

1 doing a little bit sy once. So you are seeing a
2 couple of things. But I will make sure those
3 aren't up.

4 THE JUDGE: No problem. I just
5 wasn't sure if I was the only one seeing them. And
6 there is some feedback. I apologize. So maybe,
7 Cody, if you go on mute, we will have less feedback
8 while I run through this how to submit an eComment.

9 MR. BAULEKE: Okay.

10 THE JUDGE: First, you will go
11 to this website, the
12 www.minnesotaoah.granicusideas.com. It will look
13 like this. You will pull it up and it will have --
14 this is what you will see. Let's go to the next
15 slide. All right. It's easiest if you sign in or
16 sign up right way. If you sign in, that means you
17 have already been there before. So you will put
18 your e-mail address in and the password. If you
19 haven't ever used granicus before, you are going to
20 need to sign up. Really simple. You use this
21 signup. You put your e-mail, you pick a password
22 that you remember. Write that down so you don't
23 forget it. You put your first and last name in and
24 click that "I am not a robot." It will then send
25 you a verification.

1 Right now, if I could have -- Lynn, are
2 you our operator today?

3 MS. KNIGHT: Yes, ma'am.

4 THE JUDGE: All right, Lynn, can
5 you tell us who the first two speakers are?
6 Because we are turning now to the public comment
7 portion. Who are our first two speakers today?

8 MS. KNIGHT: From WebEx, we are
9 going to have Sean Burke going first. And then our
10 only caller so far is Floris Bellenik (sp).

11 THE JUDGE: Okay. So she's on
12 deck; is that correct?

13 MS. KNIGHT: Correct.

14 THE JUDGE: Okay. So, Mr. Burke,
15 we are going to take a quick 10-minute break. At
16 10:15, we are all going to come back and, Sean, you
17 are going to be first. So we are going to work out
18 our bugs or any kinks that we have with you. We
19 are going to have you turn on your video, if you
20 would please. And then, Floris, you will be next.
21 So just hold tight and Lynn, our operator, will be
22 moving between each of you and Cody as well to
23 ensure that whoever is speaking can be seen or
24 heard. All right?

25 MS. KNIGHT: It looks like Floris

1 SONAR. Unfortunately, several of the components
2 detailed in the proposed rules conflict with and do
3 not add any reasonable and needed clarification
4 that is not already outlined in the robust and
5 detailed portions already in Minnesota Statute
6 section 144G.

7 I will not be providing additional
8 detail at this time, but it will be in my written
9 comments. I just want to add that service
10 terminations, as Sam noted in his testimony, are an
11 absolute last resort of an assisted living
12 organization. Many of us have story after story of
13 the creative attempts to work with residents, their
14 families, the ombudsman, et cetera that could have
15 easily met the current standard of issuing a
16 service termination, but because of the nature of
17 our work and the passion that we all possess to
18 serve, support and help individuals to age
19 magnificently, we tend to err on the side of doing
20 whatever we can to prevent the discharge from
21 happening. The additional requirements added to
22 this proposed rule are not necessary, needed or
23 justified.

24 Thank you again for allowing me to
25 participate in this hearing today. And please

1 accept these general comments made on behalf of
2 Lifesprk and take into consideration our written
3 comments to be submitted shortly. Thank you.

4 THE JUDGE: Thank you very much.
5 And when you said Lifesprk, it's exactly as it
6 sounds, L-i-f-e and S-p-a-r-k? Is that right?

7 MR. BERG: Minus the A.
8 L-i-f-e-s-p-r-k.

9 THE JUDGE: Okay. So let me go
10 back and change my note. I added the A, thinking
11 you had accidentally left that out. So there is no
12 A. So is s-p-r-k all capped or not?

13 MR. BERG: No. It's just capital
14 L and then the rest are lowercase.

15 THE JUDGE: Oh. Okay. Very good.
16 Thank you for that clarification. Okay. Thank you
17 very much, Mr. Berg. Operator Lynn, we are going
18 to next have Shauna Kapsner. And who is the next
19 person up on deck?

20 MS. KNIGHT: After Shauna, we are
21 going to have Dawn Kuzma.

22 THE JUDGE: Okay. So,
23 Ms. Kapsner, if I could please have you start
24 speaking, then I can see you.

25 MS. KAPSNER: My name is Shauna

1 Kapsner from Partners Senior Living Options.

2 THE JUDGE: Now I can see and hear
3 you. If you can please state and spell your first
4 and last name.

5 MS. KAPSNER: Shauna, S-h-a-u-n-a.
6 Kapsner, K-a-p-s-n-e-r.

7 THE JUDGE: Thank you. Please
8 proceed.

9 MS. KAPSNER: Thank you, Your
10 Honor, for the opportunity to speak today. I'm
11 Shauna Kapsner and I'm director of operations for
12 Partners Senior Living Options.

13 THE JUDGE: I'm sorry, you broke
14 up. For what?

15 MS. KAPSNER: For Partners Senior
16 Living Options. We are a management company that
17 manages nursing homes, assisted living and
18 developmentally delayed sites throughout the state
19 of Minnesota. Usually out state and rural
20 locations and smaller settings. And my role is
21 setting policies for the assisted living and
22 developmentally delayed sites and ensuring our
23 systems of operations both meet and typically
24 exceed state requirements.

25 My health care career started in --

1 just starting my 13th year. And I do have personal
2 ownership in a few locations as well. I just
3 wrapped up six years sitting on the Care Providers
4 of Minnesota board of directors. I've been on
5 their legislative forum for 12 years. I'm on their
6 quality council. I'm starting my fifth year of
7 being an American Health Care Association examiner
8 for elder-based long-term care quality award
9 program at both the silver and gold levels. And I
10 just started my term on their board of overseers
11 for this quality award program January 1.

12 So I would like to address a few areas
13 of concern regarding the proposed rules for
14 assisted living. And my first comment is in
15 regards to emergency preparation. And that is Rule
16 4659.0100. The application is what's known as
17 Appendix Z by the Center for Medicare and Medicare
18 Services. So assisted living originally started by
19 being a non-institutionalized setting and Appendix
20 Z is all about institutionalized settings, so I'm a
21 little bit perplexed as to why Minnesota would want
22 to institutionalize something that we want to try
23 to keep non-institutionalized.

24 I would also like to point out that
25 assisted living sites range in size from as small

1 as four units all the way up to a few hundred
2 units. So when we are looking at applying
3 something like this to a smaller provider, it's
4 very burdensome. Very burdensome. And even though
5 costs were just released this morning and attorney
6 Jeff Skaar had just testified this morning the
7 costs ranging between 5000 and \$25,000, a small
8 provider of four even up to 25 units could not
9 handle an expenditure of \$25,000 in one year to
10 implement this. So it's very concerning not only
11 that it would be very difficult and really looking
12 at some of the financial burdens in that our sites
13 right now range from 10 to 7 units, and as of this
14 time we do not discriminate admissions based on
15 payer source. However, something like this would
16 probably force us to discriminate admissions based
17 on payer source. Because presently Medicaid
18 services and -- those costs don't cover our
19 expenditures. And our private pay residents are
20 always subsidizing those costs. So to increase our
21 private pay rates to the point that it would take
22 to cover those expenses, some of these sites are
23 not going to make it. They are just not. It's not
24 doable.

25 Also, timeline for implementation of

1 something like Appendix Z for a provider is -- I
2 know when it was first implemented for a skilled
3 nursing home they had a year to implement it. And
4 we are now talking about maybe four months for us
5 to implement this during a pandemic. And so I have
6 a really hard time with that as well and it needs
7 to be taken into consideration.

8 The financial status of the profession
9 as a whole, the American Health Care Association
10 did a poll in the last month about assisted living
11 providers in specific. And if 2021 goes as 2020
12 did, are you still going to be able to provide
13 services. And, granted, this was across the
14 country. But 50 percent of providers said no. So
15 adding an expenditure of \$25,000 onto care, I think
16 you are going to see more than 30 percent say no,
17 we are not going to it. It's a big deal.

18 Do I think providers can do more for
19 emergency preparedness? Yes. And our locations
20 do. However, sticking Appendix Z into this is not
21 the answer. And I will propose that the compromise
22 that was already drafted in coordination with the
23 Department of Health we looked at again from
24 December '19.

25 My second concern is in regard to

1 staffing. And that rule number is 4659.0180. I
2 would like to first start by saying thank you for
3 leaving statutes out -- I'm sorry, not statutes,
4 but staffing ratios out of this proposal. Because
5 ratios do not solve a concern when we are looking
6 at resident specific care plans. Our locations use
7 a care level and time calculations to ensure our
8 buildings are staffed appropriate to meet resident
9 needs. And ratios wouldn't equate to care and
10 attention and don't promote person-centered care.

11 I do have concerns about posting
12 requirements. It's something that's not always
13 handled by the RN. There is changes that happen
14 sometimes by the minute in our world today and we
15 are setting up for failure in this regard. There
16 needs to be a different way. I have concerns about
17 the public posting of protected information
18 regarding HIPAA as well as the Minnesota Bill of
19 Rights and protected personal health information
20 that was just referenced by Josh Berg.

21 And my last concern regarding staffing
22 is the 10-minute call response time. And we staff
23 for normal. And we can't staff for crazy. And
24 there isn't a provider that --

25 THE JUDGE: Okay, I'm going to

1 have you back up to this last point. Because you
2 keep, I don't say breaking up. Something is
3 interfering. I don't know if there is something
4 sitting in front of you that's hitting your
5 computer. Something that's causing an
6 interference. And so both me and the Court
7 Reporter are having difficulty hearing you. So
8 let's start with that third point again.

9 MS. KAPSNER: Okay. That was in
10 regards to posting. So I have a challenge with the
11 posting requirements of the rule itself. Not just
12 because of HIPAA, but also because the Minnesota
13 Bill of Rights as referenced by Josh Berg in his
14 testimony a few minutes ago.

15 The last concern I have regarding
16 staffing is specific to the 10-minute call response
17 time. And there seems to be an arbitrary number.
18 The bottom line is the building staffs for normal,
19 not for crazy or emergency situations, because we
20 aren't a hospital. And there are reasons that
21 the 10 minutes cannot happen, and it's not -- it's
22 very rare in our buildings, but it's still there,
23 and I don't think that those rare occasions should
24 warrant punitive effects.

25 My last concern is in regards to

1 terminations. And that rule number is 4659.0120.
2 And I would like to preface my concerns with the
3 fact that terminations are not good business
4 practice for any provider. It takes a lot of work
5 to turn over a unit and admit another resident.
6 And with our locations terminations are very rare,
7 but are increasingly an issue due to nonpayment and
8 safety concerns of other vulnerable adults we are
9 charged with protecting under our care.

10 In our sites, the discharge level due
11 to level of care is most common. We are not
12 skilled nursing homes and we are not hospitals.
13 This is frequent and happens for safety of our
14 residents and our staff. Application of this
15 termination section is problematic for many
16 reasons. And the first is how long it is. This
17 process is longer than what a skilled nursing home
18 needs to implement themselves, and it's overly
19 cumbersome and burdensome. And this process is --
20 it's not clear if the same process is required if
21 our resident gives a provider notice to leave. So
22 there needs to be clarity on what happens from that
23 perspective.

24 What happens if a resident changes
25 their representative repeatedly? Does this process

1 have to start over again? What happens if nobody
2 ever shows up? These aren't something that I pose
3 to say, you know, well, these are things that will
4 definitely happen and that's why I'm bringing them
5 up. There are residents, there are family members
6 that have the standpoint of, well, what are you
7 going to do? I just won't show and then what?
8 What can you make me do? We see it every day. And
9 so this has to be answered effectively.
10 Termination for nonpayment. Our sites send monthly
11 invoices due, for past amounts due. If one payment
12 is late, calls are made. We are following up for
13 phone calls, letters, e-mails. Meetings are
14 scheduled. Sometimes they are ignored. Other
15 times they aren't. Our goal is always to set a
16 reasonable plan of payment that our residents and
17 families can make to make their account come up and
18 be current. That is our goal always as a provider.
19 And, you know, at some point enough is enough and
20 we can't be expected to carry five, six, seven
21 months of nonpayment on our books. We have bills
22 to pay, we have staff to pay, we have to buy food
23 for our residents. That doesn't end because
24 somebody is not paying their bill. There needs to
25 be an end to not being paid for our services. And

1 this process is very long and doesn't address it
2 effectively.

3 It's rare that terminations occur due
4 to violent behavior of one resident to another
5 resident or even our staff. However, when this
6 does occur, a nine-step process isn't going to get
7 it done. The safety of my residents that I'm
8 charged to protect is at risk and as well as my
9 staff. And I'm charged to have a safe work
10 environment for my staff. I need to have a step
11 process that is going to honor that effectively.
12 And I don't think this step process does. And I
13 think it's in direct competition to the Vulnerable
14 Adults Act statute which is 626.557. There has to
15 be some way to address this effectively. And right
16 now there is not.

17 When there is terminations due to level
18 of care, this is my real greatest concern area
19 because it happens the most. Every assisted living
20 building determines what their criteria are for
21 admissions or discharges. And that has to
22 continue. So if I have a resident who falls and
23 breaks a hip and they now need to be cared for with
24 the use of a mechanical lift, my assisted living,
25 most assisted livings do not provide that service.

1 But according to this termination, I'm required
2 then to do that? My staff aren't trained on that.
3 I don't even have one in the building. So this is
4 a very big problem, because I can't safely care for
5 that resident anymore. And it needs to be
6 addressed.

7 Now, presently how we handle that, we
8 haven't had any issues or concerns. We always
9 assist families and residents with placement in a
10 facility that can meet their needs along the way
11 and that they are very happy with. And nobody is
12 wanting to see them move and it's always a sad
13 situation. But there is a different way to handle
14 this. And we have been very successful in our
15 operations in doing so. So that needs to be
16 considered, level of care.

17 I would like to thank you for the
18 opportunity to speak here today. My concerns
19 regarding emergency preparation, staffing and
20 terminations are valid and we do have workable
21 solutions and I know we can do better for our
22 residents and staff. And every day we strive to do
23 better. And we can and we do. In these instances,
24 I request your assistance for changes to be made to
25 do better. Thank you, Your Honor.

1 THE JUDGE: Okay. Thank you very
2 much, Ms. Kapsner.

3 MR. SKAAR: Judge O'Reilly?

4 THE JUDGE: Yes.

5 MR. SKAAR: This is Josh Skaar
6 here. For, Ms. Kapsner, I just wanted to verify or
7 ask if you have any written testimony that you
8 intend to submit or if you have a written version
9 of your oral comments that you intend to submit in
10 the comments?

11 MS. KAPSNER: I did not. Am I
12 still muted?

13 MR. SKAAR: I hear you.

14 MS. KAPSNER: I did not formulate
15 anything written at this time, no.

16 THE JUDGE: It would be helpful if
17 you would submit --

18 MR. SKAAR: Okay --

19 THE JUDGE: I'm sorry. Let me
20 interject here. It would be helpful to me and
21 probably to the agency and to others who aren't
22 here today but who might be reading the comments,
23 it would be really helpful if you could submit your
24 written comments. It appeared that you were
25 reading from them. If you could submit written

1 comments. Try to do it through the eComments
2 website that I kind of gave a tutorial on. It
3 would be helpful. Thank you.

4 MS. KAPSNER: I will do that.
5 Thank you, Your Honor.

6 THE JUDGE: Thank you.

7 MR. SKAAR: Thank you, Your Honor.
8 That's exactly where I was headed with that, too.
9 Thanks, Judge.

10 THE JUDGE: Very good. Right now
11 it's 11:45. We have Dawn H. is up next. And who
12 comes after Dawn? Who's on deck?

13 MS. KNIGHT: After Dawn, and I
14 apologize, it's either Lore Brownson or Lore
15 Brownson. I'm not sure on the pronunciation.

16 THE JUDGE: Okay. And how many
17 people including Dawn and Lore are in the queue at
18 this moment?

19 MS. KNIGHT: Six.

20 THE JUDGE: Six. Here's what I
21 will suggest. Lynn, are we finding that people are
22 joining or is it the same people that have been on
23 the whole time kind of waiting? Are we finding
24 that new people are joining this?

25 MS. KNIGHT: I would bounce that

1 back to Cody.

2 THE JUDGE: Okay.

3 MR. BAULEKE: Yeah, I'm here. I
4 would say that we've been roughly around 130 people
5 and I think they are probably the same people that
6 have been on all along.

7 THE JUDGE: All right. What I
8 suggest is why don't we hear from Dawn H. All
9 right? And then let's take instead of a long lunch
10 break, let's take like more of a half hour break,
11 all right, and then start with Lore B. and the five
12 people after that. Because if we go straight
13 through we are going to get ourselves out to an
14 hour or two hours past right now, perhaps.

15 So does anybody object to maybe taking
16 -- let's hear from Dawn H. and then we take a half
17 hour break, return at around 12:30, whenever Dawn
18 is finished, and hear from the five people who are
19 there.

20 I would like to put up -- when we take
21 that break, I would like to put something on the
22 screen, though, to let people know that we are just
23 on a break. That they are not to hang up or go
24 away. That they should still get in queue. So
25 maybe you could display during the break my

1 PowerPoint.

2 MR. BAULEKE: I will get that.
3 I'll whip that up right now. And I believe it's
4 actually Dawn Kuzma. Dawn K.

5 THE JUDGE: K. So anybody have
6 any objection to that? Okay. So Lore B. or Lore
7 or Lore B., hold tight. You will start us fresh
8 after a shorter lunch break, just to give our Court
9 Reporter time to rest her hands. And even me.
10 I've been writing madly here for a little while.

11 So let's now turn to Dawn -- you know
12 what might be helpful if, Lynn, if you could list
13 -- since it's only six people, let's list the
14 order, so they know where they're at. Okay? We
15 have Dawn K., Lore or Lore B. And you can just --
16 you don't have to say their last name, because it
17 gets difficult for the Court Reporter. If you
18 could just say the first and last initial.

19 MS. KNIGHT: Sure. Third, we
20 would have Anna P. Fourth, we would have I believe
21 two people want to go together. I have got Lindsey
22 and Knute. After that would be Beth M. And after
23 her would be Ron E.

24 THE JUDGE: Okay. So that kind of
25 tells you where you are at. Don't worry. You can

1 kind of -- it will let you get up if you need to
2 and take a break or do what you need, because you
3 can see where you are in line. So we are going to
4 start with Dawn K. We are going to finish her up
5 by noon and then we will start fresh at 12:30 with
6 Lore B. or Lore B. and move down for the last five
7 people pretty much consecutively. So I'd probably
8 say an hour, hour and a half, maybe two hours from
9 there. Okay?

10 I haven't been imposing time limits.
11 Everybody has been very organized and efficient.
12 So if, Dawn K., you can please speak so I can see
13 you. That makes you pop up for me. Dawn? Cody?

14 MR. BAULEKE: Let me look into it.
15 I just promoted her to be a panelist. It says that
16 she's unmuted and her camera is on, so she might be
17 having audio troubles. Maybe we will have Dawn
18 maybe try and mute and unmute again and we can see
19 if that will work.

20 THE JUDGE: Dawn, Cody can see
21 you, if you want to chat with him. Can we hear you
22 now? Can you say something? We are not hearing
23 from Dawn. Dawn, if you can hear me, go into your
24 chat and explain to Cody what's going on.

25 MR. BAULEKE: Dawn, if this

1 doesn't work, I might have you leave and rejoin
2 quickly. We might have to bounce Lore above and
3 then put Dawn below Lore, just for the sake of
4 moving the queue along.

5 THE JUDGE: Certainly. I'm going
6 to give Dawn one more opportunity here before we
7 switch her. Dawn, if you speak right now, you will
8 come up on my screen.

9 MR. BAULEKE: I think I saw her
10 try right there. Dawn, do you want to unmute and
11 give it one more shot. Otherwise we can try and
12 get you here a little bit later.

13 THE JUDGE: Okay. Now I'm hearing
14 something.

15 MR. BAULEKE: I think that's
16 Susan.

17 THE JUDGE: All right. Dawn, you
18 are going to be first up at 12:30. We are going to
19 skip over you and have you come in, you are first
20 in line at 12:30 after the break. We are going to
21 move on to Lore B. You haven't left us, Lore, have
22 you? Is it Lore or Lore?

23 MS. BROWNSON: Can you hear me?

24 THE JUDGE: I can hear you.
25 There, I can both see and hear you. Are you

1 prepared to go? I know I told you it would be
2 12:30.

3 MS. BROWNSON: I believe I am.

4 THE JUDGE: Okay. Very good.

5 And, again, I'm letting Dawn K. know, we will start
6 you at 12:30 after recess.

7 If you would please state and spell
8 your first and last name, ma'am.

9 MS. BROWNSON: Very good. My name
10 is Lore. And it's spelled L-o-r-e. Last name
11 Brownson. That's spelled B-r-o-w-n-s-o-n.

12 THE JUDGE: Please proceed.

13 MS. BROWNSON: Thank you, Your
14 Honor. I appreciate the opportunity to testify
15 today on the proposed procedures for resident
16 termination and discharge planning and termination
17 appeals.

18 In the way of background, I have been
19 in health care close to 40 years. First, as a
20 registered nurse for 10 years in the acute care
21 space. Then after obtaining a law degree in 1997,
22 I served as health care regulatory counsel for the
23 skilled nursing facilities division of a national
24 Fortune 500, long-term care company. I joined my
25 present company, New Perspective, which is a

1 Minnesota based senior living provider which owns
2 and operates assisted living communities in
3 Minnesota as well as Wisconsin, Illinois and North
4 Dakota, for six years now. For the past six years,
5 I have served as senior vice president, quality
6 services and chief compliance officer.

7 Separate from my work in health care
8 over the number of years, I am the daughter of a
9 wonderful father who for the years before his death
10 resided in both assisted living and skilled nursing
11 settings. My father had multiple comorbidities,
12 key of which were diabetes, cardiovascular disease
13 and dementia. I was my father's health care and
14 financial power of attorney and followed a person-
15 centered approach to his care long before person-
16 centered care was a defined term and process.

17 My having a legal and health care
18 background was, no doubt, daunting for the
19 operators of the health care communities at which
20 my father resided. My father had a history of
21 falls and would not consistently use his walker
22 when walking or follow other interventions to
23 reduce the risk of falls. I advised the
24 communities that quality of life and following my
25 father's wishes were the priority in a

1 person-centered care approach. And that he and I
2 accepted the associated risk to any decisions made.

3 I was also clear on when my father
4 needed a higher level of care than what the
5 assisted living setting could provide. This leads
6 me to proposed Rule 4659.0120 and its subparts and
7 procedures for resident termination and discharge
8 planning.

9 I want to first stress, as Shauna and
10 Josh have said, that from my experience providers
11 strive to support aging in place, and that in the
12 majority of cases the assisted living provider and
13 resident legal representative are in mutual
14 agreement about a needed discharge with a discharge
15 proceeding only after detailed discussions of any
16 available options to avoid discharge.

17 My concerns about the proposed rule for
18 that wherein the majority of cases there is mutual
19 agreement, there are times that there is not a
20 meeting of the minds. In situations where the
21 health, safety and welfare of the resident issue or
22 other residents and staff are at risk, the proposed
23 procedures for terminating a resident's agreement
24 and subsequent appeals process will cause
25 significant undue delays to discharge.

1 The requirements of Minnesota Rule
2 4659.0120, subparts 1 through 4 for ALS to schedule
3 and participate in a pre-termination meeting which
4 mandates the resident, guests and representatives
5 are able to attend followed by a written summary of
6 the meeting within 24 hours all before being able
7 to issue a notice of termination is time consuming
8 and poses challenges in the exact circumstances for
9 which there isn't a meeting of the minds among the
10 parties involved. Residents and others can easily
11 delay a needed discharge by simply not being
12 available for a meeting. As Shauna expressed, this
13 is a common scenario and when there is not a
14 meeting of the minds in decisions.

15 In addition, requiring the assisted
16 living facility to coordinate a meeting that
17 includes the ombudsman, case manager, most
18 importantly any third parties the resident and
19 their representative request to attend will further
20 complicate the process as the assisted living
21 facility will be challenged to coordinate a meeting
22 conducive to everyone's schedules and, moreover,
23 bring these parties up to speed on the reasons for
24 the termination. Delays in discharge can expose
25 the resident and potentially others to unnecessary

1 risks involving health, safety and welfare.
2 Further, the proposed procedures are required even
3 if there is a meeting of the minds on termination.
4 Adding in the proposed termination appeal
5 procedures under 4659.0210 followed by an eviction
6 proceeding for residents who do not agree to the
7 termination will further delay a needed discharge.

8 Given that the proposed rules create
9 new time consuming requirements to make the
10 termination procedure more complex than is
11 reasonable and necessary, I ask that you disapprove
12 the subparts to the proposed rules. Thank you,
13 Your Honor.

14 THE JUDGE: Thank you, very much
15 for those comments. Will you be submitting those
16 in writing as well or have you already submitted
17 those?

18 MS. BROWNSON: I have not, Your
19 Honor, but I can do so.

20 THE JUDGE: I would appreciate it.
21 And then for everybody else who is listening it
22 would be helpful if you would submit in writing.
23 Usually when we have in-person rule hearings, I
24 will even say, hey, can I just take your notes.
25 Because they are helpful. You know? And so I

1 would take those, physically take those notes, put
2 a stamp on them as an exhibit and put it in the
3 record. But I can't do that right now. So I'm
4 just asking that if everybody who is speaking it is
5 very helpful if you submit those in the eComments
6 website with your name so I can pair them up with
7 your name. Okay? Thank you.

8 MS. BROWNSON: Thank you.

9 THE JUDGE: Okay. We have gotten
10 to the noon hour. I'm going to just ask if Dawn K.
11 has rejoined us, just so we can touch base with
12 her? She's going to be the first person up at
13 12:30.

14 MR. BAULEKE: Yes, Dawn is here.
15 We were going to work on the audio stuff during
16 break. Do you want to take her right now before?

17 THE JUDGE: No. Why don't we just
18 take the -- like I explained to everybody, because
19 they are prepared for this now, we are going to
20 take a half hour break. We are going to return at
21 12:30. We are going to put something up on the
22 screen to let people know if they haven't appeared
23 yet. For example, let's say I just got off of work
24 and I want to get in the hearing, I want them to
25 see something on the screen that we're coming back.

1 Don't worry.

2 And we will start first off with Dawn
3 K. We will go to Anna P. We will go to Lindsey
4 and Knute, Beth and Rom. In that order. Okay?

5 MR. BAULEKE: Perfect. I have
6 that slide. So I will put that on the screen. And
7 then I will put Dawn to get her sent over.

8 THE JUDGE: Very good. In the
9 interim, I'm going to stay on. I am not logging
10 off. I'm going to turn off my video and my audio.
11 And everybody else might want to do the same, to
12 ensure that -- so I'm going to have mine off, but I
13 will be rejoining at 12:30. So we stand in recess
14 until 12:30. Thank you.

15 (At this time a luncheon recess was taken.)

16 THE JUDGE: Let's go back on the
17 record. We've taken a short lunch break and
18 returning with our next speaker. If you can please
19 state and spell your first and last name.

20 MS. KUZMA: My name is Dawn Kuzma.
21 Spelled D-a-w-n K-u-z-m-a. I am here today not as
22 -- not as a member of any professional
23 organization. I am not a lawyer by training and I
24 take no pleasure in reading statutory law. It's
25 not something I'm accustomed to or feel

1 particularly good at. But I have some concerns
2 about the licensing regulations as they might
3 affect small residential assisted living
4 facilities.

5 By some sort of extraordinary
6 coincidence, my husband Alex Houlding died in an
7 assisted living facility three years ago. Exactly
8 three years ago today. And the place that he died
9 at is a place called Breck Homes. And I supplied
10 written comments that described his journey and our
11 family's journey through that terrible time.

12 When I talk about Breck, I kind of run
13 out of superlatives pretty quickly. Everything
14 they did was beyond what my best expectations could
15 have been for how to handle a man with such a
16 difficult and challenging dementia and illness at
17 such a young age. He was a very healthy and strong
18 and vigorous man, and was someone who could easily
19 hurt other people without ever realizing he was
20 doing it. Without ever giving it any thought.
21 Because part of his brain that controlled empathy
22 and proper social response was affected by the
23 disease.

24 I've heard horror stories about people
25 with the same illness being rejected from

1 residential care facilities -- or not residential,
2 assisted living and nursing home environments
3 because of behavior issues that were difficult to
4 control because of staff unable to give them
5 one-on-one attention to someone with his kind of
6 illness might have.

7 And what I learned at Breck is they
8 were able to work with him where he was, meet his
9 needs, understand him, redirect him, encourage him,
10 support him and care for him. They did a beautiful
11 job in communicating with me and my family at all
12 points in the journey. Whenever there was an
13 incident that needed to be reported, it was
14 reported to me personally via a phone call or an
15 in-person visit immediately. I never had to wonder
16 what was going on. I received photographs nearly
17 every day when I was at work of what my husband was
18 up to and what kind of adventures they were having
19 at Breck. There were dogs and cats running through
20 the house. We were able to bring our family pets
21 to visit him. Alex could come and go as freely as
22 he wished as long as it was safe. And it's
23 basically the kind of place that I think most
24 people, given a choice, would want to be in or want
25 their loved ones to be in. And part of what makes

1 Breck such a special place and such a wonderful
2 place is that they react situationally on an
3 individual basis to each person's needs.

4 So as I have been listening to the
5 various testimonies today and hearing about things
6 like call times and wait times and staff postings
7 and assisted living directors and emergency plans
8 and terminations, I have to say, honestly, that
9 that doesn't seem to me to be any kind of an issue
10 at Breck. People aren't terminated from Breck. I
11 don't know the numbers, but my guess is that in all
12 of the years that Jenny has been operating those
13 homes I would be surprised if there were more than
14 a handful of people where that was ever required.
15 And probably more likely at the request of the
16 family than of Breck. But I don't actually know
17 those facts. I'm just surmising from what I have
18 seen.

19 I've heard about the concerns about
20 facility and other things, and I think that they
21 are pretty irrelevant for small homes. I don't
22 know where the statutory guidelines came to play
23 that the breakoff point for a residential care home
24 that needed to be subject to these rules was four
25 people. I think it's pretty low. Breck has two

1 homes. Each home meets the needs of six residents.
2 And the staff to resident ratio is like a dream
3 come true. On most days when I would stop by to
4 see Alex, there would be three full-time staff
5 people there and people that have been with Breck
6 for 10 or more years. And I can't tell you how
7 much that means when you are a person helping a
8 loved one through this difficulty to have staff
9 that just has that continuity and the experience.
10 It isn't their first rodeo. Not by a long shot.
11 They know exactly what to do. And as my husband
12 was dying, they knew exactly how to manage that
13 process both with him and with us.

14 I ask only that as we think about these
15 licensing statutes and regulations we think about
16 how they affect a smaller residential treatment
17 home. It really does operate like a home. It's
18 the strength of it. It's the beauty of it. It's
19 exactly the kind of thing that many thought leaders
20 about assisted living like (undecipherable) would
21 say it's exactly the kind of place you would want
22 your loved one to be. And by adding more and more
23 restrictions and more and more licensing fees and
24 more and more administrative burden and more and
25 more facility changes to accommodate unforeseen

1 circumstances that haven't ever happened as far as
2 I know, we are going to force some of these small
3 and excellent cares right out of business.

4 I was listening to Shauna's remarks
5 earlier today and I think she was saying some of
6 the same things that I feel as I listen to this
7 conversation. So many of the things that people
8 are searching for in senior care, so many of the
9 things that are really important are already being
10 met at a place like Breck. And I don't think there
11 is a need to further regulate them. I think there
12 is a need to, like, talk to them about why it's
13 working so well and why family members love it so
14 much and see how everybody else can adopt some of
15 their practices into their way of thinking of
16 things.

17 It's not to say -- I do appreciate
18 completely that everyone working on this, everyone
19 working on this has a real and a sincere interest
20 in getting the best possible care for their loved
21 ones in these facilities. I share that. When I
22 hear stories of abuse and other problems, I'm just
23 -- I'm horrified and sickened. And, actually, when
24 all of that news was breaking in the Star and Trib,
25 I breathed a huge sigh of relief. Because I knew

1 my husband was in a place where that was never
2 going to happen. None of those things were ever
3 going to happen to him. And nothing like that ever
4 did.

5 And also respect that there is a wish
6 to simplify licensure and to make it more
7 consistent across assisted living facilities, to
8 look for excellence in credentialing and
9 management. All of that I endorse wholeheartedly.
10 I just think that there needs to be some leeway
11 here for smaller homes that provide the kind of
12 residential care. Because it's a very different
13 model from the kind of place that my mother ended
14 up in, which was a much larger facility where every
15 single regulation that you are mentioning here
16 would have been wonderful to have in place, given
17 her situation.

18 So that's the gist of my comments
19 today. I just would really like as people go
20 through and look at these rules to understand the
21 financial and regulatory hurdles this will require
22 for small homes that are already strapped for
23 funds, already doing the very best that they can,
24 providing a wonderful service. The idea that they
25 could be in financial jeopardy and possibly closed

1 down because they are unable to meet these
2 requirements makes me incredibly sad. And I know I
3 have spoken to other family members whose loved
4 ones were at Breck and they all feel the same way
5 that I do. And I would guess that that's true for
6 family members who have worked with any of the
7 smaller residential homes. I just think that there
8 has got to be a middle path here. There is some
9 way we can accommodate and encourage and support
10 this residential model as an excellent alternative
11 for people who are looking for assisted living
12 care. And that's the end of my comments.

13 THE JUDGE: Okay. Very good. I'm
14 going to wait a second. Because there was some
15 feedback there. Thank you, Ms. Kuzma. Are you
16 going to be submitting those written documents?
17 Have you already?

18 MS. KUZMA: I have submitted some
19 written documents. But I will put some additional
20 clarification based on what I said today.

21 THE JUDGE: Okay. That would be
22 wonderful. On the eComments website, that's what's
23 preferred. So I would welcome you to do that.
24 Thank you very much.

25 So, madam operator, we now have Anna P.

1 is up next. And then after that we have on deck
2 Lindsey and Knute.

3 MS. KNIGHT: Just Lindsey. I was
4 misinformed. It's just Lindsey. At then at the
5 end of the list we did have one more person join.

6 THE JUDGE: Okay. And can I have
7 the first name of that next person. That last
8 person.

9 MS. KNIGHT: The final person
10 would be Michelle N.

11 THE JUDGE: Michelle N. Perfect.

12 MS. KNIGHT: So including Anna
13 there should be five.

14 THE JUDGE: Okay. Very good. So,
15 Cody, if you can help us to get Anna P. up and
16 running here.

17 MS. PETERSMEYER: Good afternoon.

18 THE JUDGE: Hello. Okay. And I
19 see you there. Give me one moment. And I assume
20 you can see and hear us as well?

21 MS. PETERSMEYER: I can.

22 THE JUDGE: Okay. Very good. If
23 you can please, your first and last name.

24 MS. PETERSMEYER: Sure. My first
25 name is Anna, A-n-n-a, Petersmeyer. All one word.

1 It's P-e-t-e-r-s-m-e-y-e-r.

2 THE JUDGE: Very good. Please
3 proceed.

4 MS. PETERSMEYER: Thank you for
5 the opportunity to offer some comments today in the
6 public hearing. I am the chief operating officer
7 at Vista Prairie Communities. And that's V-i-s-t-a
8 P-r-a-i-r-i-e Communities. We are a nonprofit
9 provider of assisted living, independent living,
10 memory care, care suites in Minnesota, Iowa, Ohio
11 and Wisconsin. We own and operate six facilities
12 in Minnesota. Five of them are in greater state
13 Minnesota. Vista Prairie Communities is a member
14 of LeadingAge Minnesota and participates in a
15 long-term care care initiatives.

16 In previous roles, I acted as the chief
17 operating officer of Volunteers of America of
18 Minnesota and Wisconsin. Which is one of the
19 state's largest health and human service
20 organizations providing service to 25,000
21 Minnesotans on an annual basis. And prior to that
22 I've held several positions in senior services over
23 the span of the last 26 years, including leadership
24 roles with Benedictine Health System and Serenity
25 Senior Care. I'm also a licensed social worker. I

1 hold a bachelor's degree in social work and a
2 master's degree in business administration. And,
3 most importantly, I am a family member having three
4 grandparents who lived in assisted living
5 facilities whose levels of care ranged from
6 independent living to memory care.

7 We at Vista Prairie Communities support
8 enacting legislation that will help seniors live as
9 independently as possible for as long as they are
10 able and have access to care in the communities
11 where they call home. Vista Prairie Communities
12 supports the proposed rule regarding staffing
13 standards. Which is section 4659.0180.

14 The proposed rule is reasonable and
15 reflects a person-centered approach which is
16 central to Minnesota's assisted living regulation.
17 Which is also central to the last caller's comments
18 regarding the ability to provide individualized
19 care within communities.

20 We are pleased to see the response in
21 the public comments from the Office of
22 Administrative Hearings that the rule language
23 directs facilities to base staffing levels on
24 current resident needs, which is very fluid and
25 requires continuous monitoring and response by a

1 registered nurse who is already on site.
2 Staffing is driven by residents' needs versus a
3 ratio-based model which is -- a resident's needs
4 which is in a person-centered model is way more
5 beneficial to the resident than just ratio-based.

6 Chapter 144G statute already refers to
7 the registered nurse ensuring staff competency
8 aided by the completed employee record with
9 evidence of competency testing.

10 Vista Prairie Communities is concerned
11 and opposes subpart 4. And that's of the Rule
12 4659.0180. While we do not oppose the concept of
13 creating and posting a general work schedule, the
14 required detail included in the proposed rule under
15 subpart 4 are burdensome and create privacy issues
16 with staff and residents.

17 We would further recommend removing the
18 requirement that a publically posted schedule
19 include resident staff assignment. This is an
20 infringement on the resident privacy rights. The
21 identity of any person receiving assisted living or
22 dementia services is protected information under
23 the federal HIPAA requirement and by state law,
24 previously mentioned by multiple providers prior to
25 me. We recommend additional consideration be given

1 for exceptions for staff that may have a bona fide
2 safety concern if information about his or her
3 staffing assignments is publically posted.

4 We own and operate multiple assisted
5 living communities in rural Minnesota. Some of
6 these facilities are the only option in the area.
7 We offer multiple levels of care ranging from
8 minimal services to high acuity services in our
9 care suites. We provide services in multiple
10 levels because this strategy best meets the needs
11 of the older adults in rural communities.

12 Working under the existing Statute
13 144G, our clinical team assesses on a person-
14 centered basis. As cares fluctuate, the team
15 adjusts services and staffing as needed in real
16 time. Posting daily schedules on every floor is
17 not reasonable and would likely be inaccurate and
18 outdated the moment it's posted.

19 Vista Prairie Communities also has
20 significant concerns regarding the benefits of and
21 our ability to implement proposed procedures for
22 resident termination and discharge planning. Which
23 is 4659.0120. We believe this entire subpart is
24 duplicative of what is already in statute. Section
25 4659.0120 fails to strike the appropriate balance

1 between providing residents with the smooth
2 transition and the ability of providers to act
3 within a reasonable timeframe to terminate an
4 agreement when necessary. The proposed rule
5 ultimately puts residents at risk because of its
6 opportunities to delay a necessary termination and
7 transition of providers.

8 The rule generally does not provide any
9 accommodation for uncooperative residents or
10 resident's representatives. Making it unworkable
11 in contentious cases. It defeats the facility's
12 ability to implement unnecessary service
13 termination in a prompt and effective manner and
14 provides burdensome mechanisms that enables the
15 resident's representatives to divert necessary
16 terminations by simply refusing or delaying to
17 participate.

18 Rule 144G.52, subpart 2 under 2(b)
19 already requires a premeeting must take place at
20 least seven days prior before notice of
21 termination. The proposed rule goes beyond and
22 above what is clearly articulated in the current
23 statute. The statute already provides robust
24 assurances preventing arbitrary terminations.
25 The enabling legislation already mandates the

1 opportunity for thoughtful discussion.

2 Again, I thank you, Your Honor, and the
3 Department of Health. We support the enacting
4 legislation that will help seniors live
5 independently. I will be submitting these comments
6 and I appreciate the opportunity to contribute my
7 comments.

8 THE JUDGE: Thank you very much.
9 And we will look forward to those then on the
10 eComments website.

11 MS. PETERSMEYER: Thank you.

12 THE JUDGE: Thank you. Okay.
13 Next up -- hold one moment please. Hold one
14 moment. I apologize for that. Somebody walked in.
15 So Lindsey is up next. Let's look and see is
16 Lindsey ready to go?

17 MR. BAULEKE: I just promoted
18 Lindsey. So she should be able to jump in
19 whenever.

20 THE JUDGE: Okay. I see Susan.
21 And Beth is on deck after Lindsey.

22 MR. BAULEKE: It looks like
23 Lindsey is having trouble connecting her
24 microphone. The same sort of thing that Dawn had.
25 I might try and work with Lindsey here quickly

1 through the chat box to get her computer phone
2 working. So maybe we will just kind of jump to
3 whoever is in the queue and come back to Lindsey.

4 THE JUDGE: I'm wondering if the
5 public members are not -- when you first get into
6 WebEx, it says do you want to use your computer or
7 phone. Right? And then it gives you a computer
8 test to work on the audio so you can test it out.

9 MR. BAULEKE: Correct.

10 THE JUDGE: So, hopefully, they
11 can work that out. So, Beth M., are you ready to
12 go?

13 MR. BAULEKE: Let me find Beth
14 really quick. I think I have her right here.
15 Okay. Beth is just promoted, so she should be able
16 to speak.

17 MS. McMULLEN: Hello. This is
18 Beth. Can you hear me?

19 THE JUDGE: Yes, we can. Now,
20 Beth, do you have your video on?

21 MS. McMULLEN: I thought that I
22 had it.

23 THE JUDGE: There we are.

24 MS. McMULLEN: You can see me now?

25 THE JUDGE: I can. So here's how

1 we are going to do it. We are going to start with
2 Beth and we are going to go back to Lindsey, hoping
3 that she has her audio repaired. So, Beth, if you
4 would please state and spell your first and last
5 name.

6 MS. McMULLEN: Absolutely. My
7 name is Beth, B-e-t-h, McMullen, M-c-M-u-l-l-e-n.
8 So my name is Beth McMullen and I am vice president
9 of Government Affairs for the Alzheimer's
10 Association Minnesota, North Dakota chapter. The
11 Alzheimer's Association is the world's leading
12 voluntary health organization and Alzheimer's care,
13 support and research. We advance public policies
14 at the state and federal levels to improve the
15 lives of all those affected by Alzheimer's,
16 including enhancing the quality of care in
17 residential settings like assisted living
18 facilities.

19 Today there are an estimated 99,000
20 Minnesotans living with Alzheimer's disease. And
21 that number is expected to grow to 120,000 in less
22 than five years. Approximately 42 percent of
23 residents in residential care communities like
24 assisted living have Alzheimer's or another form of
25 dementia. Given the growing population and the

1 unique needs and challenges that dementia presents
2 to individuals, the Alzheimer's Association works
3 to ensure that decisionmakers like yourself
4 understand how these rules will impact people
5 living with dementia. We have submitted our
6 comments via the online system last week.

7 As an organization who has been a part
8 of this long-term effort, it's an honor to speak
9 here today. We support the majority of these rules
10 as being consistent with the statute with the
11 intent of the legislature and those who worked so
12 hard to develop this licensure framework. And we
13 appreciate the opportunity to highlight our
14 rationale for a few of our key recommendations here
15 today.

16 In order to develop a strong licensing
17 framework, the Alzheimer's Association's objective
18 over the last several years of work on this statute
19 and rule has been threefold. Consideration must be
20 given to design the system that will, one, protect
21 resident's rights, choices, their health and
22 safety. Two, ensure that care providers are set up
23 to deliver quality care. And, three, allow the
24 Department of Health to regulate critical aspects
25 of the system.

1 Now, while there have been some
2 horrible examples of neglect, abuse and
3 maltreatment in this type of setting, I want to
4 recognize and appreciate the vast majority of
5 providers who provide quality care. We recognize
6 the difficult job that these professionals who
7 provide care and support that they face every day.
8 And while these changes have been a long time
9 coming, the current pandemic serves to highlight
10 the difficulty of ensuring safe, quality care to
11 the thousands who live in our state's long-term
12 care settings.

13 As noted in our comments, the
14 Alzheimer's Association has long been a leader in
15 outlining principles and practices of quality care
16 for individuals living with dementia. Our 2018
17 dementia care practice recommendations were
18 developed to better define quality care across all
19 care settings and throughout the disease course.
20 We use these evidence-based recommendations where
21 appropriate to provide advice, direction and
22 recommendation to the legislature and MDH in the
23 development of this new framework.

24 I would like to highlight the
25 importance of a few key areas of alignment between

1 our dementia care practice recommendations and this
2 rule and the underlying statute.

3 The first is in assessments, 4659.0140.
4 The quality of dementia care provided for
5 individuals is contingent upon the quality of
6 assessment and care planning and the degree to
7 which those processes are person-centered.
8 Settings should perform regular comprehensive
9 person-centered assessments and timely interim
10 assessments. They should use assessment as an
11 opportunity for information gathering, relationship
12 building, education and support. They should use
13 documentation and communication systems to
14 facilitate the delivery of person-centered
15 information between all care providers.

16 Because someone living with dementia
17 may have diminished or limited ability to
18 communicate their own needs, special care must be
19 given how assessments are conducted, ensuring first
20 that the resident is engaged at a time that will
21 allow them to be at their optimal functioning and
22 that those who are most familiar with the resident
23 are allowed to provide input.

24 With this in mind, I call attention to
25 subpart 2 of .0140. We ask for consideration of

1 our recommendation to ensure that the time of day
2 is considered to allow the resident living with
3 dementia is at their optimal level of functioning
4 and that input from family and friends or care
5 staff familiar with the individual is also
6 considered.

7 Now I would like to move to the
8 importance of staffing, 4659.0180. The Alzheimer's
9 Association has identified staff across the long-
10 term care spectrum as a distinct and important
11 determinant of quality dementia care. In fact, we
12 suggest that it is the single most important
13 determinant of quality dementia care across all
14 settings. Staffing is a key component for quality
15 dementia care concentrated in this rule. So we
16 support the staffing rule as it is written with a
17 small suggestion.

18 Staffing levels should be -- the reason
19 we support this is that staffing levels should be
20 adequate to allow for proper care at all times, day
21 and night. Staffing levels should be adjusted
22 based on changing needs throughout the course of
23 the disease. And sufficient staff also ensures
24 that staff members not be overworked during their
25 shift.

1 With these points in mind, we ask for
2 consideration for subpart 3 of 4659.0180. Our
3 recommendations are that after-hour nursing care
4 procedures are included. And for subpart 4
5 identifying the 24 hour awake staff in a secured
6 dementia care unit.

7 Thank you for consideration of our
8 recommendations and I would be happy to answer any
9 questions, Your Honor. I can't hear the judge.

10 THE JUDGE: Sorry. Did you say
11 that you are going to be submitting this in
12 addition to what you have already submitted or are
13 you --

14 MS. McMULLEN: This is in our
15 comments, Your Honor.

16 THE JUDGE: It is. Okay. Very
17 good. Thank you very much for your comments today.
18 I appreciate it. Next up, did we get Lindsey's
19 bugs worked out there?

20 MR. BAULEKE: I think we are going
21 to give it a go here again. She's connected via
22 telephone I believe through WebEx. So we will
23 promote Lindsey here and we will give it a try.
24 Okay. She's been promoted.

25 THE JUDGE: Lindsey, can you hear

1 me? Lindsey, I'm not hearing you.

2 MR. BAULEKE: She muted herself I
3 think by accident. Lindsey?

4 MS. SAND: Yes. Can you hear me?

5 THE JUDGE: Yes, we can. And I
6 can see you now. Very good.

7 MS. SAND: Good.

8 THE JUDGE: So, Cody, did we
9 figure out what the problem is so I can maybe
10 explain it to others if we have this problem going
11 forward? Do you know what --

12 MR. BAULEKE: Unfortunately,
13 sometimes it's just people's computers. It's hard
14 for me to know, because I don't know what
15 everyone's machine is. So just before people can
16 go into audio and test and see if their microphone
17 is work being, that would be great. Otherwise, be
18 prepared to move to your phone pretty quickly.

19 THE JUDGE: Okay. Very good.
20 Meaning phone through InterCall?

21 MR. BAULEKE: Yes, correct.

22 THE JUDGE: Lindsey, why don't we
23 have you come back on.

24 MS. SAND: Sounds good. I want to
25 thank you, Your Honor. My name is Lindsey Sand.

1 L-i-n-d-s-e-y. Sand, S-a-n-d.

2 I want to thank you, Your Honor, for
3 this opportunity to provide testimony today. I
4 will also be planning to submit my comments via the
5 portal.

6 I am present today to provide
7 perspective as a former community services
8 director, licensed nursing home administrator,
9 frontline worker, housing and assisted living
10 director, former and current caregiver for
11 grandparents and an advocate for choice, safety,
12 well-being, access and affordability of care for
13 our aging population.

14 I currently serve as the vice president
15 of Population Health for Knute Nelson. I sit on
16 the LeadingAge Minnesota board of directors, the
17 LeadingAge Minnesota foundation board. I
18 participate as a member of Age Friendly Alexandria
19 and serve on the Central Minnesota Age Friendly
20 leadership team. I am also a member of the
21 LeadingAge Minnesota assisted living licensure task
22 force.

23 I have worked in the care industry
24 since I was 16 years old and have spent the last 20
25 years working beside the most compassionate team,

1 serving the most deserving and appreciative
2 individuals and holding the hands and celebrating
3 or grieving with families and caregivers both
4 formal and informal.

5 I support several of the proposed rules
6 as they call to action a person-centered approach
7 towards service. But I also want to express great
8 concern over several of the proposed rules.

9 Over the course of my senior care
10 career, I have experienced -- over the course of my
11 senior care career, I have experienced both the
12 appreciation for regulations that are in place for
13 much needed areas, but also the limiting and costly
14 burden of certain regulations on residents,
15 families and facilities within our industry. I am
16 here to urge caution with the adoption of the
17 latter. Particularly those surrounding staffing
18 and emergency and disaster planning.

19 I would be remiss not to begin with a
20 thank you to the dozens of stakeholders that have
21 spent countless hours of time planning and
22 discussing the enabling legislation. I have been
23 there with you and I truly believe that this is
24 essential work that would help shape the future of
25 our care industry. The multiple efforts put forth

1 have all contributed with similar goals and core
2 values in mind and were the ends sought for the
3 chapter 144G. And I would like to call to
4 attention a few of these values prior to addressing
5 my concerns.

6 Number one, we will strive to balance
7 personal rights, autonomy, choice and privacy with
8 safety and health protections for vulnerable
9 adults. We will value person-centered solutions
10 over those that are primarily institution-centered.
11 And the settings need to be and remain accessible
12 to low-income populations. Any new systems must
13 allow sustained access to home and community-based
14 services Medicaid funding and should also work to
15 improve those for Elderly Waiver.

16 It is vital prior to rule
17 implementation that proper evaluation be conducted
18 regarding the potential impact of these proposed
19 rules on the affordability and access limitations
20 of assisted living services for seniors. Any
21 increased cost due to new regulations will
22 inevitably impact consumers of assisted living
23 services. Elderly Waiver, the Medical Assistance
24 program that covers assisted living services for
25 low-income seniors, already fails to cover the cost

1 of providing those services today.

2 There are key aspects of the proposed
3 rule that will inevitably impact the cost of
4 assisted living services in the future, including
5 emergency preparedness and staffing. Importantly,
6 Minnesota lawmakers have not appropriated any
7 additional funding to the Elderly Waiver program to
8 offset these costs. If there is reasonable and
9 less costly alternatives to these proposals that do
10 not diminish quality care, it would serve us well
11 to modify the rule accordingly. If the regulations
12 render care completely unaffordable to those on
13 Elderly Waiver, I fear that facilities will no
14 longer be able to accept residents who qualify for
15 waiver and we would be forced for those consumers
16 to seek nursing home care at a greater cost to the
17 state taxpayers.

18 To the extent that the proposed rules
19 borrow from state and federal nursing home
20 regulations, I want to express extreme caution and
21 analysis. As a matter of principle and overall
22 approach to the work of regulating our assisted
23 living facilities, I oppose the approach taken in
24 section 4659.0100 which speaks to incorporate the
25 federal nursing home standard. Such an approach is

1 not reasonable, as the Centers of Medicare and
2 Medicaid Services did not have assisted living in
3 mind when they wrote the nursing facility rules.
4 Stakeholders intentionally decided not simply to
5 duplicate nursing home regulations in designing
6 assisted living licensure to avoid completely
7 changing the structure of assisted living from home
8 and community-based services to institutions.
9 There has been no vetting or discussion of how
10 these standards may be ruled out in assisted
11 living, including addressing the unnecessary
12 complexity and the costly implementation plans
13 required in Appendix Z.

14 As a former nursing home administrator
15 that has written and implemented policies in
16 accordance with Appendix Z, there are several
17 concerns that I have regarding applying these
18 standards to assisted living, including your
19 requirements for on-hand provisions such as
20 adequate food, pharmaceuticals and medical supplies
21 as well as the need for tracking sheltered in place
22 residents. These areas fail to consider the very
23 levels of care that may exist in an assisted living
24 building, not recognizing that there may be
25 residents that choose not to purchase services and

1 choose only to have a tenant relationship, thus
2 making it impossible for the facility to ensure
3 that provisions are available to meet the complete
4 needs of every resident and account for the
5 whereabouts of said resident.

6 Another concern required with the
7 adoption of Appendix Z is the necessity of a
8 complex medical records system. Again, not every
9 resident of an assisted living setting will be
10 receiving services from that setting, therefore, it
11 is not reasonable to require that settings maintain
12 an electronic health record on every resident.
13 There would be significant cost to compliance of
14 this proposed rule that will have not be factored
15 into discussion as many of assisted living
16 facilities have not typically had the same level of
17 funding in support for implementation of electronic
18 health records that hospitals and nursing homes
19 have received.

20 And, finally, and most concerning to me
21 is the dependence that CMC, the Centers for
22 Medicaid and Medicare Services, requires on the
23 Life Safety Code and the related NFPA Code
24 requirement for emergency and standby power
25 systems. This is not a reasonable expectation for

1 all assisted living settings, especially those
2 small residential care homes, and compliance would
3 significantly drive up operation costs which would
4 need to be passed on to residents.

5 I request that assisted living settings
6 continue to be viewed not as institutions, but
7 rather home and community-based settings in
8 construction of this rule.

9 In general, I support the approach
10 proposed in the rules about staffing standards,
11 section 4659.0180. It should be noted that these
12 proposed rules will be in addition to the already
13 extensive staffing and training requirements
14 already included in Statute 144G. The proposed
15 rule is reasonable and reflects a person-centered
16 approach that is central to Minnesota's approach to
17 assisted living regulation. The proposed rule
18 would require a clinical nurse supervisor to
19 develop and implement a staffing plan that provides
20 an adequate number of qualified staff to meet the
21 residents' needs 24 hours a day, 7 days week. This
22 approach recognizes that needs of residents may
23 vary and staff experience may vary. And it
24 entrusts the expertise of the clinical nurse
25 supervisor to ensure appropriate and person-

1 centered staffing.

2 I would oppose any alternative approach
3 like has been suggested today that would impose
4 strict staffing ratios. This would ignore the
5 person-centered approach to care and unnecessarily
6 drive up costs of care and contribute to the
7 already stressed and limited pool of staff for care
8 across the care spectrum. It also fails to
9 recognize the varying levels of care present in
10 assisted living. Minnesota lawmakers intentionally
11 avoided including acuity limits in assisted living
12 licensure statutes. This was intentional, as it
13 affirmed a core value shared by stakeholders that
14 seniors should have the ability to age in place.
15 This means that the level of care may vary
16 significantly with an assisted living facility from
17 those needing simple assisted living support to
18 those needing advanced, enhanced assisted living
19 support. A person-centered approach allows the
20 facility to dictate the appropriate staffing level
21 based on informed assessments of the collective
22 resident population.

23 I would also like to raise concern with
24 the public posting requirements in section
25 4659.0180, subpart 4(B). While I support

1 transparency, I am concerned that the approach is
2 not reasonable and is not required based on the
3 statute. Posting may create unintentional safety
4 concerns for staff in the setting and may
5 unintentionally infringe on privacy rights of
6 residents. I would recommend eliminating the
7 requirement of schedules posted on every floor.
8 This is not reasonable and could have potential for
9 errors such as changes in staffing and care change
10 throughout the day, which does happen and can
11 happen frequently. The requirement to ensure that
12 all schedules are updated timely could stand in the
13 way of care delivery and is unnecessary as a
14 facility staffing record is maintained and the
15 responsibility for appropriate staffing levels
16 would remain.

17 If required as part of the approved
18 rules, a more reasonable approach would be to post
19 a single, central location in each building. I
20 would further recommend removing the requirement of
21 posting publicly schedules, including resident
22 assignments, in order to honor the privacy rights
23 of residents.

24 Finally, I am opposed to section
25 4659.0180, subpart 6. This is not necessary or

1 reasonable. Nighttime shifts should not be singled
2 out as the staffing plan is to take in account the
3 24 hour a day needs of residents who have
4 contracted for services. A requirement of a
5 10-minute response time appears to be arbitrary.
6 If it remains, I recommend keeping the as soon as
7 possible and to eliminate the no later than 10
8 minutes to account for emergency situations and
9 ability for staff to triage a situation and respond
10 accordingly and as timely as possible.

11 In conclusion, I want to thank you,
12 Your Honor, for my ability to offer testimony
13 today. I want to thank the Department of Health
14 for their work that has been poured in. And I want
15 to thank the other stakeholders who are
16 contributing to this dialogue. Thank you for your
17 time and consideration.

18 THE JUDGE: Thank you very much.
19 I appreciate it. You have submitted written
20 comments already?

21 MS. SAND: I will be submitting
22 those.

23 THE JUDGE: Okay. Thank you very
24 much. And please try to do it on the eComments
25 website. We appreciate it.

1 MS. SAND: Will do. Thank you.

2 THE JUDGE: Thank you. All right.
3 This turns us to I think Rom E. is next. And then
4 Michelle N. is next after that.

5 Madam operator, did we have any other
6 people joining us after Michelle?

7 MS. KNIGHT: I show no one else
8 from WebEx, nor do we have any additional calls
9 coming in. So those would be our last two.

10 THE JUDGE: Okay. Well, let's
11 forge ahead then with Rom.

12 MR. ELWOOD: Can you hear me?

13 THE JUDGE: Please speak up.

14 MR. ELWOOD: Hi. Can you hear me
15 now, Your Honor?

16 THE JUDGE: I can hear you. There
17 you are. Oh, you are not Rom. You are Ron. Okay.
18 Very good. All right. Can you see and hear me
19 okay?

20 MR. ELWOOD: I can, Judge.

21 THE JUDGE: Okay. You are a
22 little faint. But just speak loudly.

23 MR. ELWOOD: All right. I will
24 try to speak up. Is that better?

25 THE JUDGE: Yes. Or even move

1 closer to your microphone, your computer.

2 MR. ELWOOD: All righty. Thank
3 you.

4 THE JUDGE: Please start by
5 stating and spelling your first and last name.

6 MR. ELWOOD: My name is Ron
7 Elwood. R-o-n, first name. Last name is
8 E-l-w-o-o-d. I'm the supervising attorney of the
9 Legal Services Advocacy Project. Which is the
10 statewide division of Legal Aid that provides
11 legislative and administrative advocacy on behalf
12 of Legal Aid statewide.

13 Legal Aid provides free civil legal
14 services for low-income Minnesotans and elders and
15 persons with disabilities of any income. We have
16 an elder law project focused exclusively on the
17 population these rules are intended to protect.
18 And Legal Aid was one of the organizations named by
19 Governor Dayton for the consumer work group and was
20 one of the groups instrumental in crafting
21 legislative proposals both in 2018 and the 2019
22 proposals that eventually became the Elder Care and
23 Vulnerable Adult Act on which these rules are
24 based. And I personally was the representative for
25 Legal Aid on that group and throughout the

1 legislative process.

2 I want to first support the comments
3 both written and oral of the other consumer
4 advocacy organizations you have heard from today
5 and that have submitted written comments.

6 Today specifically with respect to
7 sections 4659.0120 and 4659.0210 we strongly
8 support these resident termination and discharge
9 planning procedures and appeals procedures rules as
10 they have been proposed. And we have submitted
11 written comments in this docket.

12 The comments that we submitted
13 provide mostly needed technical amendments to avoid
14 legal ambiguity in the areas I just mentioned. One
15 substantive comment that I would like to highlight,
16 however, is the one recommending an amendment to
17 clarify that any person of the resident's choosing,
18 not just a legal representative or a person
19 designated in the contract as they are provided in
20 the definitions can represent a resident in an
21 appeal if the resident can't represent themselves.

22 I also just want to more generally
23 emphasize the SONAR's discussion of the critical
24 need for these lease and service termination
25 protections. I quote. And I further want to note

1 that the rule specifically called for rulemaking in
2 the areas of procedures for terminations, discharge
3 planning and ensuring resident appeal rights.

4 Therefore, any suggestion to eliminate these rules
5 is simply not legally supportable. The legislation
6 specifically requires rules in these areas.

7 Further, the SONAR clearly identified
8 why these termination and discharge planning rules
9 are vitally important. As the SONAR lays bare the
10 existing, and I quote, "problem of inappropriate
11 and unsafe resident discharges in assisted living
12 facilities has only been exacerbated by the present
13 chaos of the pandemic."

14 The rules are necessary and reasonable
15 in providing important detail on exactly how
16 providers ensure termination is accomplished with
17 appropriate due process and that relocation of
18 vulnerable adults to a safe location and an
19 appropriate service provider is accomplished with
20 the least amount of transfer trauma.

21 These rules are not burdensome.
22 Rather, they provide necessary protections to
23 prevent arbitrary terminations and unsafe
24 relocations which were the fundamental drivers of
25 the law that precipitated this rulemaking.

1 In Legal Aid's experience, terminations
2 are not necessarily a last resort. And that is
3 precisely why the legislation was crafted as it was
4 and the rules are proposed as they are. The rules
5 are necessary because they ensure providers are
6 taking all of the needed steps to ensure that
7 resident health, safety and due process are
8 protected. Thank you.

9 THE JUDGE: Thank you very much.
10 One moment. Okay. Thank you very much,
11 Mr. Elwood. And that brings us to I believe our
12 final commenter here today. Is that right, madam
13 operator?

14 MS. KNIGHT: Yes, no new names as
15 of yet.

16 THE JUDGE: Okay. Michelle, are
17 you ready to go?

18 MR. BAULEKE: One moment. Just
19 going to find Michelle quickly.

20 THE JUDGE: No problem.

21 MR. BAULEKE: Okay. It looks like
22 we've got Michelle.

23 MS. NASH: Okay. Can you see and
24 hear me yet?

25 MR. BAULEKE: I believe we can

1 hear you. We cannot see you yet, Michelle. Do you
2 want to try clicking on your camera button that
3 will be next to your name in the panelists.

4 MS. NASH: I will certainly find
5 my name. I don't know where my name went. It
6 should be there.

7 MR. BAULEKE: It should be up now.

8 MS. NASH: Okay.

9 MR. BAULEKE: All right. We see
10 you.

11 THE JUDGE: Oh, there we go. I
12 can see Susan, but I can't see Michelle.

13 MS. NASH: All right. Do you want
14 me to speak so I come up?

15 THE JUDGE: All right. Now I see
16 you, Michelle.

17 MS. NASH: Okay, great. Do you
18 still see me?

19 THE JUDGE: Nope. There we are.

20 MR. BAULEKE: Just keep talking
21 and you will pop up.

22 THE JUDGE: Now, Michelle, can you
23 please state and spell your first and last name.

24 MS. NASH: Yes. It's Michelle,
25 M-i-c-h-e-l-l-e. Nash, N-a-s-h.

1 THE JUDGE: Very good. Please
2 proceed.

3 MS. NASH: I appreciate the whole
4 day and I'm going to try to keep it brief as I am
5 the last one. And you've heard a number of
6 comments that I would have commented on, so I have
7 been tweaking this thing all day so you don't have
8 to hear everything. And I do have it all in
9 eComments. So I've made my statements shorter,
10 just to draw attention to the smaller home
11 provider.

12 My name again is Michelle Nash. I
13 owned and operated three residential care homes
14 here in Minnesota for 12 1/2 years. I am a
15 licensed independent social worker. I have a
16 master's in policy, procedure and development and
17 have been in the senior care industry for 28 years
18 and dedicate myself to caring for older adults.

19 I have worked in the nursing home when
20 all of the new nursing home regulations changed
21 over. So I have been through that process, the
22 acute care, and now the home care arena with my
23 residential care homes.

24 I am currently a consultant in the
25 senior care industry and trying to help providers

1 provide the best quality of care possible to the
2 senior industry. I am driven to protect vulnerable
3 adults as they live out their last chapter of life.

4 In the 12 1/2 years that I owned Legacy
5 Care Home, we had no substantiated issues of abuse
6 and neglect. Not to say I haven't been through it
7 as a social worker both in the nursing home and in
8 other arenas. Certainly I know it is happening,
9 and agree with the rules and regulations to
10 structure and protect older adults.

11 I would like to speak on behalf, you've
12 heard it a couple of times today, from a family
13 member, but I am the president of the Residential
14 Care Provider Network which represents small
15 residential home settings. Again, multiple of us
16 small owners have submitted comments and they are
17 there. And I want to reiterate a few of the
18 speakers. Lindsey Sand put it fabulously just a
19 couple of speakers ago, Shauna and Josh. So I
20 won't restate theirs.

21 Residential homes just would like to
22 make it clear that these new regulations for
23 assisted living are certainly reasonable in nature,
24 but unreasonable for a small facility that only
25 serves six residents on average.

1 We are not zoned commercially. We are
2 zoned residential. So I have not been held to the
3 physical standards that are now being presented,
4 especially under the emergency preparedness. These
5 regulations were designed for commercial buildings
6 that would be housing a large number of people, not
7 a house setting for a small number of people.

8 Residential care has been providing
9 care under the comprehensive home care license, but
10 we have not been calling ourselves assisted living.
11 We are not marketing it as such, and so to
12 structure a residential care home we could not be
13 compared to the larger assisted living buildings.
14 We do fall closer to the 245D structure. But,
15 again, we don't fit perfectly there either due to
16 the number threshold on 245D.

17 The residential care providers are
18 small, but want their voices heard. I want to
19 thank you very much in advance for making sure to
20 read all of the comments through eComments. Thank
21 you.

22 THE JUDGE: Okay. Very good. And
23 I can assure you that I will be reading all of
24 those comments that are submitted as we proceed
25 here. So I'm going to ask operator Lynn, has

1 anybody else joined us today?

2 MS. KNIGHT: No.

3 THE JUDGE: Okay. Josh, Mr.
4 Skaar, if you can hear me, I guess I'm asking the
5 agency to weigh in. It has been my practice on
6 these kinds of rule hearings that when the last
7 person present speaks that that ends the hearing.

8 If you can remind me on the notice --
9 let me just look at the Notice of Hearing. Okay.
10 The notice says we go from 9:30 to 4:00 p.m. But I
11 think everybody has been heard today. And it's my
12 understanding that everybody who has been heard has
13 pretty much been on most of the day since 9:30 this
14 morning. Is that correct?

15 MR. SKAAR: That's what I gather,
16 too, Judge.

17 THE JUDGE: Cody, could you
18 confirm that.

19 MR. BAULEKE: Yes, we are sitting
20 around the same amount of people. Like at 115, 106
21 now. So people who have testified are now kind of
22 dropping off the call. But, yeah, we have been
23 sitting around the same amount of people the whole
24 day.

25 THE JUDGE: Okay. So we have a

1 larger number of people on the call or on WebEx or
2 on the phone than have spoken.

3 I'm going to give one last call to
4 anybody. Anybody else want to speak today? If you
5 want to, you need to immediately indicate that in
6 the WebEx chat. I'm going to give you a minute
7 while I continue to talk to do that. Otherwise, we
8 will adjourn for today and reconvene tomorrow at
9 9:30 in the morning. If anybody who is on this Web
10 hearing today or on the telephone knows of anybody
11 who was planning to come later, you will need to
12 tell them to come tomorrow or to join right now.
13 Because we will close out the hearing, unless there
14 is an objection by the agency to keep it open until
15 4:00. I would prefer not.

16 MR. SKAAR: I agree with that
17 plan, Judge.

18 THE JUDGE: And the reason we
19 won't just keep it open is we have a number of
20 people here from the department, we have a paid
21 Court Reporter and because, really, we have been
22 here since 9:30 a.m., so since most people would
23 have already joined.

24 It's now 1:34 p.m. There being no new
25 names in the chat box of people who want to speak,

1 we will adjourn today's hearing. For those who are
2 still on this, those of you who are still
3 participating in this hearing, please remember
4 those important deadlines of February 9 for
5 comments and February 17 for rebuttal. And we will
6 proceed again tomorrow at 9:30 a.m., again, with
7 the understanding that we will continue until the
8 last person present is heard. We won't stay on
9 when nobody is willing, is wanting to speak. Okay?

10 Anything further from the agency at
11 this point?

12 MR. SKAAR: No, Judge. I would
13 like to thank everybody for their time and for
14 participating in this process.

15 THE JUDGE: Exactly. Thank you
16 very much. It is so helpful to have the comments
17 from interested parties, members of the public. I
18 know that I will read all of the comments, but
19 putting a face to the comment and as I write and
20 listen I find it extremely helpful because my mind
21 takes in what I'm writing and it seems to absorb it
22 even better so then when I reread the comments
23 everything gels a little bit better. So you are
24 really providing a good public service here by
25 offering your comments. The agency will take all

1 of these things under consideration and then will
2 will respond to those comments.

3 So thank you for your time today. That
4 concludes today's hearing. Have a good rest of the
5 afternoon.

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7 (The Public Hearing adjourned at 1:36 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 I, SUSAN M. STROM, do hereby certify that
4 I recorded in stenotype the Public Hearing on the
5 foregoing matter on the 19th day of January, 2021;
6

7 That I was then and there a Notary Public
8 in and for the County of Dakota, State of Minnesota;
9

10 I further certify that thereafter and on
11 that same date I transcribed into typewriting under
12 my direction the foregoing transcript of said recorded
13 hearing, which transcript consists of the typewritten
14 pages 1 through 150.

15
16 I further certify that said hearing
17 transcript is true and correct to the best of my
18 ability.
19

20 WITNESS MY HAND AND SEAL THIS 22nd DAY OF
21 JANUARY, 2021.

22 _____
SUSAN M. STROM
23 Court Reporter
24
25