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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **3446**

02/15/2022 Authored by Moller

The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

03/21/2022 Adoption of Report: Amended and re-referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; establishing the Department of Human Services systemic
1.3 critical incident review team; removing language regarding public health care
1.4 programs and certain trusts; amending Minnesota Statutes 2020, sections 256.01,
1.5 by adding a subdivision; 501C.1206.

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

1.7 Section 1. Minnesota Statutes 2020, section 256.01, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 12b. Department of Human Services systemic critical incident review team. (a)

1.10 The commissioner may establish a Department of Human Services systemic critical incident
1.11 review team to review critical incidents reported as required under section 626.557 for
1.12 which the Department of Human Services is responsible under section 626.5572, subdivision
1.13 13; chapter 245D; or Minnesota Rules, chapter 9544. When reviewing a critical incident,
1.14 the systemic critical incident review team shall identify systemic influences to the incident
1.15 rather than determining the culpability of any actors involved in the incident. The systemic
1.16 critical incident review may assess the entire critical incident process from the point of an
1.17 entity reporting the critical incident through the ongoing case management process.

1.18 Department staff shall lead and conduct the reviews and may utilize county staff as reviewers.

1.19 The systemic critical incident review process may include but is not limited to:

1.20 (1) data collection about the incident and actors involved. Data may include the critical
1.21 incident report under review; previous incident reports pertaining to the person receiving
1.22 services; the service provider's policies and procedures applicable to the incident; the
1.23 coordinated service and support plan as defined in section 245D.02, subdivision 4b, for the

2.1 person receiving services; or an interview of an actor involved in the critical incident or the
2.2 review of the critical incident. Actors may include:

2.3 (i) staff of the provider agency;

2.4 (ii) lead agency staff administering home and community-based services delivered by
2.5 the provider;

2.6 (iii) Department of Human Services staff with oversight of home and community-based
2.7 services;

2.8 (iv) Department of Health staff with oversight of home and community-based services;

2.9 (v) members of the community including advocates, legal representatives, health care
2.10 providers, pharmacy staff, or others with knowledge of the incident or the actors in the
2.11 incident; and

2.12 (vi) staff from the office of the ombudsman for mental health and developmental
2.13 disabilities;

2.14 (2) systemic mapping of the critical incident. The team conducting the systemic mapping
2.15 of the incident may include any actors identified in clause (1), designated representatives
2.16 of other provider agencies, regional teams, and representatives of the local regional quality
2.17 council identified in section 256B.097; and

2.18 (3) analysis of the case for systemic influences.

2.19 Data collected by the critical incident review team shall be aggregated and provided to
2.20 regional teams, participating regional quality councils, and the commissioner. The regional
2.21 teams and quality councils shall analyze the data and make recommendations to the
2.22 commissioner regarding systemic changes that would decrease the number and severity of
2.23 critical incidents in the future or improve the quality of the home and community-based
2.24 service system.

2.25 (b) Cases selected for the systemic critical incident review process shall be selected by
2.26 a selection committee among the following critical incident categories:

2.27 (1) cases of caregiver neglect identified in section 626.5572, subdivision 17;

2.28 (2) cases involving financial exploitation identified in section 626.5572, subdivision 9;

2.29 (3) incidents identified in section 245D.02, subdivision 11;

2.30 (4) incidents identified in Minnesota Rules, part 9544.0110; and

3.1 (5) service terminations reported to the department in accordance with section 245D.10,
3.2 subdivision 3a.

3.3 (c) The systemic critical incident review under this section shall not replace the process
3.4 for screening or investigating cases of alleged maltreatment of an adult under section 626.557.
3.5 The department may select cases for systemic critical incident review, under the jurisdiction
3.6 of the commissioner, reported for suspected maltreatment and closed following initial or
3.7 final disposition.

3.8 (d) The proceedings and records of the review team are confidential data on individuals
3.9 or protected nonpublic data as defined in section 13.02, subdivisions 3 and 13. Data that
3.10 document a person's opinions formed as a result of the review are not subject to discovery
3.11 or introduction into evidence in a civil or criminal action against a professional, the state,
3.12 or a county agency arising out of the matters that the team is reviewing. Information,
3.13 documents, and records otherwise available from other sources are not immune from
3.14 discovery or use in a civil or criminal action solely because the information, documents,
3.15 and records were assessed or presented during proceedings of the review team. A person
3.16 who presented information before the systemic critical incident review team or who is a
3.17 member of the team shall not be prevented from testifying about matters within the person's
3.18 knowledge. In a civil or criminal proceeding, a person shall not be questioned about opinions
3.19 formed by the person as a result of the review.

3.20 (e) By October 1 of each year, the commissioner shall prepare an annual public report
3.21 containing:

3.22 (1) an aggregate summary of the systemic themes from the critical incidents examined
3.23 by the critical incident review team during the previous year;

3.24 (2) a synopsis of the conclusions made, process maps created, or exploratory activities
3.25 taken in regard to the critical incidents examined by the critical incident review team; and

3.26 (3) recommendations made to the commissioner regarding systemic changes that could
3.27 decrease the number and severity of critical incidents in the future or improve the quality
3.28 of the home and community-based service system.

3.29 Sec. 2. Minnesota Statutes 2020, section 501C.1206, is amended to read:

3.30 **501C.1206 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.**

3.31 ~~(a)~~ It is the public policy of this state that individuals use all available resources to pay
3.32 for the cost of long-term care services, as defined in section 256B.0595, before turning to

4.1 Minnesota health care program funds, and that trust instruments should not be permitted to
4.2 shield available resources of an individual or an individual's spouse from such use.

4.3 ~~(b) When a state or local agency makes a determination on an application by the~~
4.4 ~~individual or the individual's spouse for payment of long-term care services through a~~
4.5 ~~Minnesota public health care program pursuant to chapter 256B, any irrevocable inter vivos~~
4.6 ~~trust or any legal instrument, device, or arrangement similar to an irrevocable inter vivos~~
4.7 ~~trust created on or after July 1, 2005, containing assets or income of an individual or an~~
4.8 ~~individual's spouse, including those created by a person, court, or administrative body with~~
4.9 ~~legal authority to act in place of, at the direction of, upon the request of, or on behalf of the~~
4.10 ~~individual or individual's spouse, becomes revocable for the sole purpose of that~~
4.11 ~~determination. For purposes of this section, any inter vivos trust and any legal instrument,~~
4.12 ~~device, or arrangement similar to an inter vivos trust:~~

4.13 ~~(1) shall be deemed to be located in and subject to the laws of this state; and~~

4.14 ~~(2) is created as of the date it is fully executed by or on behalf of all of the settlors or~~
4.15 ~~others.~~

4.16 ~~(c) For purposes of this section, a legal instrument, device, or arrangement similar to an~~
4.17 ~~irrevocable inter vivos trust means any instrument, device, or arrangement which involves~~
4.18 ~~a settlor who transfers or whose property is transferred by another including, but not limited~~
4.19 ~~to, any court, administrative body, or anyone else with authority to act on their behalf or at~~
4.20 ~~their direction, to an individual or entity with fiduciary, contractual, or legal obligations to~~
4.21 ~~the settlor or others to be held, managed, or administered by the individual or entity for the~~
4.22 ~~benefit of the settlor or others. These legal instruments, devices, or other arrangements are~~
4.23 ~~irrevocable inter vivos trusts for purposes of this section.~~

4.24 ~~(d) In the event of a conflict between this section and the provisions of an irrevocable~~
4.25 ~~trust created on or after July 1, 2005, this section shall control.~~

4.26 ~~(e) This section does not apply to trusts that qualify as supplemental needs trusts under~~
4.27 ~~section 501C.1205 or to trusts meeting the criteria of United States Code, title 42, section~~
4.28 ~~1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.~~

4.29 ~~(f) This section applies to all trusts first created on or after July 1, 2005, as permitted~~
4.30 ~~under United States Code, title 42, section 1396p, and to all interests in real or personal~~
4.31 ~~property regardless of the date on which the interest was created, reserved, or acquired.~~

4.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.