

**Sec. 10. REPEALER.**

Laws 1999, chapter 241, article 10, section 5, is repealed retroactive to July 1, 1999.

**Sec. 11. EFFECTIVE DATE.**

Section 8 is effective retroactive to July 1, 1999. Sections 7, paragraph (a), and 9 are effective retroactive to May 26, 1999.

Presented to the governor May 11, 2000

Signed by the governor May 15, 2000, 10:48 a.m.

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**CHAPTER 465—S.F.No. 3028**

*An act relating to human services; specifying rights for reconsideration and review of determinations regarding maltreatment of vulnerable adults; modifying provisions governing the Southern Cities Community Health Clinic; amending Minnesota Statutes 1998, section 626.557, subdivisions 9c, 9d, and 12b; Minnesota Statutes 1999 Supplement, section 13.99, by adding a subdivision; Laws 1995, chapter 207, article 8, section 37; proposing coding for new law in Minnesota Statutes, chapter 256.*

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

Section 1. Minnesota Statutes 1999 Supplement, section 13.99, is amended by adding a subdivision to read:

Subd. 74d. VULNERABLE ADULT MALTREATMENT REVIEW PANEL. Data of the vulnerable adult maltreatment review panel are classified under section 2.

**Sec. 2. [256.021] VULNERABLE ADULT MALTREATMENT REVIEW PANEL.**

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

(b) The review panel consists of:

- (1) the commissioners of health and human services or their designees;
- (2) the ombudsperson for older Minnesotans and ombudsperson for mental health and mental retardation, or their designees; and
- (3) a member of the board on aging, appointed by the board.

Subd. 2. REVIEW PROCEDURE. (a) If a vulnerable adult or an interested person acting on behalf of the vulnerable adult requests a review under this section, the panel shall review the request at its next quarterly meeting. If the next quarterly

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meeting is within ten days of the panel's receipt of the request for review, the review may be delayed until the next subsequent meeting. The panel shall review the request and the investigation memorandum and may review any other data on the investigation maintained by the lead agency that are pertinent and necessary to its review of the final disposition. If more than one person requests a review under this section with respect to the same final disposition, the review panel shall combine the requests into one review.

(b) Within 30 days of the review under this section, the panel shall notify the lead agency and the vulnerable adult or interested person who requested the review as to whether the panel agrees with the final disposition or whether the lead agency must reconsider the final disposition. If the panel determines that the lead agency must reconsider the final disposition, the panel must make specific investigative recommendations to the agency. Within 30 days the lead agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition.

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

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

Sec. 3. Minnesota Statutes 1998, section 626.557, subdivision 9c, is amended 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;

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

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

(d) 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 or review rights under this section or section 2.

(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

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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 findings 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. 4. Minnesota Statutes 1998, section 626.557, subdivision 9d, is amended to read:

Subd. 9d. **ADMINISTRATIVE RECONSIDERATION OF FINAL DISPOSITION; REVIEW PANEL.** (a) Any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or ~~vulnerable adult's designee~~ an interested person acting on behalf of the vulnerable adult, 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 or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian.

(b) 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. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the vulnerable adult maltreatment review panel under section 2 if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

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

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or

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an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

Sec. 5. Minnesota Statutes 1998, section 626.557, subdivision 12b, is amended 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 commissioners of health and 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;
- (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.

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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.

(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

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available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 2 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(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. 6. Laws 1995, chapter 207, article 8, section 37, is amended to read:

**Sec. 37. [256.0121] SOUTHERN CITIES COMMUNITY HEALTH CLINIC.**

Subdivision 1. SERVICE PROVISION. The commissioner of human services shall offer medically necessary psychiatric and dental services to developmentally disabled clients in the Faribault service area through the Southern Cities Community Health Clinic. For purposes of this requirement, the Faribault service area is expanded to also include geographic areas of the state within 100 miles of Faribault.

Subd. 2. CONSULTATION REQUIRED. The commissioner of human services shall consult with the Faribault community task force providers of psychiatric and dental services to developmentally disabled clients, family members of developmentally disabled clients, the chairs of the house and senate committees with jurisdiction over health and human services fiscal issues, and the exclusive representatives before making any decisions about when considering policy changes related to:

- (1) the future of the Southern Cities Community Health Clinic;
- (2) the services currently provided by that clinic to developmentally disabled clients in the Faribault regional center catchment area; and
- (3) changes in the model for providing those services.

Subd. 3. GUARANTEE OF SERVICE AVAILABILITY; LEGISLATIVE NOTICE. (a) The department of human services shall guarantee the provision of medically necessary psychiatric and dental services to developmentally disabled clients in the Faribault service area through the Southern Cities Community Health Clinic until or unless other appropriate arrangements have been made to provide those clients with those services and the requirements of paragraph (b) are met.

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(b) The commissioner shall notify the chairs of the house and senate committees with jurisdiction over health and human services fiscal issues of plans to use other arrangements to provide medically necessary psychiatric and dental services to developmentally disabled clients in the Faribault service area. The commissioner must not implement these arrangements unless a regular legislative session has convened and adjourned since the date notice was given under this paragraph.

Presented to the governor May 11, 2000

Signed by the governor May 15, 2000, 10:26 a.m.

### CHAPTER 466—S.F.No. 3036

*An act relating to penalties; providing for seizure and administrative forfeiture of certain firearms and abandoned property; modifying authority to issue trespass citations; modifying provisions for forfeited vehicles; requiring a report of gross violations of game and fish law; providing civil penalties; amending Minnesota Statutes 1998, sections 97B.002, subdivision 1; 169.1217, by adding a subdivision; and 609.5312, subdivision 4; Minnesota Statutes 1999 Supplement, section 169.1217, subdivision 7a; proposing coding for new law in Minnesota Statutes, chapter 97A.*

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

#### Section 1. **[97A.223] SEIZURE AND ADMINISTRATIVE FORFEITURE OF CERTAIN FIREARMS AND ABANDONED PROPERTY.**

##### **Subdivision 1. PROPERTY SUBJECT TO SEIZURE AND FORFEITURE.**

(a) An enforcement officer must seize:

- (1) firearms possessed in violation of state or federal law or court order; and
- (2) property described in section 97A.221, subdivision 1, where no owner can be determined.

(b) Property seized under this section is subject to administrative forfeiture.

**Subd. 2. NOTICE OF SEIZURE AND INTENT TO FORFEIT.** When property is seized under subdivision 1, the enforcement officer shall serve any known owner and person possessing the property with a notice of the seizure and intent to forfeit the property. The notice must be in writing, describing the property seized, the date of seizure, and notice of the right to appeal the seizure and forfeiture as described in subdivision 3.

**Subd. 3. APPEAL; FINAL ORDER.** Seizure and administrative forfeiture of property under this section may be appealed under the procedures in section 116.072, subdivision 6, if the owner or other person from whom the property was seized requests a hearing by notifying the commissioner in writing within 45 days after seizure of the property. For purposes of this section, the terms "commissioner" and

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