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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1432

- 02/22/2021 Authored by Frederick and Moller
- The bill was read for the first time and referred to the Committee on Human Services Finance and Policy
- 03/08/2021 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
- 03/11/2021 Adoption of Report: Placed on the General Register as Amended
- Read for the Second Time
- 05/17/2021 Pursuant to Rule 4.20, returned to the Committee on Judiciary Finance and Civil Law
- 03/10/2022 Adoption of Report: Amended and re-referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.21 (i) reporter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.25 (d) When the county social service agency does not accept a report for adult protective  
5.26 services or investigation, the agency may offer assistance to the reporter or the person who  
5.27 was the subject of the report.

5.28 (e) When the county is the lead investigative agency or the agency responsible for adult  
5.29 protective services, the agency may coordinate and share data with the Native American  
5.30 Tribes and case management agencies as allowed under chapter 13 to support a vulnerable  
5.31 adult's health, safety, or comfort or to prevent, stop, or remediate maltreatment. The identity  
5.32 of the reporter shall not be disclosed, except as provided in subdivision 12b.

6.1 (f) While investigating reports and providing adult protective services, the lead  
6.2 investigative agency may coordinate with entities identified under subdivision 12b, paragraph  
6.3 (g), and may coordinate with support persons to safeguard the welfare of the vulnerable  
6.4 adult and prevent further maltreatment of the vulnerable adult.

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

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

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

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

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

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

6.30 ~~(e)~~ (j) The lead investigative agency shall complete its final disposition within 60 calendar  
6.31 days. If the lead investigative agency is unable to complete its final disposition within 60  
6.32 calendar days, the lead investigative agency shall notify the following persons provided  
6.33 that the notification will not endanger the vulnerable adult or hamper the investigation: (1)  
6.34 the vulnerable adult or the vulnerable adult's guardian or health care agent, when known,

7.1 if the lead investigative agency knows them to be aware of the investigation; and (2) the  
7.2 facility, where applicable. The notice shall contain the reason for the delay and the projected  
7.3 completion date. If the lead investigative agency is unable to complete its final disposition  
7.4 by a subsequent projected completion date, the lead investigative agency shall again notify  
7.5 the vulnerable adult or the vulnerable adult's guardian or health care agent, when known if  
7.6 the lead investigative agency knows them to be aware of the investigation, and the facility,  
7.7 where applicable, of the reason for the delay and the revised projected completion date  
7.8 provided that the notification will not endanger the vulnerable adult or hamper the  
7.9 investigation. The lead investigative agency must notify the health care agent of the  
7.10 vulnerable adult only if the health care agent's authority to make health care decisions for  
7.11 the vulnerable adult is currently effective under section 145C.06 and not suspended under  
7.12 section 524.5-310 and the investigation relates to a duty assigned to the health care agent  
7.13 by the principal. A lead investigative agency's inability to complete the final disposition  
7.14 within 60 calendar days or by any projected completion date does not invalidate the final  
7.15 disposition.

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

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

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

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

7.28 (4) the facility; and

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

7.31 (l) When the lead investigative agency is a county agency, within ten calendar days of  
7.32 completing the final disposition, the lead investigative agency shall provide notification of  
7.33 the final disposition to the following persons:

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

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

8.6 (3) when the alleged incident involves a personal care assistant or provider agency, the  
8.7 personal care provider organization under section 256B.0659. Upon implementation of  
8.8 Community First Services and Supports (CFSS), this notification requirement applies to  
8.9 the CFSS support worker or CFSS agency under section 256B.85.

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

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

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

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

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

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

8.32 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided under  
8.33 paragraph (e), any individual or facility which a lead investigative agency determines has

9.1 maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf  
9.2 of the vulnerable adult, regardless of the lead investigative agency's determination, who  
9.3 contests the lead investigative agency's final disposition of an allegation of maltreatment,  
9.4 may request the lead investigative agency to reconsider its final disposition. The request  
9.5 for reconsideration must be submitted in writing to the lead investigative agency within 15  
9.6 calendar days after receipt of notice of final disposition or, if the request is made by an  
9.7 interested person who is not entitled to notice, within 15 days after receipt of the notice by  
9.8 the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the  
9.9 request for reconsideration must be postmarked and sent to the lead investigative agency  
9.10 within 15 calendar days of the individual's or facility's receipt of the final disposition. If the  
9.11 request for reconsideration is made by personal service, it must be received by the lead  
9.12 investigative agency within 15 calendar days of the individual's or facility's receipt of the  
9.13 final disposition. An individual who was determined to have maltreated a vulnerable adult  
9.14 under this section and who was disqualified on the basis of serious or recurring maltreatment  
9.15 under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment  
9.16 determination and the disqualification. The request for reconsideration of the maltreatment  
9.17 determination and the disqualification must be submitted in writing within 30 calendar days  
9.18 of the individual's receipt of the notice of disqualification under sections 245C.16 and  
9.19 245C.17. If mailed, the request for reconsideration of the maltreatment determination and  
9.20 the disqualification must be postmarked and sent to the lead investigative agency within 30  
9.21 calendar days of the individual's receipt of the notice of disqualification. If the request for  
9.22 reconsideration is made by personal service, it must be received by the lead investigative  
9.23 agency within 30 calendar days after the individual's receipt of the notice of disqualification.

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

10.1 investigative agency within 30 calendar days of receipt of notice of a denial of a request for  
10.2 reconsideration or of a reconsidered disposition. The request must specifically identify the  
10.3 aspects of the lead investigative agency determination with which the person is dissatisfied.

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

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

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

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

10.31 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
10.32 245A.07, is based on a determination that the license holder is responsible for maltreatment  
10.33 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

11.5 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
11.6 determination or disqualification, but does not appeal the denial of a license or a licensing  
11.7 sanction, reconsideration of the maltreatment determination shall be conducted under sections  
11.8 260E.33 and 626.557, subdivision 9d, and reconsideration of the disqualification shall be  
11.9 conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as  
11.10 provided under sections 245C.27, 260E.33, and 626.557, subdivision 9d.

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

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

11.26 (1) For purposes of compliance with the data destruction schedule under subdivision  
11.27 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a  
11.28 result of a reconsideration under this paragraph, the date of the original finding of a  
11.29 substantiated maltreatment must be used to calculate the destruction date.

11.30 (2) For purposes of any background studies under chapter 245C, when a determination  
11.31 of substantiated maltreatment has been changed as a result of a reconsideration under this  
11.32 paragraph, any prior disqualification of the individual under chapter 245C that was based  
11.33 on this determination of maltreatment shall be rescinded, and for future background studies  
11.34 under chapter 245C the commissioner must not use the previous determination of

12.1 substantiated maltreatment as a basis for disqualification or as a basis for referring the  
12.2 individual's maltreatment history to a health-related licensing board under section 245C.31.

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

12.4 Subd. 10. **Duties of county social service agency.** (a) When the common entry point  
12.5 refers a report to the county social service agency as the lead investigative agency or makes  
12.6 a referral to the county social service agency for emergency adult protective services, or  
12.7 when another lead investigative agency requests assistance from the county social service  
12.8 agency for adult protective services, the county social service agency shall immediately  
12.9 assess and offer emergency and continuing protective social services for purposes of  
12.10 preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable  
12.11 adult. The county shall use ~~a~~ standardized tool tools and the data system made available by  
12.12 the commissioner. The information entered by the county into the standardized tool must  
12.13 be accessible to the Department of Human Services. In cases of suspected sexual abuse, the  
12.14 county social service agency shall immediately arrange for and make available to the  
12.15 vulnerable adult appropriate medical examination and treatment. When necessary in order  
12.16 to protect the vulnerable adult from further harm, the county social service agency shall  
12.17 seek authority to remove the vulnerable adult from the situation in which the maltreatment  
12.18 occurred. The county social service agency may also investigate to determine whether the  
12.19 conditions which resulted in the reported maltreatment place other vulnerable adults in  
12.20 jeopardy of being maltreated and offer protective social services that are called for by its  
12.21 determination.

12.22 (b) Within five business days of receipt of a report screened in by the county social  
12.23 service agency for investigation, the county social service agency shall determine whether,  
12.24 in addition to an assessment and services for the vulnerable adult, to also conduct an  
12.25 investigation for final disposition of the individual or facility alleged to have maltreated the  
12.26 vulnerable adult.

12.27 (c) The county social service agency must investigate for a final disposition the individual  
12.28 or facility alleged to have maltreated a vulnerable adult for each report accepted as lead  
12.29 investigative agency involving an allegation of abuse, caregiver neglect that resulted in  
12.30 harm to the vulnerable adult, financial exploitation that may be criminal, or an allegation  
12.31 against a caregiver under chapter 256B.

12.32 (d) An investigating county social service agency must make a final disposition for any  
12.33 allegation when the county social service agency determines that a final disposition may  
12.34 safeguard a vulnerable adult or may prevent further maltreatment.

13.1 (e) If the county social service agency learns of an allegation listed in paragraph (c) after  
13.2 the determination in paragraph (a), the county social service agency must change the initial  
13.3 determination and conduct an investigation for final disposition of the individual or facility  
13.4 alleged to have maltreated the vulnerable adult.

13.5 ~~(b)~~ (f) County social service agencies may enter facilities and inspect and copy records  
13.6 as part of an investigation. The county social service agency has access to not public data,  
13.7 as defined in section 13.02, and medical records under sections 144.291 to 144.298, that  
13.8 are maintained by facilities to the extent necessary to conduct its investigation. The inquiry  
13.9 is not limited to the written records of the facility, but may include every other available  
13.10 source of information.

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

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

13.16 (2) the appointment of a guardian or conservator pursuant to sections 524.5-101 to  
13.17 524.5-502, or guardianship or conservatorship pursuant to chapter 252A;

13.18 (3) replacement of a guardian or conservator suspected of maltreatment and appointment  
13.19 of a suitable person as guardian or conservator, pursuant to sections 524.5-101 to 524.5-502;  
13.20 or

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

13.23 The expenses of legal intervention must be paid by the county in the case of indigent  
13.24 persons, under section 524.5-502 and chapter 563.

13.25 In proceedings under sections 524.5-101 to 524.5-502, if a suitable relative or other  
13.26 person is not available to petition for guardianship or conservatorship, a county employee  
13.27 shall present the petition with representation by the county attorney. The county shall contract  
13.28 with or arrange for a suitable person or organization to provide ongoing guardianship  
13.29 services. If the county presents evidence to the court exercising probate jurisdiction that it  
13.30 has made a diligent effort and no other suitable person can be found, a county employee  
13.31 may serve as guardian or conservator. The county shall not retaliate against the employee  
13.32 for any action taken on behalf of the ~~ward or protected~~ person subject to guardianship or  
13.33 conservatorship, even if the action is adverse to the county's interest. Any person retaliated

14.1 against in violation of this subdivision shall have a cause of action against the county and  
 14.2 shall be entitled to reasonable attorney fees and costs of the action if the action is upheld  
 14.3 by the court.

14.4 Sec. 7. Minnesota Statutes 2020, section 626.557, subdivision 10b, is amended to read:

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

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

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

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

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

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

14.14 ~~(5) (4) review of records and pertinent documentation of the alleged incident; and~~

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

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

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

14.20 (2) consulting with professionals; and

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

14.22 (i) service providers;

14.23 (ii) case managers;

14.24 (iii) ombudsmen; and

14.25 (iv) support persons for the vulnerable adult.

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

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

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

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

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

15.7 Sec. 8. Minnesota Statutes 2020, section 626.557, subdivision 12b, is amended to read:

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

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

15.21 (b) The commissioners of health and human services shall prepare an investigation  
15.22 memorandum for each report alleging maltreatment investigated under this section. County  
15.23 social service agencies must maintain private data on individuals but are not required to  
15.24 prepare an investigation memorandum. During an investigation by the commissioner of  
15.25 health or the commissioner of human services, data collected under this section are  
15.26 confidential data on individuals or protected nonpublic data as defined in section 13.02.  
15.27 Upon completion of the investigation, the data are classified as provided in clauses (1) to  
15.28 (3) and paragraph (c).

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

15.30 (i) the name of the facility investigated;

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

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

- 16.1 (iv) the identity of the investigator;
- 16.2 (v) a summary of the investigation's findings;
- 16.3 (vi) statement of whether the report was found to be substantiated, inconclusive, false,  
16.4 or that no determination will be made;
- 16.5 (vii) a statement of any action taken by the facility;
- 16.6 (viii) a statement of any action taken by the lead investigative agency; and
- 16.7 (ix) when a lead investigative agency's determination has substantiated maltreatment, a  
16.8 statement of whether an individual, individuals, or a facility were responsible for the  
16.9 substantiated maltreatment, if known.

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

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

- 16.15 (i) the name of the vulnerable adult;
- 16.16 (ii) the identity of the individual alleged to be the perpetrator;
- 16.17 (iii) the identity of the individual substantiated as the perpetrator; and
- 16.18 (iv) the identity of all individuals interviewed as part of the investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17.27 (g) Lead investigative agencies, county agencies responsible for adult protective services,  
17.28 prosecuting authorities, and law enforcement agencies may exchange not public data, as  
17.29 defined in section 13.02, with a tribal agency, facility, service provider, vulnerable adult,  
17.30 primary support person for a vulnerable adult, state licensing board, federal or state agency,  
17.31 the ombudsman for long-term care, or the ombudsman for mental health and developmental  
17.32 disabilities, if the agency or authority requesting providing the data determines that the data

18.1 are pertinent and necessary ~~to the requesting agency in initiating, furthering, or completing~~  
18.2 to prevent further maltreatment of a vulnerable adult, to safeguard a vulnerable adult, or for  
18.3 an investigation under this section. Data collected under this section must be made available  
18.4 to prosecuting authorities and law enforcement officials, local county agencies, and licensing  
18.5 agencies investigating the alleged maltreatment under this section. The lead investigative  
18.6 agency shall exchange not public data with the vulnerable adult maltreatment review panel  
18.7 established in section 256.021 if the data are pertinent and necessary for a review requested  
18.8 under that section. Notwithstanding section 138.17, upon completion of the review, not  
18.9 public data received by the review panel must be destroyed.

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

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

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

18.20 Sec. 9. Minnesota Statutes 2020, section 626.5571, subdivision 1, is amended to read:

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

18.27 Sec. 10. Minnesota Statutes 2020, section 626.5571, subdivision 2, is amended to read:

18.28 Subd. 2. **Duties of team.** A multidisciplinary adult protection team may provide public  
18.29 and professional education, develop resources for prevention, intervention, and treatment,  
18.30 and provide case consultation to the local welfare agency to better enable the agency to  
18.31 carry out its ~~adult protection~~ functions under section 626.557 and to meet the community's  
18.32 needs ~~for adult protection services~~. Case consultation may be performed by a committee of  
18.33 the team composed of the team members representing social services, law enforcement, the

19.1 county attorney, health care, and persons directly involved in an individual case as determined  
19.2 by the case consultation committee. Case consultation ~~is~~ includes a case review process that  
19.3 results in recommendations about services to be provided to the identified adult and family.

19.4 Sec. 11. Minnesota Statutes 2020, section 626.5572, subdivision 2, is amended to read:

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

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

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

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

19.10 (3) the solicitation, inducement, and promotion of prostitution as defined in section  
19.11 609.322; and

19.12 (4) criminal sexual conduct in the first through fifth degrees as defined in sections  
19.13 609.342 to 609.3451.

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

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

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

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

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

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

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

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

20.6 (e) For purposes of this section, a vulnerable adult is not abused for the sole reason that  
20.7 the vulnerable adult or a person with authority to make health care decisions for the  
20.8 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section  
20.9 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority  
20.10 and within the boundary of reasonable medical practice, to any therapeutic conduct, including  
20.11 any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition  
20.12 of the vulnerable adult or, where permitted under law, to provide nutrition and hydration  
20.13 parenterally or through intubation. This paragraph does not enlarge or diminish rights  
20.14 otherwise held under law by:

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

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

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

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

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

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

21.1 Sec. 12. Minnesota Statutes 2020, section 626.5572, subdivision 4, is amended to read:

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

21.6 Sec. 13. Minnesota Statutes 2020, section 626.5572, subdivision 17, is amended to read:

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

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

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

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

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

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

21.24 (1) the vulnerable adult or a person with authority to make health care decisions for the  
21.25 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections  
21.26 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with  
21.27 that authority and within the boundary of reasonable medical practice, to any therapeutic  
21.28 conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical  
21.29 or mental condition of the vulnerable adult, or, where permitted under law, to provide  
21.30 nutrition and hydration parenterally or through intubation; this paragraph does not enlarge  
21.31 or diminish rights otherwise held under law by:

- 22.1 (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an  
22.2 involved family member, to consent to or refuse consent for therapeutic conduct; or
- 22.3 (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or
- 22.4 (2) the vulnerable adult, a person with authority to make health care decisions for the  
22.5 vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or  
22.6 prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of  
22.7 medical care, provided that this is consistent with the prior practice or belief of the vulnerable  
22.8 adult or with the expressed intentions of the vulnerable adult;
- 22.9 (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or  
22.10 emotional dysfunction or undue influence, engages in consensual sexual contact with:
- 22.11 (i) a person including a facility staff person when a consensual sexual personal  
22.12 relationship existed prior to the caregiving relationship; or
- 22.13 (ii) a personal care attendant, regardless of whether the consensual sexual personal  
22.14 relationship existed prior to the caregiving relationship; or
- 22.15 (4) an individual makes an error in the provision of therapeutic conduct to a vulnerable  
22.16 adult which does not result in injury or harm which reasonably requires medical or mental  
22.17 health care; or
- 22.18 (5) an individual makes an error in the provision of therapeutic conduct to a vulnerable  
22.19 adult that results in injury or harm, which reasonably requires the care of a physician, and:
- 22.20 (i) the necessary care is provided in a timely fashion as dictated by the condition of the  
22.21 vulnerable adult;
- 22.22 (ii) if after receiving care, the health status of the vulnerable adult can be reasonably  
22.23 expected, as determined by the attending physician, to be restored to the vulnerable adult's  
22.24 preexisting condition;
- 22.25 (iii) the error is not part of a pattern of errors by the individual;
- 22.26 (iv) if in a facility, the error is immediately reported as required under section 626.557,  
22.27 and recorded internally in the facility;
- 22.28 (v) if in a facility, the facility identifies and takes corrective action and implements  
22.29 measures designed to reduce the risk of further occurrence of this error and similar errors;  
22.30 and

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

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

23.7 (e) If the findings of an investigation by a lead investigative agency result in a  
23.8 determination of substantiated maltreatment for the sole reason that the actions required of  
23.9 a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the  
23.10 facility is subject to a correction order. An individual will not be found to have neglected  
23.11 or maltreated the vulnerable adult based solely on the facility's not having taken the actions  
23.12 required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead  
23.13 investigative agency's determination of mitigating factors under section 626.557, subdivision  
23.14 9c, paragraph ~~(e)~~ (f).