Maltreatment investigations in DHS-licensed programs: frequently asked questions about what to expect

Most facilities that are licensed by the Department of Human Services (DHS) follow the licensing rules and laws when they operate their programs. Nevertheless, there are times when incidents or violations occur in DHS-licensed programs that require further investigation. This document was developed for DHS-licensed providers. We hope this information helps providers and staff have a better understanding of what to expect if an on-site investigation occurs at your program.

To help protect the health, safety and well-being of those who receive services from DHS-licensed facilities, the Licensing Division investigates reports of alleged maltreatment in these programs. Minnesota statutes govern the process and time-frame for completing an investigation.1

Because county agencies perform maltreatment investigations for licensed family child care and licensed child foster care, this information does not apply to those investigations.

What happens when a report or complaint about alleged abuse is received by DHS?

All reports and complaints received by DHS receive a thorough review, or assessment. During this assessment, DHS staff review for a history with the facility, the alleged victim, and the alleged perpetrator, if any. From there, phone calls are frequently made to gather additional information. This information is then used to determine whether further investigation through an out-of-office maltreatment investigation is needed.

During a maltreatment investigation, what are DHS investigators trying to find out?

Investigators gather information from various sources in order to answer several questions, including:

- What happened?
- Did the event meet a statutory definition of maltreatment?
- If maltreatment occurred, was an individual and/or the facility responsible?
- If maltreatment occurred, did it meet the statutory definition of recurring and/or serious?
- Is further action necessary to reduce the chance that the maltreatment will reoccur

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1 Investigations of alleged maltreatment of a child are completed according to Minnesota Statutes, section 626.556. Investigations of alleged maltreatment of a vulnerable adult are completed according to Minnesota Statutes, sections 626.557 and 626.5572.
Will the investigators come to the facility during the investigation?

Most investigations include a visit to the site of the reported maltreatment and/or the facility. These visits can be either announced or unannounced, depending on what is being investigated. The investigators may return as often as needed to complete the investigation.

Does the facility have to let the investigators onto the premises and allow them to look around?

Yes, licensed programs must provide DHS Licensing staff access to:

- The program and facility grounds
- Documents and records (both on paper and electronic)
- Staff persons
- Persons served by the program.

When investigators are on-site, they intend to cause minimal disruption to services provided to individuals. Please communicate with the investigator if you need to step away from the investigation to function in staffing ratios and/or provide care to an individual.

Can the investigators look at documents with sensitive information and can they make copies?

Yes. A variety of state and federal laws give investigators the right to see documents that you otherwise could not legally share, including medical records, personally identifiable information and records that contain private and confidential information. This includes paper files and electronic information. Investigators can make copies (paper or electronic), take pictures or otherwise retain information from the program.

Will investigators interview people?

Yes, investigators will likely interview staff persons and children or adults served by the program, as well as family members, guardians and others with information relevant to the investigation. Interviews will be audio and/or video recorded. Investigators are required to give everyone we interview a written privacy notice when collecting sensitive information from them. The notice enables people to make informed decisions about whether to give information to the investigator.

Who will have access to the information that the investigators are collecting?

During the investigation, all information is confidential, which means that it cannot be shared with anyone, except other government agencies, such as law enforcement, if the law allows.
When the investigation is completed, some information becomes public, some information becomes private, and some remains confidential. The name of the individual(s) who reported the maltreatment remains confidential. The names of other individuals who provide information or are associated with the investigation are private unless there is a court order or it is part of a judicial or administration proceeding.

What if the facility or staff refuses to comply with the investigation?

Licensed providers must provide investigators access to the program and grounds, documents, staff, and persons served by the program. Failure to comply with this is reasonable cause to immediately suspend and/or revoke the license.

Individuals, including staff persons and persons receiving licensed services, have the right to refuse to be interviewed for the investigation. If an individual refuses to be interviewed, the investigation will conclude and determinations whether maltreatment occurred will be made without information from that individual.

What happens when the investigation is completed?

Investigators write a public summary, called an Investigative Memorandum, that contains some of the information gathered during the investigation, including a determination of whether maltreatment occurred, and if so any corrective action ordered. This summary is written in a way that protects the identity of everyone involved.

Will the summary be made available to the public?

Yes, these summaries, or Investigative Memoranda, are public documents and some are posted on the DHS Licensing Information Lookup website.

How does DHS determine whether maltreatment occurred?

DHS uses a preponderance of evidence standard to make determinations. For substantiated maltreatment, this means that the information is weighted and more than 50% indicates that maltreatment occurred.

How does DHS determine responsibility for substantiated maltreatment?

DHS considers mitigating factors as outlined by statute to determine who is responsible when maltreatment is substantiated. These include an evaluation of the facility’s compliance with regulatory standards; the adequacy of facility policies and procedures and training; and staffing levels.
What action can DHS take if the facility is found responsible for maltreatment?

If DHS determines that maltreatment occurred and that the facility is responsible, DHS will issue a fine. In a limited number of cases, the violations are so serious that DHS will place a license on conditional status, suspend, or revoke a license. DHS can also take these actions if the investigators determine that the facility failed to follow the law or rules, or provided false or misleading information as part of the investigation. If other violations are observed, a correction order may also be issued.

What action can DHS take if a staff person is found responsible for maltreatment?

If DHS determines that a staff person is found responsible for maltreatment, and that maltreatment meets the definition of serious and/or recurring maltreatment, that staff person will be “disqualified,” which means they are prohibited from having direct contact with or access to people who receive services and their personal property and information for seven years.

If the maltreatment the staff person is responsible for does not meet the definition of serious and/or recurring, then that staff person will receive a letter informing them of the finding and that any additional findings of maltreatment they are found responsible for in the next seven years will automatically meet the definition of recurring, and thus result in disqualification.

Can a maltreatment decision be appealed?

Yes, if the investigators determine that maltreatment occurred, the facility or staff person found responsible can appeal the decision. If the investigator determines that maltreatment did not occur, the alleged victim (or their guardian/parent of a minor), or the Ombudsman for Mental Health and Developmental Disabilities can ask DHS to reconsider its decision.

What if I have questions or need more information?

You can contact your licensor or call at 651-431-6600.