

## DATA PRIVACY, VULNERABLE ADULT REPORTING REQUIREMENTS AND DUTY TO WARN

### **DATA PRIVACY: RELEASE OF INFORMATION**

**Collection and storage of all data on individuals** and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government (Mn. Statute 13.05, Subd. 3).

**Data collected prior to August 1, 1975**, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety or welfare (Mn. Statute 13.05, Subd. 4(a)).

**Private or confidential data may be used and disseminated** to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data (Mn. Statute 13.05, Subd. 4(b)).

**Private or confidential data may be used and disseminated** to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commission as necessary to carry out a function assigned by law (Mn. Statute 13.05, Subd. 4(c)).

**With informed consent of the person who is the subject of the data** to be released determined by the rules of the commissioner. Format for informed consent is located in 13.05 unless prescribed by the HIPAA (Mn. Statute 13.05, Subd. 4(d)).

**Use of summary data derived from private or confidential data on individuals** under the jurisdiction of one or more responsible authorities is permitted (Mn. Statute 13.05, Subd. 7).

**Mental health data are private data on individuals and shall not be disclosed, except:**

- (1) pursuant to Mn. Statute 13.05, as determined by the responsible authority for the community mental health center, mental health division, or provider;
- (2) pursuant to court order;
- (3) pursuant to a statute specifically authorizing access to or disclosure of mental health data or as otherwise provided by this subdivision;
- (4) or with the consent of the client or patient (Mn. Statute 13.46, Subd. 7).

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Generally speaking, agencies of the welfare system may disseminate welfare data to mental health providers if the agencies have provided the person who is the subject of the data with a Tennessee Warning (Mn. Statute 13.04, Subd. 2).

**Mental health providers, on the other hand, must obtain informed consent of the individual to provide mental health data to other agencies in the welfare system; giving the individual a Tennessee Warning is not sufficient.**

Even if another agency in the welfare system needs access to mental health data for the administration and management of programs, the mental health provider must first obtain the individuals' informed consent or find a specific statute allowing disclosure of the information.

County employees who are not employees of the mental health unit are not to have access to the mental health data unless the responsible authority determines that a statute authorizes access. The responsible authority of the mental health unit (which is usually also the director of the county human services agency) is required to determine who has the right to access mental health data pursuant to this statute.

Various laws specifically allow for or mandate the release of or access to mental health data. Two instances of this are the **Vulnerable Adult Abuse Reporting Act** and the **Duty to Warn Law**.

### VULNERABLE ADULT REPORTING REQUIREMENTS

All crisis responders will be considered mandated reporters of neglect or abuse of vulnerable adults due to their employment with a county social services agency or their contract to provide services for the county social services agency.

#### ***Who is a vulnerable adult?***

A vulnerable adult is any person who is 18 years of age or older who is living in a facility licensed to provide services by the Minnesota Department of Human Services or any person who due to mental or physical impairment is unable or unlikely to report abuse or neglect.

#### ***What is considered to be abuse?***

Abuse is any crime committed against a person including those relating to prostitution or criminal sexual conduct, any non-therapeutic conduct that causes or could cause pain or injury and is not accidental, any repeated conduct that produces or could produce mental or emotional distress, any sexual contact between facility staff and a resident or client, or any illegal use of a vulnerable adult's person or property for profit or advantage including situations where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception or fraud.

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### ***What is considered to be neglect?***

Neglect is failure by a caretaker to supply or ensure the supply of necessary food, clothing, shelter, health care or supervision for a vulnerable adult. This may include self-neglect by the vulnerable adult.

### ***What incidents should be reported?***

Three sorts of incidents should be reported.

1. Knowledge of the abuse or neglect of a vulnerable adult
2. Reasonable cause to believe that a vulnerable adult is being or has been abused or neglected or
3. Knowledge that a vulnerable adult has sustained a physical injury which is not necessarily explained by the history of injuries provided by the caretaker or caretakers of the vulnerable adult

### ***Who should abuse or neglect of a vulnerable adult be reported to?***

Local police departments, county sheriff, local social services agency or appropriate licensing or certifying agencies all may receive reports of abuse or neglect of vulnerable adults. An initial report may be made orally but a written report is also required.

### ***Can legal action be taken against a person who makes a vulnerable adult report?***

A person who is making a mandated report of abuse or neglect of a vulnerable adult or participating in an adult protection investigation is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith. (Minnesota Department of Human Services [Social Services Manual, Adult Protective Services XVI-3000.](#))

## **DUTY TO WARN**

### ***What is Duty to Warn?***

The Duty to Warn law is found in Mn. Statute 148.975. The law requires specified professionals to warn an intended victim if the professional knows that a patient has made a specific serious threat of physical violence against a specific person. If the target of the threat cannot be located, the professional may inform the local law enforcement agency.

### ***Who is required to make a warning to an intended victim?***

Psychologists, school psychologists, nurses, chemical dependency counselors, and social workers working in licensed facilities or community mental health centers are required to warn an intended victim.

Social workers in county agencies who are not licensed are not governed by this statute; however social workers in state hospitals, and mental health centers, and licensed social workers must comply with these provisions. Unlicensed county social workers **may** comply with the intent of the law and warn the intended victim through statutory provisions found in Mn. Statute 13.46, Subd. 2(a) (10).

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That statute provides that in an emergency, welfare system employees may release information of they feel that knowledge of the information is necessary to protect the health or safety of the individual or other individuals or persons. Under this law, social workers are permitted also to warn persons other than the intended victim (Minnesota Department of Human Services [Data Practices Manual](#)).

### ***Can legal action be taken against a person who discloses information by warning a potential victim?***

The law provides immunity from liability for good faith disclosures pursuant to this statute. It also provides immunity when the professional warns the intended victim or contacts appropriate law enforcement regarding the patient's dangerous nature even if no specific threat was made.