

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 2474

(SENATE AUTHORS: SHERAN)

DATE	D-PG	OFFICIAL STATUS
03/10/2016	4946	Introduction and first reading Referred to Health, Human Services and Housing
03/29/2016		Comm report: To pass as amended Second reading

1.1 A bill for an act

1.2 relating to human services; positive supports; legislatively approving Minnesota

1.3 Rules, chapter 9544; making technical changes; amending Minnesota Statutes

1.4 2014, sections 245.8251, subdivision 2, by adding a subdivision; 252.275,

1.5 subdivision 1a; 253B.03, subdivisions 1, 6a; 256B.0659, subdivision 3;

1.6 256B.0951, subdivision 5; 256B.097, subdivision 4; 256B.77, subdivision 17;

1.7 626.5572, subdivision 2; Minnesota Statutes 2015 Supplement, section 626.556,

1.8 subdivision 2; repealing Minnesota Statutes 2014, section 245.825, subdivisions

1.9 1, 1b.

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

1.11 Section 1. Minnesota Statutes 2014, section 245.8251, is amended by adding a

1.12 subdivision to read:

1.13 Subd. 1a. **Legislative approval.** Minnesota Rules, chapter 9544, positive support

1.14 strategies and restrictive interventions is approved.

1.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.16 Sec. 2. Minnesota Statutes 2014, section 245.8251, subdivision 2, is amended to read:

1.17 Subd. 2. **Data collection.** (a) The commissioner shall, with stakeholder input,

1.18 identify data elements specific to incidents of emergency use of manual restraint and

1.19 positive support transition plans for persons receiving services from licensed facilities

1.20 and licensed services under chapter 245D and in licensed facilities and licensed services

1.21 serving persons with a developmental disability or related condition as defined in

1.22 Minnesota Rules, part 9525.0016, subpart 2, effective January 1, 2014. Licensed facilities

1.23 and licensed services shall report the data in a format and at a frequency determined by the

1.24 commissioner of human services to the commissioner and the Office of the Ombudsman

1.25 for Mental Health and Developmental Disabilities.

~~(b) Beginning July 1, 2013, licensed facilities and licensed services regulated under Minnesota Rules, parts 9525.2700 to 9525.2810, shall submit data regarding the use of all controlled procedures identified in Minnesota Rules, part 9525.2740, in a format and at a frequency determined by the commissioner to the commissioner and the Office of the Ombudsman for Mental Health and Developmental Disabilities.~~

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2014, section 252.275, subdivision 1a, is amended to read:

Subd. 1a. **Service requirements.** The methods, materials, and settings used to provide semi-independent living services to a person must be designed to:

(1) increase the person's independence in performing tasks and activities by teaching skills that reduce dependence on caregivers;

(2) provide training in an environment where the skill being taught is typically used;

(3) increase the person's opportunities to interact with nondisabled individuals who are not paid caregivers;

(4) increase the person's opportunities to use community resources and participate in community activities, including recreational, cultural, and educational resources, stores, restaurants, religious services, and public transportation;

(5) increase the person's opportunities to develop decision-making skills and to make informed choices in all aspects of daily living, including:

(i) selection of service providers;

(ii) goals and methods;

(iii) location and decor of residence;

(iv) roommates;

(v) daily routines;

(vi) leisure activities; and

(vii) personal possessions;

(6) provide daily schedules, routines, environments and interactions similar to those of nondisabled individuals of the same chronological age; and

(7) comply with section ~~245.825, subdivision 1~~ 245.8251 and the rules promulgated pursuant to section 245.8251, subdivision 1.

Sec. 4. Minnesota Statutes 2014, section 253B.03, subdivision 1, is amended to read:

Subdivision 1. **Restraints.** (a) A patient has the right to be free from restraints. Restraints shall not be applied to a patient in a treatment facility unless the head of the

treatment facility, a member of the medical staff, or a licensed peace officer who has custody of the patient determines that they are necessary for the safety of the patient or others.

(b) Restraints shall not be applied to patients with developmental disabilities except as permitted under section ~~245.825~~ 245.8251 and rules of the commissioner of human services. Consent must be obtained from the person or person's guardian except for emergency procedures as permitted under rules of the commissioner adopted under section ~~245.825~~ 245.8251.

(c) Each use of a restraint and reason for it shall be made part of the clinical record of the patient under the signature of the head of the treatment facility.

Sec. 5. Minnesota Statutes 2014, section 253B.03, subdivision 6a, is amended to read:

Subd. 6a. **Consent for treatment for developmental disability.** A patient with a developmental disability, or the patient's guardian, has the right to give or withhold consent before:

(1) the implementation of any ~~aversive or deprivation procedure~~ restrictive interventions except for emergency ~~procedures~~ use of manual restraint permitted in rules of the commissioner adopted under section ~~245.825~~ 245.8251; or

(2) the administration of psychotropic medication.

Sec. 6. Minnesota Statutes 2014, section 256B.0659, subdivision 3, is amended to read:

Subd. 3. **Noncovered personal care assistance services.** (a) Personal care assistance services are not eligible for medical assistance payment under this section when provided:

(1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal guardian, licensed foster provider, except as allowed under section 256B.0652, subdivision 10, or responsible party;

(2) in order to meet staffing or license requirements in a residential or child care setting;

(3) solely as a child care or babysitting service; or

(4) without authorization by the commissioner or the commissioner's designee.

(b) The following personal care services are not eligible for medical assistance payment under this section when provided in residential settings:

(1) when the provider of home care services who is not related by blood, marriage, or adoption owns or otherwise controls the living arrangement, including licensed or unlicensed services; or

(2) when personal care assistance services are the responsibility of a residential or program license holder under the terms of a service agreement and administrative rules.

(c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible for medical assistance reimbursement for personal care assistance services under this section include:

- (1) sterile procedures;
- (2) injections of fluids and medications into veins, muscles, or skin;
- (3) home maintenance or chore services;
- (4) homemaker services not an integral part of assessed personal care assistance services needed by a recipient;
- (5) application of ~~restraints or implementation of procedures~~ restrictive interventions under section ~~245.825~~ 245.8251;
- (6) instrumental activities of daily living for children under the age of 18, except when immediate attention is needed for health or hygiene reasons integral to the personal care services and the need is listed in the service plan by the assessor; and
- (7) assessments for personal care assistance services by personal care assistance provider agencies or by independently enrolled registered nurses.

Sec. 7. Minnesota Statutes 2014, section 256B.0951, subdivision 5, is amended to read:

Subd. 5. **Variance of certain standards prohibited.** The safety standards, rights, or procedural protections under chapter 245C and sections ~~245.825~~ 245.8251; 245.91 to 245.97; 245A.09, subdivision 2, paragraph (c), clauses (2) and (5); 245A.12; 245A.13; 252.41, subdivision 9; 256B.092, subdivisions 1b, clause (7), and 10; 626.556; 626.557, and procedures for the monitoring of psychotropic medications shall not be varied under the alternative quality assurance licensing system. The commission may make recommendations to the commissioners of human services and health or to the legislature regarding alternatives to or modifications of the rules and procedures referenced in this subdivision.

Sec. 8. Minnesota Statutes 2014, section 256B.097, subdivision 4, is amended to read:

Subd. 4. **Regional quality councils.** (a) The commissioner shall establish, as selected by the State Quality Council, regional quality councils of key stakeholders, including regional representatives of:

- (1) disability service recipients and their family members;
- (2) disability service providers;
- (3) disability advocacy groups; and
- (4) county human services agencies and staff from the Department of Human Services and Ombudsman for Mental Health and Developmental Disabilities.

5.1 (b) Each regional quality council shall:

5.2 (1) direct and monitor the community-based, person-directed quality assurance
5.3 system in this section;

5.4 (2) approve a training program for quality assurance team members under clause (13);

5.5 (3) review summary reports from quality assurance team reviews and make
5.6 recommendations to the State Quality Council regarding program licensure;

5.7 (4) make recommendations to the State Quality Council regarding the system;

5.8 (5) resolve complaints between the quality assurance teams, counties, providers,
5.9 persons receiving services, their families, and legal representatives;

5.10 (6) analyze and review quality outcomes and critical incident data reporting
5.11 incidents of life safety concerns immediately to the Department of Human Services
5.12 licensing division;

5.13 (7) provide information and training programs for persons with disabilities and their
5.14 families and legal representatives on service options and quality expectations;

5.15 (8) disseminate information and resources developed to other regional quality
5.16 councils;

5.17 (9) respond to state-level priorities;

5.18 (10) establish regional priorities for quality improvement;

5.19 (11) submit an annual report to the State Quality Council on the status, outcomes,
5.20 improvement priorities, and activities in the region;

5.21 (12) choose a representative to participate on the State Quality Council and assume
5.22 other responsibilities consistent with the priorities of the State Quality Council; and

5.23 (13) recruit, train, and assign duties to members of quality assurance teams, taking
5.24 into account the size of the service provider, the number of services to be reviewed,
5.25 the skills necessary for the team members to complete the process, and ensure that no
5.26 team member has a financial, personal, or family relationship with the facility, program,
5.27 or service being reviewed or with anyone served at the facility, program, or service.

5.28 Quality assurance teams must be comprised of county staff, persons receiving services
5.29 or the person's families, legal representatives, members of advocacy organizations,
5.30 providers, and other involved community members. Team members must complete
5.31 the training program approved by the regional quality council and must demonstrate
5.32 performance-based competency. Team members may be paid a per diem and reimbursed
5.33 for expenses related to their participation in the quality assurance process.

5.34 (c) The commissioner shall monitor the safety standards, rights, and procedural
5.35 protections for the monitoring of psychotropic medications and those identified under
5.36 sections ~~245.825~~ 245.8251; 245.91 to 245.97; 245A.09, subdivision 2, paragraph (c),

6.1 clauses (2) and (5); 245A.12; 245A.13; 252.41, subdivision 9; 256B.092, subdivision 1b,
6.2 clause (7); 626.556; and 626.557.

6.3 (d) The regional quality councils may hire staff to perform the duties assigned in
6.4 this subdivision.

6.5 (e) The regional quality councils may charge fees for their services.

6.6 (f) The quality assurance process undertaken by a regional quality council consists of
6.7 an evaluation by a quality assurance team of the facility, program, or service. The process
6.8 must include an evaluation of a random sample of persons served. The sample must be
6.9 representative of each service provided. The sample size must be at least five percent but
6.10 not less than two persons served. All persons must be given the opportunity to be included
6.11 in the quality assurance process in addition to those chosen for the random sample.

6.12 (g) A facility, program, or service may contest a licensing decision of the regional
6.13 quality council as permitted under chapter 245A.

6.14 Sec. 9. Minnesota Statutes 2014, section 256B.77, subdivision 17, is amended to read:

6.15 Subd. 17. **Approval of alternatives.** The commissioner may approve alternatives to
6.16 administrative rules if the commissioner determines that appropriate alternative measures
6.17 are in place to protect the health, safety, and rights of enrollees and to assure that services
6.18 are of sufficient quality to produce the outcomes described in the personal support plans.
6.19 Prior approved waivers, if needed by the demonstration project, shall be extended. The
6.20 commissioner shall not waive the rights or procedural protections under sections ~~245.825~~
6.21 245.8251; 245.91 to 245.97; 252.41, subdivision 9; 256B.092, subdivision 10; 626.556;
6.22 and 626.557; or procedures for the monitoring of psychotropic medications. Prohibited
6.23 practices as defined in statutes and rules governing service delivery to eligible individuals
6.24 are applicable to services delivered under this demonstration project.

6.25 Sec. 10. Minnesota Statutes 2015 Supplement, section 626.556, subdivision 2, is
6.26 amended to read:

6.27 Subd. 2. **Definitions.** As used in this section, the following terms have the meanings
6.28 given them unless the specific content indicates otherwise:

6.29 (a) "Accidental" means a sudden, not reasonably foreseeable, and unexpected
6.30 occurrence or event which:

6.31 (1) is not likely to occur and could not have been prevented by exercise of due
6.32 care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

(b) "Commissioner" means the commissioner of human services.

(c) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245D;

(2) a school as defined in section 120A.05, subdivisions 9, 11, and 13; and chapter 124E; or

(3) a nonlicensed personal care provider organization as defined in section 256B.0625, subdivision 19a.

(d) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege sexual abuse or substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(e) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve sexual abuse or substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245D; under sections 144.50 to 144.58 and 241.021; in a school as defined in section 120A.05, subdivisions 9, 11, and 13, and chapter 124E; or in a nonlicensed personal care provider association as defined in section 256B.0625, subdivision 19a.

(f) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(g) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(h) "Nonmaltreatment mistake" means:

(1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;

(2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;

(3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;

(4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

(5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

(i) "Operator" means an operator or agency as defined in section 245A.02.

(j) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(k) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 125A.0942 or ~~245.825~~ 245.8251.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following:

(1) throwing, kicking, burning, biting, or cutting a child;

- 10.1 (2) striking a child with a closed fist;
- 10.2 (3) shaking a child under age three;
- 10.3 (4) striking or other actions which result in any nonaccidental injury to a child
- 10.4 under 18 months of age;
- 10.5 (5) unreasonable interference with a child's breathing;
- 10.6 (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- 10.7 (7) striking a child under age one on the face or head;
- 10.8 (8) striking a child who is at least age one but under age four on the face or head,
- 10.9 which results in an injury;
- 10.10 (9) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled
- 10.11 substances which were not prescribed for the child by a practitioner, in order to control or
- 10.12 punish the child; or other substances that substantially affect the child's behavior, motor
- 10.13 coordination, or judgment or that results in sickness or internal injury, or subjects the
- 10.14 child to medical procedures that would be unnecessary if the child were not exposed
- 10.15 to the substances;
- 10.16 (10) unreasonable physical confinement or restraint not permitted under section
- 10.17 609.379, including but not limited to tying, caging, or chaining; or
- 10.18 (11) in a school facility or school zone, an act by a person responsible for the child's
- 10.19 care that is a violation under section 121A.58.
- 10.20 (l) "Practice of social services," for the purposes of subdivision 3, includes but is
- 10.21 not limited to employee assistance counseling and the provision of guardian ad litem and
- 10.22 parenting time expeditor services.
- 10.23 (m) "Report" means any communication received by the local welfare agency,
- 10.24 police department, county sheriff, or agency responsible for child protection pursuant to
- 10.25 this section that describes neglect or physical or sexual abuse of a child and contains
- 10.26 sufficient content to identify the child and any person believed to be responsible for the
- 10.27 neglect or abuse, if known.
- 10.28 (n) "Sexual abuse" means the subjection of a child by a person responsible for the
- 10.29 child's care, by a person who has a significant relationship to the child, as defined in
- 10.30 section 609.341, or by a person in a position of authority, as defined in section 609.341,
- 10.31 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
- 10.32 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
- 10.33 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
- 10.34 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
- 10.35 abuse also includes any act which involves a minor which constitutes a violation of
- 10.36 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes

11.1 threatened sexual abuse which includes the status of a parent or household member
11.2 who has committed a violation which requires registration as an offender under section
11.3 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section
11.4 243.166, subdivision 1b, paragraph (a) or (b).

11.5 (o) "Substantial child endangerment" means a person responsible for a child's care,
11.6 by act or omission, commits or attempts to commit an act against a child under their
11.7 care that constitutes any of the following:

11.8 (1) egregious harm as defined in section 260C.007, subdivision 14;

11.9 (2) abandonment under section 260C.301, subdivision 2;

11.10 (3) neglect as defined in paragraph (g), clause (2), that substantially endangers the
11.11 child's physical or mental health, including a growth delay, which may be referred to as
11.12 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

11.13 (4) murder in the first, second, or third degree under section 609.185, 609.19, or
11.14 609.195;

11.15 (5) manslaughter in the first or second degree under section 609.20 or 609.205;

11.16 (6) assault in the first, second, or third degree under section 609.221, 609.222, or
11.17 609.223;

11.18 (7) solicitation, inducement, and promotion of prostitution under section 609.322;

11.19 (8) criminal sexual conduct under sections 609.342 to 609.3451;

11.20 (9) solicitation of children to engage in sexual conduct under section 609.352;

11.21 (10) malicious punishment or neglect or endangerment of a child under section
11.22 609.377 or 609.378;

11.23 (11) use of a minor in sexual performance under section 617.246; or

11.24 (12) parental behavior, status, or condition which mandates that the county attorney
11.25 file a termination of parental rights petition under section 260C.503, subdivision 2.

11.26 (p) "Threatened injury" means a statement, overt act, condition, or status that
11.27 represents a substantial risk of physical or sexual abuse or mental injury. Threatened
11.28 injury includes, but is not limited to, exposing a child to a person responsible for the
11.29 child's care, as defined in paragraph (j), clause (1), who has:

11.30 (1) subjected a child to, or failed to protect a child from, an overt act or condition
11.31 that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a
11.32 similar law of another jurisdiction;

11.33 (2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph
11.34 (b), clause (4), or a similar law of another jurisdiction;

11.35 (3) committed an act that has resulted in an involuntary termination of parental rights
11.36 under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction.

A child is the subject of a report of threatened injury when the responsible social services agency receives birth match data under paragraph (q) from the Department of Human Services.

(q) Upon receiving data under section 144.225, subdivision 2b, contained in a birth record or recognition of parentage identifying a child who is subject to threatened injury under paragraph (p), the Department of Human Services shall send the data to the responsible social services agency. The data is known as "birth match" data. Unless the responsible social services agency has already begun an investigation or assessment of the report due to the birth of the child or execution of the recognition of parentage and the parent's previous history with child protection, the agency shall accept the birth match data as a report under this section. The agency may use either a family assessment or investigation to determine whether the child is safe. All of the provisions of this section apply. If the child is determined to be safe, the agency shall consult with the county attorney to determine the appropriateness of filing a petition alleging the child is in need of protection or services under section 260C.007, subdivision 6, clause (16), in order to deliver needed services. If the child is determined not to be safe, the agency and the county attorney shall take appropriate action as required under section 260C.503, subdivision 2.

(r) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Sec. 11. Minnesota Statutes 2014, section 626.5572, subdivision 2, is amended to read:

Subd. 2. **Abuse.** "Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

(1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;
(2) the use of drugs to injure or facilitate crime as defined in section 609.235;
(3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section ~~245.825~~ 245.8251.

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means

14.1 or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu
14.2 of medical care, provided that this is consistent with the prior practice or belief of the
14.3 vulnerable adult or with the expressed intentions of the vulnerable adult.

14.4 (g) For purposes of this section, a vulnerable adult is not abused for the sole reason
14.5 that the vulnerable adult, who is not impaired in judgment or capacity by mental or
14.6 emotional dysfunction or undue influence, engages in consensual sexual contact with:

14.7 (1) a person, including a facility staff person, when a consensual sexual personal
14.8 relationship existed prior to the caregiving relationship; or

14.9 (2) a personal care attendant, regardless of whether the consensual sexual personal
14.10 relationship existed prior to the caregiving relationship.

14.11 Sec. 12. **REPEALER.**

14.12 Minnesota Statutes 2014, section 245.825, subdivisions 1 and 1b, are repealed.

14.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

245.825 AVERSIVE AND DEPRIVATION PROCEDURES; LICENSED FACILITIES AND SERVICES.

Subdivision 1. **Rules governing aversive and deprivation procedures.** The commissioner of human services shall by October, 1983, promulgate rules governing the use of aversive and deprivation procedures in all licensed facilities and licensed services serving persons with developmental disabilities, as defined in section 252.27, subdivision 1a. No provision of these rules shall encourage or require the use of aversive and deprivation procedures. The rules shall prohibit: (1) the application of certain aversive and deprivation procedures in facilities except as authorized and monitored by the commissioner; (2) the use of aversive and deprivation procedures that restrict the consumers' normal access to nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, and necessary clothing; and (3) the use of faradic shock without a court order. The rule shall further specify that consumers may not be denied ordinary access to legal counsel and next of kin. In addition, the rule may specify other prohibited practices and the specific conditions under which permitted practices are to be carried out. For any persons receiving faradic shock, a plan to reduce and eliminate the use of faradic shock shall be in effect upon implementation of the procedure.

Subd. 1b. **Review and approval.** Notwithstanding the provisions of Minnesota Rules, parts 9525.2700 to 9525.2810, the commissioner may designate the county case manager to authorize the use of controlled procedures as defined in Minnesota Rules, parts 9525.2710, subpart 9, and 9525.2740, subparts 1 and 2, after review and approval by the interdisciplinary team and the internal review committee as required in Minnesota Rules, part 9525.2750, subparts 1a and 2. Use of controlled procedures must be reported to the commissioner in accordance with the requirements of Minnesota Rules, part 9525.2750, subpart 2a.