DEPARTMENT OF HEALTH

Office of Health Facility Complaints Investigative Report
PUBLIC

Facility Name:	Report Number:	Date of Visit:
Birchview Gardens Assisted Living	HL28208003	August 28, 2017
Facility Address:	**Time of Visit:**	**Date Concluded:**
108 3rd Street North	10:00 a.m. to 3:30 p.m.	December 13, 2017
Facility City:	**Investigator's Name and Title:**	
Hackensack	Rhylee Gilb, RN, Special Investigator	

State:	ZIP:	County:
Minnesota	56452	Cass

☒ **Home Care Provider/Assisted Living**

Allegation(s):

It is alleged that a client was financially exploited by staff/alleged perpetrators (AP) when the client's re-loadable credit card was stolen by AP #2 and used by AP #1 to make cash withdrawals.

☒ State Statutes for Home Care Providers (MN Statutes, section 144A.43 - 144A.483)

☒ State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557)

☒ State Statutes Chapters 144 and 144A

Conclusion:

Based on a preponderance of evidence, financial exploitation occurred when alleged perpetrator (AP) #2 stole a client's credit card and gave it to AP #1. AP #1 then used the card to make two cash withdrawals in the amounts of $303 and $43, a total of $346.

The client received services from a licensed comprehensive home care provider. The client had a diagnosis of quadriplegia (paralysis of all four limbs). The client's service plan included total assistance for all activities of daily living, exercises and mobility. The client required two staff and a total mechanical lift for all transfers. In addition, the client required assistance with arranging and utilizing transportation. The client was alert and oriented, unable to move from the neck down and required hourly checks for safety.

The client had a re-loadable credit card to utilize for personal needs purchases and money was deposited periodically. The client's name was printed on the back of the card. The client required caregiver assistance to make purchases on his/her behalf due to her/his medical condition. S/he stored the card in a bag that hung on the back of his/her wheelchair.

The client told management his/her re-loadable credit card was missing from his/her purse. After staff tried to locate the card, the social worker pulled the card activity report. Two transactions were made on the

same day in the amount of $303 and $43. The client stated s/he did not make those transactions. The theft was reported to law enforcement. The home care provider conducted their own investigation, but there were not security cameras in the area. Three days later, a caregiver reported to the administrator about text messages from AP #1. The text messages indicated AP #1 had used the client's card to withdraw cash and was given the card by AP #2.

During an interview, management said both AP #1 and AP #2 provided cares for the client, and AP #2 in particular had a good rapport with the client. Shortly after the police report was filed, AP #1 and AP #2 both gave their two week notice to end employment at the same time. The client was provided a new re-loadable card and it was stored in the nurses' office. One staff member is assigned to assist the client with his/her purchasing needs.

A police report indicated AP #2 refused to give a statement regarding the theft. AP#1 provided a statement and stated s/he was unaware the card was stolen when s/he was given the card by AP #2. AP #1 failed to notice the client's name printed on the back of the card. AP#1 stated the pin was the last four digits of the card number and was able to withdraw the money.

The client declined an interview.

During an interview, the client's family said the client only recently mentioned the incident, but did not provide details other than his/her card was stolen by a caregiver.

During an interview, AP #1 stated AP #2 owed him/her money and gave him/her the credit card. AP# 2 told him/her the approximate amount of money on the card and stated it was partial payment of his/her debt. AP #1 stated s/he used the card to withdraw cash.

A subpoena was sent to AP#2 and AP#2 failed to respond.

Minnesota Vulnerable Adults Act (Minnesota Statutes, section 626.557)

Under the Minnesota Vulnerable Adults Act (Minnesota Statutes, section 626.557):

☐ Abuse ☐ Neglect ☒ Financial Exploitation

☒ Substantiated ☐ Not Substantiated ☐ Inconclusive based on the following information:

Mitigating Factors:

The "mitigating factors" in Minnesota Statutes, section 626.557, subdivision 9c (c) were considered and it was determined that the ☒ Individual(s) and/or ☐ Facility is responsible for the

☐ Abuse ☐ Neglect ☒ Financial Exploitation. This determination was based on the following:

The alleged perpetrator (AP) #2 is responsible for the maltreatment. AP #2 was trained on the client's dependency on staff function for mobility including using the card to make purchases on the client's behalf. AP #2 had vulnerable adult training and received copies of the employee handbook, which indicated cash

gifts from client's are prohibited.

The responsible party will be notified of their right to appeal the maltreatment finding. If the maltreatment is substantiated against an identified employee, this report will be submitted to the nurse aide registry for possible inclusion of the finding on the abuse registry and/or to the Minnesota Department of Human Services for possible disqualification in accordance with the provisions of the background study requirements under Minnesota 245C.

Compliance:

State Statutes for Home Care Providers (MN Statutes section 144A.43 - 144A.483) - Compliance Not Met
The requirements under State Statutes for Home Care Providers (MN Statutes, section 144A.43 - 144A.483) were not met.

State licensing orders were issued: ☒ Yes ☐ No

(State licensing orders will be available on the MDH website.)

State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557) - Compliance Not Met
The requirements under State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557) were not met.

State licensing orders were issued: ☒ Yes ☐ No

(State licensing orders will be available on the MDH website.)

State Statutes Chapters 144 & 144A – Compliance Not Met - Compliance Not Met
The requirements under State Statues for Chapters 144 &144A were not met.

State licensing orders were issued: ☒ Yes ☐ No

(State licensing orders will be available on the MDH website.)

Compliance Notes:

Definitions:

Minnesota Statutes, section 626.5572, subdivision 9 - Financial exploitation

"Financial exploitation" means:

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

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult

which results or is likely to result in detriment to the vulnerable adult; or

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

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

Minnesota Statutes, section 626.5572, subdivision 19 - Substantiated

"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

The Investigation included the following:

Document Review: The following records were reviewed during the investigation:

- [x] Medical Records
- [x] Care Guide
- [x] Nurses Notes
- [x] Assessments
- [x] Care Plan Records
- [x] Social Service Notes
- [x] Facility Incident Reports
- [x] ADL (Activities of Daily Living) Flow Sheets
- [x] Service Plan

Other pertinent medical records:

- [x] Police Report

Additional facility records:

- [x] Staff Time Sheets, Schedules, etc.
- [x] Facility Internal Investigation Reports
- [x] Personnel Records/Background Check, etc.
- [x] Facility Policies and Procedures

Number of additional resident(s) reviewed: Three

Were residents selected based on the allegation(s)? ○ Yes ◉ No ○ N/A

Specify: No similar incidents

Were resident(s) identified in the allegation(s) present in the facility at the time of the investigation?

◉ Yes ○ No ○ N/A

Specify:

Interviews: The following interviews were conducted during the investigation:

Interview with reporter(s) ◉ Yes ○ No ○ N/A

Specify: _____

If unable to contact reporter, attempts were made on:

Date:	Time:	Date:	Time:	Date:	Time:

Interview with family: ◉ Yes ○ No ○ N/A Specify: _____

Did you interview the resident(s) identified in allegation:

◉ Yes ○ No ○ N/A Specify: attempted, client declined

Did you interview additional residents? ◉ Yes ○ No

Total number of resident interviews: Three

Interview with staff: ◉ Yes ○ No ○ N/A Specify: _____

Tennessen Warnings

Tennessen Warning given as required: ◉ Yes ○ No

Total number of staff interviews: Three

Physician Interviewed: ○ Yes ◉ No

Nurse Practitioner Interviewed: ○ Yes ◉ No

Physician Assistant Interviewed: ○ Yes ◉ No

Interview with Alleged Perpetrator(s): ◉ Yes ◉ No ○ N/A Specify: AP #2 did not respond

Attempts to contact:

Date:	Time:	Date:	Time:	Date:	Time:

If unable to contact was subpoena issued: ◉ Yes, date subpoena was issued 09/14/2017 ○ No

Were contacts made with any of the following:

☐ Emergency Personnel ☒ Police Officers ☐ Medical Examiner ☐ Other: Specify _____

Observations were conducted related to:

☒ Personal Care

☒ Cleanliness

☒ Dignity/Privacy Issues

☒ Safety Issues

☒ Facility Tour

Was any involved equipment inspected: ○ Yes ○ No ◉ N/A

Was equipment being operated in safe manner: ○ Yes ○ No ◉ N/A

Were photographs taken: ○ Yes ◉ No Specify: _____

cc:

Health Regulation Division - Home Care & Assisted Living Program

The Office of Ombudsman for Long-Term Care

Hackensack Police Department

Cass County Attorney

Hackensack City Attorney

DEPARTMENT OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

November 9, 2017

Mr. John McElfresh, Administrator
Birchview Gardens Assisted Living Inc
108 3rd Street North
Hackensack, MN 56452

RE: Complaint Number HL28208003

Dear Mr. McElfresh :

On November 8, 2017 an investigator of the Minnesota Department of Health, Office of Health Facility Complaints completed a re-inspection of your facility, to determine correction of orders found on the complaint investigation completed on September 22, 2017 with orders received by you on October 12, 2017. At this time these correction orders were found corrected and are listed on the attached State Form: Revisit Report.

You are encouraged to retain this document for your records. It is your responsibility to share the information contained in this letter and the results of this visit with the President of your facility's Governing Body. Please feel free to call me with any questions.

Sincerely,

Matthew Heffron

Matthew Heffron, JD, NREMT
Health Regulations Division
Supervisor Office of Health Facility Complaints
85 East Seventh Place, Suite 220
P.O. Box 64970
St. Paul, MN 55164-0970
Telephone: (651) 201-4221 Fax: (651) 281-9796

MLH

Enclosure

cc: Home Health Care Assisted Living File
Cass County Adult Protection
Office of Ombudsman for Long-Term Care
MN Department of Human Services

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	H28208	A. BUILDING: _____ B. WING _____	R-C 11/08/2017

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
BIRCHVIEW GARDENS ASSISTED LIVING INC	108 3RD STREET NORTH HACKENSACK, MN 56452

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
{0 000}	Initial Comments A licensing order follow-up was completed to follow up on correction orders issued related to complaint HL28208003. Birchview Gardens Assisted Living was found in compliance with state regulations.	{0 000}		

Minnesota Department of Health
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE | TITLE | (X6) DATE

DEPARTMENT OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

Certified Mail Number: 7015 1660 0000 4149 8082

October 5, 2017

Mr. John McElfresh, Administrator
Birchview Gardens Assisted Living Inc.
108 3rd Street North
Hackensack, MN 56452

RE: Complaint Number HL28208003

Dear Mr. McElfresh :

A complaint investigation (#HL28208003) of the Home Care Provider named above was completed on September 22, 2017, for the purpose of assessing compliance with state licensing regulations. At the time of the investigation, the investigator from the Minnesota Department of Health, Office of Health Facility Complaints, noted one or more violations of these regulations. These state licensing orders are issued in accordance with Minnesota Statutes Sections 144A.43 to 144A.482.

State licensing orders are delineated on the attached State Form. The Minnesota Department of Health is documenting the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota state statutes for Home Care Providers. The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state statute number and the corresponding text of the state statute out of compliance are listed in the "Summary Statement of Deficiencies" column. This column also includes the findings that are in violation of the state statute after the statement, "This MN Requirement is not met as evidenced by."

A written plan for correction of licensing orders is not required. Per Minnesota State Statute 144A.474 Subd. 8(c), the home care provider must document in the provider's records any action taken to comply with the correction order. A copy of this document of the home care provider's action may be requested at future surveys.

A licensed home care provider may request a correction order reconsideration regarding any correction order issued to the provider. The reconsideration must be in writing and received within 15 calendar days. Reconsiderations should be addressed to:

Ms. Michelle Ness, Assistant Director
Office of Health Facility Complaints
Minnesota Department of Health
P.O. Box 64970
St. Paul, MN 55164-0970

It is your responsibility to share the information contained in this letter and the results of the visit with the President of your organization's Governing Body. If you have any questions, please contact me.

Sincerely,

John Aglieco
Health Program Representative-Senior
Minnesota Department of Health
85 East Seventh Place, Suite 220
PO Box 64970
St Paul, MN 55164-0970
Office 651-201-4212 Fax: 651-281-9796

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Enclosure

cc: Home Health Care Assisted Living File
Cass County Adult Protection
Office of Ombudsman
MN Department of Human Services

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	H28208	A. BUILDING: _____ B. WING _____	C 09/22/2017

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0 000	Initial Comments *****ATTENTION****** HOME CARE PROVIDER LICENSING CORRECTION ORDER In accordance with Minnesota Statutes, section 144A.43 to 144A.482, this correction order(s) has been issued pursuant to a survey. Determination of whether a violation has been corrected requires compliance with all requirements provided at the Statute number indicated below. When Minnesota Statute contains several items, failure to comply with any of the items will be considered lack of compliance. INITIAL COMMENTS: On August 28, 2017, a complaint investigation was initiated to investigate complaint #HL28208003 . At the time of the survey, there were 38 clients that were receiving services under the comprehensive license. The following correction orders are issued.	0 000	Minnesota Department of Health is documenting the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota State Statutes for Home Care Providers. The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state Statute number and the corresponding text of the state Statute out of compliance is listed in the "Summary Statement of Deficiencies" column. This column also includes the findings which are in violation of the state requirement after the statement, "This Minnesota requirement is not met as evidenced by." Following the surveyors ' findings is the Time Period for Correction. PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN WHICH STATES,"PROVIDER ' S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE. THERE IS NO REQUIREMENT TO SUBMIT A PLAN OF CORRECTION FOR VIOLATIONS OF MINNESOTA STATE STATUTES. THE LETTER IN THE LEFT COLUMN IS USED FOR TRACKING PURPOSES AND REFLECTS THE SCOPE AND LEVEL ISSUED PURSUANT TO 144A.474 SUBDIVISION 11 (b)(1)(2)	
0 325 SS=G	144A.44, Subd. 1(14) Free From Maltreatment Subdivision 1. Statement of rights. A person who receives home care services has these rights:	0 325		

Minnesota Department of Health

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0 325	Continued From page 1 (14) the right to be free from physical and verbal abuse, neglect, financial exploitation, and all forms of maltreatment covered under the Vulnerable Adults Act and the Maltreatment of Minors Act; This MN Requirement is not met as evidenced by: Based on interview and document review, the licensee failed to provide freedom from financial exploitation when a client's pre-paid credit card was stolen by a caregiver and used by a second caregiver for one of four clients (C1) reviewed. This practice resulted in a level three violation (a violation that harmed a client's health or safety, not including serious injury, impairment, or death, or a violation that has the potential to lead to serious injury, impairment, or death), and was issued at an isolated scope (when one or a limited number of clients are affected or one or a limited number of staff are involved or the situation has occurred only occasionally). The findings include: C1's medical record was reviewed. C1 admitted with diagnoses that included quadriplegia (paralysis of all four limbs). C1's service plan dated August 29, 2017 indicated C1 required assistance with bathing, dressing/grooming, toileting, catheter cares, medication administration, exercises, smoking assistance and behavior monitoring. C1's care plan dated February 7, 2017 indicated C1 was dependent on staff and required total assistance for all activities of daily living. C1 also required a total mechanical lift with two staff members for transfers. C1 was alert and oriented.	0 325		

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0 325	Continued From page 2 The licensee internal investigation was reviewed. On October 13, 2016 C1 reported her pre-paid credit card was missing from her purse. The card activity was reviewed and discovered on October 8, 2016, two transactions were made for cash withdrawal in the amounts of $303 and $43. C1 stated neither transactions were made by her. The theft was reported to law enforcement. On October 16, 2016, caregiver (CG)-H reported to Administrator-A CG-D sent her a text message and stated she withdrew the money from the card. CG-D's text further indicated CG-E found the card on the floor and gave it to her. A police report dated October 18, 2016 indicated CG-D was questioned about her involvement with the stolen credit card. CG-D stated she was given the card by CG-E, was unaware it was stolen and failed to notice C1's name printed on the back of the card. CG-D stated the pin for cash withdrawal was the last four digits of the card number and was able to withdraw the money. The police report indicated, CG-E refused to give a statement. On August 28, 2017 at 8/28/17 at 12:45 p.m., Administrator-A stated he provided C1 the pre-paid credit card as a gift for her to use to make purchases for her and her child's needs. The card was reloadable and periodically deposited with more money. The card was placed in C1's name and was written on the back of the card. When a police report was filed, Adminstrator-A updated C1 with the status of the police investigation and the police were going to look at the cash machine security cameras. Administrator-A stated C1 told CG-E what was going on, because she trusted CG-E. CG-D and CG-E then gave their two week notice at the same time. C1 was given a new card and	0 325		

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0 325	Continued From page 3 deposited $200. C1's card now is locked up in the nurse office as C1 could not move to look behind her if someone took something out of her purse. During an interview on September 22, 2017 at 2:10 p.m., CG-D stated CG-E owed her money and gave her the pre-paid credit card. CG-E told her the approximate amount of money on the card (although she could not remember the amount) as partial payment of her debt. CG-D used the card to withdraw cash and did not realize it was C1's card. CG-D stated she had a substance problem and did not make good choices at the time. A subpoena was mailed to CG-E on 9/14/17 and CG-E failed to respond. An interview with C1 was attempted, but C1 declined. The licensee employee handbook, section "Gifts from Residents", indicated cash or money can not be received from the clients and if they are, the employee must return the funds to the client. The licensee policy titled " Vulnerable Adult Reporting and Investigation" dated May 13, 2017, indicated staff will be trained on vulnerable reporting requirements during new employee orientation and at least annually. TIME PERIOD OF CORRECTION: 21 days	0 325		