

235E.2 Dependent adult abuse reports in facilities and programs.

1. *a.* The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions and those individuals who should be placed on the central registry for dependent adult abuse pursuant to section 235E.7. If the department believes the situation involves an immediate danger to the public health, safety, or welfare requiring immediate agency action to seek emergency placement on the central registry, the department may utilize emergency adjudicative proceedings pursuant to section 17A.18A.

b. Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

c. A report of dependent adult abuse that meets the definition of dependent adult abuse under section 235E.1, subsection 5, paragraph “a”, subparagraph (1), subparagraph division (a) or (d), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services as an assessment only for a five-year period and shall not be included in the central registry and shall not be considered to be founded dependent adult abuse. A subsequent report of dependent adult abuse that meets the definition of dependent adult abuse under section 235E.1, subsection 5, paragraph “a”, subparagraph (1), subparagraph division (a) or (d), that occurs within the five-year period, and that is committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur, may be considered minor, isolated, and unlikely to reoccur depending on the circumstances of the report.

2. A staff member or employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse, shall report the suspected dependent adult abuse to the department.

3. *a.* If a staff member or employee is required to make a report pursuant to this section, the staff member or employee shall immediately notify the person in charge or the person’s designated agent who shall then notify the department within twenty-four hours of such notification. If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within twenty-four hours.

b. The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

5. Any other person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department of inspections and appeals. The department of inspections and appeals shall transfer any reports received of dependent adult abuse in the community to the department of human services. The department of human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department of inspections and appeals.

6. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department’s assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of an investigation, the department determines that the best

interests of the dependent adult require court action, the department shall notify the department of human services of the potential need for a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department of human services in the preparation of the necessary papers to initiate the action and shall appear and represent the department of human services at all district court proceedings.

b. Investigators within the department shall be specially trained to investigate cases of dependent adult abuse including but not limited to cases involving gerontological, dementia, and wound care issues.

c. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

d. In every case involving dependent adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this paragraph, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

7. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report, cooperation, or assistance or relating to the subject matter of the report, cooperation, or assistance.

8. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 5, or cooperating with, or assisting the department in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

9. A person required by this section to report a suspected case of dependent adult abuse pursuant to subsection 2 who knowingly and willfully fails to do so within twenty-four hours commits a simple misdemeanor. A person required by subsection 2 to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly interferes with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

10. The department shall adopt rules which require facilities and programs to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of dependent adult abuse and prior to the completion of an investigation of the allegation. Independent of the department's investigation, the facility or program employing the alleged dependent adult abuser shall conduct an investigation of the alleged dependent adult abuse and determine what, if any, employment action should be taken including but not limited to placing the alleged dependent adult abuser on administrative leave or reassigning or terminating the alleged dependent adult abuser as a result of the investigation by the facility or program. If the facility or program terminates the alleged dependent adult abuser as a result of the investigation by the facility or program or the alleged dependent adult abuser resigns, the alleged dependent adult abuser shall disclose such termination or investigation

to any prospective facility or program employer. An alleged dependent adult abuser who fails to disclose such termination or investigation is guilty of a simple misdemeanor.

11. Upon receiving notice from a credible source, the department shall notify a facility or program that subsequently employs a dependent adult abuser when the notice of investigative findings has been issued. Such notification shall occur prior to the completion of an investigation that is founded for dependent adult abuse.

12. An inspector of the department may enter any facility or program without a warrant and may examine all records pertaining to residents, employees, former employees, and the alleged dependent adult abuser. If upon entry, the inspector has knowledge of or learns during the course of an investigation that alleged dependent adult abuse is suspected or is being investigated, the inspector shall inform the facility or program that the inspector is investigating an alleged case of dependent adult abuse. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse. Prior to the interview, the department shall provide written notification to the person under investigation for dependent adult abuse that the person is under investigation for dependent adult abuse, the nature of the abuse being investigated, the possible civil administrative consequences of founded abuse, the requirement that the department forward a report to law enforcement if the department's investigation reveals a potential criminal offense, that the person has the right to retain legal counsel at the person's expense and may choose to have legal counsel, union representation, or any other desired representative employed by the facility present during the interview, and the fact that the person has the right to decline to be interviewed or to terminate an interview at any time. The person under investigation shall inform the department of the representatives desired to be present during the interview and not delay the interview by more than five working days to make arrangements for the person's representatives to be present at the interview. Any employer representative shall be informed of the requirement to maintain strict confidentiality and of the prohibition against redissemination of such information pursuant to chapter 235B. At the interview, the department shall request and the alleged dependent adult abuser shall provide the alleged dependent adult abuser's most current contact information to facilitate provision of the findings to the alleged dependent adult abuser. An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

13. *a.* Notwithstanding section 235B.6 and chapter 22, an employee organization or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the following conditions are met:

(1) The alleged dependent adult abuser is part of a bargaining unit that is party to a collective bargaining agreement under chapter 20 or any other applicable state or federal law.

(2) The alleged dependent adult abuser requests the presence of an employee organization or union representative.

(3) The employee organization or union representative maintains the confidentiality of all information from the interview subject to the penalties provided in section 235B.12 if such confidentiality is breached.

b. This subsection shall only apply to interviews conducted pursuant to this chapter. This subsection does not apply to interviews conducted pursuant to the regulatory activities of chapter 135B, 135C, 231B, 231C, or 231D, or any other state or federal law.

2008 Acts, ch 1093, §12; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §89; 2010 Acts, ch 1177, §2 - 4

Referred to in §235B.3, 235B.16