STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0807

Zayna Shire, et al.,
Appellants,

vs.

Jodi Harpstead,
Respondent.

Filed December 30, 2019
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-CV-18-6048

Samuel D. Orbovich, Pari I. McGarraugh, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellants)

Keith Ellison, Attorney General, Brandon Boese, Scott H. Ikeda, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellants provide services to Medicaid recipients. In July 2017, the Minnesota Department of Human Services (DHS) temporarily suspended Medicaid payments to appellants pending investigation of what DHS had determined to be credible allegations of fraud. Approximately one year later, with the investigation neither closed nor having resulted in further legal action, appellants sued respondent, the commissioner of human services, challenging the continuing withholding of payments. The district court dismissed appellants' complaint for failing to state a claim upon which relief can be granted. Appellants argue that (1) the district court erred by concluding that their due-process claim failed due to lack of a protected interest in continued Medicaid participation, and (2) the district court erred by concluding that the commissioner acted within her authority when she applied a temporary suspension of payment, or payment withhold, to appellants. We affirm.

FACTS

Appellants are two business owners and their corresponding business entities.[1] Appellant Zayna Shire is the owner of appellant Brighter Home Health Care, LLC (Brighter Home), and appellant Abdi Ahmed is the owner of appellant Family Care

[1] The complaint also seeks to bring claims on behalf of all similarly situated providers "who are owned and operated by persons who immigrated to the United States, and whose ethnicity, race and national origin make them members of a protected minority." This allegation of a class does not impact the analysis at this stage of litigation. Furthermore, while the description of the class suggests equal-protection concerns, the complaint does not assert an equal-protection claim.

Transportation, LLC (Family Care). Both businesses served Medicaid recipients in the Twin Cities area. Respondent is the current commissioner of the human services, acting in her official capacity.[2] The complaint alleges the following facts, which we take as true for purposes of this appeal.

Brighter Home provided personal-care-assistance (PCA) services from April 2014 until July 2017. On July 21, 2017, the Office of Inspector General of DHS issued a notice of payment withhold to Brighter Home. The notice stated that DHS had determined that there was a "credible allegation of fraud" and that DHS had information that Brighter Home shared an owner with Immediate Care Transportation, LLC, which had "billed for trips not supported by documentation, billed for trips that never took place, participated in kickbacks to the riders, and billed rides with multiple riders as separate trips rather than prorated." DHS addressed the notice to Ahmedweli Farah, Shire's former husband, who owned Immediate Care Transportation and who owned 50% of Brighter Home from January 2016 through July 2017. Shire claims that she had no ownership interests in Immediate Care Transportation and that Farah played no meaningful role in the operations of Brighter Home.

The notice of payment withhold indicated that all Minnesota Health Care Programs (MHCP) payments to Brighter Home would be withheld starting August 21, 2017. The notice informed Brighter Home that DHS would continue to withhold the payments until

[2] When the complaint was filed, the commissioner was Emily Johnson-Piper. Pam Wheelock was substituted for Johnson-Piper as the acting commissioner on July 16, 2019. Jodi Harpstead, the current commissioner, was substituted for Pam Wheelock on September 6, 2019.

DHS or a prosecuting authority determined that there was insufficient evidence of fraud or until the completion of any legal proceedings related to the alleged fraud. It stated that Brighter Home could submit written evidence to DHS to explain why payments should not be withheld. The notice also stated that Brighter Home must notify affected clients and assist them in transitioning to other services if Brighter Home was unable to continue providing services.

Brighter Home, through an attorney, responded to DHS with documents and a letter stating that Brighter Home agreed to disassociate from Farah and asking that the payment withhold be lifted. DHS did not lift the payment withhold; rather, it issued a notice of continued payment withhold to Shire in November. It described how, after investigating Brighter Home's claims and service documentation, DHS determined that Brighter Home had submitted claims with mismatched numbers of units, claims that had no timesheet or a timesheet that indicated no work had been done, and claims for services that could not have been provided. DHS concluded that these suspicious claims, plus Farah's operational control and access to Brighter Home's business holdings, amounted to a credible allegation of fraud. This second notice again explained the circumstances under which the hold would be lifted, informed Brighter Home that it could submit evidence and explanations to DHS, and informed Brighter Home of its obligations to notify affected clients and assist them in transitioning to other services if Brighter Home could not continue to serve them.

Appellant Family Care, meanwhile, was subject to a similar action. Family Care provided transportation services to Medicaid recipients from 2011 until July 2017. On July 21, 2017, it received a notice of payment withhold from DHS. The notice stated that

DHS had determined that there was a credible allegation of fraud and that it had information that Family Care had "billed trips without documentation to support the claim, billed rides with multiple riders as separate trips rather than prorated, and participated in a kickback scheme with recipients."

This notice was structured the same way as the notices received by Brighter Home, stating that the MHCP payment withhold would start July 21, 2017, and that the payment withhold would last until either a determination that there was insufficient evidence of fraud or the completion of any legal proceedings related to the alleged fraud. The notice also informed Family Care that it could submit written evidence to DHS about why payments should not be withheld and that, if Family Care was unable to continue providing services to its clients, it would need to notify them and assist them in transitioning to other providers.

On September 5, 2018, Shire, Ahmed, and their business entities sued the commissioner in her official capacity. They allege that the commissioner deprived them of their protected interests without due process and that the commissioner engaged in ultra vires actions. The commissioner moved the district court, pursuant to Minn. R. Civ. P. 12.02(e), to dismiss the case for failure to state a claim upon which relief could be granted. The district court granted the motion and dismissed the complaint.

This appeal follows.

D E C I S I O N

When reviewing the dismissal of a complaint for failure to state a claim under Minn. R. Civ. P. 12.02(e), appellate courts "review the legal sufficiency of the claim de novo to

determine whether the complaint sets forth a legally sufficient claim for relief." *Graphic Commc'ns Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014). Appellate courts "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

In their complaint, appellants seek declaratory and injunctive relief based on two legal theories. They allege that the commissioner violated their due-process rights and that she acted in excess of her authority. Both theories relate to the commissioner's authority to temporarily suspend Medicaid payments to providers.

Medicaid is a cooperative federal-state program, which states may administer and regulate consistent with federal law. *Getz v. Peace*, 934 N.W.2d 347, 356-57 (Minn. 2019). Under the Minnesota Medicaid statutory scheme, which reflects federal requirements, the DHS commissioner is required to withhold payments to a Medicaid provider if "the commissioner determines there is a credible allegation of fraud for which an investigation is pending." Minn. Stat. § 256B.064, subd. 2(b) (2018); *see also* 42 C.F.R. § 455.23(a)(1) (2018). An allegation is considered credible when it has "indicia of reliability and the state agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis." Minn. Stat. § 256B.064, subd. 2(b). A payment withhold must end "after the commissioner determines there is insufficient evidence of fraud by the vendor, or after legal proceedings relating to the alleged fraud are completed." Minn. Stat. § 256B.064, subd. 2(c) (2018); *see also* 42 C.F.R. § 455.23(c) (2018).

With that background, we turn to the legal sufficiency of each of appellants' claims.

I. The complaint fails to state a due-process claim because appellants lack a protected interest.

Appellants argue that the payment withholds violate their due-process rights under the United States and Minnesota Constitutions because the payment withholds effectively deprive them permanently of a protected interest without procedural due process. The district court rejected the due-process claim, concluding that appellants do not have a constitutionally protected interest in the receipt of Medicaid payments.

"Procedural due process protections restrain government action which deprives individuals of 'liberty' or 'property' interests within the meaning of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Minnesota Constitution." *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Nov. 15, 2005). The due-process protections under the United States and Minnesota Constitutions are identical. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

In evaluating a procedural due-process claim, courts must first identify "whether the government has deprived the individual of a protected life, liberty, or property interest." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). If the government has deprived a party of a protected interest, the next step of the analysis is to determine whether the government provided constitutionally sufficient procedures. *Id.* But if no deprivation of a protected interest is identified, there can be no due-process violation and the analysis ends. *Id.*

The precise protected interest that appellants allege that the government has deprived them of is somewhat difficult to ascertain; they appear to broadly assert an interest in the ability to do business that spans both property and liberty interests. The complaint frames the matter as a deprivation of their property interests: it focuses on how appellants' businesses were effectively closed by the government through its ongoing temporary suspensions and by its required transfer of appellants' clients. Appellants' argument on appeal, however, shifts its emphasis, framing the issue more as deprivation of their liberty interests: this argument focuses on damage to appellants' reputations for honesty and integrity and to their ability to pursue their chosen business. The commissioner argues that appellants forfeited their liberty-interest theory by not raising it in the district court. While we acknowledge the shift in emphasis, we note that appellants did raise both a property-interest and a reputational-liberty-interest argument to the district court, so we agree with appellants that they have not forfeited their liberty-interest theory. We thus consider whether appellants' complaint alleges deprivation of either a protected property interest or a protected liberty interest.

A. Appellants do not allege a protected property interest.

Property interests are protected, but not created, by the Constitution. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972). Rather, property interests arise from an independent source, such as a statute or contract "that secure[s] certain benefits and that support[s] claims of entitlement to those benefits." *Id.* A property interest does not arise simply from a party's unilateral expectation of it. *Id.*

Appellants frame the deprivation of their property right as the closure of their businesses. But appellants do not and cannot allege that DHS required that appellants close their businesses. DHS suspended appellants' ability to receive reimbursement under the Medicaid program; DHS did not prohibit them from serving customers. Appellants may have structured their businesses based on the unilateral expectation of continued support from the Medicaid program, but a strong financial interest in the program does not give rise to a property interest. *See Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 811 (Minn. App. 1984) (holding that participation in Medicaid did not give rise to a protected property interest such that a taking occurs when a statute modifies Medicaid rates, despite strong financial inducements to participate in the program), *review denied* (Minn. Feb. 6, 1985).

Nor do appellants have a property interest in Medicaid payments while an investigation is pending. The statute in this case makes clear that the government retains the power to temporarily suspend payments when there are credible allegations of fraud. *See* Minn. Stat. § 256B.064, subd. 2(b); *cf. Personal Care Prods., Inc. v. Hawkins*, 635 F.3d 155, 159 (5th Cir. 2011) (observing that "Texas regulations plainly permit" the Medicaid withholding). Because the statute authorizes payment withholds pending fraud investigations, it confers on appellants no entitlement to the payments during an investigation. Appellants therefore have no protected property interest created by statute. *See Roth*, 408 U.S. at 577, 92 S. Ct. at 2709.

The persuasive authorities that have considered the matter have generally concluded that participation in the Medicaid program as a provider does not create a protected

property interest. *See, e.g., Erickson v. United States ex rel. Dep't of Health & Human Servs.*, 67 F.3d 858, 862 (9th Cir. 1995) (holding that provider did not have a property interest in continued participation in Medicare, Medicaid, or other similar programs); *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 175-76 (2d Cir. 1991) (holding that the government reserved vast discretion over the continued participation of parties in Medicaid, and thus the provider had no protected property interest); *see also Minn. Ass'n of Health Care Facilities, Inc. v. Minn. Dep't of Pub. Welfare*, 742 F.2d 442, 446 (8th Cir. 1984) (holding that a statute imposing rate limits on nursing homes did not violate substantive due process or result in a taking, as participation in the Medicaid program is voluntary). And courts have specifically rejected the claim that a temporary suspension from Medicaid participation pending a fraud investigation implicates a protected property right. *See, e.g.*, *Hawkins*, 635 F.3d at 158-59 (holding there is no property right in Medicaid reimbursements pending a fraud investigation); *Guzman v. Shewry*, 552 F.3d 941, 953 (9th Cir. 2009) (holding that temporarily suspended provider did not have a property interest in continued Medicaid participation); *cf. Clarinda Home Health v. Shalala*, 100 F.3d 526, 531 (8th Cir. 1996) (noting "[t]he private interest that will be affected by a temporary withholding of Medicare payments is not as serious in nature as an exclusion from the Medicare program").

Courts have also reached similar conclusions with respect to other government benefits programs, such as Medicare. *See, e.g.*, *Key Med. Supply, Inc. v. Burwell*, 764 F.3d 955, 965 (8th Cir. 2014) (holding there was no protected property interest in preventing a competitive bidding regime for Medicare contract bids); *Clarinda*, 100 F.3d at 531

(holding that "it is not a violation of due process to temporarily withhold Medicare payments during an ongoing investigation for acts of fraud"). Appellants argue that temporary suspensions under Medicare are different, as they are generally limited to 180 days, *see* 42 C.F.R. § 405.372(d) (2018), while temporary suspensions under Medicaid do not have a time limitation. *See* Minn. Stat. § 256B.064, subd. 2(c). But, as DHS pointed out at oral argument, the 180-day limit under Medicare does not apply to payment suspensions based on credible allegations of fraud. 42 C.F.R. § 405.372(d)(3).

Appellants argue that these cases are distinguishable because they are either Medicare cases or cases in which the temporary suspension started after a criminal proceeding had begun. Those distinctions, however, do not remedy the fundamental flaw in appellants' claim—the fact that the Medicaid statute does not create an entitlement to Medicaid payments while a fraud investigation is pending.

Appellants also argue that, even if they are not entitled to future reimbursement from Medicaid, they should at least be entitled to reimbursement for services already rendered. Again, this argument fails because the statute confers no such entitlement. The statute authorizes the withholding of funds while allegations of fraud are investigated, so appellants do not have a protected property interest in reimbursements for services already rendered.

Appellants point to *Fosselman v. Comm'r of Human Servs.* as an example where this court concluded there was a protected property interest in Medicaid participation. 612 N.W.2d 456 (Minn. App. 2000). In *Fosselman*, DHS disqualified three providers from working in direct contact with individuals receiving services from DHS programs or certain

other organizations based on the providers' failure to report child maltreatment. *Id.* at 459. We determined that the providers had a property interest based on their licenses to practice medicine and a liberty interest in their reputation that was tarnished by the allegations that they had failed to carry out provisions of a law embodying an important policy. *Id.* at 461.

In *Fosselman*, the commissioner "all but concede[d] on appeal" there were protected interests at stake. *Id.* Even disregarding that concession, *Fosselman* is distinguishable from this case. In *Fosselman*, the parties were disqualified from employment in direct-contact positions. *Id.* We analogized their situation to the government's suspension of a license essential to one's livelihood, such as a driver's license or a license to practice medicine, and concluded that a property interest was at stake. *Id.* Here, in contrast, the temporary suspension of reimbursement for assisting Medicaid recipients does not prevent appellants from continuing to participate in their respective fields—they can still provide PCA or transportation services to non-Medicaid clients.

The core of appellants' claim, we recognize, is their assertion that the suspensions here are not temporary but have, in fact, become permanent due to the length of time that the investigation has lasted and that they have a property interest in the permanent loss of Medicaid payments. We do find it troubling that the temporary suspensions in this case have apparently lasted for more than two years without any investigative results. The statute certainly appears to contemplate that the government will be diligent in investigating alleged fraud, as the suspensions are described as "temporary" and only end upon the completion of the government's investigation. *See* Minn. Stat. § 256B.064, subd. 2(c) (stating that the affected party will be informed that the withholding is

"temporary" and will end when the commissioner "determines there is insufficient evidence of fraud by the vendor, or after legal proceedings relating to the alleged fraud are completed"). But the statute does not impose a time deadline, either on the investigation or on the temporary suspension. Given that statutory scheme, we conclude that the length of the investigation and the correlated temporary suspension does not give rise to a constitutionally protected interest.[3]

B. Appellants do not allege a protected liberty interest.

Appellants also assert that they were deprived of a protected liberty interest. They make two arguments: first, that they had a liberty interest in pursuing their chosen occupation, which DHS prevented by de facto closing their businesses; and, second, that they have a liberty interest in their reputation for honesty and integrity, which DHS harmed, impeding their ability to do business.

As for their closure-of-their-business argument, the reasoning above that rejects appellants' asserted property interest also defeats their asserted liberty interest. As we

[3] We recognize that federal and state law require the commissioner to report allegations of fraud to the Medicaid Fraud Control Unit (MFCU) of the Minnesota Attorney General and that the MFCU is not within the commissioner's control. *See* Minn. Stat. § 256B.12 (2018) (granting the authority to prosecute violations of Minnesota Medicaid statute to the Minnesota Attorney General); *see also* 42 C.F.R. § 455.23(d)(1) (2018); Minn. Stat. § 256B.064, subd. 2(c) (2018). But, contrary to the suggestion in the commissioner's brief, the duration of a temporary suspension is not entirely dependent on the MFCU's action; the Minnesota statute provides that a payment withhold will end after *the commissioner* determines that there is insufficient evidence of fraud *or* after legal proceedings are completed. Minn Stat. § 256B.064, subd. 2(c). We do not find the duration of the temporary suspensions in this case particularly mitigated by the fact that MFCU has not yet taken action.

discussed, DHS did not require that appellants' businesses be closed when it withheld Medicaid payments. As with the property-interest analysis, the government's decision to temporarily withhold payments under the Medicaid statute is not equivalent to a government decision to terminate a business, even if that business relies heavily on Medicaid reimbursements. *See Guzman*, 552 F.3d at 954-55 (rejecting liberty-interest claim by physician subject to temporary suspension in Medicaid program pending investigation of fraud). Nor are the payment withholds the equivalent of the permanent disqualification of a provider from performing the essential functions of their job. *Cf. Fosselman*, 612 N.W.2d at 462 (involving permanent disqualification of medical providers from holding direct-contact positions).

As for their reputation argument, a liberty interest is implicated when government action results in a loss of reputation combined with the loss of some other tangible interest. *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999). This "stigma-plus" test requires the injured party to suffer "more than mere stigma." *Id.* The party must also suffer the loss of some other recognizable interest. *Id.* A "recognizable interest" is a liberty or property interest that receives constitutional protection under due-process analysis. *See id.* (citing *Paul v. Davis*, 424 U.S. 693, 710, 96 S. Ct. 1155, 1165 (1976)).

Appellants contend that the government damaged their reputations by informing third parties about the allegations of fraud and that the stigma resulted in the discontinuation of contracts and the inevitable closure of their businesses. Specifically, in their complaint, appellants allege that DHS informed managed-care organizations (MCOs) that purchase services from appellants that appellants were subject to a Medicaid payment

withhold based on credible allegations of fraud and that, as a result, the MCOs suspended their business with appellants.

Minnesota law permits DHS to conduct its Medicaid program through contracts with MCOs. *See* Minn. Stat. § 256B.035 (2018). Under federal Medicaid regulations, MCOs that contract with a state to provide health care to Medicaid recipients are required to suspend Medicaid payments to providers with whom the MCOs, in turn, contract if the state determines there is a credible allegation of fraud against those providers. *See* 42 C.F.R. § 438.608(a)(8) (2018). The MCOs' suspension of payments to appellants thus resulted from the MCOs' legally required contractual obligation triggered by the credible allegations of fraud. To satisfy the stigma-plus requirement, appellants would have to have a recognizable interest in the payments; in other words, they would need to be entitled to continue receiving payments from the MCOs even though there was a credible allegation of fraud against them. Because, under the Medicaid regulations, appellants were not entitled to continued reimbursement from MCOs pending a fraud investigation, they were not deprived of a protected right. Thus, the suspended payments from MCOs cannot satisfy the stigma-plus additional-harm requirement of the deprivation of a liberty interest.

Because appellants did not allege the deprivation of a protected property or liberty interest, the district court did not err by dismissing appellants' due-process claim for failure to state a claim.

II. The complaint fails to state a claim that the commissioner exceeded her authority.

Appellants also argue that the commissioner engaged in ultra vires action by enforcing invalid unpromulgated rules. First, they argue that the commissioner improperly amended the state Medicaid statute by effectively adding sanctions against appellants that do not fall under the plain language of the statute. Second, they argue that the commissioner has abandoned a longstanding interpretation of the temporary-suspension provision of the statute without properly engaging in the rule-making process.[4]

An administrative agency's authority to adopt rules is governed by the Minnesota Administrative Procedure Act (MAPA). *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 233 (Minn. App. 2014), *review denied* (Minn. May 28, 2014). MAPA defines a rule as "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minn. Stat. § 14.02, subd. 4 (2018). MAPA requires agencies to promulgate rules "after giving public notice and providing interested persons the opportunity to be heard." *Minn. Transitions Charter Sch.*, 844 N.W.2d at 233. This requirement applies to both legislative and interpretive rules. *Id.* "Interpretive rules are

[4] DHS argues that we should not reach the issue of whether the commissioner acted outside her authority because appellants have not identified the statute that grants them a cause of action and appellants failed to exhaust potential administrative remedies. Because we conclude that DHS acted within its statutory authority, we decline to address these arguments.

those that make specific the law enforced or administered by the agency." *Id.* (quotation omitted).

But an interpretive rule that has not properly been promulgated may still be valid if (1) the agency's interpretation corresponds with the plain meaning of the statute or (2) if the statute is ambiguous and the agency's interpretation is a longstanding one. *In re PERA Salary Determinations Affecting Retired & Active Empls. of City of Duluth*, 820 N.W.2d 563, 570 (Minn. App. 2012). If an unpromulgated interpretive rule falls under one of these exceptions, "the agency is not deemed to have promulgated a new rule," and the agency's interpretation is not invalid, but it does not have the force and effect of law. *Id.* (quotation omitted). If the interpretive rule is not properly promulgated, and does not fall into one of the two exceptions, then the rule "cannot be used as the basis for agency action." *Id.*

A. Appellants' complaint fails to state a claim that the commissioner improperly added sanctions to the Medicaid statute.

Appellants allege that the commissioner exceeded her statutory authority by applying an invalid unpromulgated rule that adds sanctions to the Medicaid statute. Minn. Stat. § 256B.064 (2018) outlines the sanctions available against Medicaid providers. The statute includes a temporary suspension of payments pending investigation of credible allegations of fraud. Minn. Stat. § 256B.064, subd. 2(b). Appellants argue that the plain language of the statute does not permit actions that they allege the commissioner took here: imposing a suspension of indeterminate length, notifying MCOs regarding DHS suspension, and ordering appellants to transfer their clients within 30 days.

We assume for purposes of argument that the commissioner's actions amount to the adoption of a policy of general applicability and future effect—in other words, a rule under MAPA. *See* Minn. Stat. § 14.02, subd. 4. An unpromulgated interpretive rule that corresponds with the plain language of the statute is not invalid. *PERA Salary Determinations* 820 N.W.2d at 570. "If an interpretation is consistent with the plain meaning of the statute or rule, the agency's action is authorized by the statute itself . . . ." *Good Neighbor Care Ctrs., Inc. v. Minn. Dep't of Human Servs.*, 428 N.W.2d 397, 402-03 (Minn. App. 1988), *review denied* (Minn. Oct. 19, 1988).

As described above, section 256B.064 does not set a deadline on the temporary suspension; rather, its duration is determined by the length of the investigation and any resulting legal proceedings. Minn. Stat. § 256B.064, subd. 2(b). The commissioner's imposition of the temporary suspensions here corresponds with the plain language of the statute. Similarly, state law permits DHS to contract with MCOs, and Medicaid regulations require notification to participating MCOs to enable MCOs to implement a payment suspension. *See* Minn. Stat. § 256B.035; 42 C.F.R. § 438.608(a)(8). The commissioner's notification to MCOs to suspend payments corresponds with the plain language of these provisions. Thus, the commissioner's action was not based on an invalid unpromulgated rule. *See PERA Salary Determinations*, 820 N.W.2d at 570.

As for the alleged order to transfer clients, the notifications from DHS, which are attached to and incorporated into appellants' complaint, informed appellants that, if they are unable to continue providing services to Medicaid recipients, they needed to notify the recipients of the change and assist them in transferring to other providers. The notices did

not order the transfer of appellants' clients. Appellants have failed to allege that DHS made such a demand.

For these reasons, the complaint fails to state a claim that the commissioner added sanctions that are not authorized by the Medicaid statute.

B. The complaint fails to state a claim that the commissioner exceeded her authority by implementing a temporary suspension without a probable-cause determination.

Appellants argue that the commissioner exceeded her statutory authority by implementing temporary suspensions in the absence of a district court's probable-cause determination that fraud had occurred. Appellants contend that the agency was bound by what they call the "Kerber rule." They allege that, in 2012, the former DHS inspector general, Jerry Kerber, enacted a policy that would reserve immediate notice of payment withholds for cases in which a district court had made a finding of probable cause sufficient to either issue a search warrant or arrest the provider. Appellants argue that that policy was an interpretive rule of section 256B.064, subd. 2(b). They further allege that, when Kerber retired, DHS began imposing withholdings without a district court finding of probable cause. They claim this practice amounts to an unpromulgated and invalid rule repealing the Kerber rule.

We again assume for purposes of argument that the commissioner's action amounts to an interpretive rule. Again, an unpromulgated rule is not invalid if it corresponds with the plain meaning of the statute. *See PERA Salary Determinations*, 820 N.W.2d at 570. The statute here directs the commissioner, not a court, to make a determination of whether there is a credible allegation of fraud. *See* Minn. Stat. § 256B.064, subd 2(b). It provides

that the commissioner and DHS make the determination by verifying that the allegations have indicia of reliability and by reviewing the "allegations, facts and evidence carefully." *Id.* DHS's interpretation that the commissioner, not a court, determines the existence of a credible allegation of fraud corresponds with the plain meaning of the statute. The commissioner's action in determining the existence of a credible allegation of fraud is therefore authorized by the statute itself. *See Good Neighbor Care Ctrs.*, 428 N.W.2d at 402-03.

But appellants argue that the commissioner's interpretive rule is invalid because it repealed the Kerber rule. They assert that the Kerber rule was a "longstanding, historic interpretation of an ambiguous law" and that "[a]n agency may not repeal such a longstanding rule without engaging in the rule-making process." They cite two cases in support of that proposition: *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 42-43 (Minn. 1989), and *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 667 (Minn. 1984).

Cable Commc'ns explains that longstanding interpretive rules that interpret an ambiguous authority may be valid even without proper promulgation. 356 N.W.2d at 667. But the Kerber rule did not interpret an ambiguous authority. As we just discussed, Minn. Stat. § 256B.064 unambiguously gives the commissioner the authority to determine that allegations of fraud are credible without a judicial determination. The *Cable Commc'ns* rule of longstanding interpretive rules does not apply.

Nor does *St. Otto's Home* support appellants' position. It is true that *St. Otto's Home* held that an agency's new interpretation of a phrase was invalid due to the agency's failure

to properly promulgate the rule, despite the new interpretation's consistency with the plain meaning of the relevant authority's language. 437 N.W.2d at 43. But this holding was based on the particular circumstances in that case. There, the regulated parties had received significant benefits for four years under—and had made decisions based on—one interpretation of the rule and would have had the "rug quickly pulled from under them by a new interpretation of that rule." *Id.* at 45. No similar reliance interest is present here: appellants did not allege that they engaged in conduct based on the belief that DHS would only suspend their Medicaid reimbursement upon a judicial determination of probable cause. Thus, it is appropriate for the plain meaning of the statute to apply.

In sum, the district court did not err by determining that DHS's implementation of a temporary suspension based on the commissioner's determination of an allegation of fraud was within the plain meaning of the statute and not an ultra vires action.

Because appellants' complaint failed to set forth a legally sufficient claim for relief, we affirm the thorough and well-reasoned decision of the district court dismissing appellant's complaint.

Affirmed.