



Legislative Report

Vulnerable Adult Maltreatment Reconsideration Review Panel

Aging and Adult Services Division

January 2019

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Minnesota Statutes, Chapter 3.197, requires the disclosure of the cost to prepare this report. The estimated cost of preparing this report is \$580.

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I. Legislation

Minnesota Statutes, section 256.021 VULNERABLE ADULT MALTREATMENT REVIEW PANEL.

Subdivision. 3. **Report.**

By January 15 of each year, the panel shall submit a report to the committees of the legislature with jurisdiction over section 626.557 regarding the number of requests for review it receives under this section, the number of cases where the panel requires the lead investigative agency to reconsider its final disposition, and the number of cases where the final disposition is changed, and any recommendations to improve the review or investigative process.

II. Introduction

The Minnesota Legislature requires the Minnesota Department of Human Services to establish a panel to review investigation dispositions by lead investigative agencies for alleged vulnerable adult maltreatment reported to the Minnesota Adult Abuse Reporting Center (MAARC), the common entry point designated by the commissioner of human services. There are two types of lead investigative agencies responsible for reports of suspected maltreatment: 1) state regulatory agencies, specifically the Minnesota Department of Human Services, Division of Licensing; and the Minnesota Department of Health, Office of Health Facility Complaints; and 2) all county social service agencies. This results in a total of 89 vulnerable adult maltreatment lead investigative agencies. No tribes have assumed responsibilities for civil maltreatment investigations.

The civil lead investigative agency makes a determination about the report of suspected maltreatment at the conclusion of the agency’s investigative activities. A preponderance of the evidence standard is used. Investigations are determined as having a final disposition of either: substantiated, inconclusive, false, or that no determination will be made.

The **Vulnerable Adult Maltreatment Review Panel** (Panel) was established in Minnesota Statutes section 256.021 to give vulnerable adults, or an interested party to the vulnerable adult, an opportunity to have the final investigative determination of the lead investigative agency reviewed. The vulnerable adult or interested party must first request an Administrative Reconsideration from the lead investigating agency before requesting a Panel review. If the action taken by the lead investigating agency does not satisfy the vulnerable adult’s or interested party’s concerns, they may make a written request to the Panel for review.

The authority of the Panel is limited to requesting a lead investigative agency to re-visit a maltreatment investigation, focusing on specific issue(s) delineated by the Panel. It does not have the authority to order the lead investigative agency to change its final determination.

The Panel is made up of six (6) members listed in the chart below.

Vulnerable Adult Maltreatment Review Panel Member	Member’s Designee
Commissioner of Health	Don Bishop
Commissioner of Human Services	Elizabeth Oji
Ombudsman for Long-Term Care	Jim Dostal
Ombudsman for Mental Health & Developmental Disabilities	Andrea Ayres
Minnesota Board on Aging	Lynnette Buckley
County Human Services Administrators	Deb Tulloch

The legislation requires quarterly meetings of the Panel. Four meetings were held in calendar year 2018 based on requests for review. The Continuing Care Administration's Aging and Adult Services Division is responsible for drafting the Panel report and does so based on recommendations of cases reviewed at Panel meetings. The Panel's reconsideration actions are laid out below and include the number of cases reviewed each quarter, the affirmation of the findings in each case, as well as any Panel request to the lead investigative agency to reconsider their findings.

During 2018, the Panel reviewed ten (10) requests for reconsideration.

- Seven (7) requests for reconsideration were reviewed from the **Minnesota Department of Health (MDH)**. The Panel affirmed (5) final determinations. The panel requested reconsideration of one (1) final determination. One (1) request was associated with a maltreatment investigation that was not associated with a MAARC report made under the Vulnerable Adult Act (VAA), Minnesota Statutes section 626.557. The Panel did not have authority to complete a review for this request.
- One (1) request for reconsideration were reviewed from the **Minnesota Department of Human Services, Division of Licensing**. The panel affirmed one (1) final determinations.
- Two (2) requests for reconsideration were reviewed from two (2) **County Social Services Agencies (County)**. The Panel affirmed one (1) of the final determinations by the two (2) county lead investigative agencies. The Panel requested reconsideration of one (1) final determination by a county lead investigative agency.

2018 Minnesota Vulnerable Adult Maltreatment Reconsideration Panel Meetings

Date of Meeting	Dep't Health – Requests for Panel review	Dep't Health – Panel Requests for Reconsideration by lead investigative agency	Dep't Human Services – Requests for Panel review	Dep't Human Services – Panel Requests for Reconsideration by lead investigative agency	County – Requests for Panel review	County – Panel Requests for Reconsideration by lead investigative agency
January 25, 2018	1	1	1	0	0	0
April 26, 2018	1	0	0	0	0	0
July 26, 2018	2	0	0	0	1	0
October 25, 201	3	0	0	0	1	1
Totals	7	1	1	0	2	1

As of December 31, 2018 the Panel requested two (2) reconsiderations of cases reviewed in 2018. The two (2) requests for reconsideration resulted in one (1) of the two (2) lead investigative agencies changing the final determination as result of the panel’s request for reconsideration. The Panel requested additional information from the lead investigative agency in zero (0) cases. The Panel affirmed the lead investigative agency resolutions in the remaining eight (8) cases.

III. Report recommendations

The Panel has five (5) recommendations for improvement to the Vulnerable Adult Maltreatment Review Panel process. Two recommendations are consistent with the 2018 Legislative Report.

- The Panel found lead investigative agency (LIA) findings inconsistent with the findings to be used under Minnesota Statutes section 626.557, subdivision 8. The usage of inconsistent terms or phrases creates difficulty for the Panel’s review of the final disposition.
 - **Panel Recommendation:** Lead investigative agency dispositions should be consistent with those found in statute: Substantiated, False, Inconclusive, or No determination will be made. Plain language explanations should be provided to the vulnerable adult and interested party of those statutory terms and their implications to the Panel process.
- The Panel found LIAs did not carry out all investigative activities allowed under investigative guidelines within Minnesota Statutes section 626.557, subdivision 10b. Specifically, an agency did not interview the alleged victim who may have relevant information. The statute uses conflicting language regarding investigation activities. It uses the term or phrase “shall” and “as appropriate” next to each other. This creates difficulty for the Panel when reviewing determinations as meeting a preponderance of evidence.
 - **Recommendation:** Lead investigative agencies investigation standards should follow Minnesota Statutes section 626.557, subdivision 10b without exception. Lead investigative agencies exceptions for interview standards are made when the person is deceased, refuses interview, is unable to be contacted following diligent attempts, or when the agency has reason to know the interview will endanger a vulnerable adult are the only authorized exceptions to the investigative standard in statute.
- Request was made for Panel review by an interested person acting on behalf of a vulnerable adult identified under Minnesota Statutes section 626.557, subdivision 9b(d) who was also the individual determined to have maltreated the vulnerable adult. The Panel was not established as a forum for this purpose.
 - **Recommendation:** Revise Minnesota Statutes, section 626.557, subdivision 9b(d) to exclude the individual determined to have maltreated the vulnerable adult as an interested person acting on behalf of a vulnerable adult.

- The Panel identified vulnerable adult's and interested persons could benefit from an explanation of factors considered by the lead investigative agency when affirming final determination. This action supports the vulnerable adult or interested party in identifying aspects of dissatisfaction with the lead investigative agency determination when requesting Panel review.
 - **Recommendation:** Add a requirement that the lead investigative agency include the factors considered in making the final determination when denying a reconsideration request under Minnesota Statutes, section 626.557, subdivision 9d.
- The Panel has only options two options for notification to the vulnerable adult, to an interested person and to the lead investigative agency upon completion of review. Those options are 'concur' or 'reconsider.' If the panel's decision is not unanimous, there is not a request for the lead investigative agency to reconsider.
 - **Recommendation:** Revise Minnesota Statutes section 256.021 to provide the Panel with a third notification option when the Panel is not unanimous in a decision to request reconsideration by the lead investigative agency.

Quarterly meetings for 2019 are scheduled for the fourth week in January, April, July, and October.