

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 2774

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DATE
04/03/2019

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OFFICIAL STATUS
Introduction and first reading
Referred to Human Services Reform Finance and Policy

1.1 A bill for an act
1.2 relating to human services; modifying sections governing program integrity;
1.3 creating criminal penalties; appropriating money; amending Minnesota Statutes
1.4 2018, sections 13.46, subdivision 3; 15C.02; 119B.02, subdivision 6; 119B.09,
1.5 subdivision 7; 119B.125, subdivision 6; 119B.13, subdivisions 6, 7; 245.095;
1.6 245E.01, subdivision 8; 245E.02, by adding subdivisions; 256B.064, subdivisions
1.7 1a, 1b, 2, by adding subdivisions; 256B.0651, subdivision 17; 256B.27, subdivision
1.8 3; proposing coding for new law in Minnesota Statutes, chapters 256B; 609.

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

1.10 Section 1. Minnesota Statutes 2018, section 13.46, subdivision 3, is amended to read:

1.11 Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of services,
1.12 licensees, and applicants that is collected, maintained, used, or disseminated by the welfare
1.13 system in an investigation, authorized by statute, and relating to the enforcement of rules
1.14 or law are confidential data on individuals pursuant to section 13.02, subdivision 3, or
1.15 protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and
1.16 shall not be disclosed except:

1.17 (1) pursuant to section 13.05;

1.18 (2) pursuant to statute or valid court order;

1.19 (3) to a party named in a civil or criminal proceeding, administrative or judicial, for
1.20 preparation of defense; ~~or~~

1.21 (4) to an agent of the welfare system or an investigator acting on behalf of a county,
1.22 state, or federal government, including a law enforcement officer or attorney in the
1.23 investigation or prosecution of a criminal, civil, or administrative proceeding, unless the

2.1 commissioner of human services determines that disclosure may compromise a department
 2.2 of human services ongoing investigation; or

2.3 ~~(4)~~ (5) to provide notices required or permitted by statute.

2.4 The data referred to in this subdivision shall be classified as public data upon submission
 2.5 to an administrative law judge or court in an administrative or judicial proceeding. Inactive
 2.6 welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

2.7 (b) Notwithstanding any other provision in law, the commissioner of human services
 2.8 shall provide all active and inactive investigative data, including the name of the reporter
 2.9 of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental
 2.10 health and developmental disabilities upon the request of the ombudsman.

2.11 (c) Notwithstanding paragraph (a) and section 13.39, the existence of an investigation
 2.12 by the commissioner of human services of possible overpayments of public funds to a service
 2.13 provider or recipient may be disclosed if the commissioner determines that it will not
 2.14 compromise the investigation.

2.15 Sec. 2. Minnesota Statutes 2018, section 15C.02, is amended to read:

2.16 **15C.02 LIABILITY FOR CERTAIN ACTS.**

2.17 (a) A person who commits any act described in clauses (1) to (7) is liable to the state or
 2.18 the political subdivision for a civil penalty ~~of not less than \$5,500 and not more than \$11,000~~
 2.19 ~~per false or fraudulent claim~~ in the amounts set forth in the federal False Claims Act, United
 2.20 States Code, title 31, section 3729, and as modified by the federal Civil Penalties Inflation
 2.21 Adjustment Act Improvements Act of 2015, plus three times the amount of damages that
 2.22 the state or the political subdivision sustains because of the act of that person, except as
 2.23 otherwise provided in paragraph (b):

2.24 (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment
 2.25 or approval;

2.26 (2) knowingly makes or uses, or causes to be made or used, a false record or statement
 2.27 material to a false or fraudulent claim;

2.28 (3) knowingly conspires to commit a violation of clause (1), (2), (4), (5), (6), or (7);

2.29 (4) has possession, custody, or control of property or money used, or to be used, by the
 2.30 state or a political subdivision and knowingly delivers or causes to be delivered less than
 2.31 all of that money or property;

3.1 (5) is authorized to make or deliver a document certifying receipt for money or property
3.2 used, or to be used, by the state or a political subdivision and, intending to defraud the state
3.3 or a political subdivision, makes or delivers the receipt without completely knowing that
3.4 the information on the receipt is true;

3.5 (6) knowingly buys, or receives as a pledge of an obligation or debt, public property
3.6 from an officer or employee of the state or a political subdivision who lawfully may not
3.7 sell or pledge the property; or

3.8 (7) knowingly makes or uses, or causes to be made or used, a false record or statement
3.9 material to an obligation to pay or transmit money or property to the state or a political
3.10 subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an
3.11 obligation to pay or transmit money or property to the state or a political subdivision.

3.12 (b) Notwithstanding paragraph (a), the court may assess not less than two times the
3.13 amount of damages that the state or the political subdivision sustains because of the act of
3.14 the person if:

3.15 (1) the person committing a violation under paragraph (a) furnished an officer or
3.16 employee of the state or the political subdivision responsible for investigating the false or
3.17 fraudulent claim violation with all information known to the person about the violation
3.18 within 30 days after the date on which the person first obtained the information;

3.19 (2) the person fully cooperated with any investigation by the state or the political
3.20 subdivision of the violation; and

3.21 (3) at the time the person furnished the state or the political subdivision with information
3.22 about the violation, no criminal prosecution, civil action, or administrative action had been
3.23 commenced under this chapter with respect to the violation and the person did not have
3.24 actual knowledge of the existence of an investigation into the violation.

3.25 (c) A person violating this section is also liable to the state or the political subdivision
3.26 for the costs of a civil action brought to recover any penalty or damages.

3.27 (d) A person is not liable under this section for mere negligence, inadvertence, or mistake
3.28 with respect to activities involving a false or fraudulent claim.

3.29 Sec. 3. Minnesota Statutes 2018, section 119B.02, subdivision 6, is amended to read:

3.30 Subd. 6. **Data.** (a) Data collected, maintained, used, or disseminated by the welfare
3.31 system pertaining to persons selected as legal nonlicensed child care providers by families

4.1 receiving child care assistance shall be treated as licensing data as provided in section 13.46,
4.2 subdivision 4.

4.3 (b) For purposes of this paragraph, "child care assistance program payment data" means
4.4 data for a specified time period showing (1) that a child care assistance program payment
4.5 under this chapter was made, and (2) the amount of child care assistance payments made
4.6 to a child care center. Child care assistance program payment data may include the number
4.7 of families and children on whose behalf payments were made for the specified time period.
4.8 Any child care assistance program payment data that may identify a specific child care
4.9 assistance recipient or benefit paid on behalf of a specific child care assistance recipient,
4.10 as determined by the commissioner, is private data on individuals as defined in section
4.11 13.02, subdivision 12. Data related to a child care assistance payment is public if the data
4.12 relates to a child care assistance payment made to a licensed child care center or a child
4.13 care center exempt from licensure and:

4.14 (1) the child care center receives payment of more than \$100,000 from the child care
4.15 assistance program under this chapter in a period of one year or less; or

4.16 (2) when the commissioner or county agency either:

4.17 (i) disqualified the center from receipt of a payment from the child care assistance
4.18 program under this chapter for wrongfully obtaining child care assistance under section
4.19 256.98, subdivision 8, paragraph (c);

4.20 (ii) refused a child care authorization, revoked a child care authorization, stopped
4.21 payment, or denied payment for a bill for the center under section 119B.13, subdivision 6,
4.22 paragraph (d); or

4.23 (iii) made a finding of financial misconduct under section 245E.02.

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

4.25 Sec. 4. Minnesota Statutes 2018, section 119B.09, subdivision 7, is amended to read:

4.26 Subd. 7. **Date of eligibility for assistance.** (a) The date of eligibility for child care
4.27 assistance under this chapter is the later of the date the application was received by the
4.28 county; the beginning date of employment, education, or training; the date the infant is born
4.29 for applicants to the at-home infant care program; or the date a determination has been made
4.30 that the applicant is a participant in employment and training services under Minnesota
4.31 Rules, part 3400.0080, or chapter 256J.

5.1 (b) Payment ceases for a family under the at-home infant child care program when a
 5.2 family has used a total of 12 months of assistance as specified under section 119B.035.
 5.3 Payment of child care assistance for employed persons on MFIP is effective the date of
 5.4 employment or the date of MFIP eligibility, whichever is later. Payment of child care
 5.5 assistance for MFIP or DWP participants in employment and training services is effective
 5.6 the date of commencement of the services or the date of MFIP or DWP eligibility, whichever
 5.7 is later. Payment of child care assistance for transition year child care must be made
 5.8 retroactive to the date of eligibility for transition year child care.

5.9 (c) Notwithstanding paragraph (b), payment of child care assistance for participants
 5.10 eligible under section 119B.05 may only be made retroactive for a maximum of ~~six~~ three
 5.11 months from the date of application for child care assistance.

5.12 **EFFECTIVE DATE.** This section is effective July 1, 2019.

5.13 Sec. 5. Minnesota Statutes 2018, section 119B.125, subdivision 6, is amended to read:

5.14 Subd. 6. **Record-keeping requirement.** (a) As a condition of payment, all providers
 5.15 receiving child care assistance payments must:

5.16 (1) keep accurate and legible daily attendance records at the site where services are
 5.17 delivered for children receiving child care assistance; and

5.18 ~~must~~ (2) make those records available immediately to the county or the commissioner
 5.19 upon request. Any records not provided to a county or the commissioner at the date and
 5.20 time of the request are deemed inadmissible if offered as evidence by the provider in any
 5.21 proceeding to contest an overpayment or disqualification of the provider.

5.22 ~~The~~ (b) As a condition of payment, attendance records must be completed daily and
 5.23 include the date, the first and last name of each child in attendance, and the times when
 5.24 each child is dropped off and picked up. To the extent possible, the times that the child was
 5.25 dropped off to and picked up from the child care provider must be entered by the person
 5.26 dropping off or picking up the child. The daily attendance records must be retained at the
 5.27 site where services are delivered for six years after the date of service.

5.28 (c) A county or the commissioner may deny or revoke a provider's authorization as a
 5.29 child care provider to any applicant, rescind authorization of any provider, to receive child
 5.30 care assistance payments under section 119B.13, subdivision 6, paragraph (d), pursue a
 5.31 fraud disqualification under section 256.98, take an action against the provider under chapter
 5.32 245E, or establish an attendance record overpayment claim in the system under paragraph
 5.33 (d) against a current or former provider, when the county or the commissioner knows or

6.1 has reason to believe that the provider has not complied with the record-keeping requirement
6.2 in this subdivision. ~~A provider's failure to produce attendance records as requested on more
6.3 than one occasion constitutes grounds for disqualification as a provider.~~

6.4 (d) To calculate an attendance record overpayment under this subdivision, the
6.5 commissioner or county agency shall subtract the maximum daily rate from the total amount
6.6 paid to a provider for each day that a child's attendance record is missing, unavailable,
6.7 incomplete, illegible, inaccurate, or otherwise inadequate.

6.8 (e) The commissioner shall develop criteria for a county to determine an attendance
6.9 record overpayment under this subdivision.

6.10 **EFFECTIVE DATE.** This section is effective July 1, 2019.

6.11 Sec. 6. Minnesota Statutes 2018, section 119B.13, subdivision 6, is amended to read:

6.12 Subd. 6. **Provider payments.** (a) A provider shall bill only for services documented
6.13 according to section 119B.125, subdivision 6. The provider shall bill for services provided
6.14 within ten days of the end of the service period. Payments under the child care fund shall
6.15 be made within 21 days of receiving a complete bill from the provider. Counties or the state
6.16 may establish policies that make payments on a more frequent basis.

6.17 (b) If a provider has received an authorization of care and been issued a billing form for
6.18 an eligible family, the bill must be submitted within 60 days of the last date of service on
6.19 the bill. A bill submitted more than 60 days after the last date of service must be paid if the
6.20 county determines that the provider has shown good cause why the bill was not submitted
6.21 within 60 days. Good cause must be defined in the county's child care fund plan under
6.22 section 119B.08, subdivision 3, and the definition of good cause must include county error.
6.23 Any bill submitted more than a year after the last date of service on the bill must not be
6.24 paid.

6.25 (c) If a provider provided care for a time period without receiving an authorization of
6.26 care and a billing form for an eligible family, payment of child care assistance may only be
6.27 made retroactively for a maximum of six months from the date the provider is issued an
6.28 authorization of care and billing form.

6.29 (d) A county or the commissioner may refuse to issue a child care authorization to a
6.30 licensed or legal nonlicensed provider, revoke an existing child care authorization to a
6.31 licensed or legal nonlicensed provider, stop payment issued to a licensed or legal nonlicensed
6.32 provider, or refuse to pay a bill submitted by a licensed or legal nonlicensed provider if:

7.1 (1) the provider admits to intentionally giving the county materially false information
7.2 on the provider's billing forms;

7.3 (2) a county or the commissioner finds by a preponderance of the evidence that the
7.4 provider intentionally gave the county materially false information on the provider's billing
7.5 forms, or provided false attendance records to a county or the commissioner;

7.6 (3) the provider is in violation of child care assistance program rules, until the agency
7.7 determines those violations have been corrected;

7.8 (4) the provider is operating after:

7.9 (i) an order of suspension of the provider's license issued by the commissioner;

7.10 (ii) an order of revocation of the provider's license; or

7.11 (iii) a final order of conditional license issued by the commissioner for as long as the
7.12 conditional license is in effect;

7.13 (5) the provider submits false attendance reports or refuses to provide documentation
7.14 of the child's attendance upon request; ~~or~~

7.15 (6) the provider gives false child care price information; or

7.16 (7) the provider fails to report decreases in a child's attendance, as required under section
7.17 119B.125, subdivision 9.

7.18 (e) For purposes of paragraph (d), clauses (3), (5), ~~and~~ (6), and (7), the county or the
7.19 commissioner may withhold the provider's authorization or payment for a period of time
7.20 not to exceed three months beyond the time the condition has been corrected.

7.21 (f) A county's payment policies must be included in the county's child care plan under
7.22 section 119B.08, subdivision 3. If payments are made by the state, in addition to being in
7.23 compliance with this subdivision, the payments must be made in compliance with section
7.24 16A.124.

7.25 **EFFECTIVE DATE.** This section is effective July 1, 2019.

7.26 Sec. 7. Minnesota Statutes 2018, section 119B.13, subdivision 7, is amended to read:

7.27 Subd. 7. **Absent days.** (a) Licensed child care providers and license-exempt centers
7.28 must not be reimbursed for more than 25 full-day absent days per child, excluding holidays,
7.29 in a ~~fiscal~~ calendar year, or for more than ten consecutive full-day absent days. "Absent
7.30 day" means any day that the child is authorized and scheduled to be in care with a licensed
7.31 provider or license exempt center, and the child is absent from the care for the entire day.

8.1 Legal nonlicensed family child care providers must not be reimbursed for absent days. If a
8.2 child attends for part of the time authorized to be in care in a day, but is absent for part of
8.3 the time authorized to be in care in that same day, the absent time must be reimbursed but
8.4 the time must not count toward the absent days limit. Child care providers must only be
8.5 reimbursed for absent days if the provider has a written policy for child absences and charges
8.6 all other families in care for similar absences.

8.7 (b) Notwithstanding paragraph (a), children with documented medical conditions that
8.8 cause more frequent absences may exceed the 25 absent days limit, or ten consecutive
8.9 full-day absent days limit. Absences due to a documented medical condition of a parent or
8.10 sibling who lives in the same residence as the child receiving child care assistance do not
8.11 count against the absent days limit in a ~~fiscal~~ calendar year. Documentation of medical
8.12 conditions must be on the forms and submitted according to the timelines established by
8.13 the commissioner. A public health nurse or school nurse may verify the illness in lieu of a
8.14 medical practitioner. If a provider sends a child home early due to a medical reason,
8.15 including, but not limited to, fever or contagious illness, the child care center director or
8.16 lead teacher may verify the illness in lieu of a medical practitioner.

8.17 (c) Notwithstanding paragraph (a), children in families may exceed the absent days limit
8.18 if at least one parent: (1) is under the age of 21; (2) does not have a high school diploma or
8.19 commissioner of education-selected high school equivalency certification; and (3) is a
8.20 student in a school district or another similar program that provides or arranges for child
8.21 care, parenting support, social services, career and employment supports, and academic
8.22 support to achieve high school graduation, upon request of the program and approval of the
8.23 county. If a child attends part of an authorized day, payment to the provider must be for the
8.24 full amount of care authorized for that day.

8.25 (d) Child care providers must be reimbursed for up to ten federal or state holidays or
8.26 designated holidays per year when the provider charges all families for these days and the
8.27 holiday or designated holiday falls on a day when the child is authorized to be in attendance.
8.28 Parents may substitute other cultural or religious holidays for the ten recognized state and
8.29 federal holidays. Holidays do not count toward the absent days limit.

8.30 (e) A family or child care provider must not be assessed an overpayment for an absent
8.31 day payment unless (1) there was an error in the amount of care authorized for the family,
8.32 (2) all of the allowed full-day absent payments for the child have been paid, or (3) the family
8.33 or provider did not timely report a change as required under law.

9.1 (f) The provider and family shall receive notification of the number of absent days used
 9.2 upon initial provider authorization for a family and ongoing notification of the number of
 9.3 absent days used as of the date of the notification.

9.4 (g) For purposes of this subdivision, "absent days limit" means 25 full-day absent days
 9.5 per child, excluding holidays, in a ~~fiscal~~ calendar year; and ten consecutive full-day absent
 9.6 days.

9.7 (h) For purposes of this subdivision, "holidays limit" means ten full-day holidays per
 9.8 child, excluding absent days, in a calendar year.

9.9 (i) If a day meets the criteria of an absent day or a holiday under this subdivision, the
 9.10 provider must bill that day as an absent day or holiday. A provider's failure to properly bill
 9.11 an absent day or a holiday results in an overpayment, regardless of whether the child reached,
 9.12 or is exempt from, the absent days limit or holidays limit for the calendar year.

9.13 **EFFECTIVE DATE.** This section is effective July 1, 2019.

9.14 Sec. 8. Minnesota Statutes 2018, section 245.095, is amended to read:

9.15 **245.095 LIMITS ON RECEIVING PUBLIC FUNDS.**

9.16 Subdivision 1. **Prohibition.** (a) If a provider, vendor, or individual enrolled, licensed,
 9.17 or receiving funds under a grant contract, or registered in any program administered by the
 9.18 commissioner, including under the commissioner's powers and authorities in section 256.01,
 9.19 is excluded from any that program administered by the commissioner, including under the
 9.20 commissioner's powers and authorities in section 256.01, the commissioner shall:

9.21 (1) prohibit the excluded provider, vendor, or individual from enrolling or becoming
 9.22 licensed, receiving grant funds, or registering in any other program administered by the
 9.23 commissioner; and

9.24 (2) disenroll, revoke or suspend a license, disqualify, or debar the excluded provider,
 9.25 vendor, or individual in any other program administered by the commissioner.

9.26 (b) The duration of this prohibition, disenrollment, revocation, suspension,
 9.27 disqualification, or debarment must last for the longest applicable sanction or disqualifying
 9.28 period in effect for the provider, vendor, or individual permitted by state or federal law.

9.29 Subd. 2. **Definitions.** (a) For purposes of this section, the following definitions have the
 9.30 meanings given them.

9.31 (b) "Excluded" means disenrolled, subject to license revocation or suspension,
 9.32 disqualified, or subject to vendor debarment disqualified, having a license that has been

10.1 revoked or suspended under chapter 245A, or debarred or suspended under Minnesota Rules,
10.2 part 1230.1150, or excluded pursuant to section 256B.064, subdivision 3.

10.3 (c) "Individual" means a natural person providing products or services as a provider or
10.4 vendor.

10.5 (d) "Provider" ~~means~~ includes any entity or individual receiving payment from a program
10.6 administered by the Department of Human Services, and an owner, controlling individual,
10.7 license holder, director, or managerial official of an entity receiving payment from a program
10.8 administered by the Department of Human Services.

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

10.10 Sec. 9. Minnesota Statutes 2018, section 245E.01, subdivision 8, is amended to read:

10.11 Subd. 8. **Financial misconduct or misconduct.** "Financial misconduct" or "misconduct"
10.12 means an entity's or individual's acts or omissions that result in fraud and abuse or error
10.13 against the Department of Human Services. Financial misconduct includes: (1) acting as a
10.14 recruiter offering conditional employment on behalf of a provider that has received funds
10.15 from the child care assistance program; and (2) committing an act or acts that meet the
10.16 definition of offenses listed in section 609.817.

10.17 Sec. 10. Minnesota Statutes 2018, section 245E.02, is amended by adding a subdivision
10.18 to read:

10.19 Subd. 1a. **Provider definitions.** For the purposes of this section, "provider" includes:

10.20 (1) individuals or entities meeting the definition of provider in section 245E.01,
10.21 subdivision 12; and

10.22 (2) owners and controlling individuals of entities identified in clause (1).

10.23 Sec. 11. Minnesota Statutes 2018, section 245E.02, is amended by adding a subdivision
10.24 to read:

10.25 Subd. 5. **Administrative disqualifications.** (a) The department shall pursue an
10.26 administrative disqualification in subdivision 4, paragraph (c), clause (1), if the provider
10.27 committed an intentional program violation. Intentional program violations include
10.28 intentionally making false or misleading statements; intentionally misrepresenting,
10.29 concealing, or withholding facts; and intentionally violating program regulations. Intent
10.30 may be proven by demonstrating a pattern or conduct that violates program rules.

11.1 (b) To initiate an administrative disqualification, the department must issue a notice to
 11.2 the provider under section 245E.06, subdivision 2.

11.3 (c) The provider may appeal the department's administrative disqualification according
 11.4 to section 256.045. The appeal must be made in writing and must be received by the
 11.5 department no later than 30 days after the issuance of the notice to the provider. On appeal
 11.6 the department bears the burden of proof to demonstrate by a preponderance of the evidence
 11.7 that the provider committed an intentional program violation.

11.8 (d) The human services judge may combine a fair hearing and administrative
 11.9 disqualification hearing into a single hearing if the factual issues arise out of the same or
 11.10 related circumstances and the provider receives prior notice that the hearings will be
 11.11 combined.

11.12 (e) A provider found to have committed an intentional program violation and is
 11.13 administratively disqualified shall be disqualified, for a period of three years for the first
 11.14 offense and permanently for any subsequent offense, from receiving any payments from
 11.15 any child care program under chapter 119B. Unless a timely and proper appeal made under
 11.16 this section is received by the department, the administrative determination of the department
 11.17 is final and binding.

11.18 Sec. 12. Minnesota Statutes 2018, section 256B.064, subdivision 1a, is amended to read:

11.19 Subd. 1a. **Grounds for sanctions against vendors.** The commissioner may impose
 11.20 sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse
 11.21 in connection with the provision of medical care to recipients of public assistance; (2) a
 11.22 pattern of presentment of false or duplicate claims or claims for services not medically
 11.23 necessary; (3) a pattern of making false statements of material facts for the purpose of
 11.24 obtaining greater compensation than that to which the vendor is legally entitled; (4)
 11.25 suspension or termination as a Medicare vendor; (5) refusal to grant the state agency access
 11.26 during regular business hours to examine all records necessary to disclose the extent of
 11.27 services provided to program recipients and appropriateness of claims for payment; (6)
 11.28 failure to repay an overpayment or a fine finally established under this section; (7) failure
 11.29 to correct errors in the maintenance of health service or financial records for which a fine
 11.30 was imposed or after issuance of a warning by the commissioner; ~~and~~ (8) any reason for
 11.31 which a vendor could be excluded from participation in the Medicare program under section
 11.32 1128, 1128A, or 1866(b)(2) of the Social Security Act; and (9) there is a preponderance of
 11.33 evidence that the vendor committed an act or acts that meet the definition of offenses listed
 11.34 in section 609.817.

12.1 Sec. 13. Minnesota Statutes 2018, section 256B.064, subdivision 1b, is amended to read:

12.2 Subd. 1b. **Sanctions available.** The commissioner may impose the following sanctions
12.3 for the conduct described in subdivision 1a: suspension or withholding of payments to a
12.4 vendor and suspending or terminating participation in the program, or imposition of a fine
12.5 under subdivision 2, paragraph (f). When imposing sanctions under this section, the
12.6 commissioner shall consider the nature, chronicity, or severity of the conduct and the effect
12.7 of the conduct on the health and safety of persons served by the vendor. The commissioner
12.8 shall suspend a vendor's participation in the program for a minimum of five years if the
12.9 vendor is convicted of a crime, received a stay of adjudication, or entered a court-ordered
12.10 diversion program for an offense related to a provision of a health service under medical
12.11 assistance or health care fraud. Regardless of imposition of sanctions, the commissioner
12.12 may make a referral to the appropriate state licensing board.

12.13 Sec. 14. Minnesota Statutes 2018, section 256B.064, subdivision 2, is amended to read:

12.14 Subd. 2. **Imposition of monetary recovery and sanctions.** (a) The commissioner shall
12.15 determine any monetary amounts to be recovered and sanctions to be imposed upon a vendor
12.16 of medical care under this section. Except as provided in paragraphs (b) and (d), neither a
12.17 monetary recovery nor a sanction will be imposed by the commissioner without prior notice
12.18 and an opportunity for a hearing, according to chapter 14, on the commissioner's proposed
12.19 action, provided that the commissioner may suspend or reduce payment to a vendor of
12.20 medical care, except a nursing home or convalescent care facility, after notice and prior to
12.21 the hearing if in the commissioner's opinion that action is necessary to protect the public
12.22 welfare and the interests of the program.

12.23 (b) Except when the commissioner finds good cause not to suspend payments under
12.24 Code of Federal Regulations, title 42, section 455.23 (e) or (f), the commissioner shall
12.25 withhold or reduce payments to a vendor of medical care without providing advance notice
12.26 of such withholding or reduction if either of the following occurs:

12.27 (1) the vendor is convicted of a crime involving the conduct described in subdivision
12.28 1a; or

12.29 (2) the commissioner determines there is a credible allegation of fraud for which an
12.30 investigation is pending under the program. A credible allegation of fraud is an allegation
12.31 which has been verified by the state, from any source, including but not limited to:

12.32 (i) fraud hotline complaints;

12.33 (ii) claims data mining; and

13.1 (iii) patterns identified through provider audits, civil false claims cases, and law
13.2 enforcement investigations.

13.3 Allegations are considered to be credible when they have an indicia of reliability and
13.4 the state agency has reviewed all allegations, facts, and evidence carefully and acts
13.5 judiciously on a case-by-case basis.

13.6 (c) The commissioner must send notice of the withholding or reduction of payments
13.7 under paragraph (b) within five days of taking such action unless requested in writing by a
13.8 law enforcement agency to temporarily withhold the notice. The notice must:

13.9 (1) state that payments are being withheld according to paragraph (b);

13.10 (2) set forth the general allegations as to the nature of the withholding action, but need
13.11 not disclose any specific information concerning an ongoing investigation;

13.12 (3) except in the case of a conviction for conduct described in subdivision 1a, state that
13.13 the withholding is for a temporary period and cite the circumstances under which withholding
13.14 will be terminated;

13.15 (4) identify the types of claims to which the withholding applies; and

13.16 (5) inform the vendor of the right to submit written evidence for consideration by the
13.17 commissioner.

13.18 The withholding or reduction of payments will not continue after the commissioner
13.19 determines there is insufficient evidence of fraud by the vendor, or after legal proceedings
13.20 relating to the alleged fraud are completed, unless the commissioner has sent notice of
13.21 intention to impose monetary recovery or sanctions under paragraph (a). Upon conviction
13.22 for a crime related to the provision, management, or administration of a health service under
13.23 medical assistance, a payment held pursuant to this section by the commissioner or a managed
13.24 care organization that contracts with the commissioner under section 256B.035 is forfeited
13.25 by the commissioner or managed care organization, regardless of the amount charged in
13.26 the criminal complaint or the amount of criminal restitution ordered.

13.27 (d) The commissioner shall suspend or terminate a vendor's participation in the program
13.28 without providing advance notice and an opportunity for a hearing when the suspension or
13.29 termination is required because of the vendor's exclusion from participation in Medicare.
13.30 Within five days of taking such action, the commissioner must send notice of the suspension
13.31 or termination. The notice must:

13.32 (1) state that suspension or termination is the result of the vendor's exclusion from
13.33 Medicare;

14.1 (2) identify the effective date of the suspension or termination; and

14.2 (3) inform the vendor of the need to be reinstated to Medicare before reapplying for
14.3 participation in the program.

14.4 (e) Upon receipt of a notice under paragraph (a) that a monetary recovery or sanction is
14.5 to be imposed, a vendor may request a contested case, as defined in section 14.02, subdivision
14.6 3, by filing with the commissioner a written request of appeal. The appeal request must be
14.7 received by the commissioner no later than 30 days after the date the notification of monetary
14.8 recovery or sanction was mailed to the vendor. The appeal request must specify:

14.9 (1) each disputed item, the reason for the dispute, and an estimate of the dollar amount
14.10 involved for each disputed item;

14.11 (2) the computation that the vendor believes is correct;

14.12 (3) the authority in statute or rule upon which the vendor relies for each disputed item;

14.13 (4) the name and address of the person or entity with whom contacts may be made
14.14 regarding the appeal; and

14.15 (5) other information required by the commissioner.

14.16 (f) The commissioner may order a vendor to forfeit a fine for failure to fully document
14.17 services according to standards in this chapter and Minnesota Rules, chapter 9505. The
14.18 commissioner may assess fines if specific required components of documentation are
14.19 missing. The fine for incomplete documentation shall equal 20 percent of the amount paid
14.20 on the claims for reimbursement submitted by the vendor, or up to \$5,000, whichever is
14.21 less. If the commissioner determines that a vendor repeatedly violated this chapter or
14.22 Minnesota Rules, chapter 9505, related to the provision of services to program recipients
14.23 and the submission of claims for payment, the commissioner may order a vendor to forfeit
14.24 a fine based on the nature, severity, and chronicity of the violations, in an amount of up to
14.25 \$5,000 or 20 percent of the value of the claims, whichever is greater.

14.26 (g) The vendor shall pay the fine assessed on or before the payment date specified. If
14.27 the vendor fails to pay the fine, the commissioner may withhold or reduce payments and
14.28 recover the amount of the fine. A timely appeal shall stay payment of the fine until the
14.29 commissioner issues a final order.

15.1 Sec. 15. Minnesota Statutes 2018, section 256B.064, is amended by adding a subdivision
15.2 to read:

15.3 Subd. 3. Vendor mandates on prohibited hiring. (a) The commissioner shall maintain
15.4 and publish a list of each excluded individual and entity that was convicted of a crime related
15.5 to the provision, management, or administration of a medical assistance health service, or
15.6 suspended or terminated under subdivision 2. A vendor that receives funding from medical
15.7 assistance shall not: (1) employ an individual or entity who is on the exclusion list; or (2)
15.8 enter into or maintain a business relationship with an individual or entity that is on the
15.9 exclusion list.

15.10 (b) Before hiring or entering into a business transaction, a vendor must check the
15.11 exclusion list. The vendor must check the exclusion list on a monthly basis and document
15.12 the date and time with a.m. and p.m. designations that the exclusion list was checked and
15.13 the name and title of the person who checked the exclusion list. The vendor must: (1)
15.14 immediately terminate a current employee on the exclusion list; and (2) immediately
15.15 terminate a business relationship with an individual or entity on the exclusion list.

15.16 (c) A vendor's requirement to check the exclusion list and to terminate an employee on
15.17 the exclusion list applies to each employee, even if the named employee is not responsible
15.18 for direct patient care or direct submission of a claim to medical assistance. A vendor's
15.19 requirement to check the exclusion list and terminate a business relationship with an
15.20 individual or entity on the exclusion list applies to each business relationship, even if the
15.21 named individual or entity is not responsible for direct patient care or direct submission of
15.22 a claim to medical assistance.

15.23 (d) A vendor that employs or enters into or maintains a business relationship with an
15.24 individual or entity on the exclusion list must refund any payment related to a service
15.25 rendered by an individual or entity on the exclusion list from the date the individual is
15.26 employed or the date the individual is placed on the exclusion list, whichever is later, and
15.27 a vendor may be subject to:

15.28 (1) sanctions under subdivision 2;

15.29 (2) a civil monetary penalty of up to \$25,000 for each determination by the department
15.30 that the vendor employed or contracted with an individual or entity on the exclusion list;
15.31 and

15.32 (3) other fines or penalties allowed by law.

16.1 Sec. 16. Minnesota Statutes 2018, section 256B.064, is amended by adding a subdivision
16.2 to read:

16.3 Subd. 4. **Notice.** (a) The notice required under subdivision 2 shall be served by first class
16.4 mail at the address submitted to the department by the vendor. Service is complete upon
16.5 mailing. The commissioner shall place an affidavit of the first class mailing in the vendor's
16.6 file as an indication of the address and the date of mailing.

16.7 (b) The department shall give notice in writing to a recipient placed in the Minnesota
16.8 restricted recipient program under section 256B.0646 and Minnesota Rules, part 9505.2200.
16.9 The notice shall be sent by first class mail to the recipient's current address on file with the
16.10 department. A recipient placed in the Minnesota restricted recipient program may contest
16.11 the placement by submitting a written request for a hearing to the department within 90
16.12 days of the notice being mailed.

16.13 Sec. 17. Minnesota Statutes 2018, section 256B.064, is amended by adding a subdivision
16.14 to read:

16.15 Subd. 5. **Immunity; good faith reporters.** (a) A person who makes a good faith report
16.16 is immune from any civil or criminal liability that might otherwise arise from reporting or
16.17 participating in the investigation. Nothing in this subdivision affects a vendor's responsibility
16.18 for an overpayment established under this subdivision.

16.19 (b) A person employed by a lead investigative agency who is conducting or supervising
16.20 an investigation or enforcing the law according to the applicable law or rule is immune from
16.21 any civil or criminal liability that might otherwise arise from the person's actions, if the
16.22 person is acting in good faith and exercising due care.

16.23 (c) For purposes of this subdivision, "person" includes a natural person or any form of
16.24 a business or legal entity.

16.25 (d) After an investigation is complete, the reporter's name must be kept confidential.
16.26 The subject of the report may compel disclosure of the reporter's name only with the consent
16.27 of the reporter or upon a written finding by a district court that the report was false and there
16.28 is evidence that the report was made in bad faith. This subdivision does not alter disclosure
16.29 responsibilities or obligations under the Rules of Criminal Procedure, except when the
16.30 identity of the reporter is relevant to a criminal prosecution the district court shall conduct
16.31 an in-camera review before determining whether to order disclosure of the reporter's identity.

17.1 Sec. 18. **[256B.0646] MINNESOTA RESTRICTED RECIPIENT PROGRAM;**
17.2 **PERSONAL CARE ASSISTANCE SERVICES.**

17.3 (a) When a recipient's use of personal care assistance services or community first services
17.4 and supports under section 256B.85 results in abusive or fraudulent billing, the commissioner
17.5 may place a recipient in the Minnesota restricted recipient program under Minnesota Rules,
17.6 part 9505.2165. A recipient placed in the Minnesota restricted recipient program under this
17.7 section must: (1) use a designated traditional personal care assistance provider agency; and
17.8 (2) obtain a new assessment under section 256B.0911, including consultation with a registered
17.9 or public health nurse on the long-term care consultation team pursuant to section 256B.0911,
17.10 subdivision 3, paragraph (b), clause (2).

17.11 (b) A recipient must comply with additional conditions for the use of personal care
17.12 assistance services or community first services and supports if the commissioner determines
17.13 it is necessary to prevent future misuse of personal care assistance services or abusive or
17.14 fraudulent billing. Additional conditions may include but are not limited to restricting service
17.15 authorizations to a duration of no more than one month, and requiring a qualified professional
17.16 to monitor and report services on a monthly basis.

17.17 (c) A recipient placed in the Minnesota restricted recipient program under this section
17.18 may appeal the placement according to section 256B.045.

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

17.20 Sec. 19. Minnesota Statutes 2018, section 256B.0651, subdivision 17, is amended to read:

17.21 Subd. 17. **Recipient protection.** (a) Providers of home care services must provide each
17.22 recipient with a copy of the home care bill of rights under section 144A.44 at least 30 days
17.23 prior to terminating services to a recipient, if the termination results from provider sanctions
17.24 under section 256B.064, such as a payment withhold, a suspension of participation, or a
17.25 termination of participation. If a home care provider determines it is unable to continue
17.26 providing services to a recipient, the provider must notify the recipient, the recipient's
17.27 responsible party, and the commissioner 30 days prior to terminating services to the recipient
17.28 because of an action under section 256B.064, and must assist the commissioner and lead
17.29 agency in supporting the recipient in transitioning to another home care provider of the
17.30 recipient's choice.

17.31 (b) In the event of a payment withhold from a home care provider, a suspension of
17.32 participation, or a termination of participation of a home care provider under section
17.33 256B.064, the commissioner may inform the Office of Ombudsman for Long-Term Care

18.1 and the lead agencies for all recipients with active service agreements with the provider. At
18.2 the commissioner's request, the lead agencies must contact recipients to ensure that the
18.3 recipients are continuing to receive needed care, and that the recipients have been given
18.4 free choice of provider if they transfer to another home care provider. In addition, the
18.5 commissioner or the commissioner's delegate may directly notify recipients who receive
18.6 care from the provider that payments have been or may be withheld or that the provider's
18.7 participation in medical assistance has been or may be suspended or terminated, if the
18.8 commissioner determines that notification is necessary to protect the welfare of the recipients.
18.9 For purposes of this subdivision, "lead agencies" means counties, tribes, and managed care
18.10 organizations.

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

18.12 Sec. 20. Minnesota Statutes 2018, section 256B.27, subdivision 3, is amended to read:

18.13 Subd. 3. **Access to medical records.** The commissioner of human services, with the
18.14 written consent of the recipient, on file with the local welfare agency, shall be allowed
18.15 access to all personal medical records of medical assistance recipients solely for the purposes
18.16 of investigating whether or not: (a) a vendor of medical care has submitted a claim for
18.17 reimbursement, a cost report or a rate application which is duplicative, erroneous, or false
18.18 in whole or in part, or which results in the vendor obtaining greater compensation than the
18.19 vendor is legally entitled to; or (b) the medical care was medically necessary. ~~The vendor~~
18.20 ~~of medical care shall receive notification from the commissioner at least 24 hours before~~
18.21 ~~the commissioner gains access to such records.~~ When the commissioner is investigating a
18.22 possible overpayment of Medicaid funds, the commissioner must be given immediate access
18.23 without prior notice to the vendor's office during regular business hours and to documentation
18.24 and records related to services provided and submission of claims for services provided.
18.25 Denying the commissioner access to records is cause for the vendor's immediate suspension
18.26 of payment or termination according to section 256B.064. The determination of provision
18.27 of services not medically necessary shall be made by the commissioner. Notwithstanding
18.28 any other law to the contrary, a vendor of medical care shall not be subject to any civil or
18.29 criminal liability for providing access to medical records to the commissioner of human
18.30 services pursuant to this section.

19.1 Sec. 21. [609.817] CRIMINAL PENALTIES FOR ACTS INVOLVING HUMAN
19.2 SERVICES PROGRAMS.

19.3 Subdivision 1. Payments made relating to human services programs. A person who
19.4 with intent offers or pays any remuneration, including any kickback, bribe, or rebate, directly
19.5 or indirectly, overtly or covertly, in cash or in kind, to a person to induce the person:

19.6 (1) to apply for, receive, or induce another person to apply for or receive a human services
19.7 benefit, service, or grant related to a program funded in whole or in part by the Department
19.8 of Human Services or administered by the commissioner of human services, including but
19.9 not limited to a human services benefit, service, or grant funded in whole or in part by a
19.10 local social services agency, the Department of Human Services, or the United States
19.11 Department of Health and Human Services; or

19.12 (2) to apply for or to use a particular vendor providing a service administered or funded
19.13 in whole or in part by the Department of Human Services, a local social services agency,
19.14 or the United States Department of Health and Human Services,
19.15 is guilty of a felony and upon conviction shall be sentenced to not more than five years'
19.16 imprisonment or to payment of a fine of not more than \$15,000, or both.

19.17 Subd. 2. Payments received relating to human services programs. A person who
19.18 with intent solicits or receives any remuneration, including any kickback, bribe, or rebate,
19.19 directly or indirectly, overtly or covertly, in cash or in kind:

19.20 (1) in return for applying for or receiving a human services benefit, service, or grant
19.21 administered or funded in whole or in part by the Department of Human Services or
19.22 administered by the commissioner of human services, including but not limited to a human
19.23 services benefit, service, or grant funded in whole or in part by a local social services agency,
19.24 the Department of Human Services, or the United States Department of Health and Human
19.25 Services;

19.26 (2) in return for applying for or using a particular vendor providing a service administered
19.27 or funded in whole or in part by the Department of Human Services, a local social services
19.28 agency, or the United States Department of Health and Human Services; or

19.29 (3) in return for receiving or agreeing to receive payments in excess of fair and reasonable
19.30 market value for services or supplies provided to a company or person who is being paid
19.31 in whole or in part by the Department of Human Services, a local social services agency,
19.32 or the United States Department of Health and Human Services to provide a human services
19.33 benefit to a person,

20.1 is guilty of a felony and upon conviction shall be sentenced to not more than five years'
20.2 imprisonment or to payment of a fine of not more than \$15,000, or both.

20.3 Subd. 3. **Defense.** It is not a defense under this section for the person or company
20.4 receiving or making the payments in excess of fair and reasonable market value to claim
20.5 the person did not have knowledge of the source of the payments.

20.6 Subd. 4. **Persons exempt.** This section does not apply if:

20.7 (1) the employee receiving the remuneration is a bona fide employee of the company
20.8 receiving payment for providing care or services;

20.9 (2) the remuneration received by the employee is for work performed by the employee
20.10 and is paid via a standard payroll check or a direct deposit from the company payroll account
20.11 to the bank designated by the employee; and

20.12 (3) the company making the payment complies with all state and federal laws relating
20.13 to tax withholding, Social Security and Medicare withholding, and wage reporting to the
20.14 Department of Employment and Economic Development.

20.15 Subd. 5. **Additional sanctions.** (a) Claims or payments for any service rendered or
20.16 claimed to have been rendered by a provider or individual who violated this section in regard
20.17 to the person for whom such services were rendered or claimed to have been rendered are
20.18 noncompensable, unenforceable as a matter of law, and constitute the value of any restitution
20.19 owed to the Department of Human Services, a county, or the United States Department of
20.20 Health and Human Services.

20.21 (b) For the purposes of this section, service includes any benefit, service, or grant,
20.22 administered or funded in whole or in part by the Department of Human Services, a county,
20.23 or the United States Department of Health and Human Services.

20.24 (c) A person convicted under this section is subject to prohibitions described under
20.25 section 245.095.

20.26 Sec. 22. **APPROPRIATION.**

20.27 \$..... in fiscal year 2020 and \$..... in fiscal year 2021 are appropriated from the general
20.28 fund to the commissioner of human services for the purposes of human services program
20.29 integrity activities.