

This Document can be made available in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. **4124**

03/21/2018 Authored by Hilstrom  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act  
1.2 relating to health; changing provisions to enforcement of the health care bill of  
1.3 rights; changing provisions to maltreatment of vulnerable adults; amending  
1.4 Minnesota Statutes 2016, sections 144A.44; 573.02, subdivision 2; 626.557,  
1.5 subdivision 17; proposing coding for new law in Minnesota Statutes, chapter 144.

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

1.7 Section 1. **144.6512 ENFORCEMENT OF THE HEALTH CARE BILL OF RIGHTS.**

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

1.14 Sec. 2. Minnesota Statutes 2016, section 144A.44, is amended to read:

1.15 **144A.44 HOME CARE BILL OF RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.26 (b) A home care provider shall:

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

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

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

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

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

4.5 Subd. 2. **Interpretation and enforcement of rights.** ~~These rights are established for~~  
 4.6 ~~the benefit of clients who receive home care services. All home care providers, including~~  
 4.7 ~~those exempted under section 144A.471, must comply with this section. The commissioner~~  
 4.8 ~~shall enforce this section and the home care bill of rights requirement against home care~~  
 4.9 ~~providers exempt from licensure in the same manner as for licensees. A home care provider~~  
 4.10 ~~may not request or require a client to surrender any of these rights as a condition of receiving~~  
 4.11 ~~services. This statement of~~ The rights does provided under this section are established for  
 4.12 the benefit of clients who receive home care services, do not replace or diminish other rights  
 4.13 and liberties that may exist relative to clients receiving home care services, persons providing  
 4.14 home care services, or providers licensed under sections 144A.43 to 144A.482, and may  
 4.15 not be waived. Any oral or written waiver of the rights provided under this section is void  
 4.16 and unenforceable.

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

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

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

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

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

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

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

4.32 Subd. 5. **Private enforcement of rights.** In addition to the remedies otherwise available  
 4.33 under law, a person who receives home care services, an assisted living client, or an interested

5.1 person on behalf of the person who receives home care services may bring a civil action  
5.2 against a home care provider and recover actual, incidental, and consequential damages or  
5.3 \$5,000, whichever is greater, costs and disbursements, including costs of investigation, and  
5.4 reasonable attorney fees, and receive other equitable relief as determined by the court for  
5.5 a violation of this section or section 144A.441. For purposes of this section, an interested  
5.6 person has the meaning given in section 144.651, subdivision 2, except that an interested  
5.7 person does not include a person whose authority has been restricted by the person receiving  
5.8 home care services or assisted living, or by a court.

5.9 Sec. 3. Minnesota Statutes 2016, section 573.02, subdivision 2, is amended to read:

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

5.15 (b) When the injury is caused to a person who was a vulnerable adult, prior to the injury,  
5.16 the next of kin may maintain an action on behalf of the decedent for damages for pain and  
5.17 suffering, in addition to special damages as provided under paragraph (a). For purposes of  
5.18 this paragraph, "vulnerable adult" has the meaning given in section 626.5572, subdivision  
5.19 21.

5.20 Sec. 4. Minnesota Statutes 2016, section 626.557, subdivision 17, is amended to read:

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

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

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

6.6 (1) discharge or transfer from the facility;

6.7 (2) discharge from or termination of employment;

6.8 (3) demotion or reduction in remuneration for services;

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

6.10 ~~or~~

6.11 (5) any restriction of rights set forth in section 144.651<sub>2</sub>;

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

6.13 (7) termination of services or lease agreement;

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

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

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

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