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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **2977**

03/12/2014 Authored by Franson and Huntley

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

03/20/2014 Adoption of Report: Amended and re-referred to the Committee on Government Operations

03/26/2014 Adoption of Report: Re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to health; making changes to home care provider licensing and
1.3 compliance monitoring; amending Minnesota Statutes 2013 Supplement, sections
1.4 144A.474, subdivisions 8, 12; 144A.475, subdivision 3, by adding subdivisions.

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

1.6 Section 1. Minnesota Statutes 2013 Supplement, section 144A.474, subdivision 8,
1.7 is amended to read:

1.8 Subd. 8. **Correction orders.** (a) A correction order may be issued whenever the
1.9 commissioner finds upon survey or during a complaint investigation that a home care
1.10 provider, a managerial official, or an employee of the provider is not in compliance with
1.11 sections 144A.43 to 144A.482. The correction order shall cite the specific statute and
1.12 document areas of noncompliance and the time allowed for correction.

1.13 (b) The commissioner shall mail copies of any correction order ~~within 30 calendar~~
1.14 ~~days after an exit survey~~ to the last known address of the home care provider, or
1.15 electronically scan the correction order and e-mail it to the last known home care provider
1.16 e-mail address, within 30 calendar days after the survey exit date. A copy of each
1.17 correction order and copies of any documentation supplied to the commissioner shall be
1.18 kept on file by the home care provider, and public documents shall be made available for
1.19 viewing by any person upon request. Copies may be kept electronically.

1.20 (c) By the correction order date, the home care provider must document in the
1.21 provider's records any action taken to comply with the correction order. The commissioner
1.22 may request a copy of this documentation and the home care provider's action to respond
1.23 to the correction order in future surveys, upon a complaint investigation, and as otherwise
1.24 needed.

2.1 **EFFECTIVE DATE.** This section is effective August 1, 2014, and for current
2.2 licensees as of December 31, 2013, on or after July 1, 2014, upon license renewal.

2.3 Sec. 2. Minnesota Statutes 2013 Supplement, section 144A.474, subdivision 12,
2.4 is amended to read:

2.5 Subd. 12. **Reconsideration.** (a) The commissioner shall make available to home
2.6 care providers a correction order reconsideration process. This process may be used
2.7 to challenge the correction order issued, including the level and scope described in
2.8 subdivision 11, and any fine assessed. During the correction order reconsideration
2.9 request, the issuance for the correction orders under reconsideration are not stayed, but
2.10 the department shall post information on the Web site with the correction order that the
2.11 licensee has requested a reconsideration and that the review is pending.

2.12 (b) A licensed home care provider may request from the commissioner, in writing,
2.13 a correction order reconsideration regarding any correction order issued to the provider.
2.14 The written request for reconsideration must be received by the commissioner within 15
2.15 calendar days of the correction order receipt date. The correction order reconsideration shall
2.16 not be reviewed by any surveyor, investigator, or supervisor that participated in the writing
2.17 or reviewing of the correction order being disputed. The correction order reconsiderations
2.18 may be conducted in person, by telephone, by another electronic form, or in writing, as
2.19 determined by the commissioner. The commissioner shall respond in writing to the request
2.20 from a home care provider for a correction order reconsideration within 60 days of the
2.21 date the provider requests a reconsideration. The commissioner's response shall identify
2.22 the commissioner's decision regarding each citation challenged by the home care provider.

2.23 (c) The findings of a correction order reconsideration process shall be one or more of
2.24 the following:

2.25 (1) supported in full, the correction order is supported in full, with no deletion of
2.26 findings to the citation;

2.27 (2) supported in substance, the correction order is supported, but one or more
2.28 findings are deleted or modified without any change in the citation;

2.29 (3) correction order cited an incorrect home care licensing requirement, the correction
2.30 order is amended by changing the correction order to the appropriate statutory reference;

2.31 (4) correction order was issued under an incorrect citation, the correction order is
2.32 amended to be issued under the more appropriate correction order citation;

2.33 (5) the correction order is rescinded;

2.34 (6) fine is amended, it is determined that the fine assigned to the correction order
2.35 was applied incorrectly; or

3.1 (7) the level or scope of the citation is modified based on the reconsideration.

3.2 (d) If the correction order findings are changed by the commissioner, the
3.3 commissioner shall update the correction order Web site.

3.4 (e) This subdivision does not apply to temporary licensees.

3.5 **EFFECTIVE DATE.** This section is effective August 1, 2014, and for current
3.6 licensees as of December 31, 2013, on or after July 1, 2014, upon license renewal.

3.7 Sec. 3. Minnesota Statutes 2013 Supplement, section 144A.475, subdivision 3, is
3.8 amended to read:

3.9 Subd. 3. **Notice.** Prior to any suspension, revocation, or refusal to renew a license,
3.10 the home care provider shall be entitled to notice and a hearing as provided by sections
3.11 14.57 to 14.69. In addition to any other remedy provided by law, the commissioner may,
3.12 without a prior contested case hearing, temporarily suspend a license or prohibit delivery
3.13 of services by a provider for not more than 90 days if the commissioner determines that
3.14 the health or safety of a consumer is in imminent danger, there are level 3 or 4 violations
3.15 as defined in section 144A.474, subdivision 11, paragraph (b), provided:

3.16 (1) advance notice is given to the home care provider;

3.17 (2) after notice, the home care provider fails to correct the problem;

3.18 (3) the commissioner has reason to believe that other administrative remedies are not
3.19 likely to be effective; and

3.20 (4) there is an opportunity for a contested case hearing within the ~~90~~ 30 days unless
3.21 there is an extension granted by an administrative law judge pursuant to subdivision 3b.

3.22 **EFFECTIVE DATE.** The amendments to this section are effective August 1, 2014,
3.23 and for current licensees as of December 31, 2013, on or after July 1, 2014, upon license
3.24 renewal.

3.25 Sec. 4. Minnesota Statutes 2013 Supplement, section 144A.475, is amended by adding
3.26 a subdivision to read:

3.27 **Subd. 3a. Hearing.** Within 15 business days of receipt of the licensee's timely appeal
3.28 of a sanction under this section, other than for a temporary suspension, the commissioner
3.29 shall request assignment of an administrative law judge. The commissioner's request must
3.30 include a proposed date, time, and place of hearing. A hearing must be conducted by an
3.31 administrative law judge pursuant to Minnesota Rules, parts 1400.8505 to 1400.8612,
3.32 within 90 calendar days of the request for assignment, unless an extension is requested by
3.33 either party and granted by the administrative law judge for good cause or for purposes of

4.1 discussing settlement. In no case shall one or more extensions be granted for a total of
4.2 more than 90 calendar days unless there is a criminal action pending against the licensee.
4.3 If, while a licensee continues to operate pending an appeal of an order for revocation,
4.4 suspension, or refusal to renew a license, the commissioner identifies one or more new
4.5 violations of law that meet the requirements of level 3 or 4 violations as defined in section
4.6 144A.474, subdivision 11, paragraph (b), the commissioner shall act immediately to
4.7 temporarily suspend the license under the provisions in subdivision 3.

4.8 **EFFECTIVE DATE.** This section is effective for appeals received on or after
4.9 August 1, 2014.

4.10 Sec. 5. Minnesota Statutes 2013 Supplement, section 144A.475, is amended by adding
4.11 a subdivision to read:

4.12 Subd. 3b. **Temporary suspension expedited hearing.** (a) Within five business
4.13 days of receipt of the license holder's timely appeal of a temporary suspension, the
4.14 commissioner shall request assignment of an administrative law judge. The request must
4.15 include a proposed date, time, and place of a hearing. A hearing must be conducted by an
4.16 administrative law judge within 30 calendar days of the request for assignment, unless
4.17 an extension is requested by either party and granted by the administrative law judge
4.18 for good cause. The commissioner shall issue a notice of hearing by certified mail or
4.19 personal service at least ten business days before the hearing. Certified mail to the last
4.20 known address is sufficient. The scope of the hearing shall be limited solely to the issue of
4.21 whether the temporary suspension should remain in effect and whether there is sufficient
4.22 evidence to conclude that the licensee's actions or failure to comply with applicable laws
4.23 are level 3 or 4 violations as defined in section 144A.474, subdivision 11, paragraph (b).

4.24 (b) The administrative law judge shall issue findings of fact, conclusions, and a
4.25 recommendation within ten business days from the date of hearing. The parties shall have
4.26 ten calendar days to submit exceptions to the administrative law judge's report. The
4.27 record shall close at the end of the ten-day period for submission of exceptions. The
4.28 commissioner's final order shall be issued within ten business days from the close of the
4.29 record. When an appeal of a temporary immediate suspension is withdrawn or dismissed,
4.30 the commissioner shall issue a final order affirming the temporary immediate suspension
4.31 within ten calendar days of the commissioner's receipt of the withdrawal or dismissal. The
4.32 license holder is prohibited from operation during the temporary suspension period.

4.33 (c) When the final order under paragraph (b) affirms an immediate suspension, and a
4.34 final licensing sanction is issued under subdivisions 1 and 2 and the licensee appeals that

- 5.1 sanction, the licensee is prohibited from operation pending a final commissioner's order
- 5.2 after the contested case hearing conducted under chapter 14.
- 5.3 **EFFECTIVE DATE.** This section is effective August 1, 2014.