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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3296

- 03/05/2018 Authored by Kiel, Nornes, Albright, Backer, Poston and others
- The bill was read for the first time and referred to the Committee on Health and Human Services Reform
- 03/19/2018 Adoption of Report: Re-referred to the Committee on Government Operations and Elections Policy
- 03/21/2018 Adoption of Report: Re-referred to the Committee on Public Safety and Security Policy and Finance
- 04/30/2018 Adoption of Report: Placed on the General Register as Amended
- Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act

1.2 relating to public safety; modifying statutory provisions governing vulnerable

1.3 adults and reporting maltreatment; amending Minnesota Statutes 2016, sections

1.4 144.651, subdivision 14; 144A.53, subdivision 4; 609.2231, subdivision 8; 626.557,

1.5 subdivisions 3, 4, 9, 9a, 9b, 9c.

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

1.7 Section 1. Minnesota Statutes 2016, section 144.651, subdivision 14, is amended to read:

1.8 Subd. 14. **Freedom from maltreatment.** (a) Patients and residents shall be free from

1.9 maltreatment as defined in the Vulnerable Adults Protection Act. "Maltreatment" means

1.10 conduct described in section 626.5572, subdivision 15, or the intentional and nontherapeutic

1.11 infliction of physical pain or injury, or any persistent course of conduct intended to produce

1.12 mental or emotional distress. Patients and residents shall receive notification from the lead

1.13 investigative agency regarding a report of alleged maltreatment, disposition of a report, and

1.14 appeal rights, as provided under section 626.557, subdivision 9c.

1.15 (b) Every patient and resident shall also be free from nontherapeutic chemical and

1.16 physical restraints, except in fully documented emergencies, or as authorized in writing

1.17 after examination by a patient's or resident's physician for a specified and limited period of

1.18 time, and only when necessary to protect the resident from self-injury or injury to others.

1.19 Sec. 2. Minnesota Statutes 2016, section 144A.53, subdivision 4, is amended to read:

1.20 Subd. 4. **Referral of complaints.** (a) If a complaint received by the director relates to

1.21 a matter more properly within the jurisdiction of law enforcement, an occupational licensing

1.22 board, or other governmental agency, the director shall forward the complaint ~~to that agency~~

1.23 appropriately and shall inform the complaining party of the forwarding. ~~The~~

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

2.6 (c) If the director has reason to believe that an official or employee of an administrative  
2.7 agency, a home care provider, residential care home, ~~or~~ health facility, or a client or resident  
2.8 of any of these entities has acted in a manner warranting criminal or disciplinary proceedings,  
2.9 the director shall refer the matter to the state commissioner of health, the commissioner of  
2.10 human services, an appropriate prosecuting authority, or other appropriate agency.

2.11 Sec. 3. Minnesota Statutes 2016, section 609.2231, subdivision 8, is amended to read:

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

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

2.17 (c) A person who uses restraints on a vulnerable adult does not violate this subdivision  
2.18 if: (1) the person complies with applicable requirements in state and federal law regarding  
2.19 the use of restraints; and (2) any force applied in imposing restraints is reasonable.

2.20 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to offenses  
2.21 committed on or after that date.

2.22 Sec. 4. Minnesota Statutes 2016, section 626.557, subdivision 3, is amended to read:

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

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

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

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

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

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

3.10 (e) A mandated reporter who knows or has reason to believe that an error under section  
3.11 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this  
3.12 subdivision. If the reporter or a facility, at any time believes that an investigation by a lead  
3.13 investigative agency will determine or should determine that the reported error was not  
3.14 neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c),  
3.15 clause (5), the reporter or facility may provide to the common entry point or directly to the  
3.16 lead investigative agency information explaining how the event meets the criteria under  
3.17 section 626.5572, subdivision 17, paragraph (c), clause (5). The lead investigative agency  
3.18 shall consider this information when making an initial disposition of the report under  
3.19 subdivision 9c.

3.20 Sec. 5. Minnesota Statutes 2016, section 626.557, subdivision 4, is amended to read:

3.21 Subd. 4. **Reporting.** (a) Except as provided in paragraph (b), a mandated reporter shall  
3.22 immediately make an oral report to the common entry point. The common entry point may  
3.23 accept electronic reports submitted through a Web-based reporting system established by  
3.24 the commissioner. Use of a telecommunications device for the deaf or other similar device  
3.25 shall be considered an oral report. The common entry point may not require written reports.  
3.26 To the extent possible, the report must be of sufficient content to identify the vulnerable  
3.27 adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of  
3.28 previous maltreatment, the name and address of the reporter, the time, date, and location of  
3.29 the incident, and any other information that the reporter believes might be helpful in  
3.30 investigating the suspected maltreatment. The common entry point must provide a method  
3.31 for the reporter to electronically submit evidence to support the maltreatment report, including  
3.32 but not limited to uploading photographs, videos, or documents. A mandated reporter may  
3.33 disclose not public data, as defined in section 13.02, and medical records under sections  
3.34 144.291 to 144.298, to the extent necessary to comply with this subdivision.

4.1 (b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified  
4.2 under Title 19 of the Social Security Act, a nursing home that is licensed under section  
4.3 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital  
4.4 that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code  
4.5 of Federal Regulations, title 42, section 482.66, may submit a report electronically to the  
4.6 common entry point instead of submitting an oral report. ~~The report may be a duplicate of  
4.7 the initial report the facility submits electronically to the commissioner of health to comply  
4.8 with the reporting requirements under Code of Federal Regulations, title 42, section 483.13.~~  
4.9 The commissioner of health may modify these reporting requirements to include items  
4.10 required under paragraph (a) that are not currently included in the electronic reporting form.

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

4.13 Sec. 6. Minnesota Statutes 2016, section 626.557, subdivision 9, is amended to read:

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

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

4.24 (1) the time and date of the report;

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

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

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

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

4.30 (6) a description of the suspected maltreatment;

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

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

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

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

5.3 (11) whether law enforcement has been notified;

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

5.5 and

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

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

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

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

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

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

5.19 (2) the same vulnerable adult; or

5.20 (3) the same incident.

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

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

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

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

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

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

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

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

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

6.13 (ii) the same vulnerable adult; and

6.14 (iii) the same incident.

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

6.19 Sec. 7. Minnesota Statutes 2016, section 626.557, subdivision 9a, is amended to read:

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

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

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

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

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

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

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

7.19 Sec. 8. Minnesota Statutes 2016, section 626.557, subdivision 9b, is amended to read:

7.20 Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct  
7.21 investigations of any incident in which there is reason to believe a crime has been committed.  
7.22 Law enforcement shall initiate a response immediately. If the common entry point notified  
7.23 a county agency for emergency adult protective services, law enforcement shall cooperate  
7.24 with that county agency when both agencies are involved and shall exchange data to the  
7.25 extent authorized in subdivision 12b, paragraph ~~(g)~~ (k). County adult protection shall initiate  
7.26 a response immediately. Each lead investigative agency shall complete the investigative  
7.27 process for reports within its jurisdiction. A lead investigative agency, county, adult protective  
7.28 agency, licensed facility, or law enforcement agency shall cooperate with other agencies in  
7.29 the provision of protective services, coordinating its investigations, and assisting another  
7.30 agency within the limits of its resources and expertise and shall exchange data to the extent  
7.31 authorized in subdivision 12b, paragraph ~~(g)~~ (k). The lead investigative agency shall obtain  
7.32 the results of any investigation conducted by law enforcement officials, and law enforcement  
7.33 shall obtain the results of any investigation conducted by the lead investigative agency to  
7.34 determine if criminal action is warranted. The lead investigative agency has the right to

8.1 enter facilities and inspect and copy records as part of investigations. The lead investigative  
8.2 agency has access to not public data, as defined in section 13.02, and medical records under  
8.3 sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to  
8.4 conduct its investigation. Each lead investigative agency shall develop guidelines for  
8.5 prioritizing reports for investigation. Nothing in this subdivision alters the duty of the lead  
8.6 investigative agency to serve as the agency responsible for investigating reports made under  
8.7 this section.

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

8.9 Subd. 9c. **Lead investigative agency; notifications, dispositions, determinations.** (a)

8.10 ~~Upon request of the reporter,~~ The lead investigative agency shall notify the reporter that it  
8.11 has received the report, and provide information on the initial disposition of the report within  
8.12 five business days of receipt of the report, provided that the notification will not endanger  
8.13 the vulnerable adult or hamper the investigation.

8.14 (b) The lead investigative agency must provide the following information to the vulnerable  
8.15 adult or the vulnerable adult's guardian or health care agent, if known, within five days of  
8.16 receipt of the report:

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

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

8.20 (3) the name of the alleged perpetrator if the lead investigative agency believes disclosure  
8.21 of the name is necessary to protect the vulnerable adult's physical, emotional, or financial  
8.22 interests;

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

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

8.27 (6) confirmation of whether the lead investigative agency is investigating the matter  
8.28 and, if so:

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

8.30 (ii) a statement that the lead investigative agency will provide an update on the  
8.31 investigation approximately every three weeks upon request by the vulnerable adult or the

9.1 vulnerable adult's guardian or health care agent and a report when the investigation is  
9.2 concluded.

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

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

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

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

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

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

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

9.32 ~~(e)~~ (g) The lead investigative agency shall complete its final disposition within 60  
9.33 calendar days. If the lead investigative agency is unable to complete its final disposition

10.1 within 60 calendar days, the lead investigative agency shall notify the following persons  
10.2 provided that the notification will not endanger the vulnerable adult or hamper the  
10.3 investigation: (1) the vulnerable adult or the vulnerable adult's guardian or health care agent,  
10.4 when known, if the lead investigative agency knows them to be aware of the investigation;  
10.5 and (2) the facility, where applicable. The notice shall contain the reason for the delay and  
10.6 the projected completion date. If the lead investigative agency is unable to complete its final  
10.7 disposition by a subsequent projected completion date, the lead investigative agency shall  
10.8 again notify the vulnerable adult or the vulnerable adult's guardian or health care agent,  
10.9 when known if the lead investigative agency knows them to be aware of the investigation,  
10.10 and the facility, where applicable, of the reason for the delay and the revised projected  
10.11 completion date provided that the notification will not endanger the vulnerable adult or  
10.12 hamper the investigation. The lead investigative agency must notify the health care agent  
10.13 of the vulnerable adult only if the health care agent's authority to make health care decisions  
10.14 for the vulnerable adult is currently effective ~~under section 145C.06~~ and not suspended  
10.15 under section 524.5-310 ~~and the investigation relates to a duty assigned to the health care~~  
10.16 ~~agent by the principal~~. A lead investigative agency's inability to complete the final disposition  
10.17 within 60 calendar days or by any projected completion date does not invalidate the final  
10.18 disposition.

10.19 ~~(f)~~ (h) Within ten calendar days of completing the final disposition, the lead investigative  
10.20 agency shall provide a copy of the public investigation memorandum under subdivision  
10.21 12b, paragraph ~~(b)~~, ~~clause (1)~~ (d), when required to be completed under this section, to the  
10.22 following persons:

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

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

10.28 (3) the alleged perpetrator, if known;

10.29 (4) the facility; ~~and~~

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

10.32 (6) law enforcement; and

10.33 (7) the county attorney, as appropriate.

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

11.4 ~~(h)~~ (j) The lead investigative agency shall notify the vulnerable adult who is the subject  
11.5 of the report or the vulnerable adult's guardian or health care agent, if known, and any person  
11.6 or facility determined to have maltreated a vulnerable adult, of their appeal or review rights  
11.7 under this section or section ~~256.024~~ 256.045.

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

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

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