

CHAPTER 542—H.F.No. 1942

An act relating to public welfare; requiring reporting of abuse or neglect of vulnerable adults; requiring certain facilities to establish abuse prevention plans; establishing a penalty; appropriating money; amending Minnesota Statutes 1978, Chapter 626, by adding a section; repealing Minnesota Statutes 1978, Sections 245.813 and 626.555.

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

Section 1. Minnesota Statutes 1978, Chapter 626, is amended by adding a section to read:

[626.557] REPORTING OF MALTREATMENT OF VULNERABLE ADULTS. Subdivision 1. PUBLIC POLICY. The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect; to provide safe institutional or residential services or living environments for vulnerable adults who have been abused or neglected; and to assist persons charged with the care of vulnerable adults to provide safe environments.

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

Subd. 2. DEFINITIONS. As used in this section, the following terms have the meanings given them unless the specific context indicates otherwise.

(a) "Facility" means a hospital or other entity required to be licensed pursuant to sections 144.50 to 144.58; a nursing home required to be licensed pursuant to section 144A.02; an agency, day care facility, or residential facility required to be licensed pursuant to sections 245.781 to 245.812; a mental health program receiving funds pursuant to section 245.61; or any entity required to be certified for participation in Titles XVIII or XIX of the Social Security Act, 42 U.S.C. 1395 et seq.

(b) "Vulnerable adult" means any person 18 years of age or older:

- (1) Who is a resident or patient of a facility;
- (2) Who receives services at or from a facility required to be licensed pursuant to Minnesota Statutes, Sections 245.781 to 245.812; or
- (3) Who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

(c) "Caretaker" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has

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assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, or by contract, or agreement.

(d) "Abuse" means:

(1) Any act which constitutes a violation of sections 609.322, 609.342, 609.343, 609.344, or 609.345; or

(2) The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

(e) "Neglect" means failure by a caretaker to supply the vulnerable adult with necessary food, clothing, shelter, health care or supervision.

(f) "Report" means any report received by the local welfare agency, police department, county sheriff, or licensing agency pursuant to this section.

(g) "Licensing agency" means:

(1) The commissioner of health, for facilities as defined in subdivision 2(a) which are required to be licensed or certified by the department of health;

(2) The commissioner of public welfare, for facilities required by sections 245.781 to 245.813 to be licensed;

(3) Any licensing board which regulates persons pursuant to section 214.01; and

(4) Any agency responsible for credentialing human services occupations.

Subd. 3. PERSONS MANDATED TO REPORT. A professional or his delegate who is engaged in the care of vulnerable adults, education, law enforcement, or any of the regulated occupations referenced in subdivision 2, clause (g)(3) and (4), or an employee of or person providing services in a facility who has knowledge of the abuse or neglect of a vulnerable adult, has reasonable cause to believe that a vulnerable adult is being or has been abused or neglected, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained by the history of injuries provided by the caretaker or caretakers of the vulnerable adult shall immediately report the information to the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff and the appropriate licensing agency or agencies.

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

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

Subd. 4. REPORT. A person required to report under subdivision 3 shall make an oral report immediately by telephone or otherwise. A person required to report under subdivision 3 shall also make a report as soon as possible in writing to the appropriate police department, the county sheriff, local welfare agency, or appropriate licensing agency. The written report shall be of sufficient content to identify the vulnerable adult, the caretaker, the nature and extent of the suspected abuse or neglect, any evidence of previous abuse or neglect, name and address of the reporter, and any other information that the reporter believes might be helpful in investigating the suspected abuse or neglect. Written reports received by a police department or a county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff and the appropriate licensing agency or agencies.

Unless the local welfare agency has notified a licensing agency, records maintained by local welfare agencies, local police departments, or county sheriffs under this section shall be destroyed as follows:

(a) All records relating to reports which, upon investigation, are found to be false shall be destroyed, but only after notice of intent to destroy has been mailed to the alleged abuser. At that party's request the records shall be maintained as confidential. The request must be mailed within 30 days of the mailing date of the original notice or the records will be destroyed;

(b) All records relating to reports which, upon investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record; and

(c) All records of reports which, upon initial investigation, cannot be substantiated or disproved to the satisfaction of the local welfare agency, local police department or county sheriff shall be kept for a period of two years. If the local welfare agency, local police department or county sheriff is unable to substantiate the report within that period, each agency unable to substantiate the report shall destroy its records relating to the report.

If a licensing agency has been notified, records maintained by local welfare agencies, local police departments, or county sheriffs shall be destroyed upon receiving notice of record destruction from all licensing agencies notified about the report.

Subd. 5. IMMUNITY FROM LIABILITY. A person, including a person voluntarily making reports and a person required to make reports under subdivision 3, participating in good faith in making a report pursuant to this section shall have immunity from any civil liability that otherwise might result from making the report.

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Subd. 6. FALSIFIED REPORTS. A person who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

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

(b) A person required by this section to report who negligently or intentionally fails to report is liable for damages caused by the failure.

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

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

Subd. 10. DUTIES OF LOCAL WELFARE AGENCY UPON A RECEIPT OF A REPORT. (a) The local welfare agency shall immediately investigate and offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Local welfare agencies shall have the right to enter facilities and inspect and copy records as part of investigations. In cases of suspected sexual abuse, the local welfare agency shall immediately arrange for and make available to the victim appropriate medical examination and treatment. The investigation shall not be limited to the written records of the facility but shall include every other available source of information. When necessary in order to protect the vulnerable adult from further harm, the local welfare agency shall seek authority to remove the vulnerable adult from the caretaker in whose care the neglect or abuse occurred. The local welfare agency shall also investigate to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected and offer protective social services that are called for by its determination. In performing any of these duties, the local welfare agency shall maintain appropriate records.

(b) If the report indicates, or if the local welfare agency finds that the suspected abuse or neglect occurred at a facility, or while the vulnerable adult was or should have been under the care of or receiving services from a facility, or that the suspected abuse or neglect involved a person licensed by a licensing agency to provide care or services, the local welfare agency shall immediately notify the

appropriate licensing agency or agencies, and provide the licensing agency with a copy of the report and of its investigative findings.

Subd. 11. DUTIES OF LICENSING AGENCIES UPON RECEIPT OF REPORT. Whenever a licensing agency receives a report, or otherwise has information indicating that a vulnerable adult may have been abused or neglected at a facility it has licensed, or that a person it has licensed or credentialed to provide care or services may be involved in the abuse or neglect of a vulnerable adult, or that such a facility or person has failed to comply with the requirements of this section, it shall immediately investigate. Subject to the provisions of sections 15.1611 to 15.1698, the licensing agency shall have the right to enter facilities and inspect and copy records as part of investigations. The investigation shall not be limited to the written records of the facility, but shall include every other available source of information. The licensing agency shall issue orders and take actions with respect to the license of the facility or person that are designed to prevent further abuse or neglect of vulnerable adults.

Subd. 12. RECORDS. Each licensing agency shall maintain summary records of reports of suspected abuse or neglect and suspected violations of the requirements of this section with respect to facilities or persons licensed or credentialed by that agency. These records shall state the nature of the suspected abuse or neglect or violation of the requirements of this section and the results of the agency's investigation. These records, which shall not contain the name of the person making the report or the vulnerable adult, shall be public. All other records maintained pursuant to this section shall be private data on individuals, except that the records shall be made available to a prosecuting authority and law enforcement officials, local welfare agencies, and other licensing agencies in investigating the alleged abuse or neglect. The records shall be collected and maintained in accordance with the provisions of sections 15.1611 to 15.1698, and an individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be disclosed only upon a finding by the court that the report was false and made in bad faith.

Records maintained by licensing agencies under this section shall be destroyed as follows:

(a) All records relating to reports which, upon investigation, the licensing agency finds to be false shall be destroyed in accordance with provisions of subdivision 4, clause (a);

(b) All records relating to reports which, upon investigation, the licensing agency finds are substantiated shall be destroyed seven years after the date of the final entry in the case record; and

(c) All records of reports which, upon initial investigation, cannot be substantiated or disproved to the satisfaction of the licensing agency shall be kept for two years. If the licensing agency is unable to substantiate the report within that period, the agency shall destroy the records. The licensing agency shall notify the appropriate local welfare agency, local police department, or county sheriff of the agency's destruction of records relating to reports made pursuant to this section and the reasons for the destruction.

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Subd. 13. COORDINATION. (a) Any police department or county sheriff, upon receiving a report shall notify the local welfare agency pursuant to subdivision 3. A local welfare agency or licensing agency which receives a report pursuant to that subdivision shall immediately notify the appropriate law enforcement, local welfare, and licensing agencies.

(b) Investigating agencies, including the police department, county sheriff, local welfare agency, or appropriate licensing agency shall cooperate in coordinating their investigatory activities. Each licensing agency which regulates facilities shall develop and disseminate procedures to coordinate its activities with (i) investigations by police and county sheriffs, and (ii) provision of protective services by local welfare agencies.

Subd. 14. ABUSE PREVENTION PLANS. (a) Each facility shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan as are promulgated by the licensing agency.

(b) Each facility shall develop an individual abuse prevention plan for each vulnerable adult residing there. Facilities designated in subdivision 2, clause (b)(2) shall develop plans for any vulnerable adults receiving services from them. The plan shall contain an individualized assessment of the person's susceptibility to abuse, and a statement of the specific measures to be taken to minimize the risk of abuse to that person. For the purposes of this clause, the term "abuse" includes self-abuse.

Subd. 15. INTERNAL REPORTING OF ABUSE AND NEGLECT. Each facility shall establish and enforce an ongoing written procedure in compliance with the licensing agencies' rules for insuring that all cases of suspected abuse or neglect are reported promptly to a person required by this section to report abuse and neglect and are promptly investigated.

Subd. 16. ENFORCEMENT. (a) A facility that has not complied with this section within 60 days of the effective date of passage of temporary rules is ineligible for renewal of its license. A person required by subdivision 3 to report and who is licensed or credentialed to practice an occupation by a licensing agency who willfully fails to comply with this section shall be disciplined after a hearing by the appropriate licensing agency.

(b) Licensing agencies shall as soon as possible promulgate rules necessary to implement the requirements of subdivisions 11, 12, 13, 14, 15, and 16, clause (a). Agencies may promulgate temporary rules pursuant to section 15.0412, subdivision 5.

(c) The commissioner of public welfare shall promulgate rules as necessary to implement the requirements of subdivision 10.

Subd. 17. RETALIATION PROHIBITED. (a) A facility or person shall not retaliate against any person who reports in good faith suspected abuse or neglect

pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) Any facility or person which retaliates against any person because of a report of suspected abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$1,000.

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

- (1) Discharge or transfer from the facility;
- (2) Discharge from or termination of employment;
- (3) Demotion or reduction in remuneration for services;
- (4) Restriction or prohibition of access to the facility or its residents; or
- (5) Any restriction of rights set forth in section 144.651.

Subd. 18. OUTREACH. The commissioner of public welfare shall establish an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media.

Subd. 19. PENALTY. Any caretaker, as defined in section 1, subdivision 2, or operator or employee thereof, or volunteer worker thereat, who intentionally abuses or neglects a vulnerable adult, or being a caretaker, permits conditions to exist which result in the abuse or neglect of a vulnerable adult, may be charged with a violation of section 609.23.

Sec. 2. REPEALER. Minnesota Statutes 1978, Sections 245.813 and 626.555 are repealed.

Sec. 3. APPROPRIATION. \$113,000 is appropriated from the general fund to the commissioner of public welfare for the purposes of section 2, subdivisions 10, 16 and 18, and is available until June 30, 1981. *

Sec. 4. EFFECTIVE DATE. Sections 1 to 3 are effective January 1, 1981.

Approved April 11, 1980

* See the amendments to section 3 in Laws 1980, Chapter 618, Sections 15 and 22.

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