

David R. Stern, 201 Barney Street, Owatonna, MN 55060.....\$100.00.

Mavis J. Stockwell, 904 Pearl Avenue #104, Marshall, MN 56258.....\$225.00.

David A. Stresemann, 552 Cedar Avenue, Box 457, Westbrook, MN 56183.....\$300.00.

Ellen L. Swope, 1269 Northeast 162nd Avenue, Portland, OR 97230.....\$105.00.

Karen M. Tesch, Box 644, Henderson, MN 56044.....\$300.00.

Douglas A. Tolrud, 915 Clover Lane, Grand Rapids, MN 55744.....\$105.00.

Curtis L. Ulvestad, 357 Spates Avenue, Red Wing, MN 55066.....\$300.00.

James P. Wacek, 671 Gosiwin Avenue, Mahtomedi, MN 55115.....\$300.00.

Lawrence J. Waldvogel, 400 Southeast 5th Street, Little Falls, MN 56345.....\$105.00.

Karen H. Welander, 9001 Highway 9 Northwest, Sunburg, MN 56289.....\$210.00.

Beverly I. White, 105 Oline Drive, Albert Lea, MN 56007.....\$300.00.

Craig R. Wylie, 2730 133rd Lane Northeast, Ham Lake, MN 55304.....\$600.00.

Paul A. Yetzer, Route 1, Box 236-A, Hillman, MN 56338.....\$600.00.

Daniel J. Ziegler, 2004 Atlantic Avenue, c/o H.P. Ziegler, Benson, MN 56215.....\$600.00.

### Sec. 3. EFFECTIVE DATE.

This act is effective the day following final enactment.

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 8:50 a.m.

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## CHAPTER 229—S.F.No. 512

*An act relating to human services; licensing; administrative hearings; vulnerable adults reporting act; imposing criminal penalties; increasing licensing fees for certain facilities; requiring reports of convictions to the commissioner in certain instances; requiring a report to the legislature; appropriating money; amending Minnesota Statutes 1994, sections 13.46,*

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*subdivision 4; 13.82, subdivision 10, and by adding subdivisions; 13.88; 13.99, subdivision 113; 144.4172, subdivision 8; 144.651, subdivisions 14 and 21; 144A.103, subdivision 1; 144B.13; 148B.68, subdivision 1; 214.10, subdivision 2a; 245A.04, subdivisions 3 and 3b; 253B.02, subdivision 4a; 256.045, subdivisions 1, 3, 4, 5, 6, 7, 8, 9, and by adding a subdivision; 256E.03, subdivision 2; 256E.081, subdivision 4; 268.09, subdivision 1; 325F.692, subdivision 2; 525.703, subdivision 3; 609.224, subdivision 2; 609.268, subdivisions 1 and 2; 609.72, by adding a subdivision; 609.7495, subdivision 1; 626.556, subdivision 12; 626.557, subdivisions 1, 3, 3a, 4, 5, 6, 7, 8, 9, 10, 14, 16, 17, 18, and by adding subdivisions; and 631.40, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 144; 609; and 626; repealing Minnesota Statutes 1994, sections 144A.612; and 626.557, subdivisions 2, 10a, 11, 11a, 12, 13, 15, and 19.*

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

## ARTICLE 1

### VULNERABLE ADULTS ACT AMENDMENTS

Section 1. Minnesota Statutes 1994, section 626.557, subdivision 1, is amended to read:

Subdivision 1. **PUBLIC POLICY.** The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to ~~abuse or neglect~~ maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been ~~abused or neglected~~; and to assist persons charged with the care of ~~vulnerable adults to provide safe environments~~ maltreated.

In addition, it is the policy of this state to require the reporting of suspected ~~abuse or neglect~~ maltreatment of vulnerable adults, to provide for the voluntary reporting of ~~abuse or neglect~~ maltreatment of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

Sec. 2. Minnesota Statutes 1994, section 626.557, subdivision 3, is amended to read:

Subd. 3. **PERSONS MANDATED TO TIMING OF REPORT.** A professional or the professional's delegate who is engaged in the care of ~~vulnerable adults~~; education; social services; law enforcement; or any of the regulated occupations referenced in subdivision 2; clause ~~(g)~~(3) and (4); or an employee of a rehabilitation facility certified by the commissioner of economic security for ~~vocational rehabilitation~~; or an employee of or person providing services in a facility who has knowledge of the abuse or neglect of a ~~vulnerable adult~~; has reasonable cause to believe (a) A mandated reporter who has reason to believe that

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a vulnerable adult is being or has been ~~abused or neglected~~ maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained by the ~~history of injuries provided by the caretaker or caretakers of the vulnerable adult~~ shall immediately report the information to the ~~local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency~~ common entry point. 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, clause (4). The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff and the appropriate licensing agency or agencies:

(b) A person not required to report under the provisions of this subdivision section may voluntarily report as described above. Medical examiners or coroners shall notify the police department or county sheriff and the local welfare department in instances in which they believe that a vulnerable adult has died as a result of abuse or neglect.

(c) Nothing in this subdivision shall be construed to require the reporting or transmittal of information regarding an incident of abuse or neglect or suspected abuse or neglect if the incident has been reported or transmitted to the appropriate person or entity 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.

Sec. 3. Minnesota Statutes 1994, section 626.557, subdivision 3a, is amended to read:

Subd. 3a. **REPORT NOT REQUIRED.** The following events are not required to be reported under this section:

(a) A circumstance where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected abuse or neglect under ~~Laws 1983, chapter 273, section 3~~ maltreatment, that person need not make a required report unless the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities

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whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected ~~abuse or neglect~~ maltreatment from each patient or resident, or a guardian, conservator, or legal representative, upon the patient's or resident's admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected ~~abuse or neglect~~ maltreatment shall ~~promptly~~ immediately seek consent to make a report.

(b) ~~Except as defined in subdivision 2, paragraph (d), clause (1),~~ Verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior of by these persons does not constitute "abuse" for the purposes of ~~subdivision 3~~ abuse unless ~~it~~ the behavior causes serious harm. The operator of the facility or a designee shall record incidents of aggression and self-abusive behavior in a manner that ~~facilitates periodic~~ to facilitate review by licensing agencies and county and local welfare agencies.

(c) Accidents as defined in section 626.5572, subdivision 3.

(d) Events occurring in a facility that result from an individual's single mistake, as defined in section 626.5572, subdivision 17, paragraph (c), clause (4).

(e) Nothing in this section shall be construed to require a report of ~~abuse~~ financial exploitation, as defined in section 626.5572, subdivision 2 ~~2~~, ~~paragraph (d), clause (4),~~ solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

Sec. 4. Minnesota Statutes 1994, section 626.557, subdivision 4, is amended to read:

Subd. 4. **REPORT REPORTING.** A person required to report under ~~subdivision 3~~ mandated reporter shall immediately make an oral report ~~immediately~~ by telephone or otherwise. A person required to report under ~~subdivision 3~~ shall also make a report as soon as possible in writing to the appropriate police department, the county sheriff, local welfare agency, or appropriate licensing agency. The written report shall to the common entry point. 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 ~~caretaker~~ caregiver, the nature and extent of the suspected ~~abuse or neglect~~ maltreatment, any evidence of previous ~~abuse or neglect~~ 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 ~~abuse or neglect~~ maltreatment. Written reports received by a police department or a county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff and the appropriate licensing agency or agencies. A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under section 144.335, to the extent necessary to comply with this subdivision.

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Sec. 5. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

Subd. 4a. INTERNAL REPORTING OF MALTREATMENT. (a) Each facility shall establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported. If a facility has an internal reporting procedure, a mandated reporter may meet the reporting requirements of this section by reporting internally. However, the facility remains responsible for complying with the immediate reporting requirements of this section.

(b) A facility with an internal reporting procedure that receives an internal report by a mandated reporter shall give the mandated reporter a written notice stating whether the facility has reported the incident to the common entry point. The written notice must be provided within two working days and in a manner that protects the confidentiality of the reporter.

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the common entry point, then the mandated reporter may report externally.

(d) A facility may not prohibit a mandated reporter from reporting externally, and a facility is prohibited from retaliating against a mandated reporter who reports an incident to the common entry point in good faith. The written notice by the facility must inform the mandated reporter of this protection from retaliatory measures by the facility against the mandated reporter for reporting externally.

Sec. 6. Minnesota Statutes 1994, section 626.557, subdivision 5, is amended to read:

**Subd. 5. IMMUNITY; ~~FROM LIABILITY~~ PROTECTION FOR REPORTERS.** (a) A person making a voluntary or mandated report under subdivision 3 or participating in an investigation under this section is immune from any civil or criminal liability that otherwise might result from the person's actions; if the person is acting in good faith who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.

(b) A person employed by a ~~local welfare lead~~ agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with ~~subdivision 10, 11, or 12~~ this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

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(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

Sec. 7. Minnesota Statutes 1994, section 626.557, subdivision 6, is amended to read:

Subd. 6. **FALSIFIED REPORTS.** A person or facility who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons ~~so reported~~ and for any punitive damages ~~set by the court or jury up to \$10,000 and attorney's fees.~~

Sec. 8. Minnesota Statutes 1994, section 626.557, subdivision 7, is amended to read:

Subd. 7. **FAILURE TO REPORT.** ~~(a) A person required to report by this section who intentionally fails to report is guilty of a misdemeanor.~~

~~(b) A person required by this section to report~~ A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in this subdivision imposes vicarious liability for the acts or omissions of others.

Sec. 9. Minnesota Statutes 1994, section 626.557, subdivision 8, is amended to read:

Subd. 8. **EVIDENCE NOT PRIVILEGED.** No evidence regarding the ~~abuse or neglect~~ maltreatment of the vulnerable adult shall be excluded in any proceeding arising out of the alleged ~~abuse or neglect~~ maltreatment on the grounds of lack of competency under section 595.02.

Sec. 10. Minnesota Statutes 1994, section 626.557, subdivision 9, is amended to read:

Subd. 9. **MANDATORY REPORTING TO A MEDICAL EXAMINER OR CORONER THE COMMON ENTRY POINT.** A person required to report under the provisions of subdivision 3 who has reasonable cause to believe that a vulnerable adult has died as a direct or indirect result of abuse or neglect shall report that information to the appropriate medical examiner or coroner in addition to the local welfare agency, police department, or county sheriff or appropriate licensing agency or agencies. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff, the local welfare agency, and, if applicable, each licensing agency. A person or agency that receives a report under this sub-

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division concerning a vulnerable adult who was receiving services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance from an agency, facility, or program as defined in section 245.91, shall also report the information and findings to the ombudsman established under sections 245.91 to 245.97.

(a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point.

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 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 investigative agency.

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(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 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.

(g) When a centralized database is available, the common entry point has access to the centralized database and must log the reports in on the database.

Sec. 11. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

**Subd. 9a. EVALUATION AND REFERRAL OF REPORTS MADE TO THE COMMON ENTRY POINT.** 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 adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

(3) if the report references alleged or suspected maltreatment and there is no immediate need for adult protective services, the common entry point shall notify the appropriate lead agency as soon as possible, but in any event no longer than two working days;

(4) if the report does not reference alleged or suspected maltreatment, the common entry point may determine whether the information will be referred; and

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

Sec. 12. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision 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

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believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for 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). County adult protection shall initiate a response immediately. Each lead agency shall complete the investigative process for reports within its jurisdiction. Any other lead agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead agency shall obtain the results of any investigation conducted by law enforcement officials. The lead agency has the right to enter facilities and inspect and copy records as part of investigations. The lead agency has access to not public data, as defined in section 13.02, and medical records under section 144.335, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead agency shall develop guidelines for prioritizing reports for investigation.

Sec. 13. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

Subd. 9c. LEAD AGENCY; NOTIFICATIONS, DISPOSITIONS, AND DETERMINATIONS. (a) Upon request of the reporter, the lead 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) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment, the lead 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

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

(d) The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition within 60 calendar days, the lead 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 legal guardian, when known, if the lead 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 agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead 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. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(e) Within ten calendar days of completing the final disposition, the lead agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's legal guardian, if known unless the lead agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification 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 older Minnesotans, or the ombudsman for mental health and mental retardation, as appropriate.

(f) The lead agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal rights under this section.

(g) The lead 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 agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead 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.

(h) In order to avoid duplication, licensing boards shall consider the find-

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ings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(i) The lead 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. 14. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

**Subd. 9d. ADMINISTRATIVE RECONSIDERATION OF THE FINAL DISPOSITION.** Any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or vulnerable adult's designee, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition.

If the lead agency denies the request or fails to act upon the request within 15 calendar 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.

If, as a result of the reconsideration, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

Sec. 15. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

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

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

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

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

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

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

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

Sec. 16. Minnesota Statutes 1994, section 626.557, subdivision 10, is amended to read:

Subd. 10. **DUTIES OF LOCAL WELFARE THE COUNTY SOCIAL SERVICE AGENCY UPON A RECEIPT OF A REPORT.** (a) The local welfare ~~Upon receipt of a report from the common entry point staff, the county social service agency shall immediately investigate assess and offer emergency and continuing protective social services for purposes of preventing further abuse or neglect maltreatment and for safeguarding and enhancing the welfare of the abused or neglected maltreated vulnerable adult. Local welfare agencies may enter facilities and inspect and copy records as part of investigations.~~ In cases of suspected sexual abuse, the local welfare county social service agency shall immediately arrange for and make available to the victim vulnerable adult appropriate medical examination and treatment. The investigation shall not be limited to the written records of the facility, but shall include every other available source of information. ~~When necessary in order to protect the vulnerable adult from further harm, the local welfare county social service agency shall seek authority to remove the vulnerable adult from the situation in which the neglect or abuse maltreatment occurred. The local welfare county social service agency~~

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~~shall~~ may also investigate to determine whether the conditions which resulted in the reported ~~abuse or neglect~~ maltreatment place other vulnerable adults in jeopardy of being ~~abused or neglected~~ maltreated and offer protective social services that are called for by its determination. ~~In performing any of these duties, the local welfare agency shall maintain appropriate records.~~

(b) ~~If the report indicates, or if the local welfare agency finds that the suspected abuse or neglect occurred at a facility, or while the vulnerable adult was or should have been under the care of or receiving services from a facility, or that the suspected abuse or neglect involved a person licensed by a licensing agency to provide care or services, the local welfare agency shall immediately notify each appropriate licensing agency, and provide each licensing agency with a copy of the report and of its investigative findings. County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section 13.02, and medical records under section 144.335, that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.~~

(c) When necessary in order to protect a vulnerable adult from serious harm, the ~~local~~ county social service agency shall immediately intervene on behalf of that adult to help the family, ~~victim~~ vulnerable adult, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section 518B.01;

(2) the appointment of a guardian or conservator pursuant to sections 525.539 to 525.6198, or guardianship or conservatorship pursuant to chapter 252A;

(3) replacement of ~~an abusive or neglectful~~ a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections 525.539 to 525.6198; or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section 525.703 and chapter 563.

In proceedings under sections 525.539 to 525.6198, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or ~~non-profit~~ organization to provide ongoing guardianship services. If the county presents evidence to the probate court that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or con-

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servator. The county shall not retaliate against the employee for any action taken on behalf of the ward or conservatee even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Sec. 17. Minnesota Statutes 1994, section 626.557, is amended by adding a subdivision to read:

Subd. 12b. DATA MANAGEMENT. (a) COUNTY DATA. In performing any of the duties of this section as a lead 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).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

(b) LEAD AGENCY DATA. The commissioner of health and the commissioner of human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. 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. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

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

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;
- (vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;
- (vii) a statement of any action taken by the facility;

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

(ix) when a lead 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 listed in clause (2).

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

(i) the name of the vulnerable adult;

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

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

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

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

(c) IDENTITY OF REPORTER. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or 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) DESTRUCTION OF DATA. Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

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

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

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

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

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(e) **SUMMARY OF REPORTS.** The commissioners of health and human services shall each annually prepare a summary of the number and type of reports of alleged maltreatment involving licensed facilities reported under this section.

(f) **RECORD RETENTION POLICY.** Each lead agency must have a record retention policy.

(g) **EXCHANGE OF INFORMATION.** Lead 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.

(h) **COMPLETION TIME.** Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) **NOTIFICATION OF OTHER AFFECTED PARTIES.** A lead agency may notify other affected parties and their authorized representative if the 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) **FEDERAL REQUIREMENTS.** Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Sec. 18. Minnesota Statutes 1994, 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, 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. ~~Facilities designated in subdivision 2, clause (b)(2) or clause (b)(3) shall develop plans for any vulnerable adults receiving services from them.~~ The plan shall contain an individualized assessment of the person's susceptibility to abuse, and a state-

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ment of the specific measures to be taken to minimize the risk of abuse to that person. For the purposes of this clause, the term "abuse" includes self-abuse.

Sec. 19. Minnesota Statutes 1994, section 626.557, subdivision 16, is amended to read:

Subd. 16. **ENFORCEMENT IMPLEMENTATION AUTHORITY.** (a) ~~A facility that has not complied with this section within 60 days of the effective date of passage of emergency rules is ineligible for renewal of its license. A person required by subdivision 3 to report and who is licensed or credentialed to practice an occupation by a licensing agency who willfully fails to comply with this section shall be disciplined after a hearing by the appropriate licensing agency. By September 1, 1995, the attorney general and the commissioners of health and human services, in coordination with representatives of other entities that receive or investigate maltreatment reports, shall develop the common report form described in subdivision 9. The form may be used by mandated reporters, county social service agencies, law enforcement entities, licensing agencies, or ombudsman offices.~~

(b) ~~Licensing agencies~~ The commissioners of health and human services shall as soon as possible promulgate rules necessary to implement the requirements of subdivisions 11, 12, 13, 14, 15, and 16, ~~clause (a) this section.~~ Agencies The commissioners of health and human services may promulgate emergency rules pursuant to sections 14.29 to 14.36.

(e) ~~The commissioner of human services shall promulgate rules as necessary to implement the requirements of subdivision 10.~~

(c) By December 31, 1995, the commissioners of health, human services, and public safety shall develop criteria for the design of a statewide database utilizing data collected on the common intake form of the common entry point. The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

(d) By September 1, 1995, each lead agency shall develop the guidelines required in subdivision 9b.

Sec. 20. Minnesota Statutes 1994, 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 ~~abuse or neglect~~ 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 ~~abuse or neglect~~ maltreatment is liable to that person for actual dam-

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ages ~~and, in addition, a penalty,~~ punitive damages up to \$10,000, and attorney's 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.

Sec. 21. Minnesota Statutes 1994, section 626.557, subdivision 18, is amended to read:

Subd. 18. **OUTREACH.** The commissioner of human services shall ~~estab-~~ lish maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

Sec. 22. **[626.5572] DEFINITIONS.**

Subdivision 1. SCOPE. For the purpose of section 626.557, the following terms have the meanings given them, unless otherwise specified.

Subd. 2. ABUSE. "Abuse" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

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

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

New language is indicated by underline, deletions by ~~strikeout~~.

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

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

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

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

Subd. 3. ACCIDENT. "Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

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

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

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

Subd. 5. COMMON ENTRY POINT. "Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

Subd. 6. FACILITY. (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627.

(b) For home care providers and personal care attendants, the term "facili-

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ty" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

**Subd. 7. FALSE.** "False" means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

**Subd. 8. FINAL DISPOSITION.** "Final disposition" is the determination of an investigation by a lead agency that a report of maltreatment under this act is substantiated, inconclusive, false, or that no determination will be made. When a lead agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

**Subd. 9. FINANCIAL EXPLOITATION.** "Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

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Subd. 10. IMMEDIATELY. "Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

Subd. 11. INCONCLUSIVE. "Inconclusive" means there is less than a preponderance of evidence to show that maltreatment did or did not occur.

Subd. 12. INITIAL DISPOSITION. "Initial disposition" is the lead agency's determination of whether the report will be assigned for further investigation.

Subd. 13. LEAD AGENCY. "Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The department of health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, or boarding care homes.

(b) The department of human services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, chemical health programs, or personal care provider organizations.

(c) The county social service agency or its designee is the lead agency for all other reports.

Subd. 14. LEGAL AUTHORITY. "Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

Subd. 15. MALTREATMENT. "Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Subd. 16. MANDATED REPORTER. "Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

Subd. 17. NEGLECT. "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

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

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

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

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

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

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

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

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

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with: (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes a single mistake in the provision of therapeutic conduct to a vulnerable adult which: (i) does not result in injury or harm which reasonably requires the care of a physician or mental health professional, whether or not the care was sought; (ii) is immediately reported internally by the

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employee or person providing services in the facility; and (iii) is sufficiently documented for review and evaluation by the facility and any applicable licensing and certification agency.

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

Subd. 18. REPORT. "Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subd. 19. SUBSTANTIATED. "Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

Subd. 20. THERAPEUTIC CONDUCT. "Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

Subd. 21. VULNERABLE ADULT. "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

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(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

Sec. 23. **[626.5573] NEGLIGENCE ACTIONS.**

A violation of sections 626.557 to 626.5572 shall be admissible as evidence of negligence, but shall not be considered negligence per se.

Sec. 24. **REPEALER.**

Minnesota Statutes 1994, section 626.557, subdivisions 2, 10a, 11, 11a, 12, 13, 15, and 19, are repealed.

Sec. 25. **EFFECTIVE DATE.**

Sections 15 and 19 are effective July 1, 1995. Sections 1 to 14, 16 to 18, and 20 to 24 are effective October 1, 1995.

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**ARTICLE 2**

**CRIMINAL PENALTIES**

Section 1. Minnesota Statutes 1994, section 609.224, subdivision 2, is amended to read:

Subd. 2. **GROSS MISDEMEANOR.** (a) Whoever violates the provisions of subdivision 1 against the same victim during the time period between a previous conviction under this section, sections 609.221 to 609.2231, 609.342 to 609.345, or 609.713, or any similar law of another state, and the end of the five years following discharge from sentence for that conviction, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. Whoever violates the provisions of subdivision 1 against a family or household member as defined in section 518B.01, subdivision 2, during the time period between a previous conviction under this section or sections 609.221 to 609.2231, 609.342 to 609.345, or 609.713 against a family or household member, and the end of the five years following discharge from sentence for that conviction is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of subdivision 1 within two years of a previous conviction under this section or sections 609.221 to 609.2231 or 609.713 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(c) A caregiver, as defined in section 609.232, who is an individual and who violates the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

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Sec. 2. [609.232] CRIMES AGAINST VULNERABLE ADULTS; DEFINITIONS.

Subdivision 1. SCOPE. As used in sections 609.2325, 609.233, 609.2335, and 609.234, the terms defined in this section have the meanings given.

Subd. 2. CAREGIVER. "Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subd. 3. FACILITY. (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a home care provider licensed or required to be licensed under section 144A.46; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

Subd. 4. IMMEDIATELY. "Immediately" means as soon as possible, but no longer than 24 hours from the time of initial knowledge that the incident occurred has been received.

Subd. 5. LEGAL AUTHORITY. "Legal authority" includes, but is not limited to:

(1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations;

(2) a contractual obligation; or

(3) documented consent by a competent person.

Subd. 6. MALTREATMENT. "Maltreatment" means any of the following:

(1) abuse under section 609.2325;

(2) neglect under section 609.233; or

(3) financial exploitation under section 609.2335.

Subd. 7. OPERATOR. "Operator" means any person whose duties and responsibilities evidence actual control of administrative activities or authority for the decision making of or by a facility.

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Subd. 8. PERSON. "Person" means any individual, corporation, firm, partnership, incorporated and unincorporated association, or any other legal, professional, or commercial entity.

Subd. 9. REPORT. "Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subd. 10. THERAPEUTIC CONDUCT. "Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility or employee, or person providing services in a facility under the rights, privileges, and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

Subd. 11. VULNERABLE ADULT. "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

### Sec. 3. [609.2325] CRIMINAL ABUSE.

Subdivision 1. CRIMES. (a) A caregiver who, with intent to produce physical or mental pain or injury to a vulnerable adult, subjects a vulnerable adult to any aversive or deprivation procedure, unreasonable confinement, or involun-

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tary seclusion, is guilty of criminal abuse and may be sentenced as provided in subdivision 3.

This paragraph does not apply to therapeutic conduct.

(b) A caregiver, facility staff person, or person providing services in a facility who engages in sexual contact or penetration, as defined in section 609.341, under circumstances other than those described in sections 609.342 to 609.345, with a resident, patient, or client of the facility is guilty of criminal abuse and may be sentenced as provided in subdivision 3.

Subd. 2. EXEMPTIONS. For the purposes of this section, a vulnerable adult is not abused for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

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

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

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

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with: (i) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subd. 3. PENALTIES. (a) A person who violates subdivision 1, paragraph (a), clause (1), may be sentenced as follows:

(1) if the act results in the death of a vulnerable adult, imprisonment for not more than 15 years or payment of a fine of not more than \$30,000, or both;

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(2) if the act results in great bodily harm, imprisonment for not more than ten years or payment of a fine of not more than \$20,000, or both;

(3) if the act results in substantial bodily harm or the risk of death, imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both; or

(4) in other cases, imprisonment for not more than one year or payment of a fine of not more than \$3,000, or both.

(b) A person who violates subdivision 1, paragraph (a), clause (2), or paragraph (b), may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

#### Sec. 4. [609.233] CRIMINAL NEGLIGENCE.

Subdivision 1. CRIME. A caregiver or operator who intentionally neglects a vulnerable adult or knowingly permits conditions to exist that result in the abuse or neglect of a vulnerable adult is guilty of a gross misdemeanor. For purposes of this section, "abuse" has the meaning given in section 626.5572, subdivision 2, and "neglect" means a failure to provide a vulnerable adult with necessary food, clothing, shelter, health care, or supervision.

Subd. 2. EXEMPTIONS. A vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or 525.539 to 525.6199, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

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

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

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

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(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with; (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

**Sec. 5. [609.2335] FINANCIAL EXPLOITATION OF A VULNERABLE ADULT.**

Subdivision 1. CRIME. Whoever does any of the following acts commits the crime of financial exploitation:

(1) in breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the vulnerable adult; or

(2) in the absence of legal authority:

(i) acquires possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, or duress; or

(ii) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

Subd. 2. DEFENSES. Nothing in this section requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subd. 3. CRIMINAL PENALTIES. A person who violates subdivision 1, clause (1) or (2), item (i), may be sentenced as provided in section 609.52, subdivision 3. A person who violates subdivision 1, clause (2), item (ii), may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

**Sec. 6. [609.234] FAILURE TO REPORT.**

Subdivision 1. CRIME. Any mandated reporter who is required to report under section 626.557, who knows or has reason to believe that a vulnerable adult is being or has been maltreated, as defined in section 626.5572, subdivision 15, and who does any of the following is guilty of a misdemeanor:

(1) intentionally fails to make a report;

(2) knowingly provides information which is false, deceptive, or misleading;

or

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(3) intentionally fails to provide all of the material circumstances surrounding the incident which are known to the reporter when the report is made.

Subd. 2. INCREASED PENALTY. It is a gross misdemeanor for a person who is mandated to report under section 626.557, who knows or has reason to believe that a vulnerable adult is being or has been maltreated, as defined in section 626.5572, subdivision 15, to intentionally fail to make a report if:

(1) the person knows the maltreatment caused or contributed to the death or great bodily harm of a vulnerable adult; and

(2) the failure to report causes or contributes to the death or great bodily harm of a vulnerable adult or protects the mandated reporter's interests.

Sec. 7. Minnesota Statutes 1994, section 609.72, is amended by adding a subdivision to read:

Subd. 3. CAREGIVER; PENALTY FOR DISORDERLY CONDUCT. A caregiver, as defined in section 609.232, who violates the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Sec. 8. EFFECTIVE DATE.

Sections 1 to 7 are effective October 1, 1995, and apply to crimes committed on or after that date.

### ARTICLE 3

#### OTHER LAWS AFFECTING VULNERABLE ADULTS

Section 1. Minnesota Statutes 1994, section 13.82, is amended by adding a subdivision to read:

Subd. 5c. VULNERABLE ADULT IDENTITY DATA. Active or inactive investigative data that identify a victim of vulnerable adult maltreatment under section 626.557 are private data on individuals. Active or inactive investigative data that identify a reporter of vulnerable adult maltreatment under section 626.557 are private data on individuals.

Sec. 2. Minnesota Statutes 1994, section 13.82, is amended by adding a subdivision to read:

Subd. 5d. INACTIVE VULNERABLE ADULT MALTREATMENT DATA. Investigative data that becomes inactive under subdivision 5, paragraph (a) or (b), and that relate to the alleged maltreatment of a vulnerable adult by a caregiver or facility are private data on individuals.

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Sec. 3. Minnesota Statutes 1994, section 13.82, subdivision 10, is amended to read:

Subd. 10. **PROTECTION OF IDENTITIES.** A law enforcement agency or a law enforcement dispatching agency working under direction of a law enforcement agency may withhold public access to data on individuals to protect the identity of individuals in the following circumstances:

(a) when access to the data would reveal the identity of an undercover law enforcement officer;

(b) when access to the data would reveal the identity of a victim of criminal sexual conduct or of a violation of section 617.246, subdivision 2;

(c) when access to the data would reveal the identity of a paid or unpaid informant being used by the agency if the agency reasonably determines that revealing the identity of the informant would threaten the personal safety of the informant;

(d) when access to the data would reveal the identity of a victim of or witness to a crime if the victim or witness specifically requests not to be identified publicly, and the agency reasonably determines that revealing the identity of the victim or witness would threaten the personal safety or property of the individual;

(e) when access to the data would reveal the identity of a deceased person whose body was unlawfully removed from a cemetery in which it was interred;

(f) when access to the data would reveal the identity of a person who placed a call to a 911 system or the identity or telephone number of a service subscriber whose phone is used to place a call to the 911 system and: (1) the agency determines that revealing the identity may threaten the personal safety or property of any person; or (2) the object of the call is to receive help in a mental health emergency. For the purposes of this paragraph, a voice recording of a call placed to the 911 system is deemed to reveal the identity of the caller; or

(g) when access to the data would reveal the identity of a juvenile witness and the agency reasonably determines that the subject matter of the investigation justifies protecting the identity of the witness; or

(h) when access to the data would reveal the identity of a mandated reporter under sections 626.556 and 626.557.

Data concerning individuals whose identities are protected by this subdivision are private data about those individuals. Law enforcement agencies shall establish procedures to acquire the data and make the decisions necessary to protect the identity of individuals described in clauses (d) and (g).

Sec. 4. **[144.057] BACKGROUND STUDIES ON LICENSEES.**

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**Subdivision 1. BACKGROUND STUDIES REQUIRED.** The commissioner of health shall contract with the commissioner of human services to conduct background studies of individuals providing services which have direct contact, as defined under section 245A.04, subdivision 3, with patients and residents in hospitals, boarding care homes, outpatient surgical centers licensed under sections 144.50 to 144.58; nursing homes and home care agencies licensed under chapter 144A; residential care homes licensed under chapter 144B, and board and lodging establishments that are registered to provide supportive or health supervision services under section 157.031. If a facility or program is licensed by the department of human services and subject to the background study provisions of chapter 245A and is also licensed by the department of health, the department of human services is solely responsible for the background studies of individuals in the jointly licensed programs.

**Subd. 2. RESPONSIBILITIES OF THE DEPARTMENT OF HUMAN SERVICES.** The department of human services shall conduct the background studies required by subdivision 1 in compliance with the provisions of chapter 245A and Minnesota Rules, parts 9543.3000 to 9543.3090. For the purpose of this section, the term "residential program" shall include all facilities described in subdivision 1. The department of human services shall provide necessary forms and instructions, shall conduct the necessary background studies of individuals, and shall provide notification of the results of the studies to the facilities, individuals, and the commissioner of health. Individuals shall be disqualified under the provisions of chapter 245A and Minnesota Rules, parts 9543.3000 to 9543.3090. If an individual is disqualified, the department of human services shall notify the facility and the individual and shall inform the individual of the right to request a reconsideration of the disqualification by submitting the request to the department of health.

**Subd. 3. RECONSIDERATIONS.** The commissioner of health shall review and decide reconsideration requests in accordance with the procedures and criteria contained in chapter 245A and Minnesota Rules, parts 9543.3000 to 9543.3090. The commissioner's decision shall be provided to the individual and to the department of human services. The commissioner's decision to grant or deny a reconsideration of disqualification is the final administrative agency action.

**Subd. 4. RESPONSIBILITIES OF FACILITIES.** Facilities described in subdivision 1 shall be responsible for cooperating with the departments in implementing the provisions of this section. The responsibilities imposed on applicants and licensees under chapter 245A and Minnesota Rules, parts 9543.3000 to 9543.3090 shall apply to these facilities. The provision of section 245A.04, subdivision 3, paragraph (d) shall apply to applicants, licensees, or an individual's refusal to cooperate with the completion of the background studies.

Sec. 5. Minnesota Statutes 1994, section 245A.04, subdivision 3, is amended to read:

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Subd. 3. **STUDY OF THE APPLICANT.** (a) Before the commissioner issues a license, the commissioner shall conduct a study of the individuals specified in clauses (1) to ~~(4)~~ (5) according to rules of the commissioner. The applicant, license holder, the bureau of criminal apprehension, the commissioner of health and county agencies, after written notice to the individual who is the subject of the study, shall help with the study by giving the commissioner criminal conviction data and reports about abuse or neglect of adults in licensed programs substantiated under section 626.557 and the maltreatment of minors in licensed programs substantiated under section 626.556. The individuals to be studied shall include:

- (1) the applicant;
- (2) persons over the age of 13 living in the household where the licensed program will be provided;
- (3) current employees or contractors of the applicant who will have direct contact with persons served by the program; ~~and~~
- (4) volunteers who have direct contact with persons served by the program to provide program services, if the contact is not directly supervised by the individuals listed in clause (1) or (3); and
- (5) any person who, as an individual or as a member of an organization, exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, and 256B.0625, subdivision 19.

The juvenile courts shall also help with the study by giving the commissioner existing juvenile court records on individuals described in clause (2) relating to delinquency proceedings held within either the five years immediately preceding the application or the five years immediately preceding the individual's 18th birthday, whichever time period is longer. The commissioner shall destroy juvenile records obtained pursuant to this subdivision when the subject of the records reaches age 23.

For purposes of this subdivision, "direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by a program. For purposes of this subdivision, "directly supervised" means an individual listed in clause (1) ~~or~~, (3), or (5) is within sight or hearing of a volunteer to the extent that the individual listed in clause (1) ~~or~~, (3), or (5) is capable at all times of intervening to protect the health and safety of the persons served by the program who have direct contact with the volunteer.

A study of an individual in clauses (1) to ~~(4)~~ (5) shall be conducted at least upon application for initial license and reapplication for a license. The commissioner is not required to conduct a study of an individual at the time of reapplication for a license, other than a family day care or foster care license, if (i) a study of the individual was conducted either at the time of initial licensure or

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when the individual became affiliated with the license holder; (ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and (iii) the procedure described in paragraph (b) has been implemented and was in effect continuously since the last study was conducted. No applicant, license holder, or individual who is the subject of the study shall pay any fees required to conduct the study.

(b) If an individual who is affiliated with a program or facility regulated by the department of human services or department of health is convicted of a crime constituting a disqualification under Minnesota Rules, parts 9543.3000 to 9543.3090, the probation officer or corrections agent shall notify the commissioner of the conviction. The commissioner, in consultation with the commissioner of corrections, shall develop forms and information necessary to implement this paragraph and shall provide the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents. The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system. A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this paragraph. This paragraph does not apply to family day care and foster care programs.

(b) (c) The individual who is the subject of the study must provide the applicant or license holder with sufficient information to ensure an accurate study including the individual's first, middle, and last name; home address, city, county, and state of residence; zip code; sex; date of birth; and driver's license number. The applicant or license holder shall provide this information about an individual in paragraph (a), clauses (1) to (4) (5), on forms prescribed by the commissioner. The commissioner may request additional information of the individual, which shall be optional for the individual to provide, such as the individual's social security number or race.

(e) (d) Except for child foster care, adult foster care, and family day care homes, a study must include information from the county agency's record of substantiated abuse or neglect of adults in licensed programs, and the maltreatment of minors in licensed programs, information from juvenile courts as required in paragraph (a) for persons listed in paragraph (a), clause (2), and information from the bureau of criminal apprehension. For child foster care, adult foster care, and family day care homes, the study must include information from the county agency's record of substantiated abuse or neglect of adults, and the maltreatment of minors, information from juvenile courts as required in paragraph (a) for persons listed in paragraph (a), clause (2), and information from the bureau of criminal apprehension. The commissioner may also review arrest and investigative information from the bureau of criminal apprehension, the commissioner of health, a county attorney, county sheriff, county agency, local chief of police, other states, the courts, or a national criminal record repository if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual listed in paragraph (a), clauses (1) to (4) (5).

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(~~e~~) (e) An applicant's or license holder's failure or refusal to cooperate with the commissioner is reasonable cause to deny an application or immediately suspend, suspend, or revoke a license. Failure or refusal of an individual to cooperate with the study is just cause for denying or terminating employment of the individual if the individual's failure or refusal to cooperate could cause the applicant's application to be denied or the license holder's license to be immediately suspended, suspended, or revoked.

(~~e~~) (f) The commissioner shall not consider an application to be complete until all of the information required to be provided under this subdivision has been received.

(~~f~~) (g) No person in paragraph (a), clause (1), (2), (3), ~~or~~ (4), or (5) who is disqualified as a result of this section may be retained by the agency in a position involving direct contact with persons served by the program.

(~~g~~) (h) Termination of persons in paragraph (a), clause (1), (2), (3), ~~or~~ (4), or (5) made in good faith reliance on a notice of disqualification provided by the commissioner shall not subject the applicant or license holder to civil liability.

(~~h~~) (i) The commissioner may establish records to fulfill the requirements of this section.

(~~i~~) (j) The commissioner may not disqualify an individual subject to a study under this section because that person has, or has had, a mental illness as defined in section 245.462, subdivision 20.

(~~j~~) (k) An individual who is subject to an applicant background study under this section and whose disqualification in connection with a license would be subject to the limitations on reconsideration set forth in subdivision 3b, paragraph (c), shall be disqualified for conviction of the crimes specified in the manner specified in subdivision 3b, paragraph (c). The commissioner of human services shall amend Minnesota Rules, part 9543.3070, to conform to this section.

(l) An individual must be disqualified if it has been determined that the individual failed to make required reports under sections 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (1) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (2) the maltreatment was recurring or serious as defined in Minnesota Rules, part 9543.3020, subpart 10.

(m) An individual subject to disqualification under this subdivision has the applicable rights in subdivision 3a, 3b, or 3c.

Sec. 6. Minnesota Statutes 1994, section 256.045, subdivision 1, is amended to read:

Subdivision 1. **POWERS OF THE STATE AGENCY.** The commissioner of human services may appoint one or more state human services referees to

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conduct hearings and recommend orders in accordance with subdivisions 3, 3a, 3b, 4a, and 5. Human services referees designated pursuant to this section may administer oaths and shall be under the control and supervision of the commissioner of human services and shall not be a part of the office of administrative hearings established pursuant to sections 14.48 to 14.56.

Sec. 7. Minnesota Statutes 1994, section 256.045, subdivision 3, is amended to read:

Subd. 3. **STATE AGENCY HEARINGS.** State agency hearings are available for the following: (1) any person applying for, receiving or having received public assistance or a program of social services granted by the state agency or a county agency under sections 252.32, 256.031 to 256.036, and 256.72 to 256.879, chapters 256B, 256D, 256E, 261, 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; or (2) any patient or relative aggrieved by an order of the commissioner under section 252.27; or (3) a party aggrieved by a ruling of a prepaid health plan; or (4) any individual or facility determined by a lead agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557. Individuals and organizations specified in this section may contest that the specified action or 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 or decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit.

The hearing for an individual or facility under clause (4) is the only administrative appeal to the final lead agency disposition specifically, including a challenge to the accuracy and completeness of data under section 13.04.

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

Except for a prepaid health plan, 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 under section 256E.08, subdivision 4, is not a party and may not request a hearing under this section.

An applicant or recipient is not entitled to receive social services beyond the services included in the amended community social services plan developed under section 256E.081, subdivision 3, if the county agency has met the requirements in section 256E.081.

Sec. 8. Minnesota Statutes 1994, section 256.045, is amended by adding a subdivision to read:

Subd. 3b. **STANDARD OF EVIDENCE FOR MALTREATMENT HEARINGS.** The state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under section 626.557.

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The state human services referee shall recommend an order to the commissioner of health or human services, as applicable, who shall issue a final order. The commissioner shall affirm, reverse, or modify the final disposition. Any order of the commissioner issued in accordance with this subdivision is conclusive upon the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal under chapter 245A and sections 144.50 to 144.58 and 144A.02 to 144A.46, the commissioner's findings as to whether maltreatment occurred is conclusive.

Sec. 9. Minnesota Statutes 1994, 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 referee 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, ~~or~~ former recipient, person, or facility contesting maltreatment objects. 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 referee 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 at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, ~~or~~ 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 agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In cases alleging discharge for maltreatment, either party may subpoena the private data relating to the investigation memorandum prepared by the lead agency under section 626.557, provided the name of the reporter may not be disclosed.

(b) The private data 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 \$700, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. 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, except in appeals brought under subdivision 3b. All evidence, except

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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.

Sec. 10. Minnesota Statutes 1994, section 256.045, subdivision 5, is amended to read:

**Subd. 5. ORDERS OF THE COMMISSIONER OF HUMAN SERVICES.** This subdivision does not apply to appeals under subdivision 3b. A state human services referee shall conduct a hearing on the appeal and shall recommend an order to the commissioner of human services. The recommended order must be based on all relevant evidence and must not be limited to a review of the propriety of the state or county agency's action. A referee may take official notice of adjudicative facts. The commissioner of human services may accept the recommended order of a state human services referee and issue the order to the county agency and the applicant, recipient, former recipient, or prepaid health plan. The commissioner on refusing to accept the recommended order of the state human services referee, shall notify the county agency and the applicant, recipient, former recipient, or prepaid health plan of that fact and shall state reasons therefor and shall allow each party ten days' time to submit additional written argument on the matter. After the expiration of the ten-day period, the commissioner shall issue an order on the matter to the county agency and the applicant, recipient, former recipient, or prepaid health plan.

A party aggrieved by an order of the commissioner may appeal under subdivision 7, or request reconsideration by the commissioner within 30 days after the date the commissioner issues the order. The commissioner may reconsider an order upon request of any party or on the commissioner's own motion. A request for reconsideration does not stay implementation of the commissioner's order. Upon reconsideration, the commissioner may issue an amended order or an order affirming the original order.

Any order of the commissioner issued under this subdivision shall be conclusive upon the parties unless appeal is taken in the manner provided by subdivision 7. Any order of the commissioner is binding on the parties and must be implemented by the state agency or a county agency until the order is reversed by the district court, or unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10.

Except for a prepaid health plan, 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 under section 256E.08, subdivision 4, is not a party and may not request a hearing or seek judicial review of an order issued under this section.

Sec. 11. Minnesota Statutes 1994, section 256.045, subdivision 6, is amended to read:

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Subd. 6. **ADDITIONAL POWERS OF THE COMMISSIONER; SUBPOENAS.** (a) The commissioner of human services, or the commissioner of health for matters within the commissioner's jurisdiction under subdivision 3b, may initiate a review of any action or decision of a county agency and direct that the matter be presented to a state human services referee for a hearing held under subdivision 3, 3a, 3b, or 4a. In all matters dealing with human services committed by law to the discretion of the county agency, the commissioner's judgment may be substituted for that of the county agency. The commissioner may order an independent examination when appropriate.

(b) Any party to a hearing held pursuant to subdivision 3, 3a, 3b, or 4a may request that the commissioner issue a subpoena to compel the attendance of witnesses at the hearing. The issuance, service, and enforcement of subpoenas under this subdivision is governed by section 357.22 and the Minnesota Rules of Civil Procedure.

(c) The commissioner may issue a temporary order staying a proposed demission by a residential facility licensed under chapter 245A while an appeal by a recipient under subdivision 3 is pending or for the period of time necessary for the county agency to implement the commissioner's order.

Sec. 12. Minnesota Statutes 1994, section 256.045, subdivision 7, is amended to read:

Subd. 7. **JUDICIAL REVIEW.** Any party who is aggrieved by an order of the commissioner of human services, or the commissioner of health in appeals within the commissioner's jurisdiction under subdivision 3b, may appeal the order to the district court of the county responsible for furnishing assistance, or, in appeals under subdivision 3b, the county where the maltreatment occurred, by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days after the date the commissioner issued the order, the amended order, or order affirming the original order, and by filing the original notice and proof of service with the court administrator of the district court. Service may be made personally or by mail; service by mail is complete upon mailing; no filing fee shall be required by the court administrator in appeals taken pursuant to this subdivision, with the exception of appeals taken under subdivision 3b. The commissioner may elect to become a party to the proceedings in the district court. Except for appeals under subdivision 3b, any party may demand that the commissioner furnish all parties to the proceedings with a copy of the decision, and a transcript of any testimony, evidence, or other supporting papers from the hearing held before the human services referee, by serving a written demand upon the commissioner within 30 days after service of the notice of appeal. Any party aggrieved by the failure of an adverse party to obey an order issued by the commissioner under subdivision 5 may compel performance according to the order in the manner prescribed in sections 586.01 to 586.12.

Sec. 13. Minnesota Statutes 1994, section 256.045, subdivision 8, is amended to read:

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Subd. 8. **HEARING.** Any party may obtain a hearing at a special term of the district court by serving a written notice of the time and place of the hearing at least ten days prior to the date of the hearing. Except for appeals under subdivision 3b, the court may consider the matter in or out of chambers, and shall take no new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal.

Sec. 14. Minnesota Statutes 1994, section 256.045, subdivision 9, is amended to read:

Subd. 9. **APPEAL.** Any party aggrieved by the order of the district court may appeal the order as in other civil cases. Except for appeals under subdivision 3b, no costs or disbursements shall be taxed against any party nor shall any filing fee or bond be required of any party.

Sec. 15. Minnesota Statutes 1994, section 268.09, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFYING CONDITIONS.** An individual separated from any employment under paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under paragraphs (a) and (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned eight times the individual's weekly benefit amount in insured work.

(a) **VOLUNTARY LEAVE.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(b) **DISCHARGE FOR MISCONDUCT.** The individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment.

(c) **EXCEPTIONS TO DISQUALIFICATION.** An individual shall not be disqualified under paragraphs (a) and (b) under any of the following conditions:

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(1) the individual voluntarily discontinued employment to accept employment offering substantially better conditions or substantially higher wages or both;

(2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment.

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

(3) the individual accepts work from a base period employer which involves a change in location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

(5) the individual is terminated by the employer because the individual gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual;

(9) except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time

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employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons; or

(10) the individual accepts employment which represents a substantial departure from the individual's customary occupation and experience and would not be deemed suitable work as defined under subdivision 2, paragraphs (a) and (b), and within a period of 30 days from the commencement of that work voluntarily discontinues the employment due to reasons which would have caused the work to be unsuitable under the provisions of subdivision 2 or, if in commission sales, because of a failure to earn gross commissions averaging an amount equal to or in excess of the individual's weekly benefit amount. Other provisions notwithstanding, applying this provision precludes the use of these wage credits to clear a disqualification.

(d) **DISCHARGE FOR GROSS MISCONDUCT.** The individual was discharged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, as defined in section 626.5572, gross misconduct also includes misconduct involving an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.557, subdivision 2, clause (d) 626.5572 and applicable rules.

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(e) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting paragraphs (c)(3), (c)(5), and (c)(8), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure to accept an offer of suitable reemployment or to accept reemployment which offered substantially the same or better hourly wages and conditions of work as were previously provided by that employer, but was deemed unsuitable under subdivision 2, shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employ-

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ment at the time of the offer, or if the individual is in training with the approval of the commissioner.

Benefits paid by another state as a result of Minnesota transferring wage credits under the federally required combined wage agreement shall not be directly charged to either the taxpaying or reimbursing employer.

(f) **ACTS OR OMISSIONS.** An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after separation from employment with the employer.

(g) **DISCIPLINARY SUSPENSIONS.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Sec. 16. Minnesota Statutes 1994, section 631.40, is amended by adding a subdivision to read:

**Subd. 3. DEPARTMENT OF HUMAN SERVICES AND HEALTH LICENSEES.** When a person who is affiliated with a program or facility governed by the department of human services or department of health is convicted of a disqualifying crime, the probation officer or corrections agent shall notify the commissioner of the conviction, as provided in section 245A.04, subdivision 3, paragraph (b).

**Sec. 17. REPORT.**

By January 15, 1997, the commissioner of human services shall report to the legislature on the implementation of the process for reporting convictions under Minnesota Statutes, section 245A.04, subdivision 3, paragraph (b). The report must include an analysis of any reduction in the cost of performing background studies resulting from implementing the process and any recommendations for modification of the fee increases in article 4, section 21, based on a reduction in costs.

**Sec. 18. APPLICATION.**

The provision of section 7 that eliminates certain challenges to the accuracy and completeness of data under Minnesota Statutes, section 13.04, does not apply if the individual initiated a challenge under Minnesota Statutes, section 13.04, before the effective date of section 7.

**Sec. 19. EFFECTIVE DATE.**

Sections 1 to 18 are effective October 1, 1995.

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## ARTICLE 4

## CONFORMING AMENDMENTS

Section 1. Minnesota Statutes 1994, section 13.46, subdivision 4, is amended to read:

Subd. 4. **LICENSING DATA.** (a) As used in this subdivision:

(1) "licensing data" means all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" means social security numbers, identity of and letters of reference, insurance information, reports from the bureau of criminal apprehension, health examination reports, and social/home studies.

(b) Except as provided in paragraph (c), the following data on current and former licensees are public: name, address, telephone number of licensees, licensed capacity, type of client preferred, variances granted, type of dwelling, name and relationship of other family members, previous license history, class of license, and the existence and status of complaints. When disciplinary action has been taken against a licensee or the complaint is resolved, the following data are public: the substance of the complaint, the findings of the investigation of the complaint, the record of informal resolution of a licensing violation, orders of hearing, findings of fact, conclusions of law, and specifications of the final disciplinary action contained in the record of disciplinary action.

The following data on persons subject to disqualification under section 245A.04 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245A.04, subdivision 3b, and the reasons for setting aside the disqualification; and the reasons for granting any variance under section 245A.04, subdivision 9.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inac-

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tive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters under sections 626.556 and 626.557 may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision ~~4~~ 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as part of a disciplinary proceeding in which there is a public hearing concerning the disciplinary action.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of law are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, are subject to the destruction provisions of section 626.556, subdivision 11.

Sec. 2. Minnesota Statutes 1994, section 13.88, is amended to read:

**13.88 COMMUNITY DISPUTE RESOLUTION CENTER DATA.**

The guidelines shall provide that all files relating to a case in a community dispute resolution program are to be classified as private data on individuals, pursuant to section 13.02, subdivision 12, with the following exceptions:

(1) When a party to the case has been formally charged with a criminal offense, the data are to be classified as public data on individuals, pursuant to section 13.02, subdivision 15.

(2) Data relating to suspected neglect or physical or sexual abuse of children or maltreatment of vulnerable adults are to be subject to the reporting requirements of sections 626.556 and 626.557.

Sec. 3. Minnesota Statutes 1994, section 13.99, subdivision 113, is amended to read:

Subd. 113. **VULNERABLE ADULT REPORT RECORDS.** Data contained in vulnerable adult report records are classified under section 626.557, subdivision ~~4~~ 12b.

Sec. 4. Minnesota Statutes 1994, section 144.4172, subdivision 8, is amended to read:

Subd. 8. **HEALTH THREAT TO OTHERS.** "Health threat to others" means that a carrier demonstrates an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious disability, or death. It includes one or more of the following:

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(1) with respect to an indirectly transmitted communicable disease:

(a) behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others; or

(b) a substantial likelihood that a carrier will transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention.

(2) With respect to a directly transmitted communicable disease:

(a) repeated behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others;

(b) a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention;

(c) affirmative misrepresentation by a carrier of the carrier's status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease; or

(d) the activities referenced in clause (1) if the person whom the carrier places at risk is: (i) a minor, (ii) of diminished capacity by reason of mood altering chemicals, including alcohol, (iii) has been diagnosed as having significantly subaverage intellectual functioning, (iv) has an organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation, or memory which substantially impairs judgment, behavior, reasoning, or understanding; (v) adjudicated as an incompetent; or (vi) a vulnerable adult as defined in section ~~626.557~~ 626.5572.

(3) Violation by a carrier of any part of a court order issued pursuant to this chapter.

Sec. 5. Minnesota Statutes 1994, section 144.651, subdivision 14, is amended to read:

Subd. 14. **FREEDOM FROM ABUSE MALTREATMENT.** Patients and residents shall be free from ~~mental and physical abuse~~ maltreatment as defined in the Vulnerable Adults Protection Act. "Abuse" means any act which constitutes ~~assault, sexual exploitation, or criminal sexual~~ "Maltreatment" means conduct as described in section 626.557, subdivision 2d 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. 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.

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Sec. 6. Minnesota Statutes 1994, 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 expense, to writing instruments, stationery, and postage. 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, a patient or resident, or the patient's or resident's legal guardian or conservator, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility, to callers or visitors who may seek to communicate with the patient or resident. This disclosure option must be made available in all cases where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors. 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, ~~clause 2~~ paragraph (b), this right shall also be limited accordingly.

Sec. 7. Minnesota Statutes 1994, section 144A.103, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For purposes of this section, "abuse" and "neglect" have the meanings given in section ~~626.557, subdivision 2, paragraphs (d) and (e)~~ 626.5572, subdivisions 2 and 17.

Sec. 8. Minnesota Statutes 1994, section 144B.13, is amended to read:

**144B.13 FREEDOM FROM ABUSE AND NEGLECT MALTREATMENT.**

Residents shall be free from ~~abuse and neglect~~ maltreatment as defined in section ~~626.557, subdivision 2~~ 626.5572, subdivision 15. The commissioner shall by rule develop procedures for the reporting of alleged incidents of ~~abuse or neglect~~ maltreatment in residential care homes. The office of health facility complaints shall investigate reports of alleged ~~abuse or neglect~~ maltreatment according to sections 144A.51 to 144A.54.

Sec. 9. Minnesota Statutes 1994, section 148B.68, subdivision 1, is amended to read:

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Subdivision 1. **PROHIBITED CONDUCT.** The commissioner may impose disciplinary action as described in section 148B.69 against any unlicensed mental health practitioner. The following conduct is prohibited and is grounds for disciplinary action:

(a) Conviction of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of mental health services. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered.

(b) Conviction of crimes against persons. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; ~~and 609.595~~; and 609.72, subdivision 3.

(c) Failure to comply with the self-reporting requirements of section 148B.63, subdivision 6.

(d) Engaging in sexual contact with a client or former client as defined in section 148A.01, or engaging in contact that may be reasonably interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client.

(e) Advertising that is false, fraudulent, deceptive, or misleading.

(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(g) Adjudication as mentally incompetent, or as a person who is dangerous to self, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually dangerous person.

(h) Inability to provide mental health services with reasonable safety to clients.

(i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.

(j) Improper or unauthorized personal or other use of any legend drugs as

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defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.

(k) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(l) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.

(m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.

(n) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.

(o) Failure to make reports as required by section 148B.63, or cooperate with an investigation of the office.

(p) Obtaining money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.

(q) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(r) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(s) Violating any order issued by the commissioner.

(t) Failure to comply with sections 148B.60 to 148B.71, and the rules adopted under those sections.

(u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.

Sec. 10. Minnesota Statutes 1994, section 214.10, subdivision 2a, is amended to read:

Subd. 2a. **PROCEEDINGS.** A board shall initiate proceedings to suspend or revoke a license or shall refuse to renew a license of a person licensed by the board who is convicted in a court of competent jurisdiction of violating sections 609.224, subdivision 2, paragraph (c), 609.23, 609.231, 609.2325, 609.233, 609.2335, 609.234, 609.465, 609.466, 609.52, or ~~626.557~~ 609.72, subdivision 3.

Sec. 11. Minnesota Statutes 1994, section 245A.04, subdivision 3b, is amended to read:

Subd. 3b. **RECONSIDERATION OF DISQUALIFICATION.** (a) Within 30 days after receiving notice of disqualification under subdivision 3a, the individual who is the subject of the study may request reconsideration of the notice

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of disqualification. The individual must submit the request for reconsideration to the commissioner in writing. The individual must present information to show that:

(1) the information the commissioner relied upon is incorrect; or

(2) the subject of the study does not pose a risk of harm to any person served by the applicant or license holder.

(b) The commissioner may set aside the disqualification if the commissioner finds that the information the commissioner relied upon is incorrect or the individual does not pose a risk of harm to any person served by the applicant or license holder. The commissioner shall review the consequences of the event or events that could lead to disqualification, whether there is more than one disqualifying event, the vulnerability of the victim at the time of the event, the time elapsed without a repeat of the same or similar event, and documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event. In reviewing a disqualification, the commissioner shall give preeminent weight to the safety of each person to be served by the license holder or applicant over the interests of the license holder or applicant.

(c) Unless the information the commissioner relied on in disqualifying an individual is incorrect, the commissioner may not set aside the disqualification of an individual in connection with a license to provide family day care for children, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home if:

(1) less than ten years have passed since the discharge of the sentence imposed for the offense; and the individual has been convicted of a violation of any offense listed in section 609.20 (manslaughter in the first degree), 609.205 (manslaughter in the second degree), 609.21 (criminal vehicular homicide), 609.215 (aiding suicide or aiding attempted suicide), 609.221 to 609.2231 (felony violations of assault in the first, second, third, or fourth degree), 609.713 (terroristic threats), 609.235 (use of drugs to injure or to facilitate crime), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.561 or 609.562 (arson in the first or second degree), 609.71 (riot), 609.582 (burglary in the first or second degree), 609.66 (reckless use of a gun or dangerous weapon or intentionally pointing a gun at or towards a human being), 609.665 (setting a spring gun), 609.67 (unlawfully owning, possessing, or operating a machine gun), 152.021 or 152.022 (controlled substance crime in the first or second degree), 152.023, subdivision 1, clause (3) or (4), or subdivision 2, clause (4) (controlled substance crime in the third degree), 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree), 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult), 609.228 (great bodily harm caused by distribution of drugs), 609.23 (mistreatment of persons confined), 609.231 (mistreatment of residents or patients), 609.2325 (criminal abuse of a vulnerable adult), 609.233 (criminal neglect of a vulnerable adult), 609.2335 (financial

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exploitation of a vulnerable adult), 609.265 (abduction), 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree), 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree), 609.268 (injury or death of an unborn child in the commission of a crime), 617.293 (disseminating or displaying harmful material to minors), 609.378 (neglect or endangerment of a child), 609.377 (a gross misdemeanor offense of malicious punishment of a child), 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or an attempt or conspiracy to commit any of these offenses, as each of these offenses is defined in Minnesota Statutes; or an offense in any other state, the elements of which are substantially similar to the elements of any of the foregoing offenses;

(2) regardless of how much time has passed since the discharge of the sentence imposed for the offense, the individual was convicted of a violation of any offense listed in sections 609.185 to 609.195 (murder in the first, second, or third degree), 609.2661 to 609.2663 (murder of an unborn child in the first, second, or third degree), 609.377 (a felony offense of malicious punishment of a child), 609.322 (soliciting, inducement, or promotion of prostitution), 609.323 (receiving profit derived from prostitution), 609.342 to 609.345 (criminal sexual conduct in the first, second, third, or fourth degree), 609.352 (solicitation of children to engage in sexual conduct), 617.246 (use of minors in a sexual performance), 617.247 (possession of pictorial representations of a minor), 609.365 (incest), or an offense in any other state, the elements of which are substantially similar to any of the foregoing offenses;

(3) within the seven years preceding the study, the individual committed an act that constitutes maltreatment of a child under section 626.556, subdivision 10e, and that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence; or

(4) within the seven years preceding the study, the individual was determined under section 626.557 to be the perpetrator of a substantiated incident of abuse of a vulnerable adult that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence.

In the case of any ground for disqualification under clauses (1) to (4), if the act was committed by an individual other than the applicant or license holder residing in the applicant's or license holder's home, the applicant or license holder may seek reconsideration when the individual who committed the act no longer resides in the home.

The disqualification periods provided under clauses (1), (3), and (4) are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the license holder or applicant poses a risk of harm to a person served by that individual after the minimum disqualification period has passed.

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(d) The commissioner shall respond in writing to all reconsideration requests within 15 working days after receiving the request for reconsideration. If the disqualification is set aside, the commissioner shall notify the applicant or license holder in writing of the decision.

(e) Except as provided in subdivision 3c, the commissioner's decision to grant or deny a reconsideration of disqualification under this subdivision, or to set aside or uphold the results of the study under subdivision 3, is the final administrative agency action.

Sec. 12. Minnesota Statutes 1994, section 253B.02, subdivision 4a, is amended to read:

Subd. 4a. **CRIME AGAINST THE PERSON.** "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.265; 609.27, subdivision 1, clause (1) or (2); 609.28 if violence or threats of violence were used; 609.322, subdivision 1, clause (2); 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; ~~and 609.595~~; and 609.72, subdivision 3.

Sec. 13. Minnesota Statutes 1994, section 256E.03, subdivision 2, is amended to read:

Subd. 2. (a) "Community social services" means services provided or arranged for by county boards to fulfill the responsibilities prescribed in section 256E.08, subdivision 1, to the following groups of persons:

(1) families with children under age 18, who are experiencing child dependency, neglect or abuse, and also pregnant adolescents, adolescent parents under the age of 18, and their children;

(2) persons who are under the guardianship of the commissioner of human services as dependent and neglected wards;

(3) adults who are in need of protection and vulnerable as defined in section ~~626.557~~ 626.5572;

(4) persons age 60 and over who are experiencing difficulty living independently and are unable to provide for their own needs;

(5) emotionally disturbed children and adolescents, chronically and acutely mentally ill persons who are unable to provide for their own needs or to independently engage in ordinary community activities;

(6) persons with mental retardation as defined in section 252A.02, subdivision 2, or with related conditions as defined in section 252.27, subdivision 1a, who are unable to provide for their own needs or to independently engage in ordinary community activities;

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(7) drug dependent and intoxicated persons as defined in section 254A.02, subdivisions 5 and 7, and persons at risk of harm to self or others due to the ingestion of alcohol or other drugs;

(8) parents whose income is at or below 70 percent of the state median income and who are in need of child care services in order to secure or retain employment or to obtain the training or education necessary to secure employment; and

(9) other groups of persons who, in the judgment of the county board, are in need of social services.

(b) Except as provided in section 256E.08, subdivision 5, community social services do not include public assistance programs known as aid to families with dependent children, Minnesota supplemental aid, medical assistance, general assistance, general assistance medical care, or community health services authorized by sections 145A.09 to 145A.13.

Sec. 14. Minnesota Statutes 1994, section 256E.081, subdivision 4, is amended to read:

**Subd. 4. DENIAL, REDUCTION, OR TERMINATION OF SERVICES.**

(a) Before a county denies, reduces, or terminates services to an individual due to fiscal limitations, the county must meet the requirements in subdivisions 2 and 3, and document in the person's individual service plan:

(1) the person's service needs;

(2) the alternatives considered for meeting the person's service needs; and

(3) the actions that will be taken to prevent abuse or neglect as defined in sections 626.556, subdivision 2, paragraphs (a), (c), (d), and (k); and ~~626.557, subdivision 2, paragraphs (d) and (e)~~ maltreatment as defined in section 626.5572, subdivision 15.

(b) The county must notify the individual and the individual's guardian in writing of the reason for the denial, reduction, or termination of services and of the individual's right to an appeal under section 256.045.

(c) The county must inform the individual and the individual's guardian in writing that the county will, upon request, meet to discuss alternatives and amend the individual service plan before services are terminated or reduced.

Sec. 15. Minnesota Statutes 1994, section 325F.692, subdivision 2, is amended to read:

**Subd. 2. UNAUTHORIZED INFORMATION SERVICE CHARGES; LIABILITY.** A telephone service subscriber is not responsible for information service charges for calls made by minors or ~~other~~ vulnerable adults as defined in section ~~626.557, subdivision 2, paragraph (b)~~ 626.5572, subdivision 2, unless expressly authorized by the subscriber or spouse.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 16. Minnesota Statutes 1994, section 525.703, subdivision 3, is amended to read:

Subd. 3. **GUARDIAN OR CONSERVATOR.** (a) When the court determines that a guardian or conservator of the person or the estate has rendered necessary services or has incurred necessary expenses for the benefit of the ward or conservatee, the court may order reimbursement or reasonable compensation to be paid from the estate of the ward or conservatee or from the county having jurisdiction over the guardianship or conservatorship if the ward or conservatee is indigent. The court may not deny an award of fees solely because the ward or conservatee is a recipient of medical assistance. In determining reasonable compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or conservatee. If these services are provided by a public or private agency, the county may contract on a fee for service basis with that agency.

(b) The court shall order reimbursement or reasonable compensation if the guardian or conservator requests payment and the guardian or conservator was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or conservatorship services necessary to prevent ~~abuse or neglect~~ maltreatment of a vulnerable adult, as defined in section ~~626.557~~ 626.5572, subdivision 15. In determining reasonable compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or conservatee. If these services are provided by a public or private agency, the county may contract on a fee for service basis with that agency.

(c) When a county employee serves as a guardian or conservator as part of employment duties, the court shall order reasonable compensation if the guardian or conservator performs necessary services that are not compensated by the county. The court may order reimbursement to the county from the ward's or conservatee's estate for reasonable compensation paid by the county for services rendered by a guardian or conservator who is a county employee but only if the county shows that after a diligent effort it was unable to arrange for an independent guardian or conservator.

Sec. 17. Minnesota Statutes 1994, section 609.268, subdivision 1, is amended to read:

Subdivision 1. **DEATH OF AN UNBORN CHILD.** Whoever, in the commission of a felony or in a violation of section 609.224, 609.23, ~~or~~ 609.231, 609.2325, or 609.233, causes the death of an unborn child is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine not more than \$30,000, or both. As used in this subdivision,

New language is indicated by underline, deletions by ~~strikeout~~.

"felony" does not include a violation of sections 609.185 to 609.21, 609.221 to 609.2231, or 609.2661 to 609.2665.

Sec. 18. Minnesota Statutes 1994, section 609.268, subdivision 2, is amended to read:

Subd. 2. **INJURY TO AN UNBORN CHILD.** Whoever, in the commission of a felony or in a violation of section 609.23 ~~or~~, 609.231, 609.2325 or 609.233, causes great or substantial bodily harm to an unborn child who is subsequently born alive, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both. As used in this subdivision, "felony" does not include a violation of sections 609.21, 609.221 to 609.2231, or 609.267 to 609.2672.

Sec. 19. Minnesota Statutes 1994, section 609.7495, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them.

(a) "Facility" means any of the following:

(1) a hospital or other health institution licensed under sections 144.50 to 144.56;

(2) a medical facility as defined in section 144.561;

(3) an agency, clinic, or office operated under the direction of or under contract with the commissioner of health or a community health board, as defined in section 145A.02;

(4) a facility providing counseling regarding options for medical services or recovery from an addiction;

(5) a facility providing emergency shelter services for battered women, as defined in section 611A.31, subdivision 3, or a facility providing transitional housing for battered women and their children;

(6) a residential care home or home as defined in section 144B.01, subdivision 5;

(7) a facility as defined in section 626.556, subdivision 2, paragraph (f);

(8) a facility as defined in section ~~626.557, subdivision 2, paragraph (a)~~ 626.5572, subdivision 6, where the services described in that paragraph are provided;

(9) a place to or from which ambulance service, as defined in section 144.801, is provided or sought to be provided; and

(10) a hospice program licensed under section 144A.48.

New language is indicated by underline, deletions by ~~strikeout~~.



(b) "Aggrieved party" means a person whose access to or egress from a facility is obstructed in violation of subdivision 2, or the facility.

Sec. 20. Minnesota Statutes 1994, section 626.556, subdivision 12, is amended to read:

Subd. 12. **DUTIES OF FACILITY OPERATORS.** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, or sexual abuse of a child in the care of that facility may be charged with a violation of section ~~609.23~~ or 609.378.

Sec. 21. **FEE INCREASE.**

To implement the requirements of the vulnerable adults act under Minnesota Statutes, section 626.557, the department of health shall increase licensing fees as follows:

(a) Licensing fees shall be increased above the level set by Laws 1995, chapter 207, article 9, section 4, if enacted, as follows: (1) nursing home, boarding care home and supervised living facility fees shall be increased by \$20 per bed; (2) accredited hospital fees shall be increased to \$3,015, the 1994 licensure fee; (3) nonaccredited hospital fees shall be increased to a \$2,000 base fee and \$100 per bed, the 1994 licensure fee; and (4) fees for outpatient surgical centers shall be increased by 25 percent to \$646.

(b) Licensing fees for home care agencies as specified in the home care licensure rules shall be increased by 25 percent.

(c) Licensing fees for board and lodging establishments that are registered to provide supportive or health supervision services under Minnesota Statutes, section 157.031, shall be increased by \$5 per bed.

Sec. 22. **REPEALER.**

Minnesota Statutes 1994, section 144A.612, is repealed.

Sec. 23. **EFFECTIVE DATE.**

Sections 1 to 20 and 22 are effective October 1, 1995.

Section 21 is effective July 1, 1995.

New language is indicated by underline, deletions by ~~strikeout~~.

**ARTICLE 5**  
**APPROPRIATIONS**

Section 1. **APPROPRIATION.**

Subdivision 1. The sums set forth in this section are appropriated from the state government special revenue fund to the agencies named in this section to implement articles 1 and 3 and is available for the fiscal year ending June 30 in the years indicated.

	<u>1996</u>	<u>1997</u>
<u>Subd. 2. COMMISSIONER OF HEALTH</u>	<u>\$1,043,000</u>	<u>\$1,088,000</u>
<u>Subd. 3. COMMISSIONER OF HUMAN SERVICES</u>	<u>445,000</u>	<u>445,000</u>
<u>Subd. 4. ATTORNEY GENERAL</u>	<u>20,000</u>	<u>20,000</u>
<u>Subd. 5. COMMISSIONER OF PUBLIC SAFETY</u>	<u>14,000</u>	<u>7,000</u>

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 8:40 a.m.

**CHAPTER 230—S.F.No. 399**

*An act relating to motor vehicles; driving while intoxicated; providing for forfeiture of snowmobiles, all-terrain vehicles, and motorboats for designated, DWI-related offenses; extending vehicle forfeiture law by expanding the definition of prior conviction to include other types of vehicles; restricting issuance of limited driver's license; imposing penalties; amending Minnesota Statutes 1994, sections 84.83, subdivision 2, and by adding a subdivision; 84.91, subdivision 5; 84.927, subdivision 1; 86B.331, subdivision 5; 169.1217, subdivisions 1 and 7; and 171.30, subdivision 3; proposing coding for new law in Minnesota Statutes, chapters 84; and 86B.*

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

Section 1. Minnesota Statutes 1994, section 84.83, subdivision 2, is amended to read:

Subd. 2. **MONEY DEPOSITED IN THE ACCOUNT.** Fees from the registration of snowmobiles and the unrefunded gasoline tax attributable to snowmobile use pursuant to section 296.16, as well as the net proceeds from the sale of snowmobiles forfeited pursuant to section 84.912, shall be deposited in the state treasury and credited to the snowmobile trails and enforcement account.

New language is indicated by underline, deletions by ~~strikeout~~.