

CHAPTER 348—S.F.No. 1248

An act relating to guardianship; establishing criteria for the selection of guardians and conservators; amending Minnesota Statutes 1978, Section 525.544.

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

Section 1. Minnesota Statutes 1978, Section 525.544, is amended to read:

525.544 **PLANNING PROVISIONS.** In the petition or in a written instrument executed before or after the petition is filed, the person may, if at the time of signing the same, he has sufficient capacity to form an intelligent preference, nominate a conservator or guardian or give instructions to the conservator or guardian or he may do both. The written instrument shall be executed and attested in the same manner as a will. The court shall appoint the person so nominated as conservator or guardian and shall charge him with the instructions, unless the court finds that the appointment of the nominee or the instructions or both are not in the best interests of the person to be placed under conservatorship or guardianship. When any person lacks capacity or fails to nominate a conservator or guardian, the court may appoint any qualified person. The court shall consider the interest of a prospective guardian or conservator in the welfare of the proposed ward or conservatee. Kinship, while a factor, shall not be conclusive in making the appointment. If proposed ward or conservatee lacks capacity or fails to give instructions, the court may give such powers as required.

Approved March 3, 1980

CHAPTER 349—S.F.No. 1257

An act relating to public welfare; requiring certain recipients of state aid for medical care to authorize the commissioner of public welfare to have access to their medical records for certain purposes; authorizing the commissioner to promulgate certain rules related to investigation of fraud perpetrated by health care vendors; authorizing certain sanctions against fraudulent vendors; authorizing the commissioner to institute an action to recover moneys wrongfully paid; amending Minnesota Statutes 1978, Sections 62E.53, by adding a subdivision; 62E.54, Subdivision 1; 256B.04, Subdivision 10, and by adding a subdivision; 256B.064, Subdivision 2, and by adding subdivisions; 256B.27, Subdivisions 3 and 4; 256D.03, Subdivision 3; and 256D.05, by adding a subdivision.

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

Section 1. Minnesota Statutes 1978, Section 62E.53, is amended by adding a subdivision to read:

Subd. 4. No applicant shall be eligible for state assistance under sections 62E.51 to 62E.55 unless he has authorized the commissioner of public welfare in

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writing to examine all personal medical records developed while the applicant received the medical care for which state assistance is sought. The commissioner shall use the medical records only for the purpose of investigating whether or not a health services vendor has submitted a claim for reimbursement, a cost report or a rate application which the vendor knows to be false in whole or in part, or in order to determine whether or not the medical care provided to the applicant was medically necessary. This written authorization shall be presented to the vendor of medical care before the commissioner gains access to the records. The vendor of medical care shall receive notification from the commissioner at least 24 hours before the commissioner gains access to such records. Notwithstanding any other law to the contrary, a vendor of medical care shall not be subject to any civil or criminal liability for providing access to medical records to the commissioner pursuant to this subdivision.

Sec. 2. Minnesota Statutes 1978, Section 62E.54, Subdivision 1, is amended to read:

62E.54 DUTIES OF COMMISSIONER. Subdivision 1. The commissioner shall:

(a) Promulgate reasonable rules, including emergency rules, to implement sections 62E.51 to 62E.55 -;

(b) Establish application forms and procedures for the use of persons seeking to be declared an eligible person; and

(c) Investigate applications to determine whether or not the applicant is a qualified person and investigate claims from providers of health services to determine whether or not to pay them -; and

(d) Promulgate rules establishing general criteria and procedures for the identification and prompt investigation of suspected fraud, theft, abuse, presentation of false or duplicate claims, presentation of claims for services not medically necessary, and false statements or representations of material facts by a vendor of health services, and for the imposition of sanctions against a vendor. The rules relating to sanctions shall be consistent with the provisions of section 256B.064, subdivision 2, and section 6.

Sec. 3. Minnesota Statutes 1978, Section 256B.04, Subdivision 10, is amended to read:

Subd. 10. Establish by rule general criteria and procedures for the identification and prompt investigation of suspected medical assistance fraud, theft, abuse, presentation of false or duplicate claims, presentation of claims for services not medically necessary, or false statement or representation of material facts by a vendor of medical care, and for the imposition of sanctions against a vendor of medical care. If it appears to the state agency that a vendor of medical care may have acted in a manner warranting civil or criminal proceedings, it shall so inform the attorney general in writing.

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Sec. 4. Minnesota Statutes 1978, Section 256B.04, is amended by adding a subdivision to read:

Subd. 13. Each person appointed by the commissioner to participate in decisions whether medical care to be provided to eligible recipients is medically necessary shall abstain from participation in those cases in which he (a) has issued treatment orders in the care of the patient or participated in the formulation or execution of the patient's treatment plan or (b) has, or a member of his family has, an ownership interest of five percent or more in the institution that provided or proposed to provide the services being reviewed.

Sec. 5. Minnesota Statutes 1978, Section 256B.064, Subdivision 2, is amended to read:

Subd. 2. Any vendor of medical care who submits to the state agency a claim for reimbursement, a cost report, or a rate application which he knows to be false in whole or in part shall be declared ineligible for further payments of medical assistance funds by the commissioner of public welfare. The commissioner shall determine monetary amounts to be recovered and the time period of ineligibility and any conditions for reinstatement of eligibility sanction to be imposed upon a vendor of medical care for conduct described by section 256B.064, subdivision 1a. No vendor of medical care shall be declared ineligible. Neither a monetary recovery nor a sanction will be sought by the commissioner without prior notice and an opportunity for a hearing, pursuant to chapter 15, on the commissioner's proposed action, provided that the commissioner may suspend or reduce payment to a vendor of medical care, except a nursing home or convalescent care facility, prior to the hearing if in the commissioner's opinion that action is necessary to protect the public welfare and the interests of the program.

Sec. 6. Minnesota Statutes 1978, Section 256B.064, is amended by adding subdivisions to read:

Subd. 1a. The commissioner may seek monetary recovery and impose sanctions against vendors of medical care for any of the following: fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; a pattern of presentment of false or duplicate claims or claims for services not medically necessary; a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled; suspension or termination as a Medicare vendor; and refusal to grant the state agency access during regular business hours to examine all records necessary to disclose the extent of services provided to program recipients. No sanction may be imposed or monetary recovery obtained against any vendor of nursing home or convalescent care for providing services not medically necessary when the services provided were ordered by a licensed health professional not an employee of the vendor. The determination of abuse or services not medically necessary shall be made by the commissioner in consultation with a review organization as defined in section 145.61 or other provider advisory committees as appointed by the commissioner on the recommendation of appropriate professional organizations.

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Subd. 1b. The commissioner may impose the following sanctions for the conduct described in subdivision 1a: referral to the appropriate state licensing board, suspension or withholding of payments to a vendor, and suspending or terminating participation in the program.

Subd. 1c. The commissioner may obtain monetary recovery for the conduct described in subdivision 1a by the following methods: assessing and recovering moneys erroneously paid and debiting from future payments any moneys erroneously paid, except that patterns need not be proven as a precondition to monetary recovery for false claims, duplicate claims, claims for services not medically necessary, or false statements.

Sec. 7. Minnesota Statutes 1978, Section 256B.27, Subdivision 3, is amended to read:

Subd. 3. The commissioner of public welfare, with the written consent of the recipient, shall be allowed access to all personal medical records of medical assistance recipients solely for the purposes of investigating whether or not: (a) a vendor of medical care ~~actually provided the medical care for which a claim for reimbursement was made~~ has submitted a claim for reimbursement, a cost report or a rate application which the vendor knows to be false in whole or in part; or (b) the medical care was medically necessary. The vendor of medical care shall receive notification from the commissioner at least 24 hours before the commissioner gains access to such records. To the extent feasible, the commissioner shall contract with a review organization, as defined in section 145.61, in determining whether ~~or not the medical care provided was medically necessary.~~ Notwithstanding any other law to the contrary, a vendor of medical care shall not be subject to any civil or criminal liability for providing access to medical records to the commissioner of public welfare pursuant to this section.

Sec. 8. Minnesota Statutes 1978, Section 256B.27, Subdivision 4, is amended to read:

Subd. 4. No person shall be eligible for medical assistance unless he has ~~authorized in writing~~ the commissioner of public welfare in writing to examine all personal medical records developed while receiving medical assistance for the sole purpose of investigating whether or not a vendor has submitted a claim for reimbursement, a cost report or a rate application which the vendor knows to be false in whole or in part, or in order to determine whether or not the medical care provided was medically necessary. A vendor of medical care shall require presentation of this written authorization before the state agency can obtain access to the records unless the vendor already has received written authorization

Sec. 9. Minnesota Statutes 1978, Section 256D.03, Subdivision 3, is amended to read:

Subd. 3. State aid shall be paid to local agencies or counties for 90 percent of the cost of general relief medical care paid by the local agency or county pursuant to section 256D.02, subdivision 4 on behalf of persons eligible according

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to standards established by the commissioner of welfare in accordance with the rates established by rule of the commissioner. Persons eligible for benefits under sections 256D.01 to 256D.19 shall have free choice in the selection of a vendor of the medical care. Any local agency or county may, from its own resources, make payments for medical care for persons not otherwise eligible for the care pursuant to standards established by the commissioner.

The commissioner of public welfare shall promulgate rules to establish administrative and fiscal procedures for payment of the state share of the medical costs incurred by the counties under section 256D.02, subdivision 4. The rules may include:

(a) procedures by which state liability for the costs of medical care incurred pursuant to section 256D.02, subdivision 4 may be deducted from county liability to the state under any other public assistance program authorized by law;

(b) procedures for processing claims of counties for reimbursement by the state for expenditures for medical care made by the counties pursuant to section 256D.02, subdivision 4;

(c) procedures by which the local agencies may contract with the commissioner of public welfare for state administration of general relief medical payments; and

(d) standards of eligibility and utilization of services - ; and

(e) general criteria and procedures for the identification and prompt investigation of suspected fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services not medically necessary, or false statements or representations of material facts by a vendor of general assistance medical care, and for the imposition of sanctions against such vendor of medical care. The rules relating to sanctions shall be consistent with the provisions of section 256B.064, subdivision 2, and section 6.

Sec. 10. Minnesota Statutes 1978, Section 256D.05, is amended by adding a subdivision to read:

Subd. 4. CONSENT TO REVIEW RECORDS. No person shall be eligible for general assistance medical care unless he has authorized the commissioner of public welfare in writing to examine all personal medical records developed while receiving general assistance for the purpose of investigating whether or not a vendor has submitted a claim for reimbursement, a cost report or a rate application which the vendor knows to be false in whole or in part, or in order to determine whether or not the medical care provided was medically necessary. The vendor of medical care shall receive notification from the commissioner at least 24 hours before the commissioner gains access to such records. A vendor of medical care shall require presentation of this authorization before the state agency can obtain access to such records unless the vendor already has received written authorization. Notwithstanding any other law to the contrary, a vendor of medical care shall not be subject to any civil or criminal liability for providing access to medical records to the commissioner pursuant to this subdivision.

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