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Nursing Home Receivership – Changes to Increase Consumer Protection

Summary

The Minnesota Department of Health (MDH) regulates nursing homes and boarding care homes via state licensing and federal certification. MDH has existing statutory authority to obtain receivership authority over these facilities when the life and safety of the residents is threatened because of the actions or inactions of the facility operators or owners. Receivership is an action of last resort. SF 1471 makes changes to the receivership statute to improve the state's ability to protect these vulnerable persons when a receivership is required.

Background

In the past ten years, there have been four receiverships affecting five nursing homes, and out of these receiverships, two nursing homes have closed, two have stayed open and one is currently ongoing. When MDH determines that it is necessary to undertake a state receivership, it has concluded that the conditions onsite are life threatening and time is of the essence.

Receiverships are court ordered. MDH must go to state district court to get a Judge's order authorizing MDH to take over the operations. Before MDH can go to court, it must have an agreement with a managing agent who will be the

actual day-to-day operator of the nursing home on MDH's behalf. The process of finding a suitable and willing managing agent takes about a week. There is always the risk that MDH will not find a managing agent. The whole process from internal decision to proceed with receivership to obtaining the court order takes about two weeks.

Once the receivership begins, MDH becomes the licensee of the nursing home and its managing agent goes onsite and assumes operations with the court order in hand. MDH, via its managing agent and in partnership with Department of Human Services (DHS), first acts to protect the health and safety of the residents and stabilize operations as quickly as possible. Then MDH evaluates the nursing home to determine if closure is necessary. During the receivership third party creditors usually contact MDH seeking payments for unpaid bills or loans. In the most recent receivership, a creditor sued MDH seeking the Medicaid dollars the managing agent was using to provide health care and housing for the residents living there. The Judge eventually ruled that the creditor could not take the money being used to care for the residents to pay back the loan in default by the former licensee.

Proposal

SF 1471 does the following:

- Makes clarifying changes about roles of receiver and managing agent, legal service, payment of receivership fees, and reasons why a receivership can be sought;
- Clarifies and simplifies the method for DHS to provide sufficient operating funds, without changing actual costs from current law;
- Requires MDH to establish and maintain a list of qualified managing agent candidates to choose from when an emergency requiring a receivership occurs;
- Sets minimum legal requirements for managing agent candidates, such as not having a conflict of interest with the facility in receivership;
- Shortens the time frame for the judge to issue an order authorizing the receivership from five days to one day;
- Clarifies that the receiver can use all payments received to pay for the costs of caring for and housing the residents safely;
- Clarifies that owners, or controlling persons of facilities put in receivership must still pay mortgages, liens, and taxes owed during the receivership;
- States that for new operators post-receivership, they are not legally responsible for state law violations occurring before they became the operators.