- (5) the investigating agency's determination; and
- (6) remedial measures being provided.

B. The investigating agency shall inform parents, guardians, and legal custodians about alternative facilities.

C. When the investigation is conducted by a local agency, the local agency shall provide the applicable licensing agency or agencies listed in subpart 1a with an oral report immediately after the investigation is completed and a written report within one week after the investigation is completed.

D. For all cases in which the ombudsman received notice under subpart 4, the investigating agency must provide a written report to the ombudsman within one week after completing the investigation.

Subp. 12. **No determination of maltreatment or a need for child protective services.** If there is no determination of either maltreatment or a need for child protective services, the investigating agency shall provide, within ten working days after the investigation is completed, the notice in subpart 11, item A, subitems (1) and (3) to (5), to:

- A. parents, guardians, or legal custodians notified under subpart 5;
- B. the applicable licensing agencies listed under subpart 1a if the investigation was conducted by a local agency;
- C. the ombudsman notified under subpart 4;
- D. the alleged offender; and
- E. the facility director.

Subp. 12a. **Early determination of maltreatment allegations.** The investigating agency may make a determination of no maltreatment early in an assessment or investigation, close the case, and retain immunity if the collected information shows no basis for a full assessment or investigation.

Subp. 13. **Removal procedures.** Child placement by the local agency shall be made according to part 9560.0223.

Statutory Authority: *MS s 14.388; 256.01; 256E.05; 257.175; 393.07; 626.556*

History: *13 SR 303; 17 SR 3412; 25 SR 1772; L 2005 c 56 s 2*

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