

CHAPTER 74--H.F.No. 1792

An act relating to health; making changes to provisions governing receivership of nursing homes or certified boarding care homes; changing medical cannabis provisions; amending Minnesota Statutes 2014, sections 144A.15; 152.22, subdivision 6; 152.25, subdivision 1; 152.27, subdivision 6; 152.29, subdivision 1; 152.34; 256B.0641, subdivision 3; 256B.495, subdivisions 1, 5; Laws 2014, chapter 311, sections 17, subdivision 2; 20; repealing Minnesota Statutes 2014, sections 144A.14; 256B.495, subdivisions 1a, 2, 4.

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

Section 1. Minnesota Statutes 2014, section 144A.15, is amended to read:

144A.15 INVOLUNTARY STATE RECEIVERSHIP.

Subdivision 1. **Petition, notice.** In addition to any other remedy provided by law, the commissioner of health may petition the district court in Ramsey or Hennepin County or in the district in which a nursing home or certified boarding care home is located for an order directing the controlling persons of the nursing home or certified boarding care home to show cause why the commissioner of health or a designee should not be appointed receiver to operate the facility. The petition to the district court shall contain proof by affidavit that one or more of the following exists:

(1) the commissioner of health has either commenced proceedings to suspend or revoke the state license suspension or revocation proceedings, suspended or revoked a license, or decided not to renew the nursing home license, or that, or refuses to renew a license;

(2) violations of section 1919(b), (c), or (d), of the Social Security Act, or the regulations adopted under that section, or violations of state law laws or rules, create an emergency: for the residents of the facility;

(3) there is a threat of imminent abandonment by the owner or operator;

(4) there is a pattern of failure to meet ongoing financial obligations such as failing to pay for food, pharmaceuticals, personnel, or required insurance;

(5) the Centers for Medicare and Medicaid Services (CMS) has appointed a temporary manager to oversee the operation of the facility; or

(6) notice by CMS has been given that the federal Medicare or Medicaid provider agreement will be terminated, revoked, canceled, or not renewed.

The order to show cause shall be ~~returnable not less than five days after service is completed and shall provide for personal service of a copy to personally served to either the nursing home administrator and or to the persons person~~ designated as agents the agent by the controlling persons to accept service on their behalf pursuant to section 144A.03, subdivision 2.

Subd. 2. **Appointment of receiver, rental.** If, after hearing, the court finds that ~~involuntary~~ receivership is necessary as a means of protecting the health, safety or welfare of a resident of a ~~nursing home~~ the facility, the court shall appoint the commissioner of health, ~~or any other person designated by the commissioner of health,~~ as a receiver to take charge of the facility. The commissioner may enter into an agreement for a

managing agent to work on the commissioner's behalf in operating the facility during the receivership. The court shall determine a fair monthly rental for the facility, taking into account all relevant factors including the condition of the facility. This rental fee shall be paid by the receiver to the appropriate controlling persons person for each month that the receivership remains in effect but shall be reduced by the amount that the costs of the receivership provided under section 256B.495 are in excess of the facility rate. The controlling person may agree to waive the fair monthly rent by affidavit to the court. Notwithstanding any other law to the contrary, no payment made to a controlling person by any state agency during a period of involuntary receivership shall include any allowance for profit or be based on any formula which includes an allowance for profit.

Notwithstanding state contracting requirements in chapter 16C, the commissioner shall establish and maintain a list of qualified licensed nursing home administrators, or other qualified persons or organizations with experience in delivering skilled health care services and the operation of long-term care facilities for those interested in being a managing agent on the commissioner's behalf during a state receivership of a facility. This list will be a resource for choosing a managing agent and the commissioner may update the list at any time. A managing agent cannot be someone who: (1) is the owner, licensee, or administrator of the facility; (2) has a financial interest in the facility at the time of the receivership or is a related party to the owner, licensee, or administrator; or (3) has owned or operated any nursing facility or boarding care home that has been ordered into receivership.

Subd. 2a. **Emergency procedure.** If it appears from the petition filed under subdivision 1, or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause to believe that an emergency exists in a nursing home or certified boarding care home requiring the receivership, the court shall issue a temporary order for appointment of a receiver within ~~five days~~ two days after receipt of the petition. Notice of the petition shall be served personally on the nursing home administrator ~~and~~ or on the ~~persons~~ person designated as ~~agents~~ the agent by the controlling ~~persons~~ person to accept service on their behalf according to section 144A.03, subdivision 2. A hearing on the petition shall be held within five days' after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

Subd. 3. **Powers and duties of receiver.** (a) A nursing home receiver appointed pursuant to this section shall with all reasonable speed, but in any case, within 18 months after the receivership order, determine whether to close the facility or to make other provisions intended to keep it open. If facility closure is the determination, the commissioner shall provide for the orderly transfer of all the nursing home's residents to other facilities or make other provisions for their continued safety and health care, pursuant to the relocation procedures required in section 144A.161. During the receivership, the receiver may correct or eliminate those deficiencies in the facility which seriously endanger the life, health or safety of the residents unless the correction or elimination of deficiencies involves major alterations in the physical structure of the nursing home. The receiver shall, during this period, operate the nursing home in a manner designed to guarantee the safety and adequate health care of the residents. The receiver shall take no action which impairs the legal rights of a resident of the nursing home. The receiver shall have power to make contracts and incur lawful expenses. The receiver shall use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to the residents during the receivership period. The receiver shall take action as is reasonably necessary to protect or conserve the tangible assets or property during receivership. The receiver shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the receiver's functions. No security interest in any real or personal property comprising the nursing home or contained within it, or in any fixture of the facility, shall be impaired or

diminished in priority by the receiver. The receiver shall pay all valid obligations of the nursing home facility incurred during the course of the receivership and may pay obligations incurred prior to the receivership if, in the judgment of the commissioner, these payments must be made to ensure the health, safety, or welfare of the residents and shall deduct these expenses, if appropriate, from rental payments owed to any controlling person by virtue of the receivership. The receiver has authority to hire, direct, manage, and discharge any employees of the facility including the administrator, director of nursing, medical director, or manager of the facility.

(b) Nothing in this section shall relieve any owner, operator, or controlling person of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, licensee, or controlling person prior to the order for receivership under this section, nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, licensee, or controlling person for payment of taxes or other operating and maintenance expenses of the facility nor of the owner, licensee, or controlling person or any other person for the payment of mortgages or liens.

Subd. 4. **Receiver's fee; liability; commissioner assistance.** A ~~nursing home receiver~~ The commissioner of health, as receiver appointed pursuant to this section shall be by the court, may hire a managing agent to work on the commissioner's behalf to operate the facility during the receivership, and that managing agent is entitled to a reasonable receiver's fee as determined by the court. The receiver and its managing agent shall be liable only in an official capacity for injury to person and property by reason of the conditions of the nursing home. The receiver and its managing agent shall not be personally liable, except for gross negligence and intentional acts. The commissioner of health shall assist the ~~receiver~~ managing agent in carrying out ~~these~~ its duties.

Subd. 5. **Termination.** An ~~involuntary~~ Receivership imposed pursuant to this section shall terminate 18 months after the date on which it was ordered or at any other time designated by the court or upon the occurrence of any of the following events:

(a) (1) a determination by the commissioner of health that the nursing home's license should be renewed or should not be suspended or revoked;

(b) (2) the granting of a new license to the nursing home; or

(c) (3) a determination by the commissioner of health that all of the residents of the nursing home have been provided alternative health care, either in another facility or otherwise.

Subd. 6. **Postreceivership period; facility remaining open.** (a) If a facility remains open after the receivership is concluded, a new operator is only legally responsible under state law for its actions after the receivership has concluded.

(b) The commissioner of human services may adjust, reclassify, or disallow costs reported for a facility that was in receivership for periods of a reporting year during which the receivership was in effect and for the prior year.

Sec. 2. Minnesota Statutes 2014, section 152.22, subdivision 6, is amended to read:

Subd. 6. **Medical cannabis.** (a) "Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of:

(1) liquid, including, but not limited to, oil;

(2) pill;

(3) vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or plant form; or

(4) any other method, excluding smoking, approved by the commissioner.

(b) This definition includes any part of the genus cannabis plant prior to being processed into a form allowed under paragraph (a), that is possessed by a person while that person is engaged in employment duties necessary to carry out a requirement under sections 152.22 to 152.37 for a registered manufacturer or a laboratory under contract with a registered manufacturer.

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

Sec. 3. Minnesota Statutes 2014, section 152.25, subdivision 1, is amended to read:

Subdivision 1. **Medical cannabis manufacturer registration.** (a) The commissioner shall register two in-state manufacturers for the production of all medical cannabis within the state by December 1, 2014, unless the commissioner obtains an adequate supply of federally sourced medical cannabis by August 1, 2014. The commissioner shall register new manufacturers or reregister the existing manufacturers by December 1 ~~of each year~~ every two years, using the factors described in paragraph (c). The commissioner shall continue to accept applications after December 1, 2014, if two manufacturers that meet the qualifications set forth in this subdivision do not apply before December 1, 2014. The commissioner's determination that no manufacturer exists to fulfill the duties under sections 152.22 to 152.37 is subject to judicial review in Ramsey County District Court. Data submitted during the application process are private data on individuals or nonpublic data as defined in section 13.02 until the manufacturer is registered under this section. Data on a manufacturer that is registered are public data, unless the data are trade secret or security information under section 13.37.

(b) As a condition for registration, a manufacturer must agree to:

(1) begin supplying medical cannabis to patients by July 1, 2015; and

(2) comply with all requirements under sections 152.22 to 152.37.

(c) The commissioner shall consider the following factors when determining which manufacturer to register:

(1) the technical expertise of the manufacturer in cultivating medical cannabis and converting the medical cannabis into an acceptable delivery method under section 152.22, subdivision 6;

(2) the qualifications of the manufacturer's employees;

(3) the long-term financial stability of the manufacturer;

(4) the ability to provide appropriate security measures on the premises of the manufacturer;

(5) whether the manufacturer has demonstrated an ability to meet the medical cannabis production needs required by sections 152.22 to 152.37; and

(6) the manufacturer's projection and ongoing assessment of fees on patients with a qualifying medical condition.

(d) The commissioner shall require each medical cannabis manufacturer to contract with an independent laboratory to test medical cannabis produced by the manufacturer. The commissioner shall approve the laboratory chosen by each manufacturer and require that the laboratory report testing results to the manufacturer in a manner determined by the commissioner.

Sec. 4. Minnesota Statutes 2014, section 152.27, subdivision 6, is amended to read:

Subd. 6. **Patient enrollment.** (a) After receipt of a patient's application, application fees, and signed disclosure, the commissioner shall enroll the patient in the registry program and issue the patient and patient's registered designated caregiver or parent or legal guardian, if applicable, a registry verification. The commissioner shall approve or deny a patient's application for participation in the registry program within 30 days after the commissioner receives the patient's application and application fee. The commissioner may approve applications up to 60 days after the receipt of a patient's application and application fees until January 1, 2016. A patient's enrollment in the registry program shall only be denied if the patient:

(1) does not have certification from a health care practitioner that the patient has been diagnosed with a qualifying medical condition;

(2) has not signed and returned the disclosure form required under subdivision 3, paragraph (c), to the commissioner;

(3) does not provide the information required;

(4) has previously been removed from the registry program for violations of section 152.30 or 152.33; or

(5) provides false information.

(b) The commissioner shall give written notice to a patient of the reason for denying enrollment in the registry program.

(c) Denial of enrollment into the registry program is considered a final decision of the commissioner and is subject to judicial review under the Administrative Procedure Act pursuant to chapter 14.

(d) A patient's enrollment in the registry program may only be revoked upon the death of the patient or if a patient violates a requirement under section 152.30 or 152.33.

(e) The commissioner shall develop a registry verification to provide to the patient, the health care practitioner identified in the patient's application, and to the manufacturer. The registry verification shall include:

(1) the patient's name and date of birth;

(2) the patient registry number assigned to the patient;

(3) the patient's qualifying medical condition as provided by the patient's health care practitioner in the certification; and

(4) the name and date of birth of the patient's registered designated caregiver, if any, or the name of the patient's parent or legal guardian if the parent or legal guardian will be acting as a caregiver.

Sec. 5. Minnesota Statutes 2014, section 152.29, subdivision 1, is amended to read:

Subdivision 1. **Manufacturer; requirements.** (a) A manufacturer shall operate four distribution facilities, which may include the manufacturer's single location for cultivation, harvesting, manufacturing, packaging, and processing but is not required to include that location. A manufacturer is required to begin distribution of medical cannabis from at least one distribution facility by July 1, 2015. All distribution facilities must be operational and begin distribution of medical cannabis by July 1, 2016. The distribution facilities shall be located based on geographical need throughout the state to improve patient access. A manufacturer shall disclose the proposed locations for the distribution facilities to the commissioner during the registration process. A manufacturer shall operate only one location where all cultivation, harvesting, manufacturing, packaging, and processing shall be conducted. Any additional distribution facilities may dispense medical cannabis and medical cannabis products but may not contain any medical cannabis in a form other than those forms allowed under section 152.22, subdivision 6, and the manufacturer shall not conduct any cultivation, harvesting, manufacturing, packaging, or processing at an additional distribution facility site. Any distribution facility operated by the manufacturer is subject to all of the requirements applying to the manufacturer under sections 152.22 to 152.37, including, but not limited to, security and distribution requirements.

(b) A medical cannabis manufacturer shall contract with a laboratory approved by the commissioner, subject to ~~the commissioner's approval of the laboratory and~~ any additional requirements set by the commissioner, for purposes of testing medical cannabis manufactured by the medical cannabis manufacturer as to content, contamination, and consistency to verify the medical cannabis meets the requirements of section 152.22, subdivision 6. The cost of laboratory testing shall be paid by the manufacturer.

(c) The operating documents of a manufacturer must include:

(1) procedures for the oversight of the manufacturer and procedures to ensure accurate record keeping; and

(2) procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabis and unauthorized entrance into areas containing medical cannabis.

(d) A manufacturer shall implement security requirements, including requirements for protection of each location by a fully operational security alarm system, facility access controls, perimeter intrusion detection systems, and a personnel identification system.

(e) A manufacturer shall not share office space with, refer patients to a health care practitioner, or have any financial relationship with a health care practitioner.

(f) A manufacturer shall not permit any person to consume medical cannabis on the property of the manufacturer.

(g) A manufacturer is subject to reasonable inspection by the commissioner.

(h) For purposes of sections 152.22 to 152.37, a medical cannabis manufacturer is not subject to the Board of Pharmacy licensure or regulatory requirements under chapter 151.

(i) A medical cannabis manufacturer may not employ any person who is under 21 years of age or who has been convicted of a disqualifying felony offense. An employee of a medical cannabis manufacturer must submit a completed criminal history records check consent form, a full set of classifiable fingerprints, and

the required fees for submission to the Bureau of Criminal Apprehension before an employee may begin working with the manufacturer. The bureau must conduct a Minnesota criminal history records check and the superintendent is authorized to exchange the fingerprints with the Federal Bureau of Investigation to obtain the applicant's national criminal history record information. The bureau shall return the results of the Minnesota and federal criminal history records checks to the commissioner.

(j) A manufacturer may not operate in any location, whether for distribution or cultivation, harvesting, manufacturing, packaging, or processing, within 1,000 feet of a public or private school existing before the date of the manufacturer's registration with the commissioner.

(k) A manufacturer shall comply with reasonable restrictions set by the commissioner relating to signage, marketing, display, and advertising of medical cannabis.

Sec. 6. Minnesota Statutes 2014, section 152.34, is amended to read:

152.34 NURSING HEALTH CARE FACILITIES.

Nursing (a) Health care facilities licensed under chapter 144A, boarding care homes licensed under section 144.50, and assisted living facilities, and facilities owned, controlled, managed, or under common control with hospitals licensed under chapter 144, may adopt reasonable restrictions on the use of medical cannabis by a patient enrolled in the registry program who resides at or is actively receiving treatment or care at the facility. The restrictions may include a provision that the facility will not store or maintain the patient's supply of medical cannabis, that the facility is not responsible for providing the medical cannabis for patients, and that medical cannabis be used only in a place specified by the facility.

(b) Any employee or agent of a facility listed in this section or a person licensed under chapter 144E is not subject to violations under this chapter for possession of medical cannabis while carrying out employment duties, including providing or supervising care to a registered patient, or distribution of medical cannabis to a registered patient who resides at or is actively receiving treatment or care at the facility with which the employee or agent is affiliated. Nothing contained in this section shall require the facilities to adopt such restrictions and no facility shall unreasonably limit a patient's access to or use of medical cannabis to the extent that use is authorized by the patient under sections 152.22 to 152.37.

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

Sec. 7. Minnesota Statutes 2014, section 256B.0641, subdivision 3, is amended to read:

Subd. 3. **Facility in receivership.** Subdivision 2 does not apply to the change of ownership of a facility to a nonrelated organization while the facility to be sold, transferred or reorganized is in receivership under section ~~144A.14~~, 144A.15, 245A.12, or 245A.13, and the commissioner during the receivership has not determined the need to place residents of the facility into a newly constructed or newly established facility. Nothing in this subdivision limits the liability of a former owner.

Sec. 8. Minnesota Statutes 2014, section 256B.495, subdivision 1, is amended to read:

Subdivision 1. **Payment of receivership fees.** (a) When the commissioner of health notifies the commissioner of human services that a nursing facility is subject to the receivership provisions under section 144A.15 and provides a recommendation in accordance with section 144A.154, the commissioner in consultation with the commissioner of health may establish a receivership fee that exceeds is added to a nursing facility payment rate when the commissioner of health determines a nursing facility is subject to

~~the receivership provisions under section 144A.14 or 144A.15. In establishing the receivership fee, the commissioner must reduce the receiver's requested receivership fee by amounts that the commissioner determines are included in the nursing facility's payment rate and that can be used to cover part or all of the receivership fee. Amounts that can be used to reduce the receivership fee shall be determined by reallocating facility staff or costs that were formerly paid by the nursing facility before the receivership and are no longer required to be paid. The amounts may include any efficiency incentive, allowance, and other amounts not specifically required to be paid for expenditures of the nursing facility. The commissioner shall reduce the requested amount by any amounts the commissioner determines are included in the nursing facility's payment rate and that are not specifically required to be paid for expenditures of the nursing facility.~~

~~If the receivership fee cannot be covered by amounts in the nursing facility's payment rate, A receivership fee shall be set according to paragraphs (a) (b) and (b) (c) and payment shall be according to paragraphs (e) (d) to (e) (f).~~

~~(a) (b) The receivership fee per diem shall be determined and revised as necessary by dividing the annual estimated amount of needed additional funding or actual additional costs of the receivership fee by the nursing facility's estimated resident days from the most recent cost report for which the commissioner has established a payment rate or the estimated resident days in the projected receivership fee period for the projected duration of the receivership.~~

~~(b) (c) The receivership fee per diem shall be added to the nursing facility's payment rate.~~

~~(e) (d) Notification of the payment rate increase must meet the requirements of section 256B.47, subdivision 2.~~

~~(d) (e) The payment rate in paragraph (b) (c) for a nursing facility shall be effective the first day of the month following the receiver's compliance with the notice conditions in paragraph (e) receivership.~~

~~(e) (f) The commissioner may elect to make a lump-sum payment of a portion of the receivership fee to the receiver or managing agent. In this case, the commissioner and the receiver or managing agent shall agree to a repayment plan. Regardless of whether the commissioner makes a lump-sum payment under this paragraph, the provisions of paragraphs (a) to (d) and subdivision 2 also (b) to (e) apply.~~

Sec. 9. Minnesota Statutes 2014, section 256B.495, subdivision 5, is amended to read:

Subd. 5. Sale or transfer of a nursing facility in receivership after closure. (a) Upon the subsequent sale or transfer of a nursing facility in receivership, the commissioner ~~must~~ shall seek to recover from the prior licensee any amounts paid through payment rate adjustments under subdivision 4 which exceed the normal cost of operating the nursing facility. Examples of costs in excess of the normal cost of operating the nursing facility include the managing agent's fee, directly identifiable costs of the managing agent, bonuses paid to employees for their continued employment during the downsizing to closure of the nursing facility, prereceivership expenditures paid by the receiver, additional professional services such as accountants, psychologists, and dietitians, and other similar costs incurred by the receiver to complete receivership 1. The ~~buyer or transferee prior licensee~~ buyer or transferee prior licensee shall repay this amount to the commissioner within 60 days after the commissioner notifies the ~~buyer or transferee prior licensee~~ buyer or transferee prior licensee of the obligation to repay. The ~~buyer or transferee~~ buyer or transferee must also repay the private-pay resident the amount the private-pay resident paid through payment rate adjustment.

(b) The commissioner may recover amounts paid through the receivership fee by means of withholding from the prior licensee payments related to any other medical assistance provider of the prior licensee in

Minnesota. The prior licensee must also repay private-pay residents the amount the private-pay resident paid for the receivership fee.

~~(c) If a nursing facility with payment rates subject to subdivision 4, paragraph (a), determined under subdivision 1 is later sold while the nursing facility is in receivership, the payment rates in effect prior to the receivership shall be the new owner's payment rates. Those payment rates shall continue to be in effect until the rate year following the reporting period ending on September 30 for the new owner. The reporting period shall, whenever possible, be at least five consecutive months. If the reporting period is less than five months but more than three months, the nursing facility's resident days for the last two months of the reporting period must be annualized over the reporting period for the purpose of computing the payment rate for the rate year following the reporting period. The commissioner shall apply to these rates any rate adjustment provided to other nursing facilities for which the facility is qualified.~~

Sec. 10. Laws 2014, chapter 311, section 17, subdivision 2, is amended to read:

Subd. 2. **Certified annual audit.** A medical cannabis manufacturer shall submit the results of an annual certified financial audit to the commissioner no later than May 1 of each year for the calendar year beginning January 2015. The annual audit shall be conducted by an independent certified public accountant and the costs of the audit are the responsibility of the medical cannabis manufacturer. Results of the audit shall be provided to the medical cannabis manufacturer and the commissioner. The commissioner may also require another audit of the medical cannabis manufacturer by a certified public accountant chosen by the commissioner with the costs of the audit paid by the medical cannabis manufacturer.

Sec. 11. Laws 2014, chapter 311, section 20, is amended to read:

Sec. 20. **INTRACTABLE PAIN.**

The commissioner of health shall consider the addition of intractable pain, as defined in Minnesota Statutes, section 152.125, subdivision 1, to the list of qualifying medical conditions under Minnesota Statutes, section 152.22, subdivision 14, prior to the consideration of any other new qualifying medical conditions. The commissioner shall report findings on the need for adding intractable pain to the list of qualifying medical conditions to the task force established under Minnesota Statutes, section 152.36, no later than ~~July~~ January 1, 2016.

Sec. 12. **REVISOR'S INSTRUCTION.**

The revisor shall remove cross-references to the repealed sections in section 13 and make conforming changes necessary to correct punctuation, grammar, or the structure of the remaining text and preserve its meaning.

Sec. 13. **REPEALER.**

Minnesota Statutes 2014, sections 144A.14; and 256B.495, subdivisions 1a, 2, and 4, are repealed.

Presented to the governor May 20, 2015

Signed by the governor May 22, 2015, 4:00 p.m.