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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1203

02/14/2019 Authored by Gruenhagen and Schultz
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to vulnerable adults; requiring the Department of Health to provide certain
1.3 notices and information to vulnerable adults who are subjects of maltreatment
1.4 reports or their guardians or health care agents; amending Minnesota Statutes 2018,
1.5 sections 245A.07, subdivision 3; 245C.08, subdivision 1; 626.557, subdivisions
1.6 9c, 9d; 626.5572, subdivision 17.

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

1.8 Section 1. Minnesota Statutes 2018, section 245A.07, subdivision 3, is amended to read:

1.9 Subd. 3. License suspension, revocation, or fine. (a) The commissioner may suspend
1.10 or revoke a license, or impose a fine if:

1.11 (1) a license holder fails to comply fully with applicable laws or rules;

1.12 (2) a license holder, a controlling individual, or an individual living in the household
1.13 where the licensed services are provided or is otherwise subject to a background study has
1.14 a disqualification which has not been set aside under section 245C.22;

1.15 (3) a license holder knowingly withholds relevant information from or gives false or
1.16 misleading information to the commissioner in connection with an application for a license,
1.17 in connection with the background study status of an individual, during an investigation,
1.18 or regarding compliance with applicable laws or rules; or

1.19 (4) after July 1, 2012, and upon request by the commissioner, a license holder fails to
1.20 submit the information required of an applicant under section 245A.04, subdivision 1,
1.21 paragraph (f) or (g).

1.22 A license holder who has had a license suspended, revoked, or has been ordered to pay
1.23 a fine must be given notice of the action by certified mail or personal service. If mailed, the

2.1 notice must be mailed to the address shown on the application or the last known address of
2.2 the license holder. The notice must state in plain language the reasons the license was
2.3 suspended or revoked, or a fine was ordered.

2.4 (b) If the license was suspended or revoked, the notice must inform the license holder
2.5 of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
2.6 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
2.7 a license. The appeal of an order suspending or revoking a license must be made in writing
2.8 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
2.9 the commissioner within ten calendar days after the license holder receives notice that the
2.10 license has been suspended or revoked. If a request is made by personal service, it must be
2.11 received by the commissioner within ten calendar days after the license holder received the
2.12 order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits a
2.13 timely appeal of an order suspending or revoking a license, the license holder may continue
2.14 to operate the program as provided in section 245A.04, subdivision 7, paragraphs (g) and
2.15 (h), until the commissioner issues a final order on the suspension or revocation.

2.16 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the license
2.17 holder of the responsibility for payment of fines and the right to a contested case hearing
2.18 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal of an
2.19 order to pay a fine must be made in writing by certified mail or personal service. If mailed,
2.20 the appeal must be postmarked and sent to the commissioner within ten calendar days after
2.21 the license holder receives notice that the fine has been ordered. If a request is made by
2.22 personal service, it must be received by the commissioner within ten calendar days after
2.23 the license holder received the order.

2.24 (2) The license holder shall pay the fines assessed on or before the payment date specified.
2.25 If the license holder fails to fully comply with the order, the commissioner may issue a
2.26 second fine or suspend the license until the license holder complies. If the license holder
2.27 receives state funds, the state, county, or municipal agencies or departments responsible for
2.28 administering the funds shall withhold payments and recover any payments made while the
2.29 license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine
2.30 until the commissioner issues a final order.

2.31 (3) A license holder shall promptly notify the commissioner of human services, in writing,
2.32 when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the
2.33 commissioner determines that a violation has not been corrected as indicated by the order
2.34 to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify

3.1 the license holder by certified mail or personal service that a second fine has been assessed.
3.2 The license holder may appeal the second fine as provided under this subdivision.

3.3 (4) Fines shall be assessed as follows:

3.4 (i) the license holder shall forfeit \$1,000 for each determination of maltreatment of a
3.5 child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557
3.6 for which the license holder is determined responsible for the maltreatment under section
3.7 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph ~~(e)~~ (e);

3.8 (ii) if the commissioner determines that a determination of maltreatment for which the
3.9 license holder is responsible is the result of maltreatment that meets the definition of serious
3.10 maltreatment as defined in section 245C.02, subdivision 18, the license holder shall forfeit
3.11 \$5,000;

3.12 (iii) for a program that operates out of the license holder's home and a program licensed
3.13 under Minnesota Rules, parts 9502.0300 to 9502.0495, the fine assessed against the license
3.14 holder shall not exceed \$1,000 for each determination of maltreatment;

3.15 (iv) the license holder shall forfeit \$200 for each occurrence of a violation of law or rule
3.16 governing matters of health, safety, or supervision, including but not limited to the provision
3.17 of adequate staff-to-child or adult ratios, and failure to comply with background study
3.18 requirements under chapter 245C; and

3.19 (v) the license holder shall forfeit \$100 for each occurrence of a violation of law or rule
3.20 other than those subject to a \$5,000, \$1,000, or \$200 fine in items (i) to (iv).

3.21 For purposes of this section, "occurrence" means each violation identified in the
3.22 commissioner's fine order. Fines assessed against a license holder that holds a license to
3.23 provide home and community-based services, as identified in section 245D.03, subdivision
3.24 1, and a community residential setting or day services facility license under chapter 245D
3.25 where the services are provided, may be assessed against both licenses for the same
3.26 occurrence, but the combined amount of the fines shall not exceed the amount specified in
3.27 this clause for that occurrence.

3.28 (5) When a fine has been assessed, the license holder may not avoid payment by closing,
3.29 selling, or otherwise transferring the licensed program to a third party. In such an event, the
3.30 license holder will be personally liable for payment. In the case of a corporation, each
3.31 controlling individual is personally and jointly liable for payment.

3.32 (d) Except for background study violations involving the failure to comply with an order
3.33 to immediately remove an individual or an order to provide continuous, direct supervision,

4.1 the commissioner shall not issue a fine under paragraph (c) relating to a background study
4.2 violation to a license holder who self-corrects a background study violation before the
4.3 commissioner discovers the violation. A license holder who has previously exercised the
4.4 provisions of this paragraph to avoid a fine for a background study violation may not avoid
4.5 a fine for a subsequent background study violation unless at least 365 days have passed
4.6 since the license holder self-corrected the earlier background study violation.

4.7 Sec. 2. Minnesota Statutes 2018, section 245C.08, subdivision 1, is amended to read:

4.8 Subdivision 1. **Background studies conducted by Department of Human Services.** (a)
4.9 For a background study conducted by the Department of Human Services, the commissioner
4.10 shall review:

4.11 (1) information related to names of substantiated perpetrators of maltreatment of
4.12 vulnerable adults that has been received by the commissioner as required under section
4.13 626.557, subdivision 9c, paragraph ~~(j)~~ (m);

4.14 (2) the commissioner's records relating to the maltreatment of minors in licensed
4.15 programs, and from findings of maltreatment of minors as indicated through the social
4.16 service information system;

4.17 (3) information from juvenile courts as required in subdivision 4 for individuals listed
4.18 in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

4.19 (4) information from the Bureau of Criminal Apprehension, including information
4.20 regarding a background study subject's registration in Minnesota as a predatory offender
4.21 under section 243.166;

4.22 (5) except as provided in clause (6), information received as a result of submission of
4.23 fingerprints for a national criminal history record check, as defined in section 245C.02,
4.24 subdivision 13c, when the commissioner has reasonable cause for a national criminal history
4.25 record check as defined under section 245C.02, subdivision 15a, or as required under section
4.26 144.057, subdivision 1, clause (2);

4.27 (6) for a background study related to a child foster care application for licensure, a
4.28 transfer of permanent legal and physical custody of a child under sections 260C.503 to
4.29 260C.515, or adoptions, and for a background study required for family child care, certified
4.30 license-exempt child care, child care centers, and legal nonlicensed child care authorized
4.31 under chapter 119B, the commissioner shall also review:

4.32 (i) information from the child abuse and neglect registry for any state in which the
4.33 background study subject has resided for the past five years; and

5.1 (ii) when the background study subject is 18 years of age or older, or a minor under
5.2 section 245C.05, subdivision 5a, paragraph (c), information received following submission
5.3 of fingerprints for a national criminal history record check; and

5.4 (7) for a background study required for family child care, certified license-exempt child
5.5 care centers, licensed child care centers, and legal nonlicensed child care authorized under
5.6 chapter 119B, the background study shall also include, to the extent practicable, a name
5.7 and date-of-birth search of the National Sex Offender Public website.

5.8 (b) Notwithstanding expungement by a court, the commissioner may consider information
5.9 obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice
5.10 of the petition for expungement and the court order for expungement is directed specifically
5.11 to the commissioner.

5.12 (c) The commissioner shall also review criminal case information received according
5.13 to section 245C.04, subdivision 4a, from the Minnesota court information system that relates
5.14 to individuals who have already been studied under this chapter and who remain affiliated
5.15 with the agency that initiated the background study.

5.16 (d) When the commissioner has reasonable cause to believe that the identity of a
5.17 background study subject is uncertain, the commissioner may require the subject to provide
5.18 a set of classifiable fingerprints for purposes of completing a fingerprint-based record check
5.19 with the Bureau of Criminal Apprehension. Fingerprints collected under this paragraph
5.20 shall not be saved by the commissioner after they have been used to verify the identity of
5.21 the background study subject against the particular criminal record in question.

5.22 (e) The commissioner may inform the entity that initiated a background study under
5.23 NETStudy 2.0 of the status of processing of the subject's fingerprints.

5.24 Sec. 3. Minnesota Statutes 2018, section 626.557, subdivision 9c, is amended to read:

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

5.30 (b) Except to the extent prohibited under federal law, when the Department of Health
5.31 is the lead investigative agency, the department must provide the following information to
5.32 a vulnerable adult who is the subject of a maltreatment report or the vulnerable adult's
5.33 guardian or health care agent, if known, within five days after the department initiates an

6.1 investigation, as long as providing this information will not hamper the investigation or
6.2 harm the vulnerable adult:

6.3 (1) the maltreatment allegation by type of allegation: abuse, neglect, financial exploitation,
6.4 or drug diversion;

6.5 (2) the name of the facility or other location where the alleged maltreatment occurred;

6.6 (3) the dates of the alleged maltreatment, if identified in the report at the time the
6.7 Department of Health is providing this information;

6.8 (4) the name and contact information of the investigator; and

6.9 (5) confirmation that the Department of Health is investigating the matter, and if so:

6.10 (i) an explanation of the investigation process;

6.11 (ii) an estimated timeline for the investigation;

6.12 (iii) a notification that the vulnerable adult or vulnerable adult's guardian or health care
6.13 agent may submit evidence to support the maltreatment report, including photographs,
6.14 videos, and documents; and

6.15 (iv) a statement that the Department of Health will provide an update on the investigation
6.16 if requested by the vulnerable adult or vulnerable adult's guardian or health care agent, and
6.17 will provide a report when the investigation is concluded.

6.18 (c) To the extent allowed under state and federal law, when the Department of Health
6.19 is the lead investigative agency, the department shall provide maltreatment information and
6.20 investigation updates, including reports, upon the request of the vulnerable adult who is the
6.21 subject of a maltreatment report or upon request of that vulnerable adult's guardian or health
6.22 care agent.

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

6.25 ~~(e)~~ (e) When determining whether the facility or individual is the responsible party for
6.26 substantiated maltreatment or whether both the facility and the individual are responsible
6.27 for substantiated maltreatment, the lead investigative agency shall consider at least the
6.28 following mitigating factors:

6.29 (1) whether the actions of the facility or the individual caregivers were in accordance
6.30 with, and followed the terms of, an erroneous physician order, prescription, resident care
6.31 plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible
6.32 for the issuance of the erroneous order, prescription, plan, or directive or knows or should

7.1 have known of the errors and took no reasonable measures to correct the defect before
7.2 administering care;

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

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

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

7.16 ~~(e)~~ (g) The lead investigative agency shall complete its final disposition within 60
7.17 calendar days. If the lead investigative agency is unable to complete its final disposition
7.18 within 60 calendar days, the lead investigative agency shall notify the following persons
7.19 provided that the notification will not endanger the vulnerable adult or hamper the
7.20 investigation: (1) the vulnerable adult or the vulnerable adult's guardian or health care agent,
7.21 when known, if the lead investigative agency knows them to be aware of the investigation;
7.22 and (2) the facility, where applicable. The notice shall contain the reason for the delay and
7.23 the projected completion date. If the lead investigative agency is unable to complete its final
7.24 disposition by a subsequent projected completion date, the lead investigative agency shall
7.25 again notify the vulnerable adult or the vulnerable adult's guardian or health care agent,
7.26 when known if the lead investigative agency knows them to be aware of the investigation,
7.27 and the facility, where applicable, of the reason for the delay and the revised projected
7.28 completion date provided that the notification will not endanger the vulnerable adult or
7.29 hamper the investigation. The lead investigative agency must notify the health care agent
7.30 of the vulnerable adult only if the health care agent's authority to make health care decisions
7.31 for the vulnerable adult is currently effective under section 145C.06 and not suspended
7.32 under section 524.5-310 and the investigation relates to a duty assigned to the health care
7.33 agent by the principal. A lead investigative agency's inability to complete the final disposition
7.34 within 60 calendar days or by any projected completion date does not invalidate the final
7.35 disposition.

8.1 ~~(f)~~ (h) Within ten calendar days of completing the final disposition, the lead investigative
8.2 agency shall provide a copy of the public investigation memorandum under subdivision
8.3 12b, paragraph (b), clause (1), when required to be completed under this section, to the
8.4 following persons: (1) the vulnerable adult, or the vulnerable adult's guardian or health care
8.5 agent, if known, unless the lead investigative agency knows that the notification would
8.6 endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested
8.7 notification when making the report, provided this notification would not endanger the
8.8 well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility;
8.9 and (5) the ombudsman for long-term care, or the ombudsman for mental health and
8.10 developmental disabilities, as appropriate.

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

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

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

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

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

9.1 Sec. 4. Minnesota Statutes 2018, section 626.557, subdivision 9d, is amended to read:

9.2 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided under
9.3 paragraph (e), any individual or facility which a lead investigative agency determines has
9.4 maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf
9.5 of the vulnerable adult, regardless of the lead investigative agency's determination, who
9.6 contests the lead investigative agency's final disposition of an allegation of maltreatment,
9.7 may request the lead investigative agency to reconsider its final disposition. The request
9.8 for reconsideration must be submitted in writing to the lead investigative agency within 15
9.9 calendar days after receipt of notice of final disposition or, if the request is made by an
9.10 interested person who is not entitled to notice, within 15 days after receipt of the notice by
9.11 the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the
9.12 request for reconsideration must be postmarked and sent to the lead investigative agency
9.13 within 15 calendar days of the individual's or facility's receipt of the final disposition. If the
9.14 request for reconsideration is made by personal service, it must be received by the lead
9.15 investigative agency within 15 calendar days of the individual's or facility's receipt of the
9.16 final disposition. An individual who was determined to have maltreated a vulnerable adult
9.17 under this section and who was disqualified on the basis of serious or recurring maltreatment
9.18 under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment
9.19 determination and the disqualification. The request for reconsideration of the maltreatment
9.20 determination and the disqualification must be submitted in writing within 30 calendar days
9.21 of the individual's receipt of the notice of disqualification under sections 245C.16 and
9.22 245C.17. If mailed, the request for reconsideration of the maltreatment determination and
9.23 the disqualification must be postmarked and sent to the lead investigative agency within 30
9.24 calendar days of the individual's receipt of the notice of disqualification. If the request for
9.25 reconsideration is made by personal service, it must be received by the lead investigative
9.26 agency within 30 calendar days after the individual's receipt of the notice of disqualification.

9.27 (b) Except as provided under paragraphs (e) and (f), if the lead investigative agency
9.28 denies the request or fails to act upon the request within 15 working days after receiving
9.29 the request for reconsideration, the person or facility entitled to a fair hearing under section
9.30 256.045, may submit to the commissioner of human services a written request for a hearing
9.31 under that statute. The vulnerable adult, or an interested person acting on behalf of the
9.32 vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel
9.33 under section 256.021 if the lead investigative agency denies the request or fails to act upon
9.34 the request, or if the vulnerable adult or interested person contests a reconsidered disposition.
9.35 The lead investigative agency shall notify persons who request reconsideration of their

10.1 rights under this paragraph. The request must be submitted in writing to the review panel
10.2 and a copy sent to the lead investigative agency within 30 calendar days of receipt of notice
10.3 of a denial of a request for reconsideration or of a reconsidered disposition. The request
10.4 must specifically identify the aspects of the lead investigative agency determination with
10.5 which the person is dissatisfied.

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

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

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

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

11.1 (1) a denial of a license under section 245A.05, or a licensing sanction under section
11.2 245A.07, is based on a determination that the license holder is responsible for maltreatment
11.3 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

11.8 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
11.9 determination or disqualification, but does not appeal the denial of a license or a licensing
11.10 sanction, reconsideration of the maltreatment determination shall be conducted under sections
11.11 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
11.12 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall
11.13 also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
11.14 626.557, subdivision 9d.

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

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

11.30 (1) For purposes of compliance with the data destruction schedule under subdivision
11.31 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a
11.32 result of a reconsideration under this paragraph, the date of the original finding of a
11.33 substantiated maltreatment must be used to calculate the destruction date.

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

12.8 Sec. 5. Minnesota Statutes 2018, section 626.5572, subdivision 17, is amended to read:

12.9 Subd. 17. **Neglect.** "Neglect" means:

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

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

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

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

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

12.24 (1) the vulnerable adult or a person with authority to make health care decisions for the
 12.25 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections
 12.26 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with
 12.27 that authority and within the boundary of reasonable medical practice, to any therapeutic
 12.28 conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical
 12.29 or mental condition of the vulnerable adult, or, where permitted under law, to provide
 12.30 nutrition and hydration parenterally or through intubation; this paragraph does not enlarge
 12.31 or diminish rights otherwise held under law by:

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

- 13.1 (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or
- 13.2 (2) the vulnerable adult, a person with authority to make health care decisions for the
- 13.3 vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or
- 13.4 prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of
- 13.5 medical care, provided that this is consistent with the prior practice or belief of the vulnerable
- 13.6 adult or with the expressed intentions of the vulnerable adult;
- 13.7 (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or
- 13.8 emotional dysfunction or undue influence, engages in consensual sexual contact with:
- 13.9 (i) a person including a facility staff person when a consensual sexual personal
- 13.10 relationship existed prior to the caregiving relationship; or
- 13.11 (ii) a personal care attendant, regardless of whether the consensual sexual personal
- 13.12 relationship existed prior to the caregiving relationship; or
- 13.13 (4) an individual makes an error in the provision of therapeutic conduct to a vulnerable
- 13.14 adult which does not result in injury or harm which reasonably requires medical or mental
- 13.15 health care; or
- 13.16 (5) an individual makes an error in the provision of therapeutic conduct to a vulnerable
- 13.17 adult that results in injury or harm, which reasonably requires the care of a physician, and:
- 13.18 (i) the necessary care is provided in a timely fashion as dictated by the condition of the
- 13.19 vulnerable adult;
- 13.20 (ii) if after receiving care, the health status of the vulnerable adult can be reasonably
- 13.21 expected, as determined by the attending physician, to be restored to the vulnerable adult's
- 13.22 preexisting condition;
- 13.23 (iii) the error is not part of a pattern of errors by the individual;
- 13.24 (iv) if in a facility, the error is immediately reported as required under section 626.557,
- 13.25 and recorded internally in the facility;
- 13.26 (v) if in a facility, the facility identifies and takes corrective action and implements
- 13.27 measures designed to reduce the risk of further occurrence of this error and similar errors;
- 13.28 and
- 13.29 (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently
- 13.30 documented for review and evaluation by the facility and any applicable licensing,
- 13.31 certification, and ombudsman agency.

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

14.4 (e) If the findings of an investigation by a lead investigative agency result in a
14.5 determination of substantiated maltreatment for the sole reason that the actions required of
14.6 a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the
14.7 facility is subject to a correction order. An individual will not be found to have neglected
14.8 or maltreated the vulnerable adult based solely on the facility's not having taken the actions
14.9 required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead
14.10 investigative agency's determination of mitigating factors under section 626.557, subdivision
14.11 9c, paragraph ~~(e)~~ (e).