State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3468

03/08/2018 Authored by Olson, O'Driscoll, Allen, Freiberg, Halverson and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

A bill for an act

relating to health; making changes to statutory provisions affecting older and vulnerable adults; modifying the Minnesota Health Records Act and the health care bill of rights; modifying regulation of nursing homes, home care providers, housing with services establishments, and assisted living services; modifying requirements for reporting maltreatment of vulnerable adults; establishing an advisory task force; providing for access to information and data sharing; requiring reports; imposing civil and criminal penalties; amending Minnesota Statutes 2016, sections 144.291, subdivision 2; 144.6501, subdivision 3, by adding a subdivision; 144.651, subdivisions 1, 2, 4, 6, 14, 16, 17, 20, 21, by adding subdivisions; 144A.10, subdivision 1; 144A.44; 144A.441; 144A.442; 144A.45, subdivisions 1, 2; 144A.474, subdivisions 1, 8, 9; 144A.4791, subdivision 10; 144A.53, subdivisions 1, 4; 144D.01, subdivision 1; 144D.02; 144D.04, by adding a subdivision; 144D.09; 144G.01, subdivision 1; 325F.71; 573.02, subdivision 2; 609.2231, subdivision 8; 626.557, subdivisions 3, 4, 9, 9a, 9b, 9c, 9d, 10b, 12b, 14, 17; 626.5572, by adding a subdivision; Minnesota Statutes 2017 Supplement, sections 144A.474, subdivision 11; 144D.04, subdivision 2; 256.045, subdivisions 3, 4; proposing coding for new law in Minnesota Statutes, chapters 144; 144D; 144G; repealing Minnesota Statutes 2016, sections 144G.03, subdivision 6; 256.021.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CITATION.**

Sections 1 to 60 may be cited as the "Older and Vulnerable Adults Rights and Protection Act of 2018."

Sec. 2. Minnesota Statutes 2016, section 144.291, subdivision 2, is amended to read:

Subd. 2. **Definitions.** For the purposes of sections 144.291 to 144.298, the following terms have the meanings given.

(a) "Group purchaser" has the meaning given in section 62J.03, subdivision 6.

(b) "Health information exchange" means a legal arrangement between health care providers and group purchasers to enable and oversee the business and legal issues involved in the electronic exchange of health records between the entities for the delivery of patient care.

(c) "Health record" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient.

(d) "Identifying information" means the patient's name, address, date of birth, gender, parent's or guardian's name regardless of the age of the patient, and other nonclinical data which can be used to uniquely identify a patient.

(e) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

(f) "Medical emergency" means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs, or parts, or prevent placing the physical or mental health of the patient in serious jeopardy.

(g) "Patient" means:

(1) a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition~~.~~;

(2) the surviving spouse, children, sibling, guardian, conservator, and parents of a deceased patient, ~~or~~ unless the authority of the surviving spouse, children, sibling, guardian, conservator, or parents has been restricted by either a court or the deceased person who received health care services;

(3) a person the patient appoints in writing as a representative, including a health care agent acting according to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive~~.~~; and

(4) except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(h) "Patient information service" means a service providing the following query options: a record locator service as defined in paragraph (j) or a master patient index or clinical data repository as defined in section 62J.498, subdivision 1.

(i) "Provider" means:

(1) any person who furnishes health care services and is regulated to furnish the services under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148D, 148F, 150A, 151, 153, or 153A;

(2) a home care provider licensed under section 144A.471;

(3) a health care facility licensed under this chapter or chapter 144A; and

(4) a physician assistant registered under chapter 147A.

(j) "Record locator service" means an electronic index of patient identifying information that directs providers in a health information exchange to the location of patient health records held by providers and group purchasers.

(k) "Related health care entity" means an affiliate, as defined in section 144.6521, subdivision 3, paragraph (b), of the provider releasing the health records.

Sec. 3. Minnesota Statutes 2016, section 144.6501, subdivision 3, is amended to read:

Subd. 3. **Contracts of admission.** (a) A facility shall make complete unsigned copies of its admission contract available to potential applicants and to the state or local long-term care ombudsman immediately upon request.

(b) A facility shall post conspicuously within the facility, in a location accessible to public view, either a complete copy of its admission contract or notice of its availability from the facility.

(c) An admission contract must be printed in black type of at least ten-point type size. The facility shall give a complete copy of the admission contract to the resident or the resident's legal representative promptly after it has been signed by the resident or legal representative.

(d) The admission contract must contain the name, address, and contact information of the current owner, manager, and if different from the owner, license holder of the facility, and the name and physical mailing address, which may not be a public or private post office box, of at least one natural person who is authorized to accept service of process.

~~(d)~~ (e) An admission contract is a consumer contract under sections 325G.29 to 325G.37.

~~(e)~~ (f) All admission contracts must state in bold capital letters the following notice to applicants for admission: "NOTICE TO APPLICANTS FOR ADMISSION. READ YOUR ADMISSION CONTRACT. ORAL STATEMENTS OR COMMENTS MADE BY THE

FACILITY OR YOU OR YOUR REPRESENTATIVE ARE NOT PART OF YOUR ADMISSION CONTRACT UNLESS THEY ARE ALSO IN WRITING. DO NOT RELY ON ORAL STATEMENTS OR COMMENTS THAT ARE NOT INCLUDED IN THE WRITTEN ADMISSION CONTRACT."

Sec. 4. Minnesota Statutes 2016, section 144.6501, is amended by adding a subdivision to read:

Subd. 3a. **Changes to contracts of admission.** The facility must provide prompt written notice to the resident or resident's legal representative of a new owner, manager, and if different from the owner, license holder of the facility, and the name and physical mailing address, which may not be a public or private post office box of any new or additional natural person not identified in the admission contract who is authorized to accept service of process.

Sec. 5. Minnesota Statutes 2016, section 144.651, subdivision 1, is amended to read:

Subdivision 1. **Legislative intent.** It is the intent of the legislature and the purpose of this section to promote the interests and well being of the patients and residents of health care facilities. It is the intent of this section that every patient's and resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, must not be infringed and that the facility must encourage and assist in the fullest possible exercise of these rights. The rights provided under this section are established for the benefit of patients and residents. No health care facility may require or request a patient or resident to waive any of these rights at any time or for any reason including as a condition of admission to the facility. ~~Any guardian or conservator of a patient or resident or, in the absence of a guardian or conservator,~~ An interested person~~,~~ may seek enforcement of these rights on behalf of a patient or resident, as provided under section 144.6512. ~~An interested person may also seek enforcement of these rights on behalf of a patient or resident who has a guardian or conservator through administrative agencies or in district court having jurisdiction over guardianships and conservatorships.~~ Pending the outcome of an enforcement proceeding the health care facility may, in good faith, comply with the instructions of a guardian or conservator. ~~It is the intent of this section that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist in the fullest possible exercise of these rights.~~

Sec. 6. Minnesota Statutes 2016, section 144.651, subdivision 2, is amended to read:

Subd. 2. **Definitions.** (a) For the purposes of this section and sections 144.6511 and 144.6512, the terms defined in this subdivision have the meanings given them.

(b) "Patient" means:

(1) a person who is admitted to an acute care inpatient facility for a continuous period longer than 24 hours, for the purpose of diagnosis or treatment bearing on the physical or mental health of that person.;

(2) a minor who is admitted to a residential program as defined in section 253C.01;

(3) for purposes of subdivisions 1, 4 to 9, 12, 13, 15, 16, and 18 to 20, ~~"patient" also means~~ a person who receives health care services at an outpatient surgical center or at a birth center licensed under section 144.615~~. "Patient" also means a minor who is admitted to a residential program as defined in section 253C.01.~~; and

(4) for purposes of subdivisions 1, 3 to 16, 18, 20 and 30, ~~"patient" also means~~ any person who is receiving mental health treatment on an outpatient basis or in a community support program or other community-based program.

(c) "Resident" means a person who is admitted to, resides in, or receives services from:

(1) a nonacute care facility including extended care facilities~~,~~;

(2) a housing with services establishment operating under assisted living title protection under chapter 144G;

(3) a home care service provider required to be licensed under chapter 144A that provides services in a living unit registered as a housing with services establishment under chapter 144D;

(4) a nursing ~~homes, and~~ home;

(5) a boarding care ~~homes~~ home for care required because of prolonged mental or physical illness or disability, recovery from injury or disease, or advancing age.; and

(6) for purposes of ~~all subdivisions except~~ subdivisions ~~28 and 29~~ 1 to 27, ~~"resident" also means a person who is admitted to~~ and 30 to 34, a facility licensed as a board and lodging facility under Minnesota Rules, parts 4625.0100 to 4625.2355, or a supervised living facility under Minnesota Rules, parts 4665.0100 to 4665.9900, and which operates a rehabilitation program licensed under Minnesota Rules, parts ~~9530.6405~~ 9530.6510 to 9530.6590.

(d) "Health care facility" or "facility" means:

(1) an acute care inpatient facility;

(2) a residential program as defined in section 253C.01;

(3) for the purposes of subdivisions 1, 4 to 9, 12, 13, 15, 16, and 18 to 20, an outpatient surgical center or a birth center licensed under section 144.615;

(4) for the purposes of subdivisions 1, 3 to 16, 18, 20, and 30, a setting in which outpatient mental health services are provided, or a community support program or other community-based program providing mental health treatment;

(5) a nonacute care facility, including extended care facilities;

(6) a housing with services establishment operating under assisted living title protection under chapter 144G;

(7) any living unit of a housing with services establishment registered under chapter 144D, in which home care services are provided to a resident by a home care provider licensed under chapter 144A;

(8) a nursing home;

(9) a boarding care home for care required because of prolonged mental or physical illness or disability, recovery from injury or disease, or advancing age; or

(10) for the purposes of subdivisions 1 to 27 and 30 to 34, a facility licensed as a board and lodging facility under Minnesota Rules, chapter 4625, or a supervised living facility under Minnesota Rules, chapter 4665, and which operates a rehabilitation program licensed under Minnesota Rules, parts 9530.6410 to 9530.6590.

(e) "Interested person" has the meaning given under section 524.5-102, subdivision 7. An interested person does not include a person whose authority has been restricted by the patient or resident, or by a court.

Sec. 7. Minnesota Statutes 2016, section 144.651, subdivision 4, is amended to read:

Subd. 4. **Information about rights.** (a) Patients and residents shall, at admission, be told that there are legal rights for their protection during their stay at the facility or throughout their course of treatment and maintenance in the community and that these are described in an accompanying written statement in plain language and in terms patients and residents can understand of the applicable rights and responsibilities set forth in this section. The written statement must also include the name and address of the state or county agency to

contact for additional information or assistance. In the case of patients admitted to residential programs as defined in section 253C.01, the written statement shall also describe the right of a person 16 years old or older to request release as provided in section 253B.04, subdivision 2, and shall list the names and telephone numbers of individuals and organizations that provide advocacy and legal services for patients in residential programs.

(b) Reasonable accommodations shall be made for people who have communication disabilities and those who speak a language other than English.

(c) Current facility policies, inspection findings of state and local health authorities, and further explanation of the written statement of rights shall be available to patients, residents, their guardians or their chosen representatives upon reasonable request to the administrator or other designated staff person, consistent with chapter 13, the Data Practices Act, and section 626.557, relating to vulnerable adults.

Sec. 8. Minnesota Statutes 2016, section 144.651, subdivision 6, is amended to read:

Subd. 6. **Appropriate health care.** Patients and residents shall have the right to appropriate medical and personal care based on individual needs. Appropriate care for residents means care designed to enable residents to achieve their highest level of physical and mental functioning~~.~~, provided with reasonable regularity and continuity of staff assignment as far as facility policy allows by persons who are properly trained and competent to perform their duties. This right is limited where the service is not reimbursable by public or private resources.

Sec. 9. Minnesota Statutes 2016, section 144.651, subdivision 14, is amended to read:

Subd. 14. **Freedom from maltreatment.** (a) Patients and residents shall be free from maltreatment as defined in the Vulnerable Adults Protection Act. "Maltreatment" means conduct described in section 626.5572, subdivision 15, or the intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress. Every patient and resident has the right to immediate notification by a facility of alleged maltreatment, including the details of any report submitted by the facility under section 626.557 to the common entry point, as defined in section 626.5572, subdivision 5. An interested person, as defined in section 626.5572, subdivision 12a, also has the right to information about maltreatment and the details of a report.

(b) Every patient and resident shall also be free from nontherapeutic chemical and physical restraints, except in fully documented emergencies, or as authorized in writing

after examination by a patient's or resident's physician for a specified and limited period of time, and only when necessary to protect the resident from self-injury or injury to others.

Sec. 10. Minnesota Statutes 2016, section 144.651, is amended by adding a subdivision to read:

Subd. 14a. **Placement of cameras in private space.** (a) For purposes of this subdivision:

(1) "resident representative" has the meaning given in Code of Federal Regulations, title 42, section 483.5; and

(2) "camera" includes other electronic monitoring devices.

(b) Every resident has the right to place a camera in the resident's private space. A facility shall not interfere with the placement. The resident may define when, where, and under what circumstances the camera may be temporarily turned off and has the right to change these preferences at any time.

(c) If the resident resides in shared space, the resident must document a discussion regarding placement of a camera with any roommate or the roommate's guardian or health care agent. If consent from the roommate or the roommate's guardian or health care agent cannot be obtained, the facility must make a reasonable accommodation to either provide a private room or another shared room in which the roommate consents to placement of a camera.

(d) Costs for placement of a camera are incurred by the resident, except that the resident may utilize the facility's Internet service if otherwise made available to the resident.

(e) A health care agent or guardian may place a camera in the resident's private space on behalf of the resident after documenting a discussion with the resident, which includes informing the resident of the resident's right to privacy and a right to be free from maltreatment, and confirming that the resident does not object to the placement of a camera in the resident's private space.

(f) A resident representative who is not the health care agent or guardian may place a camera in the resident's private space on behalf of the resident after documenting a discussion with any health care agent or guardian of the resident regarding the placement, and confirming that the resident and any health care agent or guardian do not object to the placement.

(g) An interested person who is not the health care agent, guardian, or resident representative may place a camera in the resident's private space on behalf of the resident

after documenting a discussion with any health care agent, guardian, or resident representative of the resident regarding the placement, and confirming that any health care agent, guardian, or resident representative does not object to the placement. Where there is no health care agent, guardian, or resident representative of the resident, an interested person must document a discussion with the ombudsman for long-term care regarding the placement, and must confirm that the ombudsman does not object to the placement.

If conflict arises between multiple interested parties, the ombudsman for long-term care shall be consulted.

(h) The health care agent, guardian, resident representative, or interested person who has placed the camera, after discussion with the resident, may define when, where, and under what circumstances the camera may be temporarily turned off and has the right to change these preferences at any time.

(i) No one may seek placement of a camera in the resident's private space on behalf of a resident if the placement has been restricted or rescinded in writing by a resident or a court.

(j) The facility may not tamper with or remove any camera placed in the resident's private space or attempt to persuade, coerce, or influence the resident not to place a camera in the resident's private space. The facility shall not retaliate against the resident for placement of a camera. A facility does not violate Minnesota law or rules if a camera for which the facility was unaware is found during a survey or investigation by the Department of Health.

Sec. 11. Minnesota Statutes 2016, section 144.651, subdivision 16, is amended to read:

Subd. 16. **Confidentiality of records.** Patients and residents shall be assured confidential treatment of their personal, financial, and medical records, and may approve or refuse their release to any individual outside the facility. Residents shall be notified when personal records are requested by any individual outside the facility and may select someone to accompany them when the records or information are the subject of a personal interview. Patients and residents have a right to access their own records and written information from those records. Copies of records and written information from the records shall be made available in accordance with this subdivision and sections 144.291 to 144.298. This right does not apply to complaint investigations and inspections by the Department of Health, where required by third-party payment contracts, or where otherwise provided by law.

Sec. 12. Minnesota Statutes 2016, section 144.651, subdivision 17, is amended to read:

Subd. 17. **Disclosure of services available.** Patients and residents shall be informed, prior to or at the time of admission and during their stay, of services which are included in the facility's basic per diem or daily room rate and that other services are available at additional charges. Patients and residents have the right to reasonable advance notice of changes in services or charges. A facility may not collect a nonrefundable deposit, unless it is applied to the first month's charges. Facilities shall make every effort to assist patients and residents in obtaining information regarding whether the Medicare or medical assistance program will pay for any or all of the aforementioned services.

Sec. 13. Minnesota Statutes 2016, section 144.651, subdivision 20, is amended to read:

Subd. 20. **Grievances.** (a) Patients and residents shall be encouraged and assisted, throughout their stay in a facility or their course of treatment, to understand and exercise their rights as patients, residents, and citizens. Patients and residents may voice grievances, assert the rights granted under this section personally, or have these rights asserted by an interested person, and recommend changes in policies and services to facility staff and others of their choice, free from restraint, interference, coercion, discrimination, retaliation, or reprisal, including threat of discharge. ~~Notice of the grievance procedure of the facility or program, as well as addresses and telephone numbers for the Office of Health Facility Complaints and the area nursing home ombudsman pursuant to the Older Americans Act, section 307(a)(12) shall be posted in a conspicuous place.~~

(b) Patients, residents, and interested persons have the right to complain about services that are provided, services that are not being provided, and the lack of courtesy or respect to the patient or resident or the patient's or resident's property. The facility must investigate and attempt resolution of the complaint or grievance. The patient or resident has the right to be informed of the name of the individual who is responsible for handling grievances.

(c) Notice must be posted in a conspicuous place of the facility's or program's grievance procedure, as well as telephone numbers and, where applicable, addresses for the common entry point, defined in section 626.5572, subdivision 5, a protection and advocacy agency, and the area nursing home ombudsman pursuant to the Older Americans Act, section 307(a)(12).

(d) Every acute care inpatient facility, every residential program as defined in section 253C.01, every nonacute care facility, and every facility employing more than two people that provides outpatient mental health services shall have a written internal grievance procedure that, at a minimum, sets forth the process to be followed; specifies time limits,

including time limits for facility response; provides for the patient or resident to have the assistance of an advocate; requires a written response to written grievances; and provides for a timely decision by an impartial decision maker if the grievance is not otherwise resolved. Compliance by hospitals, residential programs as defined in section 253C.01 which are hospital-based primary treatment programs, and outpatient surgery centers with section 144.691 and compliance by health maintenance organizations with section 62D.11 is deemed to be compliance with the requirement for a written internal grievance procedure.

Sec. 14. Minnesota Statutes 2016, section 144.651, subdivision 21, is amended to read:

Subd. 21. **Communication privacy.** Patients and residents may associate and communicate privately with persons of their choice and enter and, except as provided by the Minnesota Commitment Act, leave the facility as they choose. Patients and residents shall have access, at their own expense, unless provided by the facility, to writing instruments, stationery, ~~and~~ postage, and Internet service. Personal mail shall be sent without interference and received unopened unless medically or programmatically contraindicated and documented by the physician in the medical record. There shall be access to a telephone where patients and residents can make and receive calls as well as speak privately. Facilities which are unable to provide a private area shall make reasonable arrangements to accommodate the privacy of patients' or residents' calls. Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility. This right is limited where medically inadvisable, as documented by the attending physician in a patient's or resident's care record. Where programmatically limited by a facility abuse prevention plan pursuant to section 626.557, subdivision 14, paragraph (b), this right shall also be limited accordingly.

Sec. 15. Minnesota Statutes 2016, section 144.651, is amended by adding a subdivision to read:

Subd. 34. **Retaliation prohibited.** (a) A facility or person must not retaliate against a patient, resident, employee, or interested person who:

(1) files a complaint or grievance or asserts any rights on behalf of the patient or resident as provided under subdivision 20;

(2) submits a maltreatment report, whether mandatory or voluntary, on behalf of the patient or resident under section 626.557, subdivision 3, 4, or 4a;

(3) advocates on behalf of the patient or resident for necessary or improved care and services or enforcement of rights under this section or other law;

(4) contracts to receive services from a service provider of the resident's choice; or

(5) places a camera or electronic monitoring device in the resident's private space as provided in subdivision 14a.

(b) There is a rebuttable presumption that adverse action is retaliatory if taken against a patient, resident, employee, or interested person within 90 days of a patient, resident, employee, or interested person filing a grievance as provided in paragraph (a), submitting a maltreatment report, or otherwise advocating on behalf of a patient or resident.

(c) For purposes of this section, "adverse action" means any action taken by a facility or person against the patient, resident, employee, or interested person that includes but is not limited to:

(1) discharge or transfer from the facility;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services;

(4) restriction or prohibition of access either to the facility or to the patient or resident;

(5) any restriction of any of the rights set forth in state or federal law;

(6) any restriction of access to or use of amenities or services;

(7) termination of a services or lease agreement, or both;

(8) a sudden increase in costs for services not already contemplated at the time of the action taken;

(9) removal, tampering with, or deprivation of technology, communication, or electronic monitoring devices of the patient or resident;

(10) reporting maltreatment in bad faith; or

(11) making any oral or written communication of false information about a person advocating on behalf of the patient or resident.

Sec. 16. **[144.6511] DECEPTIVE MARKETING AND BUSINESS PRACTICES.**

(a) Deceptive marketing and business practices are prohibited.

(b) For the purposes of this section, it is a deceptive practice for a facility to:

(1) make any false, fraudulent, deceptive, or misleading statements in marketing, advertising, or any other oral or written description or representation of care or services, whether in oral, written, or electronic form;

(2) arrange for or provide health care or services that are inferior to, substantially different from, or substantially more expensive than those offered, promised, marketed, or advertised;

(3) fail to deliver any care or services the provider or facility promised or represented that the facility was able to provide;

(4) fail to inform the patient or resident in writing of any limitations to care services available prior to executing a contract for admission;

(5) fail to fulfill a written or oral promise that the facility shall continue the same services and the same lease terms if a private pay resident converts to the elderly waiver program;

(6) fail to disclose and clearly explain the purpose of a nonrefundable community fee or other fee prior to contracting for services with a patient or resident;

(7) advertise or represent, orally or in writing, that the facility is or has a special care unit, such as for dementia or memory care, without complying with training and disclosure requirements under sections 144D.065 and 325F.72, and any other applicable law; or

(8) define the terms "facility," "contract of admission," "admission contract," "admission agreement," "legal representative," or "responsible party" to mean anything other than the meanings of those terms under section 144.6501.

Sec. 17. **[144.6512] ENFORCEMENT OF THE HEALTH CARE BILL OF RIGHTS.**

In addition to the remedies otherwise provided by or available under law, a patient or resident, or an interested person on behalf of the patient or resident, may bring a civil action against a facility to recover actual, incidental, and consequential damages or $5,000, whichever is greater, costs and disbursements, including costs of investigation, and reasonable attorney fees, and receive other equitable relief as determined by the court for a violation of sections 144.6501, subdivision 2, or 144.651 and 144.6511.

Sec. 18. Minnesota Statutes 2016, section 144A.10, subdivision 1, is amended to read:

Subdivision 1. **Enforcement authority.** The commissioner of health is the exclusive state agency charged with the responsibility and duty of inspecting all facilities required to be licensed under section 144A.02, and issuing correction orders and imposing fines as provided in this section, Minnesota Rules, chapter 4658, or any other applicable law. The commissioner of health shall enforce the rules established pursuant to sections 144A.01 to 144A.155, subject only to the authority of the Department of Public Safety respecting the enforcement of fire and safety standards in nursing homes and the responsibility of the commissioner of human services under sections 245A.01 to 245A.16 or 252.28.

The commissioner may request and must be given access to relevant information, records, incident reports, or other documents in the possession of a licensed facility if the commissioner considers them necessary for the discharge of responsibilities. For the purposes of inspections and securing information to determine compliance with the licensure laws and rules, the commissioner need not present a release, waiver, or consent of the individual. A nursing home's refusal to cooperate in providing lawfully requested information is grounds for a correction order or fine. The identities of patients or residents must be kept private as defined by section 13.02, subdivision 12.

Sec. 19. Minnesota Statutes 2016, section 144A.44, is amended to read:

144A.44 HOME CARE BILL OF RIGHTS.

Subdivision 1. **Statement of rights.** (a) All home care providers, and individuals or organizations exempt from home care licensure by section 144A.471, subdivision 8, must comply with this section. A person who receives home care services has ~~these rights~~ the right to:

(1) ~~the right to~~ receive written information about rights before receiving services, including what to do if rights are violated;

(2) ~~the right to~~ receive care and services according to a suitable and up-to-date plan, and subject to accepted health care, medical or nursing standards, to take an active part in developing, modifying, and evaluating the plan and services;

(3) ~~the right to~~ be told before receiving services the type and disciplines of staff who will be providing the services, the frequency of visits proposed to be furnished, other choices that are available for addressing home care needs, and the potential consequences of refusing these services;

(4) ~~the right to~~ be told in advance of any recommended changes by the provider in the service plan and to take an active part in any decisions about changes to the service plan;

(5) ~~the right to~~ refuse services or treatment;

(6) ~~the right to~~ know, before receiving services or during the initial visit, any limits to the services available from a home care provider;

(7) ~~the right to~~ be told before services are initiated what the provider charges for the services; to what extent payment may be expected from health insurance, public programs, or other sources, if known; and what charges the client may be responsible for paying;

(8) ~~the right to~~ know that there may be other services available in the community, including other home care services and providers, and to know where to find information about these services;

(9) ~~the right to~~ choose freely among available providers and to change providers after services have begun, within the limits of health insurance, long-term care insurance, medical assistance, or other health programs;

(10) ~~the right to~~ have personal, financial, and medical information kept private, and to be advised of the provider's policies and procedures regarding disclosure of such information;

(11) ~~the right to~~ access the client's own records and written information from those records in accordance with sections 144.291 to 144.298;

(12) ~~the right to~~ be served by people who are properly trained and competent to perform their duties;

(13) ~~the right to~~ be treated with courtesy and respect, and to have the client's property treated with respect;

(14) ~~the right to~~ be free from physical and verbal abuse, neglect, financial exploitation, and all forms of maltreatment covered under the Vulnerable Adults Act and the Maltreatment of Minors Act;

(15) ~~the right to~~ reasonable, advance notice of changes in services or charges;

(16) ~~the right to~~ know the provider's reason for termination of services;

(17) ~~the right to~~ at least ~~ten~~ 30 days' advance notice of the termination of a service by a provider, except in cases where:

(i) the client engages in conduct that significantly alters the terms of the service plan with the home care provider;

(ii) the client, person who lives with the client, or others create an abusive or unsafe work environment for the person providing home care services; or

(iii) an emergency or a significant change in the client's condition has resulted in service needs that exceed the current service plan and that cannot be safely met by the home care provider;

(18) ~~the right to~~ a coordinated transfer when there will be a change in the provider of services;

(19) ~~the right to~~ complain about services that are provided, or fail to be provided, and the lack of courtesy or respect to the client or the client's property;

(20) ~~the right to~~ know how to contact an individual associated with the home care provider who is responsible for handling problems and to have the home care provider investigate and attempt to resolve the grievance or complaint;

(21) ~~the right to~~ know the name and address of the state or county agency to contact for additional information or assistance; ~~and~~

(22) ~~the right to~~ assert these rights personally, or have them asserted by the client's representative or by anyone on behalf of the client, without retaliation~~.~~; and

(23) reasonable access at reasonable times to available legal or advocacy services so that the client may receive assistance in understanding, exercising, and protecting the rights in this section and other law.

(b) A home care provider shall:

(1) encourage and assist in the fullest possible exercise of these rights;

(2) provide the names and telephone numbers of individuals and organizations that provide advocacy and legal services for clients;

(3) make every effort to assist clients in obtaining information regarding whether the Medicare or medical assistance program will pay for services;

(4) make reasonable accommodations for people who have communication disabilities and those who speak a language other than English; and

(5) provide all information and notices in plain language and in terms the client can understand.

Subd. 2. **Interpretation and enforcement of rights.** ~~These rights are established for the benefit of clients who receive home care services. All home care providers, including~~

~~those exempted under section 144A.471, must comply with this section. The commissioner shall enforce this section and the home care bill of rights requirement against home care providers exempt from licensure in the same manner as for licensees. A home care provider may not request or require a client to surrender any of these rights as a condition of receiving services. This statement of~~ The rights ~~does~~ provided under this section are established for the benefit of clients who receive home care services, do not replace or diminish other rights and liberties that may exist relative to clients receiving home care services, persons providing home care services, or providers licensed under sections 144A.43 to 144A.482, and may not be waived. Any oral or written waiver of the rights provided under this section is void and unenforceable.

Subd. 3. **Deceptive marketing and business practices.** (a) Deceptive marketing and business practices are prohibited.

(b) For the purposes of this section, it is a deceptive marketing and business practice to:

(1) engage in any conduct listed in section 144.6511;

(2) seek or collect a nonrefundable deposit, unless the deposit is applied to the first month's charges;

(3) fail to disclose and clearly explain the purpose of a nonrefundable community fee or other fee prior to contracting for services with a client; or

(4) make any oral or written statement or representation, either directly or in marketing or advertising materials that contradict, conflict with, or otherwise are inconsistent with the provisions set forth in the admissions agreement, service agreement, contract, lease, or Uniform Consumer Information Guide under section 144G.06.

Subd. 4. **Enforcement of rights.** The commissioner shall enforce this section and the requirements in the home care bill of rights against home care providers exempt from licensure in the same manner as for licensees.

Subd. 5. **Private enforcement of rights.** In addition to the remedies otherwise available under law, a person who receives home care services, an assisted living client, or an interested person on behalf of the person who receives home care services may bring a civil action against a home care provider and recover actual, incidental, and consequential damages or $5,000, whichever is greater, costs and disbursements, including costs of investigation, and reasonable attorney fees, and receive other equitable relief as determined by the court for a violation of this section or section 144A.441. For purposes of this section, an interested person has the meaning given in section 144.651, subdivision 2, except that an interested

person does not include a person whose authority has been restricted by the person receiving home care services or assisted living, or by a court.

Sec. 20. Minnesota Statutes 2016, section 144A.441, is amended to read:

144A.441 ASSISTED LIVING BILL OF RIGHTS ADDENDUM.

Assisted living clients, as defined in section 144G.01, subdivision 3, shall be provided with the home care bill of rights required by section 144A.44, except that the home care bill of rights provided to these clients must include the following provision in place of the provision in section 144A.44, subdivision 1, paragraph (a), clause (17):

"(17) the right to reasonable, advance notice of changes in services or charges, including at least 30 days' advance notice of the termination of a service by a provider, except in cases where:

(i) the recipient of services ~~engages in conduct that alters the conditions of employment as specified in the employment contract between the home care provider and the individual providing home care services, or~~ creates and the home care provider can document an abusive or unsafe work environment for the individual providing home care services;

(ii) a doctor or treating physician documents that an emergency ~~for the informal caregiver~~ or a significant change in the recipient's condition has resulted in service needs that exceed the current service provider agreement and that cannot be safely met by the home care provider; or

(iii) the provider has not received payment for services, for which at least ten days' advance notice of the termination of a service shall be provided."

Sec. 21. Minnesota Statutes 2016, section 144A.442, is amended to read:

144A.442 ~~ASSISTED LIVING CLIENTS; SERVICE~~ ARRANGED HOME CARE PROVIDER RESPONSIBILITIES; TERMINATION OF SERVICES.

Subdivision 1. **Legislative intent.** It is the intent of the legislature to ensure to the greatest extent possible stability of services for persons residing in housing with services establishments.

Subd. 2. **Definitions.** For the purposes of this section, "arranged home care provider" has the meaning given in section 144D.01, subdivision 2a, and "assisted living client" has the meaning given in section 144G.01, subdivision 3.

Subd. 3. **Notice; permissible reasons to terminate services.** (a) Except as provided in paragraph (b), an arranged home care provider must provide at least 30 days' notice prior to terminating a service contract. Notwithstanding any other provision of law, an arranged home care provider may terminate services only if the assisted living client:

(1) engages in conduct that significantly alters the terms of the service plan with the arranged home care provider and does not cure the alteration within 30 days of receiving written notice of the conduct; or

(2) breaches the services agreement, which includes failure to pay for services, and has not cured the breach within 30 days of receiving written notice of the nonpayment.

(b) Notwithstanding paragraph (a), the arranged home care provider may terminate services with ten days' notice if the assisted living client:

(1) creates, and the arranged home care provider can document, an abusive or unsafe work environment for the individual providing home care services; or

(2) has service needs that exceed the current service plan and cannot be safely met by the arranged home care provider and a doctor or treating physician documents that an emergency or a significant change in the assisted living client's condition has occurred.

Subd. 4. **Contents of service termination notice.** If an arranged home care provider~~, as defined in section 144D.01, subdivision 2a, who is not also Medicare certified~~ terminates a service agreement or service plan with an assisted living client, ~~as defined in section 144G.01, subdivision 3,~~ the arranged home care provider shall provide the assisted living client and the legal or designated representatives of the client, if any, with ~~a~~ an advance written notice of service termination as provided under subdivision 3, which ~~includes~~ must include the following information:

(1) the effective date of service termination;

(2) the reason for service termination;

(3) without extending the termination notice period, an affirmative offer to meet with the assisted living client or ~~client representatives~~ client's representative within no more than five business days of the date of the service termination notice to discuss the termination;

(4) contact information for a reasonable number of other home care providers in the geographic area of the assisted living client, as required by section 144A.4791, subdivision 10;

(5) a statement that the arranged home care provider will participate in a coordinated transfer of the care of the client to another provider or caregiver, as required by section 144A.44, subdivision 1, paragraph (a), clause (18);

(6) a statement that the assisted living client has the right to a meeting at the client's request with a representative of the arranged home care provider to discuss and attempt to avoid the service termination;

(7) the name and contact information of a representative of the arranged home care provider with whom the assisted living client may discuss the notice of service termination;

~~(7)~~ (8) a copy of the home care bill of rights; ~~and~~

~~(8)~~ (9) a statement that the notice of service termination of home care services by the arranged home care provider does not constitute notice of termination of the ~~housing with services contract with a housing with services establishment.~~ lease; and

(10) a statement that the assisted living client has the right to appeal the service termination to the Office of Administrative Hearings and that includes the contact information for the Office of Administrative Hearings.

Subd. 5. **Right to appeal service termination.** (a) At any time prior to the expiration of the notice period provided under subdivision 3 and section 144A.441, an assisted living client may appeal the service termination by making a written request for a hearing to the Office of Administrative Hearings. The Office of Administrative Hearings must conduct the hearing no later than 14 days after the office receives the appeal request from the assisted living client. The hearing must be held in the housing with services establishment where the client resides, unless it is impractical or the parties agree to a different place.

(b) The arranged home care provider may not discontinue services to an assisted living client who makes a timely appeal of a notice of service termination unless the Office of Administrative Hearings has made a final determination on the appeal in favor of the arranged home care provider.

(c) Assisted living clients are not required to request a meeting as available under subdivision 4, clause (6), prior to submitting an appeal hearing request.

(d) The commissioner of health may order the arranged home care provider to rescind the service contract termination if the proposed termination is in violation of state or federal law.

(e) Nothing in this section limits the right of an assisted living client or the client's representative to request or receive assistance from the Office of Ombudsman for Long-Term Care and a protection and advocacy agency concerning the proposed service termination.

Subd. 6. **Discontinuation of services.** An arranged home care provider's responsibilities when voluntarily discontinuing services to all clients are governed by section 144A.4791, subdivision 10.

Sec. 22. Minnesota Statutes 2016, section 144A.45, subdivision 1, is amended to read:

Subdivision 1. **Regulations.** The commissioner shall regulate home care providers pursuant to sections 144A.43 to 144A.482. The regulations shall include the following:

(1) provisions to assure, to the extent possible, the health, safety, well-being, and appropriate treatment of persons who receive home care services while respecting a client's autonomy and choice;

(2) requirements that home care providers furnish the commissioner with specified information necessary to implement sections 144A.43 to 144A.482;

(3) standards of training of home care provider personnel;

(4) standards for provision of home care services;

(5) standards for medication management;

(6) standards for supervision of home care services;

(7) standards for client evaluation or assessment;

(8) requirements for the involvement of a client's health care provider, the documentation of health care providers' orders, if required, and the client's service plan;

(9) standards for the maintenance of accurate, current client records;

(10) the establishment of basic and comprehensive levels of licenses based on services provided; and

(11) provisions to enforce these regulations and the home care bill of rights, including provisions for issuing penalties and fines as allowed under law.

Sec. 23. Minnesota Statutes 2016, section 144A.45, subdivision 2, is amended to read:

Subd. 2. **Regulatory functions.** The commissioner shall:

(1) license, survey, and monitor without advance notice, home care providers in accordance with sections 144A.43 to 144A.482;

(2) survey every temporary licensee within one year of the temporary license issuance date subject to the temporary licensee providing home care services to a client or clients;

(3) survey all licensed home care providers ~~on an interval that will promote the health and safety of clients~~ annually;

(4) with the consent of the client, visit the home where services are being provided;

(5) issue correction orders and assess civil penalties in accordance with ~~section~~ sections 144.653, subdivisions 5 to 8, 144A.474, and 144A.475, for violations of sections 144A.43 to 144A.482;

(6) take action as authorized in section 144A.475; and

(7) take other action reasonably required to accomplish the purposes of sections 144A.43 to 144A.482.

Sec. 24. Minnesota Statutes 2016, section 144A.474, subdivision 1, is amended to read:

Subdivision 1. **Surveys.** The commissioner shall conduct surveys of each home care provider. ~~By June 30, 2016,~~ The commissioner shall conduct a survey of home care providers ~~on a frequency of at least once every three years. Survey frequency may be based on the license level, the provider's compliance history, the number of clients served, or other factors as determined by the department deemed necessary to ensure the health, safety, and welfare of clients and compliance with the law~~ annually.

Sec. 25. Minnesota Statutes 2016, section 144A.474, subdivision 8, is amended to read:

Subd. 8. **Correction orders.** (a) A correction order may be issued whenever the commissioner finds upon survey or during a complaint investigation that a home care provider, a managerial official, or an employee of the provider is not in compliance with sections 144A.43 to 144A.482. The correction order shall cite the specific statute and document areas of noncompliance and the time allowed for correction. In addition to issuing a correction order, the commissioner may impose an immediate fine. The home care provider must submit a correction plan to the commissioner.

(b) The commissioner shall mail copies of any correction order to the last known address of the home care provider, or electronically scan the correction order and e-mail it to the last known home care provider e-mail address, within 30 calendar days after the survey exit

date. A copy of each correction order, the amount of any immediate fine issued, the correction plan, and copies of any documentation supplied to the commissioner shall be kept on file by the home care provider, and public documents shall be made available for viewing by any person upon request. Copies may be kept electronically.

(c) By the correction order date, the home care provider must document in the provider's records and submit in writing to the commissioner any action taken to comply with the correction order. ~~The commissioner may request a copy of this documentation and the home care provider's action to respond to the correction order in future surveys, upon a complaint investigation, and as otherwise needed.~~

Sec. 26. Minnesota Statutes 2016, section 144A.474, subdivision 9, is amended to read:

Subd. 9. **Follow-up surveys.** For providers that have Level 3 or Level 4 violations under subdivision 11, or any violations determined to be widespread, the department shall conduct a follow-up survey within 90 calendar days of the survey. When conducting a follow-up survey, the surveyor will focus on whether the previous violations have been corrected and may also address any new violations that are observed while evaluating the corrections that have been made. If a new violation is identified on a follow-up survey, ~~no fine will be imposed unless it is not corrected on the next follow-up survey~~ the surveyor shall issue a correction order for the new violation and may impose an immediate fine for the new violation.

Sec. 27. Minnesota Statutes 2017 Supplement, section 144A.474, subdivision 11, is amended to read:

Subd. 11. **Fines.** (a) Fines and enforcement actions under this subdivision may be assessed based on the level and scope of the violations described in paragraph (c) as follows:

(1) Level 0, fines ranging from $0 to $500, using as a guide relevant or comparable penalty schedules in Minnesota Rules, chapter 4658;

(2) Level 1, no fines or enforcement;

~~(2)~~ (3) Level 2, fines ranging from $0 to ~~$500~~ $....., in addition to any of the enforcement mechanisms authorized in section 144A.475 for widespread violations;

~~(3)~~ (4) Level 3, fines ranging from $500 to ~~$1,000~~ $....., in addition to any of the enforcement mechanisms authorized in section 144A.475; and

~~(4)~~ (5) Level 4, fines ranging from $1,000 to ~~$5,000~~ $....., in addition to any of the enforcement mechanisms authorized in section 144A.475.

(b) Correction orders for violations are categorized by both level and scope and fines shall be assessed as follows:

(1) level of violation:

(i) Level 0 is a violation of sections 144.6501, 144.651 to 144.6512, 144A.44, 144A.441, or 626.557;

(ii) Level 1 is a violation that has no potential to cause more than a minimal impact on the client and does not affect health or safety;

~~(ii)~~ (iii) Level 2 is a violation that did not harm a client's health or safety but had the potential to have harmed a client's health or safety, but was not likely to cause serious injury, impairment, or death;

~~(iii)~~ (iv) Level 3 is a violation that harmed a client's health or safety, not including serious injury, impairment, or death, or a violation that has the potential to lead to serious injury, impairment, or death; and

~~(iv)~~ (v) Level 4 is a violation that results in serious injury, impairment, or death.

(2) scope of violation:

(i) isolated, when one or a limited number of clients are affected or one or a limited number of staff are involved or the situation has occurred only occasionally;

(ii) pattern, when more than a limited number of clients are affected, more than a limited number of staff are involved, or the situation has occurred repeatedly but is not found to be pervasive; and

(iii) widespread, when problems are pervasive or represent a systemic failure that has affected or has the potential to affect a large portion or all of the clients.

(c) If the commissioner finds that the applicant or a home care provider required to be licensed under sections 144A.43 to 144A.482 has not corrected violations by the date specified in the correction order or conditional license resulting from a survey or complaint investigation, the commissioner may impose ~~a~~ an additional fine for noncompliance with a correction order. A notice of noncompliance with a correction order must be mailed to the applicant's or provider's last known address. The ~~noncompliance~~ notice of noncompliance with a correction order must list the violations not corrected and any fines imposed.

(d) The license holder must pay the fines assessed on or before the payment date specified on a correction order or on a notice of noncompliance with a correction order. If the license holder fails to ~~fully comply with the order~~ pay a fine by the specified date, the commissioner

may issue a ~~second~~ late payment fine or suspend the license until the license holder ~~complies by paying the fine~~ pays all outstanding fines. A timely appeal shall stay payment of the late payment fine until the commissioner issues a final order.

(e) A license holder shall promptly notify the commissioner in writing when a violation specified in ~~the order~~ a notice of noncompliance with a correction order is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the ~~order~~ notice of noncompliance with a correction order, the commissioner may issue ~~a second~~ an additional fine for noncompliance with a notice of noncompliance with a correction order. The commissioner shall notify the license holder by mail to the last known address in the licensing record that ~~a second~~ an additional fine has been assessed. The license holder may appeal the ~~second~~ additional fine as provided under this subdivision.

(f) A home care provider that has been assessed a fine under this subdivision or subdivision 8 has a right to a reconsideration or a hearing under this section and chapter 14.

(g) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder shall be liable for payment of the fine.

(h) In addition to any fine imposed under this section, the commissioner may assess costs related to an investigation that results in a final order assessing a fine or other enforcement action authorized by this chapter.

(i) Fines collected under this subdivision shall be deposited in the state government special revenue fund and credited to an account separate from the revenue collected under section 144A.472. Subject to an appropriation by the legislature, the revenue from the fines collected must be used by the commissioner for special projects to improve home care in Minnesota as recommended by the advisory council established in section 144A.4799.

Sec. 28. Minnesota Statutes 2016, section 144A.4791, subdivision 10, is amended to read:

Subd. 10. **Termination of service plan.** (a) Except as provided in section 144A.442, if a home care provider terminates a service plan with a client, and the client continues to need home care services, the home care provider shall provide the client and the client's representative, if any, with a written notice of termination which includes the following information:

(1) the effective date of termination;

(2) the reason for termination;

(3) a list of known licensed home care providers in the client's immediate geographic area;

(4) a statement that the home care provider will participate in a coordinated transfer of care of the client to another home care provider, health care provider, or caregiver, as required by the home care bill of rights, section 144A.44, subdivision 1, paragraph (a), clause (17);

(5) the name and contact information of a person employed by the home care provider with whom the client may discuss the notice of termination; and

(6) if applicable, a statement that the notice of termination of home care services does not constitute notice of termination of the housing with services contract with a housing with services establishment.

(b) When the home care provider voluntarily discontinues services to all clients, the home care provider must notify the commissioner, lead agencies, and ombudsman for long-term care about its clients and comply with the requirements in this subdivision.

Sec. 29. Minnesota Statutes 2016, section 144A.53, subdivision 1, is amended to read:

Subdivision 1. **Powers.** The director may:

(a) Promulgate by rule, pursuant to chapter 14, and within the limits set forth in subdivision 2, the methods by which complaints against health facilities, health care providers, home care providers, or residential care homes, or administrative agencies are to be made, reviewed, investigated, and acted upon; provided, however, that a fee may not be charged for filing a complaint.

(b) Recommend legislation and changes in rules to the state commissioner of health, governor, administrative agencies or the federal government.

(c) Investigate, upon a complaint or upon initiative of the director, any action or failure to act by a health care provider, home care provider, residential care home, or a health facility.

(d) Request and receive access to relevant information, records, incident reports, or documents in the possession of an administrative agency, a health care provider, a home care provider, a residential care home, or a health facility, and issue investigative subpoenas to individuals and facilities for oral information and written information, including privileged information which the director deems necessary for the discharge of responsibilities. For purposes of investigation and securing information to determine violations, the director

need not present a release, waiver, or consent of an individual. The identities of patients or residents must be kept private as defined by section 13.02, subdivision 12.

(e) Enter and inspect, at any time, a health facility or residential care home and be permitted to interview staff; provided that the director shall not unduly interfere with or disturb the provision of care and services within the facility or home or the activities of a patient or resident unless the patient or resident consents.

(f) Issue correction orders and assess civil fines pursuant to ~~section~~ sections 144.653, 144A.10, 144A.45, and 144A.474; Minnesota Rules, chapters 4655, 4658, 4664, and 4665; or any other law ~~which~~ that provides for the issuance of correction orders or fines to health facilities or home care provider~~, or under section 144A.45~~. A facility's or home's refusal to cooperate in providing lawfully requested information may also be grounds for a correction order or fine.

(g) Recommend the certification or decertification of health facilities pursuant to Title XVIII or XIX of the United States Social Security Act.

(h) Assist patients or residents of health facilities or residential care homes in the enforcement of their rights under Minnesota law.

(i) Work with administrative agencies, health facilities, home care providers, residential care homes, and health care providers and organizations representing consumers on programs designed to provide information about health facilities to the public and to health facility residents.

Sec. 30. Minnesota Statutes 2016, section 144A.53, subdivision 4, is amended to read:

Subd. 4. **Referral of complaints.** (a) If a complaint received by the director relates to a matter more properly within the jurisdiction of law enforcement; an occupational licensing board, or other governmental agency, the director shall forward the complaint ~~to that agency~~ appropriately and shall inform the complaining party of the forwarding. ~~The~~

(b) An agency shall promptly act in respect to the complaint, and shall inform the complaining party and the director of its disposition. If a governmental agency receives a complaint which is more properly within the jurisdiction of the director, it shall promptly forward the complaint to the director, and shall inform the complaining party of the forwarding.

(c) If the director has reason to believe that an official or employee, or client or resident of an administrative agency, a home care provider, residential care home, or health facility has acted in a manner warranting criminal or disciplinary proceedings, the director shall

refer the matter to the state commissioner of health, the commissioner of human services, an appropriate prosecuting authority, or other appropriate agency.

Sec. 31. Minnesota Statutes 2016, section 144D.01, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in sections 144D.01 to ~~144D.06~~ 144D.11, the following terms have the meanings given them.

Sec. 32. Minnesota Statutes 2016, section 144D.02, is amended to read:

144D.02 REGISTRATION REQUIRED.

No entity may establish, operate, conduct, or maintain a housing with services establishment in this state without registering and operating as required in sections 144D.01 to ~~144D.06~~ 144D.11.

Sec. 33. Minnesota Statutes 2017 Supplement, section 144D.04, subdivision 2, is amended to read:

Subd. 2. **Contents of contract.** A housing with services contract, which need not be entitled as such to comply with this section, shall include at least the following elements in itself or through supporting documents or attachments:

(1) the name, street address, and mailing address of the establishment;

(2) the name and mailing address of the owner or owners of the establishment and, if the owner or owners is not a natural person, identification of the type of business entity of the owner or owners;

(3) the name and mailing address of the managing agent, through management agreement or lease agreement, of the establishment, if different from the owner or owners;

(4) the name and physical mailing address, which may not be a public or private post office box, of at least one natural person who is authorized to accept service of process on behalf of the owner or owners and managing agent;

(5) a statement describing the registration and licensure status of the establishment and any provider providing health-related or supportive services under an arrangement with the establishment;

(6) the term of the contract;

(7) a description of the services to be provided to the resident in the base rate to be paid by the resident, including a delineation of the portion of the base rate that constitutes rent and a delineation of charges for each service included in the base rate;

(8) a description of any additional services, including home care services, available for an additional fee from the establishment directly or through arrangements with the establishment, and a schedule of fees charged for these services;

(9) a conspicuous notice informing the tenant of the policy concerning the conditions under which and the process through which the contract may be modified, amended, or terminated, including whether a move to a different room or sharing a room would be required in the event that the tenant can no longer pay the current rent;

(10) a description of the establishment's complaint resolution process available to residents including the toll-free complaint line for the Office of Ombudsman for Long-Term Care;

(11) the resident's designated representative, if any;

(12) the establishment's referral procedures if the contract is terminated;

(13) requirements of residency used by the establishment to determine who may reside or continue to reside in the housing with services establishment;

(14) billing and payment procedures and requirements;

(15) a statement regarding the ability of a resident to receive services from service providers with whom the establishment does not have an arrangement;

(16) a statement regarding the availability of public funds for payment for residence or services in the establishment and the fact that at least ten percent of the rooms or beds in the housing with services establishment are to be used by residents whose payments are made under the medical assistance elderly waiver program; ~~and~~

(17) a statement regarding the availability of and contact information for long-term care consultation services under section 256B.0911 in the county in which the establishment is located~~.~~;

(18) a statement that a resident has the right to request a reasonable accommodation; and

(19) a statement describing the conditions under which a contract may be amended.

Sec. 34. Minnesota Statutes 2016, section 144D.04, is amended by adding a subdivision to read:

Subd. 2b. **Changes to contract.** The housing with services establishment must provide prompt written notice to the resident or resident's legal representative of a new owner, manager, and if different from the owner, license holder of the housing with services establishment, and the name and physical mailing address, which may not be a public or private post office box of any new or additional natural person not identified in the admission contract who is authorized to accept service of process.

Sec. 35. **[144D.061] ELDERLY WAIVER BEDS REQUIRED.**

All registered housing with services establishments must designate at least ten percent of rooms or beds for residents receiving medical assistance elderly waiver services.

Sec. 36. **[144D.085] RELOCATION WITHIN FACILITY.**

Subdivision 1. **Notification prior to relocation.** A housing with services establishment must:

(1) notify a resident and the resident's representative at least five days prior to a proposed nonemergency relocation within the facility; and

(2) obtain consent from the resident or the resident's representative to the relocation.

Subd. 2. **Restriction on relocation.** A person who has been a private pay resident for at least one year, resides in a private room, and whose payments subsequently will be made under the medical assistance elderly waiver program may not be relocated to a shared room without the consent of the resident or the resident's representative.

Sec. 37. Minnesota Statutes 2016, section 144D.09, is amended to read:

144D.09 TERMINATION OF LEASE.

Subdivision 1. **Legislative intent.** ~~The housing with services establishment shall include with notice of termination of lease information about how to contact the ombudsman for long-term care, including the address and telephone number along with a statement of how to request problem-solving assistance.~~ It is the intent of the legislature to ensure to the greatest extent possible stability of housing for persons residing in housing with services establishments.

Subd. 2. **Permissible reasons to terminate lease.** (a) Notwithstanding chapter 504B, a housing with services establishment may terminate a resident's lease only if:

(1) the resident breaches the lease, which includes failure to pay rent as required, and has not cured the breach within 30 days of receipt of the notice required under subdivision 3. A breach of a services contract does not constitute a breach of a lease;

(2) the resident holds over beyond the date to vacate mutually agreed upon in writing by the resident and the housing with services establishment; or

(3) the resident holds over beyond the date provided by the resident in a notice of voluntary termination of the lease provided to the housing with services establishment.

(b) Notwithstanding paragraph (a), a housing with services establishment may immediately commence an eviction if the breach involves any of the acts listed in section 504B.171, subdivision 1.

Subd. 3. **Notice of lease termination.** A housing with services establishment must provide at least 30 days' notice prior to terminating a residential lease, unless the resident commits a breach of the lease involving any of the acts listed in section 504B.171, subdivision 1.

Subd. 4. **Contents of notice.** The notice of lease termination required under subdivision 3 must include:

(1) the reason for the termination;

(2) the date termination shall occur;

(3) a statement that a lease cannot be terminated without providing the resident an opportunity to cure the breach of lease, including failure to pay rent, prior to expiration of 30 days after receipt of the notice;

(4) information on how to contact the Office of Ombudsman for Long-Term Care and a protection and advocacy agency, including the address and telephone number of both offices, along with a statement of how to request problem-solving assistance;

(5) a statement that the resident has the right to a meeting at the resident's request with the owner or manager of the housing with services establishment to discuss and attempt to resolve the alleged breach to avoid termination; and

(6) a statement that the resident has the right to appeal the termination of the lease to the Office of Administrative Hearings and provide the contact information for the Office of Administrative Hearings.

Subd. 5. **Right to appeal termination of lease.** (a) At any time prior to the expiration of the notice period provided under subdivision 3, a resident may appeal the termination by

making a written request for a hearing to the Office of Administrative Hearings. The Office of Administrative Hearings must conduct the hearing no later than 14 days after the office receives the appeal request from the resident. The hearing must be held in the establishment in which the resident resides, unless it is impractical or the parties agree to a different place.

(b) A resident who makes a timely appeal of a notice of lease termination may not be evicted by the housing with services establishment unless the Office of Administrative Hearings has made a final determination on the appeal in favor of the housing with services establishment.

(c) The commissioner of health may order the housing with services establishment to rescind the lease termination or readmit the resident if the lease termination was in violation of state or federal law.

(d) The housing with services establishment must readmit the resident if the resident is hospitalized for medical necessity before resolution of the appeal.

(e) Residents are not required to request a meeting under subdivision 4, clause (6), prior to submitting an appeal hearing request.

(f) Nothing in this section limits the right of a resident or the resident's representative to request or receive assistance from the Office of Ombudsman for Long-Term Care and the protection and advocacy agency concerning the proposed lease termination.

Subd. 6. **Discharge plan and transfer of information to new residence.** (a) For the purposes of this subdivision and subdivision 7, "discharge" means the involuntary relocation of a resident due to a termination of a lease.

(b) A housing with services establishment discharging a resident must prepare an adequate discharge plan that proposes a safe discharge location, is based on the resident's discharge goals, includes the resident and the resident's case manager and representative, if any, in discharge planning, and contains a plan for appropriate and sufficient postdischarge care. A housing with services establishment may not discharge a resident if the resident will become homeless upon discharge, as that term is defined in section 116L.361, subdivision 5.

(c) A housing with services establishment that proposes to discharge a resident must assist the resident with applying for and locating a new housing with services establishment or skilled nursing facility in which to live, including coordinating with the case manager, if any.

(d) Prior to discharge, a housing with services establishment must provide to the receiving facility or establishment all information known to the housing with services establishment related to the resident that is necessary to ensure continuity of care and services, including, at a minimum:

(1) the resident's full name, date of birth, and insurance information;

(2) the name, telephone number, and address of the resident's representative, if any;

(3) the resident's current documented diagnoses;

(4) the resident's known allergies, if any;

(5) the name and telephone number of the resident's physician and current physician orders;

(6) medication administration records;

(7) the most recent resident assessment; and

(8) copies of health care directives, "do not resuscitate" orders, and guardianship orders or powers of attorney, if any.

Subd. 7. **Final accounting; return of money and property.** Within 30 days of the date of discharge, the housing with services establishment shall:

(1) provide to the resident or the resident's representative a final statement of account;

(2) provide any refunds due; and

(3) return any money, property, or valuables held in trust or custody by the establishment.

Sec. 38. **[144D.095] TERMINATION OF SERVICES.**

A termination of services initiated by an arranged home care provider is governed by section 144A.442.

Sec. 39. Minnesota Statutes 2016, section 144G.01, subdivision 1, is amended to read:

Subdivision 1. **Scope; other definitions.** For purposes of sections 144G.01 to ~~144G.05~~ 144G.08, the following definitions apply. In addition, the definitions provided in section 144D.01 also apply to sections 144G.01 to ~~144G.05~~ 144G.08.

Sec. 40. **[144G.07] TERMINATION OF LEASE.**

A lease termination initiated by a registered housing with services establishment using "assisted living" is governed by section 144D.09.

Sec. 41. **[144G.08] TERMINATION OF SERVICES.**

A termination of services initiated by an arranged home care provider as defined in section 144D.01, subdivision 2a, is governed by section 144A.442.

Sec. 42. Minnesota Statutes 2017 Supplement, section 256.045, subdivision 3, is amended to read:

Subd. 3. **State agency hearings.** (a) State agency hearings are available for the following:

(1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section 252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C;

(i) any individual or facility determined by a lead investigative agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557; and

(ii) any vulnerable adult who is the subject of a maltreatment investigation under section 626.557 or unless restricted by the vulnerable adult or by a court, an interested person as defined in section 524.5-102, subdivision 7, after the right to administrative reconsideration under section 626.557, subdivision 9d, has been exercised;

(5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services judge shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment;

(11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt;

(12) a person issued a notice of service termination under section 245D.10, subdivision 3a, from residential supports and services as defined in section 245D.03, subdivision 1, paragraph (c), clause (3), that is not otherwise subject to appeal under subdivision 4a;

(13) an individual disability waiver recipient based on a denial of a request for a rate exception under section 256B.4914; or

(14) a person issued a notice of service termination under section 245A.11, subdivision 11, that is not otherwise subject to appeal under subdivision 4a.

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case

proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), clauses (4), (9), and (10), is only available when there is no district court action pending. If such action is filed in district court while an administrative review is pending that arises out of some or all of the events or circumstances on which the appeal is based, the administrative review must be suspended until the judicial actions are completed. If the district court proceedings are completed, dismissed, or overturned, the matter may be considered in an administrative hearing.

(c) For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

(d) The scope of hearings involving claims to foster care payments under paragraph (a), clause (5), shall be limited to the issue of whether the county is legally responsible for a child's placement under court order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

(e) The scope of hearings under paragraph (a), clauses (12) and (14), shall be limited to whether the proposed termination of services is authorized under section 245D.10, subdivision 3a, paragraph (b), or 245A.11, subdivision 11, and whether the requirements of section 245D.10, subdivision 3a, paragraphs (c) to (e), or 245A.11, subdivision 2a, paragraphs (d) to (f), were met. If the appeal includes a request for a temporary stay of termination of services, the scope of the hearing shall also include whether the case management provider has finalized arrangements for a residential facility, a program, or services that will meet the assessed needs of the recipient by the effective date of the service termination.

(f) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

(g) An applicant or recipient is not entitled to receive social services beyond the services prescribed under chapter 256M or other social services the person is eligible for under state law.

(h) The commissioner may summarily affirm the county or state agency's proposed action without a hearing when the sole issue is an automatic change due to a change in state or federal law.

(i) Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause, as defined in section 256.0451, subdivision 13, why the request was not submitted within the 30-day time limit. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence.

Sec. 43. Minnesota Statutes 2017 Supplement, section 256.045, subdivision 4, is amended to read:

Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services judge may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. A human services judge may grant a request for a hearing in person by holding the hearing by interactive video technology or in person. The human services judge must hear the case in person if the person asserts that either the person or a witness has a physical or mental disability that would impair the person's or witness's ability to fully participate in a hearing held by interactive video technology. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services judge shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings under subdivision 3, paragraph (a), clauses (4), (9), and (10), either party may subpoena the private data relating to the investigation

prepared by the agency under section 626.556 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of the reporter may not be disclosed.

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (9), or (10), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than $1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (9), and (10), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

(c) In hearings under subdivision 3, paragraph (a), clauses (4), (9), and (10), involving determinations of maltreatment or disqualification made by more than one county agency, by a county agency and a state agency, or by more than one state agency, the hearings may be consolidated into a single fair hearing upon the consent of all parties and the state human services judge.

(d) For hearings under subdivision 3, paragraph (a), clause (4) or (10), involving a vulnerable adult, the human services judge shall notify the vulnerable adult who is the subject of the maltreatment determination and an interested person, as defined in section 524.5-102, subdivision 7, if known, ~~a guardian of the vulnerable adult appointed under section 524.5-310, or a health care agent designated by the vulnerable adult in a health care directive that is currently effective under section 145C.06 and whose authority to make health care decisions is not suspended under section 524.5-310, of the hearing~~ and whose authority has not been restricted by the vulnerable adult or by a court, and shall notify the facility or individual who is the alleged perpetrator of maltreatment. The notice must be sent by certified mail and inform the vulnerable adult or the alleged perpetrator of the right to file a signed written statement in the proceedings. A guardian or health care agent who prepares or files a written statement for the vulnerable adult must indicate in the statement

that the person is the vulnerable adult's guardian or health care agent and sign the statement in that capacity. The vulnerable adult, the guardian, or the health care agent may file a written statement with the human services judge hearing the case no later than five business days before commencement of the hearing. The human services judge shall include the written statement in the hearing record and consider the statement in deciding the appeal. This subdivision does not limit, prevent, or excuse the vulnerable adult or alleged perpetrator from being called as a witness testifying at the hearing or grant the vulnerable adult, the guardian, or health care agent a right to participate in the proceedings or appeal the human services judge's decision in the case. The lead investigative agency must consider including the vulnerable adult victim of maltreatment as a witness in the hearing. If the lead investigative agency determines that participation in the hearing would endanger the well-being of the vulnerable adult or not be in the best interests of the vulnerable adult, the lead investigative agency shall inform the human services judge of the basis for this determination, which must be included in the final order. If the human services judge is not reasonably able to determine the address of the vulnerable adult, the guardian, the alleged perpetrator, or the health care agent, the human services judge is not required to send a hearing notice under this subdivision.

Sec. 44. Minnesota Statutes 2016, section 325F.71, is amended to read:

325F.71 SENIOR CITIZENS, VULNERABLE ADULTS, AND ~~DISABLED~~ PERSONS WITH DISABILITIES; ADDITIONAL CIVIL PENALTY FOR DECEPTIVE ACTS.

Subdivision 1. **Definitions.** For the purposes of this section, the following words have the meanings given them:

(a) "Senior citizen" means a person who is 62 years of age or older.

(b) "~~Disabled~~ Person with a disability" means a person who has an impairment of physical or mental function or emotional status that substantially limits one or more major life activities.

(c) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) "Vulnerable adult" has the meaning given in section 626.5572, subdivision 21.

Subd. 2. **Supplemental civil penalty.** (a) In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person

who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability, is liable for an additional civil penalty not to exceed $10,000 for each violation, if one or more of the factors in paragraph (b) are present.

(b) In determining whether to impose a civil penalty pursuant to paragraph (a), and the amount of the penalty, the court shall consider, in addition to other appropriate factors, the extent to which one or more of the following factors are present:

(1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability;

(2) whether the defendant's conduct caused one or more senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance; substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen, vulnerable adult, or ~~disabled~~ person with a disability;

(3) whether one or more senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct; ~~or~~

(4) whether the defendant's conduct caused senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability to make an uncompensated asset transfer that resulted in the person being found ineligible for medical assistance~~.~~; or

(5) whether the defendant provided or arranged for health care or services that are inferior to, substantially different than, or substantially more expensive than offered, promised, marketed, or advertised.

Subd. 3. **Restitution to be given priority.** Restitution ordered pursuant to the statutes listed in subdivision 2 shall be given priority over imposition of civil penalties designated by the court under this section.

Subd. 4. **Private remedies.** A person injured by a violation of this section may bring a civil action and recover damages, together with costs and disbursements, including costs

of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

Sec. 45. Minnesota Statutes 2016, section 573.02, subdivision 2, is amended to read:

Subd. 2. **Injury action.** (a) When injury is caused to a person by the wrongful act or omission of any person or corporation and the person thereafter dies from a cause unrelated to those injuries, the trustee appointed in subdivision 3 may maintain an action for special damages arising out of such injury if the decedent might have maintained an action therefor had the decedent lived.

(b) When the injury is caused to a person who was a vulnerable adult, prior to the injury, the next of kin may maintain an action on behalf of the decedent for damages for pain and suffering, in addition to special damages as provided under paragraph (a). For purposes of this paragraph, "vulnerable adult" has the meaning given in section 626.5572, subdivision 21.

Sec. 46. Minnesota Statutes 2016, section 609.2231, subdivision 8, is amended to read:

Subd. 8. **Vulnerable adults.** (a) As used in this subdivision, "vulnerable adult" has the meaning given in section 609.232, subdivision 11.

(b) Whoever assaults ~~and inflicts demonstrable bodily harm on~~ a vulnerable adult, knowing or having reason to know that the person is a vulnerable adult, is guilty of a gross misdemeanor.

Sec. 47. Minnesota Statutes 2016, section 626.557, subdivision 3, is amended to read:

Subd. 3. **Timing of report.** (a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall ~~immediately~~ report the information to the common entry point as soon as possible but in no event longer than 24 hours. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, paragraph (a), clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead investigative agency will determine or should determine that the reported error was not neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead investigative agency information explaining how the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5). The lead investigative agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Sec. 48. Minnesota Statutes 2016, section 626.557, subdivision 4, is amended to read:

Subd. 4. **Reporting.** (a) Except as provided in paragraph (b), a mandated reporter shall immediately make an oral report to the common entry point. The common entry point may accept electronic reports submitted through a Web-based reporting system established by the commissioner. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. <u>The common entry point must provide a method for the reporter to electronically submit evidence to support the maltreatment report, including but not limited to uploading photographs, videos, or documents.</u> A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, to the extent necessary to comply with this subdivision.

(b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under section

144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code of Federal Regulations, title 42, section 482.66, may submit a report electronically to the common entry point instead of submitting an oral report. ~~The report may be a duplicate of the initial report the facility submits electronically to the commissioner of health to comply with the reporting requirements under Code of Federal Regulations, title 42, section 483.13.~~ The commissioner of health may modify these reporting requirements to include items required under paragraph (a) that are not currently included in the electronic reporting form.

(c) All reports must be directed to the common entry point, including reports from federally licensed facilities, vulnerable adults, and interested persons.

Sec. 49. Minnesota Statutes 2016, section 626.557, subdivision 9, is amended to read:

Subd. 9. **Common entry point designation.** (a) Each county board shall designate a common entry point for reports of suspected maltreatment, for use until the commissioner of human services establishes a common entry point. Two or more county boards may jointly designate a single common entry point. The commissioner of human services shall establish a common entry point effective July 1, 2015. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment. The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section. The common entry point shall use a standard intake form that includes:

(1) the time and date of the report;

(2) the name, address, and telephone number of the person reporting;

(3) the time, date, and location of the incident;

(4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;

(5) whether there was a risk of imminent danger to the alleged victim;

(6) a description of the suspected maltreatment;

(7) the disability, if any, of the alleged victim;

(8) the relationship of the alleged perpetrator to the alleged victim;

(9) whether a facility was involved and, if so, which agency licenses the facility;

(10) any action taken by the common entry point;

(11) whether law enforcement has been notified;

(12) whether the reporter wishes to receive notification of the initial and final reports; and

(13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The common entry point is not required to complete each item on the form prior to dispatching the report to the appropriate lead investigative agency.

(d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead investigative agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

(f) The common entry point ~~staff~~ must ~~receive training on how to screen and dispatch reports efficiently and in accordance with this section.~~ cross-reference multiple complaints to the lead investigative agency concerning:

(1) the same alleged perpetrator, facility, or licensee;

(2) the same vulnerable adult; or

(3) the same incident.

(g) The commissioner of human services shall maintain a centralized database for the collection of common entry point data, lead investigative agency data including maltreatment report disposition, and appeals data. The common entry point shall have access to the centralized database and must log the reports into the database and immediately identify and locate prior reports of abuse, neglect, or exploitation.

(h) When appropriate, the common entry point staff must refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might resolve the reporter's concerns.

(i) A common entry point must be operated in a manner that enables the commissioner of human services to:

(1) track critical steps in the reporting, evaluation, referral, response, disposition, and investigative process to ensure compliance with all requirements for all reports;

(2) maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation;

(3) serve as a resource for the evaluation, management, and planning of preventative and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation;

(4) set standards, priorities, and policies to maximize the efficiency and effectiveness of the common entry point; and

(5) track and manage consumer complaints related to the common entry point~~.~~, including tracking and cross-referencing multiple complaints concerning:

(i) the same alleged perpetrator, facility, or licensee;

(ii) the same vulnerable adult; and

(iii) the same incident.

(j) The commissioners of human services and health shall collaborate on the creation of a system for referring reports to the lead investigative agencies. This system shall enable the commissioner of human services to track critical steps in the reporting, evaluation, referral, response, disposition, investigation, notification, determination, and appeal processes.

Sec. 50. Minnesota Statutes 2016, section 626.557, subdivision 9a, is amended to read:

Subd. 9a. **Evaluation and referral of reports made to common entry point.** (a) The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for emergency adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the common entry point determines immediate need exists for response by law enforcement, including the urgent need to secure a crime scene, interview witnesses, remove the alleged perpetrator, or safeguard the vulnerable adult's property, or if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

(3) the common entry point shall refer all reports of alleged or suspected maltreatment to the appropriate lead investigative agency as soon as possible, but in any event no longer than two working days;

(4) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman for mental health and developmental disabilities established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law; and

(5) for reports involving multiple locations or changing circumstances, the common entry point shall determine the county agency responsible for emergency adult protective services and the county responsible as the lead investigative agency, using referral guidelines established by the commissioner.

(b) If the lead investigative agency receiving a report believes the report was referred by the common entry point in error, the lead investigative agency shall immediately notify the common entry point of the error, including the basis for the lead investigative agency's belief that the referral was made in error. The common entry point shall review the information submitted by the lead investigative agency and immediately refer the report to the appropriate lead investigative agency.

Sec. 51. Minnesota Statutes 2016, section 626.557, subdivision 9b, is amended to read:

Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for emergency adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph ~~(g)~~ (k). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate with other agencies in the provision of protective services, coordinating its investigations, and assisting another agency within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph ~~(g)~~ (k). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials, and law enforcement shall obtain the results of any investigation conducted by the lead investigative agency to determine if criminal action is warranted. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to

conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. Nothing in this subdivision alters the duty of the lead investigative agency to serve as the agency responsible for investigating reports made under section 626.557.

Sec. 52. Minnesota Statutes 2016, section 626.557, subdivision 9c, is amended to read:

Subd. 9c. **Lead investigative agency; notifications, dispositions, determinations.** (a) ~~Upon request of the reporter,~~ The lead investigative agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) The lead investigative agency must provide the following information to the vulnerable adult or the vulnerable adult's interested person, if known, within five days of receipt of the report:

(1) the nature of the maltreatment allegations, including the report of maltreatment as allowed under law;

(2) the name of the facility or other location at which alleged maltreatment occurred;

(3) the name of the alleged perpetrator if the lead investigative agency believes disclosure of the name is necessary to protect the vulnerable adult;

(4) protective measures that may be recommended or taken as a result of the maltreatment report;

(5) contact information for the investigator or other information as requested and allowed under law; and

(6) confirmation of whether the facility is investigating the matter and, if so:

(i) an explanation of the process and estimated timeline for the investigation; and

(ii) a statement that the lead investigative agency will provide an update on the investigation approximately every three weeks upon request by the vulnerable adult or the vulnerable adult's interested person and a report when the investigation is concluded.

(c) The lead investigative agency may assign multiple reports of maltreatment for the same or separate incidences related to the same vulnerable adult to the same investigator, as deemed appropriate. Reports related to the same vulnerable adult must, at a minimum, be cross-referenced.

~~(b)~~ (d) Upon conclusion of every investigation it conducts, the lead investigative agency shall make a final disposition as defined in section 626.5572, subdivision 8.

~~(c)~~ (e) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead investigative agency shall consider at least the following mitigating factors:

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

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

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

~~(d)~~ (f) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under section 245A.06 or 245A.07 apply.

~~(e)~~ (g) The lead investigative agency shall complete its final disposition within 60 calendar days. If the lead investigative agency is unable to complete its final disposition within 60 calendar days, the lead investigative agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's ~~guardian or health care agent~~ interested person, when known, if the lead investigative agency knows them to be aware of the investigation; and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead investigative agency is unable to complete its final disposition by a subsequent projected completion date, the lead

investigative agency shall again notify the vulnerable adult or the vulnerable adult's ~~guardian or health care agent~~ interested person, when known if the lead investigative agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. The lead investigative agency must notify the health care agent of the vulnerable adult only if the health care agent's authority to make health care decisions for the vulnerable adult is currently effective ~~under section 145C.06~~ and not suspended under section 524.5-310 ~~and the investigation relates to a duty assigned to the health care agent by the principal~~. A lead investigative agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

~~(f)~~ (h) Within ten calendar days of completing the final disposition, the lead investigative agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph ~~(b), clause (1)~~ (d), when required to be completed under this section, to the following persons:

(1) the vulnerable adult, or ~~the vulnerable adult's guardian or health care agent~~ an interested person, if known, unless the lead investigative agency knows that the notification would endanger the well-being of the vulnerable adult;

(2) the reporter, ~~if~~ unless the reporter requested ~~notification~~ otherwise when making the report, provided this notification would not endanger the well-being of the vulnerable adult;

(3) the alleged perpetrator, if known;

(4) the facility; ~~and~~

(5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate~~.~~;

(6) law enforcement; and

(7) the county attorney, as appropriate.

~~(g)~~ (i) If, as a result of a reconsideration, review, or hearing, the lead investigative agency changes the final disposition, or if a final disposition is changed on appeal, the lead investigative agency shall notify the parties specified in paragraph ~~(f)~~ (h).

~~(h)~~ (j) The lead investigative agency shall notify the vulnerable adult who is the subject of the report or ~~the vulnerable adult's guardian or health care agent~~ an interested person, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section ~~256.021~~ 256.045.

~~(i)~~ (k) The lead investigative agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead investigative agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead investigative agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

~~(j)~~ (l) In order to avoid duplication, licensing boards shall consider the findings of the lead investigative agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

~~(k)~~ (m) The lead investigative agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Sec. 53. Minnesota Statutes 2016, section 626.557, subdivision 9d, is amended to read:

Subd. 9d. **Administrative reconsideration~~; review panel~~.** (a) Except as provided under paragraph ~~(e)~~ (d), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment

determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (d) and (e) ~~and (f)~~, if the lead investigative agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person, including the vulnerable adult or an interested person acting on behalf of the vulnerable adult, or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. ~~The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead investigative agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition.~~ The lead investigative agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead investigative agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the lead investigative agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead investigative agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph ~~(f)~~ (h).

~~(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.~~

~~(e)~~ (d) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment

determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

~~(f)~~ (e) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, the scope of the contested case hearing must include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination under this subdivision, and reconsideration of a disqualification under section 245C.22, must not be conducted when:

(1) a denial of a license under section 245A.05, or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

~~(g)~~ (f) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect

under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

~~(1)~~ (g) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph ~~(d)~~ (h), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

~~(2)~~ (h) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245C.31.

Sec. 54. Minnesota Statutes 2016, section 626.557, subdivision 10b, is amended to read:

Subd. 10b. **Investigations; guidelines.** (a) Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead investigative agency shall conduct the following activities, as appropriate:

(1) interview of the alleged victim;

(2) interview of the reporter and others who may have relevant information;

(3) interview of the alleged perpetrator;

(4) examination of the environment surrounding the alleged incident;

(5) review of pertinent documentation of the alleged incident; and

(6) consultation with professionals.

(b) The lead investigator must contact the alleged victim or, if known, an interested person, within five days after initiation of an investigation to provide the investigator's name

and contact information, and communicate with the alleged victim or interested person approximately every three weeks during the course of the investigation.

Sec. 55. Minnesota Statutes 2016, section 626.557, subdivision 12b, is amended to read:

Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a lead investigative agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph ~~(c)~~ (g).

(b) Data maintained by the common entry point are ~~confidential~~ private data on individuals or ~~protected~~ nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall maintain data for three calendar years after date of receipt and then destroy the data unless otherwise directed by federal requirements.

~~(b)~~ (c) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02, provided that data may be shared with the vulnerable adult or the vulnerable adult's interested person if both commissioners determine that sharing of the data is needed to protect the vulnerable adult. Upon completion of the investigation, the data are classified as provided in ~~clauses (1) to (3) and paragraph (c)~~ paragraphs (d) to (g).

~~(1)~~ (d) The investigation memorandum must contain the following data, which are public:

~~(i)~~ (1) the name of the facility investigated;

~~(ii)~~ (2) a statement of the nature of the alleged maltreatment;

~~(iii)~~ (3) pertinent information obtained from medical or other records reviewed;

~~(iv)~~ (4) the identity of the investigator;

~~(v)~~ (5) a summary of the investigation's findings;

~~(vi)~~ (6) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;

~~(vii)~~ (7) a statement of any action taken by the facility;

~~(viii)~~ (8) a statement of any action taken by the lead investigative agency; and

~~(ix)~~ (9) when a lead investigative agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data or individuals listed in ~~clause (2)~~ paragraph (e).

~~(2)~~ (e) Data on individuals collected and maintained in the investigation memorandum are private data on individuals, including:

~~(i)~~ (1) the name of the vulnerable adult;

~~(ii)~~ (2) the identity of the individual alleged to be the perpetrator;

~~(iii)~~ (3) the identity of the individual substantiated as the perpetrator; and

~~(iv)~~ (4) the identity of all individuals interviewed as part of the investigation.

~~(3)~~ (f) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

~~(c)~~ (g) After the assessment or investigation is completed, the name of the reporter must be confidential~~.~~, except:

(1) the subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter ~~or~~;

(2) upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith; or

(3) the mandated reporter may self-disclose to support a claim of retaliation that is prohibited under law, including under sections 144.651, subdivision 34, and 626.557, subdivisions 4a and 17.

This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

~~(d)~~ (h) Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be maintained under the following schedule and then destroyed unless otherwise directed by federal requirements:

(1) data from reports determined to be false, maintained for three years after the finding was made;

(2) data from reports determined to be inconclusive, maintained for four years after the finding was made;

(3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and

(4) data from reports which were not investigated by a lead investigative agency and for which there is no final disposition, maintained for three years from the date of the report.

~~(e)~~ (i) The commissioners of health and human services shall annually publish on their Web sites the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. On a biennial basis, the commissioners of health and human services shall jointly report the following information to the legislature and the governor:

(1) the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigations under this section, the resolution of those investigations, and which of the two lead agencies was responsible;

(2) trends about types of substantiated maltreatment found in the reporting period;

(3) if there are upward trends for types of maltreatment substantiated, recommendations for addressing and responding to them;

(4) efforts undertaken or recommended to improve the protection of vulnerable adults;

(5) whether and where backlogs of cases result in a failure to conform with statutory time frames and recommendations for reducing backlogs if applicable;

(6) recommended changes to statutes affecting the protection of vulnerable adults; and

(7) any other information that is relevant to the report trends and findings.

~~(f)~~ (j) Each lead investigative agency must have a record retention policy.

~~(g)~~ (k) Lead investigative agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority

requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. ~~The lead investigative agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section.~~ Notwithstanding section 138.17, upon completion of the review, not public data received by the review panel must be destroyed.

~~(h)~~ (l) Each lead investigative agency shall keep records of the length of time it takes to complete its investigations.

~~(i)~~ (m) Notwithstanding paragraph (a) or (b), a lead investigative agency may share common entry point or investigative data and may notify other affected parties, including the vulnerable adult and their authorized representative, if the lead investigative agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

~~(j)~~ (n) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead investigative agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Sec. 56. Minnesota Statutes 2016, section 626.557, subdivision 14, is amended to read:

Subd. 14. **Abuse prevention plans.** (a) Each facility, except home health agencies and personal care attendant services providers and including a housing with services establishment under chapter 144D and an entity operating under assisted living title protection under section 144G.02, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of: (1) the person's susceptibility to abuse by other individuals, including other

vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

(c) If the facility, except home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

(d) The commissioner of health must issue a correction order and fine upon a finding that the facility has failed to comply with this subdivision.

Sec. 57. Minnesota Statutes 2016, section 626.557, subdivision 17, is amended to read:

Subd. 17. **Retaliation prohibited.** (a) A facility or person shall not retaliate against any person, including an interested person or an agent of the vulnerable adult, who reports in good faith, or who the facility or person believes reported, suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report or presumed report, whether mandatory or voluntary.

(b) In addition to any remedies allowed under sections 181.931 to 181.935, any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to $10,000, and attorney fees. A claim of retaliation may be brought upon showing that the claimant has a good faith reason to believe retaliation as described under this subdivision occurred. The claim may be brought regardless of whether or not there is confirmation that the name of the mandated reporter was known.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this ~~clause~~ paragraph, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

(1) discharge or transfer from the facility;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services;

(4) restriction or prohibition of access of the vulnerable adult to the facility or its residents; ~~or~~

(5) any restriction of rights set forth in section 144.651~~.~~;

(6) any restriction of access to or use of amenities or services;

(7) termination of services or lease agreement;

(8) sudden increase in costs for services not already contemplated at the time of the maltreatment report;

(9) removal, tampering with, or deprivation of technology, communication, or electronic monitoring devices; and

(10) filing a maltreatment report in bad faith against the reporter; or

(11) oral or written communication of false information about the reporter.

Sec. 58. Minnesota Statutes 2016, section 626.5572, is amended by adding a subdivision to read:

Subd. 12a. **Interested person.** "Interested person" has the meaning given in section 524.5-102, subdivision 7. An interested person does not include a person whose authority has been restricted by the vulnerable adult or by a court or a person who is the alleged perpetrator of the maltreatment.

Sec. 59. **ASSISTED LIVING LICENSURE.**

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "commissioner" means the commissioner of health; and

(2) "multiunit residential dwelling" means a residential dwelling containing two or more units intended for use as a residence.

Subd. 2. **Requirement of license.** (a) After January 1, 2020, no provider of assisted living may operate without first having obtained a license.

(b) By February 1, 2019, the commissioner shall propose for codification assisted living licensing standards, which may include licensing tiers that correspond to designated levels of care and services to replace housing with services registration under Minnesota Statutes,

chapter 144D, and assisted living title protection under Minnesota Statutes, chapter 144G. The commissioner shall recommend draft legislation to implement all proposed changes to Minnesota Statutes. The draft legislation shall:

(1) replace in Minnesota Statutes the term "housing with services" with "assisted living" and replace the term "assisted living client" with "assisted living resident";

(2) consolidate and recodify Minnesota Statutes, chapters 144D and 144G, and all other associated and relevant statutes and rules; and

(3) add "assisted living" to the definition of facilities in Minnesota Statutes, sections 144.651, subdivision 2, and 626.5572, subdivision 6, and all other applicable statutes or rules.

The commissioner shall solicit public comment on the proposed licensing standards and provide a comment period of no less than 30 days.

Subd. 3. **Collaboration and consultation.** In developing the licensing structure, the commissioner must:

(1) collaborate with the commissioner of human services and the ombudsman for long-term care;

(2) consult with an equal number of service providers, consumer advocates, and assisted living and housing with services residents and their families or agents; and

(3) review and evaluate other state's licensing systems related to assisted living.

Subd. 4. **Single license for housing and services.** (a) The commissioner must create a single assisted living license for both housing and services offered in a multiunit residential dwelling that is not otherwise licensed by the Department of Human Services or the Department of Health that offers:

(1) services comparable to those of a comprehensive home care services provider under Minnesota Statutes, section 144A.471, subdivision 7;

(2) health-related services under Minnesota Statutes, section 144D.01, subdivision 6; or

(3) supportive services under Minnesota Statutes, section 144D.01, including daily life checks, transportation, social work services, and dietary services.

(b) A multiunit residential dwelling must obtain an assisted living license if at least 30 percent of the residents receive home care, health-related services, or supportive care services.

Subd. 5. **Single contract.** (a) The commissioner must establish a single contract for the provision of housing and care services in an assisted living facility. The provisions of Minnesota Statutes, chapter 504B, apply.

(b) Nothing in this subdivision precludes a resident from separately contracting with a provider other than the assisted living facility.

(c) Nothing in this subdivision precludes the assisted living facility from separating housing costs from care costs when billing.

Subd. 6. **Forms and procedures.** The commissioner must establish forms and procedures for the processing of assisted living license applications. An application for an assisted living license must, at a minimum, include the following information:

(1) the names and addresses of all controlling persons and managerial employees of the facility to be licensed, and any affiliated corporate entities;

(2) the address and legal property description of the facility;

(3) a copy of the architectural and engineering plans and specifications of the facility as prepared and certified by an architect or engineer registered to practice in this state;

(4) whether the applicant's license or authority to provide assisted living in any other state has ever been revoked or suspended; and

(5) any other relevant information the commissioner determines necessary, including the number of beds and other data necessary to determine number and type of residents being served.

Subd. 7. **Appeals and reconsiderations.** The commissioner must establish criteria and a process for reconsideration and appeal under which a license may be denied, suspended, nonrenewed, or revoked.

Subd. 8. **Fines and penalties.** The commissioner must establish a schedule of license fees and penalties for compliance failures.

Subd. 9. **Standards.** The commissioner must establish licensing standards that must include, at a minimum:

(1) building design;

(2) physical environment;

(3) dietary services, including both the type, appropriateness, and quality of food;

(4) support services, including social work and transportation;

(5) staffing guidelines, including establishing 24 hours a day, seven days a week awake staff, taking into account:

(i) the acuity level of the residents;

(ii) the number of residents;

(iii) evening and weekend needs; and

(iv) existing requirements under Minnesota Statutes, section 144A.4795, and Code of Federal Regulations, title 42, section 483.30;

(6) training for:

(i) owners, financial officers, administrators, and management on Minnesota Statutes, section 626.557, and on best practices and standards for long-term care; and

(ii) all staff, management, and controlling persons in the best practices for courteous treatment of residents, resolution of conflict, and collaboration with all staff positions, assisted living residents, and families;

(7) admission criteria, including but not limited to:

(i) admission contract language or definitions; and

(ii) an assessment to be conducted prior to admission to best meet the needs of residents;

(8) retention criteria, including criteria based on the provisions of Minnesota Statutes, section 144A.4791, subdivision 4, as to when a resident's needs are beyond the scope of care and practice in an assisted living facility;

(9) care and services, including but not limited to centralized, core criteria for dementia care and coordination of care among medical providers for residents, based on the needs of the resident, including carrying out any medical orders;

(10) discharge criteria, including discharge planning to a safe location and appeal rights, incorporating Minnesota Statutes, sections 144D.09, 144D.095, 144G.07, and 144G.08;

(11) resident rights in the assisted living setting, including those currently found in Minnesota Statutes, sections 144.651, 144A.44, 144A.441, or other statement of rights under law;

(12) establishment of resident or family councils, or both, based on Minnesota Statutes, section 144A.33; and

(13) safety criteria, including abuse prevention plans under Minnesota Statutes, section 626.557, subdivision 14.

Subd. 10. **Licensing tiers.** The commissioner may establish separate licensing levels and, if levels are established, the criteria for the licenses. Examples of levels include:

(1) Tier 1, basic level service offering any supportive service, including daily life checks, transportation, dietary services, or social work services, or any health-related service or supportive service in an independent unit within a continuing care campus model;

(2) Tier 2, medium level service offering, in addition to Tier 1 offerings, any health-related service, including dementia care, assistance with two or fewer activities of daily living that do not include a two-person transfer, and the ability to engage in self-preservation; and

(3) Tier 3, high level service offering, in addition to Tier 1 and Tier 2 offerings, assistance with three or more activities of daily living, two-person transfers, diagnoses requiring specialty care, or the need for assistance with self-preservation.

Subd. 11. **Other considerations and actions.** The commissioner, in establishing a licensing structure, must:

(1) consider federal home and community-based service requirements necessary to preserve access to assisted living care and services for individuals who rely on the medical assistance elderly waiver program, including the customized living rates and other waivered programs;

(2) determine if any changes are required to the medical assistance elderly waiver benefit program or group residential housing program to ensure, to the extent possible, the programs cover the housing costs and meet the service needs of an assisted living resident, including the customized living rates; and

(3) seek federal approval as necessary for the assisted living license developed by the commissioner.

Subd. 12. **Exceptions.** The commissioner shall exclude providers and facilities currently licensed by the Department of Human Services from the requirements of the new assisted living license. Nothing may be construed to affect the governance under Minnesota Statutes, sections 144A.43 to 144A.483, of home care providers who do not dedicate their services to a particular multiunit residential dwelling.

Subd. 13. **Licensing of executive directors and administrators.** After January 1, 2020, no person may serve as an executive director or administrator of an assisted living facility without first obtaining a license from the commissioner. The commissioner shall establish

licensing criteria and a fee schedule in consultation with the Board of Examiners for Nursing Home Administrators under Minnesota Statutes, section 144A.19.

Subd. 14. **Enforcement authority.** The commissioner has the authority to enforce any statute or rule governing licensing of assisted living facilities.

Sec. 60. **DEMENTIA CARE CERTIFICATION.**

(a) For the purposes of this section, "commissioner" means the commissioner of health.

(b) By February 1, 2019, the commissioner shall establish core criteria in all care and service settings for the provision of dementia care as well as criteria to operate a dementia care unit, to recommend legislation to implement dementia care after first providing a 30-day public comment period. In establishing the core criteria for dementia care in these settings, the commissioner must:

(1) collaborate with the commissioner of human services and the ombudsman for long-term care;

(2) consult with an equal number of service providers, consumer advocates, and residents diagnosed with dementia and their families or agents;

(3) review and evaluate other state's dementia care systems; and

(4) meet standards based on best practice recommendations for dementia care developed by the Alzheimer's Association and other state and national organizations providing services, information, and advocacy regarding persons with dementia and their families.

(c) After January 1, 2020, all providers must meet core criteria for dementia care as developed by the commissioner. After January 1, 2020, no provider may advertise, offer, or use the term "memory care unit" or "dementia care unit" without having first obtained a dementia care unit certification. If 30 percent or more of the residents in any particular unit in the residential setting are diagnosed with dementia, the provider must obtain the dementia care unit certification in order to serve the residents.

(d) In developing core criteria for dementia care across all settings, the commissioner must, at a minimum:

(1) evaluate existing requirements under Minnesota Statutes, sections 144.6503, 144A.4795, 144A.4796, and 144D.065, and chapter 144G;

(2) propose a single statute that identifies minimum safety and quality of service standards for dementia special care, including dementia training, assessment, care planning, therapeutic activities, and a residential setting's physical design and environment by combining concepts

and provisions found in Minnesota Statutes, sections 144.6503, 144A.4791, 144A.4796, 144D.065, and 325F.72; and

(3) develop comprehensive dementia care training curriculum, including evaluation of competency of the individual worker, continuing education, portability for workers across employers, and minimum standards for trainers. The curriculum must incorporate principles of person-centered dementia care, including thorough knowledge of the person and the person's abilities and needs, advancement of optimal functioning and a high quality of life, and use of problem-solving approaches to care. Training requirements and curriculum must reflect cultural competency, both for the provider and the recipient of the care.

(e) The commissioner must establish additional requirements beyond core criteria for facilities and providers operating a dementia care unit in the residential setting, including but not limited to the following:

(1) criteria for certification for the provision of dementia care and training for all care providers employed by any facility, provider, or program who are involved in the delivery of care to, or have regular contact with, persons with Alzheimer's disease or related dementias; and

(2) training on behavioral approaches.

(f) The commissioner may adopt rules to implement this section.

(g) The commissioner has the authority to monitor and enforce compliance with any certification statutes enacted or rules adopted.

Sec. 61. **REPEALER.**

Minnesota Statutes 2016, sections 144G.03, subdivision 6; and 256.021, are repealed.

144G.03 ASSISTED LIVING REQUIREMENTS.

Subd. 6. **Termination of housing with services contract.** If a housing with services establishment terminates a housing with services contract with an assisted living client, the establishment shall provide the assisted living client, and the legal or designated representative of the assisted living client, if any, with a written notice of termination which includes the following information:

(1) the effective date of termination;

(2) the section of the contract that authorizes the termination;

(3) without extending the termination notice period, an affirmative offer to meet with the assisted living client and, if applicable, client representatives, within no more than five business days of the date of the termination notice to discuss the termination;

(4) an explanation that:

(i) the assisted living client must vacate the apartment, along with all personal possessions, on or before the effective date of termination;

(ii) failure to vacate the apartment by the date of termination may result in the filing of an eviction action in court by the establishment, and that the assisted living client may present a defense, if any, to the court at that time; and

(iii) the assisted living client may seek legal counsel in connection with the notice of termination;

(5) a statement that, with respect to the notice of termination, reasonable accommodation is available for the disability of the assisted living client, if any; and

(6) the name and contact information of the representative of the establishment with whom the assisted living client or client representatives may discuss the notice of termination.

256.021 VULNERABLE ADULT MALTREATMENT REVIEW PANEL.

Subdivision 1. **Creation.** (a) The commissioner of human services shall establish a review panel for purposes of reviewing lead investigative agency determinations regarding maltreatment of a vulnerable adult in response to requests received under section 626.557, subdivision 9d, paragraph (b). The panel shall hold quarterly meetings for purposes of conducting reviews under this section.

(b) The review panel consists of:

(1) the commissioners of health and human services or their designees;

(2) the ombudsman for long-term care and ombudsman for mental health and developmental disabilities, or their designees;

(3) a member of the board on aging, appointed by the board; and

(4) a representative from the county human services administrators appointed by the commissioner of human services or the administrator's designee.

Subd. 2. **Review procedure.** (a) If a vulnerable adult or an interested person acting on behalf of the vulnerable adult requests a review under this section, the panel shall review the request at its next quarterly meeting. If the next quarterly meeting is within ten days of the panel's receipt of the request for review, the review may be delayed until the next subsequent meeting. The panel shall review the request and the investigation memorandum and may review any other data on the investigation maintained by the lead investigative agency that are pertinent and necessary to its review of the final disposition. If more than one person requests a review under this section with respect to the same final disposition, the review panel shall combine the requests into one review. The panel shall submit its written request for the case file and other documentation relevant to the review to the supervisor of the investigator conducting the investigation under review.

(b) Within 30 days of the review under this section, the panel shall notify the director or manager of the lead investigative agency and the vulnerable adult or interested person who requested the review as to whether the panel concurs with the final disposition or whether the lead investigative agency must reconsider the final disposition. If the panel determines that the lead investigative agency must reconsider the final disposition, the panel must make specific recommendations to the director or manager of the lead investigative agency. The recommendation must include an explanation of the factors that form the basis of the recommendation to reconsider the final disposition

and must specifically identify the disputed facts, the disputed application of maltreatment definitions, the disputed application of responsibility for maltreatment, and the disputed weighing of evidence, whichever apply. Within 30 days the lead investigative agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition. At a minimum, the specific rationale must include a detailed response to each of the factors identified by the panel that formed the basis for the recommendations of the panel.

(c) Upon receiving the report of reconsideration from the lead investigative agency, the panel shall communicate the decision in writing to the vulnerable adult or interested person acting on behalf of the vulnerable adult who requested the review. The panel shall include the specific rationale provided by the lead investigative agency as part of the communication.

Subd. 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.

Subd. 4. **Data.** Data of the review panel created or received as part of a review under this section are private data on individuals as defined in section 13.02.