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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 2938

February 12, 2010

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

March 4, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Civil Justice

March 15, 2010

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

March 17, 2010

By motion, re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to human services; modifying programs and licensure provisions for
1.3 services to persons with disabilities; amending Minnesota Statutes 2008, section
1.4 326B.43, subdivision 2; Minnesota Statutes 2009 Supplement, sections 245A.03,
1.5 subdivision 7; 245A.11, subdivision 7b; 256D.44, subdivision 5; Laws 2009,
1.6 chapter 79, article 8, section 81.

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

1.8 Section 1. Minnesota Statutes 2009 Supplement, section 245A.03, subdivision 7,
1.9 is amended to read:

1.10 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an
1.11 initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to
1.12 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to
1.13 9555.6265, under this chapter for a physical location that will not be the primary residence
1.14 of the license holder for the entire period of licensure. If a license is issued during this
1.15 moratorium, and the license holder changes the license holder's primary residence away
1.16 from the physical location of the foster care license, the commissioner shall revoke the
1.17 license according to section 245A.07. Exceptions to the moratorium include:

- 1.18 (1) foster care settings that are required to be registered under chapter 144D;
1.19 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009,
1.20 and determined to be needed by the commissioner under paragraph (b);
1.21 (3) new foster care licenses determined to be needed by the commissioner under
1.22 paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center;
1.23 (4) new foster care licenses determined to be needed by the commissioner under
1.24 paragraph (b) for persons requiring hospital level care; or

2.1 (5) new foster care licenses determined to be needed by the commissioner for the
2.2 transition of people from personal care assistance to the home and community-based
2.3 services; or

2.4 (6) foster care licenses under section 245A.11, subdivision 7a.

2.5 (b) The commissioner shall determine the need for newly licensed foster care homes
2.6 as defined under this subdivision. As part of the determination, the commissioner shall
2.7 consider the availability of foster care capacity in the area in which the licensee seeks to
2.8 operate, and the recommendation of the local county board. The determination by the
2.9 commissioner must be final. A determination of need is not required for a change in
2.10 ownership at the same address.

2.11 (c) Residential settings that would otherwise be subject to the moratorium established
2.12 in paragraph (a), that are in the process of receiving an adult or child foster care license as
2.13 of July 1, 2009, shall be allowed to continue to complete the process of receiving an adult
2.14 or child foster care license. For this paragraph, all of the following conditions must be met
2.15 to be considered in the process of receiving an adult or child foster care license:

2.16 (1) participants have made decisions to move into the residential setting, including
2.17 documentation in each participant's care plan;

2.18 (2) the provider has purchased housing or has made a financial investment in the
2.19 property;

2.20 (3) the lead agency has approved the plans, including costs for the residential setting
2.21 for each individual;

2.22 (4) the completion of the licensing process, including all necessary inspections, is
2.23 the only remaining component prior to being able to provide services; and

2.24 (5) the needs of the individuals cannot be met within the existing capacity in that
2.25 county.

2.26 To qualify for the process under this paragraph, the lead agency must submit
2.27 documentation to the commissioner by August 1, 2009, that all of the above criteria are
2.28 met.

2.29 (d) The commissioner shall study the effects of the license moratorium under this
2.30 subdivision and shall report back to the legislature by January 15, 2011.

2.31 Sec. 2. Minnesota Statutes 2009 Supplement, section 245A.11, subdivision 7b, is
2.32 amended to read:

2.33 Subd. 7b. **Adult foster care data privacy and security.** (a) An adult foster
2.34 care license holder who creates, collects, records, maintains, stores, or discloses any
2.35 individually identifiable recipient data, whether in an electronic or any other format,

3.1 must comply with the privacy and security provisions of applicable privacy laws and
3.2 regulations, including:

3.3 (1) the federal Health Insurance Portability and Accountability Act of 1996
3.4 (HIPAA), Public Law 104-1; and the HIPAA Privacy Rule, Code of Federal Regulations,
3.5 title 45, part 160, and subparts A and E of part 164; and

3.6 (2) the Minnesota Government Data Practices Act as codified in chapter 13.

3.7 (b) For purposes of licensure, the license holder shall be monitored for compliance
3.8 with the following data privacy and security provisions:

3.9 (1) the license holder must control access to data on foster care recipients according
3.10 to the definitions of public and private data on individuals under section 13.02;
3.11 classification of the data on individuals as private under section 13.46, subdivision 2;
3.12 and control over the collection, storage, use, access, protection, and contracting related
3.13 to data according to section 13.05, in which the license holder is assigned the duties
3.14 of a government entity;

3.15 (2) the license holder must provide each foster care recipient with a notice that
3.16 meets the requirements under section 13.04, in which the license holder is assigned the
3.17 duties of the government entity, and that meets the requirements of Code of Federal
3.18 Regulations, title 45, part 164.52. The notice shall describe the purpose for collection of
3.19 the data, and to whom and why it may be disclosed pursuant to law. The notice must
3.20 inform the recipient that the license holder uses electronic monitoring and, if applicable,
3.21 that recording technology is used;

3.22 (3) the license holder must not install monitoring cameras in bathrooms;

3.23 (4) electronic monitoring cameras must not be concealed from the foster care
3.24 recipients; and

3.25 (5) electronic video and audio recordings of foster care recipients shall not be stored
3.26 by the license holder for more than five days unless the recording is pertinent to an
3.27 investigation of a reported incident of abuse or neglect under section 626.556 or 626.557,
3.28 or if requested by a recipient for a specific reported incident of abuse or neglect.

3.29 (c) The commissioner shall develop, and make available to license holders and
3.30 county licensing workers, a checklist of the data privacy provisions to be monitored
3.31 for purposes of licensure.

3.32 Sec. 3. Minnesota Statutes 2009 Supplement, section 256D.44, subdivision 5, is
3.33 amended to read:

3.34 Subd. 5. **Special needs.** In addition to the state standards of assistance established in
3.35 subdivisions 1 to 4, payments are allowed for the following special needs of recipients of

4.1 Minnesota supplemental aid who are not residents of a nursing home, a regional treatment
4.2 center, or a group residential housing facility.

4.3 (a) The county agency shall pay a monthly allowance for medically prescribed
4.4 diets if the cost of those additional dietary needs cannot be met through some other
4.5 maintenance benefit. The need for special diets or dietary items must be prescribed by
4.6 a licensed physician. Costs for special diets shall be determined as percentages of the
4.7 allotment for a one-person household under the thrifty food plan as defined by the United
4.8 States Department of Agriculture. The types of diets and the percentages of the thrifty
4.9 food plan that are covered are as follows:

4.10 (1) high protein diet, at least 80 grams daily, 25 percent of thrifty food plan;

4.11 (2) controlled protein diet, 40 to 60 grams and requires special products, 100 percent
4.12 of thrifty food plan;

4.13 (3) controlled protein diet, less than 40 grams and requires special products, 125
4.14 percent of thrifty food plan;

4.15 (4) low cholesterol diet, 25 percent of thrifty food plan;

4.16 (5) high residue diet, 20 percent of thrifty food plan;

4.17 (6) pregnancy and lactation diet, 35 percent of thrifty food plan;

4.18 (7) gluten-free diet, 25 percent of thrifty food plan;

4.19 (8) lactose-free diet, 25 percent of thrifty food plan;

4.20 (9) antidumping diet, 15 percent of thrifty food plan;

4.21 (10) hypoglycemic diet, 15 percent of thrifty food plan; or

4.22 (11) ketogenic diet, 25 percent of thrifty food plan.

4.23 (b) Payment for nonrecurring special needs must be allowed for necessary home
4.24 repairs or necessary repairs or replacement of household furniture and appliances using
4.25 the payment standard of the AFDC program in effect on July 16, 1996, for these expenses,
4.26 as long as other funding sources are not available.

4.27 (c) A fee for guardian or conservator service is allowed at a reasonable rate
4.28 negotiated by the county or approved by the court. This rate shall not exceed five percent
4.29 of the assistance unit's gross monthly income up to a maximum of \$100 per month. If the
4.30 guardian or conservator is a member of the county agency staff, no fee is allowed.

4.31 (d) The county agency shall continue to pay a monthly allowance of \$68 for
4.32 restaurant meals for a person who was receiving a restaurant meal allowance on June 1,
4.33 1990, and who eats two or more meals in a restaurant daily. The allowance must continue
4.34 until the person has not received Minnesota supplemental aid for one full calendar month
4.35 or until the person's living arrangement changes and the person no longer meets the criteria
4.36 for the restaurant meal allowance, whichever occurs first.

5.1 (e) A fee of ten percent of the recipient's gross income or \$25, whichever is less,
5.2 is allowed for representative payee services provided by an agency that meets the
5.3 requirements under SSI regulations to charge a fee for representative payee services. This
5.4 special need is available to all recipients of Minnesota supplemental aid regardless of
5.5 their living arrangement.

5.6 (f)(1) Notwithstanding the language in this subdivision, an amount equal to the
5.7 maximum allotment authorized by the federal Food Stamp Program for a single individual
5.8 which is in effect on the first day of July of each year will be added to the standards of
5.9 assistance established in subdivisions 1 to 4 for adults under the age of 65 who qualify
5.10 as shelter needy and are: (i) relocating from an institution, or an adult mental health
5.11 residential treatment program under section 256B.0622; (ii) eligible for the self-directed
5.12 supports option as defined under section 256B.0657, subdivision 2; or (iii) home and
5.13 community-based waiver recipients ~~living in their own home or rented or leased apartment~~
5.14 ~~which is not owned, operated, or controlled by a provider of service not related by blood~~
5.15 ~~or marriage.~~

5.16 (2) Notwithstanding subdivision 3, paragraph (c), an individual eligible for the
5.17 shelter needy benefit under this paragraph is considered a household of one. An eligible
5.18 individual who receives this benefit prior to age 65 may continue to receive the benefit
5.19 after the age of 65.

5.20 (3) "Shelter needy" means that the assistance unit incurs monthly shelter costs that
5.21 exceed 40 percent of the assistance unit's gross income before the application of this
5.22 special needs standard. "Gross income" for the purposes of this section is the applicant's or
5.23 recipient's income as defined in section 256D.35, subdivision 10, or the standard specified
5.24 in subdivision 3, paragraph (a) or (b), whichever is greater. A recipient of a federal or
5.25 state housing subsidy, that limits shelter costs to a percentage of gross income, shall not be
5.26 considered shelter needy for purposes of this paragraph.

5.27 (g) Notwithstanding this subdivision, to access housing and services as provided in
5.28 paragraph (f), the recipient may choose housing that may or may not be owned, operated,
5.29 or controlled by the recipient's service provider ~~if the housing is located in a multifamily~~
5.30 ~~building of six or more units. In a multiunit building of six or more units,~~ the maximum
5.31 number of units that may be used by recipients of this program shall be 50 percent of the
5.32 units in a building. ~~The department shall develop an exception process to the 50 percent~~
5.33 ~~maximum.~~ This paragraph expires on June 30, ~~2011~~ 2012.

5.34 Sec. 4. Minnesota Statutes 2008, section 326B.43, subdivision 2, is amended to read:

6.1 Subd. 2. **Agreement with municipality.** The commissioner may enter into an
6.2 agreement with a municipality, in which the municipality agrees to perform plan and
6.3 specification reviews required to be performed by the commissioner under Minnesota
6.4 Rules, part 4715.3130, if:

6.5 (a) the municipality has adopted:

6.6 (1) the plumbing code;

6.7 (2) an ordinance that requires plumbing plans and specifications to be submitted to,
6.8 reviewed, and approved by the municipality, except as provided in paragraph (n);

6.9 (3) an ordinance that authorizes the municipality to perform inspections required by
6.10 the plumbing code; and

6.11 (4) an ordinance that authorizes the municipality to enforce the plumbing code in its
6.12 entirety, except as provided in paragraph (p);

6.13 (b) the municipality agrees to review plumbing plans and specifications for all
6.14 construction for which the plumbing code requires the review of plumbing plans and
6.15 specifications, except as provided in paragraph (n);

6.16 (c) the municipality agrees that, when it reviews plumbing plans and specifications
6.17 under paragraph (b), the review will:

6.18 (1) reflect the degree to which the plans and specifications affect the public health
6.19 and conform to the provisions of the plumbing code;

6.20 (2) ensure that there is no physical connection between water supply systems that
6.21 are safe for domestic use and those that are unsafe for domestic use; and

6.22 (3) ensure that there is no apparatus through which unsafe water may be discharged
6.23 or drawn into a safe water supply system;

6.24 (d) the municipality agrees to perform all inspections required by the plumbing
6.25 code in connection with projects for which the municipality reviews plumbing plans and
6.26 specifications under paragraph (b);

6.27 (e) the commissioner determines that the individuals who will conduct the
6.28 inspections and the plumbing plan and specification reviews for the municipality do not
6.29 have any conflict of interest in conducting the inspections and the plan and specification
6.30 reviews;

6.31 (f) individuals who will conduct the plumbing plan and specification reviews for
6.32 the municipality are:

6.33 (1) licensed master plumbers;

6.34 (2) licensed professional engineers; or

7.1 (3) individuals who are working under the supervision of a licensed professional
7.2 engineer or licensed master plumber and who are licensed master or journeyman plumbers
7.3 or hold a postsecondary degree in engineering;

7.4 (g) individuals who will conduct the plumbing plan and specification reviews for
7.5 the municipality have passed a competency assessment required by the commissioner to
7.6 assess the individual's competency at reviewing plumbing plans and specifications;

7.7 (h) individuals who will conduct the plumbing inspections for the municipality
7.8 are licensed master or journeyman plumbers, or inspectors meeting the competency
7.9 requirements established in rules adopted under section 326B.135;

7.10 (i) the municipality agrees to enforce in its entirety the plumbing code on all
7.11 projects, except as provided in paragraph (p);

7.12 (j) the municipality agrees to keep official records of all documents received,
7.13 including plans, specifications, surveys, and plot plans, and of all plan reviews, permits
7.14 and certificates issued, reports of inspections, and notices issued in connection with
7.15 plumbing inspections and the review of plumbing plans and specifications;

7.16 (k) the municipality agrees to maintain the records described in paragraph (j) in the
7.17 official records of the municipality for the period required for the retention of public
7.18 records under section 138.17, and shall make these records readily available for review at
7.19 the request of the commissioner;

7.20 (l) the municipality and the commissioner agree that if at any time during the
7.21 agreement the municipality does not have in effect the plumbing code or any of ordinances
7.22 described in paragraph (a), or if the commissioner determines that the municipality is not
7.23 properly administering and enforcing the plumbing code or is otherwise not complying
7.24 with the agreement:

7.25 (1) the commissioner may, effective 14 days after the municipality's receipt of
7.26 written notice, terminate the agreement;

7.27 (2) the municipality may challenge the termination in a contested case before the
7.28 commissioner pursuant to the Administrative Procedure Act; and

7.29 (3) while any challenge is pending under clause (2), the commissioner shall perform
7.30 plan and specification reviews within the municipality under Minnesota Rules, part
7.31 4715.3130;

7.32 (m) the municipality and the commissioner agree that the municipality may terminate
7.33 the agreement with or without cause on 90 days' written notice to the commissioner;

7.34 (n) the municipality and the commissioner agree that the municipality shall forward
7.35 to the state for review all plumbing plans and specifications for the following types of
7.36 projects within the municipality:

8.1 (1) hospitals, nursing homes, supervised living facilities licensed for eight or
8.2 more individuals, and similar health-care-related facilities regulated by the Minnesota
8.3 Department of Health;

8.4 (2) buildings owned by the federal or state government; and

8.5 (3) projects of a special nature for which department review is requested by either
8.6 the municipality or the state;

8.7 (o) where the municipality forwards to the state for review plumbing plans and
8.8 specifications, as provided in paragraph (n), the municipality shall not collect any fee for
8.9 plan review, and the commissioner shall collect all applicable fees for plan review; and

8.10 (p) no municipality shall revoke, suspend, or place restrictions on any plumbing
8.11 license issued by the state.

8.12 Sec. 5. Laws 2009, chapter 79, article 8, section 81, is amended to read:

8.13 Sec. 81. **ESTABLISHING A SINGLE SET OF STANDARDS.**

8.14 (a) The commissioner of human services shall consult with disability service
8.15 providers, advocates, counties, and consumer families to develop a single set of standards,
8.16 to be referred to as "quality outcome standards," governing services for people with
8.17 disabilities receiving services under the home and community-based waiver services
8.18 program to replace all or portions of existing laws and rules including, but not limited
8.19 to, data practices, licensure of facilities and providers, background studies, reporting
8.20 of maltreatment of minors, reporting of maltreatment of vulnerable adults, and the
8.21 psychotropic medication checklist. The standards must:

8.22 (1) enable optimum consumer choice;

8.23 (2) be consumer driven;

8.24 (3) link services to individual needs and life goals;

8.25 (4) be based on quality assurance and individual outcomes;

8.26 (5) utilize the people closest to the recipient, who may include family, friends, and
8.27 health and service providers, in conjunction with the recipient's risk management plan to
8.28 assist the recipient or the recipient's guardian in making decisions that meet the recipient's
8.29 needs in a cost-effective manner and assure the recipient's health and safety;

8.30 (6) utilize person-centered planning; and

8.31 (7) maximize federal financial participation.

8.32 (b) The commissioner may consult with existing stakeholder groups convened under
8.33 the commissioner's authority, including the home and community-based expert services
8.34 panel established by the commissioner in 2008, to meet all or some of the requirements
8.35 of this section.

9.1 (c) The commissioner shall provide the reports and plans required by this section to
9.2 the legislative committees and budget divisions with jurisdiction over health and human
9.3 services policy and finance by January 15, 2012.