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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1653**

02/25/2021 Authored by Moller
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy
03/04/2021 By motion, recalled and re-referred to the Committee on Judiciary Finance and Civil Law
03/09/2021 Adoption of Report: Amended and re-referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to human services; permitting the commissioner to collect data about

1.3 children's mental health screenings; clarifying requirements for public guardianship

1.4 for a person with a developmental disability; modifying requirements for a petition

1.5 for an appointment of public guardianship for a person with a developmental

1.6 disability; changing terminology and making related changes; making technical

1.7 changes; amending Minnesota Statutes 2020, sections 245.4874, subdivision 1;

1.8 252A.01, subdivision 1; 252A.02, subdivisions 2, 9, 11, 12, by adding subdivisions;

1.9 252A.03, subdivisions 3, 4; 252A.04, subdivisions 1, 2, 4; 252A.05; 252A.06,

1.10 subdivisions 1, 2; 252A.07, subdivisions 1, 2, 3; 252A.081, subdivisions 2, 3, 5;

1.11 252A.09, subdivisions 1, 2; 252A.101, subdivisions 2, 3, 5, 6, 7, 8; 252A.111,

1.12 subdivisions 2, 4, 6; 252A.12; 252A.16; 252A.17; 252A.19, subdivisions 2, 4, 5,

1.13 7, 8; 252A.20; 252A.21, subdivisions 2, 4; repealing Minnesota Statutes 2020,

1.14 sections 252A.02, subdivisions 8, 10; 252A.21, subdivision 3.

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

1.16 Section 1. Minnesota Statutes 2020, section 245.4874, subdivision 1, is amended to read:

1.17 Subdivision 1. **Duties of county board.** (a) The county board must:

1.18 (1) develop a system of affordable and locally available children's mental health services

1.19 according to sections 245.487 to 245.4889;

1.20 (2) consider the assessment of unmet needs in the county as reported by the local

1.21 children's mental health advisory council under section 245.4875, subdivision 5, paragraph

1.22 (b), clause (3). The county shall provide, upon request of the local children's mental health

1.23 advisory council, readily available data to assist in the determination of unmet needs;

1.24 (3) assure that parents and providers in the county receive information about how to

1.25 gain access to services provided according to sections 245.487 to 245.4889;

2.1 (4) coordinate the delivery of children's mental health services with services provided
2.2 by social services, education, corrections, health, and vocational agencies to improve the
2.3 availability of mental health services to children and the cost-effectiveness of their delivery;

2.4 (5) assure that mental health services delivered according to sections 245.487 to 245.4889
2.5 are delivered expeditiously and are appropriate to the child's diagnostic assessment and
2.6 individual treatment plan;

2.7 (6) provide for case management services to each child with severe emotional disturbance
2.8 according to sections 245.486; 245.4871, subdivisions 3 and 4; and 245.4881, subdivisions
2.9 1, 3, and 5;

2.10 (7) provide for screening of each child under section 245.4885 upon admission to a
2.11 residential treatment facility, acute care hospital inpatient treatment, or informal admission
2.12 to a regional treatment center;

2.13 (8) prudently administer grants and purchase-of-service contracts that the county board
2.14 determines are necessary to fulfill its responsibilities under sections 245.487 to 245.4889;

2.15 (9) assure that mental health professionals, mental health practitioners, and case managers
2.16 employed by or under contract to the county to provide mental health services are qualified
2.17 under section 245.4871;

2.18 (10) assure that children's mental health services are coordinated with adult mental health
2.19 services specified in sections 245.461 to 245.486 so that a continuum of mental health
2.20 services is available to serve persons with mental illness, regardless of the person's age;

2.21 (11) assure that culturally competent mental health consultants are used as necessary to
2.22 assist the county board in assessing and providing appropriate treatment for children of
2.23 cultural or racial minority heritage; and

2.24 (12) consistent with section 245.486, arrange for or provide a children's mental health
2.25 screening for:

2.26 (i) a child receiving child protective services;

2.27 (ii) a child in out-of-home placement;

2.28 (iii) a child for whom parental rights have been terminated;

2.29 (iv) a child found to be delinquent; or

2.30 (v) a child found to have committed a juvenile petty offense for the third or subsequent
2.31 time.

3.1 A children's mental health screening is not required when a screening or diagnostic
3.2 assessment has been performed within the previous 180 days, or the child is currently under
3.3 the care of a mental health professional.

3.4 (b) When a child is receiving protective services or is in out-of-home placement, the
3.5 court or county agency must notify a parent or guardian whose parental rights have not been
3.6 terminated of the potential mental health screening and the option to prevent the screening
3.7 by notifying the court or county agency in writing.

3.8 (c) When a child is found to be delinquent or a child is found to have committed a
3.9 juvenile petty offense for the third or subsequent time, the court or county agency must
3.10 obtain written informed consent from the parent or legal guardian before a screening is
3.11 conducted unless the court, notwithstanding the parent's failure to consent, determines that
3.12 the screening is in the child's best interest.

3.13 (d) The screening shall be conducted with a screening instrument approved by the
3.14 commissioner of human services according to criteria that are updated and issued annually
3.15 to ensure that approved screening instruments are valid and useful for child welfare and
3.16 juvenile justice populations. Screenings shall be conducted by a mental health practitioner
3.17 as defined in section 245.4871, subdivision 26, or a probation officer or local social services
3.18 agency staff person who is trained in the use of the screening instrument. Training in the
3.19 use of the instrument shall include:

3.20 (1) training in the administration of the instrument;

3.21 (2) the interpretation of its validity given the child's current circumstances;

3.22 (3) the state and federal data practices laws and confidentiality standards;

3.23 (4) the parental consent requirement; and

3.24 (5) providing respect for families and cultural values.

3.25 If the screen indicates a need for assessment, the child's family, or if the family lacks
3.26 mental health insurance, the local social services agency, in consultation with the child's
3.27 family, shall have conducted a diagnostic assessment, including a functional assessment.
3.28 The administration of the screening shall safeguard the privacy of children receiving the
3.29 screening and their families and shall comply with the Minnesota Government Data Practices
3.30 Act, chapter 13, and the federal Health Insurance Portability and Accountability Act of
3.31 1996, Public Law 104-191. Screening results ~~shall be considered private data~~ are classified
3.32 as private data on individuals, as defined by section 13.02, subdivision 12 and the
3.33 commissioner shall not collect individual screening results. The county board or tribal nation

4.1 may provide the commissioner with access to the screening results for the purposes of
4.2 program evaluation and improvement.

4.3 (e) When the county board refers clients to providers of children's therapeutic services
4.4 and supports under section 256B.0943, the county board must clearly identify the desired
4.5 services components not covered under section 256B.0943 and identify the reimbursement
4.6 source for those requested services, the method of payment, and the payment rate to the
4.7 provider.

4.8 Sec. 2. Minnesota Statutes 2020, section 252A.01, subdivision 1, is amended to read:

4.9 Subdivision 1. **Policy.** (a) It is the policy of the state of Minnesota to provide a
4.10 coordinated approach to the supervision, protection, and habilitation of its adult citizens
4.11 with a developmental disability. In furtherance of this policy, sections 252A.01 to 252A.21
4.12 are enacted to authorize the commissioner of human services to:

4.13 (1) supervise those adult citizens with a developmental disability who are unable to fully
4.14 provide for their own needs and for whom no qualified person is willing and able to seek
4.15 guardianship ~~or conservatorship~~ under sections 524.5-101 to 524.5-502; and

4.16 (2) protect adults with a developmental disability from violation of their human and civil
4.17 rights by ~~assuring~~ ensuring that they receive the full range of needed social, financial,
4.18 residential, and habilitative services to which they are lawfully entitled.

4.19 (b) Public guardianship ~~or conservatorship~~ is the most restrictive form of guardianship
4.20 ~~or conservatorship~~ and should be imposed only when ~~no other acceptable alternative is~~
4.21 ~~available~~ less restrictive alternatives have been attempted and determined to be insufficient
4.22 to meet the person's needs. Less restrictive alternatives include but are not limited to
4.23 supported decision making, community or residential services, or appointment of a health
4.24 care agent.

4.25 Sec. 3. Minnesota Statutes 2020, section 252A.02, subdivision 2, is amended to read:

4.26 Subd. 2. **Person with a developmental disability.** "Person with a developmental
4.27 disability" refers to any person age 18 or older who:

4.28 (1) ~~has been diagnosed as having significantly subaverage intellectual functioning existing~~
4.29 ~~concurrently with demonstrated deficits in adaptive behavior such as to require supervision~~
4.30 ~~and protection for the person's welfare or the public welfare.~~ a developmental disability;

4.31 (2) is impaired to the extent of lacking sufficient understanding or capacity to make
4.32 personal decisions; and

5.1 (3) is unable to meet personal needs for medical care, nutrition, clothing, shelter, or
5.2 safety, even with appropriate technological and supported decision-making assistance.

5.3 Sec. 4. Minnesota Statutes 2020, section 252A.02, subdivision 9, is amended to read:

5.4 Subd. 9. **Ward Person subject to public guardianship.** ~~"Ward"~~ "Person subject to
5.5 public guardianship" means a person with a developmental disability for whom the court
5.6 has appointed a public guardian.

5.7 Sec. 5. Minnesota Statutes 2020, section 252A.02, subdivision 11, is amended to read:

5.8 Subd. 11. **Interested person.** "Interested person" means an interested responsible adult,
5.9 ~~including, but not limited to, a public official, guardian, spouse, parent, adult sibling, legal~~
5.10 ~~counsel, adult child, or next of kin of a person alleged to have a developmental disability.~~
5.11 including but not limited to:

5.12 (1) the person subject to guardianship, protected person, or respondent;

5.13 (2) a nominated guardian or conservator;

5.14 (3) a legal representative;

5.15 (4) the spouse; parent, including stepparent; adult children, including adult stepchildren
5.16 of a living spouse; and siblings. If no such persons are living or can be located, the next of
5.17 kin of the person subject to public guardianship or the respondent is an interested person;

5.18 (5) a representative of a state ombudsman's office or a federal protection and advocacy
5.19 program that has notified the commissioner or lead agency that it has a matter regarding
5.20 the protected person subject to guardianship, person subject to conservatorship, or respondent;
5.21 and

5.22 (6) a health care agent or proxy appointed pursuant to a health care directive as defined
5.23 in section 145C.01, subdivision 5a; a living will under chapter 145B; or other similar
5.24 documentation executed in another state and enforceable under the laws of this state.

5.25 Sec. 6. Minnesota Statutes 2020, section 252A.02, subdivision 12, is amended to read:

5.26 Subd. 12. **Comprehensive evaluation.** (a) ~~"Comprehensive evaluation" shall consist~~
5.27 consists of:

5.28 (1) a medical report on the health status and physical condition of the proposed ~~ward,~~
5.29 person subject to public guardianship prepared under the direction of a licensed physician
5.30 or advanced practice registered nurse;

6.1 (2) a report on the ~~proposed ward's~~ intellectual capacity and functional abilities, ~~specifying~~
6.2 of the proposed person subject to public guardianship that specifies the tests and other data
6.3 used in reaching its conclusions; and is prepared by a psychologist who is qualified in the
6.4 diagnosis of developmental disability; and

6.5 (3) a report from the case manager that includes:

6.6 (i) the most current assessment of individual service needs as described in rules of the
6.7 commissioner;

6.8 (ii) the most current ~~individual service plan~~ coordinated service and support plan under
6.9 section 256B.092, subdivision 1b; and

6.10 (iii) a description of contacts with and responses of near relatives of the proposed ~~ward~~
6.11 person subject to public guardianship notifying ~~them~~ the near relatives that a nomination
6.12 for public guardianship has been made and advising ~~them~~ the near relatives that they may
6.13 seek private guardianship.

6.14 (b) Each report under paragraph (a), clause (3), shall contain recommendations as to the
6.15 amount of assistance and supervision required by the proposed ~~ward~~ person subject to public
6.16 guardianship to function as independently as possible in society. To be considered part of
6.17 the comprehensive evaluation, the reports must be completed no more than one year before
6.18 filing the petition under section 252A.05.

6.19 Sec. 7. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision to
6.20 read:

6.21 Subd. 16. **Protected person.** "Protected person" means a person for whom a guardian
6.22 or conservator has been appointed or other protective order has been sought. A protected
6.23 person may be a minor.

6.24 Sec. 8. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision to
6.25 read:

6.26 Subd. 17. **Respondent.** "Respondent" means an individual for whom the appointment
6.27 of a guardian or conservator or other protective order is sought.

6.28 Sec. 9. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision to
6.29 read:

6.30 Subd. 18. **Supported decision making.** "Supported decision making" means assistance
6.31 to understand the nature and consequences of personal and financial decisions from one or

7.1 more persons of the individual's choosing to enable the individual to make the personal and
 7.2 financial decisions and, when consistent with the individual's wishes, to communicate a
 7.3 decision once made.

7.4 Sec. 10. Minnesota Statutes 2020, section 252A.03, subdivision 3, is amended to read:

7.5 Subd. 3. **Standard for acceptance.** The commissioner shall accept the nomination if:
 7.6 ~~the comprehensive evaluation concludes that:~~

7.7 ~~(1) the person alleged to have developmental disability is, in fact, developmentally~~
 7.8 ~~disabled;~~ (1) the person's assessment confirms that they are a person with a developmental
 7.9 disability under section 252A.02, subdivision 2;

7.10 (2) the person is in need of the supervision and protection of a ~~conservator or~~ guardian;
 7.11 ~~and~~

7.12 (3) no qualified person is willing to assume guardianship ~~or conservatorship~~ under
 7.13 sections 524.5-101 to 524.5-502.; and

7.14 (4) the person subject to public guardianship was included in the process prior to the
 7.15 submission of the nomination.

7.16 Sec. 11. Minnesota Statutes 2020, section 252A.03, subdivision 4, is amended to read:

7.17 Subd. 4. **Alternatives.** (a) Public guardianship ~~or conservatorship~~ may be imposed only
 7.18 when:

7.19 (1) the person subject to guardianship is impaired to the extent of lacking sufficient
 7.20 understanding or capacity to make personal decisions;

7.21 (2) the person subject to guardianship is unable to meet personal needs for medical care,
 7.22 nutrition, clothing, shelter, or safety, even with appropriate technological and supported
 7.23 decision-making assistance; and

7.24 (3) no acceptable, less restrictive form of guardianship or conservatorship is available.

7.25 (b) The commissioner shall seek parents, near relatives, and other interested persons to
 7.26 assume guardianship for persons with developmental disabilities who are currently under
 7.27 public guardianship. If a person seeks to become a guardian ~~or conservator~~, costs to the
 7.28 person may be reimbursed under section 524.5-502. The commissioner must provide technical
 7.29 assistance to parents, near relatives, and interested persons seeking to become guardians ~~or~~
 7.30 ~~conservators.~~

8.1 Sec. 12. Minnesota Statutes 2020, section 252A.04, subdivision 1, is amended to read:

8.2 Subdivision 1. **Local agency.** Upon receipt of a written nomination, the commissioner
8.3 shall promptly order the local agency of the county in which the proposed ward person
8.4 subject to public guardianship resides to coordinate or arrange for a comprehensive evaluation
8.5 of the proposed ward person subject to public guardianship.

8.6 Sec. 13. Minnesota Statutes 2020, section 252A.04, subdivision 2, is amended to read:

8.7 Subd. 2. **Medication; treatment.** A proposed ward person subject to public guardianship
8.8 who, at the time the comprehensive evaluation is to be performed, has been under medical
8.9 care shall not be so under the influence or so suffer the effects of drugs, medication, or other
8.10 treatment as to be hampered in the testing or evaluation process. When in the opinion of
8.11 the licensed physician or advanced practice registered nurse attending the proposed ward
8.12 person subject to public guardianship, the discontinuance of medication or other treatment
8.13 is not in the ~~proposed ward's~~ best interest of the proposed person subject to public
8.14 guardianship, the physician or advanced practice registered nurse shall record a list of all
8.15 drugs, medication, or other treatment ~~which~~ that the proposed ward person subject to public
8.16 guardianship received 48 hours immediately prior to any examination, test, or interview
8.17 conducted in preparation for the comprehensive evaluation.

8.18 Sec. 14. Minnesota Statutes 2020, section 252A.04, subdivision 4, is amended to read:

8.19 Subd. 4. **File.** The comprehensive evaluation shall be kept on file at the Department of
8.20 Human Services and shall be open to the inspection of the proposed ward person subject to
8.21 public guardianship and ~~such~~ other persons ~~as may be given permission~~ permitted by the
8.22 commissioner.

8.23 Sec. 15. Minnesota Statutes 2020, section 252A.05, is amended to read:

8.24 **252A.05 COMMISSIONER'S PETITION FOR APPOINTMENT AS PUBLIC**
8.25 **GUARDIAN ~~OR PUBLIC CONSERVATOR.~~**

8.26 In every case in which the commissioner agrees to accept a nomination, the local agency,
8.27 within 20 working days of receipt of the commissioner's acceptance, shall petition on behalf
8.28 of the commissioner in the county or court of the county of residence of the person with a
8.29 developmental disability for appointment to act as ~~public conservator or~~ public guardian of
8.30 the person with a developmental disability.

9.1 Sec. 16. Minnesota Statutes 2020, section 252A.06, subdivision 1, is amended to read:

9.2 Subdivision 1. **Who may file.** ~~The commissioner, the local agency, a person with a~~
 9.3 ~~developmental disability or any parent, spouse or relative of a person with a developmental~~
 9.4 ~~disability may file~~ A verified petition alleging that the appointment of a public conservator
 9.5 ~~or public guardian is required~~ may be filed by: the commissioner; the local agency; a person
 9.6 with a developmental disability; or a parent, stepparent, spouse, or relative of a person with
 9.7 a developmental disability.

9.8 Sec. 17. Minnesota Statutes 2020, section 252A.06, subdivision 2, is amended to read:

9.9 Subd. 2. **Contents.** The petition shall set forth:

9.10 (1) the name and address of the petitioner; and, in the case of a petition brought by a
 9.11 person other than the commissioner, whether the petitioner is a parent, spouse, or relative
 9.12 ~~of the proposed ward~~ of the proposed person subject to guardianship;

9.13 (2) whether the commissioner has accepted a nomination to act as ~~public conservator~~
 9.14 ~~or public guardian;~~

9.15 (3) the name, address, and date of birth of the proposed ~~ward~~ person subject to public
 9.16 guardianship;

9.17 (4) the names and addresses of the nearest relatives and spouse, if any, of the proposed
 9.18 ~~ward~~ person subject to public guardianship;

9.19 (5) the probable value and general character of the ~~proposed ward's~~ real and personal
 9.20 property of the proposed person subject to public guardianship and the probable amount of
 9.21 ~~the proposed ward's debts~~ of the proposed person subject to public guardianship; and

9.22 (6) the facts supporting the establishment of public ~~conservatorship or~~ guardianship,
 9.23 including that no family member or other qualified individual is willing to assume
 9.24 ~~guardianship or conservatorship~~ responsibilities under sections 524.5-101 to 524.5-502;
 9.25 and.

9.26 ~~(7) if conservatorship is requested, the powers the petitioner believes are necessary to~~
 9.27 ~~protect and supervise the proposed conservatee.~~

9.28 Sec. 18. Minnesota Statutes 2020, section 252A.07, subdivision 1, is amended to read:

9.29 Subdivision 1. **With petition.** When a petition is brought by the commissioner or local
 9.30 agency, a copy of the comprehensive evaluation shall be filed with the petition. If a petition
 9.31 is brought by a person other than the commissioner or local agency and a comprehensive

10.1 evaluation has been prepared within a year of the filing of the petition, the local agency
10.2 shall ~~forward~~ send a copy of the comprehensive evaluation to the court upon notice of the
10.3 filing of the petition. If a comprehensive evaluation has not been prepared within a year of
10.4 the filing of the petition, the local agency, upon notice of the filing of the petition, shall
10.5 arrange for a comprehensive evaluation to be prepared and ~~forwarded~~ provided to the court
10.6 within 90 days.

10.7 Sec. 19. Minnesota Statutes 2020, section 252A.07, subdivision 2, is amended to read:

10.8 Subd. 2. **Copies.** A copy of the comprehensive evaluation shall be made available by
10.9 the court to the proposed ~~ward~~ person subject to public guardianship, the ~~proposed ward's~~
10.10 counsel of the proposed person subject to public guardianship, the county attorney, the
10.11 attorney general, and the petitioner.

10.12 Sec. 20. Minnesota Statutes 2020, section 252A.07, subdivision 3, is amended to read:

10.13 Subd. 3. **Evaluation required; exception.** (a) No action for the appointment of a public
10.14 guardian may proceed to hearing unless a comprehensive evaluation has been first filed
10.15 with the court; ~~provided, however, that an action may proceed and a guardian appointed.~~

10.16 (b) Paragraph (a) does not apply if the director of the local agency responsible for
10.17 conducting the comprehensive evaluation has filed an affidavit that the proposed ~~ward~~
10.18 person subject to public guardianship refused to participate in the comprehensive evaluation
10.19 and the court finds on the basis of clear and convincing evidence that the proposed ~~ward~~
10.20 person subject to public guardianship is developmentally disabled and in need of the
10.21 supervision and protection of a guardian.

10.22 Sec. 21. Minnesota Statutes 2020, section 252A.081, subdivision 2, is amended to read:

10.23 Subd. 2. **Service of notice.** Service of notice on the ~~ward~~ person subject to public
10.24 guardianship or proposed ~~ward~~ person subject to public guardianship must be made by a
10.25 nonuniformed person or nonuniformed visitor. To the extent possible, the ~~process server or~~
10.26 ~~visitor~~ person or visitor serving the notice shall explain the document's meaning to the
10.27 proposed ~~ward~~ person subject to public guardianship. In addition to the persons required to
10.28 be served under sections 524.5-113, 524.5-205, and 524.5-304, the mailed notice of the
10.29 hearing must be served on the commissioner, the local agency, and the county attorney.

11.1 Sec. 22. Minnesota Statutes 2020, section 252A.081, subdivision 3, is amended to read:

11.2 Subd. 3. **Attorney.** In place of the notice of attorney provisions in sections 524.5-205
11.3 and 524.5-304, the notice must state that the court will appoint an attorney for the proposed
11.4 ~~ward~~ person subject to public guardianship unless an attorney is provided by other persons.

11.5 Sec. 23. Minnesota Statutes 2020, section 252A.081, subdivision 5, is amended to read:

11.6 Subd. 5. **Defective notice of service.** A defect in the service of notice or process, other
11.7 than personal service upon the proposed ~~ward or conservatee~~ person subject to public
11.8 guardianship or service upon the commissioner and local agency within the time allowed
11.9 and the form prescribed in this section and sections 524.5-113, 524.5-205, and 524.5-304,
11.10 does not invalidate any public guardianship ~~or conservatorship~~ proceedings.

11.11 Sec. 24. Minnesota Statutes 2020, section 252A.09, subdivision 1, is amended to read:

11.12 Subdivision 1. **Attorney appointment.** Upon the filing of the petition, the court shall
11.13 appoint an attorney for the proposed ~~ward~~ person subject to public guardianship, unless
11.14 such counsel is provided by others.

11.15 Sec. 25. Minnesota Statutes 2020, section 252A.09, subdivision 2, is amended to read:

11.16 Subd. 2. **Representation.** Counsel shall visit with and, to the extent possible, consult
11.17 with the proposed ~~ward~~ person subject to public guardianship prior to the hearing and shall
11.18 be given adequate time to prepare ~~therefor~~ for the hearing. Counsel shall be given the full
11.19 right of subpoena and shall be supplied with a copy of all documents filed with or issued
11.20 by the court.

11.21 Sec. 26. Minnesota Statutes 2020, section 252A.101, subdivision 2, is amended to read:

11.22 Subd. 2. **Waiver of presence.** The proposed ~~ward~~ person subject to public guardianship
11.23 may waive the right to be present at the hearing only if the proposed ~~ward~~ person subject
11.24 to public guardianship has met with counsel and specifically waived the right to appear.

11.25 Sec. 27. Minnesota Statutes 2020, section 252A.101, subdivision 3, is amended to read:

11.26 Subd. 3. **Medical care.** If, at the time of the hearing, the proposed ~~ward~~ person subject
11.27 to public guardianship has been under medical care, the ~~ward~~ person subject to public
11.28 guardianship has the same rights regarding limitation on the use of drugs, medication, or
11.29 other treatment before the hearing that are available under section 252A.04, subdivision 2.

12.1 Sec. 28. Minnesota Statutes 2020, section 252A.101, subdivision 5, is amended to read:

12.2 Subd. 5. **Findings.** (a) In all cases the court shall make specific written findings of fact,
12.3 conclusions of law, and direct entry of an appropriate judgment or order. The court shall
12.4 order the appointment of the commissioner as guardian ~~or conservator~~ if it finds that:

12.5 (1) the proposed ~~ward or conservatee~~ person subject to public guardianship is a person
12.6 with a developmental disability as defined in section 252A.02, subdivision 2;

12.7 (2) the proposed ~~ward or conservatee~~ person subject to public guardianship is incapable
12.8 of exercising specific legal rights, which must be enumerated in ~~its~~ the court's findings;

12.9 (3) the proposed ~~ward or conservatee~~ person subject to public guardianship is in need
12.10 of the supervision and protection of a public guardian ~~or conservator~~; and

12.11 (4) no appropriate alternatives to public guardianship ~~or public conservatorship~~ exist
12.12 that are less restrictive of the person's civil rights and liberties, such as appointing a private
12.13 guardian, or conservator supported decision maker, or health care agent; or arranging
12.14 residential or community services under sections 524.5-101 to 524.5-502.

12.15 (b) The court shall grant the specific powers that are necessary for the commissioner to
12.16 act as public guardian ~~or conservator~~ on behalf of the ~~ward or conservatee~~ person subject
12.17 to public guardianship.

12.18 Sec. 29. Minnesota Statutes 2020, section 252A.101, subdivision 6, is amended to read:

12.19 Subd. 6. **Notice of order; appeal.** A copy of the order shall be served by mail upon the
12.20 ~~ward or conservatee~~ person subject to public guardianship and the ~~ward's~~ counsel of the
12.21 person subject to public guardianship. The order must be accompanied by a notice that
12.22 advises the ~~ward or conservatee~~ person subject to public guardianship of the right to appeal
12.23 the guardianship ~~or conservatorship~~ appointment within 30 days.

12.24 Sec. 30. Minnesota Statutes 2020, section 252A.101, subdivision 7, is amended to read:

12.25 Subd. 7. **Letters of guardianship.** (a) Letters of guardianship ~~or conservatorship~~ must
12.26 be issued by the court and contain:

12.27 (1) the name, address, and telephone number of the ~~ward or conservatee~~ person subject
12.28 to public guardianship; and

12.29 (2) the powers to be exercised on behalf of the ~~ward or conservatee~~ person subject to
12.30 public guardianship.

13.1 (b) The letters under paragraph (a) must be served by mail upon the ~~ward or conservatee~~
13.2 person subject to public guardianship, the ward's counsel of the person subject to public
13.3 guardianship, the commissioner, and the local agency.

13.4 Sec. 31. Minnesota Statutes 2020, section 252A.101, subdivision 8, is amended to read:

13.5 Subd. 8. **Dismissal.** If upon the completion of the hearing and consideration of the record,
13.6 the court finds that the proposed ~~ward~~ person subject to public guardianship is not
13.7 developmentally disabled or is developmentally disabled but not in need of the supervision
13.8 and protection of a ~~conservator or public guardian, if the court~~ shall dismiss the application
13.9 and shall notify the proposed ~~ward~~ person subject to public guardianship, the ward's counsel
13.10 of the person subject to public guardianship, and the petitioner of the court's findings.

13.11 Sec. 32. Minnesota Statutes 2020, section 252A.111, subdivision 2, is amended to read:

13.12 Subd. 2. **Additional powers.** In addition to the powers contained in sections 524.5-207
13.13 and 524.5-313, the powers of a public guardian that the court may grant include:

13.14 (1) the power to permit or withhold permission for the ~~ward~~ person subject to public
13.15 guardianship to marry;

13.16 (2) the power to begin legal action or defend against legal action in the name of the ~~ward~~
13.17 person subject to public guardianship; and

13.18 (3) the power to consent to the adoption of the ~~ward~~ person subject to public guardianship
13.19 as provided in section 259.24.

13.20 Sec. 33. Minnesota Statutes 2020, section 252A.111, subdivision 4, is amended to read:

13.21 Subd. 4. **Appointment of conservator.** If the ~~ward~~ person subject to public guardianship
13.22 has a personal estate beyond that which is necessary for the ~~ward's~~ personal and immediate
13.23 needs of the person subject to public guardianship, the commissioner shall determine whether
13.24 a conservator should be appointed. The commissioner shall consult with the parents, spouse,
13.25 or nearest relative of the ~~ward~~ person subject to public guardianship. The commissioner
13.26 may petition the court for the appointment of a private conservator of the ~~ward~~ person
13.27 subject to public guardianship. The commissioner cannot act as conservator for public ~~wards~~
13.28 persons subject to public guardianship or public protected persons.

14.1 Sec. 34. Minnesota Statutes 2020, section 252A.111, subdivision 6, is amended to read:

14.2 Subd. 6. **Special duties.** In exercising powers and duties under this chapter, the
14.3 commissioner shall:

14.4 (1) maintain close contact with the ~~ward~~ person subject to public guardianship, visiting
14.5 at least twice a year;

14.6 (2) protect and exercise the legal rights of the ~~ward~~ person subject to public guardianship;

14.7 (3) take actions and make decisions on behalf of the ~~ward~~ person subject to public
14.8 guardianship that encourage and allow the maximum level of independent functioning in a
14.9 manner least restrictive of the ~~ward's~~ personal freedom of the person subject to public
14.10 guardianship consistent with the need for supervision and protection; and

14.11 (4) permit and encourage maximum self-reliance on the part of the ~~ward~~ person subject
14.12 to public guardianship and permit and encourage input by the nearest relative of the ~~ward~~
14.13 person subject to public guardianship in planning and decision making on behalf of the
14.14 ~~ward~~ person subject to public guardianship.

14.15 Sec. 35. Minnesota Statutes 2020, section 252A.12, is amended to read:

14.16 **252A.12 APPOINTMENT OF ~~CONSERVATOR~~ PUBLIC GUARDIAN NOT A**
14.17 **FINDING OF INCOMPETENCY.**

14.18 An appointment of the commissioner as ~~conservator~~ public guardian shall not constitute
14.19 a judicial finding that the person with a developmental disability is legally incompetent
14.20 except for the restrictions ~~which~~ that the conservatorship public guardianship places on the
14.21 ~~conservatee~~ person subject to public guardianship. The appointment of a ~~conservator~~ public
14.22 guardian shall not deprive the ~~conservatee~~ person subject to public guardianship of the right
14.23 to vote.

14.24 Sec. 36. Minnesota Statutes 2020, section 252A.16, is amended to read:

14.25 **252A.16 ANNUAL REVIEW.**

14.26 Subdivision 1. **Review required.** The commissioner shall require an annual review of
14.27 the physical, mental, and social adjustment and progress of every ~~ward and conservatee~~
14.28 person subject to public guardianship. A copy of this review shall be kept on file at the
14.29 Department of Human Services and may be inspected by the ~~ward or conservatee~~ person
14.30 subject to public guardianship, the ~~ward's or conservatee's~~ parents, spouse, or relatives of
14.31 the person subject to public guardianship, and other persons who receive the permission of

15.1 the commissioner. The review shall contain information required under Minnesota Rules,
15.2 part 9525.3065, subpart 1.

15.3 Subd. 2. **Assessment of need for continued guardianship.** The commissioner shall
15.4 annually review the legal status of each ~~ward~~ person subject to public guardianship in light
15.5 of the progress indicated in the annual review. If the commissioner determines the ~~ward~~
15.6 person subject to public guardianship is no longer in need of public guardianship ~~or~~
15.7 ~~conservatorship~~ or is capable of functioning under a less restrictive ~~conservatorship~~
15.8 guardianship, the commissioner or local agency shall petition the court pursuant to section
15.9 252A.19 to restore the ~~ward~~ person subject to public guardianship to capacity or for a
15.10 modification of the court's previous order.

15.11 Sec. 37. Minnesota Statutes 2020, section 252A.17, is amended to read:

15.12 **252A.17 EFFECT OF SUCCESSION IN OFFICE.**

15.13 The appointment by the court of the commissioner ~~of human services~~ as public
15.14 ~~conservator~~ or guardian shall be by the title of the commissioner's office. The authority of
15.15 the commissioner as public ~~conservator~~ or guardian shall cease upon the termination of the
15.16 commissioner's term of office and shall vest in a successor or successors in office without
15.17 further court proceedings.

15.18 Sec. 38. Minnesota Statutes 2020, section 252A.19, subdivision 2, is amended to read:

15.19 Subd. 2. **Petition.** The commissioner, ~~ward~~ person subject to public guardianship, or
15.20 any interested person may petition the appointing court or the court to which venue has
15.21 been transferred ~~for an order to~~ ;

15.22 (1) for an order to remove the guardianship ~~or to~~ ;

15.23 (2) for an order to limit or expand the powers of the guardianship ~~or to~~ ;

15.24 (3) for an order to appoint a guardian ~~or conservator~~ under sections 524.5-101 to
15.25 524.5-502 ~~or to~~ ;

15.26 (4) for an order to restore the ~~ward~~ person subject to public guardianship or protected
15.27 person to full legal capacity ~~or to~~ ;

15.28 (5) to review de novo any decision made by the public guardian ~~or public conservator~~
15.29 for or on behalf of a ~~ward~~ person subject to public guardianship or protected person; or

15.30 (6) for any other order as the court may deem just and equitable.

16.1 Sec. 39. Minnesota Statutes 2020, section 252A.19, subdivision 4, is amended to read:

16.2 Subd. 4. **Comprehensive evaluation.** The commissioner shall, at the court's request,
16.3 arrange for the preparation of a comprehensive evaluation of the ~~ward~~ person subject to
16.4 public guardianship or protected person.

16.5 Sec. 40. Minnesota Statutes 2020, section 252A.19, subdivision 5, is amended to read:

16.6 Subd. 5. **Court order.** Upon proof of the allegations of the petition the court shall enter
16.7 an order removing the guardianship or limiting or expanding the powers of the guardianship
16.8 or restoring the ~~ward~~ person subject to public guardianship or protected person to full legal
16.9 capacity or may enter such other order as the court may deem just and equitable.

16.10 Sec. 41. Minnesota Statutes 2020, section 252A.19, subdivision 7, is amended to read:

16.11 Subd. 7. **Attorney general's role; commissioner's role.** The attorney general may
16.12 appear and represent the commissioner in such proceedings. The commissioner shall support
16.13 or oppose the petition if the commissioner deems such action necessary for the protection
16.14 and supervision of the ~~ward~~ person subject to public guardianship or protected person.

16.15 Sec. 42. Minnesota Statutes 2020, section 252A.19, subdivision 8, is amended to read:

16.16 Subd. 8. ~~Court-appointed~~ **Court-appointed counsel.** In all such proceedings, the
16.17 protected person or ~~ward~~ person subject to public guardianship shall be afforded an
16.18 opportunity to be represented by counsel, and if neither the protected person or ~~ward~~ person
16.19 subject to public guardianship nor others provide counsel the court shall appoint counsel to
16.20 represent the protected person or ~~ward~~ person subject to public guardianship.

16.21 Sec. 43. Minnesota Statutes 2020, section 252A.20, is amended to read:

16.22 **252A.20 COSTS OF HEARINGS.**

16.23 Subdivision 1. **Witness and attorney fees.** In each proceeding under sections 252A.01
16.24 to 252A.21, the court shall allow and order paid to each witness subpoenaed the fees and
16.25 mileage prescribed by law; to each physician, advanced practice registered nurse,
16.26 psychologist, or social worker who assists in the preparation of the comprehensive evaluation
16.27 and who is not ~~in the employ of~~ employed by the local agency or the state Department of
16.28 Human Services, a reasonable sum for services and for travel; and to the ~~ward's~~ counsel of
16.29 the person subject to public guardianship, when appointed by the court, a reasonable sum
16.30 for travel and for each day or portion of a day actually employed in court or actually

17.1 consumed in preparing for the hearing. Upon order the county auditor shall issue a warrant
17.2 on the county treasurer for payment of the amount allowed.

17.3 Subd. 2. **Expenses.** When the settlement of the ~~ward~~ person subject to public guardianship
17.4 is found to be in another county, the court shall transmit to the county auditor a statement
17.5 of the expenses incurred pursuant to subdivision 1. The auditor shall transmit the statement
17.6 to the auditor of the county of the ~~ward's~~ settlement of the person subject to public
17.7 guardianship and this claim shall be paid as other claims against that county. If the auditor
17.8 to whom this claim is transmitted denies the claim, the auditor shall transmit it, together
17.9 with the objections thereto, to the commissioner, who shall determine the question of
17.10 settlement and certify findings to each auditor. If the claim is not paid within 30 days after
17.11 such certification, an action may be maintained thereon in the district court of the claimant
17.12 county.

17.13 Subd. 3. **Change of venue; cost of proceedings.** Whenever venue of a proceeding has
17.14 been transferred under sections 252A.01 to 252A.21, the costs of such proceedings shall be
17.15 reimbursed to the county of the ~~ward's~~ settlement of the person subject to public guardianship
17.16 by the state.

17.17 Sec. 44. Minnesota Statutes 2020, section 252A.21, subdivision 2, is amended to read:

17.18 Subd. 2. **Rules.** The commissioner shall adopt rules to implement this chapter. The rules
17.19 must include standards for performance of guardianship ~~or conservatorship~~ duties including;
17.20 but not limited to: twice a year visits with the ~~ward~~ person subject to public guardianship;
17.21 a requirement that the duties of guardianship ~~or conservatorship~~ and case management not
17.22 be performed by the same person; specific standards for action on "do not resuscitate" orders
17.23 as recommended by a physician, an advanced practice registered nurse, or a physician
17.24 assistant; sterilization requests; and the use of psychotropic medication and aversive
17.25 procedures.

17.26 Sec. 45. Minnesota Statutes 2020, section 252A.21, subdivision 4, is amended to read:

17.27 Subd. 4. **Private guardianships ~~and conservatorships~~.** Nothing in sections 252A.01
17.28 to 252A.21 shall impair the right of individuals to establish private guardianships ~~or~~
17.29 ~~conservatorships~~ in accordance with applicable law.

17.30 Sec. 46. **REPEALER.**

17.31 Minnesota Statutes 2020, sections 252A.02, subdivisions 8 and 10; and 252A.21,
17.32 subdivision 3, are repealed.

APPENDIX
Repealed Minnesota Statutes: H1653-1

252A.02 DEFINITIONS.

Subd. 8. **Public conservator.** "Public conservator" means the commissioner of human services when exercising some, but not all the powers designated in section 252A.111.

Subd. 10. **Conservatee.** "Conservatee" means a person with a developmental disability for whom the court has appointed a public conservator.

252A.21 GENERAL PROVISIONS.

Subd. 3. **Terminology.** Whenever the term "guardian" is used in sections 252A.01 to 252A.21, it shall include "conservator," and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.