

**CHAPTER 317—S.F.No. 3563**

*An act relating to human services; making changes to continuing care provisions; clarifying licensing fines; clarifying senior nutrition appropriations; amending local certification requirements; amending Minnesota Statutes 2007 Supplement, sections 245A.07, subdivision 3; 256B.49, subdivision 16a; Laws 2007, chapter 147, article 19, section 3, subdivision 8.*

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

Section 1. Minnesota Statutes 2007 Supplement, section 245A.07, subdivision 3, is amended to read:

Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, if a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22, or if a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

(b) If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking a license. The appeal of an order suspending or revoking a license must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. Except as provided in subdivision 2a, paragraph (c), a timely appeal of an order suspending or revoking a license shall stay the suspension or revocation until the commissioner issues a final order.

(c)(1) If the license holder was ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal of an order to pay a fine must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the fine has been ordered. If a request is

made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order.

(2) The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

(3) A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557 for which the license holder is determined responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i), or section 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order. Fines assessed against a license holder that holds a license to provide the residential-based habilitation services, as defined under section 245B.02, subdivision 20, and a license to provide foster care, may be assessed against both licenses for the same occurrence, but the combined amount of the fines shall not exceed the amount specified in this clause for that occurrence.

(5) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Sec. 2. Minnesota Statutes 2007 Supplement, section 256B.49, subdivision 16a, is amended to read:

Subd. 16a. **Medical assistance reimbursement.** (a) The commissioner shall seek federal approval for medical assistance reimbursement of independent living skills services, foster care waiver service, supported employment, prevocational service, and structured day service, ~~and adult day care~~ under the home and community-based waiver for persons with a traumatic brain injury, the community alternatives for disabled individuals waivers, and the community alternative care waivers.

(b) Medical reimbursement shall be made only when the provider demonstrates evidence of its capacity to meet basic health, safety, and protection standards through the following methods:

(1) for independent living skills services, supported employment, prevocational service, and structured day service through one of the methods in paragraphs (c) to (e) and (d); and

(2) for foster care waiver services through the method in paragraph (e).

(c) The provider is licensed to provide services under chapter 245B and agrees to apply these standards to services funded through the traumatic brain injury, community alternatives for disabled, or community alternative care home and community-based waivers.

~~(d) The local agency contracting for the services certifies on a form provided by the commissioner shall certify that the provider has the capacity to meet the individual needs as identified in each person's individual service plan. When certifying that the service provider meets the necessary provider qualifications, the local agency shall verify that the provider has policies and procedures governing the following:~~

- (1) protection of the consumer's rights and privacy;
- (2) risk assessment and planning;
- (3) record keeping and reporting of incidents and emergencies with documentation of corrective action if needed;
- (4) service outcomes, regular reviews of progress, and periodic reports;
- (5) complaint and grievance procedures;
- (6) service termination or suspension;
- (7) necessary training and supervision of direct care staff that includes:
  - (i) documentation in personnel files of 20 hours of orientation training in providing training related to service provision;
  - (ii) training in recognizing the symptoms and effects of certain disabilities, health conditions, and positive behavioral supports and interventions;
  - (iii) a minimum of five hours of related training annually; and
  - (iv) when applicable:
    - (A) safe medication administration;
    - (B) proper handling of consumer funds; and
    - (C) compliance with prohibitions and standards developed by the commissioner to satisfy federal requirements regarding the use of restraints and restrictive interventions. The local agency commissioner shall review at least annually biennially that each service provider's continued compliance with the standards policies and procedures governing basic health, safety, and protection of rights continue to meet minimum standards.

(e) The commissioner shall seek federal approval for Medicaid reimbursement of foster care services under the home and community-based waiver for persons with a traumatic brain injury, the community alternatives for disabled individuals waiver, and community alternative care waiver when the provider demonstrates evidence of its capacity to meet basic health, safety, and protection standards. The local agency commissioner shall verify that the adult foster care provider is licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, the child foster care provider is licensed as family

foster care or a foster care residence under Minnesota Rules, parts 2960.3000 to 2960.3340 and certify that the provider has policies and procedures that govern:

(1) compliance with prohibitions and standards developed by the commissioner to meet federal requirements regarding the use of restraints and restrictive interventions; ~~and~~

(2) documentation of service needs and outcomes, regular reviews of progress, and periodic reports; and

(3) safe medication management and administration.

The ~~local agency commissioner~~ shall review at least ~~annually~~ biennially that each service provider's ~~continued compliance with the standards~~ policies and procedures governing basic health, safety, and protection of rights standards continue to meet minimum standards.

Sec. 3. Laws 2007, chapter 147, article 19, section 3, subdivision 8, is amended to read:

#### Subd. 8. **Continuing Care Grants**

The amounts that may be spent from the appropriation for each purpose are as follows:

##### (a) **Aging and Adult Services Grants**

|         |            |            |
|---------|------------|------------|
| General | 14,357,000 | 14,727,000 |
|---------|------------|------------|

**Information and Assistance Reimbursement.** Federal administrative reimbursement obtained from information and assistance services provided by the Senior LinkAge Line to people who are identified as eligible for medical assistance is appropriated to the commissioner for this activity.

**Senior Companion Program.** Of this appropriation, \$42,000 each year is for the senior companion program under Minnesota Statutes, section 256.977.

**Volunteer Senior Citizens.** Of this appropriation, \$42,000 each year is for the volunteer programs for retired senior citizens under Minnesota Statutes, section 256.9753.

**Foster Grandparent Program.** Of this appropriation, \$41,000 each year is for the foster grandparent program in Minnesota Statutes, section 256.976.

**Senior Nutrition.** Of this appropriation, \$125,000 each year is for the senior nutrition programs under Minnesota Statutes, section

256.9752. The commissioner shall give priority to ~~increase services to: (1) persons facing language or cultural barriers, (2) persons with special diets, (3) persons living in isolated rural areas, and (4) other hard-to-serve populations~~ maintaining home delivery and congregate dining services existing on July 1, 2007.

**Base Adjustment.** The general fund base is \$14,774,000 in fiscal year 2010 and \$14,899,000 in fiscal year 2011.

**(b) Alternative Care Grants**

|         |            |            |
|---------|------------|------------|
| General | 49,858,000 | 51,758,000 |
|---------|------------|------------|

**Alternative Care Transfer.** Any money allocated to the alternative care program that is not spent for the purposes indicated does not cancel but is transferred to the medical assistance account.

**Base Adjustment.** The general fund base is \$52,120,000 in fiscal year 2010 and \$52,277,000 in fiscal year 2011 for alternative care grants.

**(c) Medical Assistance Grants - Long-Term Care Facilities**

|         |             |             |
|---------|-------------|-------------|
| General | 496,920,000 | 499,556,000 |
|---------|-------------|-------------|

**Long-Term Care Consultation Funding Increase.** For the rate year beginning October 1, 2008, the county long-term care consultation allocations in Minnesota Statutes, section 256B.0911, subdivision 6, must be increased based on the number of transitional long-term care consultation visits projected by the commissioner in each county. For the rate year beginning October 1, 2009, final allocations must be determined based on the average between the actual number of transitional long-term care visits that were conducted in the prior 12-month period and the projected number of consultations that will be provided in the rate year beginning October 1, 2009. Notwithstanding any contrary provision in

this article, this paragraph expires June 30, 2010.

**Nursing Facility Sprinkler Systems.** Of the general fund appropriation, \$2,500,000 the first year is to reimburse the costs of nursing facility sprinkler systems under Minnesota Statutes, section 256B.434, subdivision 4, paragraph (e). Any portion of this appropriation not spent in the first year shall not cancel but shall be available for the second year.

**Nursing Home Moratorium Exceptions.** During fiscal year 2008, the commissioner of health may approve moratorium exception projects under Minnesota Statutes, section 144A.073, for which the full annualized state share of medical assistance costs does not exceed \$3,000,000. During fiscal year 2009, the commissioner of health may approve moratorium exception projects under Minnesota Statutes, section 144A.073, for which the full annualized state share of medical assistance costs does not exceed \$3,000,000 less the amount approved during the first year. Priority shall be given to proposals that entail:

- (1) complete building replacement in conjunction with reductions in the number of beds in a county, with greater weight given to projects in counties with a greater than average number of beds per 1,000 elderly;
- (2) technology improvements;
- (3) improvements in life safety;
- (4) construction of nursing facilities that are part of senior services campuses; and
- (5) improvements in the work environment.

**(d) Medical Assistance Grants - Long-Term Care Waivers and Home Care Grants**

|         |             |               |
|---------|-------------|---------------|
| General | 957,020,000 | 1,075,074,000 |
|---------|-------------|---------------|

**County CADI allocation adjustment.**

- (1) The commissioner shall adjust 2007 home and community-based allocations under Minnesota Statutes, section 256B.49,

to qualifying counties that transferred persons to the community alternatives for disabled individuals (CADI) waiver program under Laws 2006, chapter 282, article 20, section 35. The adjustment shall reflect the amount that county-authorized funding for CADI waiver services exceeded the allowable amount as shown in the Medicaid Management Information System (MMIS) on March 1, 2007.

(2) A county that may qualify under paragraph (1) shall apply to the commissioner by June 10, 2007. Following a review of the county request and the MMIS documentation, the commissioner shall adjust the county allocation, as appropriate, by June 25, 2007.

(3) The amounts provided to a county under this section shall become part of the county's base level state allocation for the CADI waiver for the biennium beginning July 1, 2007.

(4) This rider is effective the day following final enactment.

**(e) Mental Health Grants**

Appropriations by Fund

|                    |            |            |
|--------------------|------------|------------|
| General            | 59,632,000 | 62,217,000 |
| Health Care Access | 750,000    | 750,000    |
| Lottery Prize      | 1,933,000  | 1,633,000  |

**Mental Health Crisis Services.** Of the general fund appropriation, \$2,528,000 in fiscal year 2008 and \$3,278,000 in fiscal year 2009 are for statewide funding of adult mental health crisis services. Providers must utilize all available funding streams.

**Adult Mental Health Evidence-Based and Best Practices.** Of the general fund appropriation, \$375,000 in fiscal year 2008 and \$750,000 in fiscal year 2009 are for adult mental health evidence-based and best practices including, but not limited to, Assertive Community Treatment and Integrated Dual Diagnosis Treatment services. The commissioner shall require

grantees to utilize all available third-party reimbursement sources as a condition of using state grant funds.

**Culturally Specific Mental Health Treatment Grants.** Of the general fund appropriation, \$75,000 in fiscal year 2008 and \$300,000 in fiscal year 2009 are for adult mental health grants to support increased availability of mental health services for persons from cultural and ethnic minorities within the state. The commissioner shall use at least 20 percent of these funds to help members of cultural and ethnic minority communities to become qualified mental health professionals and practitioners. The commissioner shall assist grantees to meet third-party credentialing requirements and require them to utilize all available third-party reimbursement sources as a condition of using state grant funds.

**Mental Health Services for Adults with Special Treatment Needs.** Of the general fund appropriation, \$50,000 in fiscal year 2008 and \$200,000 in fiscal year 2009 are for adult mental health grants to support increased availability of mental health services for adults with special treatment needs. These adults shall include, but not be limited to: victims of trauma, including persons subjected to abuse or neglect, veterans and their families, and refugee populations; person's with complex treatment needs, such as eating disorders; and those with low incidence disorders.

**Supportive Housing Services for Adults with Mental Illness.** Of the general fund appropriation, \$1,750,000 in fiscal year 2008 and \$1,500,000 in fiscal year 2009 are for adult mental health grants to support increased availability of a range of housing options with supports for persons with serious mental illness.

**National Council on Problem Gambling.** (1) Of the appropriation from the lottery prize fund, \$225,000 each year is for a grant to the state affiliate recognized by the National Council on Problem Gambling. The affiliate must provide services to increase public



awareness of problem gambling, education, and training for individuals and organizations providing effective treatment services to problem gamblers and their families, and research relating to problem gambling. These services must be complementary to and not duplicative of the services provided through the problem gambling program administered by the commissioner of human services. This grant does not prevent the commissioner from regular monitoring and oversight of the grant or the ability to reallocate the funds to other services within the problem gambling program for nonperformance of duties by the grantee.

(2) Of this appropriation, \$100,000 in fiscal year 2008 and \$100,000 in fiscal year 2009 are contingent on the contribution of nonstate matching funds. Matching funds may be either cash or qualifying in-kind contributions. The commissioner of finance may disburse the state portion of the matching funds in increments of \$25,000 upon receipt of a commitment for an equal amount of matching nonstate funds. The general fund base shall be \$100,000 in fiscal year 2010 and \$100,000 in fiscal year 2011.

(3) Of the lottery prize fund appropriation, \$100,000 in fiscal year 2008 is for a grant or grants to be awarded competitively to develop programs and services for problem gambling treatment, prevention, and education in immigrant communities. This appropriation is available until June 30, 2009, at which time the project must be completed and final products delivered, unless an earlier completion date is specified in the work program.

**Compulsive Gambling.** Of the lottery prize fund appropriation, \$300,000 in fiscal year 2008 and \$100,000 in fiscal year 2009 are for purposes of compulsive gambling education, assessment, and treatment under Minnesota Statutes, section 245.98.

**Compulsive Gambling Study.** Of the lottery prize fund appropriation, \$100,000 in fiscal year 2008 is to continue the study currently being done on compulsive gambling

treatment effectiveness and long-term effects of gambling.

**Base Adjustment.** The general fund base is \$59,460,000 in each of fiscal years 2010 and 2011.

**Base Adjustment.** The lottery prize fund base is \$1,508,000 in each of fiscal years 2010 and 2011.

**(f) Deaf and Hard-of-Hearing Grants**

|         |           |           |
|---------|-----------|-----------|
| General | 1,730,000 | 1,964,000 |
|---------|-----------|-----------|

**Hearing Loss Mentors.** Of the general fund appropriation, \$40,000 each year is to provide mentors who have a hearing loss to parents of newly identified infants and children with hearing loss.

**Base Adjustment.** The general fund base is \$1,968,000 in each of fiscal years 2010 and 2011.

**(g) Chemical Dependency Entitlement Grants**

|         |            |            |
|---------|------------|------------|
| General | 78,225,000 | 88,138,000 |
|---------|------------|------------|

**(h) Chemical Dependency Nonentitlement Grants**

|         |           |           |
|---------|-----------|-----------|
| General | 1,655,000 | 1,805,000 |
| TANF    | 150,000   | 150,000   |

**Methamphetamine Abuse Grants.** Of the general fund appropriation, \$175,000 in the first year and \$375,000 in the second year are for grants to existing programs that treat methamphetamine abuse, and the abuse of other substances in Carlton, Faribault, Martin, Olmsted, and Anoka Counties, that received grant funds under Laws 2005, chapter 136, article 1, section 9, subdivision 6. The commissioner shall administer the grants to programs that the commissioner deems successful, and may discontinue grants to programs after an evaluation of the program and a determination by the

commissioner that the program should no longer receive funds. This appropriation shall not become part of base level funding.

**Native American Juvenile Treatment Center.** Of the general fund appropriation, \$50,000 is to conduct a feasibility study of and to predesign a Native American juvenile treatment center on or near the White Earth Reservation. The facility must house and treat Native American juveniles and provide culturally specific programming to juveniles placed in the treatment center. The commissioner of human services may contract with parties who have experience in the design and construction of juvenile treatment centers to assist in the feasibility study and predesign. On or before January 15, 2008, the commissioner shall present the results of the feasibility study and the predesign of the facility to the chairs of house of representatives and senate committees having jurisdiction over human services finance, public safety finance, and capital investment.

**Leech Lake Youth Treatment Center.** Of the general fund appropriation, \$75,000 each year are for a grant to the Leech Lake Youth Treatment Center project partners, in order to pay the salaries and other directly related costs associated with the development of this project. This is a onetime appropriation.

**Base Adjustment.** The general fund base is \$1,055,000 in each of fiscal years 2010 and 2011.

**(i) Other Continuing Care Grants**

|         |            |            |
|---------|------------|------------|
| General | 21,409,000 | 16,983,000 |
|---------|------------|------------|

**Repayment.** Of the general fund appropriation, \$4,302,000 the first year is to repay the amount of overspending in the waiver program for persons with developmental disabilities incurred by Fillmore, Steele, and St. Louis Counties in calendar years 2004 and 2005. \* (The preceding text beginning "Repayment. Of

**the general fund" was indicated as vetoed by the governor.)**

**Department of Employment and Economic Development Transfer.** For fiscal year 2008, the commissioner of finance shall transfer \$200,000 from the methamphetamine abatement loan fund to the commissioner of human services for methamphetamine treatment programs.

**Disability Linkage Line.** Of the general fund appropriation, \$469,000 in fiscal year 2008 and \$626,000 in fiscal year 2009 are to establish and maintain the disability linkage line.

**Base Adjustment.** The general fund base is \$17,103,000 in fiscal year 2010 and \$17,141,000 in fiscal year 2011 for other continuing care grants.

Sec. 4. **REPORT ON STAFFING CRITERIA.**

The commissioner of human services in consultation with the commissioner of health, as well as consumers, nursing facility providers, and nursing facility employees, shall: (1) review the definitions of nursing facility direct care staff in Minnesota Statutes, Minnesota Rules, and agency bulletins; (2) determine how to standardize definitions to allow the public to compare direct care staffing across facilities; and (3) examine how new and emerging staff positions and titles, including but not limited to "resident assistant," should be incorporated over time into direct care staffing. The commissioner shall report recommendations to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health and human services by January 15, 2009.

Presented to the governor May 12, 2008

Signed by the governor May 15, 2008, 3:03 p.m.