

## CHAPTER 411—S.F.No. 1594

*An act relating to human services; providing for definitions, exclusions, access to records, and period of receivership under the human services licensing act; liability of the state for municipal inspection functions; amending Minnesota Statutes 1986, section 466.132; and Minnesota Statutes 1987 Supplement, sections 245A.02, subdivision 13; 245A.03, subdivision 2; 245A.04, subdivisions 3 and 5; 245A.095, subdivision 1; 245A.11, subdivision 5; and 245A.13, subdivision 5; repealing Minnesota Statutes 1987 Supplement, sections 256D.01, subdivision 1d; and 256D.37, subdivision 5.*

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

Section 1. Minnesota Statutes 1987 Supplement, section 245A.02, subdivision 13, is amended to read:

Subd. 13. **INDIVIDUAL WHO IS RELATED.** "Individual who is related" means a spouse, a parent, a natural or adopted child or stepchild, a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian.

Sec. 2. Minnesota Statutes 1987 Supplement, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **EXCLUSION FROM LICENSURE.** Sections 245A.01 to 245A.16 do not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;

(4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;

(5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education programs that are operated by the commissioner of education or a ~~legally constituted local school board, or private schools that have been approved under the rules of the commissioner of education~~ school as defined in section 120.101, subdivision 4;

(6) nonresidential programs for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building or present on property that is contiguous with the physical facility where the nonresidential program is provided;

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(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for ~~more than five~~ or more persons whose primary diagnosis is mental illness ~~or mental retardation~~ who have refused ~~services in a~~ an appropriate residential program offered by a county agency. This exclusion expires on July 1, 1989;

(9) homes providing programs for persons placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years;

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that operate for fewer than 40 calendar days in a calendar year;

(12) programs not located in family or group family day care homes whose primary purpose is to provide activities outside of the regular school day for children age five and older, until such time as appropriate rules have been adopted by the commissioner;

(13) head start nonresidential programs which operate for less than 31 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;

(15) ~~family day care~~ nonresidential programs for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period; or

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules.

Sec. 3. Minnesota Statutes 1987 Supplement, section 245A.04, subdivision 3, is amended to read:

Subd. 3. **STUDY OF THE APPLICANT.** (a) Before issuing a license, the commissioner shall conduct a study of the applicant. The applicant, the bureau of criminal apprehension, county attorneys, county sheriffs, county agencies, and local chiefs of police, after notice to the subject of the data, shall help with the study by giving the commissioner criminal conviction data, arrest information, reports about abuse or neglect of children or adults, and investigation results available from local, state, and national criminal record repositories, including the criminal justice data communications network, about:

(1) the applicant;

(2) persons living in the household where the licensed program will be provided;

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(3) employees or contractors of the applicant who will have direct contact with persons served by the program; and

(4) volunteers who have direct contact with persons served by the program, if the contact is not directly supervised by the individuals listed in clause (1) or (3).

The commissioner and agencies required to help conduct the study may charge the applicant or the subject of the data a reasonable fee for conducting the study.

(b) A study must meet the following minimum criteria:

(1) if the subject of the data has resided in the same county for at least the past five years, the study must include information from the county sheriff, the local chief of police, and the county ~~attorney~~ agency;

(2) if the subject of the data has resided in the state, but not in the same county, for the past five years, the study must include information from the agencies listed in clause (1) and the bureau of criminal apprehension; and

(3) if the subject of the data has not resided in the state for at least five years, the study must include information from the agencies listed in clauses (1) and (2) and the national criminal records repository and the state law enforcement agencies in the states where the subject of the data has maintained a residence during the past five years.

(c) An applicant's failure or refusal to cooperate with the commissioner is reasonable cause to deny an application or revoke or suspend a license. Failure or refusal of an individual to cooperate with the study is just cause for denying or terminating employment of the individual if the individual's failure or refusal to cooperate could cause the applicant's application to be denied or the license holder's license to be immediately suspended, suspended, or revoked.

(d) The commissioner shall not consider an application to be complete until all of the information required to be provided under this subdivision has been received.

Sec. 4. Minnesota Statutes 1987 Supplement, section 245A.04, subdivision 5, is amended to read:

Subd. 5. **COMMISSIONER'S RIGHT OF ACCESS.** When the commissioner is exercising the powers conferred by sections 245A.01 to 245A.15, the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of abuse, neglect, or other violation of applicable laws or rules. In conducting

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inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Sec. 5. Minnesota Statutes 1987 Supplement, section 245A.095, subdivision 1, is amended to read:

Subdivision 1. Residential programs for five or more persons with a mental illness must be licensed under sections 245A.01 to 245A.16. To assure that this requirement is met, the commissioner of health, in cooperation with the commissioner of human services, shall monitor licensed boarding care homes, board and lodging houses, and supervised living facilities.

By January 1, 1989, the commissioner of health shall recommend to the legislature an appropriate method for enforcing this requirement.

Sec. 6. Minnesota Statutes 1987 Supplement, section 245A.11, subdivision 5, is amended to read:

Subd. 5. **OVERCONCENTRATION AND DISPERSAL.** (a) Before January 1, 1985, each county having two or more group residential programs within 1,320 feet of each other shall submit to the department of human services a plan to promote dispersal of group residential programs. In formulating its plan, the county shall solicit the participation of affected persons, programs, municipalities having highly concentrated residential program populations, and advocacy groups. For the purposes of this subdivision, "highly concentrated" means having a population in residential programs serving seven or more persons that exceeds one-half of one percent of the population of a recognized planning district or other administrative subdivision.

(b) Within 45 days after the county submits the plan, the commissioner shall certify whether the plan fulfills the purposes and requirements of this subdivision including the following requirements:

(1) a new program serving seven or more persons must not be located in any recognized planning district or other administrative subdivision where the population in residential programs is highly concentrated;

(2) the county plan must promote dispersal of highly concentrated residential program populations;

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(3) the county plan shall promote the development of residential programs in areas that are not highly concentrated;

(4) no person in a residential program shall be displaced as a result of this section until a relocation plan has been implemented that provides for an acceptable alternative placement;

(5) if the plan provides for the relocation of residential programs, the relocation must be completed by January 1, 1990. If the commissioner certifies that the plan does not do so, the commissioner shall state the reasons, and the county has 30 days to submit a plan amended to comply with the requirements of the commissioner.

(c) After July 1, 1985, the commissioner may reduce grants under section 245.73 to a county required to have an approved plan under paragraph (a) if the county does not have a plan approved by the commissioner or if the county acts in substantial disregard of its approved plan. The county board has the right to be provided with advance notice and to appeal the commissioner's decision. If the county requests a hearing within 30 days of the notification of intent to reduce grants, the commissioner shall not certify any reduction in grants until a hearing is conducted and a decision made in accordance with the contested case provisions of chapter 14.

Sec. 7. Minnesota Statutes 1987 Supplement, section 245A.13, subdivision 5, is amended to read:

Subd. 5. **TERMINATION.** An involuntary receivership terminates ~~18~~ 12 months after the date on which it was ordered or at any other time designated by the court or when any of the following events occurs:

(1) the commissioner determines that the residential program's license application should be granted or should not be suspended or revoked;

(2) a new license is granted to the residential program; or

(3) the commissioner determines that all persons residing in the residential program have been provided with alternative residential programs.

Sec. 8. Minnesota Statutes 1986, section 466.132, is amended to read:

**466.132 INDEMNIFICATION BY STATE.**

Municipalities, when performing, as required or mandated by state law, inspections or investigations of persons prior to the issuance of state licenses, are employees of the state for purposes of the indemnification provisions of section 3.736, subdivision 9. A municipality is not, however, an employee of the state for purposes of this section if in hiring, supervising, or continuing to employ the person performing an inspection or investigation for the municipality, the municipality was clearly negligent. In no event shall the state be obligated to defend or indemnify a municipality for inspections or investigations relating to licensing to the extent of insurance purchased by the municipality covering liability therefor. The municipality's right to indemnity shall not be

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considered a waiver of the limitations, defenses, and immunities available to the municipality and state by law.

Sec. 9. **REPEALER.**

Minnesota Statutes 1987 Supplement, sections 256D.01, subdivision 1d; and 256D.37, subdivision 5, are repealed.

Approved March 22, 1988

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**CHAPTER 412—H.F.No. 1884**

*An act relating to state lands; authorizing private conveyance of tax-forfeited land in Beltrami county.*

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

**Section 1. SALE OF TAX-FORFEITED LAND; BELTRAMI COUNTY.**

Notwithstanding Minnesota Statutes, sections 94.09 to 94.16, 282.018, or other law, Beltrami county may convey certain tax-forfeited land to Robert R. Paine and Ardis V. Paine of Puposky, Minnesota in accordance with this section before July 1, 1988.

The land described in this section may be conveyed without consideration in a form approved by the attorney general.

The land that may be conveyed consists of about two acres located in Beltrami county and lying northwesterly of Mud River in the Northwest Quarter of the Southwest Quarter of Section 32, Township 150 North, Range 33 West.

The land that may be conveyed was inadvertently omitted from state deed 162377 issued to the Paines following a land exchange with Beltrami county in February 1983. The land that may be conveyed was included in the appraisal for the land exchange.

**Sec. 2. EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Approved March 22, 1988

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