

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 3287

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DATE	D-PG	OFFICIAL STATUS
02/17/2020	4792	Introduction and first reading
		Referred to Human Services Reform Finance and Policy
02/27/2020	4913a	Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to human services; establishing prohibition against and administrative

1.3 penalties for remuneration involving human services programs; amending

1.4 Minnesota Statutes 2018, section 245E.01, subdivision 8; Minnesota Statutes 2019

1.5 Supplement, sections 256.046, subdivisions 1, 3; 256B.064, subdivision 1a;

1.6 proposing coding for new law in Minnesota Statutes, chapter 256.

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

1.8 Section 1. Minnesota Statutes 2018, section 245E.01, subdivision 8, is amended to read:

1.9 Subd. 8. **Financial misconduct or misconduct.** "Financial misconduct" or "misconduct"

1.10 means an entity's or individual's acts or omissions that result in fraud and abuse or error

1.11 against the Department of Human Services. Financial misconduct includes: (1) acting as a

1.12 recruiter offering conditional employment on behalf of a provider that has received funds

1.13 from the child care assistance program; and (2) committing an act or acts that meet the

1.14 definition of violations listed in section 256.044, subdivision 3.

1.15 **EFFECTIVE DATE.** This section is effective August 1, 2020.

1.16 Sec. 2. **[256.044] HUMAN SERVICES PROGRAM REMUNERATIONS**

1.17 **PROHIBITED; ADMINISTRATIVE PENALTIES.**

1.18 Subdivision 1. **Definitions.** (a) "Federal health care program" has the meaning provided

1.19 in United States Code, title 42, section 1320a-7b(f).

1.20 (b) "Remuneration" has the meaning provided in United States Code, title 42, section

1.21 1320a-7a(i)(6).

2.1 Subd. 2. Prohibited remunerations; medical assistance program. (a) A person commits
2.2 a violation that shall constitute grounds for sanctions under section 256B.064, subdivision
2.3 1a, if the person solicits or receives any remuneration, including any kickback, bribe, or
2.4 rebate, directly or indirectly, overtly or covertly, in cash or in kind, from another person in
2.5 return for:

2.6 (1) applying for, receiving, or arranging for or referring another person to apply for or
2.7 receive any item or service for which payment may be made in whole or in part under a
2.8 federal health care program; or

2.9 (2) purchasing, leasing, ordering, or arranging for or inducing the purchasing, leasing,
2.10 or ordering of any good, facility, service, or item for which payment may be made in whole
2.11 or in part under a federal health care program.

2.12 (b) A person commits a violation that shall constitute grounds for sanctions under section
2.13 256B.064, subdivision 1a, if the person offers or pays any remuneration, including any
2.14 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to
2.15 another person to induce that person to:

2.16 (1) apply for, receive, or arrange for or refer a person to apply for or receive any item
2.17 or service for which payment may be made in whole or in part under a federal health care
2.18 program; or

2.19 (2) purchase, lease, order, or arrange for or induce the purchasing, leasing, or ordering
2.20 of any good, facility, service, or item for which payment may be made in whole or in part
2.21 under a federal health care program.

2.22 (c) This subdivision does not apply to remuneration exempted under United States Code,
2.23 title 42, section 1320a-7b(b)(3), payment practices listed in Code of Federal Regulations,
2.24 title 42, section 1001.952, or the activities described in section 62J.23, subdivision 2,
2.25 paragraphs (b) to (d), and subdivision 4.

2.26 Subd. 3. Prohibited remunerations; child care assistance program. (a) A person
2.27 commits a violation that shall constitute grounds for disqualification or sanctions under
2.28 chapter 245E, if the person solicits or receives any remuneration, including any kickback,
2.29 bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, from another
2.30 person in return for:

2.31 (1) applying for, receiving, or arranging for or referring another person to apply for or
2.32 receive any item or service for which payment may be made in whole or in part under
2.33 chapter 119B; or

3.1 (2) purchasing, leasing, ordering, or arranging for or inducing the purchasing, leasing,
 3.2 or ordering of any good, facility, service, or item for which payment may be made in whole
 3.3 or in part under chapter 119B.

3.4 (b) A person commits a violation that shall constitute grounds for disqualification or
 3.5 sanctions under chapter 245E, if the person offers or pays any remuneration, including any
 3.6 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to
 3.7 another person to induce that person to:

3.8 (1) apply for, receive, or arrange for or refer a person to apply for or receive any item
 3.9 or service for which payment may be made in whole or in part under chapter 119B; or

3.10 (2) purchase, lease, order, or arrange for or induce the purchasing, leasing, or ordering
 3.11 of any good, facility, service, or item for which payment may be made in whole or in part
 3.12 under chapter 119B.

3.13 (c) This subdivision does not apply to any amount paid by an employer to a bona fide
 3.14 employee for providing covered items or services under chapter 119B while acting in the
 3.15 course and scope of employment.

3.16 (d) This subdivision does not apply to marketing or promotional offerings that directly
 3.17 benefit an eligible individual's child for whom the child care provider is providing child
 3.18 care services.

3.19 Subd. 4. **Intentional program violation.** A violation under this section shall constitute
 3.20 an intentional program violation subject to an administrative disqualification hearing pursuant
 3.21 to section 256.046.

3.22 **EFFECTIVE DATE.** This section is effective August 1, 2020.

3.23 Sec. 3. Minnesota Statutes 2019 Supplement, section 256.046, subdivision 1, is amended
 3.24 to read:

3.25 Subdivision 1. **Hearing authority.** A local agency must initiate an administrative fraud
 3.26 disqualification hearing for individuals accused of wrongfully obtaining assistance or
 3.27 intentional program violations, including violations under section 256.044, in lieu of a
 3.28 criminal action when it has not been pursued, in the Minnesota family investment program
 3.29 and any affiliated program to include the diversionary work program and the work
 3.30 participation cash benefit program, child care assistance programs, general assistance, family
 3.31 general assistance program formerly codified in section 256D.05, subdivision 1, clause (15),
 3.32 Minnesota supplemental aid, food stamp programs, MinnesotaCare for adults without
 3.33 children, and upon federal approval, all categories of medical assistance and remaining

4.1 categories of MinnesotaCare except for children through age 18. The Department of Human
 4.2 Services, in lieu of a local agency, may initiate an administrative fraud disqualification
 4.3 hearing when the state agency is directly responsible for administration or investigation of
 4.4 the program for which benefits were wrongfully obtained. The hearing is subject to the
 4.5 requirements of sections 256.045 and 256.0451 and the requirements in Code of Federal
 4.6 Regulations, title 7, section 273.16.

4.7 **EFFECTIVE DATE.** This section is effective August 1, 2020.

4.8 Sec. 4. Minnesota Statutes 2019 Supplement, section 256.046, subdivision 3, is amended
 4.9 to read:

4.10 Subd. 3. **Administrative disqualification of child care providers caring for children**
 4.11 **receiving child care assistance.** (a) The department or local agency shall pursue an
 4.12 administrative disqualification, if the child care provider is accused of committing an
 4.13 intentional program violation, in lieu of a criminal action when it has not been pursued.
 4.14 Intentional program violations include intentionally making false or misleading statements;
 4.15 intentionally misrepresenting, concealing, or withholding facts; ~~and~~ repeatedly and
 4.16 intentionally violating program regulations under chapters 119B and 245E; and violations
 4.17 under section 256.044, subdivision 3. Intent may be proven by demonstrating a pattern of
 4.18 conduct that violates program rules under chapters 119B and 245E.

4.19 (b) To initiate an administrative disqualification, a local agency or the commissioner
 4.20 must mail written notice by certified mail to the provider against whom the action is being
 4.21 taken. Unless otherwise specified under chapter 119B or 245E or Minnesota Rules, chapter
 4.22 3400, a local agency or the commissioner must mail the written notice at least 15 calendar
 4.23 days before the adverse action's effective date. The notice shall state (1) the factual basis
 4.24 for the agency's determination, (2) the action the agency intends to take, (3) the dollar amount
 4.25 of the monetary recovery or recoupment, if known, and (4) the provider's right to appeal
 4.26 the agency's proposed action.

4.27 (c) The provider may appeal an administrative disqualification by submitting a written
 4.28 request to the Department of Human Services, Appeals Division. A provider's request must
 4.29 be received by the Appeals Division no later than 30 days after the date a local agency or
 4.30 the commissioner mails the notice.

4.31 (d) The provider's appeal request must contain the following:

4.32 (1) each disputed item, the reason for the dispute, and, if applicable, an estimate of the
 4.33 dollar amount involved for each disputed item;

5.1 (2) the computation the provider believes to be correct, if applicable;

5.2 (3) the statute or rule relied on for each disputed item; and

5.3 (4) the name, address, and telephone number of the person at the provider's place of
5.4 business with whom contact may be made regarding the appeal.

5.5 (e) On appeal, the issuing agency bears the burden of proof to demonstrate by a
5.6 preponderance of the evidence that the provider committed an intentional program violation.

5.7 (f) The hearing is subject to the requirements of sections 256.045 and 256.0451. The
5.8 human services judge may combine a fair hearing and administrative disqualification hearing
5.9 into a single hearing if the factual issues arise out of the same or related circumstances and
5.10 the provider receives prior notice that the hearings will be combined.

5.11 (g) A provider found to have committed an intentional program violation and is
5.12 administratively disqualified shall be disqualified, for a period of three years for the first
5.13 offense and permanently for any subsequent offense, from receiving any payments from
5.14 any child care program under chapter 119B.

5.15 (h) Unless a timely and proper appeal made under this section is received by the
5.16 department, the administrative determination of the department is final and binding.

5.17 **EFFECTIVE DATE.** This section is effective August 1, 2020.

5.18 Sec. 5. Minnesota Statutes 2019 Supplement, section 256B.064, subdivision 1a, is amended
5.19 to read:

5.20 Subd. 1a. **Grounds for sanctions against vendors.** (a) The commissioner may impose
5.21 sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse
5.22 in connection with the provision of medical care to recipients of public assistance; (2) a
5.23 pattern of presentment of false or duplicate claims or claims for services not medically
5.24 necessary; (3) a pattern of making false statements of material facts for the purpose of
5.25 obtaining greater compensation than that to which the vendor is legally entitled; (4)
5.26 suspension or termination as a Medicare vendor; (5) refusal to grant the state agency access
5.27 during regular business hours to examine all records necessary to disclose the extent of
5.28 services provided to program recipients and appropriateness of claims for payment; (6)
5.29 failure to repay an overpayment or a fine finally established under this section; (7) failure
5.30 to correct errors in the maintenance of health service or financial records for which a fine
5.31 was imposed or after issuance of a warning by the commissioner; ~~and~~ (8) any reason for
5.32 which a vendor could be excluded from participation in the Medicare program under section

6.1 1128, 1128A, or 1866(b)(2) of the Social Security Act; and (9) violations listed under section
6.2 256.044, subdivision 2.

6.3 (b) The commissioner may impose sanctions against a pharmacy provider for failure to
6.4 respond to a cost of dispensing survey under section 256B.0625, subdivision 13e, paragraph
6.5 (h).

6.6 **EFFECTIVE DATE.** This section is effective August 1, 2020.