Senate Language S3656-2

House Language H3138-3

ARTICLE 27

PROTECTION OF VULNERABLE ADULTS

ARTICLE 6

PROTECTIONS FOR OLDER ADULTS AND VULNERABLE ADULTS

Section 1. **CITATION.**

Sections 1 to 62 may be cited as the "Vulnerable Adult Maltreatment Prevention and Accountability 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. 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. 5. 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~~ 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~~ 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:

(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, "resident" also means a person who is admitted to~~ 1 to 27 and 30 to 33, 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 purposes of subdivisions 1, 4 to 9, 12, 13, 15, 16, and 18 to 20, an outpatient surgical center or a birth center licensed under section 144.615;

(4) for purposes of subdivisions 1, 3 to 16, 18, 20, and 30, 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 33, 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 9530.6510 to 9530.6590.

Sec. 6. 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 be developed by the commissioner, in consultation with stakeholders, and must also include the name, address, and telephone number 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. 7. 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 shall receive 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. 8. 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. 9. 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, 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) 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 ombudsman for long-term care 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. 10. 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. 11. **[144.6511] CONSUMER TRANSPARENCY.**

(a) For purposes of this section, "facility" means a facility listed in section 144.651, subdivision 2, paragraph (d); a housing with services establishment registered under chapter 144D; or an assisted living setting regulated under chapter 144G.

(b) Deceptive marketing and business practices by a facility or by a home care provider licensed under sections 144A.43 to 144A.482, are prohibited.

(c) For the purposes of this section, it is a deceptive practice for a facility or home care provider to:

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

(2) arrange for or provide health care or services other than those contracted for;

(3) fail to deliver any care or services the provider or facility promised 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 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 in writing the purpose of a nonrefundable community fee or other fee prior to contracting for services with a patient or resident;

(7) advertise or represent, 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. 12. 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 facility'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. 13. Minnesota Statutes 2017 Supplement, section 144A.10, subdivision 4, is amended to read:

Subd. 4. **Correction orders.** Whenever a duly authorized representative of the commissioner of health finds upon inspection of a nursing home, that the facility or a controlling person or an employee of the facility is not in compliance with sections 144.411 to 144.417, 144.651, 144.6503, 144A.01 to 144A.155, or 626.557 or the rules promulgated thereunder, a correction order shall be issued to the facility. The correction order shall state the deficiency, cite the specific rule or statute violated, state the suggested method of correction, and specify the time allowed for correction. Upon receipt of a correction order, a facility shall develop and submit to the commissioner a corrective action plan based on the correction order. The corrective action plan must specify the steps the facility will take to correct the violation and to prevent such violations in the future, how the facility will monitor its compliance with the corrective action plan, and when the facility plans to complete the steps in the corrective action plan. The commissioner is presumed to accept a corrective action plan unless the commissioner notifies the submitting facility that the plan is not accepted within 15 calendar days after the plan is submitted to the commissioner. The commissioner shall monitor the facility's compliance with the corrective action plan. If the commissioner finds that the nursing home had uncorrected or repeated violations which create a risk to resident care, safety, or rights, the commissioner shall notify the commissioner of human services.

Sec. 14. Minnesota Statutes 2016, section 144A.44, subdivision 1, is amended to read:

Subdivision 1. **Statement of rights.** A person who receives home care services has these rights:

(1) the right to receive written information 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, and subject to accepted health care, medical or nursing standards, 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 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 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;

(17) the right to at least ten days' advance notice of the termination of a service 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 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;

(20) the right to recommend changes in policies and services to the home care provider, provider staff, and others of the person's choice, free from restraint, interference, coercion, discrimination, or reprisal, including threat of termination of services;

~~(20)~~ (21) 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)~~ (22) the right to know the name and address of the state or county agency to contact for additional information or assistance; and

~~(22)~~ (23) 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.

Sec. 15. 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, 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. 16. Minnesota Statutes 2016, section 144A.45, subdivision 1, is amended to read:

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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. 17. 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. 18. Minnesota Statutes 2016, section 144A.473, subdivision 2, is amended to read:

Subd. 2. **Temporary license.** (a) For new license applicants, the commissioner shall issue a temporary license for either the basic or comprehensive home care level. A temporary license is effective for up to one year from the date of issuance. Temporary licensees must comply with sections 144A.43 to 144A.482.

(b) During the temporary license ~~year~~ period, the commissioner shall survey the temporary licensee within 90 calendar days after the commissioner is notified or has evidence that the temporary licensee is providing home care services.

(c) Within five days of beginning the provision of services, the temporary licensee must notify the commissioner that it is serving clients. The notification to the commissioner may be mailed or e-mailed to the commissioner at the address provided by the commissioner. If the temporary licensee does not provide home care services during the temporary license ~~year~~ period, then the temporary license expires at the end of the ~~year~~ period and the applicant must reapply for a temporary home care license.

(d) A temporary licensee may request a change in the level of licensure prior to being surveyed and granted a license by notifying the commissioner in writing and providing additional documentation or materials required to update or complete the changed temporary license application. The applicant must pay the difference between the application fees when changing from the basic level to the comprehensive level of licensure. No refund will be made if the provider chooses to change the license application to the basic level.

(e) If the temporary licensee notifies the commissioner that the licensee has clients within 45 days prior to the temporary license expiration, the commissioner may extend the temporary

license for up to 60 days in order to allow the commissioner to complete the on-site survey required under this section and follow-up survey visits.

Sec. 19. 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) "Change in ownership survey" means a full survey of a new licensee due to a change in ownership. Change in ownership surveys must be completed within six months after the department's issuance of a new license due to a change in ownership.

~~(b)~~ (c) "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 available to licensed home care providers who have been licensed for three years and surveyed at least once in the past three years with the latest survey having no widespread violations beyond Level 1 as provided in subdivision 11. 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)~~ (d) "Full survey" means the periodic 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)~~ (e) "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 surveys, shall be concluded with an exit conference and written information provided on the process for requesting a reconsideration of the survey results.

~~(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. 20. 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.

(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 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 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~~ develop and submit to the commissioner a corrective action plan based on the correction order. The corrective action plan must specify the steps the provider will take to comply with the correction order and how to prevent noncompliance in the future, how the provider will monitor its compliance with the corrective action plan, and when the provider plans to complete the steps in the corrective action plan. The commissioner is presumed to accept a corrective action plan unless the commissioner notifies the submitting home care provider that the plan is not accepted within 15 calendar days after the plan is submitted to the commissioner. The commissioner shall monitor the provider's compliance with the corrective action plan.

Sec. 21. 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. 22. 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. 23. Minnesota Statutes 2016, section 144A.479, is amended by adding a subdivision to read:

Subd. 2a. **Deceptive marketing and business practices.** Deceptive marketing and business practices by a home care provider are prohibited. For purposes of this subdivision,

it is a deceptive practice for a home care provider to engage in any conduct listed in section 144.6511.

Sec. 24. 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, 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. 25. 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 or home care ~~provider, or under section 144A.45~~ providers. This authority includes the authority to issue correction orders and assess civil fines for violations identified in the appeal or review process. A health facility'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.

Section 1. Minnesota Statutes 2016, section 144A.53, subdivision 2, is amended to read:

Subd. 2. **Complaints.** (a) The director may receive a complaint from any source concerning an action of an administrative agency, a health care provider, a home care provider, a residential care home, or a health facility. The director may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint. Investigators are required to interview at least one family member of the vulnerable adult identified in the complaint. If the vulnerable adult is directing his or her own care and does not want the investigator to contact the family, this information must be documented in the investigative file.

(b) The director shall keep written records of all complaints and any action upon them. After completing an investigation of a complaint, the director shall inform the complainant, the administrative agency having jurisdiction over the subject matter, the health care provider, the home care provider, the residential care home, and the health facility of the action taken. Complainants must be provided a copy of the public report upon completion of the investigation.

(c) Notwithstanding section 626.557, subdivision 5 or 9c, upon request of a vulnerable adult or an interested person, the director shall:

(1) disclose whether a health care provider or other person has made a report or submitted a complaint that involves maltreatment of the vulnerable adult; and

(2) provide a redacted version of the initial report or complaint that does not disclose data on individuals, as defined in section 13.02, subdivision 5.

(d) For purposes of paragraph (c), "interested person" means one of the persons listed below in the following order of priority:

(1) a court-appointed guardian;

(2) a person designated in writing by the vulnerable adult, including a nominated guardian, to act on behalf of the vulnerable adult;

(3) a proxy or health care agent appointed under chapter 145B or 145C or similar law of another state, provided that the authority of the proxy or health care agent is currently effective under section 145C.06 or similar law;

(4) a person designated in writing by the vulnerable adult as an emergency contact for a facility; or

(5) a spouse, parent, adult child, or adult sibling 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. 26. 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 entities 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. 27. Minnesota Statutes 2016, section 144A.53, is amended by adding a subdivision to read:

Subd. 5. **Safety and quality improvement technical panel.** The director shall establish an expert technical panel to examine and make recommendations, on an ongoing basis, on how to apply proven safety and quality improvement practices and infrastructure to settings and providers that provide long-term services and supports. The technical panel must include representation from nonprofit Minnesota-based organizations dedicated to patient safety or innovation in health care safety and quality, Department of Health staff with expertise in issues related to adverse health events, the University of Minnesota, organizations representing long-term care providers and home care providers in Minnesota, national patient safety experts, and other experts in the safety and quality improvement field. The technical panel shall periodically provide recommendations to the legislature on legislative changes needed to promote safety and quality improvement practices in long-term care settings and with long-term care providers.

Senate Language S3656-2

House Language H3138-3

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

Subd. 7. **Posting maltreatment reports, correction orders, certification deficiencies.** (a) The director shall post on the Department of Health Web site the following information for the past three years:

(1) the public portions of all substantiated reports of maltreatment of a vulnerable adult at a facility or by a provider for which the Department of Health is the lead investigative agency under section 626.557;

(2) all state licensing correction orders and federal certification deficiencies that are issued as a result of an investigation of maltreatment of a vulnerable adult and issued to a facility or provider for which the Department of Health is the lead investigative agency under section 626.557; and

(3) whether the facility or provider has requested reconsideration or initiated any type of dispute resolution or appeal of the correction order, deficiency, or report.

(b) Following a reconsideration, dispute resolution, or appeal, the director must update the information posted under this subdivision to reflect the results of the reconsideration, dispute resolution, or appeal. The director must also update the information posted under this subdivision regarding a correction order issued to a facility or provider to indicate that the facility or provider is in substantial compliance with the correction order, upon a determination of substantial compliance by the commissioner.

(c) The information posted under this subdivision must be posted in coordination with other divisions or sections at the Department of Health and in a manner that does not duplicate information already published by the Department of Health, and must be posted in a format that allows consumers to search the information by facility or provider name and by the physical address of the facility or the local business address of the provider.

Sec. 30. Minnesota Statutes 2016, section 144D.01, subdivision 1, is amended to read:

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

Sec. 31. 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. 32. 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. 33. 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 or manager 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. 34. **[144D.044] INFORMATION REQUIRED TO BE POSTED.**

A housing with services establishment must post conspicuously within the establishment, in a location accessible to public view, the following information:

(1) the name, mailing address, and contact information of the current owner or owners of the establishment and, if the owner or owners are not natural persons, identification of the type of business entity of the owner or owners;

(2) the name, mailing address, and contact information of the managing agent, through management agreement or lease agreement, of the establishment, if different from the owner or owners, and the name and contact information of the on-site manager, if any; and

(3) the name and 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.

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 a guardian or health care agent of the vulnerable adult, 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, 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.

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.

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

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

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 this section.

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 guardian or health care agent, 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's physical, emotional, or financial interests;

(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 lead investigative agency 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 guardian or health care agent 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.

~~(b)~~ (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.

~~(c)~~ (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, 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, 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, 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, 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), 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 (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 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).

(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) 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) 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) 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) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), 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) 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 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, the alleged victim's guardian or health care agent, within five days after initiation of an investigation to provide the investigator's name and contact information and communicate with the alleged victim or the alleged victim's guardian or health care agent approximately every three weeks during the course of the investigation.

Sec. 51. 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 guardian or health care agent 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 on 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.

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 preventing, addressing, and responding to ~~them~~ substantiated maltreatment;

(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. 52. 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. 53. 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 suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(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.

(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, 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 to the facility or its residents; or

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

Sec. 54. 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. 55. **REPORT; SAFETY AND QUALITY IMPROVEMENT PRACTICES.**

By January 15, 2019, the safety and quality improvement technical panel established under Minnesota Statutes, section 144A.53, subdivision 5, shall provide recommendations to the legislature on legislative changes needed to promote safety and quality improvement

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Sec. 2. **DIRECTION TO COMMISSIONER.**

Subdivision 1. **Policies and procedures for the Office of Health Facility Complaints.** The commissioner of health shall develop comprehensive, written policies and procedures for the Office of Health Facility Complaints for conducting timely reviews and investigation of allegations that are available for all investigators in a centralized location, including policies, procedures, guidelines, and criteria for:

(1) data collection that will allow for rigorous trend analysis of maltreatment and licensing violations;

(2) data entry in the case management system, including an up-to-date description of each data entry point to be used consistently by all staff;

(3) intake of allegation reports, including the gathering of all data from the reporter and verification of jurisdiction;

(4) selection of allegation reports for further investigation within the time frames required by federal and state law;

(5) the investigative process, including guidelines for interviews and documentation;

(6) cross-referencing of data, including when and under what circumstances to combine data collection or maltreatment investigations regarding the same vulnerable adult, allegations, facility, or alleged perpetrator;

(7) final determinations, including having supporting documentation for the determinations;

(8) enforcement actions, including the imposition of immediate fines and any distinctions in process for licensing violations versus maltreatment determinations;

(9) communication with interested parties and the public regarding the status of investigations, final determinations, enforcement actions, and appeal rights, including when communication must be made if the timelines established in law are not able to be met and sufficient information in written communication for understanding the process; and

(10) quality control measures, including audits and random samplings, to discover gaps in understanding and to ensure accuracy.

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practices in long-term care settings and with long-term care providers. The recommendations must address:

(1) how to implement a system for adverse health events reporting, learning, and prevention in long-term care settings and with long-term care providers; and

(2) interim actions to improve systems for the timely analysis of reports and complaints submitted to the Office of Health Facility Complaints to identify common themes and key prevention opportunities, and to disseminate key findings to providers across the state for the purposes of shared learning and prevention.

Sec. 28. Minnesota Statutes 2016, section 144A.53, is amended by adding a subdivision to read:

Subd. 6. **Training and operations panel.** (a) The director shall establish a training and operations panel within the Office of Health Facility Complaints to examine and make recommendations, on an ongoing basis, on continual improvements to the operation of the office. The training and operations panel shall be composed of office staff, including investigators and intake and triage staff, one or more representatives of the commissioner's office, and employees from any other divisions in the Department of Health with relevant knowledge or expertise. The training and operations panel may also consult with employees from other agencies in state government with relevant knowledge or expertise.

(b) The training and operations panel shall examine and make recommendations to the director and the commissioner regarding introducing or refining office systems, procedures, and staff training in order to improve office and staff efficiency; enhance communications between the office, health care facilities, home care providers, and residents or clients; and provide for appropriate, effective protection for vulnerable adults through rigorous investigations and enforcement of laws. Panel duties include but are not limited to:

(1) developing the office's training processes to adequately prepare and support investigators in performing their duties;

(2) developing clear, consistent internal policies for conducting investigations as required by federal law, including policies to ensure staff meet the deadlines in state and federal laws for triaging, investigating, and making final dispositions of cases involving maltreatment, and procedures for notifying the vulnerable adult, reporter, and facility of any delays in investigations; communicating these policies to staff in a clear, timely manner; and developing procedures to evaluate and modify these internal policies on an ongoing basis;

(3) developing and refining quality control measures for the intake and triage processes, through such practices as reviewing a random sample of the triage decisions made in case reports or auditing a random sample of the case files to ensure the proper information is being collected, the files are being properly maintained, and consistent triage and investigations determinations are being made;

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Subd. 2. **Training of staff at the Office of Health Facility Complaints.** The commissioner of health shall revise the training program at the Office of Health Facility Complaints to ensure that all staff are trained adequately and consistently to perform their duties. The revised training program must provide for timely and consistent training whenever policies, procedures, guidelines, or criteria are changed due to legislative changes, decisions by management, or interpretations of state or federal law. The revised training program shall include a mentor-based training program that assigns a mentor to all new investigators and ensures new investigators work with an experienced investigator during every aspect of the investigation process.

Subd. 3. **Quality controls at the Office of Health Facility Complaints.** The commissioner of health shall implement quality control measures to ensure that intake, triage, investigations, final determinations, enforcement actions, and communication are conducted and documented in a consistent, thorough, and accurate manner. The quality control measures must include regular internal audits of staff work, including when a decision is made to not investigate a report, reporting to staff of patterns and trends discovered through the audits, training of staff to address patterns and trends discovered through the audits, and electronic safeguards in the case management system to prevent backdating of data, incomplete or missing data fields, missed deadlines, and missed communications, including communications concerning the status of investigations, delays in investigations, final determinations, and appeal rights following final determinations.

Subd. 4. **Provider education.** (a) The commissioner of health shall develop decision-making tools, including decision trees, regarding provider self-reported maltreatment allegations and share these tools with providers. As soon as practicable, the commissioner shall update the decision-making tools as necessary, including whenever federal or state requirements change, and inform providers that the updated tools are available. The commissioner shall develop decision-making tools that clarify and encourage reporting whether the provider is licensed or registered under federal or state law, while also educating on any distinctions in reporting under federal versus state law.

(b) The commissioner of health shall conduct rigorous trend analysis of maltreatment reports, triage decisions, investigation determinations, enforcement actions, and appeals to identify trends and patterns in reporting of maltreatment, substantiated maltreatment, and licensing violations, and share these findings with providers and interested stakeholders.

Subd. 5. **Departmental oversight of the Office of Health Facility Complaints.** The commissioner of health shall ensure that the commissioner's office provides direct oversight of the Office of Health Facility Complaints.

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(4) developing and maintaining systems and procedures to accurately determine the situations in which the office has jurisdiction over a maltreatment allegation;

(5) developing and maintaining audit procedures for investigations to ensure investigators obtain and document information necessary to support decisions;

(6) developing and maintaining procedures to, following a maltreatment determination, clearly communicate the appeal or review rights of all parties upon final disposition; and

(7) continuously upgrading the information on and utility of the office's Web site through such steps as providing clear, detailed information about the appeal or review rights of vulnerable adults, alleged perpetrators, and providers and facilities.

Sec. 61. **DIRECTION TO COMMISSIONER OF HEALTH; PROVIDER EDUCATION.**

(a) The commissioner of health shall develop decision-making tools, including decision trees, regarding provider self-reported maltreatment allegations, and shall share these tools with providers. As soon as practicable, the commissioner shall update the decision-making tools as necessary, including whenever federal or state requirements change, and shall inform providers when the updated tools are available. The commissioner shall develop decision-making tools that clarify and encourage reporting whether the provider is licensed or registered under federal or state law, while also educating providers on any distinctions in reporting under federal versus state law.

(b) The commissioner of health shall conduct rigorous trend analyses of maltreatment reports, triage decisions, investigation determinations, enforcement actions, and appeals to identify trends and patterns in reporting of maltreatment, substantiated maltreatment, and licensing violations and shall share these findings with providers and interested stakeholders.

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Sec. 3. **DIRECTION TO COMMISSIONER.**

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.

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Sec. 56. **REPORTS; OFFICE OF HEALTH FACILITY COMPLAINTS' RESPONSE TO VULNERABLE ADULT MALTREATMENT ALLEGATIONS.**

(a) On a quarterly basis until January 2021, and annually thereafter, the commissioner of health must publish on the Department of Health Web site, 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)(i) the number of reports received by type of reporter; (ii) the number of reports investigated; (iii) the percentage and number of reported cases awaiting triage; (iv) the number and percentage of open investigations; (v) the number and percentage of reports that have failed to meet state or federal timelines for triaging, investigating, or making a final disposition of an investigation by cause of delay; and (vi) processes the office will implement to bring the office into compliance with state and federal timelines for triaging, investigating, and making final dispositions of investigations;

(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.

(b) The commissioner shall maintain on the Department of Health Web site reports published under this section for at least the past three years.

Sec. 57. **ASSISTED LIVING AND DEMENTIA CARE LICENSING WORKING GROUP.**

Subdivision 1. **Establishment; membership.** (a) An assisted living and dementia care licensing working group is established.

(b) The commissioner of health shall appoint the following members of the working group:

(1) four providers from the senior housing with services profession, two providing services in the seven-county metropolitan area and two providing services outside the

seven-county metropolitan area. The providers appointed must include providers from establishments of different sizes;

(2) two persons who reside in senior housing with services establishments, or family members of persons who reside in senior housing with services establishments. One resident or family member must reside in the seven-county metropolitan area and one resident or family member must reside outside the seven-county metropolitan area;

(3) one representative from the Home Care and Assisted Living Program Advisory Council;

(4) one representative of a health plan company;

(5) one representative from Care Providers of Minnesota;

(6) one representative from LeadingAge Minnesota;

(7) one representative from the Alzheimer's Association;

(8) one representative from the Metropolitan Area Agency on Aging and one representative from an area agency on aging other than the Metropolitan Area Agency on Aging;

(9) one representative from the Minnesota Rural Health Association;

(10) one federal compliance official; and

(11) one representative from the Minnesota Home Care Association.

(c) The following individuals shall also be members of the working group:

(1) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;

(2) two members of the senate, one appointed by the majority leader and one appointed by the minority leader;

(3) one member of the Minnesota Council on Disability or a designee, appointed by the council;

(4) one member of the Commission of Deaf, Deafblind and Hard of Hearing Minnesotans or a designee, appointed by the commission;

(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; and

(8) one member of the Minnesota Board of Aging, appointed by the board.

(d) The appointing authorities under this subdivision must complete the appointments no later than July 1, 2018.

Subd. 2. **Duties; recommendations.** (a) The assisted living and dementia care licensing working group shall consider and make recommendations on a new regulatory framework for assisted living and dementia care. In developing the licensing framework, the working group must address at least the following:

(1) the appropriate level of regulation, including licensure, registration, or certification;

(2) coordination of care;

(3) the scope of care to be provided and limits on acuity levels of residents;

(4) consumer rights;

(5) building design and physical environment;

(6) dietary services;

(7) support services;

(8) transition planning;

(9) the installation and use of electronic monitoring in settings in which assisted living or dementia care services are provided;

(10) staff training and qualifications;

(11) options for the engagement of seniors and their families;

(12) notices and financial requirements; and

(13) compliance with federal Medicaid waiver requirements for home and community-based services settings.

(b) Facilities and providers licensed by the commissioner of human services shall be exempt from licensing requirements for assisted living recommended under this section.

Subd. 3. **Meetings.** The commissioner of health or a designee shall convene the first meeting of the working group no later than August 1, 2018. The members of the working group shall elect a chair from among the group's members at the first meeting, and the commissioner of health or a designee shall serve as the working group's chair until a chair is elected. Meetings of the working group shall be open to the public.

Subd. 4. **Compensation.** Members of the working group appointed under subdivision 1, paragraph (b), shall serve without compensation or reimbursement for expenses.

Subd. 5. **Administrative support.** The commissioner of health shall provide administrative support for the working group and arrange meeting space.

Subd. 6. **Report.** By January 15, 2019, the working group must submit a report with findings, recommendations, and draft legislation to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance.

Subd. 7. **Expiration.** The working group expires January 16, 2019, or the day after the working group submits the report required under subdivision 6, whichever is earlier.

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

Sec. 58. **DEMENTIA CARE CERTIFICATION WORKING GROUP.**

Subdivision 1. **Establishment; membership.** (a) A dementia care certification working group is established.

(b) The commissioner of health shall appoint the following members of the working group:

(1) two caregivers of persons who have been diagnosed with Alzheimer's disease or other dementia, one caregiver residing in the seven-county metropolitan area and one caregiver residing outside the seven-county metropolitan area;

(2) two providers from the senior housing with services profession, one providing services in the seven-county metropolitan area and one providing services outside the seven-county metropolitan area;

(3) two geriatricians, one of whom serves a diverse or underserved community;

(4) one psychologist who specializes in dementia care;

(5) one representative of the Alzheimer's Association;

(6) one representative from Care Providers of Minnesota;

(7) one representative from LeadingAge Minnesota; and

(8) one representative from the Minnesota Home Care Association.

(c) The following individuals shall also be members of the working group:

(1) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;

(2) two members of the senate, one appointed by the majority leader and one appointed by the minority leader;

(3) the commissioner of health or a designee;

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

(5) the ombudsman for long-term care or a designee;

(6) one member of the Minnesota Board on Aging, appointed by the board; and

(7) the executive director of the Minnesota Board on Aging, who shall serve as a nonvoting member of the working group.

(d) The appointing authorities under this subdivision must complete their appointments no later than July 1, 2018.

Subd. 2. **Duties; recommendations.** The dementia care certification working group shall consider and make recommendations regarding the certification of providers offering dementia care services to clients diagnosed with Alzheimer's disease or other dementias. The working group must:

(1) develop standards in the following areas that nursing homes, boarding care homes, and housing with services establishments offering care for clients diagnosed with Alzheimer's disease or other dementias must meet in order to obtain dementia care certification, including staffing, egress control, access to secured outdoor spaces, specialized therapeutic activities, and specialized life enrichment programming;

(2) develop requirements for disclosing dementia care certification standards to consumers; and

(3) develop mechanisms for enforcing dementia care certification standards.

Subd. 3. **Meetings.** The commissioner of health or a designee shall convene the first meeting of the working group no later than August 1, 2018. The members of the working group shall elect a chair from among the group's members at the first meeting, and the commissioner of health or a designee shall serve as the working group's chair until a chair is elected. Meetings of the working group shall be open to the public.

Subd. 4. **Compensation.** Members of the working group appointed under subdivision 1, paragraph (b), shall serve without compensation or reimbursement for expenses.

Subd. 5. **Administrative support.** The commissioner of health shall provide administrative support for the working group and arrange meeting space.

Subd. 6. **Report.** By January 15, 2019, the working group must submit a report with findings, recommendations, and draft legislation to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance.

Subd. 7. **Expiration.** The working group expires January 16, 2019, or the day after the working group submits the report required under subdivision 6, whichever is earlier.

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

Sec. 59. **ASSISTED LIVING REPORT CARD WORKING GROUP.**

Subdivision 1. **Establishment; membership.** (a) An assisted living report card working group, tasked with researching and making recommendations on the development of an assisted living report card, is established.

(b) The commissioner of human services shall appoint the following members of the working group:

(1) two persons who reside in senior housing with services establishments, one residing in an establishment in the seven-county metropolitan area and one residing in an establishment outside the seven-county metropolitan area;

(2) four representatives of the senior housing with services profession, two providing services in the seven-county metropolitan area and two providing services outside the seven-county metropolitan area;

(3) one family member of a person who resides in a senior housing with services establishment in the seven-county metropolitan area, and one family member of a person who resides in a senior housing with services establishment outside the seven-county metropolitan area;

(4) a representative from the Home Care and Assisted Living Program Advisory Council;

(5) a representative from the University of Minnesota with expertise in data and analytics;

(6) a representative from Care Providers of Minnesota; and

(7) a representative from LeadingAge Minnesota.

(c) The following individuals shall also be appointed to the working group:

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

(2) the commissioner of health or a designee;

(3) the ombudsman for long-term care or a designee;

(4) one member of the Minnesota Board on Aging, appointed by the board; and

(5) the executive director of the Minnesota Board on Aging who shall serve on the working group as a nonvoting member.

(d) The appointing authorities under this subdivision must complete the appointments no later than July 1, 2018.

Subd. 2. **Duties.** The assisted living report card 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 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 Office of Health Facility Complaints findings against a home care provider;

(3) a home care staff retention measure; and

(4) a measure that scores a provider's staff according to their level of training and education.

Subd. 3. **Meetings.** The commissioner of human services or a designee shall convene the first meeting of the working group no later than August 1, 2018. The members of the working group shall elect a chair from among the group's members at the first meeting, and the commissioner of human services or a designee shall serve as the working group's chair until a chair is elected. Meetings of the working group shall be open to the public.

Subd. 4. **Compensation.** Members of the working group shall serve without compensation or reimbursement for expenses.

Subd. 5. **Administrative support.** The commissioner of human services shall provide administrative support and arrange meeting space for the working group.

Subd. 6. **Report.** By January 15, 2019, the working group must submit a report with findings, recommendations, and draft legislation to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance.

Subd. 7. **Expiration.** The working group expires January 16, 2019, or the day after the working group submits the report required in subdivision 6, whichever is later.

Senate Language S3656-2

House Language H3138-3

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

Sec. 4. **DIRECTION TO COMMISSIONERS.**

By February 1 of each year, the commissioners of health and human services must submit an annual joint report on each department's response to allegations of maltreatment of vulnerable adults. The annual report must include a description and assessment of the departments' efforts to improve their internal processes and compliance with federal and state requirements concerning allegations of maltreatment of vulnerable adults, including any relevant timelines. The report must also include 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.

This section expires upon submission of the commissioners' 2024 report.

Sec. 60. **DIRECTION TO COMMISSIONER OF HEALTH; PROGRESS IN IMPLEMENTING RECOMMENDATIONS OF LEGISLATIVE AUDITOR.**

By March 1, 2019, the commissioner of health must submit 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. 62. **REPEALER.**

Minnesota Statutes 2016, section 256.021, is repealed.