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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE  
MINNESOTA DEPARTMENT OF HEALTH

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In the Matter of:

Proposed Rules Governing Assisted Living  
Licensure and Consumer Protections for  
Assisted Living Residents, Minnesota Rules,  
Chapter 4659; Revisor's ID Number R-4605  
-----

OAH DOCKET NO. 65-9000-37175

VOLUME II

The Public Rulemaking Hearing in the  
above-entitled matter came on via WebEx before  
Administrative Law Judge Ann C. O'Reilly, taken  
before Barbara F. Schoenthaler, a Notary Public in  
and for the County of Washington, State of  
Minnesota, taken on the 20th day of January, 2021  
commencing at approximately 9:30 a.m.

## A P P E A R A N C E S

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## AGENCY PANEL:

JOSH SKAAR, MDH Attorney

LINDSEY KRUEGER, Program Manager, Home Care and  
Assisted Living ProgramAMY CHANTRY, Legal and Policy Advisor,  
Health Regulation DivisionAMY HYERS, Survey Supervisor, Assisted Living  
LicensureDAPHNE PONDS, Investigator Supervisor, Office of  
Health Facility ComplaintsMARIA KING, Assistant Program Manager,  
Licensing and Certification

BEN HANSON, Appeals Coordinator, Background Studies

JERI CUMINS, Survey Supervisor, Home Care and  
Assisted Living ProgramRICK MICHELS, Licensing and Enforcement Supervisor,  
Home Care and Assisted Living Program

ROBERT DEHLER, Program Manager, Engineer

MARK SCHULZ, Legal Specialist, Health Regulation  
DivisionJEREMY PEICHEL, Principle/Owner,  
Civic Intelligence, LLC

## I N D E X

	Page
1	
2	
3	PUBLIC COMMENTS:
4	
5	Ms. Aisha Elmquist ..... 171
6	Mr. Eilon Caspi ..... 177
7	Ms. Lores Vlaminck ..... 190
8	Ms. Lore Brownson ..... 211
9	Mr. Scott Carpenter ..... 218
10	Mr. Josh Berg ..... 234
11	Ms. Shelli Bakken ..... 244
12	Ms. Nancy Haugen ..... 249
13	Ms. Nancy Strandlund ..... 258
14	Ms. Kathryn Freimuth ..... 271
15	Mr. Eilon Caspi ..... 285
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1 P R O C E E D I N G S

2

3 THE JUDGE: Welcome, and thank you  
4 for taking your time to be here today to  
5 participate in this public rulemaking process.  
6 Today is January 20, 2021. It's 9:30 a.m. and we  
7 are here for a public hearing in the matter of the  
8 proposed rules of the Department of Health  
9 governing assisted living facilities, Minnesota  
10 Rules chapter 4659.

11 This matter will be referred to as OAH  
12 docket number 65-9000-37175. Please pay attention  
13 to these last five numbers, the 37175, as they will  
14 help you navigate the eComment website because  
15 that's the number that you'll look for to find  
16 these rules as opposed to others.

17 You should also use this OAH docket  
18 number if you submit comments by fax or mail  
19 because that will make sure that the comments get  
20 to me because that's a unique case number.

21 Next slide please. My name is  
22 Ann O'Reilly. I'm an administrative law judge with  
23 the Office of Administrative Hearings. The Office  
24 of Administrative Hearings is independent of the  
25 Minnesota Department of Health as well as the

1 groups or individuals that are participating in  
2 this hearing. The role of our office is to provide  
3 hearings that are fair to all of the participants.

4           Among the other directives from the  
5 legislature, specifically those in Minnesota  
6 chapter -- statutes, chapter 14, rulemaking  
7 hearings are conducted so that members of the  
8 public can be heard as part of the rulemaking  
9 process.

10           I'm here to ensure that there is  
11 procedural fairness, to ensure that we're courteous  
12 to each other so that all interested parties can be  
13 heard, and to draw out knowledge from as many  
14 voices as possible.

15           An underlying assumption of this process  
16 is that we rely on the wisdom of the group. Thus  
17 we're grateful that you are contributing your  
18 thoughts, experiences, and expertise in our  
19 formation of substantive rule.

20           The hearing is a process by which the  
21 rules are adopted under the Minnesota  
22 Administrative Procedure Act. During this  
23 rulemaking proceeding, the Department is required  
24 to, number one, document its statutory authority to  
25 adopt the proposed rules; number two, demonstrate

1 that it has fulfilled all relevant legal and  
2 procedural requirements of law; and, number three,  
3 demonstrate the need for and reasonableness of each  
4 portion of the proposed rules with an affirmative  
5 presentation of the facts.

6           Those are the three big issues I'm  
7 interested in reviewing as part of this proceeding.  
8 Now, some of you are here to express your thoughts  
9 or views on various parts of the rule, and that's  
10 certainly helpful to the Department and this  
11 process.

12           My job, however, is not to rewrite the  
13 rules based on views of participants or to select  
14 one set of proposed rules over another set of  
15 proposed rules. Rather, my job is to ensure that  
16 the statutory requirements are met for rulemaking.

17           The roadmap for this hearing will be as  
18 follows: After I complete my introductory remarks  
19 about the hearing procedure, we're going to turn to  
20 Josh Skaar of the -- he's an attorney for the  
21 Minnesota Department of Health, and he will  
22 introduce the panel who is here today and the  
23 exhibits that the -- oh, actually, he's already  
24 presented the exhibits yesterday.

25           We started this rule hearing yesterday

1 and we heard from Commissioner Malcolm, but today  
2 since we've already introduced all the exhibits,  
3 he'll just remind you as to where you can find  
4 those exhibits, and I'm going to tell you too.

5           So the next slide is a list of the  
6 panelists who are available here to answer your  
7 questions. You'll see the names of all of these  
8 individuals as well as their titles, and they're  
9 here if you have any questions or want  
10 clarification about something, they -- they can be  
11 heard.

12           Next is -- here on this slide is the  
13 link to where you can find all of the exhibits from  
14 this hearing, okay, because there are certain  
15 exhibits that the Department has already offered  
16 into the hearing record, and there they are and  
17 available. So Mr. Skaar is not going to be  
18 reintroducing them today. They're available to you  
19 for view on that Website.

20           Most of the hearing time has been  
21 allotted for questions and statements from members  
22 of the public. That's the key reason why we're  
23 here today.

24           There are two general ways that you can  
25 submit comments into the record. First, you can

1 provide oral comments here at the hearing, and  
2 second, you can submit written comments by our  
3 eComments website by mail or by fax, and you see  
4 those three ways of doing it.

5           We prefer -- the preferred method for  
6 submitting comments is through eComments, and the  
7 reason being is, number one, we're in a pandemic  
8 and there's limited staff to receive mail; but  
9 number two, eComments is a very slick system which  
10 our office has invested in for people to see  
11 comments in realtime as well as responses to those  
12 comments.

13           That way consider it a repository for  
14 all the comments that are coming in, and so  
15 comments that are mailed or faxed, they do go into  
16 eComments. It just takes more time. So we ask if  
17 at all possible, to use the eComments website, and  
18 I'm going to give you a quick tutorial later in  
19 this introduction.

20           Now, let's first discuss how to present  
21 oral comments at today's hearing. If you want to  
22 comment today, here's what you'll need to do.

23           For member WebEx video commenters, when  
24 you are called, hit the bottom -- I'm sorry. For  
25 WebEx video commenters, at the top of your screen,

1 if you hover over with your mouse, you'll see a  
2 little icon called "chat."

3 In that chat box please enter your first  
4 and last name and hit "enter" and that will go to  
5 the host. That will let the host know that you  
6 would like to get into the queue to speak.

7 So you might want to do that right now.  
8 Take a moment, put your name in there if you'd like  
9 to speak. The operator will use the names in the  
10 chat to call you to speak in the order in which  
11 your names were entered into the queue.

12 For telephone commenters, commenters who  
13 are appearing by InterCall only, okay, those who  
14 are not using WebEx, you have already been entered  
15 into the queue and in the order to speak, so you  
16 don't have to do anything further.

17 The operator, Lynn, will announce the  
18 speakers in the queue from both the telephone and  
19 WebEx in the order that they are entered into the  
20 queue. The operator will announce who's up to  
21 speak and who's also on deck as the next speaker.

22 That allows you to kind of get your  
23 thoughts ready, your papers ready, and know that  
24 you are going to be called after the current  
25 speaker.

1           For those attending by WebEx, please  
2 turn on your video, and you're going to do that by  
3 clicking the video comment icon next to your name  
4 in the participants box, so if you go into  
5 "participants," you look down, find your name and  
6 turn on your video when it's your turn to speak.

7           I like to see people when they speak.  
8 It's just -- it brings me back to face-to-face  
9 hearings. I think it is very helpful. And if you  
10 don't -- you don't have to. Nobody has to have  
11 their video on, but if you want to, I think it's  
12 helpful and I will keep my video on throughout this  
13 hearing.

14           When your name is called to be a  
15 speaker, please state and spell your first and last  
16 name. Identify the entity that you represent.

17           Now, remember that this hearing is being  
18 transcribed by a court reporter. Thus it's  
19 important to speak clearly and slowly and speak  
20 loud enough to be heard.

21           At some point you might hear Barb, our  
22 court reporter, or me interrupt you. We don't mean  
23 to be rude. We're just trying -- we just want to  
24 let you know if for some reason maybe you froze up,  
25 maybe we can't hear you very well, or maybe you're

1 going too fast.

2           The reason we do this is just to ensure  
3 that our record is as clear as possible because I  
4 look at this transcript after today's hearing. I  
5 take copious notes as we go along. You'll see me  
6 looking down. I'm writing as fast as I can, but I  
7 can't keep up with everybody as they speak, so I  
8 rely on that transcript to fill in the blanks in my  
9 notes, so that's why we're trying to make sure that  
10 the transcript is as clear as possible.

11           Now, remember that only verbal comments  
12 are taken into the record, so if something is not  
13 audible, for example, gestures or head nods, those  
14 types of not audible responses won't go into the  
15 record.

16           It's also helpful to spell any proper  
17 names or technical terms, to state an acronym if  
18 there's a term I might not be familiar with.

19           A rule hearing is similar to a  
20 legislative hearing or a meeting of a local board  
21 or city council. You will have the opportunity to  
22 speak and ask questions of other participants.  
23 This is a fairly informal process, but I'm here to  
24 ensure that we are courteous to each other and that  
25 we respect time limits to ensure that everybody

1 should be heard.

2           Today I don't believe there is going to  
3 be a need for time limits. Yesterday we didn't  
4 impose time limits. Sometimes when we have rule  
5 hearings where we have a lot of people who want to  
6 speak, I have to actually limit them.

7           I'm just asking that you be courteous  
8 and organized so that when it's your turn to speak,  
9 you can tell me the exact rule or rule parts that  
10 you support or object to and why. I think that's  
11 very helpful.

12           So I found yesterday it was really  
13 helpful if people would kind of delineate which  
14 rule parts by stating, you know, the exact number  
15 of the rule and then the subpart of the rule and  
16 then go from there.

17           Now, if you want to supplement your oral  
18 comments, you can certainly do so in writing with  
19 the eComments or you can send them or fax them, and  
20 I might even ask you if you're speaking here today  
21 and reading off of something, I might suggest to  
22 you to file them in eComments because sometimes  
23 you're just hitting the highlights, right, when  
24 you're here speaking, and it's helpful to get the  
25 more detailed written comments, so if you can efile

1 those through the eComments website.

2 Now, the next slides are a quick  
3 tutorial on using the eComments website, and I'll  
4 go through these fairly quickly.

5 You'll go to this website, it's  
6 [www.minnesotaoah.granicusideas.com](http://www.minnesotaoah.granicusideas.com), and when you  
7 get there, that website is going to look like this.  
8 Okay. The best that -- I think the easiest -- go  
9 to the next slide.

10 The easiest thing that I have found when  
11 working within this website is to either sign in or  
12 sign up right away. So if you've never been here  
13 before, you'll want to sign up. So you'll go to  
14 the signup and enter the information in the signup.

15 Once you've already been to this website  
16 and signed up, then you'll just go into sign-in in  
17 the future. So when you do the signup, you hit  
18 you're not a robot, and it will then -- next slide,  
19 please -- send you an email.

20 So you'll have to leave Granicus, go  
21 check your emails. You'll receive an email, and it  
22 will have a link in there that will say "click  
23 here." Double click on that "here," and it will  
24 take you then to this screen.

25 It will take you automatically back into

1 Granicus. You then go up into the left-hand corner  
2 and double click on "discussions." Next slide,  
3 please.

4 When you get to "discussions," you'll  
5 see a bunch of rules and you'll wonder at first  
6 "Well, hold on. Where's my rule?" and that's where  
7 that number 37175 comes into play.

8 So you'll scroll down. It's just a  
9 little bit of scrolling, and you'll see "37175,  
10 Department of Health, Notice of Hearing," and  
11 double click on "view discussions." That will take  
12 you to this slide.

13 So again, it will be confusing a little  
14 bit, so you scroll all the way down, right, and it  
15 will say "submit a comment," and you double click  
16 on "view topic," not particularly intuitive, so  
17 that's why I have you -- walk you through this.

18 You double click on "view topic" and it  
19 will bring you, next page, kind of back to the same  
20 screen, and you'll wonder "what? It's taking me  
21 exactly back to where I started."

22 Well, it didn't quite do that. If you  
23 scroll all the way down to the bottom of the page  
24 past everybody's comments, you'll see an empty spot  
25 for you. That's where you enter your comments.

1           You can either cut and paste from a  
2 different document you have and then paste it in  
3 there or you can attach a file, and you can attach  
4 more than one. Perhaps you have a letter. Perhaps  
5 you have a study or something else. You can attach  
6 those files, then hit "post," and that will  
7 automatically go into the eComments.

8           Next slide, please. And you can read  
9 everybody else's comments if you go above. So  
10 using the same process, you can go through and read  
11 all the other comments that have been filed as well  
12 as responses that have been filed to those  
13 comments.

14           What's important though that you  
15 remember is the initial comment period closes  
16 February 9, 2021. That means all comments must be  
17 received by 4:30 that day.

18           So if you put something in the mail,  
19 make sure it gets to us by February 9, 2021, same  
20 with fax. And if you submit your eComments, you'll  
21 know it's there because you'll see it posted.

22           Yesterday I issued an order to keep the  
23 hearing record open for this extra 20 days, so that  
24 brings us to February 9. Just if you're wondering  
25 where we came up with that date, it's 20 days from

1 today's date and that is the end of the official  
2 comment period.

3           After February 9, there will be a five  
4 working day rebuttal period for anything that was  
5 filed by 4:30 on February 9. That five-day period  
6 is meant for comments on -- is meant to reply to  
7 comments, not to introduce new matter. It's a  
8 rebuttal period.

9           You will have until February 17, 2021 at  
10 4:30 p.m. to make rebuttal comments, so keep that  
11 date in mind. It's five business days, and there's  
12 a holiday in there. That's why it's February 17.

13           After February 17, I'll prepare a report  
14 that contains my conclusions about whether the  
15 Department has met the statutory burdens in this  
16 matter, specifically whether the Department has  
17 documented its authority to enact the rule, whether  
18 the Department has fulfilled all of the required  
19 procedures, and whether the Department has  
20 demonstrated the need and reasonableness for each  
21 portion of the proposed rule.

22           You can expect my report in  
23 approximately 30 days from the last comment date,  
24 February 17, unless an extension is necessary. My  
25 report will be published on the OAH website on the

1 day it is issued, and there you can see that link  
2 for where the report will be, so very easy to  
3 access.

4 I just want to be clear about these  
5 deadlines because they're very important. Again,  
6 initial comments must be received by February 9,  
7 2021 at 4:30, and rebuttals must be received by  
8 February 17, 2021 at 4:30 p.m.

9 One final reminder. If you are a  
10 lobbyist, you must register with the Minnesota  
11 Campaign Finance and Disclosure Board. I'm  
12 required to let you know. That's their website  
13 there.

14 So now it's time to get into the queue  
15 to speak, if you wish to speak. Put your name into  
16 the chat and if, callers, you have any issues,  
17 remember to dial star zero. That takes you to the  
18 operator and the operator can assist you.

19 With that, I'm going to introduce  
20 Josh Skaar from the Department of Health.

21 MR. SKAAR: Good morning,  
22 Judge O'Reilly. Thank you for that. Again, my  
23 name is Josh Skaar, and that is spelled J-O-S-H,  
24 S-K-A-A-R. I am an attorney with the Department of  
25 Health and will be representing the agency at

1 today's hearing.

2 As Judge O'Reilly indicated, we have a  
3 panel assembled to answer any questions that may be  
4 directed at them. Judge O'Reilly had provided the  
5 name of our panelists in her slides.

6 You can find copies of these slides and  
7 our exhibits on our assisted living licensure web  
8 page that is identified in our notice of hearing  
9 for these proceedings.

10 From that page, you can find links to  
11 the judge's slides by clicking on "How to attend  
12 the assisted living licensure hearing" in the gray  
13 box toward the top of the page.

14 Our panel today is comprised of  
15 Department staff members and subject matter experts  
16 in their respective portions of the rules. In  
17 addition, as described in our Statement of Need and  
18 Reasonableness, we've invited Jeremy Peichel from  
19 Civic Intelligence, LLC to be present on our panel  
20 today to discuss his survey findings as they relate  
21 to these rules.

22 I'll point out again, as I did  
23 yesterday, that you don't need to worry about which  
24 of the panelists might be experts regarding the  
25 portion of the rule you're providing input on.

1           If you have a question to address to the  
2 panel, you can simply address that question to the  
3 Department generally and I will direct it to the  
4 appropriate panelist or panelists depending.

5           And I just want to echo part of what the  
6 judge, Judge O'Reilly, said with regard to  
7 submitting comments in writing today. If you have,  
8 you know, the ability, I'd really encourage you to  
9 do that. It's really helpful for us in our efforts  
10 to thoroughly respond to and consider your input  
11 that we have a written version of your oral  
12 statements.

13           But with that, I have nothing further,  
14 Judge, and I'm happy to open it up to public  
15 comment.

16           THE JUDGE: All right. Well, very  
17 good. So Operator Lynn, if you could tell me, kind  
18 of give me an idea of how many people you have in  
19 the queue today so I can think about, you know, how  
20 best to schedule this in terms of, you know, when  
21 our first break should be, if we need a lunch  
22 break, those types of things.

23           MS. KNIGHT: Yes. We have  
24 Aisha Elmquist up first. We have Eilon Caspi on  
25 the phone, and then I've got Lores Vlaminck on

1 WebEx, and that is all.

2 THE JUDGE: Okay. Very good. So at  
3 this time, I think we'll just go straight through.  
4 I should let everybody know, so if you know people  
5 who wanted to comment at this hearing and they're  
6 not here right now, you need to let them know that  
7 the hearing goes until the last speaker present has  
8 been heard or 4:30, whichever is later.

9 Now, in some hearings where you have so  
10 many people, we try to -- you know, we set time  
11 limits and get through everybody. But when there  
12 are only a few people present like here today, we  
13 actually end with the last speaker present.

14 So I kind of give a last "Anybody else  
15 want to speak? Anybody else want to be heard?"  
16 And if no one else is there, we adjourn the  
17 hearing.

18 So if you know of somebody who wanted to  
19 speak who's not here presently, you might want to  
20 send them a little note to get on right now. Now  
21 is the time to do it because we might not go past  
22 noon, if even, today given the number of speakers  
23 we have in queue at this moment.

24 So we'll begin with Aisha, and if I  
25 could have you please turn on your video, if you'd

1 like, and then start speaking so that will put you  
2 on my screen so I can see you.

3 MS. ELMQUIST: Great. Good morning.  
4 My name is Aisha Elmquist, A-I-S-H-A, last name  
5 E-L-M-Q-U-I-S-T, and I am deputy ombudsman with the  
6 Office of Ombudsman for Long-Term Care, and I will  
7 call our office OOLTC.

8 OOLTC submitted written comments online  
9 on January 18, and we may submit additional written  
10 comment on specific issues. My goal today is to do  
11 my best to provide a voice to what we at OOLTC have  
12 heard directly from residents.

13 OOLTC's mission and purpose is to  
14 directly advocate for residents. How we do that is  
15 described in more detail in our written comments,  
16 but we have regular interactions with residents  
17 throughout the entire state every day of the work  
18 week in assisted living.

19 What I can tell you from those  
20 interactions is that while the current system is  
21 working for some, there are those who it has  
22 failed, sometimes tragically.

23 When looking at these rules, we need to  
24 keep the resident at the center and elevate their  
25 voices. This is what OOLTC tried to do when we

1 were involved in helping to draft the Elder Care  
2 and Vulnerable Adult Protection Act that underlies  
3 the rules that this Court is considering.

4 I'd like to focus especially today based  
5 on concerns we've heard from residents on proposed  
6 rule 4659.0120, Procedures for Resident Discharge  
7 and Termination Planning.

8 Overwhelmingly, the direct advocates on  
9 our staff would tell you that discharges or  
10 terminations and discharge planning is one of the  
11 top concerns that we have about assisted living  
12 facilities.

13 In our last reporting year that spans  
14 from October 2019 to September 2020,  
15 termination-related complaints were the top  
16 complaint we received in assisted living  
17 facilities, and this is commonly among the top  
18 complaints that our office receives.

19 So what do these concerns look like in  
20 real life? It may be a resident who has a  
21 legitimate complaint about the lack of quality  
22 care. The resident complains and shortly  
23 thereafter receives a termination notice.

24 Or it may look like a resident with  
25 advanced dementia who lives in a secure dementia

1 unit. The resident's family may have been told  
2 that this facility was an expert in advanced  
3 dementia care.

4 As background, there are many such  
5 secure dementia care units in assisted living  
6 facilities throughout the state. Then the resident  
7 may wander or become agitated or engage in other  
8 common symptoms of advancing dementia and be handed  
9 a termination notice as a result.

10 When a resident of assisted living is  
11 given a termination notice, this is no small  
12 matter, especially if the resident has dementia.  
13 This could lead to a resident suffering significant  
14 transfer trauma.

15 It could lead to institutionalization,  
16 moving someone to a nursing home who desires and  
17 can remain in the community. It could lead to  
18 someone having to move far away from their loved  
19 ones or away from the town where they have lived  
20 their entire lives.

21 OOLTC has seen providers who do an  
22 excellent job with person-centered care and rarely  
23 carry out a termination. For these providers, the  
24 proposed rule should have minimal additional burden  
25 because the termination process is used

1 infrequently and many of these steps may be taken  
2 anyway as a best practice.

3 But for those providers who are not  
4 living up to this standard, and in our experience  
5 this happens more frequently than it should, these  
6 protections are critical to fulfilling the  
7 legislative intent of the underlying statute,  
8 including person-centeredness, quality of life,  
9 resident choice, and public health and safety.

10 Finally on this point, it's important to  
11 note that nothing in this rule takes away the  
12 ability under statute to relocate a resident on an  
13 emergency basis if there is a true safety threat to  
14 the resident or to someone else at the facility,  
15 which is detailed in our written comments.

16 There are many other issues I could  
17 focus on today, but I'd like to talk about just one  
18 more, which is staffing, which is primarily dealt  
19 with under proposed rule 4659.0180.

20 Staffing is a critically important issue  
21 in assisted living. It is also among the top  
22 complaints that OOLTC receives from residents. Our  
23 work with residents shows staffing levels in some  
24 assisted living facilities can be insufficient.

25 Now, the proposed rules do not mandate

1 any particular staffing ratio. This makes  
2 transparency especially important as to staffing  
3 levels. This transparency helps to promote  
4 informed choice by consumers as well as safety.

5 I have a personal example of this issue  
6 as I had a family member in assisted living in  
7 Minnesota who had an emergency and there was only  
8 one nurse's aide on duty at the time for  
9 80 assisted living residents.

10 OOLTC sees instances like this too often  
11 in our casework. For example, a case of only one  
12 unlicensed personnel on duty for five separate  
13 assisted living buildings on a campus.

14 Transparency about staffing levels and  
15 proper planning for staffing will help ensure that  
16 there is not just person-centered staffing in name  
17 but in practice.

18 One area related to staffing that has  
19 received a great deal of attention in this hearing  
20 is related to staffing schedules and posting of  
21 staff information that is described in the proposed  
22 rule.

23 For example, the rule requires that a  
24 clinical nurse supervisor develop a 24-hour  
25 staffing schedule and post it in the facility.

1 There has been discussion that these postings would  
2 violate privacy laws or cause other issues.

3 We would like to draw the Court and the  
4 Department of Health's attention to this statute --  
5 I'm sorry -- this regulation, 42 CFR 483.35 which  
6 does require the posting of some staffing  
7 information in nursing homes.

8 This regulation shows that the posting  
9 of certain staffing information can occur and work  
10 in a way that does not violate privacy rights.

11 And while assisted living facilities are  
12 not nursing homes and shouldn't be treated as such,  
13 nursing home residents are also valuable people  
14 with a variety of rights, including the right to  
15 privacy and the right to access the community, and  
16 there is still the ability to post some basic  
17 staffing information for the safety and benefit of  
18 residents.

19 We would encourage that even if some  
20 parts of the staffing requirements as drafted in  
21 rule are changed, it is not done by simply deleting  
22 parts of the rule.

23 The rule must reflect the importance of  
24 staffing levels and transparency to all the goals  
25 underlying the statute, including

1 person-centeredness, quality of life, resident  
2 rights, and safety.

3 Thank you so much for considering my  
4 comments today.

5 THE JUDGE: Thank you very much.  
6 I'm just going finish my notes here. Thank you for  
7 your time today, Aisha.

8 Now let's turn to -- is it Eilon, Eilon?  
9 And if Eilon would do the same and -- is Eilon  
10 appearing by phone?

11 MR. CASPI: Hi. This is Eilon.  
12 Thank you.

13 THE JUDGE: Eilon, very good. And  
14 then before Eilon begins, we have I think it's  
15 Loes. Is it Loes will be on deck. Very good.  
16 So, Eilon, if you could please state and spell your  
17 first and last name.

18 MR. CASPI: My first name is Eilon.  
19 My last name is Caspi. My first name is spelled  
20 E-I-L-O-N, as in Nancy. My last name is spelled C,  
21 as in cat, A as in apple, S as in Sam, P as in  
22 Paul, I.

23 THE JUDGE: Very good. Please  
24 proceed, Eilon.

25 MR. CASPI: Thank you, Your Honor or

1 Judge O'Reilly for the ability to provide this  
2 input today. Background about myself, I worked my  
3 entire adult life in the aging field, 27 years to  
4 be exact.

5 I started working as a nursing aide in a  
6 nursing home where my grandfather lived. I since  
7 worked as a social worker in a nursing home,  
8 consultant with families of elders with dementia,  
9 an educator, applied researcher in assisted living  
10 and nursing homes, and also a care and elder rights  
11 advocate.

12 THE JUDGE: Sir, I don't mean to  
13 interrupt you, but I am going to just because I'm  
14 having trouble keeping up with you when I write,  
15 and I suspect our court reporter probably is too.  
16 So if you could do me a favor and just slow down so  
17 I can keep up with you; okay?

18 MR. CASPI: Sure. Thank you.

19 THE JUDGE: Thank you.

20 MR. CASPI: My research studies  
21 focus on the prevention of various forms of elderly  
22 treatment in nursing homes and assisted living  
23 residences.

24 For example, I recently examined 300 MDH  
25 investigation reports that were substantiated

1 neglect resulting in serious bodily injury and  
2 death in assisted living residences and nursing  
3 homes in Minnesota.

4 I was also on the research team that  
5 conducted the study culminating in the report  
6 entitled "Inhumane and Deadly Neglect Revealed in  
7 State Assisted Living Residences," which was  
8 instrumental in passing the assisted living  
9 licensure.

10 Some of my comments are general and  
11 overarching. They cut across key principles and  
12 underlying the assisted living rulemaking process.  
13 My hope is that they will enable to establish a  
14 more balanced picture and narrative of the care  
15 situation on assisted living grounds.

16 My first two comments may not have a  
17 specific clause in the assisted living statute as  
18 they are generally a response to important comments  
19 made yesterday by representatives of the long-term  
20 care industry.

21 My first comment relates to the notion  
22 "Let's not making assisted living an institution  
23 like nursing homes." In efforts to promote  
24 assisted living, the representative of the  
25 assisted -- of the nursing care industry have

1 regretfully dismissed, devalued, and perpetuated  
2 the stigma associated with nursing homes as  
3 institutions providing essentially worthless  
4 services and that all are bad places for elders to  
5 live in.

6 That I believe is a problematic and  
7 unhelpful public health message. I am not here to  
8 suggest that there are no serious systemic  
9 care-related problems in nursing homes. There are.

10 However, this claim that if we regulate  
11 assisted living with basic safeguards against  
12 mistreatment and other sources of preventable harm  
13 will create a new institution like nursing homes is  
14 largely an unbalanced and misleading narrative  
15 we've heard over and over in recent years.

16 I want to ask us to remember: Why are  
17 we here today? What has brought us here? How many  
18 of us know that allegations of mistreatment and  
19 other licensing violations in assisted living in  
20 the state of Minnesota have mushroomed 5.5 fold  
21 between fiscal year 2011 and 2018, specifically  
22 from 1,293 in fiscal year 2011 to 7,144 allegations  
23 in fiscal year 2018?

24 How many of us have read the hundreds of  
25 MDH investigation reports substantiated as neglect

1 in assisted living in recent years? These reports  
2 detail the traumatic but preventable injuries and  
3 tragic deaths in this care setting.

4 How many of us know that this is only a  
5 fraction of what actually happens in assisted  
6 living as the vast majority of neglect and abuse is  
7 never reported to MDH for various reasons such as  
8 fear of retaliation.

9 Even if all the proposed changes  
10 contained in the new assisted living licensure  
11 statute would be approved without a single item  
12 being rejected, it would still at best represent  
13 only up to about 5 to 10 percent of the regulations  
14 in place in CMS certified nursing homes.

15 So no, passing adequate and responsible  
16 and ethical safeguards to protect very vulnerable  
17 and frail population with complex healthcare  
18 conditions in assisted living as specified in the  
19 assisted living statute will not necessarily make  
20 assisted living an institution, again, will not  
21 necessarily make assisted living an institution  
22 like a nursing home. In fact, it would enable to  
23 ensure that assisted living are safer care homes.

24 Related to that, I personally prefer to  
25 live in an nursing homes that looks like a hospital

1 and actually have the safe what I call  
2 people-to-people ratios, also called staffing  
3 level, at all times, active presence of adequate  
4 number of registered nurses and licensed practical  
5 nurses and managers, robust staff training, warm  
6 approach by staff, person-directed care, which is  
7 different than person-centered care, adequate risk  
8 assessment and individualized care planning  
9 policies and procedures, transparency and  
10 accountability.

11 All are basic measures that are entirely  
12 missing in many assisted living in the state.  
13 Things, including meaningful protection against  
14 wrongful admissions and evictions.

15 And please do not be misled by assisted  
16 living that looks like hotels but has very little  
17 to do with being user friendly; that is, elder  
18 friendly and dementia friendly. This I'm afraid is  
19 part of a strategic deceptive marketing practice  
20 that has gone unchecked and unregulated in assisted  
21 living in our state since the first assisted living  
22 was registered in our state many years ago.

23 Despite the significant decline in the  
24 number of nursing homes in our state in recent  
25 years, this critical segment of the long-term care

1 sector will continue to serve an important role in  
2 our state in the future.

3           If we are truly committed to the health  
4 of our entire spectrum of long-term care services,  
5 it is our duty, I believe, to support, elevate, and  
6 strengthen this sector, not bash and stigmatize it.

7           Let's stop exploiting the misleading  
8 term "institution" as a fear-mongering strategy  
9 aimed at blocking crucial, if not life-saving,  
10 basic protections for vulnerable and frail elderly  
11 in assisted living residences.

12           Being a representative of the long-term  
13 care industry means that you need to represent and  
14 support the entire spectrum of the long-term care  
15 industry, which include nursing homes that struggle  
16 to provide adequate and safe care.

17           My second comment has to do with an  
18 important but often overlooked distinction between  
19 the overly used term "choice" versus "informed  
20 choice." The term "choice," which we heard again  
21 and again yesterday, has been knowingly overused  
22 and misused by the representatives of the long-term  
23 care industry.

24           Choice is an important principle in the  
25 assisted living model, but when assisted living

1 largely operates in the dark with extremely low  
2 transparency, in effect, the term rings hollow.

3 I have recently put together a document  
4 identifying 70 pieces of essential information that  
5 we don't know about assisted living in Minnesota.  
6 I would like to submit it with my written comments.

7 How can an elder for his care or his  
8 family make a good choice when there's such lack of  
9 basic information regarding assisted living care  
10 settings? An example is the misleading, unfair,  
11 and deceptive marketing practices that are so  
12 common in the assisted living sector in Minnesota  
13 that they became the norm.

14 Some of these practices could be  
15 described as outright fraud. This pressing issue  
16 is directly tied to wrongful admissions and the  
17 fact that we've allowed assisted living to operate  
18 their scope of practice; that is, admitting elders  
19 with complex healthcare conditions that the  
20 assisted living residence has no capability of  
21 caring for adequately and safely.

22 Your Honor Judge O'Reilly, I urge you to  
23 consider using the term "informed choice" and  
24 ensure that the rulemaking consists of substance  
25 that render this term practically meaningful.

1           The word "choice" is also inappropriate  
2 in the context of a large number of residents in  
3 advanced stages of dementia. We know that  
4 nationally 50 percent of assisted living residences  
5 have -- residents have dementia and 70 percent have  
6 some level of cognitive impairment.

7           Yeah, many people in advanced stages of  
8 dementia can still make some simple choices when  
9 the right dementia-friendly conditions are created,  
10 but to suggest that people in advanced stages of  
11 dementia are fully capable of making choices in all  
12 care-related circumstances is a recipe for a gross  
13 neglect of healthcare.

14           In addition, the idea that residents in  
15 advanced stages of dementia simply live in their  
16 own apartment and can safely make their own choices  
17 under all circumstances is not only -- is nothing  
18 short of fiction, although a dangerous -- the  
19 dangerous kind, one that has already contributed to  
20 hundreds of preventable serious bodily injuries and  
21 death in assisted living in recent years.

22           My third comment has to do with  
23 staffing, specifically 4659.0180, or what I prefer  
24 to call safe people-to-people ratios. These are  
25 people caring for people. By far the number one

1 systemic issue in nursing homes and assisted  
2 livings for decades has been staffing levels.

3 Numerous research studies established  
4 the relationship between low staffing levels and a  
5 series of poor quality of care outcomes, this  
6 including mistreatment such as neglect of  
7 healthcare as well as state survey deficiency  
8 citations.

9 I can talk about this issue for hours,  
10 but I want to leave you with two reflection  
11 questions on this comment. Why is it that we  
12 continue to disregard the science on this crucial  
13 point? The evidence that adhering to minimum  
14 staffing levels in better qual -- results in better  
15 quality of care and lessens treatment is  
16 overwhelming.

17 Yes, there are serious workforce  
18 problems that need to be fixed urgently as well as  
19 heterogeneity across assisted living and varied  
20 acuity levels that need to be addressed but still.

21 My second reflection question is why is  
22 it that we have state regulated and enforced  
23 minimum staffing ratios in child care settings in  
24 Minnesota? Allowing assisted living to operate  
25 without minimum staffing levels not only represents

1 a blatant form of ageism, dementism, and sexism, if  
2 you want the classes divided also a form of sexism,  
3 but for all practical purposes, leaving it to the  
4 discretion of owners of largely for-profit assisted  
5 living chains and Real Estate Investment Trusts,  
6 also called REIT, give a green light for continued  
7 systemic neglect of healthcare of very vulnerable  
8 and frail residents with complex healthcare  
9 conditions in the fast-growing for-profit, largely  
10 for-profit care setting.

11 My fourth point then has to do with  
12 initial assessment and continuing assessments,  
13 specifically 46 -- again 4659.0140. The topic here  
14 is nursing profession and medical profession I  
15 believe are largely missing in action in many  
16 assisted living residences across the state of  
17 Minnesota.

18 The overwhelming evidence of neglect of  
19 healthcare in assisted living across Minnesota  
20 strongly suggests an urgent need to fully integrate  
21 the nursing profession with adequate numbers and  
22 active presence of RNs on-site and medical  
23 profession physicians such as geriatricians into  
24 the assisted living model.

25 How many of us know that approximately

1 70 pers -- 75 percent of 300 MDH investigation  
2 reports substantiated as neglect resulting in  
3 serious bodily injury and death prior to the  
4 pandemic were determined by MDH investigators to be  
5 the sole responsibility of the long-term care home.

6 Key examples of critical but largely  
7 missing nursing assessments in many assisted living  
8 in the state of Minnesota include issues with  
9 adequate preadmission assessment of the person's  
10 care needs, assessment during admission, and  
11 development of individualized care plans, updating  
12 the care plans after a significant change in  
13 condition is a largely ignored area, general risk  
14 assessments, and timely and skilled interventions  
15 and emergency medical services that are provided in  
16 a timely manner.

17 Otherwise, affordable neglect of  
18 healthcare will continue to injure and kill scores  
19 of vulnerable and frail elderly in this long-term  
20 care setting in the coming years.

21 My fifth and last comment, and I  
22 appreciate your patience, I know it's long, has to  
23 do also with staffing, 4659.0180. It has to do  
24 with call lights or when residents call for help,  
25 for staff help when they're in great need.

1                   How would you feel if you were an old  
2 person who was physically frail with advanced  
3 stages -- in advanced of dementia? Your adult  
4 Depends are soiled with bowel movement, you  
5 repeatedly call for staff help to assist changing  
6 you, but no one comes to help you for extended  
7 periods of time.

8                   You stand up and you walk to the  
9 bathroom, fall on your face and hitting your body  
10 hard on the floor. You break your hip and sustain  
11 brain injury and internal bleeding in your brain,  
12 which is extremely, extremely painful.

13                   You somehow manage to press the call and  
14 press the call light but no one comes. How many  
15 minutes would you want staff to be expected to come  
16 and help you?

17                   These are my comments today. Thank you  
18 for the opportunity to provide this feedback.

19                   THE JUDGE: Very good. Thank you.  
20 Thank you, sir. And you will be submitting -- are  
21 you still there, Eilon?

22                   MR. CASPI: Yes.

23                   THE JUDGE: Will you be -- you have  
24 submitted or you will be submitting these written  
25 comments today; is that correct?

1 MR. CASPI: Yes. Yes, I will submit  
2 the comments shortly after the hearing.

3 THE JUDGE: Very good. And if you  
4 can on eComments, that would be very helpful.  
5 Thank you very, very much.

6 MR. CASPI: Okay. Thank you,  
7 Your Honor.

8 THE JUDGE: All right. And I  
9 believe is it Lori or Lores, the next individual.

10 MS. KNIGHT: Lores is next and then  
11 on the phone, Andem.

12 THE JUDGE: Okay. Very good.  
13 Lores, you're on WebEx. I'm wondering if -- are  
14 you going to be on video? If you want to be on  
15 video, click that video icon, and you could speak,  
16 then I could see you.

17 MS. VLAMINCK: Right. I want to be  
18 on video, but I'm seeing it's not connecting me at  
19 this moment for some reason.

20 THE JUDGE: Okay. Hold one moment.  
21 I'm wondering if you could assist --

22 MS. VLAMINCK: I'm sorry.

23 THE JUDGE: -- us here. No, just  
24 let's take a second here. Cody is going to assist  
25 us. He's our resident expert on WebEx.

1 MS. VLAMINCK: He's your guru.

2 MR. BAULEKE: Yes.

3 THE JUDGE: Yes.

4 MR. BAULEKE: So you found the  
5 camera icon; correct?

6 MS. VLAMINCK: I had, yes.

7 MR. BAULEKE: Okay. Are you in like  
8 the full screen view with like the full screen of  
9 the video or are you in that kind of like normal  
10 white screen where there is like the three buttons  
11 and then everything else is kind of on the right  
12 side?

13 MS. VLAMINCK: What I'm getting is a  
14 message that say that the Web cam -- is the Web cam  
15 installed properly.

16 MR. BAULEKE: Oh, okay.

17 MS. VLAMINCK: Should I -- it  
18 says --

19 MR. BAULEKE: I'm not sure that  
20 there is anything we can do through the WebEx.  
21 That has to be something with your personal  
22 computer unfortunately.

23 MS. VLAMINCK: That is crazy. Okay.

24 MR. BAULEKE: Sorry about that.

25 MS. VLAMINCK: Maybe should -- do

1 you have somebody else in queue and I could log out  
2 and log back in again or should I go ahead with  
3 just audio?

4 THE JUDGE: Lores, why don't we do  
5 this: Why don't we take Andem first, the next  
6 caller, you log out and log back in and see if  
7 that --

8 MS. VLAMINCK: Perfect.

9 THE JUDGE: -- reboots your  
10 computer. You'll miss out on his comments, but at  
11 least -- I would love to have you on video if you  
12 can do it, and it might just be a weird connection  
13 and you just need to go out and come back in from  
14 the very beginning.

15 MS. VLAMINCK: Okay. I will do  
16 that. Thank you. I will be right back with you.

17 THE JUDGE: Okay. Very good.

18 MR. BAULEKE: Thanks Lores.

19 MS. VLAMINCK: Thank you.

20 THE JUDGE: Okay. So we're going to  
21 turn to Andem on the phone, I believe.

22 MS. KNIGHT: That's correct.

23 THE JUDGE: Do we have Andem on the  
24 phone?

25 MS. UMOH: Yes, I'm on the phone.

1 THE JUDGE: Okay. Hold one moment,  
2 please, call-in commenter. If I could have your  
3 first and last name spelled, please.

4 MS. UMOH: First name is A, as in  
5 apple; N, as in Nancy; D, as in David; E, as in  
6 Ester; M, as in Mary. And the last name is U, as  
7 in us; M, as in Moses; O, as in Oscar; H, as in  
8 house.

9 THE JUDGE: Very good. Please  
10 proceed.

11 MS. UMOH: Yes. So I'm calling in.  
12 Actually, providing housing with services, and we  
13 are calling in to listen and to hear the new  
14 guidelines and the contribution. I really didn't  
15 have much in terms of contributing. We just want  
16 to learn and to update whatever changes that are  
17 required.

18 THE JUDGE: Okay. There's no  
19 requirement that you give a comment, and you're  
20 certainly welcome to just listen and hear this  
21 proceeding. You should be advised that the final  
22 rules will not -- you know, the process is I review  
23 the rules pursuant to the statutory requirements  
24 and the rule requirements, and then I make a rec --  
25 I give a report that is if I approve the rules.

1 That goes directly to the agency and they can then  
2 publish and proceed with the rules.

3 I believe in this case, there will be --  
4 the agency has notified since the time the rules  
5 were published, okay, the proposed rules were  
6 published, they have made some changes, but as long  
7 as those changes aren't substantial or that they  
8 are within the nature of the kind of changes one  
9 would expect in these kind of hearings, then they  
10 can be approved, right, so I have to look at those  
11 kind of changes too.

12 So right now the proposed rules are  
13 slightly different. They're different from how  
14 they were initially published. The agency has  
15 submitted an exhibit, I believe, with some proposed  
16 changes to what they had proposed, and there could  
17 potentially be more proposed changes that the  
18 agency makes. There's a special review process for  
19 that.

20 And then after I give my report, if I  
21 find -- if I disapprove portions of it, it goes to  
22 the chief judge for review, and then there's a  
23 certain timeframe in which the Department can go  
24 back and make changes or accept things or, you  
25 know, make revisions, or if they're just approved

1 as is, it goes to the agency then to publish and to  
2 adopt.

3           So we have a little ways from today's  
4 date to the final rules, so as a provider, you're  
5 going to want to keep track of this and what's  
6 going on and then pay very close attention to those  
7 final rules as they come out because the final  
8 rules may be different from those that they have  
9 published earlier. Does that make sense?

10           MS. UMOH: Yes, it does.

11           THE JUDGE: Very good.

12           MS. UMOH: Yes. Yes.

13           THE JUDGE: Would you like to make  
14 any other public comments or do you want to just  
15 listen? It's all up to you.

16           MS. UMOH: Yes, I would like to just  
17 listen, and if I have any further comments, if  
18 given another chance, I would make it.

19           THE JUDGE: Very good. And so at  
20 the very end of the hearing I'm going to ask  
21 everybody, "Is there anybody here who would like to  
22 be heard? Please indicate that."

23           I'm wondering -- Operator Lynn, how  
24 would she indicate if she wants to speak if she's  
25 calling on InterCall? She should probably press

1 star zero and let the operator know?

2 MS. KNIGHT: Or star one.

3 THE JUDGE: Star one, okay. And if  
4 you decide that you want to speak again, press star  
5 one; okay? Ma'am, did you hear me?

6 MS. UMOH: Star one if I need to  
7 speak again. Yes, I can hear you.

8 THE JUDGE: Wonderful. Wonderful.  
9 Well, thank you very much. Just feel free to  
10 continue listening and being a part of this  
11 hearing. Thank you for your attendance today and  
12 your interest in the rules. I'm wondering if Lores  
13 has --

14 MS. UMOH: Thank you.

15 THE JUDGE: Thank you. I'm  
16 wondering if Lores has been able to rejoin us yet?

17 MR. BAULEKE: Lores is back, so  
18 let's give her another try here.

19 THE JUDGE: Okay.

20 MS. VLAMINCK: But, you know, I seem  
21 to be having trouble with my Web cam. I'm so  
22 sorry.

23 THE JUDGE: No problem. I can hear  
24 you loud and clear, so if you don't mind --

25 MS. VLAMINCK: Well, thank you.

1 THE JUDGE: -- proceeding orally,  
2 that would be great.

3 MS. VLAMINCK: Thank you. You know,  
4 everything works up until the moment, so I  
5 apologize for that, but, Your Honor, good morning  
6 to you.

7 THE JUDGE: Thank you. If you could  
8 please state and spell your first and last name for  
9 the record and then proceed with your comments.

10 MS. VLAMINCK: I sure will. My name  
11 is Lores Vlaminck. That is spelled L-O-R-E-S, last  
12 name Vlaminck with a V-L-A-M-I-N-C-K.

13 And I am joining you today as the  
14 principal consultant owner of my own consulting  
15 firm which is called Lores Consulting. I have two  
16 RN subcontractors, but I have been providing  
17 consulting as a sole proprietor and then joining  
18 these subcontractors for 16 years.

19 So I want to just give a little bit of  
20 background and to the extent of my comments today.  
21 As a professional RN, I am very vested in this  
22 information and the rule changes and the proposals,  
23 but of a personal note, my parents experienced  
24 three months living in an assisted living and  
25 passing one year ago within 11 weeks of each other.

1           And they had wonderful, wonderful care  
2 from the assisted living staff as well as the  
3 hospice, and thankfully it was before the COVID  
4 restrictions so our family could be very, very  
5 involved in caring for them, and I believe that's a  
6 wonderful way in which end-of-life care can happen  
7 within assisted living.

8           But I would like to start by  
9 acknowledging the many, many hours of time and  
10 effort that has been spent on drafting Minnesota  
11 chapter 4659, the rules, the listening, the reading  
12 of our subsequent comments that are going to be yet  
13 submitted and responding to them.

14           We really need to get this right. I  
15 believe that to the core of my being. There's a  
16 lot of things that I've heard in the last day, will  
17 hear again yet today, and comments that will be  
18 read, reviewed, et cetera.

19           And from this standpoint, I'd like to  
20 just throw in a bit of history. I'm proud to have  
21 been a registered nurse for 44 years, and part of  
22 the reason I'm testifying today is I didn't hear a  
23 lot of testimony from RNs, and this rule is so  
24 embedded with the assessment skills, the knowledge  
25 and the competence of an RN who is delegating so

1 many of the practices to unlicensed staff, to LPNs,  
2 to other individuals, and so therefore I said I've  
3 got to throw my hat in the ring and take the risk  
4 of expressing what I feel is really imperative.

5 My experience as a nurse spans intensive  
6 care, outpatient clinics, working greater  
7 Minnesota, and most important to this conversation  
8 I was the founder and director of a home health and  
9 a hospice agency for 19 years.

10 And I've been around, Your Honor, long  
11 enough prior to even licensure for home care in  
12 Minnesota. And I remember sitting around, you  
13 know, meetings with the Department and Department  
14 of Human Services and talking about how do we  
15 license home care.

16 And so we came up with sort of, if you  
17 will, the alphabet soup with Class A and B and D  
18 and then subsequently F and then the comprehensive  
19 home care rule and now looking at the assisted  
20 living rule.

21 You might think that I'm old, but I'd  
22 like to just say I'm sage. And throughout all of  
23 this time, you know, the core of my being has been  
24 to promote excellence in the care that we provide,  
25 no matter who is providing it.

1           I sought my nursing advanced degree in  
2 nursing education with my masters because I really  
3 wanted to best represent my passion. I currently  
4 serve on three large Minnesota-based not-for-profit  
5 boards that serve residents through their skilled  
6 nursing homes and assisted living.

7           Pertinent to my testimony today,  
8 however, I have spent the last 16 years providing  
9 consultation to assisted livings, hospice, and home  
10 care agencies in Minnesota.

11           Of those three entities, I spend the  
12 most hours in a year in assisted living communities  
13 in Minnesota providing regulatory audits while  
14 mentoring and coaching the nurses and the staff who  
15 are acclimating the world of assisted living.

16           My assisted living communities vary in  
17 the fact that they may serve four residents in a  
18 residential setting, as we heard yesterday, to  
19 hundreds residing in a multistory facility.

20           Not only does each assisted living  
21 setting present unique opportunities, but the  
22 residents residing in the assisted livings vary in  
23 ages, in clinical, social, and mental health needs.

24           And I am glad it is not a cookie-cutter  
25 approach because an expert in the provision of

1 assisted living is going to craft the education,  
2 the competency to meet the needs of their  
3 residents.

4           We heard a lot yesterday about  
5 person-centered, resident-centered care, and this  
6 is not a new concept to me. It was introduced in  
7 the late 1980s as a philosophy of care that was  
8 built around the needs of the individual, and it  
9 was contingent upon knowing the person through an  
10 interpersonal relationship.

11           And meeting that person where they're at  
12 requires time, requires a lot of listening and  
13 engagement. And person-centered or  
14 resident-centered care really challenges the  
15 traditional medical model of care that tends to  
16 focus on processes, schedules, and staff, and  
17 organizational needs.

18           So I will say that on a daily basis, it  
19 challenges me as I try to sort out the regulatory  
20 requirements the agency must adhere to to that of  
21 resident autonomy because sometimes there are  
22 conflicts with the resident's informed choice that  
23 may not be, if you will, a safe choice.

24           So my first comments I had to look at  
25 the nursing assessment tool, which is 4659.0105,

1 subdivision 2, the uniform assessment tool.

2           Anyone that knows me would know that I  
3 am passionate about nursing assessments and  
4 clinical competence as the priority in the delivery  
5 of excellence in all of our care.

6           I'm supportive of the identification of  
7 the assessment elements in the proposed rule, but I  
8 am going to be submitting a request for some  
9 modification.

10           While the rule states that we must  
11 develop a uniform tool with the following  
12 14 elements, our residents don't always come to us  
13 as great historians. And some of the components  
14 require that we review their therapy visits or  
15 their radiology reports or their lab reports, and  
16 quite honestly, some of our residents don't  
17 remember if they've had a physical therapy visit or  
18 who their physician was or perhaps they've not seen  
19 a provider in a great deal of time.

20           Many of them come from -- many of our  
21 residents are admitted from private homes to our  
22 assisted livings with poorly documented health  
23 histories, and so sometimes it's really a work in  
24 progress as we get to know our residents.  
25 Sometimes we don't know about their unsuccessful

1 previous living arrangements because that might be  
2 information that is withheld from us.

3 So I will be, Your Honor, submitting  
4 detailed recommendations that I hope will clarify  
5 the elements required in this tool.

6 I would like to also comment about some  
7 of the staffing requirements that have already been  
8 identified under 4659.0180, subpart 4 and  
9 subpart 6.

10 Many comments have been made about the  
11 posting of the daily work schedule that includes  
12 the fact that it may not protect personal health  
13 information, the schedule changes frequently.

14 But I'd like to add another problematic,  
15 as I see, requirement that states the daily work  
16 schedule must be posted in a central location on  
17 each floor of the facility.

18 I have one facility that serves persons  
19 in 22 stories, so I had to try to imagine how would  
20 that posting of the shift schedules be made  
21 available on all 22 stories every eight hours.

22 And so while we might not always think  
23 about the differences in our assisted living  
24 settings, we really are trying to craft a rule that  
25 is applicable to, as I've stated earlier, a

1 four-resident home-like environment to a large  
2 building in which services may be provided to  
3 individuals living on various floors.

4           Also under this particular item,  
5 4659.0180, subpart 6, the response to the  
6 individual request, and I believe there will be  
7 some opportunity for us to come up with some common  
8 language, but one of the first things that I looked  
9 at was what is magic about the hours of 10 p.m. to  
10 6 a.m.

11           And again, as was alluded to yesterday,  
12 I am in the assisted livings, and I know for a fact  
13 unexpected things happen. We might have in the  
14 middle of our planned day a resident collapse and  
15 staff is with that resident, perhaps administering  
16 CPR until EMS arrives, perhaps it is assisting  
17 somebody with incontinency and they're in the  
18 middle of a shower or the middle of toileting, and  
19 so the ten-minute response may be through the  
20 verbal response versus an on-site response, which  
21 is problematic again when I'm thinking of a  
22 22-story building, ten minutes, and what does that  
23 mean.

24           And while I understand there's no excuse  
25 for somebody remaining on the floors, as was

1 described on the earlier testimony, for hours  
2 without a response, I think there needs to be a lot  
3 more clarification and work around what is a  
4 reasonable response by our staff and how can they  
5 communicate with those individuals that are seeking  
6 a request for assistance.

7           We also know that some of our residents  
8 will turn on or push their pendant light because  
9 they want the window shades readjusted. That's a  
10 little bit different than the request for "I need  
11 to go the bathroom."

12           And so considering all of those types of  
13 things I think really need to be at play as we look  
14 at the rule because I also know that any rule that  
15 is adopted is something that the providers will be  
16 held to, so we want to have the comments now.

17           The next area that I'd like to comment  
18 on is the initial assessments and continuing  
19 assessments under 4659.0140, subpart 7, the weekend  
20 assessments.

21           And I remember certainly at a point in  
22 our history in Minnesota in which nursing homes  
23 really didn't accept new admissions on weekends.  
24 It was kind of a Monday through Friday kind of  
25 event, and of course we know that that has changed

1 and hospitals are anxious to have persons  
2 discharged from that acute care setting. Most of  
3 our residents want to go back to the location in  
4 which they feel most supported or perhaps have the  
5 most independence or privacy.

6           Problematic under subpart 7 would be the  
7 question that it says "An assisted living facility  
8 must be able to conduct a nursing assessment during  
9 the weekend for a resident."

10           So one of the clarifying factors I'd  
11 like to ask is that for an existing resident that  
12 has been in my building and has gone to the  
13 hospital for an acute care stay and who is ready to  
14 be discharged or is this for a resident who is new  
15 to me which I've not had a chance as an RN to do  
16 the premove-in assessment?

17           I'm assuming since the word is  
18 "resident," that it would be applicable to an  
19 existing resident who has been hospitalized who is  
20 ready to be discharged and returned to the  
21 facility.

22           But also I don't know how this could be  
23 clarified, but it may be the RN assessment would  
24 also indicate that the resident will not be able to  
25 come back to the previous assisted living as the

1 condition may have changed substantially during the  
2 hospitalization and the RN is bound to look at her  
3 current -- her or his current staff to be sure that  
4 she has sufficient numbers and qualifications to  
5 meet the updated and current needs of the client.

6 I also am assuming, but again this would  
7 require clarification, the RN assessment, as  
8 indicated earlier, would be done face-to-face or  
9 can this RN assessment be done virtually on a  
10 weekend. So clarification I will be requesting in  
11 my written comments.

12 My last comment, and I probably will  
13 have more, Your Honor, would be 4659.0100, the  
14 emergency disaster and preparedness plan.

15 While referenced in a number of  
16 testimonials yesterday, I would like to strongly  
17 suggest that we look carefully at imposing federal  
18 guidelines on Minnesota licensed assisted living  
19 because we know the unique entities and it would  
20 seem to be an overreach in an overarching  
21 encumbrance on the variety of houses and structures  
22 of our assisted living in Minnesota.

23 I know that personally, even despite and  
24 in the middle of the COVID crisis, some of the CMS  
25 regulations that were, if you will, enacted in our

1 nursing homes in Minnesota, there was always that  
2 "Now, does this apply also to long-term care  
3 facilities that are called assisted livings or  
4 not?"

5           And I think there are unique  
6 opportunities for us to revisit the emergency  
7 preparedness requirements the Department of Health  
8 had proposed and look at some of the guidance from  
9 CMS to say what is truly applicable in all settings  
10 versus let's just use the Center for Medicare and  
11 Medicaid's guidance in all of our assisted livings.

12           So with that, I would like to close and  
13 say I think it is such a privilege and an honor  
14 that we get to have the opportunity and the  
15 privilege to respond to rules, to offer our public  
16 comments, and to be a part of this rule moving  
17 forward.

18           And I would like to thank you,  
19 Your Honor, for your time and attention, and I  
20 apologize for not being able to see you as I talk  
21 because it's not near as much fun to speak to, you  
22 know, a computer screen, and so I want to again  
23 thank you so much.

24           THE JUDGE: Well, very good. Thank  
25 you. This is what makes the rulemaking process so

1 good is getting the viewpoints from all interested  
2 parties and coming together and sifting through  
3 the -- looking to see what difficult provision --  
4 what provisions should be, et cetera. So thank you  
5 very much for your time.

6 I'm going to ask Operator Lynn, is there  
7 anybody else who has joined us today?

8 MS. KNIGHT: Yes. We're going to  
9 have four additional people.

10 THE JUDGE: Okay. Let me look at  
11 the time. All right. So if you could -- let's --  
12 if you could just list, give me their first and  
13 then last initial to make it easier.

14 MS. KNIGHT: We have Lore Brownson  
15 who is back again today. Then we'll have Scott  
16 Carpenter. Josh Berg is also returning from  
17 yesterday, and then Shelli Bakken.

18 THE JUDGE: Okay. So I'm wondering,  
19 why don't we do this: Why don't we take -- we'll  
20 have Lore B. go next and then maybe take a  
21 ten-minute break to give our court reporter a hand  
22 break, right, because her fingers get -- they get  
23 tired.

24 So we'll have Lore B. Then we're going  
25 to take a ten-minute break and return with Scott C.

1 Okay. So Lore B., you've been through this before.  
2 If we could have you -- I assume you're on WebEx.  
3 If I could have you put on your video, that would  
4 be helpful.

5 MR. BAULEKE: Lore should be good to  
6 go now.

7 THE JUDGE: Very good. Lore, I'm  
8 going to have you state and spell your first and  
9 last name again. We have a new court reporter  
10 today.

11 MS. BROWNSON: Judge, can you hear  
12 me?

13 THE JUDGE: I can. I can't see you.

14 MS. BROWNSON: Okay. So I will -- I  
15 have it turned off. Can you see me now?

16 THE JUDGE: I can see you now. Very  
17 good.

18 MS. BROWNSON: Sorry, Judge. Are we  
19 taking a break or am I proceeding?

20 THE JUDGE: We're going to go with  
21 you, and then we're going to take a ten-minute  
22 break after you because that will probably get us  
23 to the 11 o'clock hour, and we'll take a ten-minute  
24 break. Then we'll probably go up to -- you know,  
25 see if we can get the rest of the speakers. If we

1 have more speakers join, we'll take a lunch break  
2 around 12:30.

3 MS. BROWNSON: Very good. Thank  
4 you. Good morning, Judge O'Reilly. For the record  
5 my name is Lore --

6 THE JUDGE: Okay. Thank you.

7 MS. BROWNSON: For the record, my  
8 name is Lore spelled L-O-R-E, Brownson,  
9 B-R-O-W-N-S-O-N. As I testified yesterday, I hold  
10 a bachelor of science degree in nursing and have  
11 worked in healthcare for close to 40 years.

12 I worked as a registered nurse for ten  
13 years in an acute care space, hospital setting. I  
14 later obtained a law degree in 1997 and worked as  
15 healthcare regulatory counsel for a national  
16 Fortune 500 long-term care company in which I  
17 provided legal support to the company's skilled  
18 nursing facility and rehabilitation services  
19 division.

20 I joined New Perspective, a  
21 Minnesota-based senior living provider and member  
22 of Care Providers of Minnesota six years ago as  
23 senior vice president, quality services and chief  
24 compliance officer.

25 New Perspective owns and operates

1 assisted living communities in Minnesota,  
2 Wisconsin, Illinois, and North Dakota.

3 As I concluded in my testimony  
4 yesterday, I also have had a parent who for years  
5 resided in assisted living and skilled nursing  
6 facilities.

7 Your Honor, I appreciate the opportunity  
8 to testify today on proposed rule -- Minnesota rule  
9 4659.0180, staffing. I first, however, want to  
10 acknowledge and thank MDH for its work on this  
11 critical and landmark law.

12 Turning to the proposed rule, subpart 3A  
13 mandates that a clinical nurse supervisor defined  
14 in subpart 2 as a role that may also fulfill any  
15 responsibilities that a registered nurse is  
16 required to perform at the facility under Minnesota  
17 statutes 144G.

18 Subpart 3 mandates that the clinical  
19 nurse supervisor is responsible for developing and  
20 implementing a written staffing plan that provides  
21 an adequate number of qualified direct care staff  
22 to meet the residents' needs 24 hours a day, seven  
23 days a week.

24 As referenced in subpart 2, the clinical  
25 nurse supervisor may also fulfill any

1 responsibilities of a registered nurse. A  
2 registered nurse serving in long-term care has many  
3 responsibilities to include training and delegating  
4 and evaluating staff.

5 In addition, the registered nurse is  
6 responsible for resident assessments, developing  
7 service plans, conducting care conferences and  
8 quality audits, the list goes on, all of which  
9 require the skills of a licensed nurse.

10 Presently for many providers, staff  
11 scheduling is the responsibility of a separate  
12 often full-time role. The staff scheduling role is  
13 one of the most challenging in the community  
14 because of the fluidity and demands of the staffing  
15 process.

16 A registered nurse with the addition of  
17 staff scheduling responsibilities will be diverted  
18 from the many essential duties that require and  
19 warrant the skills of a licensed clinician.

20 Developing a staffing plan that schedules staff  
21 that the registered nurse has trained, delegated,  
22 and evaluates does not require the skills of a  
23 licensed clinician.

24 As for the cost that would come with  
25 implementation of this rule, adding staff

1 scheduling responsibility to a registered nurse  
2 would require hiring an additional registered nurse  
3 to cover non-staff scheduling responsibilities, the  
4 cost of which would be 30 plus dollars per hour for  
5 on average 20 plus hours a week. I will add that I  
6 know that MDH --

7 THE JUDGE: Hold on. Hold on.

8 Ms. Brownson, I -- you have broken up a couple of  
9 times. I don't know if it's me or if it's your  
10 Internet, but the last thing I got was will cost to  
11 have an RN at \$30 an hour, an additional cost to do  
12 staffing.

13 MS. BROWNSON: I will repeat,  
14 Your Honor.

15 THE JUDGE: Okay.

16 MS. BROWNSON: As for the cost that  
17 would come with implementation of this rule, adding  
18 staff scheduling responsibilities to a registered  
19 nurse would require hiring an additional registered  
20 nurse to cover non-staff scheduling  
21 responsibilities, the cost of which would be  
22 30 plus dollars per hour, or on average, 20 plus  
23 hours a week.

24 I will add that I know that MDH  
25 appreciates the challenges and implications of the

1 shortage of licensed clinicians in Minnesota and  
2 nationwide.

3           Subpart 4 of the rule requires the  
4 clinical nurse supervisor develop a staffing plan  
5 to include direct care staff work schedules for  
6 each direct care staff member, showing all work  
7 shifts, including days and hours worked.

8           Under B, the plan must be posted at the  
9 beginning of each work shift in a central location  
10 on each floor of the facility assessable to staff,  
11 residents, volunteers, and the public.

12           I have addressed the diversion from  
13 clinical responsibilities and the cost that this  
14 rule would create. I am also very concerned about  
15 the requirement to publicly post staff names and  
16 resident assignments. There are privacy and  
17 operational concerns to this unreasonable and  
18 burdensome requirement.

19           Further, I know of no healthcare setting  
20 that requires a public posting of employee names  
21 for any purpose. As presented in testimony  
22 yesterday, individuals, regardless of the  
23 appropriateness of doing so, will reference the  
24 posting for reasons that may in worst case  
25 scenarios disrupt resident care.

1           I cannot help but speak to an event in a  
2 skilled nursing facility that I supported as  
3 in-house counsel where a CNA was gunned down in a  
4 stairway and killed by her domestic partner after  
5 the perpetrator searched the facility floor by  
6 floor to find her.

7           Other incidents of menacing of  
8 employees, to include by family members of  
9 residents, occur. As a general practice,  
10 healthcare providers do not have the staff member's  
11 last name on their name badge for general privacy  
12 purposes.

13           Employee's first name followed by any  
14 credentials, from my experience, is the norm for  
15 staff badges. Staff names and other information is  
16 readily available to State and others who need this  
17 information upon request.

18           The requirement of subpart 5 requires  
19 that two direct care staff be scheduled and  
20 available for scheduled and unscheduled needs.  
21 Staffing is developed based on the level of care  
22 required by residents. Adding in a requirement to  
23 anticipate unscheduled needs will challenge  
24 staffing to meet this requirement.

25           Subpart 6 of the rules requirement for a

1 call response time of ten minutes is arbitrary and  
2 prevents staff from appropriately managing and, for  
3 emergencies, triaging care needed by residents.

4 I recommend disapproving of this  
5 arbitrary timeframe and instead require response  
6 within a reasonable time. For the reasons  
7 provided, I respectfully request you disapprove  
8 rule 4659.0180, subparts 2 through 6. Thank you,  
9 Your Honor.

10 THE JUDGE: Okay. Thank you very  
11 much for your comments today. Why don't we go do  
12 this: Why don't we take a ten-minute break. First  
13 I want to ask Operator Lynn, we have three people  
14 in queue. Have we had more people added to the  
15 queue?

16 MS. KNIGHT: Yes. We've had Ophelia  
17 join the phone.

18 THE JUDGE: Okay. So we'll put  
19 Ophelia on the list as well. So let's take a  
20 ten-minute break. We'll return at 11 -- let's just  
21 say 11:15. Then what we'll do is we'll go until  
22 12:30. If we haven't heard from everybody -- we'll  
23 depend on how many people are there whether or not  
24 we'll take a lunch break and what time.

25 Does that work or does anybody need a

1 lunch break at noon? Okay. So why don't we do  
2 this: We'll stand in recess for the next ten  
3 minutes or so. Let's return at 11:15. Thank you.

4 (At this time a brief recess was taken.)

5 THE JUDGE: Let's go back on the  
6 record. We've had about a 15-minute break. We're  
7 back on the record and we're starting with  
8 Scott Carpenter. If you can please state and spell  
9 your first and last name.

10 MR. CARPENTER: Happy to do so. So  
11 my name is Scott, S-C-O-T-T, Carpenter,  
12 C-A-R-P-E-N-T-E-R, and I'm joining you this morning  
13 not as an expert in assisted living. I am not  
14 educated in this area. I don't work in that area,  
15 so I'm joining the conversation as a member of the  
16 general public, but one who has had a long  
17 education through the college of hard knocks, I  
18 guess I would say, with assisted living in the  
19 metro area.

20 So it has to do with my mother-in-law  
21 and father-in-law having been in two different  
22 assisted living facilities. My mother is currently  
23 in an assisted living facility. My brother was in  
24 assisted living until the time of his death, and my  
25 wife is currently in assisted living, so I have

1 some broad experience of it.

2 And in particular, I would like to  
3 address the, I guess, third purpose of the hearing  
4 which, as you described this, Your Honor, has to do  
5 with the need for and the reasonableness of the  
6 proposed rules and regulations.

7 Many of the people who have spoken  
8 before me have already addressed the importance of  
9 recognizing the variety of facilities and contexts  
10 that one finds in assisted living in the state of  
11 Minnesota, and my comments go in that direction.

12 I think it is important to recognize in  
13 particular the crucial services provided by small  
14 facilities. My wife is currently living at Breck  
15 Homes, which is a small residential care facility  
16 in Bloomington.

17 These are customized, well-staffed,  
18 high-touch facilities that really provide an  
19 excellent environment for many individuals. Of  
20 course every case is different, but we've had a  
21 very good experience there.

22 So in particular, I'm hoping that the  
23 rules and regulations can recognize the various  
24 needs of facilities with serving different publics  
25 and facilities of different sizes so that not all

1 facilities are pressed into one Procrustean bed and  
2 that we're able to recognize their special needs.

3 In particular in the rules and  
4 regulations, I'm concerned about issues that might  
5 force unreasonable costs upon small facilities and  
6 often costs that would have -- would provide no  
7 real benefit, I think, to the residents.

8 In particular, so I'll just mention two  
9 sections, one is section 4659.0100 of the proposed  
10 regulations. It's the section entitled Emergency  
11 Disaster and Preparedness Plan; Incorporation by  
12 Reference.

13 I know that some others have spoken to  
14 this issue before, but I'll just mention that there  
15 is a way in which additional regulations are looped  
16 into the current proposal by way of footnotes and  
17 references to appendices.

18 In particular, there are several  
19 provisions of the CMS Appendix Z, which is referred  
20 to on pages 13 and 36, that could place an undue  
21 burden on smaller facilities. In particular, the  
22 need for the installation of expensive sprinkler  
23 systems in facilities that are typically so small  
24 they would pose no particular difficulty for  
25 evacuation; need for alternative energy sources,

1 which again would be the overkill in many small  
2 facilities to provide generators and other such  
3 equipment; emergency lighting systems, not just  
4 handheld but installed systems, and a number of  
5 other costly requirements that would really only be  
6 suitable for larger facilities.

7 My guess is that this is mostly an  
8 oversight, that the rules as cited in Appendix Z  
9 are painting with a broad brush, but maybe now that  
10 we have the opportunity to provide comments and  
11 feedback, it would be possible to use a somewhat  
12 smaller brush to paint things differently for these  
13 different facilities.

14 My second point is referred to on  
15 page 10 in the introductory portion of the rules  
16 and regulations. Point 2 of the regulation states  
17 that the Department will then implement the  
18 proposed rules with money collected through fees as  
19 provided under statute.

20 This refers then to Minnesota statute  
21 144.122 which sets the fee for assisted living  
22 facilities with dementia care at \$3,000 plus \$100  
23 per resident. This represents a substantial  
24 increase in licensing fees.

25 Again for painting with a broad brush,

1 applying the same fees for very small assisted  
2 living facilities that may have five, six, or seven  
3 residents and applying the same fee schedule that  
4 would be used for much larger facilities.

5           So that represents the gist of my  
6 comments. I guess my questions are simply whether  
7 or not I have understood this correctly that those  
8 sorts of fees and conditions are applied as they  
9 appear to be.

10           I have also looked at the modified rules  
11 and regulations, the modifications that were  
12 proposed. I could see nothing there addressing any  
13 of this, so I thought it might be worth repeating.  
14 And if I have understood this correctly, I would be  
15 happy to hear some explanation of the need for and  
16 the reasonableness of these provisions applying to  
17 these very small facilities. Thank you. That's  
18 it.

19           THE JUDGE: Okay. Well, there were  
20 two things that you had mentioned that you'd like a  
21 response from. Would you like to ask a question of  
22 any of the panel members? We can start with the  
23 first question with respect to the fees that are  
24 referenced in page 10 of the SONAR, S-O-N-A-R.

25           MR. CARPENTER: Yeah, so I'm not

1 sure. I think you mentioned at the beginning of  
2 the hearing that we don't need to necessarily  
3 identify which panelist would be appropriate to  
4 answer it, but I would love to hear back about  
5 whether or not I have understood that that fee  
6 structure would apply and, if so, if there's some  
7 explanation of why that fee structure would apply  
8 to the smaller establishments.

9 THE JUDGE: Okay. Let's start with  
10 that one. Then you had a second question, I think  
11 it's a related question, about the effect on small  
12 facilities. So let's do this: Let's -- you stay  
13 on your video, stay on here. We're going to have  
14 Mr. Skaar identify which panel member would  
15 probably be best to address Mr. Carpenter's concern  
16 and questions.

17 MR. CARPENTER: Thank you.

18 MR. SKAAR: Hello, Your Honor. I  
19 think you all can see me here. So I just wanted to  
20 be sure that I understand Mr. Carpenter's  
21 questions.

22 You -- it sounds like the question is  
23 you want to know whether the fee structure that in  
24 statute is applied broadly, small and large built  
25 facilities alike, and then why. Is that the

1 question?

2 MR. CARPENTER: Right. That's the  
3 question with respect to the fee structure, and  
4 then a similar question with respect to some of the  
5 requirements for the emergency preparedness  
6 installations as outlined in Appendix Z, CMS  
7 Appendix Z.

8 MR. SKAAR: Okay. And if you could  
9 just bear with us real quickly. I just want to --

10 MR. CARPENTER: Sure.

11 MR. SKAAR: -- make sure that we get  
12 the right person to respond to your questions.

13 Okay. So I would say first with respect  
14 to fees, it is a structure that will apply broadly  
15 across the board. There's calculations therein,  
16 per-resident calculations for the amount of those  
17 fees, but the rule does not make exceptions or  
18 variation based on the size of the facility, and  
19 that was not unintentional.

20 And I think the reason for the fee  
21 structure generally is that it is -- that's in  
22 statute, and so it is -- you know, the extent to  
23 which we could upset that through rulemaking is  
24 narrow.

25 So to the extent -- and, sir, I guess I

1 would ask if that does not fully respond to the  
2 question, you give us an opportunity to just follow  
3 up in writing in case I got any of that wrong.

4           With regard to the emergency  
5 preparedness, I'm actually going to ask Maria King  
6 to address that, your concern with -- your  
7 understanding of, I think it was, you know,  
8 sprinklers, generators, and emergency lighting are  
9 required and if those requirements apply with equal  
10 force to smaller facilities.

11           THE JUDGE: Okay. And the  
12 individual, the panelist, please state and spell  
13 that panelist's name again. Well, let's just have  
14 that panelist come on and identify herself and her  
15 position. That would be helpful just for the  
16 record.

17           MS. KING: Okay. Good morning. Can  
18 you hear me all right?

19           THE JUDGE: I can. We can't see  
20 you. Oh, there we are. We've got you.

21           MS. KING: Okay. Good morning. I'm  
22 Maria, M-A-R-I-A, King, K-I-N-G. I'm an assistant  
23 program manager with the licensing and  
24 certification section of the health regulation  
25 division.

1           And just to respond to the question that  
2 we just received from Mr. Carpenter, I think that  
3 one of the things that you wanted to be aware of is  
4 what was required. The emergency lighting, fire  
5 detection, extinguishing, alarm systems, and sewer  
6 and waste deposal only apply if codes require them.

7           An emergency generator right now is not  
8 a requirement in an assisted living facility, but  
9 the facility has to have a plan in place that  
10 addresses alternate sources of energy for  
11 temperatures in the facility; emergency lighting;  
12 fire detection, extinguishing, and alarm systems;  
13 and sewage and waste disposal to be able to ensure  
14 that there's a safe method for the persons in these  
15 settings to be -- receive care. I'm hoping that  
16 that answers your question.

17           THE JUDGE: I didn't understand what  
18 you said. I guess what I heard you say is that  
19 these requirements are only required if code  
20 requires that for the building, but then I thought  
21 your second sentence said yes, they are required.  
22 So I'm unsure. Can you explain it to me better?

23           MS. KING: Sure. Facilities have to  
24 have a plan in place to be able to meet the needs  
25 of the persons living in their facilities, and an

1 emergency generator is not a requirement in an  
2 assisted living facility.

3           However, the facility does have to have  
4 systems in place that address making sure that they  
5 have an ability to provide safe living situations,  
6 such as heating, water, and those types of things,  
7 emergency lighting, those kinds of things, which  
8 would be able to be met without having an emergency  
9 generator in place.

10           There are two types of facilities in the  
11 Appendix Z that must have an emergency generator  
12 and those are the skilled nursing facilities and  
13 hospitals. Otherwise, it is not a specific  
14 requirement necessarily for an assisted living  
15 facility certainly and for some of our other  
16 federally certified entities.

17           THE JUDGE: And so the other  
18 requirements that he talked about, sprinkler  
19 system, emergency lighting, that would only be  
20 required if code requires it?

21           MS. KING: Right. Because  
22 they're -- and actually, I'm -- I'm going to ask to  
23 call a friend. I'll have Bob Dehler who can speak  
24 more to the codes in these settings. Bob Dehler,  
25 are you available? Could you just address that

1 piece, please?

2           And then I just want to add that we do  
3 have some smaller federally certified facilities,  
4 intermediate care facilities, some of them are four  
5 beds, that also follow these same requirements.

6 Bob, I'll pass this to you. Thank you.

7           MR. DEHLER: Thank you, Your Honor.  
8 My name is Bob Dehler, B-O-B, D-E-H-L-E-R. I am  
9 the engineering manager at the Minnesota Department  
10 of Health in the health regulation division. Could  
11 I -- could I get the question repeated, please?

12           THE JUDGE: I'm not sure whose  
13 question you're asking about. I guess my question  
14 was about -- I'm not certain I really understood.  
15 The commenter's concern is that the Department is  
16 incorporating by reference the CMS Appendix Z which  
17 is applicable to nursing homes, okay, and they're  
18 saying it doesn't take into account that assisted  
19 living homes are different than the nursing homes.

20           They have a different type of  
21 population. They serve a different type of  
22 population, and they vary in size greatly with lots  
23 of them being small and that imposing the  
24 Appendix Z requirements on the -- by incorporating  
25 by reference these Appendix Z requirements, that it

1 is an undue burden on small facilities.

2           And he identified just a couple things.  
3 He identified the -- the commenter, Mr. Carpenter,  
4 identified specifically sprinklers, emergency  
5 lighting, emergency generators, so I believe that  
6 Maria King, Ms. King, she said no, you're not  
7 required to have a generator, but you still need to  
8 have a plan for if the lights go out. How do you  
9 continue feeding the individuals? How do you make  
10 sure that they're warm if the heat goes out?

11           How do you -- you know, like you need a  
12 plan to have all of these things in place, right,  
13 should the place get flooded, should the lights go  
14 out, should the electricity be shut off, should the  
15 air-conditioning not work, should the heat not  
16 work.

17           Okay. So she said that, and then she  
18 referred to you with respect to building codes  
19 because she had indicated with respect to  
20 specifically sprinklers and emergency lighting that  
21 building code requirements applicable to the  
22 facilities would apply.

23           For example, I don't -- you know, there  
24 might be some -- I don't know specifically, might  
25 be some grandfathered-in clauses, facilities that

1 are grandfathered-in in building codes that might  
2 or might not have sprinklers, so I think she  
3 referred to you to talk about the building code  
4 aspect.

5 MR. DEHLER: Thank you, Your Honor.  
6 Yes, the emergency preparedness requirements really  
7 just ask for a plan, and the requirements in that  
8 just -- you just need to have a plan. And  
9 sometimes facilities, even assisted living  
10 facilities right now, they have chosen to have a  
11 generator. If they have a generator, then they  
12 have to maintain it as such.

13 There are some codes that do require  
14 emergency lighting. Those are generally for larger  
15 facilities that have corridors and a large number  
16 of rooms that they need to evacuate.

17 Generally the concern is with these  
18 small facilities. The small facilities, you know,  
19 like a typical home where they've got five  
20 residents would not require emergency lighting,  
21 would not generally require sprinklers or really  
22 don't have a lot of extra requirements in them;  
23 however, they still would have to have a plan. You  
24 know, what would they do in a power outage? What  
25 would they do if they lost their water, et cetera?

1 THE JUDGE: Okay. Mr. Carpenter,  
2 does that answer your question?

3 MR. CARPENTER: I can't -- I think I  
4 can't speak. I'm muted I believe.

5 THE JUDGE: No, you're not muted.

6 MR. CARPENTER: Oh, okay. Great.  
7 Yeah, so that's very helpful on that point. I  
8 wanted to ask a follow-up question just about the  
9 fee structure, so it does seem to me that the --  
10 that there's a cutoff, I believe, after four beds  
11 that the licensing structure, the fee structure is  
12 different, and there is this very considerable leap  
13 in the fee structure when one goes beyond that.

14 It seems an arbitrary division, and I  
15 just worry that it's going to price some facilities  
16 out because the jump is so large. There is -- as  
17 was commented, there is a small portion of the fee  
18 structure that is per resident, but for a small  
19 facility, the vast proportion of the fee structure  
20 is a per establishment fee.

21 I realize that these structures cover  
22 things like inspections and other forms of  
23 verification, but these too will be very rapid --  
24 rapidly handled for small facilities, so I guess  
25 I'm still curious about the need for and the

1   reasonableness of this very substantial jump in fee  
2   structures for smaller facilities that surpass  
3   slightly the four-bed maximum.

4                   MR. SKAAR:   This is Josh Skaar  
5   again, and I'll just respond quickly with something  
6   that I failed to mention earlier, like most  
7   responses to your comments, which is that if you  
8   consult Exhibit L reflecting the modifications that  
9   the agency had proposed to its proposed -- or  
10  proposed to make to its proposed rules, within that  
11  we have actually withdrawn that fee rule which was  
12  4659.0070 because in the seventh special session of  
13  the legislature last year, that was adopted into  
14  statute almost verbatim from the rule, but that is  
15  now a statutory requirement, and fees are set by  
16  statute, so they are, I would say, outside the  
17  scope of this rulemaking at this point,  
18  notwithstanding the, you know, rightness or  
19  wrongness of your comments.

20                   MR. CARPENTER:   Thank you very much.

21                   THE JUDGE:   Okay.   So I think to  
22  make it real clear and simple, I think the  
23  Department is saying if there are concerns or  
24  disagreements with the fee structure, how the money  
25  is collected, how much money is collected, how it

1 is, you know, appropriated among the various kinds  
2 of facilities, that's an issue for the legislature,  
3 not for them. It's not subject to this rulemaking  
4 proceeding is the bottom line. Is that correct,  
5 Mr. Skaar?

6 MR. SKAAR: Yes, Judge.

7 THE JUDGE: Okay.

8 MR. SKAAR: Yes, Judge. I would  
9 just simply say we can't -- yeah, we can't affect  
10 the statute, whether that's right or -- that's good  
11 or bad. We just said it's for the legislature  
12 rather than the Department.

13 THE JUDGE: Okay. Okay. Anything  
14 else, Mr. Carpenter?

15 MR. CARPENTER: No. Thank you very  
16 much. I appreciate the opportunity.

17 THE JUDGE: Okay. Thank you. Now  
18 let's -- thank you very much for your comments,  
19 Mr. Carpenter. We're going to turn to Josh B.  
20 Josh Berg is -- spoke yesterday. If we could have  
21 Mr. Berg please rejoin us on the video.

22 MR. BAULEKE: I believe Mr. Berg  
23 should be good to go.

24 THE JUDGE: Okay.

25 MR. BERG: My apologies. I had my

1 computer muted, Your Honor. I should be good now.

2 THE JUDGE: Very good. Please again  
3 for the record state and spell your first and last  
4 name.

5 MR. BERG: It's Josh, J-O-S-H, Berg,  
6 B-E-R-G.

7 THE JUDGE: Okay.

8 MR. BERG: Good morning. Thank you  
9 for allowing me to participate again in this  
10 rulemaking process. As stated, my name is  
11 Josh Berg and I work for an incredible organization  
12 called Lifesprk.

13 As I did yesterday, I will post these  
14 comments on the eComments website following this  
15 testimony which will have the links to the various  
16 statutes and resources referenced in these  
17 comments.

18 Perhaps it was all the fun that we had  
19 yesterday and again this morning, including putting  
20 on a buttoned-up shirt for the first time in too  
21 long or the mere fact that this is truly an  
22 historical and critical discussion, but most likely  
23 just the fact that those who know me and expect me  
24 and others who have already spoken to step up in  
25 times like these to ensure that we have covered

1 what needs covering so we can continue to serve,  
2 support, and care for the lives that are in our  
3 hands for decades to come.

4 I also believe, and as someone way  
5 smarter than I noted yesterday, that we have more  
6 people choosing to move into assisted and senior  
7 living communities not because of the nursing homes  
8 moratorium that went into effect years ago, but  
9 because we in the state and nation have made the  
10 wholehearted and whole person-centered decision to  
11 offer a home-based option to institutionalized  
12 healthcare and to support and encourage individuals  
13 to age magnificently in wherever they want to call  
14 home, and because of this growing interest and  
15 demand for a home and community based setting  
16 option like assisted living, we must get this  
17 right.

18 I will not regurgitate my LinkedIn  
19 profile like I did yesterday. My apologies for  
20 that. But I did just want to add one more thing  
21 that I forgot to mention before I touch on the few  
22 additional topics related to the proposed rules.

23 In 2019, the Minnesota Department of  
24 Human Services, DHS, selected eleven individuals to  
25 sit on the settings review panel, the SRP. This

1 group of individuals was not a governing group but  
2 a diverse group of individuals who advised DHS's  
3 aging and adult services and disability services  
4 divisions and provided recommendations on home and  
5 community based settings that required further  
6 review to ensure they complied with and/or had a  
7 plan to come into compliance with the CMS HCBS  
8 settings final rule. I was proud and humbled to  
9 serve on this group.

10           And speaking of the HCBS settings  
11 rights, et cetera, let's take a look at a couple  
12 more topics I would like to highlight for you that  
13 were not included in my comments yesterday.

14           The first is in the definition section  
15 of the proposed rule, 4659.0020, subpart 14. I  
16 want to express my support for the modification  
17 proposed by the Department to the definition of  
18 "elopement" in Exhibit L.

19           As originally proposed, "elopement" was  
20 defined as when a resident leaves the premises or a  
21 safe area without authorization or necessary  
22 supervision to do so.

23           To many of us, including my grandma who  
24 lives in an assisted living, non Lifesprk, in  
25 Burnsville, Minnesota, this is far too broad and

1 paternalistic.

2           By definition, my grandma, who has no  
3 assessed need or vulnerability in this area would  
4 be forced to check out with and get authorization  
5 to leave, again with absolutely no assessed need  
6 identified in her care plan by the clinical nurse  
7 supervisor; no concern by us as a family; and most  
8 importantly, no desire of herself to be treated  
9 like she is incapable of doing something that she  
10 is most definitely able to do.

11           She would meet the original definition  
12 of elopement each time she decides to go for a walk  
13 on the walking trails around her building as she  
14 loves to do in the summer months.

15           Minnesota's home and community based  
16 settings rule, statewide transition plan, and  
17 specifically the DHS published document titled "A  
18 Provider's Guide to Putting the HCBS Rule into  
19 Practice."

20           Based on page 32, data practice in all  
21 HCBS settings, unless there's a documented and  
22 assessed need or vulnerability that would justify a  
23 rights modification, quote, people can come and go  
24 from the setting at any time, unquote.

25           The broad definition in the originally

1 proposed rules directly conflicts with this and  
2 must be modified. I would similarly add some  
3 additional language to the effect of having it  
4 defined as a resident who lacks self-preservation  
5 skills identified through a clinical assessment  
6 leaves the premises or a safe area without  
7 necessary supervision to do so.

8           While we are on the topic, let's quickly  
9 move to the missing resident plan in the proposed  
10 rules section 4659.0110.

11           THE JUDGE: Sir. Sir.

12           MR. BERG: Yes. Yep.

13           THE JUDGE: Can I put -- can I have  
14 you -- one moment. Can I just have you stop there  
15 for one second. I just need to catch up.

16           MR. BERG: Certainly.

17           THE JUDGE: Okay. Sir, I apologize.  
18 As we know, working from home has its drawbacks,  
19 suddenly someone appears at the door that you don't  
20 expect and haven't invited, so I apologize that I  
21 interrupted you. And you were moving on from your  
22 comments on .0020 subpart 14 to the next provision.  
23 And could you repeat that for me?

24           MR. BERG: Absolutely, Your Honor.

25 Moving on to the missing resident plan section,

1 which is in proposed rule section 4659.0110. This  
2 overly prescriptive plan goes above and beyond what  
3 is necessary and reasonable for a rule.

4 Not only does it dictate in rule very  
5 specific actions that all licensed facilities must  
6 do or take and cannot customize to their own  
7 setting, residents, and/or staff, but it also  
8 requires quarterly reviews of the plan.

9 In my opinion, a more reasonable  
10 approach would be reviewing this plan annually  
11 and/or if an actual elopement occurs. Then a  
12 review at that time would also be prudent for  
13 quality improvement purposes.

14 Finally I will wrap-up by making a  
15 comment about the resident nursing assessment.  
16 Lores, who is much more --

17 THE JUDGE: Before you -- sir,  
18 before you do, you were cutting out, so I'm going  
19 to repeat for you what I heard you say because you  
20 cut out.

21 With respect to .0110, the missing  
22 resident plan, it goes beyond what is reasonable by  
23 requiring monthly reports, and you're suggesting  
24 that it only require reports if an elopement. Is  
25 that a fair statement?

1 MR. BERG: So to clarify -- thank  
2 you, Your Honor, for the question.

3 THE JUDGE: Okay.

4 MR. BERG: To clarify, currently it  
5 states that all licensed facilities would be  
6 required to do quarterly reviews of the plan, and I  
7 am suggesting reviewing this plan annually. And  
8 then if an actual elopement occurs at a timeframe,  
9 to do another review at that time to make sure that  
10 the systems in place are adequate and to follow  
11 quality improvement protocols or purposes.

12 THE JUDGE: Okay. Thank you. You  
13 had broken up and so that made a difference. Thank  
14 you very much for clarifying. Okay. Let's move on  
15 to your third point.

16 MR. BERG: Absolutely. So Lores,  
17 who had spoken before and who is much more  
18 clinically qualified and undoubtedly significantly  
19 sager than I am, touched on other portions of the  
20 nursing assessment section in her beautiful  
21 testimony.

22 I acknowledge that I am not a nurse or a  
23 licensed anything, so I will do my best to make  
24 this point. Under proposed rule 4659.0140,  
25 subpart 4, a registered nurse is required to

1 complete all nursing assessments and reassessments.

2 This appears to directly conflict with  
3 current nursing standards set forth by the  
4 Minnesota Board of Nursing and the Nurse Practice  
5 Act, current guidance set forth by MDH, and is a  
6 departure from what is outlined in future AL  
7 licensure laws under Minnesota statutes 144G.70,  
8 which is silent to this as noted by the Department  
9 in the SONAR.

10 But it should also be noted that this  
11 section is actually exactly copied and pasted from  
12 the current comprehensive home care laws under  
13 Minnesota statute section 144A.4791.

14 In addition, MDH currently as of this  
15 morning on January 20 has a posted frequently asked  
16 question, FAQ, that relates to this very issue.  
17 The Department goes on to state in that FAQ that a  
18 registered nurse may elect to assign to a licensed  
19 practical nurse the nursing task of the ongoing  
20 client monitoring and reassessment that is required  
21 by Minnesota statutes section 144A.4791,  
22 subdivision 8(c).

23 This is because Minnesota statute  
24 section 148.171, subdivision 14 states that it is  
25 within an LPN's scope of practice to conduct

1 focused assessments. However, this same statute  
2 requires an LPN to report any changes in the  
3 condition or needs of a client to an RN.

4 The RN's scope of practice includes  
5 providing a comprehensive assessment and evaluating  
6 responses to interventions and the effectiveness of  
7 the plan of care. Therefore, an RN should conduct  
8 reassessments triggered by changes in a client's  
9 condition.

10 I respectfully disagree with the  
11 Department's statement in the current SONAR related  
12 to the proposed rules that states this is  
13 consistent with the Nurse Practice Act.

14 Focused assessments and monitoring are  
15 clearly defined in the Nurse Practice Act as within  
16 scope of the LPN. And, as far as I am aware,  
17 nothing has changed in the current nursing  
18 standards outlined in the Nurse Practice Act.

19 I want to again thank you for the time  
20 to comment today and provide additional written  
21 comments in the coming weeks. This is an  
22 incredibly important work that everyone is doing  
23 here. And I thank you, Your Honor, and the team  
24 behind the scenes for making this virtual process  
25 work so well.

1 All of the stakeholders whose passion  
2 and interest in this topic is simply awesome, and  
3 to all my colleagues who have dedicated their  
4 personal and professional lives to caring for  
5 others, especially over the past 12 months where so  
6 many of our worlds have been turned upside down by  
7 this pandemic, thank you.

8 THE JUDGE: Thank you very much for  
9 your comments again today, and we'll look forward  
10 then to the written comments that you will submit  
11 on eComments in follow-up, so thank you.

12 Let's look at our time. I'm going to  
13 ask Operator Lynn, we have Shelli B. next. Then  
14 Ophelia is next. Do we have others who have joined  
15 us?

16 MS. KNIGHT: We actually lost  
17 Ophelia on the phone. She disconnected. But we do  
18 have Nancy Haugen on WebEx added to the list, so we  
19 have Shelli and Nancy.

20 THE JUDGE: Okay. Shelli and then  
21 Nancy. Hopefully Ophelia will join us again. So  
22 we'll take her off of our queue. Let's turn to  
23 Shelli B. If Shelli B. could please turn on her  
24 video, if she'd like to.

25 MS. BAKKEN: Good morning,

1 Your Honor. My video is on. Can you see and hear  
2 me?

3 THE JUDGE: I can. Hold on one  
4 moment. Okay. Thank you very much. If you could  
5 state and spell your first and last name.

6 MS. BAKKEN: Thank you, Your Honor.  
7 My name is Shelli Bakken, S-H-E-L-L-I, Bakken is B,  
8 like boy, A-K-K-E-N, like Nancy.

9 THE JUDGE: Very good. Please  
10 proceed.

11 MS. BAKKEN: Thank you. I serve at  
12 Walker Methodist as the director housing operations  
13 and customer experience. I have worked in senior  
14 living in Minnesota for 33 years in every setting  
15 except for adult day. Currently I serve as the  
16 chair of the LeadingAge Minnesota assisted living  
17 committee.

18 In 2020 I successfully completed the  
19 elder law certificate program through the Mitchell  
20 Hamline School of Law. At my heart and foundation  
21 though is my social work background as it informs  
22 my belief in the rights of residents'  
23 self-determination and independence to the extent  
24 possible.

25 I support assisted living licensure. I

1 am grateful for all of the work done to get us to  
2 this point because in addition to providing needed  
3 protection for our state's vulnerable elders, it  
4 will serve to raise the level of respect and  
5 legitimacy to the heroic work that is done by  
6 assisted living providers and staff 24 hours a day,  
7 around the clock, weekends, holidays, fair weather  
8 or blizzard, pandemic or not.

9 I have submitted comments on the  
10 eComments site. Today, however, I would like to  
11 speak specifically to two areas. 4659.0120,  
12 Procedures for Resident Termination and Discharge  
13 Planning, subpart 1, the pretermination meeting.

14 I have concerns with subpart 1B that  
15 mandates that a provider may only hold this meeting  
16 when the resident and the representative will  
17 attend. This section ignores the unfortunate  
18 possibility that there may be other factors that  
19 lead to the rare step of terminating a housing or  
20 service contract, such as financial exploitation  
21 from a resident's loved one, responsible party, or  
22 family member.

23 My concern is that the delays written  
24 into the process rules -- proposed rules would only  
25 serve to prolong the time an elder could be taken

1 advantage of by someone who is outside of the  
2 facility's control or assisting a resident to find  
3 a more appropriate level of living for their  
4 medical needs, their safety and the safety of the  
5 other vulnerable adults who reside in the facility  
6 and who we are obligated to protect.

7           According to the Minnesota Elder Justice  
8 website, two-thirds of the perpetrators of elder  
9 abuse are trusted individuals or family members.  
10 The National Council on Aging states that in almost  
11 60 percent of elder abuse and neglect incidents,  
12 the perpetrator is a family member. Two-thirds of  
13 perpetrators are adult children or spouses.

14           There are times when a family member may  
15 attempt to delay the process for a variety of  
16 reasons, and this should be balanced in the  
17 proposed rules.

18           Subpart 1B should address the need of a  
19 provider to make a reasonable attempt to schedule  
20 and hold a pretermination meeting at a time when  
21 the resident and their representatives are able to  
22 attend either in person or electronically.

23           It has already been stressed and stated  
24 that terminations are rare. This is not the  
25 business practice that we are in. Every day

1 providers work with and negotiate with residents  
2 and family members to ensure that their living  
3 situation is satisfying and successful utilizing  
4 person-centered methods.

5           These successful interactions are too  
6 numerous to mention and they aren't what we are  
7 here discussing today. In my 33 years of serving  
8 seniors, the one and only time I was involved in an  
9 actual eviction action with a resident of an  
10 assisted living was related to the financial  
11 exploitation by a family member.

12           This extremely sad and difficult case  
13 occurred after more than a year of negotiations  
14 with the resident's son who held the power of  
15 attorney. The court found on behalf of the  
16 facility, but this was not a win that we celebrated  
17 because we knew that this resident continued to be  
18 vulnerable.

19           I would now like to speak to the  
20 staffing section, 4659.0180, subpart 6. The  
21 requirement in the rules that refers to a  
22 ten-minute response time for the night shift is  
23 arbitrary and unreasonable in many situations.

24           Travel time between apartment homes or  
25 other work areas should be considered in even ideal

1 situations. If you are already with a client and  
2 get summoned to another, common courtesy and TLC  
3 would require that you not just run off in order to  
4 be in compliance with an arbitrary time limit.

5           It is important to mention that in this  
6 time of pandemic, which is a reality that we are  
7 living in every day, simply the time it takes to  
8 don and doff PPE and other infection control  
9 measures appropriately when necessary can push this  
10 arbitrary time limit.

11           I propose that the rule refer to  
12 response time as soon as possible as this is  
13 reasonable and accounts for the special needs of  
14 every resident we serve. Thank you for your time.

15           THE JUDGE: Very good. Thank you.  
16 I'm just catching up on my writing. One moment.  
17 Okay. Thank you, Ms. Bakken. Next up we have  
18 Nancy H. All right. And if Nancy wants to -- is  
19 Nancy on the telephone or is Nancy on WebEx today?

20           MS. HAUGEN: I am on the telephone,  
21 Your Honor.

22           THE JUDGE: No problem. Hold one  
23 moment. We'll get -- I'm going to ask Operator  
24 Lynn if we have others after Nancy. Operator Lynn,  
25 can you hear me?

1 MS. KNIGHT: Sorry, mute.

2 THE JUDGE: No problem.

3 MS. KNIGHT: Yep, we have Nancy, and  
4 then as for Ophelia, the operator tried to call her  
5 back and got her voicemail a few times, so she must  
6 have just disconnected on purpose, so we just have  
7 Nancy.

8 THE JUDGE: Okay. At this time and  
9 I'll do another call after Nancy. So Nancy, can  
10 you hear me okay? I know you're on the phone.

11 MS. HAUGEN: Yes, I can hear you  
12 just fine, Your Honor.

13 THE JUDGE: Wonderful. Okay. So if  
14 you could please state and spell your first and  
15 last name and then proceed with your comment.

16 MS. HAUGEN: Thank you, Your Honor.  
17 My name is Nancy, N-A-N-C-Y, Haugen, H-A-U-G-E-N.  
18 I am calling today to comment on the rule proposals  
19 for nursing assessments. I am commenting --

20 THE COURT REPORTER: I didn't hear  
21 the -- she cut out, Your Honor. Commenting on the  
22 rule proposals for --

23 THE JUDGE: Nursing assistants.

24 MS. HAUGEN: Nursing assessments.

25 THE JUDGE: Assessments, oh, I'm

1 sorry.

2 MS. HAUGEN: Yeah.

3 THE JUDGE: See, it's great. When  
4 we -- when you cut out, it's very difficult to get  
5 a good transcript, so okay. So I had written down  
6 a -- okay, so nursing assessments. Very good.  
7 Please continue.

8 MS. HAUGEN: I am commenting as a  
9 registered nurse in the state of Minnesota since  
10 1969, also a public health nurse and having a  
11 masters degree in mental health nursing from the  
12 University of Minnesota.

13 I am also commenting as the daughter  
14 whose mother paid more than \$500,000 for  
15 specialized memory care services from February of  
16 2013 through December of 2017 when she died.

17 My mother lived in two assisted living  
18 communities during that time. I am calling in  
19 support of the strongest regulations for nursing  
20 assessments that Minnesota can provide because I  
21 support best practice nursing rather than minimum  
22 standard care.

23 The Minnesota Nurse Practice Act  
24 reserves comprehensive nursing assessment to  
25 registered nurses because of their educational

1 preparation for that activity. Quality nursing  
2 assessments is the foundation for all safe and  
3 comprehensive person-centered/directed care and  
4 services.

5 And the regulations must include a  
6 common assessment created by actual registered  
7 nurses who understand nursing assessment to ensure  
8 the quality of that RN assessment.

9 In my mother's situation, the assessment  
10 was driven by the provider's functional checkboxes  
11 rather than her actual individual needs. It did  
12 not describe her needs or any personal goals.

13 This resulted in multiple errors of  
14 medication administration, errors in giving  
15 directions for personal care. For example,  
16 modality: Walk three times a day. It never stated  
17 whether she used assistance with a walker, whether  
18 she needed specific prompts, whether she needed the  
19 assistance of a caregiver, how far she should walk,  
20 under what circumstances.

21 THE JUDGE: Ma'am, I'm going to  
22 interrupt you. I'm sorry to interrupt you, but for  
23 some reason, either the way you're holding your  
24 phone or where you're located is -- it's like  
25 there's a static when sometimes you get too --

1 sounds like you're getting too close to the  
2 microphone of your phone. Does that make sense?

3 MS. HAUGEN: Yes.

4 THE JUDGE: So can I have you slow  
5 down and just make sure that where your phone is  
6 has good reception and that you're not talking too  
7 closely in the microphone. All right? I want to  
8 make sure we're getting everything you're saying.

9 MS. HAUGEN: Okay. Is this better,  
10 Your Honor?

11 THE JUDGE: Yes, it is.

12 MS. HAUGEN: My mother's care plan  
13 did not adequately describe her needs because it  
14 was driven by checkboxes on the provider's list of  
15 cares. That resulted in multiple errors in care  
16 giving, including lack of specificity around almost  
17 every area, including eating, mobility, dressing,  
18 bathing.

19 And so for almost five years, we had  
20 incorrect care plans. We experienced caregivers  
21 acting on what the nurse had provided, but it  
22 didn't relate to my mother's needs.

23 When in November of 2017 she experienced  
24 a significant change in condition and became  
25 unresponsive, no assessment was initiated by the

1 provider, by either an RN or an LPN.

2 At the time, unbeknownst to me, the  
3 provider did not have a registered nurse available  
4 for consultation to any staff member or caregiver.  
5 There was an LPN who was an interim clinical nurse  
6 supervisor. That person never visited my mother to  
7 make any focused assessment.

8 So at the time of my mother's change in  
9 condition, we had no nursing support or guidance  
10 for caregivers. When she was not receiving the  
11 hospice prescribed medication in time to prevent  
12 pain at her end of life, we advocated for our right  
13 to self-administer that medication, being with her  
14 24 hours a day for over ten days.

15 The provider who had an interim  
16 executive director refused to allow us to do that  
17 and thus made a move for arbitrary termination of  
18 our mother's residency and actual termination of  
19 our mother's services, requiring us to hire private  
20 duty nursing services at our own cost.

21 And so four days before my mother's  
22 death we were put in a position where we could not  
23 get care for her. We had to worry about whether  
24 someone was going to call an ambulance and have her  
25 removed without any due process to allow us to

1 explain our concerns.

2 We advocated with the corporate  
3 providers. My mother was allowed to stay until her  
4 death. Again, we had to pay for services.

5 I will tell you that that retaliation  
6 was confirmed by the investigation from the Office  
7 of Health Services Complaints, and they cited the  
8 provider for 22 violations.

9 I am most grateful for the care with  
10 which they provided in following through with the  
11 investigation report. However, the provider had no  
12 consequences for that retaliation.

13 I will tell you that I am not the only  
14 person who has experienced this. I have multiple  
15 friends who have family members who have already  
16 died who have experienced equal kinds of poor care  
17 and poor assessment. Nursing assessment is the  
18 foundation of all safe and comprehensive  
19 person-centered and person-directed care, and we  
20 must not water down those standards.

21 I accept that a registered nurse could  
22 delegate to an LPN some specific portions of  
23 nursing assessments for ongoing assessments.  
24 However, the nurse must -- the registered nurse  
25 must know and consciously delegate that

1 understanding the licensed practical nurse's  
2 skills, and this must not be permitted for change  
3 in condition because the Nurse Practice Act  
4 specifically states that the focused assessment  
5 refers to conditions that are already identified.

6           So again, I thank you for the privilege  
7 of being able to testify today, and I hope that our  
8 vulnerable elders will receive only the best  
9 quality nursing assessments for the time that they  
10 spend in assisted living. Thank you.

11           THE JUDGE: Thank you. One moment.  
12 I'm writing. You can't see me right now, but I'm  
13 completing my thoughts here. I'm writing. Give me  
14 one second. Okay. Thank you Ms. Haugen.

15           I'm now going to turn to Operator Lynn  
16 again and ask if we have had anybody else join the  
17 hearing today?

18           MS. KNIGHT: I believe we have  
19 Kathryn Freimuth via WebEx and we've got  
20 Nancy Strandlund on the phone.

21           THE JUDGE: Okay. So we have  
22 Kathryn and Nancy. And if anybody is -- who has  
23 joined the hearing today wanting to speak, I'm  
24 asking that you do it now. Put that in the chat  
25 now. And the reason I'm asking you to do that is

1 because I would like to take Kathryn and Nancy  
2 next, kind of skip over lunch hour because if we  
3 only have two last commenters, we will take them  
4 now and do a late lunch and then complete the  
5 hearing or if we have more than that, we'll take a  
6 lunch break and come back for the reminder.

7           So if we only have two commenters, I  
8 suggest we go forward without a lunch break at this  
9 time. If there are more, I would suggest that we  
10 take a lunch break now and then come back and have  
11 the remainder of the speakers so that people can --  
12 you know, if they want to speak.

13           So Operator Lynn, have more people  
14 indicated a request to speak at this point?

15           MS. KNIGHT: Still just Kathryn and  
16 Nancy. Cody is telling me no, and I'm also being  
17 told that Nancy was first.

18           THE JUDGE: Oh, I'm sorry. Okay.  
19 So we will go Nancy then Kathryn. So let me defer  
20 to -- I'm going to be -- Mr. Skaar -- I'm sorry,  
21 Josh, the spelling of your last name throws me off  
22 every time because I see it in my head before I say  
23 it.

24           MR. SKAAR: You're not alone, Judge.

25           THE JUDGE: Mr. Skaar, what's your

1 thoughts? Should we take, you know, a shorter  
2 lunch break, like say a half hour lunch break and  
3 let people -- give people an opportunity to, you  
4 know, get in the queue because there might be, you  
5 know, for example, people telling others "Hey,  
6 we're coming to an end. If you want to speak, get  
7 on now."

8           We could take a half hour break, for  
9 example, and then come back with these last two  
10 speakers with the understanding that there might be  
11 others at that point or do you want to just go  
12 straight through? And, Barb, please weigh in.

13           MR. SKAAR: Yeah, I'd be curious to  
14 hear what Barb has to say, Judge. If we could go  
15 straight through, at least these next two, and  
16 maybe we can recess for a period to give people  
17 time to come back from that in case there's anyone  
18 who's lined up, but I think it would be good to try  
19 to just finish off these two last comments.

20           THE JUDGE: Barb, how are you hands?  
21 Are we okay to do that?

22           THE COURT REPORTER: We are.

23           THE JUDGE: Okay. Well, then we'll  
24 start with Nancy. Nancy I believe is on the phone.  
25 Is that correct?

1 MS. STRANDLUND: Can you guys hear  
2 me?

3 THE JUDGE: Yes, I can. There's a  
4 little bit of an echo. I'm not sure if you're  
5 close to a computer or something.

6 MS. STRANDLUND: Yes, I'm actually  
7 right in front of my computer, but I --

8 MR. BAULEKE: Could you mute your  
9 computer for us because you can still hear through  
10 the telephone.

11 MS. STRANDLUND: How about this one?

12 MR. BAULEKE: I'm just checking.

13 MS. STRANDLUND: Can you hear me  
14 okay now?

15 THE JUDGE: Yes. I mean, if you'd  
16 like to --

17 MS. STRANDLUND: I muted my  
18 computer.

19 THE JUDGE: Yeah, I would say either  
20 mute your computer or step away, go to a different  
21 room from your computer because anytime -- it's  
22 kind of like when you have, you know, the radio  
23 callers and they say "Turn down your radio" because  
24 we hear the echo. All right?

25 MS. STRANDLUND: Okay.

1 THE JUDGE: So try -- let me hear  
2 from you now, Nancy. Let's see if it's working.

3 MS. STRANDLUND: All right. I'm  
4 moving away. How about this one?

5 THE JUDGE: I think that's good, but  
6 if I interrupt you again, it just means that we're  
7 having echos. Okay. Nancy, can you start by  
8 stating your first and last name.

9 MS. STRANDLUND: My name is  
10 Nancy Strandlund.

11 THE JUDGE: And spell it, please.

12 MS. STRANDLUND: Nancy for  
13 N-A-N-C-Y, Strandlund for S-T-R-A-N-D-L-U-N-D,  
14 Strandlund.

15 THE JUDGE: Very good. Thank you  
16 very much. Please proceed.

17 MS. STRANDLUND: Yes. Actually, the  
18 comments that I'm going to comment today have  
19 already been commented by some of the speakers, and  
20 I really appreciate those that tackled those  
21 because those, I believe, are very important to me  
22 as well.

23 I am an RN for a very long time now, so  
24 my work is very important to us as an RN, and we  
25 specialize in Huntington's disease kind of clients,

1 which are movement and neurological disorders, so  
2 my concerns are in regards to three topics.

3           The number one is the 4659.0180, which  
4 is the staffing, and the others will be the  
5 4659.0140 regarding assessments, and the last one,  
6 which is the third one, is about the training but  
7 it's most -- it's basically a question.

8           Okay. So number one, the staffing and  
9 4659.0180, subpart 3, subpart 4 and subparts 5 and  
10 6. I believe -- I don't have to read those, do I?

11           THE JUDGE: No, you don't have to.

12           MS. STRANGLUND: Judge. No?

13           THE JUDGE: No.

14           MS. STRANGLUND: Okay. All right.

15 Because I would rather go through my comments  
16 instead, so it will be less time. I don't want to  
17 make -- I mean, use up too much of your time. I'm  
18 sure the rest are hungry already for lunch.

19           So I believe this subpart needs  
20 modification or at least changes because these  
21 are -- seems to be unreasonable and also not cost  
22 effective.

23           The reason behind it is that for like  
24 for the daily staffing schedules, we actually do  
25 have home coordinators and lead aides that does the

1 scheduling for all our houses. We have seven  
2 locations in the Twin Cities, and so far we don't  
3 have an issue with scheduling while this type of  
4 staff handle those, so I don't think it's necessary  
5 to have an RN or a clinical nurse to supervise the  
6 daily staffing.

7           The subpart 5, direct care staff  
8 availability, also I don't think like a night shift  
9 for full residents that we need to have two staff  
10 at night unless -- unless it's really necessary or  
11 is in the care plan. So I guess that subpart also  
12 for me is not -- it shouldn't be or it should be  
13 changed.

14           The ten minutes response for a small  
15 setting is actually not a problem, you know, but I  
16 used to work in a huge facility and it's a huge  
17 problem. So for subpart 6, I think there should  
18 be -- it should be differentiated between the small  
19 setting and a bigger setting.

20           Now, on 4659.0140, subpart -- I can't  
21 remember, the weekend assessments. Give me one  
22 second. I'm trying to look through my information  
23 here. So for the weekend assessments, it states  
24 here that an RN should do an assessment, initial  
25 assessment when there is a discharge from the

1 hospital.

2 Now, in our small -- like right now  
3 since we are a small setting, most of our RNs  
4 normally just work from Monday to Friday, and the  
5 weekends me -- I'm an owner. I'm an RN. Most of  
6 the time I also do the assessment, but there are  
7 times that I don't work the weekends because I have  
8 two kids.

9 So I think that this needs to be  
10 modified like a video call maybe is possible or  
11 it's allowed because right especially now with the  
12 pandemic, most of our supervisory visits are done  
13 by video calls.

14 So those are the things that are my  
15 comments, and then the last one for me is about the  
16 training. Now, right now or for a few more years  
17 now, we've been using the Web-based training and  
18 the EduCare, Reliance, so those trainings, I  
19 believe, are enough training, but it states here  
20 that the evaluation, that RN needs to be evaluate  
21 the staff task duties and responsibilities.

22 This is like a question. My question is  
23 is a video call all right to evaluate a staff doing  
24 the task at home? Would that be enough?

25 THE JUDGE: Mr. Skaar -- I'm sorry.

1 I didn't really understand your question. If I  
2 could just have you restate it one more time before  
3 I have Mr. Skaar find a panel member to answer it.  
4 I think we all need to understand the question  
5 better.

6 MS. STRANDLUND: Okay. So right now  
7 we are using the video call to do our supervisory  
8 visit for our staff and our residents because of  
9 the pandemic because some of our houses were --  
10 have COVID positive clients, so instead of having  
11 an RN come in to do the supervisory visit, so we  
12 basically do kind of like a telehealth, and my  
13 question is would that be enough or suffice enough  
14 to be considered as the supervisory visit this  
15 date, you know, video calling instead of an actual  
16 RN going into the home and watching the staff or  
17 evaluate the staff, observe the staff while doing  
18 their tasks?

19 THE JUDGE: Okay. Mr. Skaar, if you  
20 would please identify a panel member or yourself to  
21 respond to that question.

22 MR. SKAAR: Our panelist  
23 Jeri Cummins, but I am wondering if I could get a  
24 citation from Ms. Strandlund to the particular  
25 portion of the rule you are referring to.

1 MS. STRANDLUND: Training, give me  
2 one second.

3 THE JUDGE: Take your time.

4 MS. STRANDLUND: It's the subpart  
5 4659.0190, the training requirements. So -- oh, I  
6 didn't read my -- I haven't really looked into this  
7 requirement, but I just thought that because of the  
8 pandemic I need to ask that question because that's  
9 what we've been doing since March of 2020.

10 MR. SKAAR: I wonder if,  
11 Ms. Strandlund, you might want to submit that  
12 question in writing.

13 MS. STRANDLUND: Okay. Okay.

14 MR. SKAAR: Which would give you a  
15 chance to look that up and be more -- just to make  
16 sure that you are clear in your question so we can  
17 give you a clear answer. I'm happy to do my best  
18 today.

19 MS. STRANDLUND: Okay.

20 MR. SKAAR: We're happy to do our  
21 best here live, but --

22 MS. STRANDLUND: All right. Sounds  
23 good.

24 THE JUDGE: Hold please for one  
25 second. The 4659.0190 is the rule that you're

1 talking about?

2 MS. STRANDLUND: Correct, and I  
3 don't really see here in regards to the Web-based  
4 or video calling or video calling if that's -- that  
5 observation or evaluation qualifies as a training  
6 for surveyor purposes. You know, once we get  
7 surveyed, we have to follow some of the  
8 requirements for the training and the RN that did  
9 indeed do the observation.

10 But what worries me is the majority of  
11 our RNs are doing the video calling instead to  
12 do -- to observe a staff as they do the showering  
13 or the transferring or the socialization, and then  
14 they put that into our documentation that they did  
15 observe the staff, that those kinds of tasks were  
16 observed.

17 But in the past, we always do it face to  
18 face, but now because of pandemic, we're doing the  
19 video calling instead. And that's just one of my  
20 concerns, if that qualifies as supervisory visit  
21 for a staff or does an RN need to go face to face,  
22 observe, evaluate the task of the CNA or does it  
23 qualify when we get surveyed.

24 MR. SKAAR: So, Ms. Strandlund, this  
25 is --

1 MS. STRANDLUND: So in this -- in  
2 the proposed -- sorry. Because in this proposed  
3 training requirements, there's no mention of it.  
4 There's no mention of a base -- I mean, of a video  
5 call observation of a staff. It's not in it. I  
6 don't see it.

7 MR. SKAAR: Sure. I think that  
8 given the complexity of that rule and just to make  
9 sure that we can give you a thorough and sufficient  
10 response, if we could, we would like to follow up  
11 with you in writing, Ms. Strandlund.

12 MS. STRANDLUND: Okay. Okay. All  
13 right. Sounds good. Thank you, Judge.

14 MR. SKAAR: Yes, and did you intend  
15 to submit written comments or a written version of  
16 your testimony?

17 MS. STRANDLUND: With this question  
18 about the Web-based or the video call, I would  
19 definitely send an email or if you can -- if  
20 someone can send me how to do that, I would really  
21 appreciate it. It might be in the email as well,  
22 the instructions to send. I think I've seen it, so  
23 I can send -- yes, it is.

24 THE JUDGE: I think that the easiest  
25 way would probably be to go into the eComments

1 website, okay. I don't know if you were here  
2 earlier this morning when and I walked through a  
3 tutorial on how to do the eComments website? If  
4 you weren't --

5 MS. STRANDLUND: I was late. I'm  
6 sorry.

7 THE JUDGE: Were you or not? No?

8 MS. STRANDLUND: I was late.

9 THE JUDGE: Okay. No problem.

10 MS. STRANDLUND: I'm sorry. I  
11 apologize.

12 THE JUDGE: No problem, but if you  
13 go back to the website where you got this phone  
14 number, I believe, and, Mr. Skaar, correct me if  
15 I'm wrong, I believe that my PowerPoint is attached  
16 and it says "Judge's Directions." Is that correct?

17 MR. SKAAR: That is correct, Judge.

18 THE JUDGE: Okay. If you go back to  
19 that website, you'll see a link and it says  
20 "Judge's Directions." Look at that PowerPoint,  
21 okay. It will walk you through how to do an  
22 eComment. It would be helpful, and this would save  
23 time for you because you don't have to wait for an  
24 answer by mail if you submit your question on that  
25 eComments. Okay. Type it in, and then the agency

1 can respond to your question because I think  
2 they're having difficulty understanding the  
3 question.

4 MS. STRANDLUND: Okay.

5 THE JUDGE: Okay?

6 MS. STRANDLUND: All right. Thank  
7 you, Judge.

8 MR. SKAAR: And, Ms. Strandlund, if  
9 you want to just enter your email address in the  
10 comments to our moderator as opposed to everyone,  
11 we could respond with directions as well or a link  
12 to that site to help you out.

13 I would ask if you do that, not to  
14 direct your question to us in the email because we  
15 want to make sure it's part of the public record  
16 for everyone to see and also make sure our response  
17 is also included in the public record.

18 MS. STRANDLUND: Okay. So you  
19 want -- you want me to send my email to you or to  
20 the host?

21 MR. SKAAR: If you would add it to  
22 the comments, I think that would be a good way  
23 unless Cody, who's on here, could think of a better  
24 way for us to just provide you with direct  
25 instructions for how to -- you know, a link to the

1 instructions the judge just referenced.

2 MR. BAULEKE: Yeah, if you just want  
3 to put your email address in the chat, I'll grab it  
4 and I'll get it to the right parties to get you the  
5 directions.

6 MS. STRANDLUND: Okay. Sounds good.  
7 I'm doing it now. Thank you.

8 THE JUDGE: Okay. So you are going  
9 to -- Nancy is going to send an email -- I'm  
10 sorry -- is going to give her email to Mr. Skaar.  
11 Mr. Skaar is going to then follow up by providing  
12 the PowerPoint to Nancy with an explanation of how  
13 to make an eComment, and then Nancy is going to put  
14 her comment in eComments so that -- she's going to  
15 put her question in eComments so that the rest of  
16 the public can actually see it too. It could be a  
17 very helpful question for others, and then others  
18 can also see the agency's answer to that question.  
19 All right?

20 MS. STRANDLUND: Thank you, Judge,  
21 and thank you everyone for allowing me to make my  
22 comments. I really appreciate it. Especially at  
23 this time of pandemic, it's really hard for RNs to  
24 go do face-to-face as needed.

25 THE JUDGE: Very good.

1 MR. SKAAR: Thank you for your  
2 participation.

3 THE JUDGE: Thank you so much for  
4 your time today, and you can continue to stay on  
5 the phone and listen. If for some reason you want  
6 to speak again, please press star one; okay?

7 MS. STRANGLUND: Got it.

8 THE JUDGE: All right. Same thing  
9 for everybody on the InterCall who's listening by  
10 InterCall, if you want to speak again, please press  
11 star one. All right. And then our next -- first,  
12 Operator Lynn, has anybody joined after Kathryn?

13 MS. KNIGHT: No.

14 THE JUDGE: Okay. So we will then  
15 begin. If Kathryn can turn on her Web cam if she  
16 wants to appear by video, we'll wait for Kathryn to  
17 do this.

18 MS. FREIMUTH: I look awful.

19 THE JUDGE: Oh, that's no problem at  
20 all. We're not -- you don't have to if you don't  
21 want to. It's up to you.

22 MS. FREIMUTH: Can you hear me?

23 THE JUDGE: I can hear you.

24 MS. FREIMUTH: Hello, Judge  
25 O'Reilly.

1                   THE JUDGE: Hello. Okay. Oh, I  
2 gotcha. There we go. If you could please state --  
3 I can see and hear you now. If you could please  
4 state and spell your first and last name.

5                   MS. FREIMUTH: My first name is  
6 Kathryn, K-A-T-H-R-Y-N, and my last name is  
7 Freimuth, F, as in Frank; R, as in red; E, as in  
8 egg; I, as in igloo; M, as in man; U, as in  
9 umbrella; T, as in Thomas; and H as in hello.

10                  THE JUDGE: Very good. Please  
11 proceed.

12                  MS. FREIMUTH: I am sorry I'm pretty  
13 late coming to this discussion and the statutes and  
14 the rulemaking, and I'm just an ordinary citizen  
15 who, as another gentlemen referred to, am coming  
16 out of the school of hard knocks.

17                  I'm going to make this short. I'm not  
18 going to tell you my full story by any means. That  
19 would get too long. But I looked at the rulemaking  
20 thus far and listened for part of yesterday and  
21 today to the comments.

22                  I have two questions, and I don't know  
23 if at this point anybody is willing to dive in and  
24 answer them. They're based on my husband who has  
25 Parkinson's and dementia, and we had an awful

1 experience at a small facility, so they can -- bad  
2 things can come out of little facilities and big  
3 facilities.

4           But two issues that I'm concerned about  
5 are in the medication section. I don't know if  
6 anybody could answer the question if between the  
7 statutes and the rulemaking that's gone on so far,  
8 is there any requirement that medicines such as  
9 Parkinson's medicines that need to be given on time  
10 are in fact given in a reasonable amount of time?

11           Right now you can go and call assisted  
12 living facilities slash memory care facilities and  
13 they will tell you that the Minnesota Department of  
14 Health gives them an hour leeway both ways. They  
15 can give them their medicine an hour early or an  
16 hour late.

17           What that results in in a Parkinson's  
18 case is a person really, really being off and very  
19 ill. My husband was overmedicated and  
20 undermedicated with that, and it wasn't just the  
21 facility he was in. We've done some calling, and  
22 most facilities won't take people if they can't  
23 have that hour leeway. Does the statute address  
24 that or rulemaking address that?

25           THE JUDGE: Okay. Mr. Skaar, if you

1 could identify which panel member will be answering  
2 that?

3 MR. SKAAR: Yeah, Judge, I am still  
4 determining given that that is not tied to a rule  
5 part but more general, we're still figuring out  
6 exactly who might have that expertise. If you  
7 could maybe -- Ms. Freimuth -- I apologize if I  
8 mispronounced your name.

9 MS. FREIMUTH: That's all right.

10 MR. SKAAR: If you might ask your  
11 second question, while you do that, we'll have  
12 somebody in mind by the time you finish.

13 MS. FREIMUTH: I guess I would think  
14 it would have to come out of the statutes, but I  
15 don't know.

16 THE JUDGE: Okay. Right now the  
17 question is twofold. One, is there a medication  
18 timeframe requirement imposed under these rules,  
19 which would be a pretty quick answer; and two, are  
20 there timeframe requirements for providing  
21 medications under the statutes, which might be a  
22 little bit more complicated in terms of right now  
23 we're only here for the rules.

24 So they can probably answer you right  
25 now as to if there is any provisions in the

1 proposed rule with respect to that. Let's go to  
2 the second question.

3 MS. FREIMUTH: The second question  
4 has to do with terminations, and I'm just going to  
5 describe the termination that happened, and I would  
6 like to know if -- and I've seen -- read the  
7 termination rules -- if anything in the statutes or  
8 the rule would apply to this situation because if  
9 not, I guess I'd like to see something done, and if  
10 it takes me going to another legislator to get it  
11 done, I will.

12 I as my husband's power of attorney and  
13 healthcare agent was given three-and-a-half hours  
14 notice that he was being kicked out of a facility.  
15 And the reason why is because he kept trying to  
16 walk and --

17 THE COURT REPORTER: I didn't catch  
18 that, Your Honor.

19 THE JUDGE: Hold one moment. She  
20 said that she was given three hours notice for  
21 termination because --

22 MS. FREIMUTH: Verbal.

23 THE JUDGE: Because her husband was  
24 attempting to walk.

25 MS. FREIMUTH: And he would fall

1 down a lot, and he also at night would once in a  
2 while get up and wander the halls, and they saw  
3 that as a risk to other residents. Both of those  
4 are part of Parkinson's and dementia.

5           So my question is -- and there's a lot  
6 of things written in the rules -- do any of those  
7 rules or the statutes behind them apply to that  
8 situation that would prevent a  
9 three-and-a-half-hour notice to get somebody out of  
10 a facility and find another one on Friday?

11           THE JUDGE: Okay. So that's the  
12 second question, Mr. Skaar, for one of your panel  
13 members. So, Mr. Skaar, are you ready to have a  
14 panel member answer her first medication question?

15           MR. SKAAR: Yes, Judge, I am and  
16 that is going to be Daphne Ponds who will be  
17 responding to that.

18           And with regard to the termination  
19 question, is there any protection in the rule  
20 against a termination occurring as described  
21 within, you know, a very narrow time frame like  
22 three hours, first, the answer is yes, there's  
23 protections in the rules and in statute for that.  
24 The termination rule is at 4659.0120, and I will  
25 allow Ben Hanson on our panel to respond further to

1 that question as well.

2 THE JUDGE: Okay. We'll start with  
3 Ms. Ponds. Please state and spell your first and  
4 last name and provide us with your job title.

5 MS. Ponds: Hello. I'm Daphne,  
6 D-A-P-H-N-E, Ponds, P-O-N-D-S, and I work with the  
7 Office of Health Facility Complaints with the  
8 Minnesota Department of Health. I am an  
9 investigative supervisor.

10 And I am responding, Ms. Freimuth, to  
11 your question regarding timeframe of medication  
12 administration. In looking in the assisted living  
13 statutes and rule parts, there is not a specific  
14 timeframe that is listed in the statute or rule  
15 parts, but it is considered -- we look to the  
16 standard of practice, the clinical standard of  
17 practice for medication administration, which would  
18 be an hour on either side of the scheduled time.

19 For instance, your husband may be  
20 prescribed certain medications that are considered  
21 his routine or everyday medication, and the  
22 facility certainly has a responsibility to set  
23 policies and procedures in place to give -- this is  
24 under 144G.71 in subdivision 10 -- for them to give  
25 accurate and current medications to residents for

1 planned and unplanned times away from the home. It  
2 should be according to the resident's  
3 individualized medication management plan, so  
4 certainly they can set the times; for instance,  
5 schedule his morning medications at 9 a.m.

6           And that clinical hour on either side,  
7 historically that has been determined -- we give  
8 that timeframe because there may be several  
9 individuals that a staff member needs to give  
10 medications to at 9:00, so that gives some  
11 flexibility. So I would say that that -- so it's  
12 not in statute, but it's considered clinical  
13 practice standard.

14           MS. FREIMUTH: So how do -- I mean,  
15 to take a Parkinson's medicine and be as much as a  
16 two-hour window giving it is not acceptable, and at  
17 the assessment, it was said that.

18           MS. PONDS: Well, it would -- I  
19 would -- to clarify, for instance, if the  
20 medication was due at 9 a.m., they -- the  
21 expectation is that they would give it between  
22 either eight and nine or nine and ten, that they  
23 would not be waiting two hours. It's an hour on  
24 either side of the scheduled medication time.

25           MS. FREIMUTH: It is not -- it's not

1 acceptable for Parkinson's, and so when you go look  
2 for an assisted living and they go by that  
3 standard, that does not work.

4           Parkinson's patients often -- and my  
5 husband gets meds five times a day and they have to  
6 be on time, meaning 10 to 15 minutes either side of  
7 the time he's expected to get them. So the health  
8 practice may be that, but this is an exception.

9           THE JUDGE: Okay. You know what?  
10 I'm wondering if there's any way you can turn off  
11 your video, Kathryn, because it's not really  
12 working, but we still want to hear you.

13           MS. FREIMUTH: Okay.

14           THE JUDGE: So if you want to turn  
15 off your video, that's fine. We can hear you  
16 better if it's off. I think that the long and  
17 short of the answer is the proposed rules do not  
18 change or impose any time frames on the  
19 administration of medication. They don't  
20 specifically address that issue, and correct me if  
21 I'm wrong, Ms. Ponds.

22           MS. Ponds: That is correct,  
23 Your Honor. It does specify though that the  
24 registered nurse is responsible to make sure that  
25 the task is completed accurately, so there are some

1 provisions and safeguards to make sure that the  
2 medication management plan for the individual is  
3 followed.

4           And if there are specifics in the  
5 medication plan for that individual, such as if the  
6 physician says it must be given, you know, with  
7 different parameters than what the clinical  
8 practice standard is, then the expectation would be  
9 to follow that plan.

10           MS. FREIMUTH: I just want to  
11 comment that if you take a Parkinson's patient and  
12 you call assisted living slash memory care, and  
13 between me and a broker we called 10 to 15, they  
14 tell you the standard is that one hour either way,  
15 and you cannot find the place to do that. And that  
16 is something that needs to be addressed.

17           THE JUDGE: Okay.

18           MS. PONDS: I appreciate your  
19 comments, Ms. Freimuth. I appreciate you bringing  
20 those forward to us today.

21           MS. FREIMUTH: Okay. Thank you.

22           THE JUDGE: That's very good. Now  
23 let's turn to your second question, and that was  
24 about the termination procedures, and you just want  
25 a little bit more clarification about the proposed

1 termination and discharge procedures. We're going  
2 to have Mr. Hanson address that. It's my  
3 understanding that the agency is presenting  
4 Mr. Hanson. Mr. Hanson, if you could state and  
5 spell your first and last name. Is Mr. Hanson  
6 unmuted or muted?

7 MR. HANSON: Can you hear me now,  
8 Judge?

9 THE JUDGE: I can.

10 MR. HANSON: Okay. Sorry. Ben  
11 Hanson, B-E-N, H-A-N-S-O-N.

12 THE JUDGE: Okay. You can please  
13 proceed.

14 MR. HANSON: Speaking to the  
15 eCommenter's concerns, there are various procedures  
16 in place to prevent the circumstance that she's  
17 concerned about with the brief period of notice  
18 before discharging or terminating a patient or a  
19 resident.

20 The first step would be that facilities  
21 are required to hold a pretermination notice with  
22 the resident and their family or representatives.  
23 First they're required to provide a notice of the  
24 meeting five days in advance of the meeting and  
25 schedule it at a time that the resident and their

1 family are able to participate.

2           Only after that pretermination meeting  
3 occurs, they have to wait seven days before  
4 actually issuing the termination notice. So there  
5 are pretty significant time requirements, notice  
6 requirements before formally terminating or  
7 discharging your resident.

8           There are certain circumstances where an  
9 individual may be emergent -- relocated on an  
10 emergency basis. That would be in a situation  
11 where they require urgent medical needs or are  
12 posing imminent risk of harm to the staff or other  
13 residents at the facility, in which case they can  
14 be relocated to another appropriate facility, but  
15 at the same time, the facility will also still have  
16 to undergo all the pretermination meetings and  
17 notices before formally terminating your resident.

18           MS. FREIMUTH: Even if it's an  
19 expedition reason? Ben?

20           MR. HANSON: What was that?

21           THE JUDGE: I'm sorry. I couldn't  
22 understand you. What did you say?

23           MS. FREIMUTH: If it's an expedited  
24 discharge -- I think that was the word that was  
25 used in the rules that I read -- they still have to

1 go through some meeting and a period of time before  
2 they move the person out the door?

3 MR. HANSON: Yeah, so the emergency  
4 or the expedited discharge procedure simply  
5 shortens the period of time between the termination  
6 notice and the effective -- the termination  
7 becoming effective.

8 Typical standard terminations or  
9 discharges it's a period of 30 days between issuing  
10 the notice and the termination becoming effective.  
11 But in the expedited processes, that period is  
12 shortened to 15 days.

13 So there's still a substantial amount of  
14 time or enough time for the resident to appeal or  
15 make any sort of planning for relocation, so it's  
16 not immediate by any means. There's still a period  
17 of shortened time.

18 MS. FREIMUTH: Well, one out of two  
19 isn't bad.

20 THE COURT REPORTER: I'm sorry?

21 THE JUDGE: Okay. The last sentence  
22 was "One out of two isn't bad," I believe was her  
23 response.

24 MS. FREIMUTH: Yes. Yes.

25 THE JUDGE: Okay.

1 MS. FREIMUTH: That's just some  
2 rule --

3 THE JUDGE: Ms. Freimuth, we aren't  
4 able to hear you. Can you speak up, please.

5 MS. FREIMUTH: I'm sorry. I think  
6 it's good that there is some type of termination  
7 rules in the statutes or in the rules that you're  
8 making. I'll have to work on the meds.

9 THE JUDGE: Very good. I'm going to  
10 complete my thoughts here on summarizing up your  
11 comments. Hold one moment. Very good. Anything  
12 further, Ms. Freimuth?

13 MS. FREIMUTH: No.

14 THE JUDGE: Okay. Well, thank you  
15 very much for attending the hearing today. You can  
16 stay on and listen, no problem. Of course we  
17 encourage you to do so. Operator Lynn, anybody  
18 else who's joined us?

19 MS. KNIGHT: Nope, no one else.

20 THE JUDGE: And nobody on the phone?

21 MS. KNIGHT: Nope.

22 THE JUDGE: All right. Well, we  
23 have been on the -- we have -- we adjourned this  
24 hearing -- sorry. We commenced this hearing at  
25 9:30 a.m. It now 1 p.m.

1           Is there anybody -- this is kind of a  
2 last call -- anybody on WebEx or the phone who  
3 would like to give any further comment? Please  
4 right now put your name into the comment -- put  
5 your name into the chat box or press star one if  
6 you're on the InterCall.

7           Okay. So star one on InterCall or your  
8 name in the chat box right now. Cody will be  
9 monitoring the chat box and Lynn is listening for  
10 the InterCall operator to let us know. I'm just  
11 going to give a couple minutes here.

12           As we wait, anything further from the  
13 agency at this point?

14           MR. SKAAR: No, Judge. I would just  
15 remind people -- I know we're, you know, gearing up  
16 to possibly end this hearing -- that this is not  
17 anyone's last chance to weigh in. The public  
18 comment period is going to continue until February  
19 9 before the posthearing comment period concludes  
20 and the 17th for the rebuttal, so, please, anybody  
21 who doesn't weigh -- you know, sign up right now,  
22 please, I encourage you to file eComments as the  
23 judge has described that process, you know, after  
24 this hearing.

25           THE JUDGE: Absolutely, and thank

1 you, Mr. Skaar, for reminding everybody. So  
2 Operator Lynn, anybody else indicated that they  
3 wish to be heard today?

4 MS. KNIGHT: Yes. Eilon on the  
5 phone would like to respond.

6 THE JUDGE: Okay. Is he the only  
7 one? Okay. Eilon, we return to you. Please state  
8 and spell your first name one more time.

9 MR. CASPI: My name is Eilon Caspi,  
10 E-I-L-O-N, C-A-S-P-I.

11 THE JUDGE: Thank you. Please  
12 proceed.

13 MR. CASPI: So I've submitted my  
14 written comments earlier. I called in earlier. I  
15 appreciate you taking the time to listen. I tried  
16 to listen to the majority of the hearings yesterday  
17 and today, and I may have missed it, but really one  
18 observation that I have is that we talk a lot about  
19 person-centered care and person-directed care, and  
20 I hope that we had, but I'm not sure we had  
21 residents of assisted living that speak from the  
22 ground level about what they are experiencing.

23 And what I'm wondering is were assisted  
24 living residents aware of this hearing, to what  
25 extent? Was there an intentional reaching out to a

1 random sample, not cherry picked sample of  
2 residents from across the state, in the rural areas  
3 to hear their voice because at the end of the day,  
4 the decisions that will culminate from this hearing  
5 will impact their lives and scores of other  
6 residents in the coming years.

7           And I'm just wondering if you know, if  
8 you recall whether there was a single resident,  
9 assisted living resident, including residents in  
10 early stages of dementia who live in what is called  
11 memory care units in assisted living to share their  
12 voice about what they think is a pertinent issue in  
13 the context of the proposed rulemaking. That was  
14 my observation and question. Thank you.

15           THE JUDGE: Okay. We turn to  
16 Mr. Skaar to identify anybody or maybe  
17 Mr. Skaar will talk about the notice procedures and  
18 what notice or efforts there were that the  
19 Department made to reach out to residents of  
20 assisted living facilities to comment on the  
21 hearings today -- in the hearing today.

22           MR. SKAAR: Yes. Thank you, Judge.  
23 I think I can respond to the question. Mr. Caspi,  
24 I would first point out that the agency did make  
25 efforts to reach all affected parties, including

1 residents, and those efforts are detailed beginning  
2 at page 21 of the Statement of Need and  
3 Reasonableness under our additional notice plan  
4 heading.

5           In addition -- so that is in addition to  
6 the statutory requirement that folks in the public  
7 who've signed up to receive updates on rulemaking  
8 at the agency received notice. We also circulated  
9 or engaged with the community well in advance of  
10 the hearing to get their input via the Rule  
11 Advisory Committee and various community engagement  
12 events.

13           I think the primary means by which we  
14 reached residents would be in reaching out to these  
15 advocacy organizations and asking them to share  
16 this information with their resident  
17 constituencies. Those include, you know, AARP and,  
18 you know, various others I'll say.

19           In addition, we have facility groups who  
20 received notice of this, and we would have hoped  
21 and asked that they include their residents as  
22 well. I think that -- and so I would just  
23 encourage you to review that plan and see for  
24 yourself the length to which we sought to do that  
25 exact type of outreach.

1                   MR. CASPI:  Guys, I really  
2 appreciate your efforts to reaching out.  It means  
3 a lot to me and I'm sure to residents.  I'm still  
4 left with the question whether a single resident  
5 ended up being on the hearing yesterday or today  
6 expressing their thoughts about the care conditions  
7 in assisted living residences across the state,  
8 including memory care units, what we call memory  
9 care units operated under assisted living  
10 residences.  I still didn't get an answer for that.  
11 I'm sorry.

12                   MR. SKAAR:  Yeah, I don't recall, I  
13 guess, whether or not we actually had residents  
14 participating, and it's possible we did and they  
15 didn't declare that as their status, so I'm not  
16 sure I could give you an answer to that particular  
17 question.

18                   I can say again just to return to that  
19 initial notice plan that we made every effort to  
20 give that opportunity to residents.

21                   And as far as participation in the  
22 hearing, you know, that you're -- not only have we  
23 provided for remote computer participation, but  
24 also we created a dedicated phone line for those  
25 folks who would wish to participate but don't have

1 computer access they could do so by telephone and  
2 make comment by telephone.

3 MR. CASPI: Guys, thank you for  
4 listening.

5 THE JUDGE: Thank you very much,  
6 Mr. Caspi. Anybody else who has -- has anybody  
7 else joined us, Operator Lynn?

8 MS. KNIGHT: They have not.

9 THE JUDGE: Okay. I think I am just  
10 going to -- just to be on the safe side, here's  
11 what I suggest. Why don't we take a 15-minute  
12 break, return at 1:20. In the meantime, what I'll  
13 have Cody do is put up a little notice here on  
14 WebEx that we're on a 15-minute break, we'll return  
15 at 1:20.

16 In that time, we'll see if anybody else  
17 has joined us. If nobody has joined us, then we  
18 will adjourn and we will close this hearing at that  
19 time. Okay. So those of you who are listening on  
20 the phone, those of you who are here on WebEx, this  
21 is your last opportunity. In that 15-minute  
22 timeframe, please indicate if you want to speak  
23 again. So we will recess until 1:20. Thank you.

24 (At this time a brief recess was taken.)

25 THE JUDGE: We are back on the

1 record. If I could ask Operator Lynn if we've had  
2 anybody else join or express interest in giving  
3 comments?

4 MS. KNIGHT: Judge, we have not.

5 THE JUDGE: Okay. So for the  
6 record, we took a 15-minute break in which we put  
7 up a notice on WebEx that we were taking a break  
8 and would return at 1:20. It's now a little after  
9 1:20. Nobody else has indicated a request to  
10 speak.

11 And so if, Cody, you could indulge me  
12 and just put up on the screen again, it would be  
13 the slide -- let's see -- it would be the slide  
14 advising people -- it's towards the end -- of the  
15 deadlines. It's kind of the final reminder of the  
16 deadlines in this case for commenting.

17 And again, those deadlines are  
18 February 9 for comments, for initial comments and  
19 February 17 for rebuttal comments. And again, if  
20 today after we -- you know, we're going to close  
21 this hearing, and you might think once it's closed,  
22 you'll say, "Oh, I wish I would have said this" or  
23 "I wish I would have addressed that."

24 Don't worry. You have plenty of time to  
25 submit written comments, and there is no limit as

1 to -- you can submit two, three, whatever you need  
2 to do to -- however many comments you need to  
3 submit, there's no limit on that for written  
4 comments.

5 We just ask that you do so in our  
6 preferred method, and that's the eComments website,  
7 but there are other options of mail and fax if you  
8 do not have access to Internet to do that.

9 Are there -- before I close today's  
10 hearing, are there any questions or concerns that  
11 we need to address before we close the hearing  
12 record? I'm going to ask first Mr. Skaar.

13 MR. SKAAR: No, Judge, I don't have  
14 any questions for the record. I guess I do have  
15 one procedural question for you, which is just we  
16 delivered the hard copy of those printed -- printed  
17 hard copies of those comments that we entered into  
18 the record as Exhibits I and M, I want to say.

19 Do you have any preference or  
20 instructions for the Department along those lines  
21 for those comments that we receive, you know,  
22 through that OAH site subsequent to this hearing or  
23 subsequent to the last one reflected in your  
24 exhibits?

25 THE JUDGE: So I and M are comments

1 that you received up 'til the date of the hearing;  
2 is that correct?

3 MR. SKAAR: Up 'til, I believe, the  
4 close of the prehearing comment, that 30-day  
5 period. They don't include I think it's the 13th  
6 of January forward or -- or and back to the date of  
7 publication.

8 THE JUDGE: Okay. Hold on. No, I  
9 think we'll -- I'll have my office confer with you  
10 about how we're going to -- depending on the volume  
11 and the format that they come in on Granicus.

12 Denise Collins from our office is our  
13 court administrator, and she'll be in touch to talk  
14 about that when we kind of figure out the volume in  
15 which the response -- the comments have come in and  
16 we'll decide from that. Does that answer your  
17 question?

18 MR. SKAAR: That does.

19 THE JUDGE: Perfect. And I'll  
20 confer with her too. I don't think she's here  
21 today, but in terms of -- I don't know if she's on  
22 the hearing today, but I will certainly be talking  
23 to her about this, and she's taken a leadership  
24 role in all of this administration of this rule  
25 too.

1           Any other questions for me from anybody  
2 else who's joined us here today? Well, thank you  
3 very much to everybody who took their time. I  
4 know, you know, it's a -- we've had two days of  
5 hearing. There have been a lot of very thoughtful  
6 well-prepared and in some cases very heartfelt  
7 stories that have been shared and comments that  
8 have been offered, and those are very helpful to  
9 the agency and to me in this rulemaking process.

10           I commend you on your civic duty of  
11 helping to make Minnesota's laws and rules the best  
12 they can be. So with that, I'll conclude today's  
13 hearing. Thank you very much for your time.

14                   (The public hearing adjourned at 1:27 p.m.)  
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