A bill for an act

relating to human services; modifying human services agency provisions; modifying agency hearing and appeals provisions; creating the Disparities Reduction Advisory Council; amending Minnesota Statutes 2010, sections 256.045, subdivisions 3, 4; 256.0451, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 256.

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

ARTICLE 1

AGENCY HEARINGS AND APPEALS

Section 1. Minnesota Statutes 2010, section 256.045, subdivision 3, is amended to read:

Subd. 3. **State agency hearings.** (a) State agency hearings are available for the following:

(1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section 252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C, any individual or facility determined by a lead agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557;

(5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. ~~Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit~~; or

(11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt.

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), ~~clause~~ clauses (4), (9), and (10), is only available when there is no ~~juvenile court or adult criminal~~ district court action pending. If such action is filed in ~~either~~ district court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

(c) For an individual under paragraph (a), clauses (4), (9), and (10), who is determined to have committed maltreatment of a vulnerable adult or a minor child based on a conviction of, an admission to, or an Alford plea to:

(1) any of the crimes listed in sections 245C.15, subdivisions 1 to 4; and 626.556, subdivision 2;

(2) any of the crimes listed under section 626.5572, subdivision 2, paragraph (a);

(3) financial exploitation of a vulnerable adult under section 609.2335; or

(4) any acts constituting financial exploitation as defined in section 626.5572, subdivision 9,

or for any individual under paragraph (a), clause (10), who is disqualified based on a judicial determination, the reconsideration decision is the final agency action for purposes of appeal by the individual and is not subject to a hearing under this section.

~~(c)~~ (d) For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

~~(d)~~ (e) The scope of hearings involving claims to foster care payments under paragraph (a), clause (5), shall be limited to the issue of whether the county is legally responsible for a child's placement under court order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

~~(e)~~ (f) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and

may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

~~(f)~~ (g) An applicant or recipient is not entitled to receive social services beyond the services prescribed under chapter 256M or other social services the person is eligible for under state law.

~~(g)~~ (h) The commissioner may summarily affirm the county or state agency's proposed action without a hearing when the sole issue is an automatic change due to a change in state or federal law.

(i) Unless federal or Minnesota law specifies a different time frame in which to file an appeal, individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of the written notice if the applicant, recipient, patient, or a responsible party shows good cause why the request was not submitted within the 30-day time limit.

Sec. 2. Minnesota Statutes 2010, section 256.045, subdivision 4, is amended to read:

Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services referee may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. Human services judges shall have sole discretion to grant a request for a hearing in person by holding the hearing by interactive video technology. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services referee shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity

to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), either party may subpoena the private data relating to the investigation prepared by the agency under section 626.556 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of the reporter may not be disclosed.

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than $1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8), and (9), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

(c) In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), involving determinations of maltreatment or disqualification made by more than one county agency, by a county agency and a state agency, or by more than one state agency, the hearings may be consolidated into a single fair hearing upon the consent of all parties and the state human services referee.

Sec. 3. Minnesota Statutes 2010, section 256.0451, subdivision 5, is amended to read:

Subd. 5. **Prehearing conferences.** (a) The ~~appeals referee~~ human services judge prior to a fair hearing appeal may hold a prehearing conference to further the interests of justice or efficiency and must include the person involved in the appeal. A person involved in a fair hearing appeal or the agency may request a prehearing conference. The prehearing conference may be conducted by telephone, in person, or in writing. The prehearing conference may address the following:

(1) disputes regarding access to files, evidence, subpoenas, or testimony;

(2) the time required for the hearing or any need for expedited procedures or decision;

(3) identification or clarification of legal or other issues that may arise at the hearing;

(4) identification of and possible agreement to factual issues; and

(5) scheduling and any other matter which will aid in the proper and fair functioning of the hearing.

(b) The ~~appeals referee~~ human services judge shall make a record or otherwise contemporaneously summarize the prehearing conference in writing, which shall be sent to both the person involved in the hearing, the person's attorney or authorized representative, and the agency. A human services judge may make rulings and enter interim orders to further the appeal process.

Sec. 4. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall substitute the term "human services judge" for the term "appeals examiner," "human services referee," "referee," or any similar terms referring to the human services referees appointed by the commissioner of human services under Minnesota Statutes, section 256.045, subdivision 1, wherever they appear in Minnesota Statutes.

ARTICLE 2

DISPARITIES REDUCTION ADVISORY COUNCIL

Section 1. **[256.4831] DISPARITIES REDUCTION ADVISORY COUNCIL.**

Subdivision 1. **Establishment; members.** (a) There is hereby established the Disparities Reduction Advisory Council. The council must consist of no fewer than 15 and no more than 30 members appointed by the commissioner of human services, in consultation with county, tribal, community, and parent representatives. The purpose of the council is to reduce racial and ethnic disparities in service access and outcomes for programs funded by the Department of Human Services. The commissioner shall develop guidelines defining the membership of the council, setting out definitions, and developing duties of the commissioner, the council, and council members regarding racial and ethnic disparities reduction. The guidelines must be developed in consultation with county, tribal, community, and parent representatives. Members must be appointed to allow for representation of the following groups:

(1) racial and ethnic minority groups;

(2) tribal service providers;

(3) culturally and linguistically specific advocacy groups and service providers;

(4) human services program participants;

(5) public and private institutions;

(6) parents of human services program participants;

(7) members of the faith community;

(8) Department of Human Services employees; and

(9) any other group the commissioner deems appropriate to facilitate the goals and duties of the council.

(b) Notwithstanding the provisions of section 15.059, each member of the council must be appointed to either a one-year or two-year term. The commissioner shall appoint one member as chair. Notwithstanding the provisions of section 15.059, the council does not expire unless directed by the commissioner.

Subd. 2. **Definitions.** For the purposes of this section, the following definitions apply:

(1) "racial, ethnic, cultural, or linguistic disparities" means differences in program outcomes, service quality, access, utilization, or participation rates that are considered to be unfair, unjust, or inequitable;

(2) "culturally appropriate" and "culturally sensitive" refer to quality services that are provided with consideration of specific characteristics of the individual participant, including, but not limited to, cultural values, norms, attitudes, expectations, beliefs, and preferences.

Subd. 3. **Duties of the commissioner.** The commissioner of human services shall:

(1) maintain the council established in this section;

(2) supervise and coordinate services and policies for persons from racial, ethnic, cultural, linguistic, and tribal communities who experience disparities in access and outcomes;

(3) contract with qualified agencies or employ staff to carry out the recommendations of the council;

(4) investigate the need for the development of new human services rules or statutes that would benefit affected persons from racial, ethnic, cultural, linguistic, and tribal communities;

(5) investigate present and potential models of service coordination which can be delivered in a culturally sensitive and competent manner and which achieve positive outcomes for the service recipients; and

(6) based on recommendations of the council, review identified department policies that maintain racial, ethnic, cultural, linguistic, and tribal disparities and make adjustments to ensure those disparities are not perpetuated.

Subd. 4. **Duties of the council.** The Disparities Reduction Advisory Council shall:

(1) recommend to the commissioner for review identified policies in the Department of Human Services that maintain racial, ethnic, cultural, linguistic, and tribal disparities;

(2) coordinate identified issues regarding disparities by engaging diverse populations in human services systems and engaging in mutual learning essential for achieving human services parity and optimal wellness for service recipients. The council shall strive to raise awareness about human services disparities to the legislature and media;

(3) provide technical assistance and consultation support to counties, private nonprofit agencies, and other service providers, to support their efforts to provide equitable human services for persons from racial, ethnic, cultural, linguistic, and tribal communities who experience disparities in access and outcomes;

(4) provide technical assistance to promote statewide development of culturally and linguistically appropriate, accessible, and cost-effective human services assistance and related policy;

(5) provide training and outreach to facilitate access to culturally and linguistically appropriate, accessible, and cost-effective human services to prevent disparities;

(6) facilitate culturally appropriate and culturally sensitive admissions, continued services, discharges, and utilization review for human services agencies and institutions;

(7) form work groups to help carry out the duties of the council that include, but are not limited to, persons who provide and receive services and representatives of advocacy groups, and provide the work groups with clear guidelines, standardized parameters, and tasks for the work groups to accomplish; and

(8) promote information sharing in the human services community and statewide.

Subd. 5. **Duties of the council members.** Each member of the Disparities Reduction Advisory Council shall:

(1) attend and participate in scheduled meetings and be prepared by reviewing meeting notes;

(2) maintain open communication channels with respective constituencies;

(3) identify and communicate issues and risks that could impact the timely completion of tasks;

(4) collaborate on disparity reduction efforts;

(5) communicate updates of the council's work progress and status on the Department of Human Service's Web site; and

(6) participate in any activities the council or chair deem appropriate and necessary to facilitate the goals and duties of the council.

APPENDIX
Article locations in 11-0147

ARTICLE 1 AGENCY HEARINGS AND APPEALS ..... Page.Ln 1.8
ARTICLE 2 DISPARITIES REDUCTION ADVISORY COUNCIL ..... Page.Ln 6.17