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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 4125

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 civil law; making changes to statutory provisions affecting older and  
1.3 vulnerable adults by modifying data practices provisions; amending Minnesota  
1.4 Statutes 2016, sections 144.291, subdivision 2; 626.557, subdivision 12b.

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

1.6 Section 1. Minnesota Statutes 2016, section 144.291, subdivision 2, is amended to read:

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

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

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

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

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

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

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

2.4 (g) "Patient" means:

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

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

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

2.14 (4) except for minors who have received health care services under sections 144.341 to  
2.15 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as  
2.16 a parent or guardian in the absence of a parent or guardian.

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

2.20 (i) "Provider" means:

2.21 (1) any person who furnishes health care services and is regulated to furnish the services  
2.22 under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148D, 148F, 150A, 151, 153, or  
2.23 153A;

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

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

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

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

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

3.1 Sec. 2. Minnesota Statutes 2016, section 626.557, subdivision 12b, is amended to read:

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

3.9 (b) Data maintained by the common entry point are ~~confidential~~ private data on  
 3.10 individuals or ~~protected~~ nonpublic data as defined in section 13.02. Notwithstanding section  
 3.11 138.163, the common entry point shall maintain data for three calendar years after date of  
 3.12 receipt and then destroy the data unless otherwise directed by federal requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.27 ~~(g)~~ (k) Lead investigative agencies, prosecuting authorities, and law enforcement agencies  
5.28 may exchange not public data, as defined in section 13.02, if the agency or authority  
5.29 requesting the data determines that the data are pertinent and necessary to the requesting  
5.30 agency in initiating, furthering, or completing an investigation under this section. Data  
5.31 collected under this section must be made available to prosecuting authorities and law  
5.32 enforcement officials, local county agencies, and licensing agencies investigating the alleged

6.1 maltreatment under this section. ~~The lead investigative agency shall exchange not public~~  
6.2 ~~data with the vulnerable adult maltreatment review panel established in section 256.021 if~~  
6.3 ~~the data are pertinent and necessary for a review requested under that section.~~

6.4 Notwithstanding section 138.17, upon completion of the review, not public data received  
6.5 by the review panel must be destroyed.

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

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

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