

# HOUSE RESEARCH

## Bill Summary

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### Section

#### **Article 1 Licensing**

This article makes various changes to licensing provisions in the Data Practices Act, Human Services Licensing Act, Department of Human Services fair hearing statute, Maltreatment of Minors Act, and Vulnerable Adults Act. It also modifies the licensing standards for programs serving persons with mental retardation or related conditions.

- 1 **Definition.** Amends § 13.41, subd. 1. Changes a cross reference to the welfare data section in the licensing data section of the Data Practices Act.
- 2 **Definitions.** Amends § 13.46, subd. 1. Adds a definition of private licensing agency to the Data Practices Act.
- 3 **Investigative data.** Amends § 13.46, subd. 3. Requires the commissioner of human services to provide all active and inactive investigative data to the ombudsman for mental health and retardation upon the request of the ombudsman.
- 4 **Licensing data.** Amends § 13.46, subd. 4. Permits the commissioner of human services to exchange not public data regarding a report of substantiated maltreatment with the department of corrections for purposes of completing background studies.
- 5 **Adult day care.** Amends § 245A.02, by adding subd. 2a. Adds the definition of adult day care to the Human Services Licensing Act.
- 6 **Annual or annually.** Amends § 245A.02, by adding subd. 2b. Adds the definition of annual or annually to the Human Services Licensing Act.
- 7 **Exclusion from licensure.** Amends § 245A.03, subd. 2. Strikes a provision requiring that the exclusion from licensure for certain board and lodge facilities licensed by the commissioner of health expires on July 1, 1990. Adds an exclusion from licensure for certain services provided and funded through an approved federal waiver plan.

- 8 **Requirements for emergency license.** Amends § 245A.035, subd. 3. Requires that a county not issue an emergency license to anyone requiring a background study who is disqualified under section 245A.04 and the disqualification cannot be set aside.
- 9 **Background study of the applicant; definitions.** Amends § 245A.04, subd. 3. Paragraph (c) requires that, if a background study is initiated by an applicant or license holder and the applicant or license holder receives information about a possible criminal or maltreatment history of the individual studied, the applicant or license holder must provide the information to the commissioner. Also clarifies that a volunteer or student must be studied if they have direct contact with persons served by the program if the contact is not "under the continuous, direct supervision" of an applicant or employee of the program.  
Paragraph (g) makes a technical correction by striking an unnecessary reference to "or registration."  
Paragraph (p) prohibits a disqualified person age 13 and over living in the licensed home; a disqualified person age 10 to 12 living in the licensed home; and disqualified persons who have unsupervised access to children and vulnerable adults in the licensed home from having access to persons served by the licensed program unless certain requirements are met.  
Paragraph (q) clarifies that termination means termination of "affiliation with" persons required to have a background study.
- 10 **Notification to subject and license holder of study results; determination of risk of harm.** Amends § 245A.04, subd. 3a. Requires a license holder to assure that a person whose background study reveals a disqualifying characteristic to be "under the continuous, direct supervision," instead of "within sight or hearing," of another staff person during the period the person requests a reconsideration of the disqualification.
- 11 **Reconsideration of disqualification.** Amends § 245A.04, subd. 3b. Paragraph (a) clarifies one of the grounds for requesting reconsideration of a disqualification. It also strikes provisions relocated in section 12 of the bill.  
Paragraph (c) prohibits the commissioner of human services from setting aside the disqualification of an individual who has committed certain disqualifying crimes, unless the information relied upon is incorrect. It also updates the list of crimes constituting a ten-year and permanent bar to the commissioner's reconsideration of the disqualification.  
Paragraph (e) clarifies provisions relating to reconsideration of a disqualification.  
Paragraph (f) clarifies that, if the county disqualifies an individual on multiple bases, the county agency must conduct the reconsideration of all disqualifications. It also clarifies provisions regarding a disqualified person's appeal rights.
- 12 **Disqualification.** Amends § 245A.04, subd. 3d. Updates the list of crimes for which an individual must be disqualified following a background study.
- 13 **Conclusive determinations or dispositions.** Amends § 245A.04, by adding subd. 3f. Adds a section regarding when determinations and dispositions regarding maltreatment and appeals are conclusive.
- 14 **Immediate suspension expedited hearing.** Amends § 245A.07, subd. 2a. Provides that, if a license holder appeals a licensing sanction following an immediate suspension, the license holder continues to be prohibited from operating the program pending the commissioner's final order regarding the licensing sanction.
- 15 **License suspension, revocation, or fine.** Amends § 245A.07, subd. 3. Provides that a license holder's timely appeal of a license suspension or revocation stays the suspension or revocation until the commissioner issues a final order.

- 16 **Consolidation of hearings; reconsideration.** Adds § 245A.085. Permits hearings and reconsiderations authorized under the Human Services Licensing Act, fair hearings, and hearings under the Maltreatment of Minors Act and Vulnerable Adults Acts to be consolidated, if feasible.
- 17 **Reduction of risk of sudden infant death syndrome in child care programs.** Amends § 245A.144. Specifies amount, content, and county approval of training required under this section.
- 18 **Delegation of authority to agencies.** Amends § 245A.16, subd. 1. Paragraph (a) authorizes the county to issue variances regarding disqualified individuals if the county is responsible for conducting the consolidated reconsideration of the county's maltreatment determination and disqualification.  
Paragraph (b) requires the county to report to the commissioner at least monthly with information about disqualification reconsiderations and variances.
- 19 **Incident.** Amends § 245B.02, subd. 10. Modifies the definition of incident.
- 20 **Reporting incidents.** Amends § 245B.05, subd. 7. (a) Requires the license holder to maintain information about and report within 24 hours certain incidents involving a consumer to a consumer's legal representative, licensed caregiver, if any, and case manager. Provides that the report need not be made if the incident has been reported by another license holder.  
(b) When the incident involves more than one consumer, prohibits the license holder from disclosing personally identifiable information about a consumer to other consumers' legal representatives, other licensed caregivers, if any, and case managers unless a consumer consents to the disclosure.  
(c) Within 24 hours of reporting child or vulnerable adult maltreatment under section 626.556 or 626.557, requires the license holder to inform a consumer's legal representative or case manager of the report unless the suspected maltreatment involves the legal representative or case manager. Specifies the information the license holder must disclose regarding the maltreatment.
- 21 **Consumer data file.** Amends section § 245B.07, subd. 1. Specifies additional information that a license holder must maintain for each consumer, including information about incidents; reports; and verbal aggression directed at a consumer by another consumer.
- 22 **Standard of evidence for maltreatment and disqualification hearings.** Amends § 256.045, subd. 3b. Clarifies standard of evidence a referee must apply if an individual fails to make a report of maltreatment for incidents in which serious or recurring maltreatment is substantiated.
- 23 **Conduct of hearings.** Amends § 256.045, subd. 4. Permits consolidated hearings involving maltreatment determinations or disqualifications made by more than one county or state agency.
- 24 **Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** Amends § 626.556, subd. 10i. Specifies that an individual whose reconsideration of a maltreatment determination is denied or disqualification is not set aside or rescinded may request a fair hearing. Also specifies the scope of the hearing.
- 25 **Report not required.** Amends § 626.557, subd. 3a. Makes a conforming change to the Vulnerable Adults Act regarding when events resulting from neglect must be reported under the Act.
- 26 **Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** Amends § 626.557, subd. 9d. Specifies that an individual whose reconsideration of a maltreatment determination is denied or disqualification is not set aside or rescinded may request a fair hearing. Also specifies the scope of the hearing.

- 27 **Abuse prevention plans.** Amends § 626.557, subd. 14. Requires a facility's individual abuse prevention plan for each vulnerable adult residing in or receiving services from the facility to include an individualized assessment of the person's susceptibility to abuse by other individuals, including other vulnerable adults.
- 28 **Repealer.** Repeals two definitions (definitions of blood borne disease and infection control) in the chapter on licensure of acupuncture practitioners.

## **Article 2**

### **Continuing Care Programs**

This article contains provisions related to the alternative care program, the elderly waiver, nursing facilities, and other continuing care initiatives. This article also makes policy changes related to PCA and alternative care services, elderly waiver conversion rates, the region 10 quality assurance project, planned closure rate adjustments, contracting with border states for mental health services, deaf-blind services, and other health care initiatives.

- 1 **Definitions.** Amends § 144A.071, subd. 1a. Includes depreciable equipment as an allowable moratorium exception construction project cost. Allows facilities to elect whether the cost of new technology and depreciable equipment is to be treated as a project cost or reimbursed separately.
- 2 **Definitions.** Amends § 144A.36, subd. 1. Makes boarding care facilities that are MA certified eligible to receive transition planning grants. This is done by including these facilities in the definition of "eligible nursing home."
- 3 **Nursing home license surcharge.** Amends § 256.9657, subd. 1. Between March 1, 2002 and August 15, 2003, allows nursing facilities paying the surcharge on licensed beds to elect to participate in MA by agreeing to comply with all MA program requirements, including the equalization law. Specifies procedures for payment rate determination.
- 4 **Case management service provider.** Amends § 245.462, subd. 4. For purposes of the adult mental health act, extends from one to two years the period within which case managers who are not credentialed by a health-related licensing must complete 30 hours of continuing education and training.
- 5 **Case management services provider.** Amends § 245.4871, subd. 4. For purposes of the children's mental health act, extends from one to two years the period within which case managers who are not credentialed by a health-related licensing must complete 30 hours of continuing education and training.
- 6 **Definitions.** Amends § 245.50, subd. 1. For a section governing contracting with border states for mental health services, defines the following terms: receiving state, sending agency, and sending state. Changes a term used throughout the section from receiving agency or facility to receiving agency, and clarifies that term by specifying the entity provides services to individuals from another state.
- 7 **Purpose and authority.** Amends § 245.50, subd. 2. Specifies that the purpose of this section is to allow an individual to receive appropriate treatment in a facility in another state that is closer to individual's home than a facility in an individual's home state. Also allows the commissioner of human services to contract for mental health services for Minnesota residents in border states. Makes a conforming change.
- 8 **Special contracts; bordering states.** Amends § 245.50, subd. 5. Strikes language directing the commissioner of human services to come to an agreement with the Wisconsin department of health and social services to allow Minnesota civilly committed patients to be placed in Wisconsin facilities and Wisconsin civilly committed patients to be placed in Minnesota facilities. Instead, establishes provisions governing the placement of Minnesota residents in

border state facilities, and the placement of border state residents in Minnesota facilities.

Paragraph (a) allows persons civilly committed in Minnesota to be confined or treated in a border state, and allows persons civilly committed in a border state to be confined or treated in Minnesota. Specifies how court orders from a person's home state apply, what state has legal custody over the person, and a condition that must be met for a person being treated in a border state to be released.

Paragraph (b) specifies when the receiving state's laws apply to the person, and prohibits a person from being sent to a border state unless the border state recognizes the validity of this law.

Paragraph (c) describes what happens when a person receiving services in a border state leaves the border state facility without permission.

Paragraph (d) specifies that the person's home state is responsible for the person's cost of care in the border state.

Paragraph (e) specifies that this subdivision also applies to contracts for mental health services made between a county and a border state.

- 9 **Drugs.** Amends § 256B.0625, subd. 13. Prohibits the use of prior authorization for antipsychotic drugs with no generic equivalents, unless the commissioner determines this is necessary for patient safety. Specifies that this provision applies to any supplemental drug rebate program established or administered by the commissioner.
- 10 **Targeted case management services.** Amends § 256B.0625, by adding subd. 44. Adds case management services for vulnerable adults and adults with developmental disabilities to the listing of MA covered services. (This language is similar to language elsewhere in the MA chapter that is later repealed.)
- 11 **Fiscal intermediary option available for personal care assistant services.** Amends § 256B.0627, subd. 10. Allows individuals receiving PCA services under the shared care option to use a fiscal intermediary, if the same fiscal intermediary is used.
- 12 **Exemptions and emergency admissions.** Amends § 256B.0911, subd. 4b. Exempts persons age 21 or older with mental illness or mental retardation or a related condition, who are admitted to a nursing facility after a hospital stay, from federal preadmission screening requirements, if the admission to the nursing facility meets the criteria in federal rules. Provides an immediate effective date.
- 13 **Preadmission screening of individuals under 65 years of age.** Amends § 256B.0911, subd. 4d. Requires persons exempted from preadmission screening under the previous section, who remain in the facility longer than 30 days, to receive a face-to-face assessment within 40 days of admission. Provides an immediate effective date.
- 14 **Eligibility for funding for services for nonmedical assistance recipients.** Amends § 256B.0913, subd. 4. Eliminates redundant language in a section dealing with eligibility for the alternative care program.
- 15 **Services covered under alternative care.** Amends § 256B.0913, subd. 5. Updates the names of covered alternative care services and replaces references to "registered nurse or mental health practitioner" with "qualified professional" to conform with terminology used for the elderly waiver and MA home care services. Adds the state of Minnesota to the list of entities exempt from liability related to a person's receipt of alternative care services. Strikes obsolete language related to consumer support grants. Raises the county cap on alternative care payments for "other services" from 10 to 25 percent, and eliminates the \$5,000 limit. Also eliminates the requirement that cash payments not exceed 80 percent of a client's monthly payment limit.
- 16 **Requirements for individual care plan.** Amends § 256B.0913, subd. 8. Clarifies language

related to denials and reductions of alternative care services.

- 17 **Allocation formula.** Amends § 256B.0913, subd. 10. Makes a technical change related to allocation of alternative care funds.
- 18 **Client premiums.** Amends § 256B.0913, subd. 12. Updates language related to calculation of monthly alternative care premiums. Also strikes an outdated reference to rulemaking.
- 19 **Provider requirements, payment, and rate adjustments.** Amends § 256B.0913, by adding subd. 14. Requires providers of alternative care services to be also enrolled as state health care program providers.
- 20 **Limits of cases, rates, payments, and forecasting.** Amends § 256B.0915, subd. 3. Allows the elderly waiver conversion rate (for persons who move from nursing homes into the community) to be adjusted to reflect legislatively approved increases for home and community-based services or nursing facilities.
- 21 **Termination notice.** Amends § 256B.0915, subd. 4. Clarifies language related to denials and reductions of elderly waiver services.
- 22 **Assessments and reassessments for waiver clients.** Amends § 256B.0915, subd. 5. Requires elderly waiver clients to receive initial assessments as provided through long-term care consultation services.
- 23 **Implementation of care plan.** Amends § 256B.0915, subd. 6. Requires elderly waiver clients to be provided with a copy of a written care plan.
- 24 **Services and supports.** Amends § 256B.0915, subd. 8. Requires elderly waiver services to meet the requirements of federal law governing waived services and to promote consumer choice and be consistent with individualized, written care plans. Also exempts the state, county, or tribal governments from liability related to the purchase of direct supports or goods through consumer directed community support services.
- 25 **Payment for targeted case management.** Amends § 256B.0924, subd. 6. Allows providers of targeted case management for vulnerable adults and adults with developmental disabilities to fulfill criteria related to a minimum number of visits by seeing the adult's family, primary caregiver, or other relevant persons.
- 26 **Waiver of rules.** Amends § 256B.0951, subd. 7. Makes a conforming change related to seeking a federal waiver for the region 10 alternative quality assurance project. Also removes references to the project being a pilot.
- 27 **Federal waiver.** Amends § 256B.0951, subd. 8. Directs the commissioner to seek a federal waiver to allow ICFs/MR to participate in the region 10 alternative licensing system. Provides that if a facility needs to be decertified to participate, it will not be considered a new facility at the time of recertification, provided that its capacity did not increase. States that provisions related to county proposals for voluntary ICF/MR conversion continue to apply to the region 10 counties and ICFs/MR located in those counties.
- 28 **Contracts for services for ventilator-dependent persons.** Amends § 256B.431, subd. 2e. Allows the commissioner to negotiate, rather than contract, with nursing facilities to provide services for ventilator-dependent persons. Provides that upon implementation of the RUGs-based case mix system, the maximum payment will be 200 percent of the highest RUGs rate for persons initially admitted before July 1, 2001, and 300 percent of the highest RUGs rate for persons initially admitted on or after July 1, 2001.
- 29 **Limitations on sales of nursing facilities.** Amends § 256B.431, subd. 14. Corrects an internal reference to allowed inflation, in a section dealing with sales of nursing facilities.
- 30 **Bed layaway and delicensure.** Amends § 256B.431, subd. 30. Corrects a cross-reference to the

financial incentive for downsizing, in a section dealing with bed layaways.

- 31 **Staged reduction in bed disparities.** Amends § 256B.431, subd. 33. Corrects a cross-reference to the general nursing facility rate adjustment, in a section providing additional reimbursement to certain facilities with low operating payment rates.
- 32 **Applications for planned closure of nursing facilities.** Amends § 256B.437, subd. 3. Modifies procedures for planned closures and partial closures of nursing facilities. Eliminates the requirement that a letter of intent be submitted before application. Allows facilities without an approved closure plan that are delicensing five or fewer beds, or less than 6 percent of bed capacity, whichever is greater, to assign planned closure rate adjustments to themselves (this applies only if the facility is located in a county that is in the top three quartiles, when ranked on number of beds per thousand elderly). For facilities delicensing more than five beds, or 6 percent of more of their capacity, whichever is greater, without approved closure plans or which are not eligible for adjustments, requires the commissioner to assign a rate adjustment to the five facilities in the region with the lowest rates.
- 33 **Planned closure rate adjustment.** Amends § 256B.437, subd. 6. Provides that if the per bed dollar amount is increased, the commissioner must recalculate planned closure rate adjustments for facilities that delicense beds on or after July 1, 2001. Makes the recalculated planned closure rate adjustment effective from the date the per bed dollar amount is increased. Allows nursing facilities that have received a planned closure rate adjustment to reassign it to another facility under the same ownership, within a three-year period.
- 34 **Scope.** Amends § 256B.438, subd. 1. Requires reimbursement classifications under the new 34 group, RUG-III model to be implemented no earlier than six weeks after the commissioner mails notices of payment rates to nursing facilities.
- 35 **Operating payment rate.** Amends § 256B.5012, subd. 2. Provides that ICF/MR operating payment rates, effective July 1, 2001, are to be adjusted to reflect increases in health department licensing fees. (This provision was funded by the 2001 legislature but mistakenly left out of the final bill.)
- 36 **Physician and dental reimbursement.** Amends § 256B.76. Effective July 1, 2001, increases MA outpatient mental health rates by 38 percent for a Medicare-certified comprehensive outpatient rehabilitation facility meeting specified criteria. (This provision was funded by the 2001 legislature but mistakenly left out of the final bill.)
- 37 **Pilot project for deaf-blind services.** Requires the commissioners of human services and children, families, and learning and other interested parties to determine which agency can most efficiently and effectively develop and administer a pilot program for consumer-directed services to provide needed services to deaf-blind individuals. Requires planning for the pilot program to be done using current appropriations. Requires the agency that develops the pilot program to submit a report to committee chairs by January 1, 2003, that includes a program proposal, recommendations, and a fiscal note.
- 38 **Services for deaf-blind persons.** Requires the commissioner of human services to combine the \$1 million biennial base level funding for deaf-blind persons into a single grant program, and within the limits of the appropriation, requires at least \$350,000 to be awarded for services for deaf-blind children and their families and at least \$250,000 for services to deaf-blind adults. Specifies grant procedures and allows deaf-blind service providers to provide intervenor services.
- 39 **Feasibility assessment of medical assistance expansion to cover deaf-blind services.** Requires the commissioner of human services to report to the legislature by January 15, 2003 on the feasibility of expanding MA benefits to include specified services to deaf-blind persons.

40 **Case management study.** Requires the commissioner of human services to study case management services for persons with disabilities, in consultation with specified groups, and report to the health and human services committee chairs by January 15, 2003. Requires study costs to be paid for out of base-level funding for deaf-blind services.

41 **Repealer.** Repeals section 256B.0621, subdivision 1 (MA coverage of case management services for vulnerable adults and adults with developmental disabilities; similar language is reinstated in the MA covered services section).

### **Article 3 Miscellaneous**

This article contains provisions on identifying deceased individuals whose identities are not known, establishing guest licensure or registration for dental providers from border states who wish to volunteer in Minnesota, establishing new rate regions for MA and GAMC prospective reimbursement rates, defining poor relief, clarifying county obligations regarding income support and cash assistance, and establishing immunity for reference checks by certain health care providers and facilities.

1 **Identification of deceased individuals.** Adds subd. 4 to § 144.05. When the commissioner of health receives notice of the death of an individual who cannot be identified, requires the commissioner to post information on the individual on the department's web site. Requires the information to remain on the web site until the individual is identified.

2 **Death record.** Amends § 149A.90, subd. 1. Requires a person in charge of disposition of the body of an unidentified individual to notify the commissioner of health of the individual, so the commissioner may post information about the individual on the department's web site as required in section 1.

3 **Guest license or registration.** Adds subd. 2c to § 150A.06. Paragraph (a) requires the board of dentistry to grant a dental or dental hygienist license or a dental assistant registration to a person who is licensed or registered in good standing in a border state; is currently practicing in a border state; wants to practice in a board-approved public health setting that provides dental care to patients who have difficulty accessing it; agrees to treat indigent patients who meet the clinic's eligibility criteria; and applies to the board and pays a fee.

Paragraph (b) allows a dental provider with a guest license or registration to practice only at a single, specific location in Minnesota. Requires annual renewal and payment of an annual fee. If the clinic at which the provider practices closes, automatically revokes the guest license or registration.

Paragraph (c) makes dental providers practicing under a guest license or registration have the same obligations as Minnesota-licensed providers and makes them subject to Minnesota law and the board's regulatory authority. Requires the board to report any disciplinary action taken to the provider's regulatory board in the border state.

This section is effective the day following final enactment.

4 **Prospective reimbursement rates.** Amends § 256B.69, subd. 5b. Requires the commissioner, in consultation with an actuary, to evaluate regional prepaid MA and prepaid GAMC rates, based on actual health plan costs. Allows the commissioner to establish, based on the actuary's recommendation, new rate regions that recognize metropolitan areas outside of the seven-county metropolitan area.

5 **Tax levy for social services; board duty; penalty.** Amends § 261.063. Paragraph (a) defines poor relief as county services provided under sections 261.035 (county responsibility to pay for burial costs for indigent persons); 261.04 (a county's claim against a poor person's estate for care at the University of Minnesota or for burial costs); and 261.21 to 261.231 (county authority

to pay for hospitalization of indigent persons).

Paragraph (b) provides that a county agency is not required to provide income support or cash assistance to needy persons when an individual is no longer eligible for general assistance (GA), the Minnesota family investment program (MFIP), or Minnesota supplemental aid (MSA).

6 **Reference checks by certain health care providers and facilities.** Adds § 604A.33. Provides immunity from liability to the listed health care providers and facilities for providing reference check information about current or former employees to prospective employers. Lists the information that may be provided. This section is effective July 1, 2002, and applies to causes of action arising on or after that date.

**Subd. 1. Application.** Lists the providers and facilities who are given immunity for providing information about current or former employees: residential treatment programs for children or juveniles, nursing homes, home care providers, day training and habilitation providers, board and lodging facilities, ICFs/MR, and other facilities that provider residential services to persons with developmental disabilities.

**Subd. 2. Causes of action.** Prohibits a provider or facility listed in subdivision 1, or a designated employee or agent, from being sued for disclosing information about a current or former employee, as long as the disclosure is made in compliance with this section. Still allows a provider, facility, employee, or agent to be sued under the Human Rights Act or if the current or former employee proves, by a preponderance of the evidence, that the information was fraudulently disclosed or disclosed with deliberate disregard as to its truth or falsity. Provides that this subdivision does not preclude an action against a prospective employer for disclosing information received under this section.

**Subd. 3. Reference checks.** Paragraph (a) lists information about a current or former employee that a provider, facility, employee, or agent may disclose to a prospective employer, upon written request. Paragraph (b) lists additional information that may be disclosed with the current or former employee's consent. Paragraph (c) specifies that a copy of the information disclosed and information on to whom it was disclosed must be provided to the current or former employee, upon request.