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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3434

02/12/2024 Authored by Coulter; Lee, K., and Hicks
The bill was referred to the Committee on Children and Families Finance and Policy

1.1 A bill for an act
1.2 relating to child care assistance programs; modifying record-keeping requirements;
1.3 modifying child care assistance program fraud investigations; amending Minnesota
1.4 Statutes 2022, sections 245E.01, subdivision 8; 245E.02, subdivisions 1, 2, 3, 4;
1.5 245E.05, subdivision 1; Minnesota Statutes 2023 Supplement, section 119B.125,
1.6 subdivision 6; repealing Minnesota Statutes 2022, section 119B.09, subdivision
1.7 9a.

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

1.9 Section 1. Minnesota Statutes 2023 Supplement, section 119B.125, subdivision 6, is
1.10 amended to read:

1.11 Subd. 6. Record-keeping requirement. (a) As a condition of payment, all providers
1.12 receiving child care assistance payments must:

1.13 (1) keep accurate and legible daily attendance records at the site where services are
1.14 delivered for children receiving child care assistance; and

1.15 (2) make those records available immediately to the county or the commissioner upon
1.16 within ten business days of receiving a request from the county or the commissioner. Any
1.17 records not provided to a county or the commissioner at the date and time within ten business
1.18 days of the request are deemed inadmissible if offered as evidence by the provider in any
1.19 proceeding to contest an overpayment or disqualification of the provider.

1.20 (b) As a condition of payment, attendance records must be completed daily and include
1.21 the date, the first and last name of each child in attendance, and the times when each child
1.22 is dropped off and picked up. To the extent possible, the times that the child was dropped
1.23 off to and picked up from the child care provider must be entered by the person dropping
1.24 off or picking up the child. The daily attendance records must be retained at the site where

2.1 ~~services are delivered~~ for six years after the date of service. For at least two years after the
 2.2 date of service, the records must be retained at the site where services are delivered.

2.3 (c) When the county or the commissioner knows or has reason to believe that a current
 2.4 or former provider has not complied with the record-keeping requirement in this subdivision:

2.5 (1) the commissioner may:

2.6 (i) deny or revoke a provider's authorization to receive child care assistance payments
 2.7 under section 119B.13, subdivision 6, paragraph (d);

2.8 (ii) pursue an administrative disqualification under sections 256.046, subdivision 3, and
 2.9 256.98; or

2.10 (iii) take an action against the provider under chapter 245E; or

2.11 (2) a county or the commissioner may establish an attendance record overpayment under
 2.12 paragraph (d).

2.13 (d) To calculate an attendance record overpayment under this subdivision, the
 2.14 commissioner or county agency shall subtract the maximum daily rate from the total amount
 2.15 paid to a provider for each day that a child's attendance record is missing, unavailable,
 2.16 incomplete, inaccurate, or otherwise inadequate.

2.17 (e) The commissioner shall develop criteria for a county to determine an attendance
 2.18 record overpayment under this subdivision.

2.19 Sec. 2. Minnesota Statutes 2022, section 245E.01, subdivision 8, is amended to read:

2.20 Subd. 8. **Financial misconduct or misconduct.** "Financial misconduct" or "misconduct"
 2.21 means an entity's or individual's fraudulent or abusive acts or omissions that result in fraud
 2.22 ~~and abuse or error~~ against the Department of Human Services. To be fraudulent or abusive,
 2.23 the acts or omissions must be intentional or show a pattern of willful disregard for the
 2.24 department's record-keeping requirements. Financial misconduct includes acting as a recruiter
 2.25 offering conditional employment on behalf of a provider that has received funds from the
 2.26 child care assistance program.

2.27 Sec. 3. Minnesota Statutes 2022, section 245E.02, subdivision 1, is amended to read:

2.28 Subdivision 1. **Investigating provider or recipient financial misconduct.** The
 2.29 department shall investigate alleged or suspected financial misconduct by providers ~~and~~
 2.30 ~~errors~~ related to payments issued by the child care assistance program under this chapter.
 2.31 Recipients, employees, and staff may be investigated when the evidence shows that their

3.1 conduct is related to the financial misconduct of a provider, license holder, or controlling
 3.2 individual. When the alleged or suspected financial misconduct relates to acting as a recruiter
 3.3 offering conditional employment on behalf of a provider that has received funds from the
 3.4 child care assistance program, the department may investigate the provider, center owner,
 3.5 director, manager, license holder, or other controlling individual or agent, who is alleged
 3.6 to have acted as a recruiter offering conditional employment.

3.7 Sec. 4. Minnesota Statutes 2022, section 245E.02, subdivision 2, is amended to read:

3.8 Subd. 2. **Scope of investigations.** (a) The department may contact any person, agency,
 3.9 organization, or other entity that is necessary to an investigation of alleged or suspected
 3.10 financial misconduct.

3.11 (b) The department may examine or interview any individual, document, or piece of
 3.12 evidence that may lead to information that is relevant to ~~child care assistance program~~
 3.13 ~~benefits, payments, and child care provider authorizations~~ an investigation of alleged or
 3.14 suspected financial misconduct. This includes, but is not limited to:

- 3.15 (1) child care assistance program payments, benefits, and authorizations;
- 3.16 (2) services provided by the program or related to child care assistance program recipients;
- 3.17 (3) services provided to a provider;
- 3.18 (4) provider financial records of any type;
- 3.19 (5) daily attendance records of the children receiving services from the provider;
- 3.20 (6) billings; and
- 3.21 (7) verification of the credentials of a license holder, controlling individual, employee,
 3.22 staff person, contractor, subcontractor, and entities under contract with the provider to
 3.23 provide services or maintain service and the provider's financial records related to those
 3.24 services.

3.25 Sec. 5. Minnesota Statutes 2022, section 245E.02, subdivision 3, is amended to read:

3.26 Subd. 3. **Determination of investigation.** After completing its investigation, the
 3.27 department shall issue one of the following determinations:

- 3.28 (1) ~~no violation of child care assistance requirements~~ financial misconduct occurred;
- 3.29 (2) there is insufficient evidence to show that ~~a violation of child care assistance~~
 3.30 ~~requirements~~ financial misconduct occurred;

4.1 (3) a preponderance of evidence shows a violation of child care assistance program law,
4.2 ~~rule, or policy~~ financial misconduct occurred; or

4.3 (4) there exists a credible allegation of criminal fraud.

4.4 Sec. 6. Minnesota Statutes 2022, section 245E.02, subdivision 4, is amended to read:

4.5 Subd. 4. **Actions or administrative sanctions.** (a) After completing the determination
4.6 under subdivision 3, the department may take one or more of the actions or sanctions
4.7 specified in this subdivision.

4.8 (b) The department may take the following actions:

4.9 (1) refer the investigation to law enforcement or a county attorney for possible criminal
4.10 prosecution;

4.11 (2) refer relevant information to the department's licensing division, the child care
4.12 assistance program, the Department of Education, the federal Child and Adult Care Food
4.13 Program, or appropriate child or adult protection agency;

4.14 (3) enter into a settlement agreement with a provider, license holder, controlling
4.15 individual, or recipient; or

4.16 (4) refer the matter for review by a prosecutorial agency with appropriate jurisdiction
4.17 for possible civil action under the Minnesota False Claims Act, chapter 15C.

4.18 (c) In addition to section 256.98, the department may impose sanctions by:

4.19 (1) pursuing administrative disqualification through hearings or waivers;

4.20 (2) establishing and seeking monetary recovery or recoupment;

4.21 (3) issuing an order of corrective action that states the practices that are violations of
4.22 child care assistance program policies, laws, or regulations, and that they must be corrected;
4.23 or

4.24 (4) suspending, denying, or terminating payments to a provider.

4.25 (d) Upon a finding by the commissioner that any child care provider, center owner,
4.26 director, manager, license holder, or other controlling individual of a child care center has
4.27 employed, used, or acted as a recruiter offering conditional employment for a child care
4.28 center that has received child care assistance program funding, the commissioner shall:

4.29 (1) immediately suspend all program payments to all child care centers in which the
4.30 person employing, using, or acting as a recruiter offering conditional employment is an
4.31 owner, director, manager, license holder, or other controlling individual. The commissioner

5.1 shall suspend program payments under this clause even if services have already been
5.2 provided; and

5.3 (2) immediately and permanently revoke the licenses of all child care centers of which
5.4 the person employing, using, or acting as a recruiter offering conditional employment is an
5.5 owner, director, manager, license holder, or other controlling individual.

5.6 (e) If, while seeking and obtaining monetary recovery or recoupment under this
5.7 subdivision, the department requests or collects more than the original loss amount and
5.8 becomes aware of the error, the department must immediately return the amount at issue to
5.9 the provider.

5.10 Sec. 7. Minnesota Statutes 2022, section 245E.05, subdivision 1, is amended to read:

5.11 Subdivision 1. **Records required to be retained.** (a) The following records must be
5.12 maintained, controlled, and made immediately accessible to license holders, providers, and
5.13 controlling individuals. The records must be organized and labeled to correspond to categories
5.14 that make them easy to identify so that they can be made available immediately upon request
5.15 to an investigator acting on behalf of the commissioner at the provider's place of business:

5.16 (1) payroll ledgers, canceled checks, bank deposit slips, and any other accounting records;

5.17 ~~(2) daily attendance records required by and that comply with section 119B.125,~~
5.18 ~~subdivision 6;~~

5.19 ~~(3)~~ (2) billing transmittal forms requesting payments from the child care assistance
5.20 program and billing adjustments related to child care assistance program payments;

5.21 ~~(4)~~ (3) records identifying all persons, corporations, partnerships, and entities with an
5.22 ownership or controlling interest in the provider's child care business;

5.23 ~~(5)~~ (4) employee records identifying those persons currently employed by the provider's
5.24 child care business or who have been employed by the business at any time within the
5.25 previous five years. The records must include each employee's name, hourly and annual
5.26 salary, qualifications, position description, job title, and dates of employment. In addition,
5.27 employee records that must be made available include the employee's time sheets, current
5.28 home address of the employee or last known address of any former employee, and
5.29 documentation of background studies required under chapter 119B or 245C;

5.30 ~~(6)~~ (5) records related to transportation of children in care, including but not limited to:

5.31 (i) the dates and times that transportation is provided to children for transportation to
5.32 and from the provider's business location for any purpose. For transportation related to field

6.1 trips or locations away from the provider's business location, the names and addresses of
6.2 those field trips and locations must also be provided;

6.3 (ii) the name, business address, phone number, and website address, if any, of the
6.4 transportation service utilized; and

6.5 (iii) all billing or transportation records related to the transportation.

6.6 (b) Daily attendance records required by and in compliance with section 119B.125,
6.7 subdivision 6, must be maintained, controlled, and made immediately accessible to license
6.8 holders, providers, and controlling individuals. The records must be organized and labeled
6.9 to correspond to categories that make them easy to identify so that they can be made available
6.10 to an investigator acting on behalf of the commissioner within ten business days of receiving
6.11 a request from the investigator.

6.12 Sec. 8. **REPEALER.**

6.13 Minnesota Statutes 2022, section 119B.09, subdivision 9a, is repealed.

119B.09 FINANCIAL ELIGIBILITY.

Subd. 9a. **Child care centers; assistance.** (a) A child care center may receive authorizations for 25 or fewer children who are dependents of the center's employees. If a child care center is authorized for more than 25 children who are dependents of center employees, the county cannot authorize additional dependents of an employee until the number of children falls below 25.

(b) Funds paid to providers during the period of time when a center is authorized for more than 25 children who are dependents of center employees must not be treated as overpayments under section 119B.11, subdivision 2a, due to noncompliance with this subdivision.

(c) Nothing in this subdivision precludes the commissioner from conducting fraud investigations relating to child care assistance, imposing sanctions, and obtaining monetary recovery as otherwise provided by law.