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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4573

03/23/2022 Authored by Schultz
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health; changing provisions for nursing home change of ownership;
1.3 amending Minnesota Statutes 2020, sections 144A.01; 144A.03, subdivision 1;
1.4 144A.04, subdivisions 4, 6; 144A.06; proposing coding for new law in Minnesota
1.5 Statutes, chapter 144A.

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

1.7 Section 1. Minnesota Statutes 2020, section 144A.01, is amended to read:

1.8 144A.01 DEFINITIONS.

1.9 Subdivision 1. Scope. For the purposes of sections 144A.01 to 144A.27, the terms
1.10 defined in this section have the meanings given them.

1.11 Subd. 2. Commissioner of health. "Commissioner of health" means the state
1.12 commissioner of health established by section 144.011.

1.13 Subd. 3. Board of Executives for Long Term Services and Supports. "Board of
1.14 Executives for Long Term Services and Supports" means the Board of Executives for Long
1.15 Term Services and Supports established by section 144A.19.

1.16 Subd. 3a. Certified. "Certified" means certified for participation as a provider in the
1.17 Medicare or Medicaid programs under title XVIII or XIX of the Social Security Act.

1.18 Subd. 4. Controlling person individual. (a) "Controlling person individual" means any
1.19 public body, governmental agency, business entity, an owner and the following individuals
1.20 and entities, if applicable:

1.21 (1) each officer of the organization, including the chief executive officer and the chief
1.22 financial officer;

2.1 ~~(2) the nursing home administrator;~~ or ~~director whose responsibilities include the~~  
 2.2 ~~direction of the management or policies of a nursing home~~

2.3 (3) any managerial official.

2.4 (b) "Controlling person individual" also means any entity or natural person who, directly  
 2.5 ~~or indirectly, beneficially owns any~~ has any direct or indirect ownership interest in:

2.6 (1) any corporation, partnership or other business association which is a controlling  
 2.7 ~~person individual;~~

2.8 (2) any other legal or business entity;

2.9 ~~(2)~~ (3) the land on which a nursing home is located;

2.10 ~~(3)~~ (4) the structure in which a nursing home is located;

2.11 ~~(4)~~ (5) any entity with at least a five percent mortgage, contract for deed, deed of trust,  
 2.12 ~~or other obligation secured in whole or part by~~ security interest in the land or structure  
 2.13 ~~comprising a nursing home; or~~

2.14 ~~(5)~~ (6) any lease or sublease of the land, structure, or facilities comprising a nursing  
 2.15 ~~home.~~

2.16 ~~(b)~~ (c) "Controlling person individual" does not include:

2.17 (1) a bank, savings bank, trust company, savings association, credit union, industrial  
 2.18 loan and thrift company, investment banking firm, or insurance company unless the entity  
 2.19 directly or through a subsidiary operates a nursing home;

2.20 (2) government and government-sponsored entities such as the United States Department  
 2.21 of Housing and Urban Development, Ginnie Mae, Fannie Mae, Freddie Mac, and the  
 2.22 Minnesota Housing Finance Agency which provide loans, financing, and insurance products  
 2.23 for housing sites;

2.24 ~~(2)~~ (3) an individual who is a state or federal official or, a state or federal employee, or  
 2.25 ~~a member or employee of the governing body of a political subdivision of the state which~~  
 2.26 ~~or federal government that~~ operates one or more nursing homes, unless the individual is  
 2.27 ~~also an officer or director of a,~~ owner, or managerial official of the nursing home, receives  
 2.28 ~~any remuneration from a nursing home, or owns any of the beneficial interests who is a~~  
 2.29 ~~controlling individual not otherwise excluded in this subdivision;~~

2.30 ~~(3)~~ (4) a natural person who is a member of a tax-exempt organization under section  
 2.31 ~~290.05, subdivision 2, unless the individual is also an officer or director of a nursing home,~~

3.1 ~~or owns any of the beneficial interests~~ a controlling individual not otherwise excluded in  
 3.2 this subdivision; and

3.3 ~~(4)~~ (5) a natural person who owns less than five percent of the outstanding common  
 3.4 shares of a corporation:

3.5 (i) whose securities are exempt by virtue of section 80A.45, clause (6); or

3.6 (ii) whose transactions are exempt by virtue of section 80A.46, clause (7).

3.7 Subd. 4a. **Emergency.** "Emergency" means a situation or physical condition that creates  
 3.8 or probably will create an immediate and serious threat to a resident's health or safety.

3.9 Subd. 5. **Nursing home.** "Nursing home" means a facility or that part of a facility which  
 3.10 provides nursing care to five or more persons. "Nursing home" does not include a facility  
 3.11 or that part of a facility which is a hospital, a hospital with approved swing beds as defined  
 3.12 in section 144.562, clinic, doctor's office, diagnostic or treatment center, or a residential  
 3.13 program licensed pursuant to sections 245A.01 to 245A.16 or 252.28.

3.14 Subd. 6. **Nursing care.** "Nursing care" means health evaluation and treatment of patients  
 3.15 and residents who are not in need of an acute care facility but who require nursing supervision  
 3.16 on an inpatient basis. The commissioner of health may by rule establish levels of nursing  
 3.17 care.

3.18 Subd. 7. **Uncorrected violation.** "Uncorrected violation" means a violation of a statute  
 3.19 or rule or any other deficiency for which a notice of noncompliance has been issued and  
 3.20 fine assessed and allowed to be recovered pursuant to section 144A.10, subdivision 8.

3.21 Subd. 8. **Managerial ~~employee~~ official.** "Managerial ~~employee~~ official" means an  
 3.22 ~~employee of a~~ individual who has the decision-making authority related to the operation of  
 3.23 the nursing home whose duties include and the responsibility for either: (1) the ongoing  
 3.24 management of the nursing home; or (2) the direction of ~~some or all of the management or~~  
 3.25 policies, services, or employees of the nursing home.

3.26 Subd. 9. **Nursing home administrator.** "Nursing home administrator" means a person  
 3.27 who administers, manages, supervises, or is in general administrative charge of a nursing  
 3.28 home, whether or not the individual has an ownership interest in the home, and whether or  
 3.29 not the person's functions and duties are shared with one or more individuals, and who is  
 3.30 licensed pursuant to section 144A.21.

3.31 Subd. 10. **Repeated violation.** "Repeated violation" means the issuance of two or more  
 3.32 correction orders, within a 12-month period, for a violation of the same provision of a statute  
 3.33 or rule.

4.1 Subd. 11. **Change of ownership.** "Change of ownership" means a change in the licensee.

4.2 Subd. 12. **Direct ownership interest.** "Direct ownership interest" means an individual  
 4.3 or legal entity with the possession of at least five percent equity in capital, stock, or profits  
 4.4 of the licensee or who is a member of a limited liability company of the licensee.

4.5 Subd. 13. **Indirect ownership interest.** "Indirect ownership interest" means an individual  
 4.6 or legal entity with a direct ownership interest in an entity that has a direct or indirect  
 4.7 ownership interest of at least five percent in an entity that is a licensee.

4.8 Subd. 14. **Licensee.** "Licensee" means a person or legal entity to whom the commissioner  
 4.9 issues a license for a nursing home and who is responsible for the management, control,  
 4.10 and operation of the nursing home.

4.11 Subd. 15. **Management agreement.** "Management agreement" means a written, executed  
 4.12 agreement between a licensee and manager regarding the provision of certain services on  
 4.13 behalf of the licensee.

4.14 Subd. 16. **Manager.** "Manager" means an individual or legal entity designated by the  
 4.15 licensee through a management agreement to act on behalf of the licensee in the on-site  
 4.16 management of the nursing home.

4.17 Subd. 17. **Managing control.** "Managing control" means any organization that exercises  
 4.18 operational or managerial control over the nursing home or conducts the day-to-day  
 4.19 operations of the nursing home.

4.20 Subd. 18. **Owner.** "Owner" means: (1) an individual or legal entity that has a direct or  
 4.21 indirect ownership interest of five percent or more in a licensee; and (2) for purposes of this  
 4.22 chapter, owner of a nonprofit corporation means the president and treasurer of the board of  
 4.23 directors; and (3) for an entity owned by an employee stock ownership plan, owner means  
 4.24 the president and treasurer of the entity. A government entity that is issued a license under  
 4.25 this chapter shall be designated the owner.

4.26 **EFFECTIVE DATE.** This section is effective August 1, 2022.

4.27 Sec. 2. Minnesota Statutes 2020, section 144A.03, subdivision 1, is amended to read:

4.28 Subdivision 1. **Form; requirements.** (a) The commissioner of health by rule shall  
 4.29 establish forms and procedures for the processing of nursing home license applications.

4.30 (b) An application for a nursing home license shall include ~~the following information:~~

4.31 (1) the ~~names~~ business name and ~~addresses of all controlling persons and managerial~~  
 4.32 ~~employees of the facility to be licensed~~ legal entity name of the licensee;

- 5.1 (2) the street address, mailing address, and legal property description of the facility;
- 5.2 (3) the names, e-mail addresses, telephone numbers, and mailing addresses of all owners,
- 5.3 controlling individuals, managerial officials, and the nursing home administrator;
- 5.4 (4) the name and e-mail address of the managing agent and manager, if applicable;
- 5.5 (5) the licensed bed capacity;
- 5.6 (6) the license fee in the amount specified in section 144.122;
- 5.7 (7) documentation of compliance with the background study requirements in section
- 5.8 144.057 for the owner, controlling individuals, and managerial officials. Each application
- 5.9 for a new license must include documentation for the applicant and for each individual with
- 5.10 five percent or more direct or indirect ownership in the applicant;
- 5.11 ~~(3)~~(8) a copy of the architectural and engineering plans and specifications of the facility
- 5.12 as prepared and certified by an architect or engineer registered to practice in this state; ~~and~~
- 5.13 (9) a copy of the executed lease agreement between the landlord and the licensee, if
- 5.14 applicable;
- 5.15 (10) a copy of the management agreement, if applicable;
- 5.16 (11) a copy of the operations transfer agreement or similar agreement, if applicable;
- 5.17 (12) an organizational chart that identifies all organizations and individuals with an
- 5.18 ownership interest in the licensee of five percent or greater and that specifies their relationship
- 5.19 with the licensee and with each other;
- 5.20 (13) whether the applicant, owner, controlling individual, managerial official, or nursing
- 5.21 home administrator of the facility has ever been convicted of:
- 5.22 (i) a crime or found civilly liable for a federal or state felony-level offense that was
- 5.23 detrimental to the best interests of the facility and its residents within the last ten years
- 5.24 preceding submission of the license application. Offenses include: (A) felony crimes against
- 5.25 persons and other similar crimes for which the individual was convicted, including guilty
- 5.26 pleas and adjudicated pretrial diversions; (B) financial crimes such as extortion,
- 5.27 embezzlement, income tax evasion, insurance fraud, and other similar crimes for which the
- 5.28 individual was convicted, including guilty pleas and adjudicated pretrial diversions; (C)
- 5.29 any felonies involving malpractice that resulted in a conviction of criminal neglect or
- 5.30 misconduct; and (D) any felonies that would result in a mandatory exclusion under section
- 5.31 1128(a) of the Social Security Act;

6.1 (ii) any misdemeanor under federal or state law related to the delivery of an item or  
6.2 service under Medicaid or a state health care program or the abuse or neglect of a patient  
6.3 in connection with the delivery of a health care item or service;

6.4 (iii) any misdemeanor under federal or state law related to theft, fraud, embezzlement,  
6.5 breach of fiduciary duty, or other financial misconduct in connection with the delivery of  
6.6 a health care item or service;

6.7 (iv) any felony or misdemeanor under federal or state law relating to the interference  
6.8 with or obstruction of any investigation into any criminal offense described in Code of  
6.9 Federal Regulations, title 42, section 1001.101 or 1001.201;

6.10 (v) any felony or misdemeanor under federal or state law relating to the unlawful  
6.11 manufacture, distribution, prescription, or dispensing of a controlled substance; or

6.12 (vi) any felony or gross misdemeanor that relates to the operation of a nursing home or  
6.13 assisted living facility or directly affects resident safety or care during that period;

6.14 (14) whether the applicant, owner, controlling individual, managerial official, or nursing  
6.15 home administrator of the facility has had:

6.16 (i) any revocation or suspension of a license to provide health care by any state licensing  
6.17 authority. This includes the surrender of the license while a formal disciplinary proceeding  
6.18 was pending before a state licensing authority;

6.19 (ii) any revocation or suspension of accreditation; or

6.20 (iii) any suspension or exclusion from participation in, or any sanction imposed by, a  
6.21 federal or state health care program or any debarment from participation in any federal  
6.22 executive branch procurement or nonprocurement program;

6.23 (15) whether in the preceding three years the applicant or any owner, controlling  
6.24 individual, managerial official, or nursing home administrator of the facility has a record  
6.25 of defaulting in the payment of money collected for others, including the discharge of debts  
6.26 through bankruptcy proceedings;

6.27 (16) the signature of the owner of the licensee or an authorized agent of the licensee;

6.28 (17) identification of all states where the applicant or individual having a five percent  
6.29 or more ownership currently or previously has been licensed as an owner or operator of a  
6.30 long-term care, community-based, or health care facility or agency where the applicant's or  
6.31 individual's license or federal certification has been denied, suspended, restricted, conditioned,

7.1 refused, not renewed, or revoked under a private or state-controlled receivership or where  
 7.2 these same actions are pending under the laws of any state or federal authority;

7.3 (18) statistical information required by the commissioner; and

7.4 ~~(4)~~ (19) any other relevant information which the commissioner of health by rule or  
 7.5 otherwise may determine is necessary to properly evaluate an application for license.

7.6 (c) A controlling ~~person~~ individual which is a corporation shall submit copies of its  
 7.7 articles of incorporation and bylaws and any amendments thereto as they occur, together  
 7.8 with the names and addresses of its officers and directors. A controlling ~~person~~ individual  
 7.9 which is a foreign corporation shall furnish the commissioner of health with a copy of its  
 7.10 certificate of authority to do business in this state. ~~An application on behalf of a controlling~~  
 7.11 ~~person which is a corporation, association or a governmental unit or instrumentality shall~~  
 7.12 ~~be signed by at least two officers or managing agents of that entity.~~

7.13 **EFFECTIVE DATE.** This section is effective August 1, 2022.

7.14 Sec. 3. Minnesota Statutes 2020, section 144A.04, subdivision 4, is amended to read:

7.15 Subd. 4. **Controlling ~~person~~ individual restrictions.** (a) The commissioner has discretion  
 7.16 to bar any controlling ~~persons~~ individual of a nursing home ~~may not include any if the~~  
 7.17 person ~~who~~ was a controlling ~~person~~ individual of another any other nursing home ~~during~~  
 7.18 ~~any period of time,~~ assisted living facility, long-term care or health care facility, or agency  
 7.19 in the previous two-year period and:

7.20 (1) during ~~which that period of time of control that other nursing home the facility or~~  
 7.21 ~~agency~~ incurred the following number of uncorrected or repeated violations:

7.22 (i) two or more uncorrected violations or one or more repeated violations which created  
 7.23 an imminent risk to direct resident or client care or safety; or

7.24 (ii) four or more uncorrected violations or two or more repeated violations ~~of any nature~~  
 7.25 for which the fines are in the four highest daily fine categories prescribed in rule that created  
 7.26 an imminent risk to direct resident or client care or safety; or

7.27 (2) ~~who~~ during that period of time, was convicted of a felony or gross misdemeanor that  
 7.28 relates related to operation of the nursing home facility or agency or directly affects affected  
 7.29 resident safety or care, ~~during that period.~~

7.30 (b) The provisions of this subdivision shall not apply to any controlling ~~person~~ individual  
 7.31 who had no legal authority to affect or change decisions related to the operation of the  
 7.32 nursing home which incurred the uncorrected violations.

8.1 (c) When the commissioner bars a controlling individual under this subdivision, the  
 8.2 controlling individual has the right to appeal under chapter 14.

8.3 Sec. 4. Minnesota Statutes 2020, section 144A.04, subdivision 6, is amended to read:

8.4 Subd. 6. **Managerial ~~employee~~ official or licensed administrator; employment**  
 8.5 **prohibitions.** A nursing home may not employ as a managerial ~~employee~~ official or as its  
 8.6 licensed administrator any person who was a managerial ~~employee~~ official or the licensed  
 8.7 administrator of another facility during any period of time in the previous two-year period:

8.8 (1) during which time of employment that other nursing home incurred the following  
 8.9 number of uncorrected violations which were in the jurisdiction and control of the managerial  
 8.10 ~~employee~~ official or the administrator:

8.11 (i) two or more uncorrected violations ~~or one or more repeated violations which created~~  
 8.12 ~~an imminent risk to direct resident care or safety; or~~

8.13 (ii) four or more uncorrected violations or two or more repeated violations of any nature  
 8.14 for which the fines are in the four highest daily fine categories prescribed in rule; or

8.15 (2) who was convicted of a felony or gross misdemeanor that relates to operation of the  
 8.16 nursing home or directly affects resident safety or care, during that period.

8.17 **EFFECTIVE DATE.** This section is effective August 1, 2022.

8.18 Sec. 5. Minnesota Statutes 2020, section 144A.06, is amended to read:

8.19 **144A.06 TRANSFER OF ~~INTERESTS~~ LICENSE PROHIBITED.**

8.20 Subdivision 1. ~~Notice; expiration of license~~ **Transfers prohibited.** Any controlling  
 8.21 ~~person who makes any transfer of a beneficial interest in a nursing home shall notify the~~  
 8.22 ~~commissioner of health of the transfer within 14 days of its occurrence. The notification~~  
 8.23 ~~shall identify by name and address the transferor and transferee and shall specify the nature~~  
 8.24 ~~and amount of the transferred interest. On determining that the transferred beneficial interest~~  
 8.25 ~~exceeds ten percent of the total beneficial interest in the nursing home facility, the structure~~  
 8.26 ~~in which the facility is located, or the land upon which the structure is located, the~~  
 8.27 ~~commissioner may, and on determining that the transferred beneficial interest exceeds 50~~  
 8.28 ~~percent of the total beneficial interest in the facility, the structure in which the facility is~~  
 8.29 ~~located, or the land upon which the structure is located, the commissioner shall require that~~  
 8.30 ~~the license of the nursing home expire 90 days after the date of transfer. The commissioner~~  
 8.31 ~~of health shall notify the nursing home by certified mail of the expiration of the license at~~  
 8.32 ~~least 60 days prior to the date of expiration. A nursing home license may not be transferred.~~

9.1 Subd. 2. ~~Relicensure~~ **New license required; change of ownership.** (a) The  
 9.2 commissioner of health by rule shall prescribe procedures for ~~relicensure~~ licensure under  
 9.3 this section. ~~The commissioner of health shall relicense a nursing home if the facility satisfies~~  
 9.4 ~~the requirements for license renewal established by section 144A.05. A facility shall not be~~  
 9.5 ~~relicensed by the commissioner if at the time of transfer there are any uncorrected violations.~~  
 9.6 ~~The commissioner of health may temporarily waive correction of one or more violations if~~  
 9.7 ~~the commissioner determines that:~~

9.8 (1) ~~temporary noncorrection of the violation will not create an imminent risk of harm~~  
 9.9 ~~to a nursing home resident; and~~

9.10 (2) ~~a controlling person on behalf of all other controlling persons:~~

9.11 (i) ~~has entered into a contract to obtain the materials or labor necessary to correct the~~  
 9.12 ~~violation, but the supplier or other contractor has failed to perform the terms of the contract~~  
 9.13 ~~and the inability of the nursing home to correct the violation is due solely to that failure; or~~

9.14 (ii) ~~is otherwise making a diligent good faith effort to correct the violation.~~

9.15 (b) A new license is required and the prospective licensee must apply for a license prior  
 9.16 to operating a currently licensed nursing home. The licensee must change whenever one of  
 9.17 the following events occur:

9.18 (1) the form of the licensee's legal entity structure is converted or changed to a different  
 9.19 type of legal entity structure;

9.20 (2) the licensee dissolves, consolidates, or merges with another legal organization and  
 9.21 the licensee's legal organization does not survive;

9.22 (3) within the previous 24 months, 50 percent or more of the licensee's ownership interest  
 9.23 is transferred, whether by a single transaction or multiple transactions to:

9.24 (i) a different person; or

9.25 (ii) a person who had less than a five percent ownership interest in the facility at the  
 9.26 time of the first transaction; or

9.27 (4) any other event or combination of events that results in a substitution, elimination,  
 9.28 or withdrawal of the licensee's responsibility for the facility.

9.29 Subd. 3. **Compliance.** The commissioner must consult with the commissioner of human  
 9.30 services regarding the history of financial and cost reporting compliance of the prospective  
 9.31 licensee and prospective licensee's financial operations in any nursing home that the

10.1 prospective licensee or any controlling individual listed in the license application has had  
10.2 an interest in.

10.3 Subd. 4. Facility operation. The current licensee remains responsible for the operation  
10.4 of the nursing home until the nursing home is licensed to the prospective licensee.

10.5 EFFECTIVE DATE. This section is effective August 1, 2022.

10.6 Sec. 6. [144A.32] CONSIDERATION OF APPLICATIONS.

10.7 (a) Before issuing a provisional license or license or renewing an existing license, the  
10.8 commissioner shall consider an applicant's compliance history in providing care in a facility  
10.9 that provides care to children, the elderly, ill individuals, or individuals with disabilities.

10.10 (b) The applicant's compliance history shall include repeat violations, rule violations,  
10.11 and any license or certification involuntarily suspended or terminated during an enforcement  
10.12 process.

10.13 (c) The commissioner may deny, revoke, suspend, restrict, or refuse to renew the license  
10.14 or impose conditions if:

10.15 (1) the applicant fails to provide complete and accurate information on the application  
10.16 and the commissioner concludes that the missing or corrected information is needed to  
10.17 determine if a license is granted;

10.18 (2) the applicant, knowingly or with reason to know, made a false statement of a material  
10.19 fact in an application for the license or any data attached to the application or in any matter  
10.20 under investigation by the department;

10.21 (3) the applicant refused to allow agents of the commissioner to inspect the applicant's  
10.22 books, records, files related to the license application, or any portion of the premises;

10.23 (4) the applicant willfully prevented, interfered with, or attempted to impede in any way:

10.24 (i) the work of any authorized representative of the commissioner, the ombudsman for  
10.25 long-term care, or the ombudsman for mental health and developmental disabilities; or

10.26 (ii) the duties of the commissioner, local law enforcement, city or county attorneys, adult  
10.27 protection, county case managers, or other local government personnel;

10.28 (5) the applicant has a history of noncompliance with federal or state regulations that  
10.29 were detrimental to the health, welfare, or safety of a resident or a client; or

10.30 (6) the applicant violates any requirement in this chapter or chapter 256R.

11.1 (d) If a license is denied, the applicant has the reconsideration rights available under  
11.2 chapter 14.

11.3 **EFFECTIVE DATE.** This section is effective August 1, 2022.

11.4 Sec. 7. **REVISOR INSTRUCTION.**

11.5 The revisor of statutes shall make any necessary cross-reference changes required as a  
11.6 result of the amendments in sections 1 to 6.