

1.1 A bill for an act
1.2 relating to human services; permitting suspension of medical assistance payments
1.3 during investigation of kickback fraud; requiring rulemaking to include kickbacks
1.4 in the definition of fraud; amending Minnesota Statutes 2024, section 256B.064,
1.5 subdivision 2.

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

1.7 Section 1. Minnesota Statutes 2024, section 256B.064, subdivision 2, is amended to read:

1.8 Subd. 2. **Imposition of monetary recovery and sanctions.** (a) The commissioner shall
1.9 determine any monetary amounts to be recovered and sanctions to be imposed upon an
1.10 individual or entity under this section. Except as provided in paragraphs (b) and (d), neither
1.11 a monetary recovery nor a sanction will be imposed by the commissioner without prior
1.12 notice and an opportunity for a hearing, according to chapter 14, on the commissioner's
1.13 proposed action, provided that the commissioner may suspend or reduce payment to an
1.14 individual or entity, except a nursing home or convalescent care facility, after notice and
1.15 prior to the hearing if in the commissioner's opinion that action is necessary to protect the
1.16 public welfare and the interests of the program.

1.17 (b) Except when the commissioner finds good cause not to suspend payments under
1.18 Code of Federal Regulations, title 42, section 455.23(e) or (f), the commissioner shall
1.19 withhold or reduce payments to an individual or entity without providing advance notice
1.20 of such withholding or reduction if either of the following occurs:

1.21 (1) the individual or entity is convicted of a crime involving the conduct described in
1.22 subdivision 1a; or

2.1 (2) the commissioner determines there is a credible allegation of fraud, including but
2.2 not limited to a kickback allegation under subdivision 1a, paragraph (c), for which an
2.3 investigation is pending under the program. Allegations are considered credible when they
2.4 have an indicium of reliability and the state agency has reviewed all allegations, facts, and
2.5 evidence carefully and acts judiciously on a case-by-case basis. A credible allegation of
2.6 fraud is an allegation which has been verified by the state, from any source, including but
2.7 not limited to:

2.8 (i) fraud hotline complaints;

2.9 (ii) claims data mining; and

2.10 (iii) patterns identified through provider audits, civil false claims cases, and law
2.11 enforcement investigations.

2.12 (c) The commissioner must send notice of the withholding or reduction of payments
2.13 under paragraph (b) within five days of taking such action unless requested in writing by a
2.14 law enforcement agency to temporarily withhold the notice. The notice must:

2.15 (1) state that payments are being withheld according to paragraph (b);

2.16 (2) set forth the general allegations as to the nature of the withholding action, but need
2.17 not disclose any specific information concerning an ongoing investigation;

2.18 (3) except in the case of a conviction for conduct described in subdivision 1a, state that
2.19 the withholding is for a temporary period and cite the circumstances under which withholding
2.20 will be terminated;

2.21 (4) identify the types of claims to which the withholding applies; and

2.22 (5) inform the individual or entity of the right to submit written evidence for consideration
2.23 by the commissioner.

2.24 (d) The withholding or reduction of payments will not continue after the commissioner
2.25 determines there is insufficient evidence of fraud by the individual or entity, or after legal
2.26 proceedings relating to the alleged fraud are completed, unless the commissioner has sent
2.27 notice of intention to impose monetary recovery or sanctions under paragraph (a). Upon
2.28 conviction for a crime related to the provision, management, or administration of a health
2.29 service under medical assistance, a payment held pursuant to this section by the commissioner
2.30 or a managed care organization that contracts with the commissioner under section 256B.035
2.31 is forfeited to the commissioner or managed care organization, regardless of the amount
2.32 charged in the criminal complaint or the amount of criminal restitution ordered.

3.1 (e) The commissioner shall suspend or terminate an individual's or entity's participation
3.2 in the program without providing advance notice and an opportunity for a hearing when the
3.3 suspension or termination is required because of the individual's or entity's exclusion from
3.4 participation in Medicare. Within five days of taking such action, the commissioner must
3.5 send notice of the suspension or termination. The notice must:

3.6 (1) state that suspension or termination is the result of the individual's or entity's exclusion
3.7 from Medicare;

3.8 (2) identify the effective date of the suspension or termination; and

3.9 (3) inform the individual or entity of the need to be reinstated to Medicare before
3.10 reapplying for participation in the program.

3.11 (f) Upon receipt of a notice under paragraph (a) that a monetary recovery or sanction is
3.12 to be imposed, an individual or entity may request a contested case, as defined in section
3.13 14.02, subdivision 3, by filing with the commissioner a written request of appeal. The appeal
3.14 request must be received by the commissioner no later than 30 days after the date the
3.15 notification of monetary recovery or sanction was mailed to the individual or entity. The
3.16 appeal request must specify:

3.17 (1) each disputed item, the reason for the dispute, and an estimate of the dollar amount
3.18 involved for each disputed item;

3.19 (2) the computation that the individual or entity believes is correct;

3.20 (3) the authority in statute or rule upon which the individual or entity relies for each
3.21 disputed item;

3.22 (4) the name and address of the person or entity with whom contacts may be made
3.23 regarding the appeal; and

3.24 (5) other information required by the commissioner.

3.25 (g) The commissioner may order an individual or entity to forfeit a fine for failure to
3.26 fully document services according to standards in this chapter and Minnesota Rules, chapter
3.27 9505. The commissioner may assess fines if specific required components of documentation
3.28 are missing. The fine for incomplete documentation shall equal 20 percent of the amount
3.29 paid on the claims for reimbursement submitted by the individual or entity, or up to \$5,000,
3.30 whichever is less. If the commissioner determines that an individual or entity repeatedly
3.31 violated this chapter, chapter 254B or 245G, or Minnesota Rules, chapter 9505, related to
3.32 the provision of services to program recipients and the submission of claims for payment,
3.33 the commissioner may order an individual or entity to forfeit a fine based on the nature,

4.1 severity, and chronicity of the violations, in an amount of up to \$5,000 or 20 percent of the
4.2 value of the claims, whichever is greater.

4.3 (h) The individual or entity shall pay the fine assessed on or before the payment date
4.4 specified. If the individual or entity fails to pay the fine, the commissioner may withhold
4.5 or reduce payments and recover the amount of the fine. A timely appeal shall stay payment
4.6 of the fine until the commissioner issues a final order.

4.7 **Sec. 2. DIRECTION TO COMMISSIONER; REQUIRED RULEMAKING.**

4.8 The commissioner of human services must use expedited rulemaking under Minnesota
4.9 Statutes, section 14.389, to amend the rules of the Department of Human Services to clearly
4.10 include kickbacks in the definition of "fraud" by either:

4.11 (1) correcting the citation in Minnesota Rules, part 9505.2165, subpart 4, item C, to
4.12 properly refer to the federal anti-kickback statute as United States Code, title 42, section
4.13 1320a-7b(b); or

4.14 (2) adding a reference to the crime of illegal remuneration in Minnesota Statutes, section
4.15 609.542, and correcting or removing the incorrect citation to the federal anti-kickback
4.16 statute.