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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2217

03/15/2021 Authored by Lucero
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; transferring child care assistance program fraud
1.3 investigation unit from Department of Human Services to Department of Public
1.4 Safety; amending Minnesota Statutes 2020, sections 245E.01, subdivisions 4, 7;
1.5 245E.02, subdivision 4; 245E.03, subdivisions 3, 4; 245E.06, subdivisions 1, 2,
1.6 3, 5; 245E.07.

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

1.8 Section 1. Minnesota Statutes 2020, section 245E.01, subdivision 4, is amended to read:

1.9 Subd. 4. Commissioner. "Commissioner" means the commissioner of ~~human services~~
1.10 public safety, unless otherwise indicated.

1.11 Sec. 2. Minnesota Statutes 2020, section 245E.01, subdivision 7, is amended to read:

1.12 Subd. 7. Department. "Department" means the Department of ~~Human Services~~ Public
1.13 Safety, unless otherwise indicated.

1.14 Sec. 3. Minnesota Statutes 2020, section 245E.02, subdivision 4, is amended to read:

1.15 Subd. 4. Actions or administrative sanctions. (a) After completing the determination
1.16 under subdivision 3, the department may take one or more of the actions or sanctions
1.17 specified in this subdivision.

1.18 (b) The department may take the following actions:

1.19 (1) refer the investigation to law enforcement or a county attorney for possible criminal
1.20 prosecution;

2.1 (2) refer relevant information to the ~~department's~~ Department of Human Services licensing  
 2.2 division, the child care assistance program, the Department of Education, the federal Child  
 2.3 and Adult Care Food Program, or appropriate child or adult protection agency; or

2.4 (3) ~~enter into a settlement agreement with a provider, license holder, controlling~~  
 2.5 ~~individual, or recipient; or~~

2.6 (4) refer the matter for review by a prosecutorial agency with appropriate jurisdiction  
 2.7 for possible civil action under the Minnesota False Claims Act, chapter 15C.

2.8 (c) In addition to section 256.98, the Department of Human Services may enter into a  
 2.9 settlement agreement with a provider, license holder, controlling individual, or recipient,  
 2.10 or impose sanctions by:

2.11 (1) pursuing administrative disqualification through hearings or waivers;

2.12 (2) establishing and seeking monetary recovery or recoupment;

2.13 (3) issuing an order of corrective action that states the practices that are violations of  
 2.14 child care assistance program policies, laws, or regulations, and that they must be corrected;  
 2.15 or

2.16 (4) suspending, denying, or terminating payments to a provider.

2.17 (d) Upon a finding by the commissioner of human services that any child care provider,  
 2.18 center owner, director, manager, license holder, or other controlling individual of a child  
 2.19 care center has employed, used, or acted as a recruiter offering conditional employment for  
 2.20 a child care center that has received child care assistance program funding, the commissioner  
 2.21 of human services shall:

2.22 (1) immediately suspend all program payments to all child care centers in which the  
 2.23 person employing, using, or acting as a recruiter offering conditional employment is an  
 2.24 owner, director, manager, license holder, or other controlling individual. The commissioner  
 2.25 of human services shall suspend program payments under this clause even if services have  
 2.26 already been provided; and

2.27 (2) immediately and permanently revoke the licenses of all child care centers of which  
 2.28 the person employing, using, or acting as a recruiter offering conditional employment is an  
 2.29 owner, director, manager, license holder, or other controlling individual.

2.30 Sec. 4. Minnesota Statutes 2020, section 245E.03, subdivision 3, is amended to read:

2.31 Subd. 3. **Notice of denial or termination.** When the commissioner of human services  
 2.32 receives notice that a provider fails to provide access, a 15-day notice of denial or termination

3.1 must be issued to the provider, which prohibits the provider from participating in the child  
3.2 care assistance program. Notice must be sent to recipients whose children are under the  
3.3 provider's care pursuant to Minnesota Rules, part 3400.0185.

3.4 Sec. 5. Minnesota Statutes 2020, section 245E.03, subdivision 4, is amended to read:

3.5 Subd. 4. **Continued or repeated failure to provide access.** If the commissioner of  
3.6 human services receives notice that the provider continues to fail to provide access at the  
3.7 expiration of the 15-day notice period, child care assistance program payments to the provider  
3.8 must be denied beginning the 16th day following notice of the initial failure or refusal to  
3.9 provide access. The department may rescind the denial based upon good cause if the provider  
3.10 submits in writing a good cause basis for having failed or refused to provide access. The  
3.11 writing must be postmarked no later than the 15th day following the provider's notice of  
3.12 initial failure to provide access. Additionally, the provider, license holder, or controlling  
3.13 individual must immediately provide complete, ongoing access to the department. Repeated  
3.14 failures to provide access must, after the initial failure or for any subsequent failure, result  
3.15 in termination from participation in the child care assistance program.

3.16 Sec. 6. Minnesota Statutes 2020, section 245E.06, subdivision 1, is amended to read:

3.17 Subdivision 1. **Factors regarding imposition of administrative sanctions.** (a) The  
3.18 Department of Human Services shall consider the following factors in determining the  
3.19 administrative sanctions to be imposed:

3.20 (1) nature and extent of financial misconduct;

3.21 (2) history of financial misconduct;

3.22 (3) actions taken or recommended by other state agencies, other divisions of the  
3.23 Department of Human Services, and court and administrative decisions;

3.24 (4) prior imposition of sanctions;

3.25 (5) size and type of provider;

3.26 (6) information obtained through an investigation from any source;

3.27 (7) convictions or pending criminal charges; and

3.28 (8) any other information relevant to the acts or omissions related to the financial  
3.29 misconduct.

3.30 (b) Any single factor under paragraph (a) may be determinative of the ~~department's~~  
3.31 decision of whether and what sanctions are imposed.

4.1 Sec. 7. Minnesota Statutes 2020, section 245E.06, subdivision 2, is amended to read:

4.2 Subd. 2. **Written notice of department sanction; sanction effective date; informal**  
4.3 **meeting.** (a) The Department of Human Services shall give notice in writing to a person of  
4.4 an administrative sanction that is to be imposed. The notice shall be sent by mail as defined  
4.5 in section 245E.01, subdivision 11.

4.6 (b) The notice shall state:

4.7 (1) the factual basis for the ~~department's~~ determination;

4.8 (2) the sanction the Department of Human Services intends to take;

4.9 (3) the dollar amount of the monetary recovery or recoupment, if any;

4.10 (4) how the dollar amount was computed;

4.11 (5) the right to dispute the ~~department's~~ determination and to provide evidence;

4.12 (6) the right to appeal the ~~department's~~ proposed sanction; and

4.13 (7) the option to meet informally with Department of Human Services staff, and to bring  
4.14 additional documentation or information, to resolve the issues.

4.15 (c) In cases of determinations resulting in denial or termination of payments, in addition  
4.16 to the requirements of paragraph (b), the notice must state:

4.17 (1) the length of the denial or termination;

4.18 (2) the requirements and procedures for reinstatement; and

4.19 (3) the provider's right to submit documents and written arguments against the denial  
4.20 or termination of payments for review ~~by the department~~ before the effective date of denial  
4.21 or termination.

4.22 (d) The submission of documents and written argument for review ~~by the department~~  
4.23 under paragraph (b), clause (5) or (7), or paragraph (c), clause (3), does not stay the deadline  
4.24 for filing an appeal.

4.25 (e) Notwithstanding section 245E.03, subdivision 4, the effective date of the proposed  
4.26 sanction shall be 30 days after the license holder's, provider's, controlling individual's, or  
4.27 recipient's receipt of the notice, unless timely appealed. If a timely appeal is made, the  
4.28 proposed sanction shall be delayed pending the final outcome of the appeal. Implementation  
4.29 of a proposed sanction following the resolution of a timely appeal may be postponed if, in  
4.30 the opinion of the Department of Human Services, the delay of sanction is necessary to  
4.31 protect the health or safety of children in care. The Department of Human Services may

5.1 consider the economic hardship of a person in implementing the proposed sanction, but  
 5.2 economic hardship shall not be a determinative factor in implementing the proposed sanction.

5.3 (f) Requests for an informal meeting to attempt to resolve issues and requests for appeals  
 5.4 must be sent or delivered to the department's Office of Inspector General, Financial Fraud  
 5.5 and Abuse Division.

5.6 Sec. 8. Minnesota Statutes 2020, section 245E.06, subdivision 3, is amended to read:

5.7 Subd. 3. **Appeal of department action.** A provider's rights related to ~~the department's~~  
 5.8 an action taken by the Department of Human Services under this chapter against a provider  
 5.9 are established in sections 119B.16 and 119B.161.

5.10 Sec. 9. Minnesota Statutes 2020, section 245E.06, subdivision 5, is amended to read:

5.11 Subd. 5. **Effect of department's administrative determination or sanction.** Unless a  
 5.12 timely and proper appeal is received ~~by the department~~, the ~~department's~~ administrative  
 5.13 determination or sanction shall be considered a final ~~department~~ determination.

5.14 Sec. 10. Minnesota Statutes 2020, section 245E.07, is amended to read:

5.15 **245E.07 MONETARY RECOVERY.**

5.16 Subdivision 1. **Grounds for and methods of monetary recovery.** (a) The Department  
 5.17 of Human Services may obtain monetary recovery from a provider who has been improperly  
 5.18 paid by the child care assistance program, regardless of whether the error was intentional  
 5.19 or county error. The Department of Human Services does not need to establish a pattern as  
 5.20 a precondition of monetary recovery of erroneous or false billing claims, duplicate billing  
 5.21 claims, or billing claims based on false statements or financial misconduct.

5.22 (b) ~~The department shall obtain~~ Monetary recovery shall be obtained from providers by  
 5.23 the following means:

5.24 (1) permitting voluntary repayment of money, either in lump-sum payment or installment  
 5.25 payments;

5.26 (2) using any legal collection process;

5.27 (3) deducting or withholding program payments; or

5.28 (4) utilizing the means set forth in chapter 16D.

5.29 Subd. 2. **Monetary recovery; random sample extrapolation.** The Department of  
 5.30 Human Services is authorized to calculate the amount of monetary recovery from a provider,

6.1 license holder, or controlling individual based upon extrapolation from a statistical random  
6.2 sample of claims submitted by the provider, license holder, or controlling individual and  
6.3 paid by the child care assistance program. The ~~department's~~ random sample extrapolation  
6.4 shall constitute a rebuttable presumption of the accuracy of the calculation of monetary  
6.5 recovery. If the presumption is not rebutted by the provider, license holder, or controlling  
6.6 individual in the appeal process, the Department of Human Services shall use the  
6.7 extrapolation as the monetary recovery figure. The Department of Human Services may  
6.8 use sampling and extrapolation to calculate the amount of monetary recovery if the claims  
6.9 to be reviewed represent services to 50 or more children in care.

6.10 Sec. 11. **DIRECTION TO COMMISSIONER; CCAP FRAUD UNIT TRANSFER.**

6.11 By July 1, 2022, the commissioner of human services shall, in coordination with the  
6.12 commissioner of public safety and pursuant to Minnesota Statutes, section 15.039, transfer  
6.13 the unit responsible for conducting child care assistance investigations under Minnesota  
6.14 Statutes, chapter 245E, from the Department of Human Services to the Bureau of Criminal  
6.15 Apprehension within the Department of Public Safety. The transfer shall include all  
6.16 employees, books, accounts, documents, data of any classification, and property that the  
6.17 child care investigations unit needs to carry out the duties in Minnesota Statutes, chapter  
6.18 245E.

6.19 Sec. 12. **REVISOR INSTRUCTION.**

6.20 The revisor of statutes, in consultation with House Research Department; House Fiscal  
6.21 Analysis; Office of Senate Counsel, Research and Fiscal Analysis; Department of Human  
6.22 Services; and Department of Public Safety, shall prepare legislation for introduction in the  
6.23 2022 legislative session proposing the statutory changes needed to implement the transfers  
6.24 of duties required by this act.

6.25 Sec. 13. **EFFECTIVE DATE.**

6.26 Sections 1 to 10 are effective July 1, 2022. Sections 11 and 12 are effective July 1, 2021.