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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1272

02/26/2015 Authored by Mack, Schomacker, Halverson and Quam

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to human services; modifying human services licensing actions;
1.3 amending Minnesota Statutes 2014, sections 245A.06, by adding a subdivision;
1.4 245A.07, by adding a subdivision; 245A.08, subdivision 3, by adding a
1.5 subdivision; 626.557, subdivision 12b; 626.5572, subdivision 17.

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

1.7 Section 1. Minnesota Statutes 2014, section 245A.06, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 1a. Correction orders and conditional licenses for programs licensed
1.10 to provide home and community-based services. (a) This subdivision applies to
1.11 programs licensed to provide home and community-based services and governed by
1.12 section 245A.042.

1.13 (b) If a license holder operates more than one site under a single license issued by
1.14 the commissioner, the conditions imposed under this section shall be specific to the site
1.15 or sites at which the violations of applicable law or rules occurred and shall not apply to
1.16 other sites operated by the same license holder.

1.17 (c) If the commissioner has issued more than one license to a license holder, the
1.18 conditions imposed under this section shall be specific to the license for the program
1.19 at which the violations of applicable law or rules occurred and shall not apply to other
1.20 licenses held by the same license holder if the programs are being operated in substantial
1.21 compliance with applicable law and rules.

1.22 (d) The commissioner shall issue a conditional license only when the nature,
1.23 chronicity, or severity of the violations of applicable law or rules are not isolated, and:

1.24 (1) constitute a pattern of noncompliance or widespread noncompliance which, if
1.25 uncorrected, would pose a risk to the health, safety, and rights of the persons served; or

2.1 (2) constitute a pattern of serious maltreatment of a minor under section 626.556,
 2.2 or a vulnerable adult under section 626.557. For purposes of this paragraph, "serious
 2.3 maltreatment" has the meaning given in section 245C.02, subdivision 18.

2.4 (e) Before issuing an order of conditional license, the commissioner shall:

2.5 (1) notify the license holder in writing of the specific violations of applicable law
 2.6 or rules;

2.7 (2) provide the license holder with ten days to submit a correction plan identifying a
 2.8 date certain by which the license holder expects to correct the violations cited in the
 2.9 commissioner's notice;

2.10 (3) within ten days of receipt of the correction plan, approve the plan as submitted
 2.11 or require modifications of the plan; and

2.12 (4) conduct an inspection no later than 30 days after the approved correction plan's
 2.13 date certain to establish whether the license holder has made the required corrections or
 2.14 remains in noncompliance.

2.15 (f) The commissioner shall not issue a conditional license if the inspection
 2.16 establishes that the license holder has corrected the violations of law or rules.

2.17 (g) Prior to issuing final sanctions, the commissioner shall offer the license holder
 2.18 the opportunity for a settlement hearing.

2.19 Sec. 2. Minnesota Statutes 2014, section 245A.07, is amended by adding a subdivision
 2.20 to read:

2.21 Subd. 4a. **Revocation and suspension of licenses for home and community-based**
 2.22 **services programs; authority to stay revocation.** (a) This subdivision applies to
 2.23 programs licensed to provide home and community-based services and governed by
 2.24 section 245A.042.

2.25 (b) Except for license holders subject to an order for temporary immediate
 2.26 suspension under subdivision 2, or suspension under subdivision 3, the commissioner
 2.27 shall not revoke a license unless a conditional license has been issued to the license holder
 2.28 as provided in section 245A.06, subdivision 1a.

2.29 (c) Notwithstanding the provisions of section 245A.04, subdivision 7, paragraph (e),
 2.30 if the commissioner issues a revocation, suspension, or nonrenewal of a license held by an
 2.31 organization or controlling individual who also provides services at other sites under the
 2.32 same or other licenses issued by the commissioner, the commissioner may issue an order
 2.33 to stay the revocation, suspension, or nonrenewal of the license for other sites operated
 2.34 by the organization or controlling individual. The decision to issue an order for a stay
 2.35 must be made within 90 days of the commissioner's determination under section 245A.04,

3.1 subdivision 7, paragraph (e), that the additional licenses or sites are subject to revocation,
3.2 suspension, or nonrenewal. In deciding whether to issue a stay and impose conditions and
3.3 restrictions, the commissioner shall consider:

3.4 (1) the ability of the controlling individual or organization to operate the other
3.5 licensed programs in substantial compliance with applicable law or rules; and

3.6 (2) the compliance history of each site operated by the license holder.

3.7 Sec. 3. Minnesota Statutes 2014, section 245A.08, subdivision 3, is amended to read:

3.8 Subd. 3. **Burden of proof.** (a) At a hearing regarding a licensing sanction under
3.9 section 245A.07, including consolidated hearings under subdivision 2a, the commissioner
3.10 ~~may~~ has the burden of proof to demonstrate reasonable cause for the action taken by
3.11 ~~submitting statements, reports, or sworn affidavits or testimony to substantiate the~~
3.12 ~~allegations that the license holder failed to substantially comply fully with applicable law~~
3.13 ~~or rule. The commissioner may not rely solely on unsworn statements or reports to place~~
3.14 ~~material facts in controversy or to meet the initial burden of proof. If the commissioner~~
3.15 ~~demonstrates that reasonable cause existed~~ exists, the burden of proof shifts to the license
3.16 holder to demonstrate by a preponderance of the evidence that the license holder ~~was in~~
3.17 ~~full~~ is currently in substantial compliance with those laws or rules that the commissioner
3.18 alleges the license holder violated, ~~at the time that the commissioner alleges the violations~~
3.19 ~~of law or rules occurred.~~

3.20 (b) At a hearing on denial of an application, the applicant bears the burden of proof
3.21 to demonstrate by a preponderance of the evidence that the appellant has complied fully
3.22 with this chapter and other applicable law or rule and that the application should be
3.23 approved and a license granted.

3.24 Sec. 4. Minnesota Statutes 2014, section 245A.08, is amended by adding a subdivision
3.25 to read:

3.26 Subd. 6. **Judicial review.** Upon timely appeal of a final agency decision, the
3.27 reviewing court shall not defer to the commissioner's choice of sanction under this section
3.28 and shall consider de novo whether the commissioner's choice of sanction is supported
3.29 by the record of evidence taken as a whole and commensurate with the seriousness of
3.30 the violation.

3.31 Sec. 5. Minnesota Statutes 2014, section 626.557, subdivision 12b, is amended to read:

3.32 Subd. 12b. **Data management.** (a) In performing any of the duties of this section as
3.33 a lead investigative agency, the county social service agency shall maintain appropriate

4.1 records. Data collected by the county social service agency under this section are welfare
4.2 data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a),
4.3 data under this paragraph that are inactive investigative data on an individual who is a
4.4 vendor of services are private data on individuals, as defined in section 13.02. The identity
4.5 of the reporter may only be disclosed as provided in paragraph (c).

4.6 Data maintained by the common entry point are confidential data on individuals or
4.7 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163,
4.8 the common entry point shall maintain data for three calendar years after date of receipt
4.9 and then destroy the data unless otherwise directed by federal requirements.

4.10 (b) The commissioners of health and human services shall prepare an investigation
4.11 memorandum for each report alleging maltreatment investigated under this section.
4.12 County social service agencies must maintain private data on individuals but are not
4.13 required to prepare an investigation memorandum. During an investigation by the
4.14 commissioner of health or the commissioner of human services, data collected under this
4.15 section are confidential data on individuals or protected nonpublic data as defined in
4.16 section 13.02. Upon completion of the investigation, the data are classified as provided in
4.17 clauses (1) to (3) and paragraph (c).

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

4.19 (i) the name of the facility investigated;

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

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

4.22 (iv) the identity of the investigator;

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

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

4.26 (vii) a statement of any action taken by the facility;

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

4.28 (ix) when a lead investigative agency's determination has substantiated maltreatment,
4.29 a statement of whether an individual, individuals, or a facility were responsible for the
4.30 substantiated maltreatment, if known.

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

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

4.36 (i) the name of the vulnerable adult;

- 5.1 (ii) the identity of the individual alleged to be the perpetrator;
- 5.2 (iii) the identity of the individual substantiated as the perpetrator; and
- 5.3 (iv) the identity of all individuals interviewed as part of the investigation.

5.4 (3) Other data on individuals maintained as part of an investigation under this section
5.5 are private data on individuals upon completion of the investigation.

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

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

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

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

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

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

5.25 (e) The commissioners of health and human services shall annually publish on their
5.26 Web sites the number and type of reports of alleged maltreatment involving licensed
5.27 facilities reported under this section, the number of those requiring investigation under this
5.28 section, and the resolution of those investigations. On a biennial basis, the commissioners
5.29 of health and human services shall jointly report the following information to the
5.30 legislature and the governor:

5.31 (1) the number and type of reports of alleged maltreatment involving licensed
5.32 facilities reported under this section, the number of those requiring investigations under
5.33 this section, the resolution of those investigations, and which of the two lead agencies
5.34 was responsible;

5.35 (2) trends about types of substantiated maltreatment found in the reporting period;

- 6.1 (3) if there are upward trends for types of maltreatment substantiated,
6.2 recommendations for addressing and responding to them;
- 6.3 (4) efforts undertaken or recommended to improve the protection of vulnerable adults;
- 6.4 (5) whether and where backlogs of cases result in a failure to conform with statutory
6.5 time frames and recommendations for reducing backlogs if applicable;
- 6.6 (6) recommended changes to statutes affecting the protection of vulnerable adults; and
- 6.7 (7) any other information that is relevant to the report trends and findings.
- 6.8 (f) Each lead investigative agency must have a record retention policy.
- 6.9 (g) Lead investigative agencies, prosecuting authorities, and law enforcement
6.10 agencies may exchange not public data, as defined in section 13.02, if the agency or
6.11 authority requesting the data determines that the data are pertinent and necessary to
6.12 the requesting agency in initiating, furthering, or completing an investigation under
6.13 this section. Data collected under this section must be made available to prosecuting
6.14 authorities and law enforcement officials, local county agencies, and licensing agencies
6.15 investigating the alleged maltreatment under this section. The lead investigative agency
6.16 shall exchange not public data with the vulnerable adult maltreatment review panel
6.17 established in section 256.021 if the data are pertinent and necessary for a review
6.18 requested under that section. Notwithstanding section 138.17, upon completion of the
6.19 review, not public data received by the review panel must be destroyed.
- 6.20 (h) Each lead investigative agency shall keep records of the length of time it takes to
6.21 complete its investigations.
- 6.22 (i) A lead investigative agency may notify other affected parties and their authorized
6.23 representative if the lead investigative agency has reason to believe maltreatment has
6.24 occurred and determines the information will safeguard the well-being of the affected
6.25 parties or dispel widespread rumor or unrest in the affected facility.
- 6.26 (j) Under any notification provision of this section, where federal law specifically
6.27 prohibits the disclosure of patient identifying information, a lead investigative agency may
6.28 not provide any notice unless the vulnerable adult has consented to disclosure in a manner
6.29 which conforms to federal requirements.
- 6.30 (k) A public report finding substantiated maltreatment may not disclose an injury
6.31 or death unless the lead investigative agency demonstrates that the substantiated
6.32 maltreatment is the proximate cause of the injury or death.

6.33 Sec. 6. Minnesota Statutes 2014, section 626.5572, subdivision 17, is amended to read:

6.34 Subd. 17. **Neglect.** "Neglect" means:

7.1 (a) The failure or omission by a caregiver to supply a vulnerable adult with care or
7.2 services, including but not limited to, food, clothing, shelter, health care, or supervision
7.3 which is:

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

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

7.8 (b) The absence or likelihood of absence of care or services, including but not
7.9 limited to, food, clothing, shelter, health care, or supervision necessary to maintain the
7.10 physical and mental health of the vulnerable adult which a reasonable person would deem
7.11 essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering
7.12 the physical or mental capacity or dysfunction of the vulnerable adult.

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

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

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

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

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

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

7.33 (i) a person including a facility staff person when a consensual sexual personal
7.34 relationship existed prior to the caregiving relationship; or

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

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

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

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

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

8.12 (iii) the error is not part of a pattern of errors by the individual or facility;

8.13 (iv) if in a facility, the error is immediately reported as required under section
8.14 626.557, and recorded internally in the facility;

8.15 (v) if in a facility, the facility identifies and takes corrective action and implements
8.16 measures designed to reduce the risk of further occurrence of this error and similar
8.17 errors; and

8.18 (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently
8.19 documented for review and evaluation by the facility and any applicable licensing,
8.20 certification, and ombudsman agency.

8.21 (d) Nothing in this definition requires a caregiver, if regulated, to provide services
8.22 in excess of those required by the caregiver's license, certification, registration, or other
8.23 regulation. A lead investigative agency may not substantiate neglect against a facility
8.24 that is in compliance with the laws and rules relevant to the occurrence or event under
8.25 investigation.

8.26 (e) If the findings of an investigation by a lead investigative agency result in a
8.27 determination of substantiated maltreatment for the sole reason that the actions required
8.28 of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then
8.29 the facility is subject to a correction order. An individual will not be found to have
8.30 neglected or maltreated the vulnerable adult based solely on the facility's not having
8.31 taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This
8.32 must not alter the lead investigative agency's determination of mitigating factors under
8.33 section 626.557, subdivision 9c, paragraph (c).