

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 4662

(SENATE AUTHORS: MANN and Wiklund)

DATE
03/07/2024

D-PG

Introduction and first reading
Referred to Health and Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; prohibiting kickbacks in human services benefits;
1.3 providing for criminal penalties; amending Minnesota Statutes 2022, sections
1.4 245E.02, subdivision 3a; 256.98, subdivision 1; 256B.12; Minnesota Statutes 2023
1.5 Supplement, section 256.046, subdivision 3; proposing coding for new law in
1.6 Minnesota Statutes, chapter 609.

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

1.8 Section 1. Minnesota Statutes 2022, section 245E.02, subdivision 3a, is amended to read:

1.9 Subd. 3a. **Prohibited hiring practice practices.** (a) It is prohibited to hire a child care
1.10 center employee when, as a condition of employment, the employee is required to have one
1.11 or more children who are eligible for or receive child care assistance, if:

1.12 (1) the individual hiring the employee is, or is acting at the direction of or in cooperation
1.13 with, a child care center provider, center owner, director, manager, license holder, or other
1.14 controlling individual; and

1.15 (2) the individual hiring the employee knows or has reason to know the purpose in hiring
1.16 the employee is to obtain child care assistance program funds.

1.17 (b) Program applicants, participants, and providers are prohibited from receiving or
1.18 providing a kickback or payment in exchange for obtaining or attempting to obtain child
1.19 care assistance benefits for their own financial gain. This paragraph does not apply to:

1.20 (1) marketing or promotional offerings that directly benefit an applicant or recipient's
1.21 child or dependent for whom the child care provider is providing child care services; or

1.22 (2) child care provider discounts, scholarships, or other financial assistance allowed
1.23 under section 119B.13, subdivision 4.

2.1 (c) The commissioner shall consider an applicant, participant, or provider's attempt to
2.2 buy or sell access to a family's child care subsidy benefits to an unauthorized person to be
2.3 a kickback, an intentional program violation under section 256.046, subdivision 3, and
2.4 wrongfully obtaining assistance under section 256.98.

2.5 Sec. 2. Minnesota Statutes 2023 Supplement, section 256.046, subdivision 3, is amended
2.6 to read:

2.7 Subd. 3. **Administrative disqualification of child care providers caring for children**
2.8 **receiving child care assistance.** (a) The department shall pursue an administrative
2.9 disqualification, if the child care provider is accused of committing an intentional program
2.10 violation, in lieu of a criminal action when it has not been pursued. Intentional program
2.11 violations include intentionally making false or misleading statements; receiving or providing
2.12 a kickback, as defined in section 245E.02, subdivision 3a, paragraph (b); intentionally
2.13 misrepresenting, concealing, or withholding facts; and repeatedly and intentionally violating
2.14 program regulations under chapters 119B and 245E. Intent may be proven by demonstrating
2.15 a pattern of conduct that violates program rules under chapters 119B and 245E.

2.16 (b) To initiate an administrative disqualification, the commissioner must mail written
2.17 notice by certified mail to the provider against whom the action is being taken. Unless
2.18 otherwise specified under chapter 119B or 245E or Minnesota Rules, chapter 3400, the
2.19 commissioner must mail the written notice at least 15 calendar days before the adverse
2.20 action's effective date. The notice shall state (1) the factual basis for the agency's
2.21 determination, (2) the action the agency intends to take, (3) the dollar amount of the monetary
2.22 recovery or recoupment, if known, and (4) the provider's right to appeal the agency's proposed
2.23 action.

2.24 (c) The provider may appeal an administrative disqualification by submitting a written
2.25 request to the Department of Human Services, Appeals Division. A provider's request must
2.26 be received by the Appeals Division no later than 30 days after the date the commissioner
2.27 mails the notice.

2.28 (d) The provider's appeal request must contain the following:

2.29 (1) each disputed item, the reason for the dispute, and, if applicable, an estimate of the
2.30 dollar amount involved for each disputed item;

2.31 (2) the computation the provider believes to be correct, if applicable;

2.32 (3) the statute or rule relied on for each disputed item; and

3.1 (4) the name, address, and telephone number of the person at the provider's place of
3.2 business with whom contact may be made regarding the appeal.

3.3 (e) On appeal, the issuing agency bears the burden of proof to demonstrate by a
3.4 preponderance of the evidence that the provider committed an intentional program violation.

3.5 (f) The hearing is subject to the requirements of sections 256.045 and 256.0451. The
3.6 human services judge may combine a fair hearing and administrative disqualification hearing
3.7 into a single hearing if the factual issues arise out of the same or related circumstances and
3.8 the provider receives prior notice that the hearings will be combined.

3.9 (g) A provider found to have committed an intentional program violation and is
3.10 administratively disqualified shall be disqualified, for a period of three years for the first
3.11 offense and permanently for any subsequent offense, from receiving any payments from
3.12 any child care program under chapter 119B.

3.13 (h) Unless a timely and proper appeal made under this section is received by the
3.14 department, the administrative determination of the department is final and binding.

3.15 Sec. 3. Minnesota Statutes 2022, section 256.98, subdivision 1, is amended to read:

3.16 Subdivision 1. **Wrongfully obtaining assistance.** (a) A person who commits any of the
3.17 following acts or omissions with intent to defeat the purposes of sections 145.891 to 145.897,
3.18 the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program
3.19 formerly codified in sections 256.72 to 256.871, chapter 256B, 256D, 256I, 256J, 256K, or
3.20 256L, child care assistance programs, and emergency assistance programs under section
3.21 256D.06, is guilty of theft and shall be sentenced under section 609.52, subdivision 3, clauses
3.22 (1) to (5):

3.23 (1) obtains or attempts to obtain, or aids or abets any person to obtain by means of a
3.24 willfully false statement or representation, by intentional concealment of any material fact,
3.25 or by impersonation or other fraudulent device, assistance or the continued receipt of
3.26 assistance, to include child care assistance or food benefits produced according to sections
3.27 145.891 to 145.897 and MinnesotaCare services according to sections 256.9365, 256.94,
3.28 and 256L.01 to 256L.15, to which the person is not entitled or assistance greater than that
3.29 to which the person is entitled;

3.30 (2) knowingly aids or abets in buying or in any way disposing of the property of a
3.31 recipient or applicant of assistance without the consent of the county agency; or

3.32 (3) obtains or attempts to obtain, alone or in collusion with others, the receipt of payments
3.33 to which the individual is not entitled as a provider of subsidized child care, or by receiving

4.1 or providing a kickback, as defined in section 245E.02, subdivision 3a, paragraph (b), or
 4.2 furnishing or concurring in a willfully false claim for child care assistance.

4.3 (b) The continued receipt of assistance to which the person is not entitled or greater than
 4.4 that to which the person is entitled as a result of any of the acts, failure to act, or concealment
 4.5 described in this subdivision shall be deemed to be continuing offenses from the date that
 4.6 the first act or failure to act occurred.

4.7 Sec. 4. Minnesota Statutes 2022, section 256B.12, is amended to read:

4.8 **256B.12 LEGAL REPRESENTATION.**

4.9 The attorney general or the appropriate county attorney appearing at the direction of the
 4.10 attorney general shall be the attorney for the state agency, and the county attorney of the
 4.11 appropriate county shall be the attorney for the local agency in all matters pertaining hereto.
 4.12 To prosecute under this chapter or sections 609.466 and, 609.52, subdivision 2, and 609.542
 4.13 or to recover payments wrongfully made under this chapter, the attorney general or the
 4.14 appropriate county attorney, acting independently or at the direction of the attorney general
 4.15 may institute a criminal or civil action.

4.16 Sec. 5. **[609.542] HUMAN SERVICES PROGRAMS CRIMES.**

4.17 Subdivision 1. Definition. For purposes of this section, "federal health care program"
 4.18 has the meaning given in United States Code, title 42, section 1320a-7b(f).

4.19 Subd. 2. Prohibited payments made relating to human services programs. A person
 4.20 is guilty of a crime and may be sentenced as provided in subdivision 5 if the person
 4.21 intentionally offers or pays any remuneration, including any kickback, bribe, or rebate,
 4.22 directly or indirectly, overtly or covertly, in cash or in kind, to another person:

4.23 (1) to induce that person to apply for, receive, or induce another person to apply for or
 4.24 receive an item or service for which payment may be made in whole or in part under a
 4.25 federal health care program, state behavioral health program under section 254B.04, or
 4.26 family program under chapter 119A or 119B; or

4.27 (2) in return for purchasing, leasing, ordering, or arranging for or inducing the purchasing,
 4.28 leasing, or ordering of any good, facility, service, or item for which payment may be made
 4.29 in whole or in part, or which is administered in whole or in part under a federal health care
 4.30 program, state behavioral health program under section 254B.04, or family program under
 4.31 or chapter 119A or 119B.

5.1 Subd. 3. Receipt of prohibited payments relating to human services programs. A
5.2 person is guilty of a crime and may be sentenced as provided in subdivision 5 if the person
5.3 intentionally solicits or receives any remuneration, including any kickback, bribe, or rebate,
5.4 directly or indirectly, overtly or covertly, in cash or in kind:

5.5 (1) in return for applying for or receiving a human services benefit, service, or grant for
5.6 which payment may be made in whole or in part under a federal health care program, state
5.7 behavioral health program under section 254B.04, or family program under chapter 119A
5.8 or 119B; or

5.9 (2) in return for purchasing, leasing, ordering, or arranging for or inducing the purchasing,
5.10 leasing, or ordering of any good, facility, service, or item for which payment may be made
5.11 in whole or in part under a federal health care program, state behavioral health program
5.12 under section 254B.04, or family program under chapter 119A or 119B.

5.13 Subd. 4. Exemptions. (a) This section does not apply to remuneration exempted under
5.14 the Anti-Kickback Statute, United States Code, title 42, section 1320a-7b(b)(3), or payment
5.15 made under a federal health care program which is exempt from liability by United States
5.16 Code, title 42, section 1001.952.

5.17 (b) This section does not apply to:

5.18 (1) any amount paid by an employer to a bona fide employee for providing covered
5.19 items or services under chapter 119B while acting in the course and scope of employment;
5.20 or

5.21 (2) child care provider discounts, scholarships, or other financial assistance to families
5.22 allowed under section 119B.13, subdivision 4.

5.23 Subd. 5. Sentence. (a) A person convicted under subdivision 2 or 3 may be sentenced
5.24 pursuant to section 609.52, subdivision 3.

5.25 (b) For purposes of sentencing a violation of subdivision 2, "value" means the fair market
5.26 value of the good, facility, service, or item that was obtained as a direct or indirect result
5.27 of the prohibited payment.

5.28 (c) For purposes of sentencing a violation of subdivision 3, "value" means the amount
5.29 of the prohibited payment solicited or received.

5.30 (d) As a matter of law, a claim for any good, facility, service, or item rendered or claimed
5.31 to have been rendered in violation of this section is noncompensable and unenforceable at
5.32 the time it is made.

6.1 Subd. 6. **Aggregation.** In any prosecution under this section, the value of the money,
6.2 property, or benefit received or solicited by the defendant within any six-month period may
6.3 be aggregated and the defendant charged accordingly in applying the provisions of
6.4 subdivision 5.

6.5 Subd. 7. **False claims.** In addition to the penalties provided for in this section, a claim,
6.6 as defined in section 15C.01, subdivision 2, that includes items or services resulting from
6.7 a violation of this section constitutes a false or fraudulent claim for purposes of section
6.8 15C.02.

6.9 **EFFECTIVE DATE.** This section is effective August 1, 2024, and applies to crimes
6.10 committed on or after that date.