

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 2355

(SENATE AUTHORS: ABELER)

DATE
03/11/2019

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OFFICIAL STATUS
Introduction and first reading
Referred to Human Services Reform Finance and Policy

1.1 A bill for an act

1.2 relating to human services; modifying provisions governing continuing care for

1.3 older adults; amending Minnesota Statutes 2018, sections 245A.07, subdivision

1.4 3; 245C.08, subdivision 1; 256.021, subdivision 2; 256R.02, subdivisions 4, 17,

1.5 18, 19, 29, 42a, 48a; 256R.07, subdivisions 1, 2; 256R.09, subdivision 2; 256R.10,

1.6 subdivision 1; 256R.13, subdivision 4; 256R.39; 626.557, subdivisions 3, 3a, 4,

1.7 4a, 6, 9, 9b, 9c, 9d, 10, 10b, 12b, 14, 17; 626.5572, subdivisions 2, 3, 4, 6, 8, 9,

1.8 16, 17, 20, 21, by adding a subdivision; repealing Minnesota Statutes 2018, sections

1.9 256R.08, subdivision 2; 256R.49.

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

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

1.12 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may suspend

1.13 or revoke a license, or impose a fine if:

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

1.15 (2) a license holder, a controlling individual, or an individual living in the household

1.16 where the licensed services are provided or is otherwise subject to a background study has

1.17 a disqualification which has not been set aside under section 245C.22;

1.18 (3) a license holder knowingly withholds relevant information from or gives false or

1.19 misleading information to the commissioner in connection with an application for a license,

1.20 in connection with the background study status of an individual, during an investigation,

1.21 or regarding compliance with applicable laws or rules; or

1.22 (4) after July 1, 2012, and upon request by the commissioner, a license holder fails to

1.23 submit the information required of an applicant under section 245A.04, subdivision 1,

1.24 paragraph (f) or (g).

2.1 A license holder who has had a license suspended, revoked, or has been ordered to pay
2.2 a fine must be given notice of the action by certified mail or personal service. If mailed, the
2.3 notice must be mailed to the address shown on the application or the last known address of
2.4 the license holder. The notice must state in plain language the reasons the license was
2.5 suspended or revoked, or a fine was ordered.

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

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

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

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

3.1 to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify
3.2 the license holder by certified mail or personal service that a second fine has been assessed.
3.3 The license holder may appeal the second fine as provided under this subdivision.

3.4 (4) Fines shall be assessed as follows:

3.5 (i) the license holder shall forfeit \$1,000 for each determination of maltreatment of a
3.6 child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557
3.7 for which the license holder is determined responsible for the maltreatment under section
3.8 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph ~~(e)~~ (f);

3.9 (ii) if the commissioner determines that a determination of maltreatment for which the
3.10 license holder is responsible is the result of maltreatment that meets the definition of serious
3.11 maltreatment as defined in section 245C.02, subdivision 18, the license holder shall forfeit
3.12 \$5,000;

3.13 (iii) for a program that operates out of the license holder's home and a program licensed
3.14 under Minnesota Rules, parts 9502.0300 to ~~9502.0495~~ 9502.0445, the fine assessed against
3.15 the license holder shall not exceed \$1,000 for each determination of maltreatment;

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

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

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

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

4.1 (d) Except for background study violations involving the failure to comply with an order
4.2 to immediately remove an individual or an order to provide continuous, direct supervision,
4.3 the commissioner shall not issue a fine under paragraph (c) relating to a background study
4.4 violation to a license holder who self-corrects a background study violation before the
4.5 commissioner discovers the violation. A license holder who has previously exercised the
4.6 provisions of this paragraph to avoid a fine for a background study violation may not avoid
4.7 a fine for a subsequent background study violation unless at least 365 days have passed
4.8 since the license holder self-corrected the earlier background study violation.

4.9 **EFFECTIVE DATE.** This section is effective August 1, 2019.

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

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

4.14 (1) information related to names of substantiated perpetrators of maltreatment of
4.15 vulnerable adults that has been received by the commissioner as required under section
4.16 626.557, subdivision 9c, paragraph ~~(j)~~ (n);

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

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

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

4.25 (5) except as provided in clause (6), information received as a result of submission of
4.26 fingerprints for a national criminal history record check, as defined in section 245C.02,
4.27 subdivision 13c, when the commissioner has reasonable cause for a national criminal history
4.28 record check as defined under section 245C.02, subdivision 15a, or as required under section
4.29 144.057, subdivision 1, clause (2);

4.30 (6) for a background study related to a child foster care application for licensure, a
4.31 transfer of permanent legal and physical custody of a child under sections 260C.503 to
4.32 260C.515, or adoptions, and for a background study required for family child care, certified

5.1 license-exempt child care, child care centers, and legal nonlicensed child care authorized
5.2 under chapter 119B, the commissioner shall also review:

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

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

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

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

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

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

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

5.28 **EFFECTIVE DATE.** This section is effective August 1, 2019.

5.29 Sec. 3. Minnesota Statutes 2018, section 256.021, subdivision 2, is amended to read:

5.30 Subd. 2. **Review procedure.** (a) If a vulnerable adult or an interested person acting on
5.31 behalf of the vulnerable adult requests a review under this section, the panel shall review
5.32 the request at its next quarterly meeting. If the next quarterly meeting is within ~~ten~~ 30

6.1 calendar days of the panel's receipt of the request for review, the review may be delayed
6.2 until the next subsequent meeting. The panel shall review the request and the investigation
6.3 memorandum and may review any other data on the investigation maintained by the lead
6.4 investigative agency that are pertinent and necessary to its review of the final disposition.
6.5 If more than one person requests a review under this section with respect to the same final
6.6 disposition, the review panel shall combine the requests into one review. The panel shall
6.7 submit its written request for the case file and other documentation relevant to the review
6.8 to the supervisor of the investigator conducting the investigation under review.

6.9 (b) Within 30 days of the review under this section, the panel shall notify the director
6.10 or manager of the lead investigative agency and the vulnerable adult or interested person
6.11 who requested the review as to whether the panel concurs with the final disposition or
6.12 whether the lead investigative agency must reconsider the final disposition. If the panel
6.13 determines that the lead investigative agency must reconsider the final disposition, the panel
6.14 must make specific recommendations to the director or manager of the lead investigative
6.15 agency. The recommendation must include an explanation of the factors that form the basis
6.16 of the recommendation to reconsider the final disposition and must specifically identify the
6.17 disputed facts, the disputed application of maltreatment definitions, the disputed application
6.18 of responsibility for maltreatment, and the disputed weighing of evidence, whichever apply.
6.19 Within 30 days the lead investigative agency shall conduct a review and report back to the
6.20 panel with its determination and the specific rationale for its final disposition. At a minimum,
6.21 the specific rationale must include a detailed response to each of the factors identified by
6.22 the panel that formed the basis for the recommendations of the panel.

6.23 (c) Upon receiving the report of reconsideration from the lead investigative agency, the
6.24 panel shall communicate the decision in writing to the vulnerable adult or interested person
6.25 acting on behalf of the vulnerable adult who requested the review. The panel shall include
6.26 the specific rationale provided by the lead investigative agency as part of the communication.

6.27 **EFFECTIVE DATE.** This section is effective August 1, 2019.

6.28 Sec. 4. Minnesota Statutes 2018, section 256R.02, subdivision 4, is amended to read:

6.29 Subd. 4. **Administrative costs.** "Administrative costs" means the identifiable costs for
6.30 administering the overall activities of the nursing home. These costs include salaries and
6.31 wages of the administrator, assistant administrator, business office employees, security
6.32 guards, purchasing and inventory employees, and associated fringe benefits and payroll
6.33 taxes, fees, contracts, or purchases related to business office functions, licenses, permits
6.34 except as provided in the external fixed costs category, employee recognition, travel including

7.1 meals and lodging, all training except as specified in subdivision 17, voice and data
 7.2 communication or transmission, office supplies, property and liability insurance and other
 7.3 forms of insurance except insurance that is a fringe benefit under subdivision 22, personnel
 7.4 recruitment, legal services, accounting services, management or business consultants, data
 7.5 processing, information technology, website, central or home office costs, business meetings
 7.6 and seminars, postage, fees for professional organizations, subscriptions, security services,
 7.7 nonpromotional advertising, board of directors fees, working capital interest expense, bad
 7.8 debts, bad debt collection fees, and costs incurred for travel and housing for persons employed
 7.9 by a supplemental nursing services agency as defined in section 144A.70, subdivision 6.

7.10 **EFFECTIVE DATE.** This section is effective August 1, 2019.

7.11 Sec. 5. Minnesota Statutes 2018, section 256R.02, subdivision 17, is amended to read:

7.12 Subd. 17. **Direct care costs.** "Direct care costs" means costs for the wages of nursing
 7.13 administration, direct care registered nurses, licensed practical nurses, certified nursing
 7.14 assistants, trained medication aides, employees conducting training in resident care topics
 7.15 and associated fringe benefits and payroll taxes; services from a Minnesota registered
 7.16 supplemental nursing services agency up to the maximum allowable charges under section
 7.17 144A.74, excluding associated lodging and travel costs; supplies that are stocked at nursing
 7.18 stations or on the floor and distributed or used individually, including, but not limited to:
 7.19 alcohol, applicators, cotton balls, incontinence pads, disposable ice bags, dressings, bandages,
 7.20 water pitchers, tongue depressors, disposable gloves, enemas, enema equipment, personal
 7.21 hygiene soap, medication cups, diapers, ~~plastic waste bags~~, sanitary products, disposable
 7.22 thermometers, hypodermic needles and syringes, clinical reagents or similar diagnostic
 7.23 agents, drugs ~~that are not paid~~ payable on a separate fee schedule by the medical assistance
 7.24 program or any other payer, and ~~technology-related~~ clinical software costs specific to the
 7.25 provision of nursing care to residents, such as electronic charting systems; costs of materials
 7.26 used for resident care training, and training courses outside of the facility attended by direct
 7.27 care staff on resident care topics; and costs for nurse consultants, pharmacy consultants,
 7.28 and medical directors. Salaries and payroll taxes for nurse consultants who work out of a
 7.29 central office must be allocated proportionately by total resident days or by direct
 7.30 identification to the nursing facilities served by those consultants.

7.31 **EFFECTIVE DATE.** This section is effective August 1, 2019.

8.1 Sec. 6. Minnesota Statutes 2018, section 256R.02, subdivision 18, is amended to read:

8.2 Subd. 18. **Employer health insurance costs.** "Employer health insurance costs" means
8.3 premium expenses for group coverage; and actual expenses incurred for self-insured plans,
8.4 including ~~reinsurance~~; actual claims paid, stop loss premiums, plan fees, and employer
8.5 contributions to employee health reimbursement and health savings accounts. Actual costs
8.6 of self-insurance plans must not include any allowance for future funding unless the plan
8.7 meets the Medicare requirements for reporting on a premium basis when the Medicare
8.8 regulations define the actual costs. Premium and expense costs and contributions are
8.9 allowable for (1) all employees and (2) the spouse and dependents of those employees who
8.10 are employed on average at least 30 hours per week.

8.11 **EFFECTIVE DATE.** This section is effective August 1, 2019.

8.12 Sec. 7. Minnesota Statutes 2018, section 256R.02, subdivision 19, is amended to read:

8.13 Subd. 19. **External fixed costs.** "External fixed costs" means costs related to the nursing
8.14 home surcharge under section 256.9657, subdivision 1; licensure fees under section 144.122;
8.15 family advisory council fee under section 144A.33; scholarships under section 256R.37;
8.16 planned closure rate adjustments under section 256R.40; consolidation rate adjustments
8.17 under section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6), and 4d;
8.18 single-bed room incentives under section 256R.41; property taxes, special assessments, and
8.19 payments in lieu of taxes; employer health insurance costs; quality improvement incentive
8.20 payment rate adjustments under section 256R.39; performance-based incentive payments
8.21 under section 256R.38; special dietary needs under section 256R.51; ~~rate adjustments for~~
8.22 ~~compensation-related costs for minimum wage changes under section 256R.49 provided~~
8.23 ~~on or after January 1, 2018;~~ and Public Employees Retirement Association employer costs.

8.24 **EFFECTIVE DATE.** This section is effective August 1, 2019.

8.25 Sec. 8. Minnesota Statutes 2018, section 256R.02, subdivision 29, is amended to read:

8.26 Subd. 29. **Maintenance and plant operations costs.** "Maintenance and plant operations
8.27 costs" means the costs for the salaries and wages of the maintenance supervisor, engineers,
8.28 heating-plant employees, and other maintenance employees and associated fringe benefits
8.29 and payroll taxes. It also includes identifiable costs for maintenance and operation of the
8.30 building and grounds, including, but not limited to, fuel, electricity, plastic waste bags,
8.31 medical waste and garbage removal, water, sewer, supplies, tools, and repairs, and equipment
8.32 that is not required to be included in the property allowance.

9.1 **EFFECTIVE DATE.** This section is effective August 1, 2019.

9.2 Sec. 9. Minnesota Statutes 2018, section 256R.02, subdivision 42a, is amended to read:

9.3 Subd. 42a. **Real estate taxes.** "Real estate taxes" means the real estate tax liability shown
9.4 on the annual property tax ~~statement~~ statements of the nursing facility for the reporting
9.5 period. The term does not include personnel costs or fees for late payment.

9.6 **EFFECTIVE DATE.** This section is effective August 1, 2019.

9.7 Sec. 10. Minnesota Statutes 2018, section 256R.02, subdivision 48a, is amended to read:

9.8 Subd. 48a. **Special assessments.** "Special assessments" means the actual special
9.9 assessments and related interest paid during the reporting period that are involuntary costs.
9.10 The term does not include personnel costs ~~or~~, fees for late payment, or special assessments
9.11 for projects that are reimbursed in the property allowance.

9.12 **EFFECTIVE DATE.** This section is effective August 1, 2019.

9.13 Sec. 11. Minnesota Statutes 2018, section 256R.07, subdivision 1, is amended to read:

9.14 Subdivision 1. **Criteria.** A nursing facility shall keep adequate documentation. In order
9.15 to be adequate, documentation must:

9.16 (1) be maintained in orderly, well-organized files;

9.17 (2) not include documentation of more than one nursing facility in one set of files unless
9.18 transactions may be traced by the commissioner to the nursing facility's annual cost report;

9.19 (3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name
9.20 and address, purchaser name and delivery destination address, listing of items or services
9.21 purchased, cost of items purchased, account number to which the cost is posted, and a
9.22 breakdown of any allocation of costs between accounts or nursing facilities. If any of the
9.23 information is not available, the nursing facility shall document its good faith attempt to
9.24 obtain the information;

9.25 (4) include contracts, agreements, amortization schedules, mortgages, other debt
9.26 instruments, and all other documents necessary to explain the nursing facility's costs or
9.27 revenues; and

9.28 (5) be retained by the nursing facility to support the five most recent annual cost reports.
9.29 The commissioner may extend the period of retention if the field audit was postponed
9.30 because of inadequate record keeping or accounting practices as in section 256R.13,

10.1 subdivisions 2 and 4, the records are necessary to resolve a pending appeal, or the records
 10.2 are required for the enforcement of sections 256R.04; 256R.05, subdivision 2; 256R.06,
 10.3 subdivisions 2, 6, and 7; 256R.08, subdivisions 1 ~~to~~ and 3; and 256R.09, subdivisions 3 and
 10.4 4.

10.5 **EFFECTIVE DATE.** This section is effective August 1, 2019.

10.6 Sec. 12. Minnesota Statutes 2018, section 256R.07, subdivision 2, is amended to read:

10.7 Subd. 2. **Documentation of compensation.** Compensation for personal services,
 10.8 regardless of whether treated as identifiable costs or costs that are not identifiable, must be
 10.9 documented on payroll records. Payrolls must be supported by time and attendance or
 10.10 equivalent records for individual employees. Salaries and wages of employees which are
 10.11 allocated to more than one cost category must be supported by time distribution records.
 10.12 ~~The method used must produce a proportional distribution of actual time spent, or an accurate~~
 10.13 ~~estimate of time spent performing assigned duties. The nursing facility that chooses to~~
 10.14 ~~estimate time spent must use a statistically valid method. The compensation must reflect~~
 10.15 ~~an amount proportionate to a full-time basis if the services are rendered on less than a~~
 10.16 ~~full-time basis. Salary allocations are allowable using the Medicare approved allocation~~
 10.17 ~~basis and methodology only if the salary costs cannot be directly determined including when~~
 10.18 ~~employees provide shared services to noncovered operations.~~

10.19 **EFFECTIVE DATE.** This section is effective August 1, 2019.

10.20 Sec. 13. Minnesota Statutes 2018, section 256R.09, subdivision 2, is amended to read:

10.21 Subd. 2. **Reporting of statistical and cost information.** All nursing facilities shall
 10.22 provide information annually to the commissioner on a form and in a manner determined
 10.23 by the commissioner. The commissioner may separately require facilities to submit in a
 10.24 manner specified by the commissioner documentation of statistical and cost information
 10.25 included in the report to ensure accuracy in establishing payment rates and to perform audit
 10.26 and appeal review functions under this chapter. The commissioner may also require nursing
 10.27 facilities to provide statistical and cost information for a subset of the items in the annual
 10.28 report on a semiannual basis. Nursing facilities shall report only costs directly related to the
 10.29 operation of the nursing facility. The facility shall not include costs which are separately
 10.30 ~~reimbursed~~ reimbursable by residents, medical assistance, or other payors. Allocations of
 10.31 costs from central, affiliated, or corporate office and related organization transactions shall
 10.32 be reported according to sections 256R.07, subdivision 3, and 256R.12, subdivisions 1 to
 10.33 7. The commissioner shall not grant facilities extensions to the filing deadline.

11.1 **EFFECTIVE DATE.** This section is effective August 1, 2019.

11.2 Sec. 14. Minnesota Statutes 2018, section 256R.10, subdivision 1, is amended to read:

11.3 Subdivision 1. **General cost principles.** Only costs determined to be allowable shall be
 11.4 used to compute the total payment rate for nursing facilities participating in the medical
 11.5 assistance program. To be considered an allowable cost for rate-setting purposes, a cost
 11.6 must satisfy the following criteria:

11.7 (1) the cost is ordinary, necessary, and related to resident care;

11.8 (2) the cost is what a prudent and cost-conscious business person would pay for the
 11.9 specific good or service in the open market in an arm's-length transaction;

11.10 (3) the cost is for goods or services actually provided in the nursing facility;

11.11 (4) incurred costs that are not salary or wage costs must be paid within 180 days of the
 11.12 end of the reporting period to be allowable costs of the reporting period;

11.13 (5) the cost effects of transactions that have the effect of circumventing this chapter are
 11.14 not allowable under the principle that the substance of the transaction shall prevail over
 11.15 form; and

11.16 ~~(5)~~ (6) costs that are incurred due to management inefficiency, unnecessary care or
 11.17 facilities, agreements not to compete, or activities not commonly accepted in the nursing
 11.18 facility care field are not allowable.

11.19 **EFFECTIVE DATE.** This section is effective August 1, 2019.

11.20 Sec. 15. Minnesota Statutes 2018, section 256R.13, subdivision 4, is amended to read:

11.21 Subd. 4. **Extended record retention requirements.** The commissioner shall extend the
 11.22 period for retention of records under section 256R.09, subdivision 3, for purposes of
 11.23 performing field audits as necessary to enforce sections 256R.04; 256R.05, subdivision 2;
 11.24 256R.06, subdivisions 2, 6, and 7; 256R.08, subdivisions 1 ~~to~~ and 3; and 256R.09,
 11.25 subdivisions 3 and 4, with written notice to the facility postmarked no later than 90 days
 11.26 prior to the expiration of the record retention requirement.

11.27 **EFFECTIVE DATE.** This section is effective August 1, 2019.

12.1 Sec. 16. Minnesota Statutes 2018, section 256R.39, is amended to read:

12.2 **256R.39 QUALITY IMPROVEMENT INCENTIVE PROGRAM.**

12.3 The commissioner shall develop a quality improvement incentive program in consultation
 12.4 with stakeholders. The annual funding pool available for quality improvement incentive
 12.5 payments shall be equal to 0.8 percent of all operating payments, not including any rate
 12.6 components resulting from equitable cost-sharing for publicly owned nursing facility program
 12.7 participation under section 256R.48, critical access nursing facility program participation
 12.8 under section 256R.47, or performance-based incentive payment program participation
 12.9 under section 256R.38. ~~For the period from October 1, 2015, to December 31, 2016, rate~~
 12.10 ~~adjustments provided under this section shall be effective for 15 months. Beginning January~~
 12.11 ~~1, 2017, Annual rate adjustments provided under this section shall be effective for one rate~~
 12.12 year.

12.13 **EFFECTIVE DATE.** This section is effective August 1, 2019.

12.14 Sec. 17. Minnesota Statutes 2018, section 626.557, subdivision 3, is amended to read:

12.15 Subd. 3. **Timing of report.** (a) A mandated reporter who has reason to believe that a
 12.16 vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable
 12.17 adult has sustained a physical injury which is not reasonably explained shall immediately
 12.18 report the information to the common entry point. If an individual is a vulnerable adult
 12.19 solely because the individual ~~is admitted to a facility~~ receives licensed services, a mandated
 12.20 reporter is not required to report suspected maltreatment of the individual that occurred
 12.21 prior to ~~admission~~ receiving licensed services, unless:

12.22 (1) the individual ~~was admitted to the facility~~ received licensed services from another
 12.23 ~~facility~~ licensed provider and the reporter has reason to believe the vulnerable adult was
 12.24 maltreated ~~in the previous facility~~ during the time period in which the vulnerable adult
 12.25 received licensed services; or

12.26 (2) the reporter knows or has reason to believe that the individual is a vulnerable adult
 12.27 as defined in section 626.5572, subdivision 21, paragraph (a), clause (4).

12.28 (b) A person not required to report under the provisions of this section may voluntarily
 12.29 report as described above.

12.30 (c) Nothing in this section requires a report of known or suspected maltreatment, if the
 12.31 reporter knows or has reason to know that a report has been made to the common entry
 12.32 point.

13.1 (d) Nothing in this section shall preclude a reporter from also reporting to a law
13.2 enforcement agency.

13.3 (e) A mandated reporter who knows or has reason to believe that an error under section
13.4 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this
13.5 subdivision. If the reporter or a ~~facility licensed provider~~, at any time believes that an
13.6 investigation by a lead investigative agency will determine or should determine that the
13.7 reported error was not neglect according to the criteria under section 626.5572, subdivision
13.8 17, paragraph (c), clause (5), the reporter or ~~facility licensed provider~~ may provide to the
13.9 common entry point or directly to the lead investigative agency information explaining how
13.10 the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause
13.11 (5). The lead investigative agency shall consider this information when making an initial
13.12 disposition of the report under subdivision 9c.

13.13 Sec. 18. Minnesota Statutes 2018, section 626.557, subdivision 3a, is amended to read:

13.14 Subd. 3a. **Report not required.** The following events are not required to be reported
13.15 under this section:

13.16 (1) A circumstance where federal law specifically prohibits a person from disclosing
13.17 patient identifying information in connection with a report of suspected maltreatment, unless
13.18 the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative,
13.19 has consented to disclosure in a manner which conforms to federal requirements. ~~Facilities~~
13.20 Licensed providers whose patients or residents are covered by such a federal law shall seek
13.21 consent to the disclosure of suspected maltreatment from each patient or resident, or a
13.22 guardian, conservator, or legal representative, upon the patient's or resident's ~~admission to~~
13.23 ~~the facility~~ receipt of licensed services. Persons who are prohibited by federal law from
13.24 reporting an incident of suspected maltreatment shall immediately seek consent to make a
13.25 report.

13.26 (2) Verbal or physical aggression occurring between patients, residents, or clients of a
13.27 ~~facility licensed provider~~, or self-abusive behavior by these persons does not constitute
13.28 abuse unless the behavior causes serious harm. The ~~operator of the facility or a designee~~
13.29 licensed provider shall record incidents of aggression and self-abusive behavior to facilitate
13.30 review by licensing agencies and county and local welfare agencies.

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

14.1 (4) Events ~~occurring in a facility~~ that result from ~~an individual's~~ a licensed provider's
14.2 error in the provision of therapeutic conduct to a vulnerable adult, as provided in section
14.3 626.5572, subdivision 17, paragraph (c), clause (4).

14.4 (5) Nothing in this section shall be construed to require a report of financial exploitation,
14.5 as defined in section 626.5572, subdivision 9, solely on the basis of the transfer of money
14.6 or property by gift or as compensation for services rendered.

14.7 Sec. 19. Minnesota Statutes 2018, section 626.557, subdivision 4, is amended to read:

14.8 Subd. 4. **Reporting.** (a) Except as provided in paragraph (b), a mandated reporter shall
14.9 immediately make an oral report to the common entry point. ~~The common entry point may~~
14.10 ~~accept electronic reports submitted through a web-based reporting system established by~~
14.11 ~~the commissioner. Use of a telecommunications device for the deaf or other similar device~~
14.12 ~~shall be considered an oral report. The common entry point may not require written reports.~~
14.13 To the extent possible, the report must be of sufficient content to identify the vulnerable
14.14 adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of
14.15 previous maltreatment, the name and address of the reporter, the time, date, and location of
14.16 the incident, and any other information that the reporter believes might be helpful in
14.17 investigating the suspected maltreatment. A mandated reporter may disclose not public data,
14.18 as defined in section 13.02, and medical records under sections 144.291 to 144.298, to the
14.19 extent necessary to comply with this subdivision.

14.20 (b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified
14.21 under Title 19 of the Social Security Act, a nursing home that is licensed under section
14.22 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital
14.23 that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code
14.24 of Federal Regulations, title 42, section 482.66, may submit a report electronically to the
14.25 common entry point instead of submitting an oral report. The report may be a duplicate of
14.26 the initial report the ~~facility~~ licensed provider submits electronically to the commissioner
14.27 of health to comply with the reporting requirements under Code of Federal Regulations,
14.28 title 42, section 483.13. The commissioner of health may modify these reporting requirements
14.29 to include items required under paragraph (a) that are not currently included in the electronic
14.30 reporting form.

14.31 **EFFECTIVE DATE.** This section is effective August 1, 2019.

15.1 Sec. 20. Minnesota Statutes 2018, section 626.557, subdivision 4a, is amended to read:

15.2 Subd. 4a. **Internal reporting of maltreatment.** (a) Each facility licensed provider shall
15.3 establish and enforce an ongoing written procedure in compliance with applicable licensing
15.4 rules to ensure that all cases of suspected maltreatment are reported. If a facility licensed
15.5 provider has an internal reporting procedure, a mandated reporter may meet the reporting
15.6 requirements of this section by reporting internally. However, the facility licensed provider
15.7 remains responsible for complying with the immediate reporting requirements of this section.

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

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

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

15.22 Sec. 21. Minnesota Statutes 2018, section 626.557, subdivision 6, is amended to read:

15.23 Subd. 6. **Falsified reports.** A person or facility licensed provider who intentionally
15.24 makes a false report under the provisions of this section shall be liable in a civil suit for any
15.25 actual damages suffered by the reported facility licensed provider, person or persons and
15.26 for punitive damages up to \$10,000 and attorney fees.

15.27 Sec. 22. Minnesota Statutes 2018, section 626.557, subdivision 9, is amended to read:

15.28 Subd. 9. **Common entry point designation.** (a) ~~Each county board shall designate a~~
15.29 ~~common entry point for reports of suspected maltreatment, for use until the commissioner~~
15.30 ~~of human services establishes a common entry point. Two or more county boards may~~
15.31 ~~jointly designate a single common entry point.~~ The commissioner of human services shall

16.1 establish a common entry point ~~effective July 1, 2015~~. The common entry point is the unit
 16.2 responsible for receiving the report of suspected maltreatment under this section.

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

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

16.7 (2) the name, relationship, and identifying and contact information for the alleged victim
 16.8 and alleged perpetrator;

16.9 ~~(3) the name, address, and telephone number of the person reporting; relationship, and~~
 16.10 contact information for the:

16.11 (i) reporter;

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

16.14 (iii) alleged victim's legal surrogate and persons who may provide support to the alleged
 16.15 victim;

16.16 (4) the basis of vulnerability for the alleged victim;

16.17 ~~(3)~~ (5) the time, date, and location of the incident;

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

16.20 ~~(5) whether there was a risk of imminent danger~~ (6) the immediate safety risk to the
 16.21 alleged victim;

16.22 ~~(6)~~ (7) a description of the suspected maltreatment;

16.23 ~~(7) the disability, if any, of the alleged victim;~~

16.24 ~~(8) the relationship of the alleged perpetrator to the alleged victim;~~

16.25 (8) the impact of the suspected maltreatment on the alleged victim;

16.26 (9) whether a ~~facility~~ licensed provider was involved and, if so, which agency licenses
 16.27 the ~~facility~~ licensed provider;

16.28 (10) the actions taken to protect the alleged victim;

16.29 ~~(10) any action taken~~ (11) the required notifications and referrals made by the common
 16.30 entry point; and

17.1 ~~(11) whether law enforcement has been notified;~~

17.2 (12) whether the reporter wishes to receive notification of the ~~initial and final reports;~~
17.3 ~~and disposition.~~

17.4 ~~(13) if the report is from a facility with an internal reporting procedure, the name, mailing~~
17.5 ~~address, and telephone number of the person who initiated the report internally.~~

17.6 (c) The common entry point is not required to complete each item on the form prior to
17.7 dispatching the report to the appropriate lead investigative agency.

17.8 (d) The common entry point shall immediately report to a law enforcement agency any
17.9 incident in which there is reason to believe a crime has been committed.

17.10 (e) If a report is initially made to a law enforcement agency or a lead investigative agency,
17.11 those agencies shall take the report on the appropriate common entry point intake forms
17.12 and immediately forward a copy to the common entry point.

17.13 (f) The common entry point staff must receive training on how to screen and dispatch
17.14 reports efficiently and in accordance with this section.

17.15 (g) The commissioner of human services shall maintain a centralized database for the
17.16 collection of common entry point data, lead investigative agency data including maltreatment
17.17 report disposition, and appeals data. The common entry point shall have access to the
17.18 centralized database and must log the reports into the database ~~and immediately identify~~
17.19 ~~and locate prior reports of abuse, neglect, or exploitation.~~

17.20 (h) When appropriate, the common entry point staff must refer calls that do not allege
17.21 the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might
17.22 resolve the reporter's concerns.

17.23 (i) A common entry point must be operated in a manner that enables the commissioner
17.24 of human services to:

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

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

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

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

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

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

18.8 **EFFECTIVE DATE.** This section is effective August 1, 2019.

18.9 Sec. 23. Minnesota Statutes 2018, section 626.557, subdivision 9b, is amended to read:

18.10 Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct
18.11 investigations of any incident in which there is reason to believe a crime has been committed.
18.12 Law enforcement shall initiate a response immediately. If the common entry point notified
18.13 a county agency for emergency adult protective services, law enforcement shall cooperate
18.14 with that county agency when both agencies are involved and shall exchange data to the
18.15 extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate
18.16 a response immediately. Each lead investigative agency shall complete the investigative
18.17 process for reports within its jurisdiction. A lead investigative agency, county, adult protective
18.18 agency, licensed ~~facility~~ provider, or law enforcement agency shall cooperate with other
18.19 agencies in the provision of protective services, coordinating its investigations, and assisting
18.20 another agency within the limits of its resources and expertise and shall exchange data to
18.21 the extent authorized in subdivision 12b, paragraph (g). The lead investigative agency shall
18.22 obtain the results of any investigation conducted by law enforcement officials. The lead
18.23 investigative agency has the right to enter ~~facilities~~ licensed provider premises and inspect
18.24 and copy records as part of investigations. The lead investigative agency has access to not
18.25 public data, as defined in section 13.02, and medical records under sections 144.291 to
18.26 144.298, that are maintained by ~~facilities~~ licensed providers to the extent necessary to
18.27 conduct its investigation. Each lead investigative agency shall develop guidelines for
18.28 prioritizing reports for investigation.

18.29 Sec. 24. Minnesota Statutes 2018, section 626.557, subdivision 9c, is amended to read:

18.30 Subd. 9c. **Lead investigative agency; notifications, dispositions, determinations.** (a)
18.31 Upon request of the reporter, the lead investigative agency shall notify the reporter that it
18.32 has received the report, and provide information on the initial disposition of the report within

19.1 five business days of receipt of the report, provided that the notification will not endanger
19.2 the vulnerable adult or hamper the investigation.

19.3 (b) In making the initial disposition, the lead investigative agency may consider previous
19.4 reports of suspected maltreatment and may request and consider public information, records
19.5 maintained by a lead investigative agency or licensed providers, and information from any
19.6 other person who may have knowledge regarding the alleged maltreatment.

19.7 (c) Unless the lead investigative agency knows the information would endanger the
19.8 well-being of the vulnerable adult, during the investigation period the lead investigative
19.9 agency shall inform the vulnerable adult of the maltreatment allegation, investigation
19.10 guidelines, time frame, and evidence standards used for determinations. The lead investigative
19.11 agency must also provide the information to the vulnerable adult's guardian or health care
19.12 agent if the allegation is applicable to the guardian or health care agent.

19.13 (d) During the investigation and in the provision of adult protective services, the lead
19.14 investigative agency may coordinate with entities identified under section 626.557,
19.15 subdivision 12b, paragraph (g), and the primary support person to safeguard the welfare
19.16 and prevent further maltreatment of the vulnerable adult. The lead investigative agency
19.17 must request and consider the vulnerable adult's choice of a primary support person.

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

19.20 ~~(e)~~ (f) When determining whether the ~~facility~~ licensed provider or individual is the
19.21 responsible party for substantiated maltreatment or whether both the ~~facility~~ licensed provider
19.22 and ~~the~~ individual are responsible for substantiated maltreatment, the lead investigative
19.23 agency shall consider at least the following mitigating factors:

19.24 (1) whether the actions of the ~~facility~~ licensed provider or ~~the~~ individual caregiver
19.25 caregiver were in accordance with, and followed the terms of, an erroneous physician order,
19.26 prescription, resident care plan, or directive. This is not a mitigating factor when the ~~facility~~
19.27 licensed provider or individual caregiver is responsible for the issuance of the erroneous
19.28 order, prescription, plan, or directive or knows or should have known of the errors and took
19.29 no reasonable measures to correct the defect before administering care;

19.30 (2) the comparative responsibility between the ~~facility, other caregivers,~~ licensed provider
19.31 or individual caregiver and requirements placed upon the employee, including but not limited
19.32 to, the ~~facility's~~ licensed provider's compliance with related regulatory standards and factors
19.33 such as the adequacy of ~~facility~~ licensed provider's policies and procedures, the adequacy
19.34 of ~~facility~~ the licensed provider's training, the adequacy of an individual's participation in

20.1 the training, the adequacy of caregiver supervision, the adequacy of ~~facility~~ the licensed
20.2 provider's staffing levels, and a consideration of the scope of the individual employee's
20.3 authority; and

20.4 (3) whether the ~~facility~~ licensed provider, employee, or individual followed professional
20.5 standards in exercising professional judgment.

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

20.11 ~~(e)~~ (h) The lead investigative agency shall complete its final disposition within 60
20.12 calendar days from the date of the initial disposition for the report. If the lead investigative
20.13 agency is unable to complete its final disposition within 60 calendar days, the lead
20.14 investigative agency shall notify the following persons provided that the notification will
20.15 not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or
20.16 the vulnerable adult's guardian or health care agent, when known, if the lead investigative
20.17 agency knows them to be aware of the investigation; and (2) the ~~facility~~ licensed provider,
20.18 where applicable. The notice shall contain the reason for the delay and the projected
20.19 completion date. If the lead investigative agency is unable to complete its final disposition
20.20 by a subsequent projected completion date, the lead investigative agency shall again notify
20.21 the vulnerable adult or the vulnerable adult's guardian or health care agent, when known if
20.22 the lead investigative agency knows them to be aware of the investigation, and the ~~facility~~
20.23 licensed provider, where applicable, of the reason for the delay and the revised projected
20.24 completion date provided that the notification will not endanger the vulnerable adult or
20.25 hamper the investigation. The lead investigative agency must notify the health care agent
20.26 of the vulnerable adult only if the health care agent's authority to make health care decisions
20.27 for the vulnerable adult is currently effective under section 145C.06 and not suspended
20.28 under section 524.5-310 and the investigation relates to a duty assigned to the health care
20.29 agent by the principal. A lead investigative agency's inability to complete the final disposition
20.30 within 60 calendar days or by any projected completion date does not invalidate the final
20.31 disposition.

20.32 ~~(f)~~ (i) When the lead investigative agency is the Department of Human Services or the
20.33 Department of Health, within ten calendar days of completing the final disposition, the lead
20.34 investigative agency shall provide a copy of the public investigation memorandum under
20.35 subdivision 12b, paragraph (b), clause (1), ~~when required to be completed under this section,~~

21.1 to the following persons: (1) the vulnerable adult, or the vulnerable adult's guardian or health
 21.2 care agent, if known, when the allegation is applicable to the surrogate's authority, unless
 21.3 the lead investigative agency knows that the notification would endanger the well-being of
 21.4 the vulnerable adult; (2) the reporter, if the reporter requested notification when making the
 21.5 report, provided this notification would not endanger the well-being of the vulnerable adult;
 21.6 (3) the alleged perpetrator, if known; (4) the ~~facility~~ licensed provider; and (5) the
 21.7 ombudsman for long-term care, or the ombudsman for mental health and developmental
 21.8 disabilities, as appropriate.

21.9 (j) When the lead investigative agency is a county agency, within ten calendar days of
 21.10 completing the final disposition, the lead investigative agency shall provide notification of
 21.11 the final disposition to the following persons: (1) the vulnerable adult, or the vulnerable
 21.12 adult's guardian or health agent, if known, when the allegation is applicable to the surrogate's
 21.13 authority, unless the agency knows the notification would endanger the well-being of the
 21.14 vulnerable adult; (2) the alleged perpetrator, if known; and (3) the personal care provider
 21.15 organization under section 256B.0659 when the alleged incident involves a personal care
 21.16 assistant or provider agency.

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

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

21.24 ~~(i)~~ (m) The lead investigative agency shall routinely provide investigation memoranda
 21.25 for substantiated reports to the appropriate licensing boards. These reports must include the
 21.26 names of substantiated perpetrators. The lead investigative agency may not provide
 21.27 investigative memoranda for inconclusive or false reports to the appropriate licensing boards
 21.28 unless the lead investigative agency's investigation gives reason to believe that there may
 21.29 have been a violation of the applicable professional practice laws. If the investigation
 21.30 memorandum is provided to a licensing board, the subject of the investigation memorandum
 21.31 shall be notified and receive a summary of the investigative findings.

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

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

22.4 **EFFECTIVE DATE.** This section is effective August 1, 2019.

22.5 Sec. 25. Minnesota Statutes 2018, section 626.557, subdivision 9d, is amended to read:

22.6 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided under
22.7 paragraph (e), any individual or ~~facility~~ licensed provider which a lead investigative agency
22.8 determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person
22.9 acting on behalf of the vulnerable adult, regardless of the lead investigative agency's
22.10 determination, who contests the lead investigative agency's final disposition of an allegation
22.11 of maltreatment, may request the lead investigative agency to reconsider its final disposition.
22.12 The request for reconsideration must be submitted in writing to the lead investigative agency
22.13 within 15 calendar days after receipt of notice of final disposition or, if the request is made
22.14 by an interested person who is not entitled to notice, within 15 days after receipt of the
22.15 notice by the vulnerable adult or the vulnerable adult's guardian or health care agent. If
22.16 mailed, the request for reconsideration must be postmarked and sent to the lead investigative
22.17 agency within 15 calendar days of the individual's or ~~facility's~~ licensed provider's receipt
22.18 of the final disposition. If the request for reconsideration is made by personal service, it
22.19 must be received by the lead investigative agency within 15 calendar days of the individual's
22.20 or ~~facility's~~ licensed provider's receipt of the final disposition. An individual who was
22.21 determined to have maltreated a vulnerable adult under this section and who was disqualified
22.22 on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may
22.23 request reconsideration of the maltreatment determination and the disqualification. The
22.24 request for reconsideration of the maltreatment determination and the disqualification must
22.25 be submitted in writing within 30 calendar days of the individual's receipt of the notice of
22.26 disqualification under sections 245C.16 and 245C.17. If mailed, the request for
22.27 reconsideration of the maltreatment determination and the disqualification must be
22.28 postmarked and sent to the lead investigative agency within 30 calendar days of the
22.29 individual's receipt of the notice of disqualification. If the request for reconsideration is
22.30 made by personal service, it must be received by the lead investigative agency within 30
22.31 calendar days after the individual's receipt of the notice of disqualification.

22.32 (b) Except as provided under paragraphs (e) and (f), if the lead investigative agency
22.33 denies the request or fails to act upon the request within 15 working days after receiving
22.34 the request for reconsideration, the person or ~~facility~~ licensed provider entitled to a fair

23.1 hearing under section 256.045, may submit to the commissioner of human services a written
23.2 request for a hearing under that statute. The vulnerable adult, or an interested person acting
23.3 on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment
23.4 Review Panel under section 256.021 if the lead investigative agency denies the request or
23.5 fails to act upon the request, or if the vulnerable adult or interested person contests a
23.6 reconsidered disposition. The Vulnerable Adult Maltreatment Review Panel shall not conduct
23.7 a review if the interested person making the request on behalf of the vulnerable adult is also
23.8 the alleged perpetrator. The lead investigative agency shall notify persons who request
23.9 reconsideration of their rights under this paragraph. The request must be submitted in writing
23.10 to the review panel and a copy sent to the lead investigative agency within 30 calendar days
23.11 of receipt of notice of a denial of a request for reconsideration or of a reconsidered
23.12 disposition. The request must specifically identify the aspects of the lead investigative
23.13 agency determination with which the person is dissatisfied.

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

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

23.21 (e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis
23.22 of a determination of maltreatment, which was serious or recurring, and the individual has
23.23 requested reconsideration of the maltreatment determination under paragraph (a) and
23.24 reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration
23.25 of the maltreatment determination and requested reconsideration of the disqualification
23.26 shall be consolidated into a single reconsideration. If reconsideration of the maltreatment
23.27 determination is denied and the individual remains disqualified following a reconsideration
23.28 decision, the individual may request a fair hearing under section 256.045. If an individual
23.29 requests a fair hearing on the maltreatment determination and the disqualification, the scope
23.30 of the fair hearing shall include both the maltreatment determination and the disqualification.

23.31 (f) If a maltreatment determination or a disqualification based on serious or recurring
23.32 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing
23.33 sanction under section 245A.07, the license holder has the right to a contested case hearing
23.34 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for
23.35 under section 245A.08, the scope of the contested case hearing must include the maltreatment

24.1 determination, disqualification, and licensing sanction or denial of a license. In such cases,
24.2 a fair hearing must not be conducted under section 256.045. Except for family child care
24.3 and child foster care, reconsideration of a maltreatment determination under this subdivision,
24.4 and reconsideration of a disqualification under section 245C.22, must not be conducted
24.5 when:

24.6 (1) a denial of a license under section 245A.05, or a licensing sanction under section
24.7 245A.07, is based on a determination that the license holder is responsible for maltreatment
24.8 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

24.13 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
24.14 determination or disqualification, but does not appeal the denial of a license or a licensing
24.15 sanction, reconsideration of the maltreatment determination shall be conducted under sections
24.16 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
24.17 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall
24.18 also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
24.19 626.557, subdivision 9d.

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

24.24 (g) Until August 1, 2002, an individual or ~~facility~~ licensed provider that was determined
24.25 by the commissioner of human services or the commissioner of health to be responsible for
24.26 neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August
24.27 1, 2001, that believes that the finding of neglect does not meet an amended definition of
24.28 neglect may request a reconsideration of the determination of neglect. The commissioner
24.29 of human services or the commissioner of health shall mail a notice to the last known address
24.30 of individuals who are eligible to seek this reconsideration. The request for reconsideration
24.31 must state how the established findings no longer meet the elements of the definition of
24.32 neglect. The commissioner shall review the request for reconsideration and make a
24.33 determination within 15 calendar days. The commissioner's decision on this reconsideration
24.34 is the final agency action.

25.1 (1) For purposes of compliance with the data destruction schedule under subdivision
25.2 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a
25.3 result of a reconsideration under this paragraph, the date of the original finding of a
25.4 substantiated maltreatment must be used to calculate the destruction date.

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

25.12 **EFFECTIVE DATE.** This section is effective August 1, 2019.

25.13 Sec. 26. Minnesota Statutes 2018, section 626.557, subdivision 10, is amended to read:

25.14 Subd. 10. **Duties of county social service agency.** (a) When the common entry point
25.15 refers a report to the county social service agency as the lead investigative agency or makes
25.16 a referral to the county social service agency for emergency adult protective services, or
25.17 when another lead investigative agency requests assistance from the county social service
25.18 agency for adult protective services, the county social service agency shall immediately
25.19 assess and offer emergency and continuing protective social services for purposes of
25.20 preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable
25.21 adult. The county shall use a standardized tool made available by the commissioner. The
25.22 information entered by the county into the standardized tool must be accessible to the
25.23 Department of Human Services. In cases of suspected sexual abuse, the county social service
25.24 agency shall immediately arrange for and make available to the vulnerable adult appropriate
25.25 medical examination and treatment. When necessary in order to protect the vulnerable adult
25.26 from further harm, the county social service agency shall seek authority to remove the
25.27 vulnerable adult from the situation in which the maltreatment occurred. The county social
25.28 service agency may also investigate to determine whether the conditions which resulted in
25.29 the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and
25.30 offer protective social services that are called for by its determination.

25.31 (b) County social service agencies may enter facilities licensed provider's premises and
25.32 inspect and copy records as part of an investigation. The county social service agency has
25.33 access to not public data, as defined in section 13.02, and medical records under sections
25.34 144.291 to 144.298, that are maintained by facilities licensed providers to the extent necessary

26.1 to conduct its investigation. The inquiry is not limited to the written records of the ~~facility~~
26.2 licensed provider, but may include every other available source of information.

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

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

26.8 (2) the appointment of a guardian or conservator pursuant to sections 524.5-101 to
26.9 524.5-502, or guardianship or conservatorship pursuant to chapter 252A;

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

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

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

26.17 In proceedings under sections 524.5-101 to 524.5-502, if a suitable relative or other
26.18 person is not available to petition for guardianship or conservatorship, a county employee
26.19 shall present the petition with representation by the county attorney. The county shall contract
26.20 with or arrange for a suitable person or organization to provide ongoing guardianship
26.21 services. If the county presents evidence to the court exercising probate jurisdiction that it
26.22 has made a diligent effort and no other suitable person can be found, a county employee
26.23 may serve as guardian or conservator. The county shall not retaliate against the employee
26.24 for any action taken on behalf of the ward or protected person even if the action is adverse
26.25 to the county's interest. Any person retaliated against in violation of this subdivision shall
26.26 have a cause of action against the county and shall be entitled to reasonable attorney fees
26.27 and costs of the action if the action is upheld by the court.

26.28 Sec. 27. Minnesota Statutes 2018, section 626.557, subdivision 10b, is amended to read:

26.29 Subd. 10b. **Investigations; guidelines.** (a) Each lead investigative agency shall develop
26.30 guidelines for prioritizing reports for investigation and shall publicly post the guidelines.

26.31 (b) When investigating a report, the lead investigative agency shall conduct the following
26.32 activities, as appropriate without exception unless: (i) the vulnerable adult, reporter, or

27.1 witness is deceased, refuses an interview, or is unable to be contacted despite diligent
 27.2 attempts; (ii) the interview was conducted by law enforcement and an additional interview
 27.3 will not further the civil investigation; (iii) the alleged vulnerable adult declines an interview;
 27.4 or (iv) the agency has reason to know the activity will endanger the vulnerable adult or
 27.5 impede the investigation:

27.6 (1) interview of the alleged victim;

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

27.8 (3) interview of the alleged perpetrator; and

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

27.10 ~~(5) (4) review of records and pertinent documentation of the alleged incident; and~~

27.11 (c) The lead investigative agency shall conduct the following activities if appropriate to
 27.12 further the investigation or necessary to prevent further maltreatment or to safeguard the
 27.13 vulnerable adult:

27.14 (1) examine the environment surrounding the alleged incident;

27.15 ~~(6) consultation~~ (2) consult with professionals;

27.16 (3) request the vulnerable adult's choice of the primary support person; and

27.17 (4) communicate with tribes, service providers, and the primary support person for the
 27.18 vulnerable adult.

27.19 **EFFECTIVE DATE.** This section is effective August 1, 2019.

27.20 Sec. 28. Minnesota Statutes 2018, section 626.557, subdivision 12b, is amended to read:

27.21 Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a
 27.22 lead investigative agency, the county social service agency shall maintain appropriate
 27.23 records. Data collected by the county social service agency under this section during the
 27.24 provision of adult protective services are welfare data under section 13.46. Investigative
 27.25 data collected under this section are confidential data on individuals or protected nonpublic
 27.26 data as defined under section 13.02. Notwithstanding section 13.46, subdivision 1, paragraph
 27.27 (a), data under this paragraph that are inactive investigative data on an individual who is a
 27.28 vendor of services are private data on individuals, as defined in section 13.02. The identity
 27.29 of the reporter may only be disclosed as provided in paragraph (c).

27.30 Data maintained by the common entry point are confidential data on individuals or
 27.31 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the

28.1 common entry point shall maintain data for three calendar years after date of receipt and
28.2 then destroy the data unless otherwise directed by federal requirements.

28.3 (b) The commissioners of health and human services shall prepare an investigation
28.4 memorandum for each report alleging maltreatment investigated under this section. County
28.5 social service agencies must maintain private data on individuals but are not required to
28.6 prepare an investigation memorandum. During an investigation by the commissioner of
28.7 health or the commissioner of human services, data collected under this section are
28.8 confidential data on individuals or protected nonpublic data as defined in section 13.02.
28.9 Upon completion of the investigation, the data are classified as provided in clauses (1) to
28.10 (3) and paragraph (c).

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

28.12 (i) the name of the ~~facility~~ licensed provider investigated;

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

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

28.15 (iv) the identity of the investigator;

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

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

28.19 (vii) a statement of any action taken by the ~~facility~~ licensed provider;

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

28.21 (ix) when a lead investigative agency's determination has substantiated maltreatment, a
28.22 statement of whether an individual, individuals, or a ~~facility~~ licensed provider were
28.23 responsible for the substantiated maltreatment, if known.

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

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

28.29 (i) the name of the vulnerable adult;

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

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

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

29.2 (3) Other data on individuals maintained as part of an investigation under this section
29.3 are private data on individuals upon completion of the investigation. When the law
29.4 enforcement investigation is active, the data received by a lead investigative agency or
29.5 county agency responsible for protection of the vulnerable adult is confidential data on
29.6 individuals as defined in section 13.02, subdivision 3. When the law enforcement
29.7 investigation is completed, the investigative data are private data on individuals as defined
29.8 in section 13.02, subdivision 12.

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

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

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

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

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

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

29.28 (e) The commissioners of health and human services shall annually publish on their
29.29 websites the number and type of reports of alleged maltreatment involving licensed ~~facilities~~
29.30 providers reported under this section, the number of those requiring investigation under this
29.31 section, and the resolution of those investigations. On a biennial basis, the commissioners
29.32 of health and human services shall jointly report the following information to the legislature
29.33 and the governor:

- 30.1 (1) the number and type of reports of alleged maltreatment involving licensed facilities
30.2 reported under this section, the number of those requiring investigations under this section,
30.3 the resolution of those investigations, and which of the two lead agencies was responsible;
- 30.4 (2) trends about types of substantiated maltreatment found in the reporting period;
- 30.5 (3) if there are upward trends for types of maltreatment substantiated, recommendations
30.6 for addressing and responding to them;
- 30.7 (4) efforts undertaken or recommended to improve the protection of vulnerable adults;
- 30.8 (5) whether and where backlogs of cases result in a failure to conform with statutory
30.9 time frames and recommendations for reducing backlogs if applicable;
- 30.10 (6) recommended changes to statutes affecting the protection of vulnerable adults; and
- 30.11 (7) any other information that is relevant to the report trends and findings.
- 30.12 (f) Each lead investigative agency must have a record retention policy.
- 30.13 (g) Lead investigative agencies, county agencies responsible for adult protective services,
30.14 prosecuting authorities, and law enforcement agencies may exchange not public data, as
30.15 defined in section 13.02, with a tribe, provider, vulnerable adult, primary support person
30.16 for the vulnerable adult, state licensing board, federal or state agency, the ombudsperson
30.17 for long-term care, or the ombudsman for mental health and developmental disabilities, if
30.18 the agency or authority requesting providing the data determines that the data are pertinent
30.19 and necessary to the requesting agency in initiating, furthering, or completing to prevent
30.20 further maltreatment, to safeguard the affected vulnerable adults, or to initiate, further, or
30.21 complete an investigation under this section. Data collected under this section must be made
30.22 available to prosecuting authorities and law enforcement officials, local county agencies,
30.23 and licensing agencies investigating the alleged maltreatment under this section. The lead
30.24 investigative agency shall exchange not public data with the vulnerable adult maltreatment
30.25 review panel established in section 256.021 if the data are pertinent and necessary for a
30.26 review requested under that section. Notwithstanding section 138.17, upon completion of
30.27 the review, not public data received by the review panel must be destroyed.
- 30.28 (h) Each lead investigative agency shall keep records of the length of time it takes to
30.29 complete its investigations.
- 30.30 (i) A lead investigative agency may notify other affected parties and their authorized
30.31 representative if the lead investigative agency has reason to believe maltreatment has occurred
30.32 and determines the information will safeguard the well-being of the affected parties or dispel
30.33 widespread rumor or unrest in the affected facility licensed provider.

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

31.5 **EFFECTIVE DATE.** This section is effective August 1, 2019.

31.6 Sec. 29. Minnesota Statutes 2018, section 626.557, subdivision 14, is amended to read:

31.7 Subd. 14. **Abuse prevention plans.** (a) Each facility licensed provider, except home
31.8 health agencies and personal care attendant services providers, shall establish and enforce
31.9 an ongoing written abuse prevention plan. The plan shall contain an assessment of the
31.10 physical plant, its environment, and its population identifying factors which may encourage
31.11 or permit abuse, and a statement of specific measures to be taken to minimize the risk of
31.12 abuse. The plan shall comply with any rules governing the plan promulgated by the licensing
31.13 agency.

31.14 (b) Each facility licensed provider, including a home health care agency and personal
31.15 care attendant services providers, shall develop an individual abuse prevention plan for each
31.16 vulnerable adult residing there or receiving services from them. The plan shall contain an
31.17 individualized assessment of: (1) the person's susceptibility to abuse by other individuals,
31.18 including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults;
31.19 and (3) statements of the specific measures to be taken to minimize the risk of abuse to that
31.20 person and other vulnerable adults. For the purposes of this paragraph, the term "abuse"
31.21 includes self-abuse.

31.22 (c) If the facility licensed provider, except home health agencies and personal care
31.23 attendant services providers, knows that the vulnerable adult has committed a violent crime
31.24 or an act of physical aggression toward others, the individual abuse prevention plan must
31.25 detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably
31.26 be expected to pose to visitors to the facility licensed provider and persons outside the
31.27 facility licensed provider, if unsupervised. Under this section, a facility licensed provider
31.28 knows of a vulnerable adult's history of criminal misconduct or physical aggression if it
31.29 receives such information from a law enforcement authority or through a medical record
31.30 prepared by another facility licensed provider, another health care provider, or the facility's
31.31 licensed provider's ongoing assessments of the vulnerable adult.

32.1 Sec. 30. Minnesota Statutes 2018, section 626.557, subdivision 17, is amended to read:

32.2 Subd. 17. **Retaliation prohibited.** (a) A facility licensed provider or person shall not
 32.3 retaliate against any person who reports in good faith suspected maltreatment pursuant to
 32.4 this section, or against a vulnerable adult with respect to whom a report is made, because
 32.5 of the report.

32.6 (b) In addition to any remedies allowed under sections 181.931 to 181.935, any facility
 32.7 licensed provider or person which retaliates against any person because of a report of
 32.8 suspected maltreatment is liable to that person for actual damages, punitive damages up to
 32.9 \$10,000, and attorney fees.

32.10 (c) There shall be a rebuttable presumption that any adverse action, as defined below,
 32.11 within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse
 32.12 action" refers to action taken by a facility licensed provider or person involved in a report
 32.13 against the person making the report or the person with respect to whom the report was
 32.14 made because of the report, and includes, but is not limited to:

32.15 (1) discharge or transfer from the facility licensed provider's services;

32.16 (2) discharge from or termination of employment;

32.17 (3) demotion or reduction in remuneration for services;

32.18 (4) restriction or prohibition of access to the facility licensed provider's premises or its
 32.19 residents; or

32.20 (5) any restriction of rights set forth in section 144.651.

32.21 Sec. 31. Minnesota Statutes 2018, section 626.5572, subdivision 2, is amended to read:

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

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

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

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

32.27 (3) the solicitation, inducement, and promotion of prostitution as defined in section
 32.28 609.322; and

32.29 (4) criminal sexual conduct in the first through fifth degrees as defined in sections
 32.30 609.342 to 609.3451.

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

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

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

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

33.11 (3) use, not authorized under chapter 245A or 245D or inconsistent with state and federal
33.12 patient rights, of any aversive or deprivation procedure, unreasonable confinement, or
33.13 involuntary seclusion, including the forced separation of the vulnerable adult from other
33.14 persons against the will of the vulnerable adult or the legal representative of the vulnerable
33.15 adult; and.

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

33.18 (c) Any sexual contact or penetration as defined in section 609.341, between a ~~facility~~
33.19 licensed provider's staff person or a person providing services ~~in~~ for the facility licensed
33.20 provider and a resident, patient, or client of ~~that facility~~ the licensed provider.

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

33.23 (e) For purposes of this section, a vulnerable adult is not abused for the sole reason that
33.24 the vulnerable adult or a person with authority to make health care decisions for the
33.25 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section
33.26 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority
33.27 and within the boundary of reasonable medical practice, to any therapeutic conduct, including
33.28 any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition
33.29 of the vulnerable adult or, where permitted under law, to provide nutrition and hydration
33.30 parenterally or through intubation. This paragraph does not enlarge or diminish rights
33.31 otherwise held under law by:

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

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

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

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

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

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

34.15 **EFFECTIVE DATE.** This section is effective August 1, 2019.

34.16 Sec. 32. Minnesota Statutes 2018, section 626.5572, subdivision 3, is amended to read:

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

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

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

34.25 Sec. 33. Minnesota Statutes 2018, section 626.5572, subdivision 4, is amended to read:

34.26 Subd. 4. **Caregiver.** "Caregiver" means a paid provider, an individual, or ~~facility who~~
 34.27 ~~has responsibility for the care of a vulnerable adult as a result of a family relationship, or~~
 34.28 licensed provider who has assumed responsibility for all or a portion of the care of a
 34.29 vulnerable adult voluntarily, by contract, or by agreement.

34.30 **EFFECTIVE DATE.** This section is effective August 1, 2019.

35.1 Sec. 34. Minnesota Statutes 2018, section 626.5572, subdivision 6, is amended to read:

35.2 Subd. 6. **Facility Licensed provider.** (a) "Facility Licensed provider" means a hospital
35.3 or other entity required to be licensed under sections 144.50 to 144.58; a nursing home
35.4 required to be licensed to serve adults under section 144A.02; a facility licensed provider
35.5 or service required to be licensed under chapter 245A; a home care provider licensed or
35.6 required to be licensed under sections 144A.43 to 144A.482; a hospice provider licensed
35.7 under sections 144A.75 to 144A.755; or a person or organization that offers, provides, or
35.8 arranges for personal care assistance services under the medical assistance program as
35.9 authorized under sections 256B.0625, subdivision 19a, 256B.0651 to 256B.0654, 256B.0659,
35.10 or 256B.85.

35.11 (b) For services identified in paragraph (a) that are provided in the vulnerable adult's
35.12 own home or in another unlicensed location, the term "facility licensed provider" refers to
35.13 the provider, person, or organization that offers, provides, or arranges for personal care
35.14 services, and does not refer to the vulnerable adult's home or other location at which services
35.15 are rendered.

35.16 **EFFECTIVE DATE.** This section is effective August 1, 2019.

35.17 Sec. 35. Minnesota Statutes 2018, section 626.5572, subdivision 8, is amended to read:

35.18 Subd. 8. **Final disposition.** "Final disposition" is the determination of an investigation
35.19 by a lead investigative agency that a report of maltreatment under Laws 1995, chapter 229,
35.20 is substantiated, inconclusive, false, or that no determination will be made. When a lead
35.21 investigative agency determination has substantiated maltreatment, the final disposition
35.22 also identifies, if known, which individual or individuals were responsible for the
35.23 substantiated maltreatment, and whether a facility licensed provider was responsible for the
35.24 substantiated maltreatment.

35.25 Sec. 36. Minnesota Statutes 2018, section 626.5572, subdivision 9, is amended to read:

35.26 Subd. 9. **Financial exploitation.** "Financial exploitation" means:

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

35.30 (1) ~~engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable~~
35.31 ~~adult which results or is likely to result in detriment to the vulnerable adult~~ takes, uses, or
35.32 transfers the vulnerable adult's personal property or financial resources other than what a

36.1 reasonable person would deem the use, ownership, or obligations of the vulnerable adult;

36.2 or

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

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

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

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

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

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

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

36.17 **EFFECTIVE DATE.** This section is effective August 1, 2019.

36.18 Sec. 37. Minnesota Statutes 2018, section 626.5572, subdivision 16, is amended to read:

36.19 Subd. 16. **Mandated reporter.** "Mandated reporter" means a professional or
36.20 professional's delegate while engaged in: (1) social services; (2) law enforcement; (3)
36.21 education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section
36.22 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the
36.23 commissioner of jobs and training for vocational rehabilitation; (7) an employee or person
36.24 providing licensed services ~~in a facility~~ as defined in subdivision 6; or (8) a person that
36.25 performs the duties of the medical examiner or coroner.

36.26 Sec. 38. Minnesota Statutes 2018, section 626.5572, subdivision 17, is amended to read:

36.27 Subd. 17. **Neglect.** ~~"Neglect" means:~~ Neglect includes caregiver neglect and self-neglect.

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

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

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

37.5 (b) ~~The absence or likelihood of absence of care or services, including but not limited~~
37.6 ~~to, food, clothing, shelter, health care, or supervision necessary to maintain the physical~~
37.7 ~~and mental health of the vulnerable adult~~ "Self-neglect" means neglect by a vulnerable adult
37.8 of food, clothing, shelter, health care, or other services not under the responsibility of a
37.9 caregiver which a reasonable person would deem essential to obtain or maintain the
37.10 vulnerable adult's health, safety, or comfort ~~considering the physical or mental capacity or~~
37.11 ~~dysfunction, or physical and mental health~~ of the vulnerable adult.

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

37.14 (1) the vulnerable adult or a person with authority to make health care decisions for the
37.15 vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections
37.16 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with
37.17 that authority and within the boundary of reasonable medical practice, to any therapeutic
37.18 conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical
37.19 or mental condition of the vulnerable adult, or, where permitted under law, to provide
37.20 nutrition and hydration parenterally or through intubation; this paragraph does not enlarge
37.21 or diminish rights otherwise held under law by:

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

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

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

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

37.32 (i) a person including a ~~facility~~ licensed provider staff person when a consensual sexual
37.33 personal relationship existed prior to the caregiving relationship; or

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

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

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

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

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

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

38.14 (iv) if ~~in a facility~~ receiving services from a licensed provider, the error is immediately
38.15 reported as required under section 626.557, and recorded internally ~~in~~ by the facility licensed
38.16 provider;

38.17 (v) if ~~in a facility~~ receiving licensed services, the facility licensed provider identifies
38.18 and takes corrective action and implements measures designed to reduce the risk of further
38.19 occurrence of this error and similar errors; and

38.20 (vi) if ~~in a facility~~ receiving licensed services, the licensed provider takes the actions
38.21 required under items (iv) and (v) are sufficiently documented for review and evaluation by
38.22 the facility licensed provider and any applicable licensing, certification, and ombudsman
38.23 agency.

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

38.27 (e) If the findings of an investigation by a lead investigative agency result in a
38.28 determination of substantiated maltreatment for the sole reason that the actions required of
38.29 a facility licensed provider under paragraph (c), clause (5), item (iv), (v), or (vi), were not
38.30 taken, then the facility licensed provider is subject to a correction order. An individual will
38.31 not be found to have neglected or maltreated the vulnerable adult based solely on the facility's
38.32 licensed provider's not having taken the actions required under paragraph (c), clause (5),

39.1 item (iv), (v), or (vi). This must not alter the lead investigative agency's determination of
 39.2 mitigating factors under section 626.557, subdivision 9c, paragraph ~~(e)~~ (f).

39.3 **EFFECTIVE DATE.** This section is effective August 1, 2019.

39.4 Sec. 39. Minnesota Statutes 2018, section 626.5572, is amended by adding a subdivision
 39.5 to read:

39.6 **Subd. 17a. Primary support person.** "Primary support person" means a person or
 39.7 persons identified by the lead investigative agency or agency responsible for adult protective
 39.8 services as best able to coordinate with the agency to support protection of the vulnerable
 39.9 adult, safeguard the vulnerable adult's welfare, and prevent further maltreatment. The primary
 39.10 support person may be the vulnerable adult's guardian, health care agent, or other legal
 39.11 representative, person authorized by the vulnerable adult under a supported decision making
 39.12 or other agreement, or another person determined by the agency. If known to the agency,
 39.13 the agency must consider the vulnerable adult's choice for primary support person.

39.14 **EFFECTIVE DATE.** This section is effective August 1, 2019.

39.15 Sec. 40. Minnesota Statutes 2018, section 626.5572, subdivision 20, is amended to read:

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

39.21 Sec. 41. Minnesota Statutes 2018, section 626.5572, subdivision 21, is amended to read:

39.22 **Subd. 21. Vulnerable adult.** (a) "Vulnerable adult" means any person 18 years of age
 39.23 or older who:

39.24 (1) is a resident or inpatient of a ~~facility~~ licensed provider;

39.25 (2) receives services required to be licensed under chapter 245A, except that a person
 39.26 receiving outpatient services for treatment of chemical dependency or mental illness, or one
 39.27 who is served in the Minnesota sex offender program on a court-hold order for commitment,
 39.28 or is committed as a sexual psychopathic personality or as a sexually dangerous person
 39.29 under chapter 253B, is not considered a vulnerable adult unless the person meets the
 39.30 requirements of clause (4);

40.1 (3) receives services from a home care provider required to be licensed under sections
 40.2 144A.43 to 144A.482; or from a person or organization that offers, provides, or arranges
 40.3 for personal care assistance services under the medical assistance program as authorized
 40.4 under section 256B.0625, subdivision 19a, 256B.0651, 256B.0653, 256B.0654, 256B.0659,
 40.5 or 256B.85; or

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

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

40.11 (ii) because of the dysfunction or infirmity and the need for care or services, the individual
 40.12 has an impaired ability to protect the individual's self from maltreatment.

40.13 (b) For purposes of this subdivision, "care or services" means care or services for the
 40.14 health, safety, welfare, or maintenance of an individual.

40.15 Sec. 42. **DIRECTION TO COMMISSIONER; PROVIDER STANDARD**
 40.16 **EVALUATION.**

40.17 By January 1, 2020, the commissioner of human services shall evaluate provider standards
 40.18 for companion, homemaker, and respite services covered by the home and community-based
 40.19 waivers under Minnesota Statutes, sections 256B.0915, 256B.092, and 256B.49, and shall
 40.20 make recommendations to the legislative committees with jurisdiction over elderly waiver
 40.21 services for adjustments to these provider standards. The goal of this evaluation is to promote
 40.22 access to services by developing standards that ensure the well-being of participants while
 40.23 being minimally burdensome to providers.

40.24 **EFFECTIVE DATE.** This section is effective August 1, 2019.

40.25 Sec. 43. **REPEALER.**

40.26 Minnesota Statutes 2018, sections 256R.08, subdivision 2; and 256R.49, are repealed.

40.27 **EFFECTIVE DATE.** This section is effective August 1, 2019.

256R.08 REPORTING OF FINANCIAL STATEMENTS.

Subd. 2. **Extensions.** The commissioner may grant up to a 15-day extension of the reporting deadline to a nursing facility for good cause. To receive such an extension, a nursing facility shall submit a written request by January 1. The commissioner shall notify the nursing facility of the decision by January 15. Between January 1 and February 1, the nursing facility may request a reporting extension for good cause by telephone and followed by a written request.

256R.49 RATE ADJUSTMENTS FOR COMPENSATION-RELATED COSTS FOR MINIMUM WAGE CHANGES.

Subdivision 1. **Rate adjustments for compensation-related costs.** (a) Operating payment rates of all nursing facilities that are reimbursed under this chapter shall be increased effective for rate years beginning on and after October 1, 2014, to address changes in compensation costs for nursing facility employees paid less than \$14 per hour in accordance with this section.

(b) Nursing facilities that receive approval of the applications in subdivision 2 must receive rate adjustments according to subdivision 4. The rate adjustments must be used to pay compensation costs for nursing facility employees paid less than \$14 per hour.

Subd. 2. **Application process.** To receive a rate adjustment, nursing facilities must submit applications to the commissioner in a form and manner determined by the commissioner. The applications for the rate adjustments shall include specified data, and spending plans that describe how the funds from the rate adjustments will be allocated for compensation to employees paid less than \$14 per hour. The applications must be submitted within three months of the effective date of any operating payment rate adjustment under this section. The commissioner may request any additional information needed to determine the rate adjustment within three weeks of receiving a complete application. The nursing facility must provide any additional information requested by the commissioner within six months of the effective date of any operating payment rate adjustment under this section. The commissioner may waive the deadlines in this section under extraordinary circumstances.

Subd. 3. **Additional application requirements for facilities with employees represented by an exclusive bargaining representative.** For nursing facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the applications submitted under subdivision 2 only upon receipt of a letter or letters of acceptance of the spending plans in regard to members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 31, 2014. Upon receipt of the letter or letters of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

Subd. 4. **Determination of the rate adjustments for compensation-related costs.** Based on the application in subdivision 2, the commissioner shall calculate the allowable annualized compensation costs by adding the totals of clauses (1), (2), and (3). The result must be divided by the standardized or resident days from the most recently available cost report to determine per day amounts, which must be included in the operating portion of the total payment rate and allocated to direct care or other operating as determined by the commissioner:

(1) the sum of the difference between \$9.50 and any hourly wage rate less than \$9.50 for October 1, 2016; and between the indexed value of the minimum wage, as defined in section 177.24, subdivision 1, paragraph (f), and any hourly wage less than that indexed value for rate years beginning on and after October 1, 2017; multiplied by the number of compensated hours at that wage rate;

(2) using wages and hours in effect during the first three months of calendar year 2014, beginning with the first pay period beginning on or after January 1, 2014; 22.2 percent of the sum of items (i) to (viii) for October 1, 2016;

(i) for all compensated hours from \$8 to \$8.49 per hour, the number of compensated hours is multiplied by \$0.13;

(ii) for all compensated hours from \$8.50 to \$8.99 per hour, the number of compensated hours is multiplied by \$0.25;

(iii) for all compensated hours from \$9 to \$9.49 per hour, the number of compensated hours is multiplied by \$0.38;

(iv) for all compensated hours from \$9.50 to \$10.49 per hour, the number of compensated hours is multiplied by \$0.50;

APPENDIX
Repealed Minnesota Statutes: 19-4566

(v) for all compensated hours from \$10.50 to \$10.99 per hour, the number of compensated hours is multiplied by \$0.40;

(vi) for all compensated hours from \$11 to \$11.49 per hour, the number of compensated hours is multiplied by \$0.30;

(vii) for all compensated hours from \$11.50 to \$11.99 per hour, the number of compensated hours is multiplied by \$0.20; and

(viii) for all compensated hours from \$12 to \$13 per hour, the number of compensated hours is multiplied by \$0.10; and

(3) the sum of the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation, pensions, and contributions to employee retirement accounts attributable to the amounts in clauses (1) and (2).