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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2095

02/21/2023 Authored by Richardson
The bill was read for the first time and referred to the Committee on Children and Families Finance and Policy

1.1 A bill for an act
1.2 relating to child protection; modifying terminology for pregnant persons; modifying
1.3 standards for chemical dependency in pregnancy and prenatal substance use;
1.4 specifying that prenatal substance use does not itself constitute neglect or
1.5 maltreatment; modifying prenatal substance use reporting requirements; establishing
1.6 informed consent requirements for parent and newborn infant toxicology tests and
1.7 drug or alcohol screenings; amending Minnesota Statutes 2022, sections 253B.02,
1.8 subdivision 2; 260E.03, subdivision 15; 260E.31, subdivision 1; 260E.32,
1.9 subdivisions 1, 2, by adding a subdivision.

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

1.11 Section 1. Minnesota Statutes 2022, section 253B.02, subdivision 2, is amended to read:

1.12 Subd. 2. Chemically dependent person. "Chemically dependent person" means any
1.13 person (a) determined as being incapable of self-management or management of personal
1.14 affairs by reason of the habitual and excessive use of alcohol, drugs, or other mind-altering
1.15 substances; and (b) whose recent conduct as a result of habitual and excessive use of alcohol,
1.16 drugs, or other mind-altering substances poses a substantial likelihood of physical harm to
1.17 self or others as demonstrated by (i) a recent attempt or threat to physically harm self or
1.18 others, (ii) evidence of recent serious physical problems, or (iii) a failure to obtain necessary
1.19 food, clothing, shelter, or medical care. "Chemically dependent person" also means a pregnant
1.20 woman person who has engaged during the pregnancy in habitual or excessive chronic and
1.21 severe use, for a nonmedical purpose, of any of the following substances or their derivatives:
1.22 opium, cocaine, heroin, phencyclidine, methamphetamine, amphetamine,
1.23 tetrahydrocannabinol, or alcohol.

2.1 Sec. 2. Minnesota Statutes 2022, section 260E.03, subdivision 15, is amended to read:

2.2 Subd. 15. **Neglect.** (a) "Neglect" means the commission or omission of any of the acts
2.3 specified under clauses (1) to (8), other than by accidental means:

2.4 (1) failure by a person responsible for a child's care to supply a child with necessary
2.5 food, clothing, shelter, health, medical, or other care required for the child's physical or
2.6 mental health when reasonably able to do so;

2.7 (2) failure to protect a child from conditions or actions that seriously endanger the child's
2.8 physical or mental health when reasonably able to do so, including a growth delay, which
2.9 may be referred to as a failure to thrive, that has been diagnosed by a physician and is due
2.10 to parental neglect;

2.11 (3) failure to provide for necessary supervision or child care arrangements appropriate
2.12 for a child after considering factors as the child's age, mental ability, physical condition,
2.13 length of absence, or environment, when the child is unable to care for the child's own basic
2.14 needs or safety, or the basic needs or safety of another child in their care;

2.15 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
2.16 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
2.17 child with sympathomimetic medications, consistent with section 125A.091, subdivision
2.18 5;

2.19 (5) ~~prenatal exposure to chronic and severe use of a controlled substance, as defined~~
2.20 listed in section 253B.02, subdivision 2, used by the mother a pregnant person for a
2.21 nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of
2.22 that results in harm to a newborn child's health, safety, or development, as determined by
2.23 a physician, advanced practice registered nurse, or physician assistant involved in the child's
2.24 care. A positive toxicology test performed on the mother at delivery or the child at birth,
2.25 medical effects or developmental delays during the child's first year of life that medically
2.26 indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol
2.27 spectrum disorder for a substance listed in section 253B.02, subdivision 2; a pregnant
2.28 person's participation in a substance use disorder treatment program during pregnancy; or
2.29 withdrawal symptoms exhibited by a pregnant person alone constitutes neglect for purposes
2.30 of screening a maltreatment report or making a maltreatment determination;

2.31 (6) medical neglect, as defined in section 260C.007, subdivision 6, clause (5);

2.32 (7) chronic and severe use of alcohol or a controlled substance by a person responsible
2.33 for the child's care that adversely affects the child's basic needs and safety; or

3.1 (8) emotional harm from a pattern of behavior that contributes to impaired emotional
 3.2 functioning of the child which may be demonstrated by a substantial and observable effect
 3.3 in the child's behavior, emotional response, or cognition that is not within the normal range
 3.4 for the child's age and stage of development, with due regard to the child's culture.

3.5 (b) Nothing in this chapter shall be construed to mean that a child is neglected solely
 3.6 because the child's parent, guardian, or other person responsible for the child's care in good
 3.7 faith selects and depends upon spiritual means or prayer for treatment or care of disease or
 3.8 remedial care of the child in lieu of medical care.

3.9 (c) This chapter does not impose upon persons not otherwise legally responsible for
 3.10 providing a child with necessary food, clothing, shelter, education, or medical care a duty
 3.11 to provide that care.

3.12 Sec. 3. Minnesota Statutes 2022, section 260E.31, subdivision 1, is amended to read:

3.13 Subdivision 1. **Reports Notice required.** (a) Except as provided in paragraph (b), a
 3.14 person mandated to report under this chapter shall ~~immediately report to~~ notify the local
 3.15 welfare agency if the person knows or has reason to believe that a ~~woman~~ person is pregnant
 3.16 and has used a ~~controlled~~ substance listed in section 253B.02, subdivision 2, for a nonmedical
 3.17 purpose during the pregnancy, ~~including but not limited to tetrahydrocannabinol, or has~~
 3.18 ~~consumed alcoholic beverages during the pregnancy~~ in any way that is ~~habitual or excessive~~
 3.19 chronic and severe. Notice provided under this subdivision must not be construed as a report
 3.20 of child maltreatment without evidence of harm to the infant's health, safety, or development,
 3.21 as determined by a physician, advanced practice registered nurse, or physician assistant
 3.22 involved in the child's care.

3.23 (b) A ~~health care professional~~ physician, advanced practice registered nurse, physician
 3.24 assistant, or a social service professional who is mandated to report under this chapter is
 3.25 exempt from ~~reporting~~ providing notice to the local welfare agency under paragraph (a) if
 3.26 the professional is providing or collaborating with other professionals to provide the ~~woman~~
 3.27 person with prenatal care, postpartum care, or other health care services, including care of
 3.28 the ~~woman's~~ person's infant. If the ~~woman~~ pregnant person does not continue to receive
 3.29 regular prenatal or postpartum care, after the ~~woman's health care professional~~ pregnant
 3.30 person's physician, advanced practice registered nurse, or physician assistant has made
 3.31 attempts to contact the ~~woman~~ pregnant person, then the ~~professional~~ physician, advanced
 3.32 practice registered nurse, or physician assistant is required to ~~report~~ provide notice under
 3.33 paragraph (a).

4.1 (c) Any person may ~~make a voluntary report~~ voluntarily provide notice under this
 4.2 subdivision if the person knows or has reason to believe that a ~~woman~~ person is pregnant
 4.3 and has used a ~~controlled~~ substance listed in section 253B.02, subdivision 2, for a nonmedical
 4.4 purpose during the pregnancy, ~~including but not limited to tetrahydrocannabinol,~~ or has
 4.5 ~~consumed alcoholic beverages during the pregnancy~~ in any way that is ~~habitual or excessive~~
 4.6 chronic and severe. Notice provided under this subdivision must not be construed as a report
 4.7 of child maltreatment without evidence of harm to the infant's health, safety, or development,
 4.8 as determined by a physician, advanced practice registered nurse, or physician assistant
 4.9 involved in the child's care.

4.10 (d) ~~An Oral report shall~~ notice must be made ~~immediately~~ by telephone or otherwise.
 4.11 ~~An Oral report made~~ notice provided by a person required to ~~report shall~~ provide notice
 4.12 must be followed within 72 hours, exclusive of weekends and holidays, by a ~~report~~ notice
 4.13 in writing to the local welfare agency. Any ~~report shall~~ notice must be of sufficient content
 4.14 to identify the pregnant woman, the nature and extent of the use, if known, and the name
 4.15 and address of the ~~reporter~~ person providing the notice. The local welfare agency shall
 4.16 accept a ~~report~~ notice made under paragraph (c) notwithstanding refusal by a ~~voluntary~~
 4.17 ~~reporter~~ notifying person to provide the ~~reporter's~~ person's name or address as long as the
 4.18 report notice is otherwise sufficient.

4.19 (e) For purposes of this section, "prenatal care" means the comprehensive package of
 4.20 medical and psychological support provided throughout the pregnancy.

4.21 (f) Nothing under this subdivision is to be construed to prevent a person from reporting
 4.22 to the local welfare agency if the person knows or has reason to believe that a child has
 4.23 been maltreated based on other criteria or information.

4.24 Sec. 4. Minnesota Statutes 2022, section 260E.32, subdivision 1, is amended to read:

4.25 Subdivision 1. ~~Test; report~~ **Pregnant persons.** (a) A physician ~~shall,~~ advanced practice
 4.26 registered nurse, or physician assistant may administer a toxicology test to a pregnant ~~woman~~
 4.27 person under the physician's, advanced practice registered nurse's, or physician assistant's
 4.28 care ~~or to a woman under the physician's care within eight hours after delivery to determine~~
 4.29 ~~whether there is evidence that she has ingested a controlled substance if the woman has~~
 4.30 ~~obstetrical complications that are a medical indication of possible use of a controlled~~
 4.31 ~~substance for a nonmedical purpose.~~ for the purpose of providing medical treatment. A
 4.32 positive toxicology test for a substance listed in section 253B.02, subdivision 2, in pregnancy
 4.33 must not form the sole or primary basis for providing notice to the local welfare agency
 4.34 under section 260E.31.

5.1 ~~(b) If the test results are positive, the physician shall report the results under section~~
5.2 ~~260E.31. A negative test result does not eliminate the obligation to report under section~~
5.3 ~~260E.31 if other evidence gives the physician reason to believe the patient has used a~~
5.4 ~~controlled substance for a nonmedical purpose.~~

5.5 Sec. 5. Minnesota Statutes 2022, section 260E.32, is amended by adding a subdivision to
5.6 read:

5.7 Subd. 1a. **Informed consent for toxicology tests.** (a) The requirements under this
5.8 subdivision apply only to juvenile protection proceedings under chapter 260C and the
5.9 reporting of maltreatment of minors under chapter 260E. This subdivision does not apply
5.10 to toxicology testing ordered by Tribal or state courts.

5.11 (b) Toxicology tests may be used by a physician, advanced practice registered nurse, or
5.12 physician assistant for the purpose of providing medical treatment in pregnancy or for a
5.13 newborn infant. A physician, advanced practice registered nurse, or physician assistant must
5.14 inform a newborn infant's parent or legal guardian of the medical reasons for performing a
5.15 toxicology test for the newborn infant prior to administering a toxicology test to the newborn
5.16 infant.

5.17 (c) No physician, advanced practice registered nurse, or physician assistant shall perform
5.18 a toxicology test during pregnancy or at the time of birth unless the patient to be tested gives
5.19 prior written and oral informed consent specific to the toxicology test and the performance
5.20 of the toxicology test is within the scope of medical care being provided to the patient.

5.21 (d) Written and oral informed consent to a toxicology test or drug or alcohol screening
5.22 must occur at the time of testing, in language understandable to the patient undergoing the
5.23 test or screening, under circumstances that provide the patient sufficient opportunity to
5.24 consider whether or not to authorize the toxicology test or drug or alcohol screening and
5.25 minimize the possibility of coercion or undue influence. Informed consent to a toxicology
5.26 test or alcohol or drug screening must consist of oral and written authorization that is dated,
5.27 signed, and includes the following:

5.28 (1) a statement explaining that consenting to a toxicology test or drug or alcohol screening
5.29 is voluntary and requires written and oral informed consent, except under conditions
5.30 described in paragraph (e);

5.31 (2) a statement that testing or screening positive for drugs or alcohol could have legal
5.32 consequences, including but not limited to a report to child protective services, and the

6.1 patient may want to consult with legal counsel before or after consenting to a toxicology
 6.2 test or drug or alcohol screening;

6.3 (3) a statement explaining the extent of confidentiality of the test or screening results;

6.4 (4) a statement of the medical purpose of the test or screening; and

6.5 (5) a general description of the test or screening.

6.6 (e) A toxicology test or drug or alcohol screening may be performed without a patient's
 6.7 informed consent when, in the physician's, advanced practice registered nurse's, or physician
 6.8 assistant's judgment, an emergency exists and the patient is in immediate need of medical
 6.9 attention and an attempt to secure consent would result in delay of treatment that could
 6.10 increase the risk to the patient's life or health. If a toxicology test or drug or alcohol screening
 6.11 is performed in emergency circumstances under this paragraph, the test or screening results
 6.12 must be discussed with the patient in language understandable to the patient, and must
 6.13 consist of oral and written notification that is dated, signed, and includes the following:

6.14 (1) a statement that testing or screening positive for drugs or alcohol could have legal
 6.15 consequences, including but not limited to a potential report to child protective services,
 6.16 and that the patient may wish to consult with legal counsel;

6.17 (2) a statement in the patient's medical record with a description of the emergency
 6.18 circumstances that necessitated a toxicology test or drug or alcohol screening performed
 6.19 without the patient's informed consent; and

6.20 (3) a statement explaining the extent of confidentiality of the test or screening results.

6.21 (f) No physician, advanced practice registered nurse, or physician assistant shall refuse
 6.22 to treat a pregnant patient because the patient has refused to consent to a toxicology test or
 6.23 drug or alcohol screening.

6.24 Sec. 6. Minnesota Statutes 2022, section 260E.32, subdivision 2, is amended to read:

6.25 Subd. 2. **Newborns.** ~~(a)~~ A physician shall, advanced practice registered nurse, or
 6.26 physician assistant may administer to each a newborn infant born under the physician's,
 6.27 advanced practice registered nurse's, or physician assistant's care a toxicology test to
 6.28 determine whether there is evidence of prenatal exposure to a controlled substance if the
 6.29 physician has reason to believe, based on a medical assessment of the mother or the infant,
 6.30 that the mother used a controlled substance for a nonmedical purpose during pregnancy for
 6.31 the purpose of providing medical treatment. A positive toxicology test for a substance listed

7.1 in section 253B.02, subdivision 2, in an infant must not form the sole or primary basis for
7.2 providing notice to the local welfare agency under section 260E.31.

7.3 ~~(b) If the test results are positive, the physician shall report the results as neglect under~~
7.4 ~~section 260E.03. A negative test result does not eliminate the obligation to report under this~~
7.5 ~~chapter if other medical evidence of prenatal exposure to a controlled substance is present.~~

7.6 Sec. 7. **REVISOR INSTRUCTION.**

7.7 (a) The revisor of statutes shall amend the headnote for Minnesota Statutes, section
7.8 260E.31, to read "NOTICE OF PRENATAL EXPOSURE TO CONTROLLED
7.9 SUBSTANCES."

7.10 (b) The revisor of statutes shall amend the headnote for Minnesota Statutes, section
7.11 260E.32, to read "TOXICOLOGY TESTS AND INFORMED CONSENT."