

Signed by the governor April 24, 1990, 9:54 p.m.

CHAPTER 498—S.F.No. 2051

*An act relating to health; allowing a waiver of restrictions that may be placed upon controlling persons of a nursing home; amending Minnesota Statutes 1988, section 144A.04, subdivision 4; and by adding a subdivision.*

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

Section 1. Minnesota Statutes 1988, section 144A.04, subdivision 4, is amended to read:

Subd. 4. **CONTROLLING PERSON RESTRICTIONS.** (a) The controlling persons of a nursing home may not include any person who was a controlling person of another nursing home during any period of time in the previous two-year period:

(a) (1) during which time of control that other nursing home incurred the following number of uncorrected or repeated violations:

(1) (i) two or more uncorrected violations or one or more repeated violations which created an imminent risk to direct resident care or safety; or

(2) (ii) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule; or

(b) (2) who was convicted of a felony or gross misdemeanor punishable by a term of imprisonment of more than 90 days that relates to operation of the nursing home or directly affects resident safety or care, during that period.

(b) The provisions of this subdivision shall not apply to any controlling person who had no legal authority to affect or change decisions related to the operation of the nursing home which incurred the uncorrected violations.

Sec. 2. Minnesota Statutes 1988, section 144A.04, is amended by adding a subdivision to read:

**Subd. 4a. STAY OF ADVERSE ACTION REQUIRED BY CONTROLLING PERSON RESTRICTIONS.** (a) In lieu of revoking, suspending, or refusing to renew the license of a nursing home with a controlling person disqualified by subdivision 4, paragraph (a), clause (1), the commissioner may issue an order staying the revocation, suspension, or nonrenewal of the nursing home license. The order may, but need not, be contingent upon the nursing home's compliance with restrictions and conditions imposed on the license to ensure the proper operation of the nursing home and to protect the health, safety, comfort, treatment, and well-being of the residents in the home. The decision to issue an order for stay must be made within 90 days of the commissioner's

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determination that a controlling person is disqualified by subdivision 4, paragraph (a), clause (1), from operating a nursing home.

(b) In determining whether to issue a stay and to impose conditions and restrictions, the commissioner shall consider the following factors:

(1) the ability of the controlling persons to operate other nursing homes in accordance with the licensure rules and laws;

(2) the conditions in the facility that received the number and type of uncorrected or repeated violations described in subdivision 4, paragraph (a), clause (1); and

(3) the conditions and compliance history of each of the nursing homes operated by the controlling persons.

(c) The commissioner's decision to exercise the authority under this subdivision in lieu of revoking, suspending, or refusing to renew the license of the nursing home is not subject to administrative or judicial review.

(d) The order for the stay of revocation, suspension, or nonrenewal of the nursing home license must include any conditions and restrictions on the nursing home license that the commissioner deems necessary based upon the factors listed in paragraph (b).

(e) Prior to issuing an order for stay of revocation, suspension, or nonrenewal, the commissioner shall inform the controlling persons, in writing, of any conditions and restrictions that will be imposed. The controlling persons shall, within 10 working days, notify the commissioner in writing of their decision to accept or reject the conditions and restrictions. If the nursing home rejects any of the conditions and restrictions, the commissioner shall either modify the conditions and restrictions or take action to suspend, revoke, or not renew the nursing home license.

(f) Upon issuance of the order for stay of revocation, suspension, or nonrenewal, the controlling persons shall be responsible for compliance with the conditions and restrictions contained therein. Any time after the conditions and restrictions have been in place for 180 days, the controlling persons may petition the commissioner for removal or modification of the conditions and restrictions. The commissioner shall respond to the petition within 30 days of the receipt of the written petition. If the commissioner denies the petition, the controlling persons may request a hearing under the provisions of chapter 14. Any hearing shall be limited to a determination of whether the conditions and restrictions shall be modified or removed. At the hearing, the controlling persons will have the burden of proof.

(g) The failure of the controlling persons to comply with the conditions and restrictions contained in the order for stay shall result in the immediate removal of the stay and the commissioner shall take action to suspend, revoke, or not renew the license.

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(h) The conditions and restrictions are effective for two years after the date they are imposed.

(i) Nothing in this subdivision shall be construed to limit in any way the commissioner's ability to impose other sanctions against a nursing home license under the standards set forth in state or federal law whether or not a stay of revocation, suspension, or nonrenewal is issued.

### Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective the day following final enactment. The provisions of section 2 apply to any contested case proceeding that is pending on the date of enactment as well as to licensing actions and contested case hearings commenced on or after that date.

Presented to the governor April 24, 1990

Signed by the governor April 24, 1990, 9:56 p.m.

## CHAPTER 499—S.F.No. 2208

*An act relating to crimes; providing that it is a prima facie case for reference for prosecution as an adult if a child is alleged to have committed a felony offense as part of, or subsequent to, the delinquent act of escape from confinement to a local juvenile correctional facility; making it a crime for an alleged or adjudicated juvenile delinquent who is 18 years old to escape from a local juvenile correctional facility; changing certain grant limits and procedures; exempting certain procedures and protocols from the administrative procedure act; changing the distribution of certain money; amending Minnesota Statutes 1988, sections 260.015, subdivision 5; and 609.485, subdivisions 2 and 4; and Minnesota Statutes 1989 Supplement, sections 260.125, subdivision 3; 299A.34, subdivision 1; 299A.35, subdivision 2; 299C.155, subdivisions 2 and 3; and 609.5315, subdivision 5.*

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

Section 1. Minnesota Statutes 1988, section 260.015, subdivision 5, is amended to read:

Subd. 5. **DELINQUENT CHILD.** "Delinquent child" means a child:

(a) Who has violated any state or local law, except as provided in section 260.193, subdivision 1, and except for juvenile offenders as described in subdivisions 19 to 23; ~~or~~

(b) Who has violated a federal law or a law of another state and whose case has been referred to the juvenile court if the violation would be an act of delinquency if committed in this state or a crime or offense if committed by an adult; ~~or~~

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