SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 3437

(SENATE AUTHORS: HOUSLEY, Relph, Ruud, Benson and Abeler)

DATE	D-PG	OFFICIAL STATUS
03/15/2018	6517	Introduction and first reading Referred to Aging and Long-Term Care Policy
03/21/2018		Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy Authors added Relph; Ruud; Benson; Abeler

A bill for an act

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

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

Section 1. **CITATION.**

Sections 1 to 63 may be cited as the "Eldercare and Vulnerable Adult Protection Act of 2018."

Sec. 2. Minnesota Statutes 2016, section 144.6501, subdivision 3, is amended to read:

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

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

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

(d) The admission contract must contain the name, address, and contact information of the current owner, manager, and if different from the owner, license holder of the facility, and the name and physical mailing address of at least one natural person who is authorized to accept service of process.

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

~~(e)~~ (f) All admission contracts must state in bold capital letters the following notice to applicants for admission: "NOTICE TO APPLICANTS FOR ADMISSION. READ YOUR ADMISSION CONTRACT. ORAL STATEMENTS OR COMMENTS MADE BY THE FACILITY OR YOU OR YOUR REPRESENTATIVE ARE NOT PART OF YOUR ADMISSION CONTRACT UNLESS THEY ARE ALSO IN WRITING. DO NOT RELY ON ORAL STATEMENTS OR COMMENTS THAT ARE NOT INCLUDED IN THE WRITTEN ADMISSION CONTRACT."

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

Subd. 3a. **Changes to contracts of admission.** Within 30 days of a change in ownership, management, or license holder, the facility must provide prompt written notice to the resident or resident's legal representative of a new owner, manager, and if different from the owner, license holder of the facility, and the name and physical mailing address of any new or additional natural person not identified in the admission contract who is newly authorized to accept service of process.

Sec. 4. **[144.6502] ELECTRONIC MONITORING IN HEALTH CARE FACILITIES.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given.

(b) "Commissioner" means the commissioner of health.

(c) "Electronic monitoring device" means a surveillance instrument with a fixed position video camera or an audio recording device that is installed in a resident's room or private living space and broadcasts or records activity or sounds occurring in the room or private living space.

(d) "Facility" means a facility that is licensed as a nursing home under chapter 144A or as a boarding care home under sections 144.50 to 144.56, or registered as a housing with services establishment under chapter 144D that is also subject to chapter 144G.

(e) "Legal representative" means a court-appointed guardian or other person with legal authority to make decisions about health care services for the resident, including an individual who is an interested person, as defined in section 626.5572, subdivision 12a.

(f) "Resident" means a person 18 years of age or older residing in a facility.

Subd. 2. **Electronic monitoring authorized.** (a) A facility must allow a resident or a resident's legal representative to conduct electronic monitoring of the resident's room or private living space as provided in this section.

(b) Nothing in this section allows the use of an electronic monitoring device to take still photographs or for the nonconsensual interception of private communications.

Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in this subdivision, a resident must consent in writing on a notification and consent form prescribed by the commissioner to electronic monitoring in the resident's room or private living space. If the resident has not affirmatively objected to electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the resident's legal representative may consent on behalf of the resident. For purposes of this subdivision, a resident affirmatively objects when the resident orally, visually, or through the use of auxiliary aids or services declines electronic monitoring. The resident's response must be documented on the notification and consent form.

(b) Prior to a resident's legal representative consenting on behalf of a resident, the resident must be asked by the resident's legal representative if the resident wants electronic monitoring to be conducted. The resident's legal representative must explain to the resident:

(1) the type of electronic monitoring device to be used;

(2) the standard conditions that may be placed on the electronic monitoring device's use, including those listed in subdivision 5;

(3) with whom the recording may be shared under this section; and

(4) the resident's ability to decline all recording.

(c) A resident or roommate may consent to electronic monitoring with any conditions of the resident's or roommate's choosing, including the list of standard conditions provided in subdivision 5. A resident or roommate may request that the electronic monitoring device be turned off or the visual or audio recording component of the electronic monitoring device be blocked at any time.

(d) Prior to implementing electronic monitoring, a resident must obtain the written consent of any other resident residing in the room or private living space on the notification and consent form prescribed by the commissioner. Except as otherwise provided in this subdivision, a roommate must consent in writing to electronic monitoring in the resident's room or private living space. If the roommate has not affirmatively objected to the electronic monitoring in accordance with this subdivision and the roommate's physician determines that the roommate lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the roommate's legal representative may consent on behalf of the roommate.

(e) Any resident conducting electronic monitoring must obtain consent from any new roommate before the resident may resume authorized electronic monitoring. If a new roommate does not consent to electronic monitoring and the resident conducting the electronic monitoring does not remove or disable the electronic monitoring device, the facility must remove the electronic monitoring device.

Subd. 4. **Withdrawal of consent; refusal of roommate to consent.** (a) Consent may be withdrawn by the resident or roommate at any time and the withdrawal of consent must be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the electronic monitoring does not remove or disable the electronic monitoring device, the facility must remove the electronic monitoring device.

(b) If a resident of a nursing home or boarding care home who is residing in a shared room wants to conduct electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct electronic monitoring. A nursing home or boarding care home has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct electronic monitoring when upon notification that a roommate has not consented to the use of an electronic monitoring device in the resident's room, the nursing home or boarding care home offers to move either resident to another shared room that is available at the time of the

request. If a resident chooses to reside in a private room in a nursing home or boarding care home in order to accommodate the use of an electronic monitoring device, the resident must pay the private room rate. If a nursing home or boarding care home is unable to accommodate a resident due to lack of space, the nursing home or boarding care home must reevaluate the request every two weeks until the request is fulfilled. A nursing home or boarding care home is not required to provide a private room or a single-bed room to a resident who is not a private-pay resident.

Subd. 5. **Notice to the facility; form requirements.** (a) Electronic monitoring may begin only after the resident who intends to install an electronic monitoring device completes a notification and consent form prescribed by the commissioner and submits the form to the facility.

(b) The notification and consent form must include, at a minimum, the following information:

(1) the resident's signed consent to electronic monitoring or the signature of the resident's legal representative, if applicable. If a person other than the resident signs the consent form, the form must document the following:

(i) the date the resident was asked if the resident wants electronic monitoring to be conducted;

(ii) who was present when the resident was asked; and

(iii) an acknowledgment that the resident did not affirmatively object;

(2) the resident's roommate's signed consent or the signature of the roommate's legal representative, if applicable. If a roommate's legal representative signs the consent form, the form must document the following:

(i) the date the roommate was asked if the roommate consents to electronic monitoring;

(ii) who was present when the roommate was asked; and

(iii) an acknowledgment that the roommate did not affirmatively object;

(3) the type of electronic monitoring device to be used;

(4) any installation needs, such as mounting of a device to a wall or ceiling;

(5) the proposed date of installation for scheduling purposes;

(6) a list of standard conditions or restrictions that the resident or a roommate may elect to place on the use of the electronic monitoring device, including, but not limited to:

(i) prohibiting audio recording;

(ii) prohibiting video recording;

(iii) prohibiting broadcasting of audio or video;

(iv) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

(v) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed; and

(vi) turning off the electronic monitoring device for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

(7) any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device.

(c) A copy of the completed notification and consent form must be placed in the resident's and any roommate's clinical records and a copy must be provided to the resident and the resident's roommate, if applicable.

(d) The commissioner shall prescribe the notification and consent form required in this section no later than January 1, 2019, and shall make the form available on the department's Web site.

(e) Beginning January 1, 2019, facilities must make the notification and consent form available to the residents and inform residents of their option to conduct electronic monitoring of their rooms or private living spaces.

(f) Any resident, legal representative of a resident, or other person conducting electronic monitoring of a resident's room prior to enactment of this section must comply with the requirements of this section by January 1, 2019.

Subd. 6. **Cost and installation.** (a) A resident choosing to conduct electronic monitoring must do so at the resident's own expense, including paying purchase, installation, maintenance, and removal costs.

(b) If a resident chooses to install an electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident may be responsible for contracting with an Internet service provider.

(c) The facility shall make a reasonable attempt to accommodate the resident's installation needs, including allowing access to the facility's telecommunications or equipment room. A facility has the burden of proving that a requested accommodation is not reasonable.

(d) All electronic monitoring device installations and supporting services must be UL-listed.

Subd. 7. **Notice to visitors.** (a) A facility shall post a sign at each facility entrance accessible to visitors that states "Security cameras and audio devices may be present to record persons and activities."

(b) The facility is responsible for installing and maintaining the signage required in this subdivision.

Subd. 8. **Obstruction of electronic monitoring devices.** (a) A person must not knowingly hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a resident's room or private living space without the permission of the resident or the resident's legal representative.

(b) It is not a violation of this subdivision if a person turns off the electronic monitoring device or blocks the visual recording component of the electronic monitoring device at the direction of the resident or the resident's legal representative, or if consent has been withdrawn.

Subd. 9. **Dissemination of recordings.** (a) A facility may not access any video or audio recording created through electronic monitoring without the written consent of the resident or the resident's legal representative.

(b) Except as required under other law, a recording or copy of a recording made as provided in this section may only be disseminated for the purpose of addressing health, safety, or welfare concerns of a resident or residents.

Subd. 10. **Liability.** (a) A facility is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a resident's legal representative for any purpose not authorized by this section.

(b) A facility is not civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted as provided in this section.

Subd. 11. **Resident protections.** A facility must not:

(1) refuse to admit a potential resident or remove a resident because the facility disagrees with the potential resident's or the resident's decisions regarding electronic monitoring;

(2) intentionally retaliate or discriminate against any resident for consenting or refusing to consent to electronic monitoring under this section; or

(3) prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required under this section.

EFFECTIVE DATE. This section is effective January 1, 2019.

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

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

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

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

(b) "Patient" means:

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

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

(3) for purposes of subdivisions 1, 4 to 9, 12, 13, 15, 16, ~~and~~ 18 to 20, ~~"patient" also means~~ and 34, a person who receives health care services at an outpatient surgical center or at a birth center licensed under section 144.615~~. "Patient" also means a minor who is admitted to a residential program as defined in section 253C.01.~~; and

(4) for purposes of subdivisions 1, 3 to 16, 18, 20 ~~and~~, 30, ~~"patient" also means~~ and 34, any person who is receiving mental health treatment on an outpatient basis or in a community support program or other community-based program.

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

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

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

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

(4) for purposes of ~~all subdivisions except~~ subdivisions ~~28 and 29~~ 1 to 27, ~~"resident" also means a person who is admitted to~~ and 30 to 34, a facility licensed as a board and lodging facility under Minnesota Rules, ~~parts 4625.0100 to 4625.2355~~ chapter 4625, or a supervised living facility under Minnesota Rules, ~~parts 4665.0100 to 4665.9900~~ chapter 4665, and which operates a rehabilitation program licensed under Minnesota Rules, parts ~~9530.6405~~ 9530.6510 to 9530.6590.

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

(1) an acute care inpatient facility;

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

(3) for the purposes of subdivisions 1, 4 to 9, 12, 13, 15, 16, 18 to 20, and 34, an outpatient surgical center or a birth center licensed under section 144.615;

(4) for the purposes of subdivisions 1, 3 to 16, 18, 20, 30, and 34, a setting in which outpatient mental health services are provided, or a community support program or other community-based program providing mental health treatment;

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

(6) a nursing home;

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

(8) for the purposes of subdivisions 1 to 27 and 30 to 34, a facility licensed as a board and lodging facility under Minnesota Rules, parts 4625.0100 to 4625.2355, or a supervised living facility under Minnesota Rules, parts 4665.0100 to 4665.9900, and which operates a rehabilitation program licensed under Minnesota Rules, parts 9530.6405 to 9530.6590.

(e) "Interested person" has the meaning given under section 626.5572, subdivision 12a. An interested person does not include a person whose authority has been restricted by the patient or resident or by a court.

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

Subd. 4. **Information about rights.** (a) Patients and residents shall, at admission, be told that there are legal rights for their protection during their stay at the facility or throughout their course of treatment and maintenance in the community and that these are described in an accompanying written statement in plain language and in terms patients and residents can understand of the applicable rights and responsibilities set forth in this section. The written statement must also include the name and address of the state or county agency to contact for additional information or assistance. In the case of patients admitted to residential programs as defined in section 253C.01, the written statement shall also describe the right of a person 16 years old or older to request release as provided in section 253B.04, subdivision 2, and shall list the names and telephone numbers of individuals and organizations that provide advocacy and legal services for patients in residential programs.

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

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

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

Subd. 6. **Appropriate health care.** Patients and residents shall have the right to appropriate medical and personal care based on individual needs. Appropriate care for residents means care designed to enable residents to achieve their highest level of physical and mental functioning., provided with reasonable regularity and continuity of staff assignment as far as facility policy allows by persons who are properly trained and competent

to perform their duties. This right is limited where the service is not reimbursable by public or private resources.

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

Subd. 14. **Freedom from maltreatment.** (a) Patients and residents shall be free from maltreatment as defined in the Vulnerable Adults Protection Act. "Maltreatment" means conduct described in section 626.5572, subdivision 15, or the intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress. Patients and residents have the right to notification from the lead investigative agency regarding a report of alleged maltreatment, disposition of a report, and appeal rights, as provided under section 626.557, subdivision 9c.

(b) Every patient and resident shall also be free from nontherapeutic chemical and physical restraints, except in fully documented emergencies, or as authorized in writing after examination by a patient's or resident's physician for a specified and limited period of time, and only when necessary to protect the resident from self-injury or injury to others.

Sec. 10. Minnesota Statutes 2016, section 144.651, subdivision 16, is amended to read:

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

Sec. 11. Minnesota Statutes 2016, section 144.651, subdivision 17, is amended to read:

Subd. 17. **Disclosure of services available.** Patients and residents shall be informed, prior to or at the time of admission and during their stay, of services which are included in the facility's basic per diem or daily room rate and that other services are available at additional charges. Patients and residents have the right to at least 30 days' advance notice of changes in services or charges unrelated to changes in the patient's or resident's service or care needs. A facility may not collect a nonrefundable deposit, unless it is applied to the

first month's charges. Facilities shall make every effort to assist patients and residents in obtaining information regarding whether the Medicare or medical assistance program will pay for any or all of the aforementioned services.

Sec. 12. Minnesota Statutes 2016, section 144.651, subdivision 20, is amended to read:

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

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

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

(d) Every acute care inpatient facility, every residential program as defined in section 253C.01, every nonacute care facility, and every facility employing more than two people that provides outpatient mental health services shall have a written internal grievance procedure that, at a minimum, sets forth the process to be followed; specifies time limits, including time limits for facility response; provides for the patient or resident to have the assistance of an advocate; requires a written response to written grievances; and provides for a timely decision by an impartial decision maker if the grievance is not otherwise resolved. Compliance by hospitals, residential programs as defined in section 253C.01 which are hospital-based primary treatment programs, and outpatient surgery centers with section

144.691 and compliance by health maintenance organizations with section 62D.11 is deemed to be compliance with the requirement for a written internal grievance procedure.

Sec. 13. Minnesota Statutes 2016, section 144.651, subdivision 21, is amended to read:

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

Sec. 14. Minnesota Statutes 2016, section 144.651, is amended by adding a subdivision to read:

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

(1) files a complaint or grievance or asserts any rights on behalf of the client or resident as provided under subdivision 1, paragraph (c), clause (22);

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

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

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

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

(c) For purposes of this section, "adverse action" means actions listed in section 626.557, subdivision 17, paragraph (c).

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

Subd. 35. **Electronic monitoring.** A patient, resident, or interested person has the right to install and use electronic monitoring, provided the requirements of section 144.6502 are met.

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

(a) Deceptive marketing and business practices are prohibited.

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

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

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

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

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

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

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

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

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

Sec. 17. Minnesota Statutes 2016, section 144A.10, subdivision 1, is amended to read:

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

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

Sec. 18. Minnesota Statutes 2016, section 144A.44, is amended to read:

144A.44 HOME CARE BILL OF RIGHTS.

Subdivision 1. **Statement of rights.** (a) For the purposes of this section, "provider" includes home care providers licensed under this chapter, housing with service establishments registered under chapter 144D, and individuals or organizations exempt from home care licensure by section 144A.471, subdivision 8. For the purposes of this section, "services" means home care services as defined in section 144A.43, subdivision 3; supportive services as defined in section 144D.01, subdivision 5; and health-related services as defined in section 144D.01, subdivision 6. For the purposes of this section, "service plan" includes a housing with services contract and a lease agreement with a housing with services establishment.

(b) All providers must comply with this section. No provider may require or request a person to waive any of the rights listed in this section at any time or for any reason, including as a condition of initiating services or entering into a contract or lease.

(c) A person who receives ~~home care~~ services has ~~these rights~~ the right to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) ~~the right to~~ complain to staff and others of their choice about services that are provided, or fail to be provided, and the lack of courtesy or respect to the client or the client's property, and the right to recommend changes in policies and services, free from retaliation, including the threat of termination of services or a service plan;

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

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

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

(23) notification from the lead investigative agency regarding a report of alleged maltreatment, disposition of a report, and appeal rights, as provided under section 626.557, subdivision 9c;

(24) Internet service at the person's own expense, unless it is provided by the provider; and

(25) place an electronic monitoring device in the person's own private space, provided the requirements of section 144.6502 are met.

(d) Providers must:

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

(2) provide the names and telephone numbers of individuals and organizations that provide advocacy and legal services for clients seeking to assert their rights under this section;

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

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

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

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

Subd. 3. **Public enforcement of rights.** The commissioner shall enforce this section and the home care bill of rights requirement against home care providers exempt from licensure in the same manner as for licensees.

Subd. 4. **Retaliation prohibited.** (a) A provider must not retaliate against a client, employee, or interested person who:

(1) files a complaint or grievance or asserts any rights on behalf of the client or resident as provided under subdivision 1, paragraph (c), clause (22);

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

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

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

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

(c) For purposes of this section, "adverse action" means actions listed in section 626.557, subdivision 17, paragraph (c).

Sec. 19. Minnesota Statutes 2016, section 144A.441, is amended to read:

144A.441 ASSISTED LIVING BILL OF RIGHTS ADDENDUM.

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

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

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

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

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

Sec. 20. Minnesota Statutes 2016, section 144A.442, is amended to read:

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

Subdivision 1. **Contents of service termination notice.** If an arranged home care provider, as defined in section 144D.01, subdivision 2a, who is not also Medicare certified terminates a service agreement or service plan with an assisted living client, as defined in section 144G.01, subdivision 3, the home care provider shall provide the assisted living client and the legal or designated representatives of the client, if any, with a written notice of termination ~~which~~ that includes the following information:

(1) the effective date of termination;

(2) the reason for termination;

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

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

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

(6) the name and contact information of a representative of the home care provider with whom the client may discuss the notice of termination;

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

(8) a statement that the notice of termination of home care services by the home care provider does not constitute notice of termination of the housing with services contract with a housing with services establishment.

Subd. 2. **Discontinuation of services.** An arranged home care provider's responsibilities when voluntarily discontinuing services to all clients are governed by section 144A.4791, subdivision 10.

Sec. 21. Minnesota Statutes 2016, section 144A.45, subdivision 1, is amended to read:

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

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

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

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

(4) standards for provision of home care services;

(5) standards for medication management;

(6) standards for supervision of home care services;

(7) standards for client evaluation or assessment;

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

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

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

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

Sec. 22. Minnesota Statutes 2016, section 144A.45, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

Sec. 23. Minnesota Statutes 2016, section 144A.474, subdivision 1, is amended to read:

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

Sec. 24. Minnesota Statutes 2016, section 144A.474, subdivision 2, is amended to read:

Subd. 2. **Types of home care surveys.** (a) "Initial full survey" means the survey of a new temporary licensee conducted after the department is notified or has evidence that the temporary licensee is providing home care services to determine if the provider is in compliance with home care requirements. Initial full surveys must be completed within 14 months after the department's issuance of a temporary basic or comprehensive license.

(b) "Core survey" means periodic inspection of home care providers to determine ongoing compliance with the home care requirements, focusing on the essential health and safety requirements. Core surveys are not available to home care providers during the provider's first three years of operation. Core surveys are available to licensed home care providers who have been licensed for more than three years and surveyed at least once in the past ~~three~~ four years with the latest survey having no widespread violations beyond Level 1 nor a violation of Level 3 or greater, as provided in subdivision 11. Core surveys are not available to home care providers with a past violation of Level 3 or greater until the home care provider has three consecutive annual full surveys having no violations above Level 1. Providers must also not have had any substantiated licensing complaints, substantiated complaints against the agency under the Vulnerable Adults Act or Maltreatment of Minors Act, or an enforcement action as authorized in section 144A.475 in the past three years.

(1) The core survey for basic home care providers must review compliance in the following areas:

(i) reporting of maltreatment;

(ii) orientation to and implementation of the home care bill of rights;

(iii) statement of home care services;

(iv) initial evaluation of clients and initiation of services;

(v) client review and monitoring;

(vi) service plan implementation and changes to the service plan;

(vii) client complaint and investigative process;

(viii) competency of unlicensed personnel; and

(ix) infection control.

(2) For comprehensive home care providers, the core survey must include everything in the basic core survey plus these areas:

(i) delegation to unlicensed personnel;

(ii) assessment, monitoring, and reassessment of clients; and

(iii) medication, treatment, and therapy management.

(c) "Full survey" means the ~~periodic~~ annual inspection of home care providers to determine ongoing compliance with the home care requirements that cover the core survey areas and all the legal requirements for home care providers. A full survey is conducted for all temporary licensees and for providers who do not meet the requirements needed for a core survey, and when a surveyor identifies unacceptable client health or safety risks during a core survey. A full survey must include all the tasks identified as part of the core survey and any additional review deemed necessary by the department, including additional observation, interviewing, or records review of additional clients and staff.

(d) "Follow-up surveys" means surveys conducted to determine if a home care provider has corrected deficient issues and systems identified during a core survey, full survey, or complaint investigation. Follow-up surveys may be conducted via phone, e-mail, fax, mail, or on-site reviews.

~~Follow-up surveys, other than complaint~~ (e) All surveys~~,~~ shall be concluded with an exit conference and written information provided on the process for requesting a reconsideration of the survey results. This paragraph does not apply to on-site visits performed as part of a

maltreatment or licensing complaint investigation conducted under sections 144A.51 to 144A.54.

~~(e)~~ (f) Upon receiving information alleging that a home care provider has violated or is currently violating a requirement of sections 144A.43 to 144A.482, the commissioner shall investigate the complaint according to sections 144A.51 to 144A.54.

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

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

(b) The commissioner shall mail copies of any correction order to the last known address of the home care provider, or electronically scan the correction order and e-mail it to the last known home care provider e-mail address, within 30 calendar days after the survey exit date. A copy of each correction order, the amount of any immediate fine issued, the correction plan, and copies of any documentation supplied to the commissioner shall be kept on file by the home care provider, and public documents shall be made available for viewing by any person upon request. Copies may be kept electronically.

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

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

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

correction order for the new violation and may impose an immediate fine for the new violation.

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

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

(1) Level 1, no fines or enforcement;

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

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

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

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

(1) level of violation:

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

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

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

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

(2) scope of violation:

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

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

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

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

(d) The license holder must pay the fines assessed on or before the payment date specified on a correction order or on a notice of noncompliance with a correction order. If the license holder fails to ~~fully comply with the order~~ pay a fine by the specified date, the commissioner may issue a ~~second~~ late payment fine or suspend the license until the license holder ~~complies by paying the fine~~ pays all outstanding fines. A timely appeal shall stay payment of the late payment fine until the commissioner issues a final order.

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

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

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

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

(i) Fines collected under this subdivision shall be deposited in the state government special revenue fund and credited to an account separate from the revenue collected under section 144A.472. Subject to an appropriation by the legislature, the revenue from the fines

collected must be used by the commissioner for special projects to improve home care in Minnesota as recommended by the advisory council established in section 144A.4799.

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

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

(1) the effective date of termination;

(2) the reason for termination;

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

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

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

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

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

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

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

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

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

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

(d) Request and receive access to relevant information, records, incident reports, or documents in the possession of an administrative agency, a health care provider, a home care provider, a residential care home, or a health facility, and issue investigative subpoenas to individuals and facilities for oral information and written information, including privileged information which the director deems necessary for the discharge of responsibilities. For purposes of investigation and securing information to determine violations, the director need not present a release, waiver, or consent of an individual. The identities of patients or residents must be kept private as defined by section 13.02, subdivision 12.

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

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

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

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

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

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

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

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

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

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

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

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

144D.02 REGISTRATION REQUIRED.

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

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

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

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

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

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

(4) the name and physical mailing address of at least one natural person who is authorized to accept service of process on behalf of the owner or owners and managing agent;

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

(6) the term of the contract;

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

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

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

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

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

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

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

(14) billing and payment procedures and requirements;

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

(16) a statement regarding the availability of public funds for payment for residence or services in the establishment; ~~and~~

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

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

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

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

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

Sec. 35. **[144D.095] TERMINATION OF SERVICES.**

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

Sec. 36. Minnesota Statutes 2016, section 144G.01, subdivision 1, is amended to read:

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

Sec. 37. **[144G.07] TERMINATION OF LEASE.**

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

Sec. 38. **[144G.08] TERMINATION OF SERVICES.**

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

Sec. 39. Minnesota Statutes 2017 Supplement, section 256.045, subdivision 3, is amended to read:

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

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

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

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

(4) except as provided under chapter 245C~~,~~:

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

(ii) any vulnerable adult who is the subject of a maltreatment investigation under section 626.557 or, unless restricted by the vulnerable adult or by a court, an interested person as defined in section 626.5572, subdivision 12a, after the right to administrative reconsideration under section 626.557, subdivision 9d, has been exercised;

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

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

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

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

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

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

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

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

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

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

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), clauses (4), (9), and (10), is only

available when there is no district court action pending. If such action is filed in district court while an administrative review is pending that arises out of some or all of the events or circumstances on which the appeal is based, the administrative review must be suspended until the judicial actions are completed. If the district court proceedings are completed, dismissed, or overturned, the matter may be considered in an administrative hearing.

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

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

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

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

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

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

(i) Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request

for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause, as defined in section 256.0451, subdivision 13, why the request was not submitted within the 30-day time limit. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence.

Sec. 40. Minnesota Statutes 2017 Supplement, section 256.045, subdivision 4, is amended to read:

Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services judge may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. A human services judge may grant a request for a hearing in person by holding the hearing by interactive video technology or in person. The human services judge must hear the case in person if the person asserts that either the person or a witness has a physical or mental disability that would impair the person's or witness's ability to fully participate in a hearing held by interactive video technology. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services judge shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings under subdivision 3, paragraph (a), clauses (4), (9), and (10), either party may subpoena the private data relating to the investigation prepared by the agency under section 626.556 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of the reporter may not be disclosed.

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

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

(d) For hearings under subdivision 3, paragraph (a), clause (4) or (10), involving a vulnerable adult, the human services judge shall notify the vulnerable adult who is the subject of the maltreatment determination and an interested person, as defined in section 626.5572, subdivision 12a, if known, ~~a guardian of the vulnerable adult appointed under section 524.5-310, or a health care agent designated by the vulnerable adult in a health care directive that is currently effective under section 145C.06 and whose authority to make health care decisions is not suspended under section 524.5-310, of the hearing~~ and shall notify the facility or individual who is the alleged perpetrator of maltreatment. The notice must be sent by certified mail and inform the vulnerable adult or the alleged perpetrator of the right to file a signed written statement in the proceedings. A guardian or health care agent who prepares or files a written statement for the vulnerable adult must indicate in the statement that the person is the vulnerable adult's guardian or health care agent and sign the statement in that capacity. The vulnerable adult, the guardian, or the health care agent may file a written statement with the human services judge hearing the case no later than five

business days before commencement of the hearing. The human services judge shall include the written statement in the hearing record and consider the statement in deciding the appeal. This subdivision does not limit, prevent, or excuse the vulnerable adult or alleged perpetrator from being called as a witness testifying at the hearing or grant the vulnerable adult, the guardian, or health care agent a right to participate in the proceedings or appeal the human services judge's decision in the case. The lead investigative agency must consider including the vulnerable adult victim of maltreatment as a witness in the hearing. If the lead investigative agency determines that participation in the hearing would endanger the well-being of the vulnerable adult or not be in the best interests of the vulnerable adult, the lead investigative agency shall inform the human services judge of the basis for this determination, which must be included in the final order. If the human services judge is not reasonably able to determine the address of the vulnerable adult, the guardian, the alleged perpetrator, or the health care agent, the human services judge is not required to send a hearing notice under this subdivision.

Sec. 41. Minnesota Statutes 2016, section 325F.71, is amended to read:

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

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

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

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

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

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

Subd. 2. **Supplemental civil penalty.** (a) In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens, vulnerable adults, or ~~disabled~~ persons with a disability,

is liable for an additional civil penalty not to exceed $10,000 for each violation, if one or more of the factors in paragraph (b) are present.

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

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

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

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

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

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

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

Subd. 4. **Private remedies.** A person injured by a violation of this section may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

Sec. 42. Minnesota Statutes 2016, section 609.2231, subdivision 8, is amended to read:

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

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

Sec. 43. Minnesota Statutes 2016, section 626.557, subdivision 3, is amended to read:

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

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

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

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

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

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

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

section 626.5572, subdivision 17, paragraph (c), clause (5). The lead investigative agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Sec. 44. Minnesota Statutes 2016, section 626.557, subdivision 4, is amended to read:

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

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

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

Sec. 45. Minnesota Statutes 2016, section 626.557, subdivision 9, is amended to read:

Subd. 9. **Common entry point designation.** (a) Each county board shall designate a common entry point for reports of suspected maltreatment, for use until the commissioner

of human services establishes a common entry point. Two or more county boards may jointly designate a single common entry point. The commissioner of human services shall establish a common entry point effective July 1, 2015. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

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

(1) the time and date of the report;

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

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

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

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

(6) a description of the suspected maltreatment;

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

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

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

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

(11) whether law enforcement has been notified;

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

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

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

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

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

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

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

(2) the same vulnerable adult; or

(3) the same incident.

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

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

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

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

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

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

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

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

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

(ii) the same vulnerable adult; and

(iii) the same incident.

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

Sec. 46. Minnesota Statutes 2016, section 626.557, subdivision 9a, is amended to read:

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

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

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

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

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

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

(b) If the lead investigative agency receiving a report believes the report was referred by the common entry point in error, the lead investigative agency shall immediately notify

the common entry point of the error, including the basis for the lead investigative agency's belief that the referral was made in error. The common entry point shall review the information submitted by the lead investigative agency and immediately refer the report to the appropriate lead investigative agency.

Sec. 47. Minnesota Statutes 2016, section 626.557, subdivision 9b, is amended to read:

Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for emergency adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph ~~(g)~~ (k). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate with other agencies in the provision of protective services, coordinating its investigations, and assisting another agency within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph ~~(g)~~ (k). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials, and law enforcement shall obtain the results of any investigation conducted by the lead investigative agency to determine if criminal action is warranted. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. Nothing in this subdivision alters the duty of the lead investigative agency to serve as the agency responsible for investigating reports made under section 626.557.

Sec. 48. Minnesota Statutes 2016, section 626.557, subdivision 9c, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should

have known of the errors and took no reasonable measures to correct the defect before administering care;

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

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

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

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

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

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

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

(3) the alleged perpetrator, if known;

(4) the facility; ~~and~~

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

(6) law enforcement; and

(7) the county attorney, as appropriate.

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

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

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

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

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

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

Subd. 9d. **Administrative reconsideration~~; review panel~~.** (a) Except as provided under paragraph ~~(e)~~ (d), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

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

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

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

~~(e)~~ (d) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

~~(f)~~ (e) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing

under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, the scope of the contested case hearing must include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination under this subdivision, and reconsideration of a disqualification under section 245C.22, must not be conducted when:

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

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

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

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

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

~~(g)~~ (f) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a

determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

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

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

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

Subd. 9e. **Education requirements.** (a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead investigative agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas: (1) information collection and preservation; (2) analysis of facts; (3) levels of evidence; (4) conclusions based on evidence; (5) interviewing skills, including specialized training to interview people with unique needs; (6) report writing; (7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies; (8) human relations and cultural diversity; (9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation; (10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation; (11) the methods by which lead investigative agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and (12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioner of human services shall conduct an outreach campaign to promote the common entry point for reporting vulnerable adult maltreatment. This campaign shall use the Internet and other means of communication.

(c) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(d) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the common entry point staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(e) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall conduct regional training for law enforcement personnel regarding their responsibility under this section.

(f) Each lead investigative agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead investigative agency investigator.

A lead investigative agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available.

All lead investigative agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

(g) The commissioners of health and human services shall develop and maintain written guidance for facilities that explains and illustrates the reporting requirements under this section; the guidance shall also explain and illustrate the reporting requirements under Code of Federal Regulations, title 42, section 483.12(c), for the benefit of facilities subject to those requirements.

Sec. 51. Minnesota Statutes 2016, section 626.557, subdivision 10b, is amended to read:

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

(1) interview of the alleged victim;

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

(3) interview of the alleged perpetrator;

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

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

(6) consultation with professionals.

(b) The lead investigator must contact the alleged victim or, if known, an interested person, within five days after initiation of an investigation to provide the investigator's name and contact information, and communicate with the alleged victim or interested person approximately every three weeks during the course of the investigation.

Sec. 52. Minnesota Statutes 2016, section 626.557, subdivision 12b, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the mandated reporter may disclose that the individual was the reporter to support a claim of retaliation that is prohibited under section 144.651, subdivision 34, or 626.557, subdivisions 4a and 17, or other law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g)~~ (k) Lead investigative agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. ~~The lead investigative agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section.~~ Notwithstanding section 138.17, upon completion of the review, not public data received by the review panel must be destroyed.

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

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

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

Sec. 53. Minnesota Statutes 2016, section 626.557, subdivision 14, is amended to read:

Subd. 14. **Abuse prevention plans.** (a) Each facility, except home health agencies and personal care ~~attendant services providers~~ assistance provider agencies, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may

encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of: (1) the person's susceptibility to abuse by other individuals, including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

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

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

Sec. 54. Minnesota Statutes 2016, section 626.557, subdivision 17, is amended to read:

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

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

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

(1) discharge or transfer from the facility;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services;

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

(5) any restriction of rights set forth in section 144.651~~.~~, 144A.44, or 144A.441;

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

(7) termination of services or lease agreement;

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

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

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

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

Sec. 55. Minnesota Statutes 2016, section 626.5572, subdivision 6, is amended to read:

Subd. 6. **Facility.** (a) "Facility" means:

(1) a hospital or other entity required to be licensed under sections 144.50 to 144.58;

(2) a nursing home required to be licensed to serve adults under section 144A.02;

(3) a facility or service required to be licensed under chapter 245A;

(4) a home care provider licensed or required to be licensed under sections 144A.43 to 144A.482;

(5) a hospice provider licensed under sections 144A.75 to 144A.755;

(6) a housing with services establishment registered under chapter 144D, including an entity operating under chapter 144G, assisted living title protection; or

(7) a person or organization that offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections 256B.0625, subdivision 19a, 256B.0651 to 256B.0654, 256B.0659, or 256B.85.

(b) For personal care assistance services identified in paragraph (a), clause (7), that are provided in the vulnerable adult's own home or in another unlicensed location other than an unlicensed setting listed in paragraph (a), the term "facility" refers to the provider, person, or organization that offers, provides, or arranges for personal care assistance services, and does not refer to the vulnerable adult's home or other location at which services are rendered.

Sec. 56. Minnesota Statutes 2016, section 626.5572, is amended by adding a subdivision to read:

Subd. 12a. **Interested person.** "Interested person" means:

(1) a court-appointed guardian or conservator or other person designated in writing by the vulnerable adult, including a nominated guardian or conservator, to act on behalf of the vulnerable adult;

(2) a proxy or health care agent appointed under chapter 145B or 145C or similar law of another state; or

(3) a spouse, parent, adult child and siblings, or next of kin of the vulnerable adult.

Interested person does not include a person whose authority has been restricted by the vulnerable adult or by a court or who is the alleged or substantiated perpetrator of maltreatment of the vulnerable adult.

Sec. 57. **ASSISTED LIVING LICENSURE AND DEMENTIA CARE CERTIFICATION TASK FORCE.**

Subdivision 1. **Creation.** (a) The Assisted Living Licensure and Dementia Care Certification Task Force consists of 16 members, including the following:

(1) one senator appointed by the majority leader;

(2) one senator appointed by the minority leader;

(3) one member of the house of representatives appointed by the speaker of the house;

(4) one member of the house of representatives appointed by the minority leader;

(5) the commissioner of health or a designee;

(6) the commissioner of human services or a designee;

(7) the Ombudsman for Long-Term Care or a designee;

(8) one member appointed by the Minnesota Board on Aging;

(9) one member appointed by AARP Minnesota;

(10) one member appointed by the Alzheimer's Association Minnesota-North Dakota Chapter;

(11) one member appointed by Elder Voices Family Advocates;

(12) one member appointed by Minnesota Elder Justice Center;

(13) one member appointed by Care Providers of Minnesota;

(14) one member appointed by LeadingAge Minnesota;

(15) one member appointed by Minnesota HomeCare Association; and

(16) one member appointed by the Home Care and Assisted Living Program Advisory Council established in Minnesota Statutes, section 144A.4799.

(b) The appointing authorities must appoint members by July 1, 2018.

(c) The commissioner of health or a designee shall act as chair of the task force and convene the first meeting no later than August 1, 2018.

Subd. 2. **Legislative report on assisted living licensure and dementia care.** (a) The task force shall review existing state regulation and oversight of assisted living and dementia care. By February 1, 2019, the task force shall report to the legislature on the findings of the task force concerning the current regulation and oversight of assisted living and dementia care. The task force must include in its report recommendations regarding:

(1) a single licensing structure for assisted living to replace housing with services registration under Minnesota Statutes, chapter 144D, and assisted living title protection under Minnesota Statutes, chapter 144G;

(2) a regulation and fine structure for licensed assisted living; and

(3) dementia care certification.

(b) The report must include draft legislation to implement the task force's recommended changes to statutes. The draft legislation provided to the legislature in the task force's report must also include a proposal for improving the structure and organization of Minnesota Statutes, chapters 144, 144A, 144D, and 144G, with respect to the licensing and regulation of a residential setting in which home care services or dementia care are provided. The draft legislation shall attempt to eliminate ambiguous terms, use consistent terms across settings

and services where appropriate, minimize similar language appearing in multiple sections, be consistent with language related to nursing homes, and consolidate the various bills of rights that appear in these chapters.

Subd. 3. **Administrative provisions.** (a) The task force must meet at least monthly.

(b) The commissioner of health shall provide meeting space and administrative support for the task force.

(c) The commissioner of health and the commissioner of human services shall provide technical assistance to the task force.

Subd. 4. **Expiration.** The task force expires on May 20, 2019.

Sec. 58. **ASSISTED LIVING REPORT CARD WORKING GROUP.**

Subdivision 1. **Creation.** (a) The Assisted Living Report Card Working Group consists of the following 16 members:

(1) two residents of senior housing with services establishments appointed by the commissioner of health;

(2) four providers from the senior housing with services profession appointed by the commissioner of health;

(3) two family members of residents of senior housing with services establishments appointed by the commissioner of health;

(4) a representative from the University of Minnesota with expertise in data and analytics appointed by the commissioner of health;

(5) one member appointed by the Home Care and Assisted Living Advisory Council;

(6) one member appointed by Care Providers of Minnesota;

(7) one member appointed by LeadingAge Minnesota;

(8) the commissioner of human services or a designee;

(9) the commissioner of health or a designee;

(10) the Ombudsman for Long-Term Care or a designee; and

(11) one member of the Minnesota Board on Aging, selected by the board.

(b) The executive director of the Minnesota Board on Aging serves on the working group as a nonvoting member.

(c) The appointing authorities must complete their appointments no later than July 1, 2018.

(d) The working group shall elect a chair from among its members at its first meeting.

Subd. 2. **Duties; recommendations and report.** (a) The working group shall consider and make recommendations on the development of an assisted living report card. The quality metrics considered shall include, but are not limited to:

(1) an annual customer satisfaction survey measure using the consolidated criteria for reporting qualitative research (COREQ) questions for assisted living residents and family members;

(2) a measure utilizing Level 3 or 4 citations from Department of Health home care survey findings and substantiated findings against a home care agency or housing with services establishment;

(3) a home care and housing with services staff retention measure; and

(4) a measure that scores a home care provider's and housing with services establishment's staff according to their level of training and education.

(b) By January 15, 2019, the working group must report on its findings and recommendations to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance. The working group's report shall include draft legislation to implement changes to statute it recommends.

Subd. 3. **Administrative provisions.** (a) The commissioner of health shall provide meeting support and administrative support for the working group.

(b) The commissioners of health and human services shall provide technical assistance to the assisted living report card working group.

(c) The meetings of the assisted living report card working group shall be open to the public.

Subd. 4. **Expiration.** The working group expires May 20, 2019, or the day after submitting the report required by this section, whichever is later.

Sec. 59. **CRIMES AGAINST VULNERABLE ADULTS ADVISORY TASK FORCE.**

Subdivision 1. **Task force established; membership.** (a) The Crimes Against Vulnerable Adults Advisory Task Force consists of the following members:

(1) the commissioner of the Department of Public Safety or a designee;

(2) the commissioner of the Department of Human Services or a designee;

(3) the commissioner of the Department of Health or a designee;

(4) the attorney general or a designee;

(5) a representative from the Minnesota Bar Association;

(6) a representative from the Minnesota judicial branch;

(7) one member appointed by the Minnesota County Attorneys Association;

(8) one member appointed by the Minnesota Association of City Attorneys;

(9) one member appointed by the Minnesota Elder Justice Center;

(10) one member appointed by the Minnesota Home Care Association;

(11) one member appointed by Care Providers of Minnesota;

(12) one member appointed by LeadingAge Minnesota; and

(13) one member appointed by AARP Minnesota.

(b) The advisory task force may appoint additional members it deems necessary to carry out its duties under subdivision 2.

(c) The appointing authorities must complete the appointments listed in paragraph (a) by July 1, 2018.

(d) At its first meeting, the task force shall elect a chair from among the members listed in paragraph (a).

Subd. 2. **Duties; recommendations and report.** (a) The advisory task force's duties are to review and evaluate laws relating to crimes against vulnerable adults, and any other information the task force deems relevant.

(b) By December 1, 2018, the advisory task force shall submit a report to the chairs and ranking minority members of the legislative committees with primary jurisdiction over health and human services and criminal policy. The report must contain the task force's findings and recommendations, including discussion of the benefits and problems associated with proposed changes. The report must include draft legislation to implement any recommended changes to statute.

Subd. 3. **Administrative provisions.** (a) The commissioner of human services shall provide meeting space and administrative support to the advisory task force.

(b) The commissioners of human services and health and the attorney general shall provide technical assistance to the advisory task force.

(c) Advisory task force members shall serve without compensation and shall not be reimbursed for expenses.

Subd. 4. **Expiration.** The advisory task force expires on May 20, 2019.

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

Sec. 60. **DIRECTION TO THE COMMISSIONER OF HEALTH.**

By March 1, 2019, the commissioner of health must issue a report to the chairs and ranking minority members of the legislative committees with jurisdiction over health, human services, or aging on the progress toward implementing each recommendation of the Office of the Legislative Auditor with which the commissioner agreed in the commissioner's letter to the legislative auditor dated March 1, 2018. The commissioner shall include in the report existing data collected in the course of the commissioner's continuing oversight of the Office of Health Facility Complaints sufficient to demonstrate the implementation of the recommendations with which the commissioner agreed.

Sec. 61. **DIRECTION TO THE COMMISSIONER OF HEALTH.**

On a quarterly basis until January 2021, and annually thereafter, the commissioner of health must submit a report on the Office of Health Facility Complaints' response to allegations of maltreatment of vulnerable adults. The report must include:

(1) a description and assessment of the office's efforts to improve its internal processes and compliance with federal and state requirements concerning allegations of maltreatment of vulnerable adults, including any relevant timelines;

(2) the number of reports received by the type of reporter, the number of reports investigated, the percentage and number of reported cases awaiting triage, the number and percentage of open investigations, and the number and percentage of investigations that have failed to meet state or federal timelines by cause of delay;

(3) a trend analysis of internal audits conducted by the office; and

(4) trends and patterns in maltreatment of vulnerable adults, licensing violations by facilities or providers serving vulnerable adults, and other metrics as determined by the commissioner.

Sec. 62. **APPROPRIATION.**

(a) $75,000 in fiscal year 2019 is appropriated from the general fund to the commissioner of health for the Assisted Living Licensure and Dementia Care Certification Task Force described in section 57.

(b) $75,000 in fiscal year 2019 is appropriated from the general fund to the commissioner of health for the Assisted Living Report Card Working Group described in section 58.

Sec. 63. **APPROPRIATION.**

$75,000 in fiscal year 2019 is appropriated from the general fund to the commissioner of human services for the Crimes Against Vulnerable Adults Advisory Task Force described in section 59.

Sec. 64. **REPEALER.**

Minnesota Statutes 2016, section 256.021, is repealed.

256.021 VULNERABLE ADULT MALTREATMENT REVIEW PANEL.

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

(b) The review panel consists of:

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

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

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

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

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

(b) Within 30 days of the review under this section, the panel shall notify the director or manager of the lead investigative agency and the vulnerable adult or interested person who requested the review as to whether the panel concurs with the final disposition or whether the lead investigative agency must reconsider the final disposition. If the panel determines that the lead investigative agency must reconsider the final disposition, the panel must make specific recommendations to the director or manager of the lead investigative agency. The recommendation must include an explanation of the factors that form the basis of the recommendation to reconsider the final disposition and must specifically identify the disputed facts, the disputed application of maltreatment definitions, the disputed application of responsibility for maltreatment, and the disputed weighing of evidence, whichever apply. Within 30 days the lead investigative agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition. At a minimum, the specific rationale must include a detailed response to each of the factors identified by the panel that formed the basis for the recommendations of the panel.

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

Subd. 3. **Report.** By January 15 of each year, the panel shall submit a report to the committees of the legislature with jurisdiction over section 626.557 regarding the number of requests for review it receives under this section, the number of cases where the panel requires the lead investigative agency to reconsider its final disposition, and the number of cases where the final disposition is changed, and any recommendations to improve the review or investigative process.

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