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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1432**

- 02/22/2021 Authored by Frederick and Moller
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy
- 03/08/2021 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
- 03/11/2021 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 05/17/2021 Pursuant to Rule 4.20, returned to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to human services; modifying vulnerable adult protection provisions;

1.3 amending Minnesota Statutes 2020, sections 626.557, subdivisions 4, 9, 9b, 9c,

1.4 9d, 10b, 12b; 626.5571, subdivisions 1, 2; 626.5572, subdivisions 2, 4, 17.

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

1.6 Section 1. Minnesota Statutes 2020, section 626.557, subdivision 4, is amended to read:

1.7 Subd. 4. **Reporting.** (a) Except as provided in paragraph (b), a mandated reporter shall

1.8 immediately make ~~an oral~~ a report to the common entry point. ~~The common entry point~~

1.9 ~~may accept electronic reports submitted through a web-based reporting system established~~

1.10 ~~by the commissioner. Use of a telecommunications device for the deaf or other similar~~

1.11 ~~device shall be considered an oral report. The common entry point may not require written~~

1.12 ~~reports.~~ To the extent possible, the report must be of sufficient content to identify the

1.13 vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any

1.14 evidence of previous maltreatment, the name and address of the reporter, the time, date,

1.15 and location of the incident, and any other information that the reporter believes might be

1.16 helpful in investigating the suspected maltreatment. A mandated reporter may disclose not

1.17 public data, as defined in section 13.02, and medical records under sections 144.291 to

1.18 144.298, to the extent necessary to comply with this subdivision.

1.19 (b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified

1.20 under Title 19 of the Social Security Act, a nursing home that is licensed under section

1.21 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital

1.22 that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code

1.23 of Federal Regulations, title 42, section 482.66, may submit a report electronically to the

2.1 common entry point instead of submitting an oral report. The report may be a duplicate of
 2.2 the initial report the facility submits electronically to the commissioner of health to comply
 2.3 with the reporting requirements under Code of Federal Regulations, title 42, section 483.12.
 2.4 The commissioner of health may modify these reporting requirements to include items
 2.5 required under paragraph (a) that are not currently included in the electronic reporting form.

2.6 Sec. 2. Minnesota Statutes 2020, section 626.557, subdivision 9, is amended to read:

2.7 Subd. 9. **Common entry point designation.** (a) ~~Each county board shall designate a~~
 2.8 ~~common entry point for reports of suspected maltreatment, for use until the commissioner~~
 2.9 ~~of human services establishes a common entry point. Two or more county boards may~~
 2.10 ~~jointly designate a single common entry point.~~ The commissioner of human services shall
 2.11 establish a common entry point ~~effective July 1, 2015.~~ The common entry point is the unit
 2.12 responsible for receiving the report of suspected maltreatment under this section.

2.13 (b) The common entry point must be available 24 hours per day to take calls from
 2.14 reporters of suspected maltreatment. The common entry point shall use a standard intake
 2.15 form that includes:

2.16 (1) the time and date of the report;

2.17 (2) the name, relationship, and identifying and contact information for the person believed
 2.18 to be a vulnerable adult and the individual or facility alleged responsible for maltreatment;

2.19 (3) the name, address, and telephone number of the person reporting; relationship, and
 2.20 contact information for the:

2.21 (i) reporter;

2.22 (ii) initial reporter, witnesses, and persons who may have knowledge about the
 2.23 maltreatment; and

2.24 (iii) legal surrogate and persons who may provide support to the vulnerable adult;

2.25 (4) the basis of vulnerability for the vulnerable adult;

2.26 ~~(3)~~ (5) the time, date, and location of the incident;

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

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

2.30 (6) the immediate safety risk to the vulnerable adult;

2.31 ~~(6)~~ (7) a description of the suspected maltreatment;

- 3.1 ~~(7) the disability, if any, of the alleged victim;~~
- 3.2 ~~(8) the relationship of the alleged perpetrator to the alleged victim;~~
- 3.3 (8) the impact of the suspected maltreatment on the vulnerable adult;
- 3.4 (9) whether a facility was involved and, if so, which agency licenses the facility;
- 3.5 ~~(10) any action taken by the common entry point;~~
- 3.6 ~~(11) whether law enforcement has been notified;~~
- 3.7 (10) the actions taken to protect the vulnerable adult;
- 3.8 (11) the required notifications and referrals made by the common entry point; and
- 3.9 (12) whether the reporter wishes to receive notification of the ~~initial and final reports;~~
- 3.10 ~~and disposition.~~
- 3.11 ~~(13) if the report is from a facility with an internal reporting procedure, the name, mailing~~
- 3.12 ~~address, and telephone number of the person who initiated the report internally.~~
- 3.13 (c) The common entry point is not required to complete each item on the form prior to
- 3.14 dispatching the report to the appropriate lead investigative agency.
- 3.15 (d) The common entry point shall immediately report to a law enforcement agency any
- 3.16 incident in which there is reason to believe a crime has been committed.
- 3.17 (e) If a report is initially made to a law enforcement agency or a lead investigative agency,
- 3.18 those agencies shall take the report on the appropriate common entry point intake forms
- 3.19 and immediately forward a copy to the common entry point.
- 3.20 (f) The common entry point staff must receive training on how to screen and dispatch
- 3.21 reports efficiently and in accordance with this section.
- 3.22 (g) The commissioner of human services shall maintain a centralized database for the
- 3.23 collection of common entry point data, lead investigative agency data including maltreatment
- 3.24 report disposition, and appeals data. The common entry point shall have access to the
- 3.25 centralized database and must log the reports into the database ~~and immediately identify~~
- 3.26 ~~and locate prior reports of abuse, neglect, or exploitation.~~
- 3.27 (h) When appropriate, the common entry point staff must refer calls that do not allege
- 3.28 the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might
- 3.29 resolve the reporter's concerns.
- 3.30 (i) A common entry point must be operated in a manner that enables the commissioner
- 3.31 of human services to:

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

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

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

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

4.10 (5) track and manage consumer complaints related to the common entry point.

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

4.15 Sec. 3. Minnesota Statutes 2020, section 626.557, subdivision 9b, is amended to read:

4.16 Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct
4.17 investigations of any incident in which there is reason to believe a crime has been committed.
4.18 Law enforcement shall initiate a response immediately. If the common entry point notified
4.19 a county agency for emergency adult protective services, law enforcement shall cooperate
4.20 with that county agency when both agencies are involved and shall exchange data to the
4.21 extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate
4.22 a response immediately. Each lead investigative agency shall complete the investigative
4.23 process for reports within its jurisdiction. A lead investigative agency, county, adult protective
4.24 agency, licensed facility, or law enforcement agency shall cooperate with other agencies in
4.25 the provision of protective services, coordinating its investigations, and assisting another
4.26 agency within the limits of its resources and expertise and shall exchange data to the extent
4.27 authorized in subdivision 12b, paragraph (g). The lead investigative agency shall obtain the
4.28 results of any investigation conducted by law enforcement officials. The lead investigative
4.29 agency has the right to enter facilities and inspect and copy records as part of investigations.
4.30 The lead investigative agency has access to not public data, as defined in section 13.02, and
4.31 medical records under sections 144.291 to 144.298, that are maintained by facilities to the
4.32 extent necessary to conduct its investigation. Each lead investigative agency shall develop
4.33 guidelines for prioritizing reports for investigation. When a county acts as a lead investigative

5.1 agency, the county shall make guidelines available to the public regarding which reports
5.2 the county prioritizes for investigation and adult protective services.

5.3 Sec. 4. Minnesota Statutes 2020, section 626.557, subdivision 9c, is amended to read:

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

5.9 (b) In making the initial disposition of a report alleging maltreatment of a vulnerable
5.10 adult, the lead investigative agency may consider previous reports of suspected maltreatment
5.11 and may request and consider public information, records maintained by a lead investigative
5.12 agency or licensed providers, and information from any person who may have knowledge
5.13 regarding the alleged maltreatment and the basis for the adult's vulnerability.

5.14 (c) Unless the lead investigative agency believes that: (1) the information would endanger
5.15 the well-being of the vulnerable adult; or (2) it would not be in the best interests of the
5.16 vulnerable adult, the lead investigative agency shall inform the vulnerable adult, or vulnerable
5.17 adult's guardian or health care agent, if known and when applicable to the authority of the
5.18 vulnerable adult's guardian or health care agent, of all reports accepted by the agency for
5.19 investigation, including the maltreatment allegation, investigation guidelines, time frame,
5.20 and evidence standards that the agency uses for determinations. If the allegation is applicable
5.21 to the guardian or health care agent, the lead investigative agency must also inform the
5.22 vulnerable adult's guardian or health care agent of all reports accepted for investigation by
5.23 the agency, including the maltreatment allegation, investigation guidelines, time frame, and
5.24 evidence standards that the agency uses for determinations.

5.25 (d) While investigating reports and providing adult protective services, the lead
5.26 investigative agency may coordinate with entities identified under subdivision 12b, paragraph
5.27 (g), and may coordinate with support persons to safeguard the welfare of the vulnerable
5.28 adult and prevent further maltreatment of the vulnerable adult.

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

5.31 ~~(e)~~ (f) When determining whether the facility or individual is the responsible party for
5.32 substantiated maltreatment or whether both the facility and the individual are responsible

6.1 for substantiated maltreatment, the lead investigative agency shall consider at least the
6.2 following mitigating factors:

6.3 (1) whether the actions of the facility or the individual caregivers were in accordance
6.4 with, and followed the terms of, an erroneous physician order, prescription, resident care
6.5 plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible
6.6 for the issuance of the erroneous order, prescription, plan, or directive or knows or should
6.7 have known of the errors and took no reasonable measures to correct the defect before
6.8 administering care;

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

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

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

6.22 ~~(e)~~ (h) The lead investigative agency shall complete its final disposition within 60
6.23 calendar days. If the lead investigative agency is unable to complete its final disposition
6.24 within 60 calendar days, the lead investigative agency shall notify the following persons
6.25 provided that the notification will not endanger the vulnerable adult or hamper the
6.26 investigation: (1) the vulnerable adult or the vulnerable adult's guardian or health care agent,
6.27 when known, if the lead investigative agency knows them to be aware of the investigation;
6.28 and (2) the facility, where applicable. The notice shall contain the reason for the delay and
6.29 the projected completion date. If the lead investigative agency is unable to complete its final
6.30 disposition by a subsequent projected completion date, the lead investigative agency shall
6.31 again notify the vulnerable adult or the vulnerable adult's guardian or health care agent,
6.32 when known if the lead investigative agency knows them to be aware of the investigation,
6.33 and the facility, where applicable, of the reason for the delay and the revised projected
6.34 completion date provided that the notification will not endanger the vulnerable adult or

7.1 hamper the investigation. The lead investigative agency must notify the health care agent
7.2 of the vulnerable adult only if the health care agent's authority to make health care decisions
7.3 for the vulnerable adult is currently effective under section 145C.06 and not suspended
7.4 under section 524.5-310 and the investigation relates to a duty assigned to the health care
7.5 agent by the principal. A lead investigative agency's inability to complete the final disposition
7.6 within 60 calendar days or by any projected completion date does not invalidate the final
7.7 disposition.

7.8 ~~(f) Within ten calendar days of completing the final disposition~~ (i) When the lead
7.9 investigative agency is the Department of Health or the Department of Human Services,
7.10 the lead investigative agency shall provide a copy of the public investigation memorandum
7.11 under subdivision 12b, paragraph (b), clause (1), ~~when required to be completed under this~~
7.12 ~~section,~~ within ten calendar days of completing the final disposition to the following persons:

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

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

7.18 (3) ~~the alleged perpetrator~~ person or facility alleged responsible for maltreatment, if
7.19 known;

7.20 (4) the facility; and

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

7.23 (j) When the lead investigative agency is a county agency, within ten calendar days of
7.24 completing the final disposition, the lead investigative agency shall provide notification of
7.25 the final disposition to the following persons:

7.26 (1) the vulnerable adult, or the vulnerable adult's guardian or health care agent, if known,
7.27 when the allegation is applicable to the authority of the vulnerable adult's guardian or health
7.28 care agent, unless the agency knows that the notification would endanger the well-being of
7.29 the vulnerable adult;

7.30 (2) the individual determined responsible for maltreatment, if known; and

7.31 (3) when the alleged incident involves a personal care assistant or provider agency, the
7.32 personal care provider organization under section 256B.0659. Upon implementation of

8.1 Community First Services and Supports (CFSS), this notification requirement applies to
8.2 the CFSS support worker or CFSS agency under section 256B.85.

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

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

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

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

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

8.24 Sec. 5. Minnesota Statutes 2020, section 626.557, subdivision 9d, is amended to read:

8.25 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided under
8.26 paragraph (e), any individual or facility which a lead investigative agency determines has
8.27 maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf
8.28 of the vulnerable adult, regardless of the lead investigative agency's determination, who
8.29 contests the lead investigative agency's final disposition of an allegation of maltreatment,
8.30 may request the lead investigative agency to reconsider its final disposition. The request
8.31 for reconsideration must be submitted in writing to the lead investigative agency within 15
8.32 calendar days after receipt of notice of final disposition or, if the request is made by an
8.33 interested person who is not entitled to notice, within 15 days after receipt of the notice by

9.1 the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the
9.2 request for reconsideration must be postmarked and sent to the lead investigative agency
9.3 within 15 calendar days of the individual's or facility's receipt of the final disposition. If the
9.4 request for reconsideration is made by personal service, it must be received by the lead
9.5 investigative agency within 15 calendar days of the individual's or facility's receipt of the
9.6 final disposition. An individual who was determined to have maltreated a vulnerable adult
9.7 under this section and who was disqualified on the basis of serious or recurring maltreatment
9.8 under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment
9.9 determination and the disqualification. The request for reconsideration of the maltreatment
9.10 determination and the disqualification must be submitted in writing within 30 calendar days
9.11 of the individual's receipt of the notice of disqualification under sections 245C.16 and
9.12 245C.17. If mailed, the request for reconsideration of the maltreatment determination and
9.13 the disqualification must be postmarked and sent to the lead investigative agency within 30
9.14 calendar days of the individual's receipt of the notice of disqualification. If the request for
9.15 reconsideration is made by personal service, it must be received by the lead investigative
9.16 agency within 30 calendar days after the individual's receipt of the notice of disqualification.

9.17 (b) Except as provided under paragraphs (e) and (f), if the lead investigative agency
9.18 denies the request or fails to act upon the request within 15 working days after receiving
9.19 the request for reconsideration, the person or facility entitled to a fair hearing under section
9.20 256.045, may submit to the commissioner of human services a written request for a hearing
9.21 under that statute. The vulnerable adult, or an interested person acting on behalf of the
9.22 vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel
9.23 under section 256.021 if the lead investigative agency denies the request or fails to act upon
9.24 the request, or if the vulnerable adult or interested person contests a reconsidered disposition.
9.25 The Vulnerable Adult Maltreatment Review Panel shall not conduct a review if the interested
9.26 person making the request on behalf of the vulnerable adult is also the individual or facility
9.27 alleged responsible for the maltreatment of the vulnerable adult. The lead investigative
9.28 agency shall notify persons who request reconsideration of their rights under this paragraph.
9.29 The request must be submitted in writing to the review panel and a copy sent to the lead
9.30 investigative agency within 30 calendar days of receipt of notice of a denial of a request for
9.31 reconsideration or of a reconsidered disposition. The request must specifically identify the
9.32 aspects of the lead investigative agency determination with which the person is dissatisfied.

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

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

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

10.16 (f) If a maltreatment determination or a disqualification based on serious or recurring
10.17 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing
10.18 sanction under section 245A.07, the license holder has the right to a contested case hearing
10.19 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for
10.20 under section 245A.08, the scope of the contested case hearing must include the maltreatment
10.21 determination, disqualification, and licensing sanction or denial of a license. In such cases,
10.22 a fair hearing must not be conducted under section 256.045. Except for family child care
10.23 and child foster care, reconsideration of a maltreatment determination under this subdivision,
10.24 and reconsideration of a disqualification under section 245C.22, must not be conducted
10.25 when:

10.26 (1) a denial of a license under section 245A.05, or a licensing sanction under section
10.27 245A.07, is based on a determination that the license holder is responsible for maltreatment
10.28 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

10.33 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
10.34 determination or disqualification, but does not appeal the denial of a license or a licensing

11.1 sanction, reconsideration of the maltreatment determination shall be conducted under sections
11.2 260E.33 and 626.557, subdivision 9d, and reconsideration of the disqualification shall be
11.3 conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as
11.4 provided under sections 245C.27, 260E.33, and 626.557, subdivision 9d.

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

11.9 (g) Until August 1, 2002, an individual or facility that was determined by the
11.10 commissioner of human services or the commissioner of health to be responsible for neglect
11.11 under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001,
11.12 that believes that the finding of neglect does not meet an amended definition of neglect may
11.13 request a reconsideration of the determination of neglect. The commissioner of human
11.14 services or the commissioner of health shall mail a notice to the last known address of
11.15 individuals who are eligible to seek this reconsideration. The request for reconsideration
11.16 must state how the established findings no longer meet the elements of the definition of
11.17 neglect. The commissioner shall review the request for reconsideration and make a
11.18 determination within 15 calendar days. The commissioner's decision on this reconsideration
11.19 is the final agency action.

11.20 (1) For purposes of compliance with the data destruction schedule under subdivision
11.21 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a
11.22 result of a reconsideration under this paragraph, the date of the original finding of a
11.23 substantiated maltreatment must be used to calculate the destruction date.

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

11.31 Sec. 6. Minnesota Statutes 2020, section 626.557, subdivision 10b, is amended to read:

11.32 Subd. 10b. **Investigations; guidelines.** (a) Each lead investigative agency shall develop
11.33 guidelines for prioritizing reports for investigation.

12.1 (b) When investigating a report, the lead investigative agency shall conduct the following
12.2 activities, as appropriate:

12.3 (1) interview of the ~~alleged victim~~ vulnerable adult;

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

12.5 (3) interview of the ~~alleged perpetrator~~ individual or facility alleged responsible for
12.6 maltreatment; and

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

12.8 ~~(5) (4) review of records and pertinent documentation of the alleged incident; and~~

12.9 ~~(6) consultation with professionals.~~

12.10 (c) The lead investigative agency shall conduct the following activities as appropriate
12.11 to further the investigation, to prevent further maltreatment, or to safeguard the vulnerable
12.12 adult:

12.13 (1) examining the environment surrounding the alleged incident;

12.14 (2) consulting with professionals; and

12.15 (3) communicating with state, federal, tribal, and other agencies including:

12.16 (i) service providers;

12.17 (ii) case managers;

12.18 (iii) ombudsmen; and

12.19 (iv) support persons for the vulnerable adult.

12.20 (d) The lead investigative agency may decide not to conduct an interview of a vulnerable
12.21 adult, reporter, or witness under paragraph (b) if:

12.22 (1) the vulnerable adult, reporter, or witness is deceased, declines to have an interview
12.23 with the agency, or is unable to be contacted despite the agency's diligent attempts;

12.24 (2) an interview of the vulnerable adult or reporter was conducted by law enforcement
12.25 or a professional trained in forensic interview and an additional interview will not further
12.26 the investigation;

12.27 (3) an interview of the witness will not further the investigation; or

12.28 (4) the agency has a reason to believe that the interview will endanger the vulnerable
12.29 adult.

13.1 Sec. 7. Minnesota Statutes 2020, section 626.557, subdivision 12b, is amended to read:

13.2 Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a
13.3 lead investigative agency, the county social service agency shall maintain appropriate
13.4 records. Data collected by the county social service agency under this section while providing
13.5 adult protective services are welfare data under section 13.46. Investigative data collected
13.6 under this section are confidential data on individuals or protected nonpublic data as defined
13.7 under section 13.02. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under
13.8 this paragraph that are inactive investigative data on an individual who is a vendor of services
13.9 are private data on individuals, as defined in section 13.02. The identity of the reporter may
13.10 only be disclosed as provided in paragraph (c).

13.11 Data maintained by the common entry point are confidential data on individuals or
13.12 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the
13.13 common entry point shall maintain data for three calendar years after date of receipt and
13.14 then destroy the data unless otherwise directed by federal requirements.

13.15 (b) The commissioners of health and human services shall prepare an investigation
13.16 memorandum for each report alleging maltreatment investigated under this section. County
13.17 social service agencies must maintain private data on individuals but are not required to
13.18 prepare an investigation memorandum. During an investigation by the commissioner of
13.19 health or the commissioner of human services, data collected under this section are
13.20 confidential data on individuals or protected nonpublic data as defined in section 13.02.
13.21 Upon completion of the investigation, the data are classified as provided in clauses (1) to
13.22 (3) and paragraph (c).

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

13.24 (i) the name of the facility investigated;

13.25 (ii) a statement of the nature of the alleged maltreatment;

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

13.27 (iv) the identity of the investigator;

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

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

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

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

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

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

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

14.9 (i) the name of the vulnerable adult;

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

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

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

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

14.15 (c) ~~After the assessment or investigation is completed,~~ The name of the reporter must
14.16 be confidential. The subject of the report may compel disclosure of the name of the reporter
14.17 only with the consent of the reporter or upon a written finding by a court that the report was
14.18 false and there is evidence that the report was made in bad faith. This subdivision does not
14.19 alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except
14.20 that where the identity of the reporter is relevant to a criminal prosecution, the district court
14.21 shall do an in-camera review prior to determining whether to order disclosure of the identity
14.22 of the reporter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.21 (g) Lead investigative agencies, county agencies responsible for adult protective services,
15.22 prosecuting authorities, and law enforcement agencies may exchange not public data, as
15.23 defined in section 13.02, with a tribal agency, facility, service provider, vulnerable adult,
15.24 primary support person for a vulnerable adult, state licensing board, federal or state agency,
15.25 the ombudsman for long-term care, or the ombudsman for mental health and developmental
15.26 disabilities, if the agency or authority requesting providing the data determines that the data
15.27 are pertinent and necessary to the requesting agency in initiating, furthering, or completing
15.28 to prevent further maltreatment of a vulnerable adult, to safeguard a vulnerable adult, or for
15.29 an investigation under this section. Data collected under this section must be made available
15.30 to prosecuting authorities and law enforcement officials, local county agencies, and licensing
15.31 agencies investigating the alleged maltreatment under this section. The lead investigative
15.32 agency shall exchange not public data with the vulnerable adult maltreatment review panel
15.33 established in section 256.021 if the data are pertinent and necessary for a review requested

16.1 under that section. Notwithstanding section 138.17, upon completion of the review, not
16.2 public data received by the review panel must be destroyed.

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

16.5 (i) A lead investigative agency may notify other affected parties and their authorized
16.6 representative if the lead investigative agency has reason to believe maltreatment has occurred
16.7 and determines the information will safeguard the well-being of the affected parties or dispel
16.8 widespread rumor or unrest in the affected facility.

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

16.13 Sec. 8. Minnesota Statutes 2020, section 626.5571, subdivision 1, is amended to read:

16.14 Subdivision 1. **Establishment of team.** A county may establish a multidisciplinary adult
16.15 protection team comprised of the director of the local welfare agency or designees, the
16.16 county attorney or designees, the county sheriff or designees, and representatives of health
16.17 care. In addition, representatives of mental health or other appropriate human service
16.18 agencies, representatives from local tribal governments, ~~and~~ adult advocate groups, and any
16.19 other organization with relevant expertise may be added to the adult protection team.

16.20 Sec. 9. Minnesota Statutes 2020, section 626.5571, subdivision 2, is amended to read:

16.21 Subd. 2. **Duties of team.** A multidisciplinary adult protection team may provide public
16.22 and professional education, develop resources for prevention, intervention, and treatment,
16.23 and provide case consultation to the local welfare agency to better enable the agency to
16.24 carry out its ~~adult protection~~ functions under section 626.557 and to meet the community's
16.25 needs ~~for adult protection services~~. Case consultation may be performed by a committee of
16.26 the team composed of the team members representing social services, law enforcement, the
16.27 county attorney, health care, and persons directly involved in an individual case as determined
16.28 by the case consultation committee. Case consultation ~~is~~ includes a case review process that
16.29 results in recommendations about services to be provided to the identified adult and family.

16.30 Sec. 10. Minnesota Statutes 2020, section 626.5572, subdivision 2, is amended to read:

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

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

17.3 (1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

17.4 (2) the use of drugs to injure or facilitate crime as defined in section 609.235;

17.5 (3) the solicitation, inducement, and promotion of prostitution as defined in section
17.6 609.322; and

17.7 (4) criminal sexual conduct in the first through fifth degrees as defined in sections
17.8 609.342 to 609.3451.

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

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

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

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

17.19 (3) use of any aversive or deprivation procedure, unreasonable confinement, or
17.20 involuntary seclusion, including the forced separation of the vulnerable adult from other
17.21 persons against the will of the vulnerable adult or the legal representative of the vulnerable
17.22 adult; and unless authorized under chapter 245A or 245D or Minnesota Rules, chapter 9544.

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

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

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

17.30 (e) For purposes of this section, a vulnerable adult is not abused for the sole reason that
17.31 the vulnerable adult or a person with authority to make health care decisions for the
17.32 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section

18.1 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority
18.2 and within the boundary of reasonable medical practice, to any therapeutic conduct, including
18.3 any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition
18.4 of the vulnerable adult or, where permitted under law, to provide nutrition and hydration
18.5 parenterally or through intubation. This paragraph does not enlarge or diminish rights
18.6 otherwise held under law by:

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

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

18.10 (f) For purposes of this section, a vulnerable adult is not abused for the sole reason that
18.11 the vulnerable adult, a person with authority to make health care decisions for the vulnerable
18.12 adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for
18.13 treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care,
18.14 provided that this is consistent with the prior practice or belief of the vulnerable adult or
18.15 with the expressed intentions of the vulnerable adult.

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

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

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

18.23 Sec. 11. Minnesota Statutes 2020, section 626.5572, subdivision 4, is amended to read:

18.24 Subd. 4. **Caregiver.** "Caregiver" means an individual or facility who has responsibility
18.25 for the care of a vulnerable adult ~~as a result of a family relationship, or who has assumed~~
18.26 ~~responsibility for all or a portion of the care of a vulnerable adult~~ voluntarily, by contract,
18.27 or by agreement.

18.28 Sec. 12. Minnesota Statutes 2020, section 626.5572, subdivision 17, is amended to read:

18.29 Subd. 17. **Neglect.** ~~"Neglect" means:~~ Neglect means neglect by a caregiver or self-neglect.

19.1 (a) "Caregiver neglect" means the failure or omission by a caregiver to supply a vulnerable
19.2 adult with care or services, including but not limited to, food, clothing, shelter, health care,
19.3 or supervision which is:

19.4 (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or
19.5 mental health or safety, considering the physical and mental capacity or dysfunction of the
19.6 vulnerable adult; and

19.7 (2) which is not the result of an accident or therapeutic conduct.

19.8 (b) ~~The absence or likelihood of absence of care or services, including but not limited~~
19.9 ~~to, food, clothing, shelter, health care, or supervision necessary to maintain the physical~~
19.10 ~~and mental health of the vulnerable adult~~ "Self-neglect" means neglect by a vulnerable adult
19.11 of the vulnerable adult's own food, clothing, shelter, health care, or other services that are
19.12 not the responsibility of a caregiver which a reasonable person would deem essential to
19.13 obtain or maintain the vulnerable adult's health, safety, or comfort ~~considering the physical~~
19.14 ~~or mental capacity or dysfunction of the vulnerable adult.~~

19.15 (c) For purposes of this section, a vulnerable adult is not neglected for the sole reason
19.16 that:

19.17 (1) the vulnerable adult or a person with authority to make health care decisions for the
19.18 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections
19.19 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with
19.20 that authority and within the boundary of reasonable medical practice, to any therapeutic
19.21 conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical
19.22 or mental condition of the vulnerable adult, or, where permitted under law, to provide
19.23 nutrition and hydration parenterally or through intubation; this paragraph does not enlarge
19.24 or diminish rights otherwise held under law by:

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

19.27 (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

19.28 (2) the vulnerable adult, a person with authority to make health care decisions for the
19.29 vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or
19.30 prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of
19.31 medical care, provided that this is consistent with the prior practice or belief of the vulnerable
19.32 adult or with the expressed intentions of the vulnerable adult;

20.1 (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or
20.2 emotional dysfunction or undue influence, engages in consensual sexual contact with:

20.3 (i) a person including a facility staff person when a consensual sexual personal
20.4 relationship existed prior to the caregiving relationship; or

20.5 (ii) a personal care attendant, regardless of whether the consensual sexual personal
20.6 relationship existed prior to the caregiving relationship; or

20.7 (4) an individual makes an error in the provision of therapeutic conduct to a vulnerable
20.8 adult which does not result in injury or harm which reasonably requires medical or mental
20.9 health care; or

20.10 (5) an individual makes an error in the provision of therapeutic conduct to a vulnerable
20.11 adult that results in injury or harm, which reasonably requires the care of a physician, and:

20.12 (i) the necessary care is provided in a timely fashion as dictated by the condition of the
20.13 vulnerable adult;

20.14 (ii) if after receiving care, the health status of the vulnerable adult can be reasonably
20.15 expected, as determined by the attending physician, to be restored to the vulnerable adult's
20.16 preexisting condition;

20.17 (iii) the error is not part of a pattern of errors by the individual;

20.18 (iv) if in a facility, the error is immediately reported as required under section 626.557,
20.19 and recorded internally in the facility;

20.20 (v) if in a facility, the facility identifies and takes corrective action and implements
20.21 measures designed to reduce the risk of further occurrence of this error and similar errors;
20.22 and

20.23 (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently
20.24 documented for review and evaluation by the facility and any applicable licensing,
20.25 certification, and ombudsman agency.

20.26 (d) Nothing in this definition requires a caregiver, if regulated, to provide services in
20.27 excess of those required by the caregiver's license, certification, registration, or other
20.28 regulation.

20.29 (e) If the findings of an investigation by a lead investigative agency result in a
20.30 determination of substantiated maltreatment for the sole reason that the actions required of
20.31 a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the
20.32 facility is subject to a correction order. An individual will not be found to have neglected

- 21.1 or maltreated the vulnerable adult based solely on the facility's not having taken the actions
- 21.2 required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead
- 21.3 investigative agency's determination of mitigating factors under section 626.557, subdivision
- 21.4 9c, paragraph ~~(e)~~ (f).