

Subd. 7a. SCOPE. For purposes of subdivisions 5 to 8, "tree" means a tree or woody perennial shrub or vine which is at least six inches in diameter, as measured at a point two feet from the ground, and "hedge" means any planted and maintained hedge within the right-of-way.

Sec. 2. EFFECTIVE DATE.

This act is effective the day following final enactment.

Approved April 16, 1985

CHAPTER 21 — H.F.No. 621

An act relating to mental health; revising the language of statutes concerning persons with mental illness and mental retardation and revising the language of statutes concerning state treatment facilities; amending Minnesota Statutes 1984, sections 147.021, subdivision 1; 243.55, subdivision 3; 245.072; 245.52; 245.821, subdivision 1; 245.825, subdivision 1; 246.01; 246.013; 246.014; 246.13; 246.23; 246.234; 246.41; 246.50; 246.511; 246.52; 246.53; 246.54; 246.55; 246.56; 252.025; 252.05; 252.06; 252.07; 252.09; 252.10; 252.21; 252.22; 252.23; 252.24; 252.25; 252.27; 252.275, subdivisions 1 and 7; 252.28; 252.291; 252.30; 252.31; 252.32; 253.015; 253.10; 253.19; 253.20; 253.21; 253.25; 253.26; 256.01, subdivisions 2 and 5; 256.91; 256.93, subdivision 1; 256B.02, subdivisions 2 and 8, and by adding a subdivision; 256B.092; 256B.36; 256B.501; 256E.03, subdivision 2; 256E.06, subdivision 2a; 260.092; 260.36; 284.05; 299F.77; 447.42; 447.45; 501.27; and 517.03; proposing coding for new law in Minnesota Statutes, chapter 252.

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

Section 1. Minnesota Statutes 1984, section 147.021, subdivision 1, is amended to read:

Subdivision 1. The board shall censure, shall refuse to grant a license to, shall order re-examination, or shall suspend, revoke, condition, limit, qualify or restrict the license, whether granted under this chapter or under Minnesota Statutes 1961, Sections 148.11 to 148.16, prior to May 1, 1963, of any person whom such board, after a hearing, adjudges unqualified or who the board determines after such a hearing is any one or more of the following:

(a) a person who fails to demonstrate the qualifications or satisfy the standards for a license contained in this chapter or rules of the board. The burden of proof shall be upon the applicant to demonstrate such qualifications or satisfaction of such standards.

(b) a person who makes misleading, deceptive, untrue or fraudulent representations in the practice of medicine or who employs a trick or scheme in

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the practice of medicine or fraud or deceit in obtaining a license to practice medicine.

(c) a person who at any time during the previous five years was convicted of a felony reasonably related to his practice of medicine or osteopathy. Conviction as used in this subdivision shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered thereon.

(d) a person whose license to practice medicine has been revoked, suspended, annulled or with regard to whom disciplinary action has been taken or whose application for a license has been denied by the proper licensing authority of another state, territory or country.

In clauses (c) and (d) a copy of the judgment or proceeding under the seal of the clerk of the court or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the contents thereof.

(e) a person who advertises in any manner, either in his own name or under the name of another person or concern, actual or pretended, in any newspaper, pamphlet, circular, or other written or printed paper or document, professional superiority to or greater skill than that possessed by another doctor of medicine or another doctor of osteopathy licensed to practice medicine under this chapter, or the positive cure of any disease.

(f) a person who violates a lawful rule promulgated by the board or violates a lawful order of the board, previously entered by the board in a disciplinary hearing.

(g) a person who engages in any unethical, deceptive or deleterious conduct or practice harmful to the public, or who demonstrates a willful or careless disregard for the health, welfare or safety of his patients, in any of which cases, proof of actual injury need not be established.

(h) a person who procures, aids, or abets in the procuring of a criminal abortion.

(i) a person who violates a statute or rule of this state or of any other state or of the United States which relates to the practice of medicine or in part regulates the practice of medicine.

(j) a person who has been adjudged mentally incompetent, mentally ill or mentally ~~deficient~~ retarded, or adjudged to be a ~~drug~~ chemically dependent person, an ~~inebriate~~ person, a person dangerous to the public, or a person who has a psychopathic personality by a court of competent jurisdiction, within or

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without this state. Such adjudication shall automatically suspend a license for the duration thereof unless the board orders otherwise.

(k) a person who is guilty of unprofessional conduct. Unprofessional conduct shall include any departure from or the failure to conform to the minimal standards of acceptable and prevailing medical practice in which proceeding actual injury to a patient need not be established.

(l) a person who is unable to practice medicine with reasonable skill and safety to patients by reason of illness, professional incompetence, senility, drunkenness, use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. If the board has probable cause to believe that a physician comes within this clause, it shall direct the physician to submit to a mental or physical examination. For the purpose of this clause, every physician licensed under this chapter shall be deemed to have given his consent to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a physician to submit to such examination when directed shall constitute an admission of the allegations against him, unless the failure was due to circumstances beyond his control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this clause shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients.

In any proceeding under this clause, neither the record of proceedings nor the orders entered by the board shall be used against a physician in any other proceeding.

(m) a person who willfully betrays a professional secret.

(n) a doctor of osteopathy who fails to identify his school of healing in the professional use of his name by one of the following terms: osteopathic physician and surgeon, doctor of osteopathy, or D.O.

Sec. 2. Minnesota Statutes 1984, section 243.55, subdivision 3, is amended to read:

Subd. 3. As used in this section, "state hospital" or "hospital" means any state operated facility or hospital under the authority of the commissioner of human services for (a) ~~mentally ill, mentally deficient, or inebriate~~ persons with mental illness, mental retardation, or chemical dependency, (b) sex offenders, or (c) persons with psychopathic personalities.

Sec. 3. Minnesota Statutes 1984, section 245.072, is amended to read:

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245.072 MENTAL RETARDATION DIVISION.

A mental retardation division is created in the department of human services which shall coordinate those laws administered and enforced by the commissioner of human services relating to mental retardation and ~~mental deficiency related conditions~~, as defined in section 252.27, subdivision 1, which the commissioner may assign to the division. The mental retardation division shall be under the supervision of a director whose responsibility it shall be to maximize the availability of federal or private moneys for programs to assist ~~mentally retarded and mentally deficient persons~~ with mental retardation or related conditions. The commissioner shall appoint the director who shall serve in the classified service of the state civil service. The commissioner may employ additional personnel with such qualifications and in such numbers as are reasonable and are necessary to carry out the provisions of this section.

Sec. 4. Minnesota Statutes 1984, section 245.52, is amended to read:

245.52 COMMISSIONER OF HUMAN SERVICES AS COMPACT ADMINISTRATOR.

The commissioner of human services is hereby designated as "compact administrator." He shall have the powers and duties specified in the compact, and he may, in the name of the state of Minnesota, subject to the approval of the attorney general as to form and legality, enter into such agreements authorized by the compact as he deems appropriate to effecting the purpose of the compact. He shall, within the limits of the appropriations for the care of ~~the mentally ill and mentally deficient available therefor~~ persons with mental illness or mental retardation, authorize such payments as are necessary to discharge any financial obligations imposed upon this state by the compact or any agreement entered into under the compact.

If the patient has no established residence in a Minnesota county, the commissioner shall designate the county of financial responsibility for the purposes of carrying out the provisions of the Interstate Compact on Mental Health as it pertains to patients being transferred to Minnesota. The commissioner shall designate the county which is the residence of the person in Minnesota who initiates the earliest written request for the patient's transfer.

Sec. 5. Minnesota Statutes 1984, section 245.821, subdivision 1, is amended to read:

Subdivision 1. Notwithstanding any law to the contrary, no private or public facility for the treatment, housing, or counseling of more than five ~~mentally retarded, physically disabled, mentally ill, chemically or otherwise dependent persons~~ with mental illness, physical disabilities, mental retardation or related conditions, as defined in section 252.27, subdivision 1, chemical dependency, or another form of dependency, nor any correctional facility for more than

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five persons, shall be established without 30 days written notice to the affected municipality or other political subdivision.

Sec. 6. Minnesota Statutes 1984, section 245.825, subdivision 1, is amended to read:

Subdivision 1. **RULES GOVERNING USE OF AVERSIVE AND DEPRIVATION PROCEDURES.** The commissioner of human services shall by October, 1983 promulgate rules governing the use of aversive and deprivation procedures in all licensed facilities serving mentally retarded persons with mental retardation or related conditions, as defined in section 252.27, subdivision 1. No provision of these rules shall encourage or require the use of aversive and deprivation procedures. The rules shall prohibit: (a) the application of certain aversive or deprivation procedures in facilities except as authorized and monitored by the designated regional review committees; and (b) the use of aversive or deprivation procedures that restrict the consumers' normal access to nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, and necessary clothing. The rule shall further specify that consumers may not be denied ordinary access to legal counsel and next of kin. In addition, the rule may specify other prohibited practices and the specific conditions under which permitted practices are to be carried out.

Sec. 7. Minnesota Statutes 1984, section 246.01, is amended to read:

246.01 POWERS AND DUTIES.

The commissioner of human services is hereby specifically constituted the guardian of both the estate and person of all ~~feeble-minded persons or persons having epilepsy with mental retardation,~~ the guardianship of whom has heretofore been vested in the state board of control or in the director of social welfare whether by operation of law or by an order of court without any further act or proceeding, and all the powers and duties vested in or imposed upon the state board of control or the director of social welfare, with reference to mental testing of persons ~~mentally deficient or persons having epilepsy with mental retardation,~~ and with reference to the institutions of the state of Minnesota except correctional facilities administered and managed by the commissioner of corrections, are hereby transferred to, vested in, and imposed upon the commissioner of human services, and in relation thereto he is hereby charged with and shall have the exclusive power of administration and management of all of the following state institutions: ~~The schools and hospitals for the mentally retarded and persons having epilepsy, state hospitals for the mentally ill, and the state hospital for inebriates persons with mental retardation, mental illness, or chemical dependency.~~ He shall have power and authority to determine all matters relating to the unified and continuous development of all of the foregoing institutions and of such other institutions, the supervision of which may, from time to time, be vested in him. It is intended that there be vested in him all of the powers,

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functions, and authority heretofore vested in the state board of control relative to such state institutions. He shall have the power and authority to accept, in behalf of the state, contributions and gifts of money and personal property for the use and benefit of the ~~inmates~~ residents of the public institutions under his control, and all moneys and securities so received shall be deposited in the state treasury subject to the order of the commissioner of human services. If the gift or contribution is designated by the donor for a certain institution or purpose, the commissioner of human services shall expend or use the same as nearly as may be in accordance with the conditions of the gift or contribution, compatible with the best interests of the inmates and the state. The commissioner of human services is hereby constituted the "state agency" as defined by the social security act of the United States and the laws of this state for all purposes relating to mental health and mental hygiene.

For the purpose of carrying out his duties, the commissioner of human services shall accept from ~~mentally deficient~~ wards with mental retardation for whom he is specifically appointed guardian a signed application for his consent to the marriage of said ward. Upon receipt of such application he shall promptly conduct such investigation as he deems proper and determine if the contemplated marriage is for the best interest of the ward and the public. A signed copy of the commissioner's determination shall be mailed to the ward and to the clerk of the district court of the county where the application for such marriage license was made.

There is hereby appropriated to such persons or institutions as are entitled to such sums as are provided for in this section, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make such payment.

Sec. 8. Minnesota Statutes 1984, section 246.013, is amended to read:

**246.013 MENTALLY ILL PERSONS WITH MENTAL ILLNESS;
CARE, TREATMENT.**

Within the limits of the appropriations for the commissioner of human services, he is directed, in the performance of the duties imposed upon him by the laws of this state, to bring to the measure prescribed by section 246.012, the care and treatment of ~~the mentally ill persons~~ with mental illness as speedily as is possible, and to thereafter, subject to the paramount authority of the legislature with respect to appropriations, maintain said standards in the care and treatment of ~~the mentally ill persons~~ with mental illness.

Sec. 9. Minnesota Statutes 1984, section 246.014, is amended to read:

246.014 SERVICES.

The measure of services established and prescribed by section 246.012, are:

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(1) There shall be served in state hospitals a single standard of food for patients and employees alike, which is nutritious and palatable together with special diets as prescribed by the medical staff thereof. There shall be a chief dietitian in the department of human services and at least one dietitian at each state hospital. There shall be adequate staff and equipment for processing, preparation, distribution and serving of food.

(2) There shall be a staff of persons, professional and lay, sufficient in number, trained in the diagnosis, care and treatment of ~~the mentally ill~~ persons with mental illness, physical illness, and including religious and spiritual counsel through qualified chaplains (who shall be in the unclassified service) adequate to take advantage of and put into practice modern methods of psychiatry, medicine and related field.

(3) There shall be a staff and facilities to provide occupational and recreational therapy, entertainment and other creative activities as are consistent with modern methods of treatment and well being.

(4) There shall be in each state hospital for the care and treatment of ~~the mentally ill~~ persons with mental illness facilities for the segregation and treatment of patients and residents who have communicable disease.

(5) The commissioner of human services shall provide modern and adequate psychiatric social case work service.

(6) The commissioner of human services shall make every effort to improve the accommodations for patients and residents so that the same shall be comfortable and attractive with adequate furnishings, clothing, and supplies.

(7) The commissioner of human services shall establish training programs for the training of personnel and may require the participation of personnel in such programs. Within the limits of the appropriations available he may establish professional training programs in the forms of educational stipends for positions for which there is a scarcity of applicants.

(8) The standards herein established shall be adapted and applied to the diagnosis, care and treatment of ~~inebriate persons and mentally deficient~~ persons with chemical dependency or mental retardation who come within those terms as defined in the laws relating to the hospitalization and commitment of such persons, and of persons who are psychopathic personalities within the definition thereof in Minnesota Statutes 1945, Section 526.09.

(9) The commissioner of human services shall establish a program of detection, diagnosis and treatment of ~~mentally or nervously ill~~ persons with mental illness and persons described in clause (8), and within the limits of appropriations may establish clinics and staff the same with persons specially trained in psychiatry and related fields.

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(10) The commissioner of employee relations may reclassify employees of the ~~mental institutions~~ state hospitals from time to time, and assign classifications to such salary brackets as will adequately compensate personnel and reasonably assure a continuity of adequate staff.

(11) In addition to the chaplaincy services, provided in clause (2), the commissioner of human services shall open said ~~institutions~~ state hospitals to ~~ministers~~ members of the ~~Gospel clergy and other spiritual leaders~~ to the end that religious and spiritual counsel and services are made available to the patients and residents therein, and shall cooperate with all ~~ministers~~ members of the ~~Gospel clergy and other spiritual leaders~~ in making said patients and residents available for religious and spiritual counsel, and shall provide such ~~ministers~~ members of the ~~Gospel clergy and other spiritual leaders~~ with meals and accommodations.

(12) within the limits of the appropriations therefor, the commissioner of human services shall establish and provide facilities and equipment for research and study in the field of modern hospital management, the causes of mental and related illness and the treatment, diagnosis and care of the ~~mentally ill~~ persons with mental illness and funds provided therefor may be used to make available services, abilities and advice of leaders in these and related fields, and may provide them with meals and accommodations and compensate them for traveling expenses and services.

Sec. 10. Minnesota Statutes 1984, section 246.13, is amended to read:

246.13 RECORD OF PATIENTS AND RESIDENTS; DEPARTMENT OF HUMAN SERVICES.

The commissioner of human services shall keep in his office, accessible only by his consent or on the order of a judge or court of record, a record showing the residence, sex, age, nativity, occupation, civil condition, and date of entrance or commitment of every person ~~or patient~~, in the ~~institutions~~ state hospitals under his exclusive control, the date of discharge and whether such discharge was final, the condition of such person when he left the ~~institution~~ state hospital, and the date and cause of all deaths. The record shall state every transfer from one ~~institution~~ state hospital to another, naming each. This information shall be furnished to the commissioner of human services by each ~~institution~~ public and private agency, with such other obtainable facts as he may from time to time require. The chief executive officer of each such ~~institution~~ state hospital, within ten days after the commitment or entrance thereto of a ~~person or patient or resident~~, shall cause a true copy of his entrance record to be forwarded to the commissioner of human services. When a patient or resident leaves, is discharged or transferred, or dies in any ~~institution~~ state hospital, the chief executive officer, or other person in charge shall inform the commissioner of human services within ten days thereafter on forms by him furnished.

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The commissioner of human services may authorize the superintendent chief executive officer of any state institution hospital for the mentally ill, mentally retarded or persons having epilepsy with mental illness or mental retardation, to release to public or private medical personnel, hospitals, clinics, county welfare boards or other specifically designated interested persons or agencies any information regarding any patient or resident thereat, if, in the opinion of the commissioner, it will be for the benefit of the patient or resident.

Sec. 11. Minnesota Statutes 1984, section 246.23, is amended to read:

246.23 PERSONS ADMISSIBLE TO INSTITUTIONS STATE HOSPITALS.

No person who has not a settlement in a county, as defined in section 256D.18, shall be admitted to a state hospital for the mentally ill, the school for the deaf, the Minnesota braille and sight-saving school, the schools and hospitals for the mentally retarded and persons having epilepsy, or the Owatonna state school persons with mental illness, mental retardation, or chemical dependency, except that the commissioner of human services may authorize admission thereto when the residence cannot be ascertained, or when the circumstances in his judgment make it advisable. When application is made to a judge of probate for admission to any of the institutions state hospitals above named for admission thereto, if he finds that the person for whom application is made has not such residence, or that his residence cannot be ascertained, he shall so report to the commissioner; and he may recommend that such person be admitted notwithstanding, giving his reasons therefor. The commissioner of human services shall thereupon investigate the question of residence and, if he finds that such person has not such residence and has a legal residence in another state or country, he may cause him to be returned thereto at the expense of this state. ~~When the overseer of a county poorhouse believes an inmate thereof not to have a residence in the state, but to have a residence elsewhere, he shall so notify the commissioner of human services who shall thereupon proceed in the manner above provided; except that, if deemed impracticable to return such person to the state of his residence, he may so certify and such person shall thereafter be a charge upon the county, town or city in which he has longest resided within the preceding year.~~

Sec. 12. Minnesota Statutes 1984, section 246.234, is amended to read:

246.234 RECIPROCAL EXCHANGE OF RELIEF PERSONS WITH MENTAL ILLNESS OR MENTAL RETARDATION.

The commissioner of human services is hereby authorized and empowered with the approval of the governor to enter into reciprocal agreements with any other state or states, through the duly authorized authorities thereof, regarding the mutual exchange, return, and transportation of mentally ill persons, mentally deficient persons, or persons having epilepsy with mental illness or mental retardation who are within the confines of one state but have legal residence or

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legal settlement for the purposes of relief in another state. Such agreements shall contain no provisions conflicting with any law of this state.

Sec. 13. Minnesota Statutes 1984, section 246.41, is amended to read:

246.41 CONTRIBUTIONS FOR BENEFIT OF MENTALLY DEFICIENT PERSONS AND PERSONS HAVING EPILEPSY WITH MENTAL RETARDATION.

Subdivision 1. **ACCEPTANCE.** The commissioner of human services is authorized to accept, for and in behalf of the state, contributions of money for the use and benefit of mentally deficient persons and persons having epilepsy with mental retardation.

Subd. 2. **SPECIAL WELFARE FUND.** Any money so received by the commissioner shall be deposited with the state treasurer in a special welfare fund, which fund is to be used by the commissioner of human services for the benefit of mentally deficient persons and persons having epilepsy with mental retardation within the state, including those within institutions state hospitals. And, without excluding other possible uses, research relating to mentally deficient persons and persons having epilepsy with mental retardation shall be considered an appropriate use of such funds; but such funds shall not be used for any structures or installations which by their nature would require state expenditures for their operation or maintenance without specific legislative enactment therefor.

Subd. 3. **APPROPRIATION.** There is hereby appropriated from the special welfare fund in the state treasury to such persons as are entitled thereto to carry out the provisions stated in this section.

Sec. 14. Minnesota Statutes 1984, section 246.50, is amended to read:

246.50 CARE OF PATIENTS AND RESIDENTS AT STATE HOSPITALS; DEFINITIONS.

Subdivision 1. For the purposes of sections 246.50 to 246.55, the terms set out in subdivisions 2 to 8 shall have the meanings ascribed to them.

Subd. 2. "Commissioner" means the commissioner of human services of the state of Minnesota.

Subd. 3. "State hospital" means a state hospital facility for the mentally ill or mentally deficient treating persons with mental illness, mental retardation, or chemical dependency now existing or hereafter established.

Subd. 4. "Patient" means any person receiving care or treatment at a state hospital whether he entered such hospital voluntarily or under commitment with mental illness or chemical dependency.

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Subd. 4a. "Resident" means any mentally retarded person receiving care or treatment at a state hospital whether he entered such hospital voluntarily or under commitment.

Subd. 5. "Cost of care" means the commissioner's determination of the anticipated average per capita cost of all maintenance, treatment and expense, including depreciation of buildings and equipment, interest paid on bonds issued for capital improvements to state hospitals, and indirect costs related to the operation other than that paid from the Minnesota state building fund, at all of the state hospitals ~~for the mentally ill or mentally retarded or chemically dependent~~ during the current year for which billing is being made. The commissioner shall determine the anticipated average per capita cost. The commissioner may establish one all inclusive rate or separate rates for each patient or resident disability group, and may establish separate charges for each hospital. "Cost of care" for outpatient or day-care patients or residents shall be on a cost for service basis under a schedule the commissioner shall establish.

For purposes of this subdivision "resident patient" means a person who occupies a bed while housed in a hospital for observation, care, diagnosis, or treatment.

For purposes of this subdivision "outpatient" or "day-care" patient or resident means a person who makes use of diagnostic, therapeutic, counseling, or other service in a state hospital facility or through state hospital personnel but does not occupy a hospital bed overnight.

For the purposes of collecting from the federal government for the care of those patients eligible for medical care under the social security act "cost of care" shall be determined as set forth in the rules and regulations of the Department of Health and Human Services or its successor agency.

Subd. 6. "Relatives" means the spouse, and parents of a patient or resident, in that order of liability for cost of care.

Subd. 7. "Patient's or resident's county" means the county of the patient's or resident's legal settlement for poor relief purposes at the time of commitment or voluntary admission to a state hospital, or if he has no such legal settlement in this state, it means the county of commitment, except that where a patient or resident with no such legal settlement is committed while serving a sentence at a penal institution, it means the county from which he was sentenced.

Subd. 8. "County welfare board" means the welfare board of the patient's or resident's county as defined in subdivision 7 and of the county of commitment, and any other county welfare board possessing information regarding, or requested by the commissioner to investigate, the financial circumstances of a patient or resident or his relatives.

Sec. 15. Minnesota Statutes 1984, section 246.511, is amended to read:

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246.511 RELATIVE RESPONSIBILITY.

In no case, shall a patient's or resident's relatives, pursuant to the commissioner's authority under section 246.51, be ordered to pay more than ten percent of the cost of care, unless they reside outside the state. Parents of children in state hospitals shall have their responsibility to pay determined according to section 252.27, subdivision 2. The commissioner may accept voluntary payments in excess of ten percent. The commissioner may require full payment of the full per capita cost of care in state hospitals for patients or residents whose parent, parents, spouse, guardian or conservator do not reside in Minnesota.

Sec. 16. Minnesota Statutes 1984, section 246.52, is amended to read:

246.52 PAYMENT FOR CARE; ORDER; ACTION.

The commissioner shall issue an order to the patient or resident or the guardian of his estate, if there be one, and relatives determined able to pay requiring them to pay monthly to the state of Minnesota the amounts so determined the total of which shall not exceed the full cost of care. Such order shall specifically state the commissioner's determination and shall be conclusive unless appealed from as herein provided. When a patient or resident or relative fails to pay the amount due hereunder the attorney general, upon request of the commissioner, may institute, or direct the appropriate county attorney to institute, civil action to recover such amount.

Sec. 17. Minnesota Statutes 1984, section 246.53, is amended to read:

246.53 CLAIM AGAINST ESTATE OF DECEASED PATIENT OR RESIDENT.

Subdivision 1. **PATIENT'S OR RESIDENT'S ESTATE.** Upon the death of a patient or resident, or a former patient or resident, the total cost of care given the patient or resident, less the amount actually paid toward the cost of care by the patient or resident and the patient's or resident's relatives, shall be filed by the commissioner as a claim against the estate of the patient or resident with the court having jurisdiction to probate the estate and all proceeds collected by the state in the case shall be divided between the state and county in proportion to the cost of care each has borne.

Subd. 2. **PREFERRED STATUS.** An estate claim in subdivision 1 shall be considered an expense of the last illness for purposes of section 524.3-805.

If the commissioner of human services determines that the property or estate of any patient or resident is not more than needed to care for and maintain the spouse and minor or dependent children of a deceased patient or resident, the commissioner has the power to compromise the claim of the state in a manner deemed just and proper.

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Subd. 3. **EXCEPTION FROM STATUTE OF LIMITATIONS.** Any statute of limitations which limits the commissioner in recovering the cost of care obligation incurred by a patient or resident or former patient or resident shall not apply to any claim against an estate made hereunder to recover cost of care.

Sec. 18. Minnesota Statutes 1984, section 246.54, is amended to read:

246.54 LIABILITY OF COUNTY; REIMBURSEMENT.

The patient's or resident's county shall pay to the state of Minnesota a portion of the cost of care provided in a state hospital to a patient or resident legally settled in that county. A county's payment shall be made from the county's own sources of revenue and payments shall be paid as follows: payments to the state from the county shall equal ten percent of the per capita rate, as determined by the commissioner, for each day, or the portion thereof, that the patient or resident spends at a state hospital. If payments received by the state under sections 246.50 to 246.53 exceed 90 percent of the per capita rate, the county shall be responsible for paying the state only the remaining amount. The county shall not be entitled to reimbursement from the patient or resident, the patient's or resident's estate, or from the patient's or resident's relatives, except as provided in section 246.53. No such payments shall be made for any patient or resident who was last committed prior to July 1, 1947.

Sec. 19. Minnesota Statutes 1984, section 246.55, is amended to read:

246.55 APPEAL FROM ORDER OF COMMISSIONER.

Any patient or resident or relative aggrieved by an order of the commissioner under sections 246.50 to 246.55 may appeal from the order to the district court of the county in which he resides by serving notice of the appeal on the commissioner and filing the notice, with proof of service, in the office of the clerk of the district court of the county within 30 days from the date the order was mailed, or a later date not exceeding one year from the date of mailing as permitted by order of the court. The appeal may be brought on for hearing by the appellant or the commissioner upon ten days' written notice. It shall be tried to the court which shall hear evidence it deems necessary and by order affirm or modify the order of the commissioner. When any order or determination of the commissioner made under sections 246.50 to 246.55 is brought in question on appeal, the order or determination shall be determined de novo. Appeal from the order of the district court may be taken as in other civil cases.

Sec. 20. Minnesota Statutes 1984, section 246.56, is amended to read:

246.56 PRE-VOCATIONAL TRAINING FOR MENTALLY ILL OR RETARDED PATIENTS WITH MENTAL ILLNESS OR RESIDENTS WITH MENTAL RETARDATION; ADMINISTRATION.

Subdivision 1. The commissioner of human services is hereby authorized to establish, subject to the approval of the commissioner of education economic

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security, within the state ~~institutions~~ hospitals for the ~~mentally ill and mentally retarded patients with mental illness or residents with mental retardation~~, work activity programs for the manufacture, processing and repairing of goods, wares, and merchandise for the purpose of providing therapeutic work activities for patients and residents.

Subd. 2. The work activity programs authorized herein shall be planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make productive capacity inconsequential. The activities within this program shall conform to the rules and regulations relating to work activity centers promulgated by the United States Department of Labor. To accomplish the foregoing purpose the commissioner of human services shall have the power and authority to:

(a) use the diversified labor fund established by Laws 1945, Chapter 575, Section 19, to purchase equipment and remodel facilities of the ~~institutions~~ state hospitals referred to in subdivision 1 to initiate the work activity program,

(b) formulate a system of records and accounts which shall at all times indicate the extent of purchases, sales, wages, and bidding practices and which shall be open to public inspection.

The commissioner of human services shall, subject to the approval of the commissioner of education, have the power and authority to:

(a) create a work activity center revolving fund for the purpose of receiving and expending moneys in the operation of the said programs,

(b) contract with public and private industries for the manufacture, repair, or assembling of work according to standard bidding practices,

(c) use the revenue from the operation of said programs to pay wages to patients ~~and~~ or residents according to their productivity, purchase equipment and supplies and pay other expenses necessary to the operation of the said programs,

(d) establish an advisory committee consisting of representatives from the departments of health, ~~education~~ economic security, and human services, labor and business groups, interested community agencies, including but not limited to the Minnesota Association of Rehabilitation Facilities, the Minnesota Association for Retarded Children, and the Minnesota Association for Mental Health, and the general public. This committee will act in an advisory capacity with respect to the scope of work activity programs, the nature of the goods to be produced and services to be performed in such programs,

(e) utilize all available vocational rehabilitation services and encourage the integration of the work activity program into existing vocational rehabilitation and community based programs, so that the work activity program will neither duplicate nor unfairly compete with existing public or private community programs.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 21. [252.021] DEFINITION.

For the purposes of this chapter, the words "related condition" have the meaning given them in section 252.27, subdivision 1.

Sec. 22. Minnesota Statutes 1984, section 252.025, is amended to read:

252.025 STATE HOSPITALS FOR MENTALLY RETARDED PERSONS AND PERSONS HAVING EPILEPSY PERSONS WITH MENTAL RETARDATION.

Subdivision 1. State hospitals for ~~mentally retarded persons and persons having epilepsy with mental retardation~~ shall be established and maintained at Faribault, Cambridge and Brainerd, and notwithstanding any provision to the contrary they shall be respectively known as the Faribault State Hospital, the Cambridge State Hospital, and the Brainerd State Hospital. Each of the foregoing state hospitals shall also be known by the name of regional center at the discretion of the commissioner of human services.

Subd. 2. They shall be under the general management and control of the commissioner of human services.

Sec. 23. Minnesota Statutes 1984, section 252.05, is amended to read:

252.05 ABDUCTION OR ENTICING AWAY PROHIBITED; PENALTY.

Every person who shall abduct, entice, or carry away from a state hospital for ~~mentally retarded persons or persons having epilepsy with mental retardation~~ any ~~inmate resident~~ thereof, who has not been legally discharged therefrom, shall be guilty of a felony and punished by a fine of not to exceed \$3,000 or imprisonment in the Minnesota correctional facility-Stillwater or the Minnesota correctional facility-St. Cloud not to exceed three years, or both, in the discretion of the court; any and every person who shall abduct, entice, or carry away from any place other than a state hospital, a person duly committed as ~~feeble minded~~ or ~~mentally deficient~~ retarded to the guardianship of the commissioner of human services with the intention of wrongfully removing such person from the direct custody of the commissioner of human services, such person known by him to be under the supervision of the commissioner of human services or his agents, shall be guilty of a gross misdemeanor.

Sec. 24. Minnesota Statutes 1984, section 252.06, is amended to read:

252.06 SHERIFF TO TRANSPORT MENTALLY DEFICIENT PERSONS AND PERSONS HAVING EPILEPSY WITH MENTAL RETARDATION.

It shall be the duty of the sheriff of any county, upon the request of the commissioner of human services, to take charge of and transport any ~~mentally deficient person or any person having epilepsy~~ persons with mental retardation

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

who has been committed by the probate court of any county to the care and custody of the commissioner of human services to such ~~institution~~ state hospital as may be designated by the commissioner of human services and there deliver such person to the ~~superintendent~~ chief executive officer of the ~~institution~~ state hospital.

Sec. 25. Minnesota Statutes 1984, section 252.07, is amended to read:

252.07 SHERIFF, EXPENSES.

In any county where the sheriff receives a salary in full compensation for official services performed for the county, he shall receive no additional compensation for services performed under the provisions of sections 252.06 to 252.08, but he shall be reimbursed by the county wherein such ~~mentally deficient person~~ or person having epilepsy person with mental retardation was committed for the necessary expenses incurred by him in taking charge of and transporting such person to such ~~institution~~ a state hospital and the subsistence of himself and such person while enroute.

In any county where the sheriff does not receive a salary he shall be paid \$5 a day for the time necessarily employed in performance of the service, together with expenses incurred by him in taking charge of and transporting such person to such ~~institution~~ state hospital and the subsistence of himself and such person while enroute.

When the ~~mentally deficient person~~ or person having epilepsy with mental retardation is a female, the sheriff shall appoint some suitable woman to act in his stead. Such woman shall exercise all the powers vested in the sheriff and shall be paid \$5 per day for the time necessarily employed in the performance of such service, together with expenses incurred by her in taking charge of and transporting such person to such ~~institution~~ state hospital and the subsistence of herself and such person while enroute.

Sec. 26. Minnesota Statutes 1984, section 252.09, is amended to read:

252.09 COURSES OF INSTRUCTION FOR TEACHERS.

The commissioner of human services may establish and maintain at the state hospital for ~~mentally retarded persons~~ and persons having epilepsy with mental retardation at Faribault courses of instruction for teachers and others interested in the care and training of ~~mentally retarded or defective children~~ persons with mental retardation and make all necessary rules and regulations for the organization and conduct of such courses.

Sec. 27. Minnesota Statutes 1984, section 252.10, is amended to read:

252.10 FEES AND EXPENSES.

The commissioner of human services shall charge and collect from each person taking any such courses of instruction an amount for board and tuition

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not exceeding \$10 per week and the moneys so collected shall be turned into the state treasury as are other miscellaneous receipts from the institution state hospital. The expenses incident to the conduct of such courses of instruction and for the board of those taking the same shall be paid as are the other expenses for maintaining the state hospital for ~~the mentally retarded persons and persons having epilepsy with mental retardation~~. The courses of instruction herein referred to shall, within the limitation of charges as stated, be made as near self-sustaining as possible.

Sec. 28. Minnesota Statutes 1984, section 252.21, is amended to read:

252.21 COUNTY BOARDS MAY MAKE GRANTS FOR DEVELOPMENTAL ACHIEVEMENT CENTER SERVICES FOR THE MENTALLY RETARDED AND CEREBRAL PALSIED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

In order to assist county boards in carrying out responsibilities for the provision of daytime developmental achievement center services for eligible persons, the county board or boards are hereby authorized to make grants, within the limits of the money appropriated, to developmental achievement centers for services to mentally retarded and cerebral palsied persons with mental retardation or related conditions. In order to fulfill its responsibilities to ~~the mentally retarded and cerebral palsied persons with mental retardation or related conditions~~ as required by section 256E.08, subdivision 1, a county board may, beginning January 1, 1983, contract with developmental achievement centers or other providers.

Sec. 29. Minnesota Statutes 1984, section 252.22, is amended to read:

252.22 APPLICANTS FOR ASSISTANCE; TAX LEVY.

Any city, town, or non-profit corporation or any combination thereof, may apply to the county board for assistance in establishing and operating a developmental achievement center and program for ~~mentally retarded and cerebral palsied persons with mental retardation or related conditions~~. Application for such assistance shall be on forms supplied by the board. Each applicant shall annually submit to the board its plan and budget for the next fiscal year. No applicant shall be eligible for a grant hereunder unless its plan and budget have been approved by the board.

Any city, town, or county is authorized, at the discretion of its governing body, to make grants from special tax revenues or from its general revenue fund to any nonprofit organization, governmental or corporate, within or outside its jurisdiction, that has established a developmental achievement center for ~~the mentally retarded and cerebral palsied persons with mental retardation or related conditions~~. Nothing contained herein shall in any way preclude the use of funds

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available for this purpose under any existing statute or charter provision relating to cities, towns and counties.

Sec. 30. Minnesota Statutes 1984, section 252.23, is amended to read:

252.23 ELIGIBILITY REQUIREMENTS.

A developmental achievement center shall satisfy all of the following requirements to be eligible for assistance under sections 252.21 to 252.26:

(1) Provide daytime activities for any or all of the following classes of persons:

~~Mentally retarded and cerebral palsied children~~ Children with mental retardation or related conditions who can benefit from the program of services, including those school age children who have been excused or excluded from school;

~~Mentally retarded and cerebral palsied children and adults~~ Children and adults with mental retardation or related conditions who are unable to attend school because of their chronological age and are unable to independently engage in ordinary community activities;

(2) Provide counseling services to parents or guardians of ~~mentally retarded and cerebral palsied persons~~ with mental retardation or related conditions who may register at the center;

(3) Comply with all rules duly promulgated by the commissioner of human services.

Sec. 31. Minnesota Statutes 1984, section 252.24, is amended to read:

252.24 DUTIES OF COUNTY BOARDS.

Subdivision 1. **SELECTION OF DEVELOPMENTAL ACHIEVEMENT CENTERS.** The county board shall administer developmental achievement services, including training and habilitation services provided by licensed developmental achievement centers to residents of intermediate care facilities for the mentally retarded. The county board shall ensure that transportation is provided for persons who fulfill the eligibility requirements of section 252.23, clause (1), utilizing the most efficient and reasonable means available. The county board may contract for developmental achievement services and transportation from a center which is licensed under the provisions of sections 245.781 to 245.813, 252.28, and 257.175, and in the board's opinion, best provides daytime developmental achievement services for ~~mentally retarded and cerebral palsied persons~~ with mental retardation or related conditions within the appropriation and medical assistance resources made available for this purpose. Daytime developmental achievement services administered by the county board shall comply with standards established by the commissioner pursuant to subdivision 2 and applicable federal regulations.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 2. **SUPERVISION OF PROJECTS; PROMULGATION OF RULES.** The commissioner of human services shall closely supervise any developmental achievement center receiving a grant under sections 252.21 to 252.26. He shall promulgate rules in the manner provided by law as necessary to carry out the purposes of sections 252.21 to 252.26, including but not limited to rules pertaining to facilities for housing developmental achievement centers, administration of centers, and eligibility requirements for admission and participation in activities of the center.

Subd. 3. **PAYMENT PROCEDURE.** The board at the beginning of each year, shall allocate available money for developmental achievement services for disbursement during the year to those centers that have been selected to receive grants and whose plans and budgets have been approved. The board shall, from time to time during the fiscal year, review the budgets, expenditures and programs of the various centers and if it determines that any amount of funds are not needed for any particular center to which they were allocated, it may, after 30 days' notice, withdraw such funds as are unencumbered and reallocate them to other centers. It may withdraw all funds from any center upon 90 days' notice whose program is not being administered in accordance with its approved plan and budget.

Subd. 4. **FEES.** The county board may, with the approval of the commissioner, establish a schedule of fees for daytime developmental achievement services as provided in section 256E.08, subdivision 6. ~~No mentally retarded or cerebral palsied person~~ with mental retardation or related condition shall be denied daytime developmental achievement services because of an inability to pay such a fee.

Sec. 32. Minnesota Statutes 1984, section 252.25, is amended to read:

252.25 BOARD OF DIRECTORS.

Every city, town, or non-profit corporation, or combination thereof, establishing a developmental achievement center for ~~the mentally retarded and cerebral palsied persons~~ persons with mental retardation or related conditions shall, before it comes under the terms of sections 252.21 to 252.26, appoint a board of directors for the center program. When any city or town singly establishes such a center, such board shall be appointed by the chief executive officer of the city or the chairman of the governing board of the town. When any combination of cities, towns, or non-profit corporations, establishes such a center, the chief executive officers of the cities or non-profit corporations and the chairman of the governing bodies of the towns shall appoint the board of directors. If a non-profit corporation singly establishes such a center, its chief executive officer shall appoint the board of directors of the center. Membership on a board of directors while not mandatory, should be representative of local health, education and welfare departments, medical societies, mental health centers, associations concerned with mental retardation and cerebral palsy related conditions, civic

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groups and the general public. Nothing in sections 252.21 to 252.26 shall be construed to preclude the appointment of elected or appointed public officials or members of the board of directors of the sponsoring non-profit corporation to such board of directors.

Sec. 33. Minnesota Statutes 1984, section 252.27, is amended to read:

252.27 COST OF BOARDING CARE OUTSIDE OF HOME OR INSTITUTION.

Subdivision 1. Whenever any child who has mental retardation, epilepsy or a related condition, or a physical or emotional handicap is in 24 hour care outside the home including respite care, in a facility licensed by the commissioner of human services, the cost of care shall be paid by the county of financial responsibility determined pursuant to section 256E.08, subdivision 7. If the child's parents or guardians do not reside in this state, the cost shall be paid by the county in which the child is found. ~~For the purposes of this section an "emotionally handicapped child" means any child having~~ A person has a "related condition" if that person has a severe, chronic disability that is (a) attributable to cerebral palsy, epilepsy, autism, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation or requires treatment or services similar to those required for persons with mental retardation; (b) is likely to continue indefinitely; and (c) results in substantial functional limitations in three or more of the following areas of major life activity: self care, understanding and use of language, learning, mobility, self-direction, or capacity for independent living. For the purposes of this section, a child has an "emotional handicap" if the child has a psychiatric or other emotional disorder which substantially impairs his mental health and who requires 24 hour treatment or supervision.

Subd. 2. Responsibility of the parents for the cost of care shall be based upon ability to pay. The state agency shall adopt rules to determine responsibility of the parents for the cost of care when:

(a) Insurance or other health care benefits pay some but not all of the cost of care; and

(b) No insurance or other health care benefits are available.

Parents who have more than one child in out-of-home care shall not be required to pay more than the amount for one child in out-of-home care. In no event shall the parents be required to pay more than five percent of their income as defined in section 290A.03, subdivision 3. There shall be no resource contribution from the parents.

Responsibility of the child for the cost of care shall be up to the maximum amount of the total income and resources attributed to the child except for the

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clothing and personal needs allowance as provided in section 256B.35, subdivision 1. Reimbursement by the parents and child shall be made to the county making any payments for care and treatment. The county board may require payment of the full cost of caring for children whose parents or guardians do not reside in this state.

To the extent that a child described in subdivision 1 is eligible for benefits under chapters 62A, 62C, 62D, 62E, or 64A, the county is not liable for the cost of care. A parent or legal guardian who discontinues payment of health insurance premiums, subscriber fees or enrollment fees for a child who is otherwise eligible for those benefits is ineligible for payment of the cost of care of that child under this section.

The commissioner's determination shall be conclusive in any action to enforce payment of the cost of care. Any appeals from the commissioner's determination shall be made pursuant to section 256.045, subdivisions 2 and 3.

Subd. 3. If the parent fails to make appropriate reimbursement as required in subdivision 2, the county attorney may initiate a civil action to collect any unpaid reimbursement.

Subd. 4. In order to determine the effectiveness of the family unit in providing alternate living arrangements and providing or arranging for the training and developmental opportunities provided in a state hospital or a licensed community residential facility, the commissioner of human services may establish an experimental program to subsidize selected families who agree to carry out a planned program of home care and training for their minor dependents who are mentally retarded with mental retardation or related conditions.

This program shall be limited to children who otherwise would require and be eligible for placement in state hospitals or licensed community residential facilities.

Grants to families shall be determined by the commissioner of human services. In determining the grants, the commissioner shall consider the cost of diagnostic assessments, homemaker services, training expenses including specialized equipment, visiting nurses' or other pertinent therapists' costs, preschool program costs, related transportation expenses, and parental relief or child care costs not to exceed \$250 per month per family.

An individual care and training plan for the child shall be established and agreed upon by the parents receiving the subsidy and the appropriate local welfare agency. Periods of parental relief, including vacations, may be included in the plan and do not require the approval of the local welfare agency. The plan shall be periodically evaluated to determine the progress of the child.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 34. Minnesota Statutes 1984, section 252.275, subdivision 1, is amended to read:

Subdivision 1. **PROGRAM.** The commissioner of human services shall establish a statewide program to assist counties in reducing the utilization of intermediate care services in state hospitals and in community residential facilities for persons who are mentally retarded with mental retardation or related conditions. The commissioner shall make grants to county boards to establish, operate, or contract for the provision of semi-independent living services licensed by the commissioner pursuant to sections 245.781 to 245.812 and 252.28.

Sec. 35. Minnesota Statutes 1984, section 252.275, subdivision 7, is amended to read:

Subd. 7. **REPORTS.** The commissioner shall require collection of data and periodic reports necessary to demonstrate the effectiveness of semi-independent living services in helping mentally retarded persons with mental retardation or related conditions achieve self-sufficiency and independence. The commissioner shall report to the legislature no later than January 15, 1984, on the effectiveness of the program, its effect on reducing the number of mentally retarded persons with mental retardation or related conditions in state hospitals and in intermediate care facilities, and his recommendations regarding making this program an integral part of the social services programs administered by the counties.

Sec. 36. Minnesota Statutes 1984, section 252.28, is amended to read:

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

Subdivision 1. **DETERMINATIONS; BIENNIAL REDETERMINATIONS.** The commissioner of human services shall determine, and shall redetermine biennially, the need, location, size, and program of public and private residential and day care facilities and services for mentally retarded children and adults with mental retardation or related conditions.

Subd. 2. **RULES; PROGRAM STANDARDS; LICENSES.** The commissioner of human services shall:

(1) Establish uniform rules, regulations and program standards for each type of residential and day facility or service for mentally retarded persons with mental retardation or related conditions, including state institutions hospitals under control of the commissioner and serving mentally retarded persons with mental retardation or related conditions, and excluding mentally retarded persons with mental retardation or related conditions residing with their families.

(2) Grant licenses according to the provisions of Laws 1976, chapter 243, sections 2 to 13.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 3. **LICENSING DETERMINATIONS.** (1) No new license shall be granted pursuant to this section when the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within any town, municipality or county of the state.

(2) In determining whether a license shall be issued pursuant to this subdivision, the commissioner of human services shall specifically consider the population, size, land use plan, availability of community services and the number and size of existing public and private community residential facilities in the town, municipality or county in which a licensee seeks to operate a residence. Under no circumstances may the commissioner newly license any facility pursuant to this section except as provided in section 245.812. The commissioner of human services shall establish uniform rules and regulations to implement the provisions of this subdivision.

(3) Licenses for community facilities and services shall be issued pursuant to section 245.821.

Subd. 4. **RULES; DECERTIFICATION OF BEDS.** The commissioner shall promulgate in rule criteria for decertification of beds in intermediate care facilities for ~~the mentally retarded persons with mental retardation or related conditions~~, and shall encourage providers in voluntary decertification efforts. The commissioner shall not recommend to the commissioner of health the involuntary decertification of an intermediate care facility for beds for ~~the mentally retarded persons with mental retardation or related conditions~~ prior to the availability of appropriate services for those residents affected by the decertification. The commissioner of health shall decertify those intermediate care beds determined to be not needed by the commissioner of human services.

Sec. 37. Minnesota Statutes 1984, section 252.291, is amended to read:
252.291 LIMITATION ON DETERMINATION OF NEED.

Subdivision 1. **MORATORIUM.** Notwithstanding section 252.28, subdivision 1, or any other law or rule to the contrary, the commissioner of human services shall deny any request for a determination of need and refuse to grant a license pursuant to section 245.782 for any new intermediate care facility for ~~mentally retarded persons with mental retardation or related conditions~~ or for an increase in the licensed capacity of an existing facility except as provided in subdivision 2. In no event shall the total of certified intermediate care beds for ~~mentally retarded persons with mental retardation or related conditions~~ in community facilities and state hospitals exceed 7,500 beds as of July 1, 1983, and 7,000 beds as of July 1, 1986. "Certified bed" means an intermediate care bed for ~~the mentally retarded persons with mental retardation or related conditions~~ certified by the commissioner of health for the purposes of the medical assistance program under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982.

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Subd. 2. **EXCEPTIONS.** The commissioner of human services in coordination with the commissioner of health may approve a new intermediate care facility for ~~mentally retarded~~ persons with mental retardation or related conditions only in the following circumstances:

(a) when the facility is developed in accordance with a request for proposal system established pursuant to subdivision 3, clause (b);

(b) when the facility is necessary to serve the needs of identifiable ~~mentally retarded~~ persons with mental retardation or related conditions who are seriously behaviorally disordered or who are physically or sensorily impaired; or

(c) to license beds in new facilities where need was determined by the commissioner prior to June 10, 1983.

Subd. 3. **DUTIES OF COMMISSIONER OF HUMAN SERVICES.** The commissioner shall:

(a) establish standard admission criteria for state hospitals and county utilization targets to limit and reduce the number of intermediate care beds in state hospitals and community facilities in accordance with approved waivers under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, to assure that appropriate services are provided in the least restrictive setting;

(b) provide technical assistance so that county boards may establish a request for proposal system for meeting individual service plan objectives through home and community-based services; alternative community services; or, if no other alternative will meet the needs of identifiable individuals for whom the county is financially responsible, a new intermediate care facility for ~~mentally retarded~~ persons with mental retardation or related conditions; and

(c) establish a client tracking and evaluation system as required under applicable federal waiver regulations, Code of Federal Regulations, title 42, sections 431, 435, 440, and 441, as amended through December 31, 1982.

(d) develop a state plan for the delivery and funding of residential day and support services to ~~the mentally retarded~~ persons with mental retardation or related conditions in Minnesota and submit that plan to the clerk of each house of the Minnesota legislature on or before the 15th of January of each biennium beginning January 15, 1985. The biennial mental retardation plan shall include but not be limited to:

- (1) county by county maximum intermediate care bed utilization quotas;
- (2) plans for the development of the number and types of services alternative to intermediate care beds;
- (3) procedures for the administration and management of the plan;

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- (4) procedures for the evaluation of the implementation of the plan; and
- (5) the number, type, and location of intermediate care beds targeted for decertification.

The commissioner shall modify the plan to ensure conformance with the medical assistance home and community-based services waiver.

Subd. 4. **MONITORING.** The commissioner of human services, in coordination with the commissioner of health, shall implement mechanisms to monitor and analyze the effect of the bed moratorium in the different geographic areas of the state. The commissioner of human services shall submit to the legislature annually beginning January 15, 1984, an assessment of the impact of the moratorium by geographic areas.

Subd. 5. **RULEMAKING.** The commissioner of human services shall promulgate emergency and permanent rules pursuant to chapter 14, the Administrative Procedure Act, to implement this section.

Sec. 38. Minnesota Statutes 1984, section 252.30, is amended to read:

252.30 AUTHORIZATION TO MAKE GRANTS FOR COMMUNITY RESIDENTIAL FACILITIES.

The commissioner of human services may make grants to nonprofit organizations, municipalities or local units of government to provide up to 25 percent of the cost of constructing, purchasing or remodeling small community residential facilities for ~~mentally retarded and cerebral palsied~~ persons with mental retardation or related conditions allowing such persons to live in a homelike atmosphere near their families. Operating capital grants may also be made for up to three months of reimbursable operating costs after the facility begins processing applications for admission and prior to reimbursement for services. Repayment of the operating grants shall be made to the commissioner of human services at the end of the provider's first fiscal year, or at the conclusion of the interim rate period, whichever occurs first. No aid under this section shall be granted to a facility providing for more than 16 residents in a living unit and with more than two living units. The advisory council established by section 252.31 shall recommend to the commissioner appropriate disbursement of the funds appropriated by Laws 1973, Chapter 673, Section 3. Prior to any disbursement of funds the commissioner shall review the plans and location of any proposed facility to determine whether such a facility is needed. The commissioner shall promulgate such rules and regulations for the making of grants and for the administration of section 252.30 as he deems proper. The remaining portion of the cost of constructing, purchasing, remodeling facilities, or of operating capital shall be borne by nonstate sources including federal grants, local government funds, funds from charitable sources, gifts and mortgages.

Sec. 39. Minnesota Statutes 1984, section 252.31, is amended to read:

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252.31 ADVISORY TASK FORCE.

The commissioner of human services may appoint an advisory task force for the mentally retarded and physically handicapped persons with mental retardation, related conditions, or physical handicaps. The task force shall advise the commissioner relative to those laws for which the commissioner is responsible to administer and enforce relating to mental retardation or related conditions and physical disabilities. The task force shall consist of persons who are providers or consumers of service for the mentally retarded persons with mental retardation, related conditions, or physically handicapped physical handicaps, or who are interested citizens. The task force shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

Sec. 40. Minnesota Statutes 1984, section 252.32, is amended to read:

252.32 FAMILY SUBSIDY PROGRAM.

Within the limits of appropriations, the commissioner of human services may provide subsidies to families with mentally retarded children with mental retardation or related conditions in order to enable those families to continue caring for the children in their own homes. The commissioner may establish criteria for determining eligibility for a subsidy and subsidy amounts and conditions for use of subsidies.

Sec. 41. Minnesota Statutes 1984, section 253.015, is amended to read:

253.015 LOCATION; MANAGEMENT; COMMITMENT; ~~SUPER-INTENDENT~~ CHIEF EXECUTIVE OFFICER.

The state hospitals located at Anoka, Fergus Falls, Hastings, Moose Lake, Rochester, St. Peter, and Willmar shall constitute the state hospitals for mentally ill, and shall be maintained under the general management of the commissioner of human services. The commissioner of human services shall determine to what state hospital mentally ill persons with mental illness shall be committed from each county and notify the probate judge thereof, and of changes made from time to time. The chief executive officer of each hospital for the mentally ill persons with mental illness shall be known as the superintendent chief executive officer.

Sec. 42. Minnesota Statutes 1984, section 253.10, is amended to read:

253.10 DEATH OR ILLNESS; NOTICE GIVEN NEXT OF KIN.

The superintendent chief executive officer of any state hospital shall give to the next of kin of any inmate resident thereof immediate notice of his death, serious illness, or special change in his condition and promptly and fully answer all letters of inquiry from relatives. Immediately after the death of a patient or resident therein, he shall furnish for registration, to the proper clerk or health officer, and to the probate judge of the county from which he was committed, a certificate setting forth the name of the patient or resident, his age, the duration

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of his last sickness, and the cause and date of his death. The expenses of all coroners' inquests upon persons dying in such ~~institution~~ hospital shall be paid from the appropriation for its current expenses.

Sec. 43. Minnesota Statutes 1984, section 253.19, is amended to read:

253.19 ANNUAL REPORT.

On or before September 1 each year, the ~~superintendent~~ chief executive officer of each state hospital ~~or asylum for the insane for persons with mental illness or mental retardation~~ shall report to the commissioner of human services the number of ~~insane~~ persons with mental illness therein on July 31 preceding, giving the numbers of male and female and of the ~~idiotic and number of persons having epilepsy with mental retardation~~ idiotic and number of persons having epilepsy with mental retardation separately, and a statistical exhibit of the admissions, discharges, and deaths, with causes of death, and such other facts and information as the commissioner may require. Neglect to so report shall be a misdemeanor.

Sec. 44. Minnesota Statutes 1984, section 253.20, is amended to read:

253.20 MINNESOTA SECURITY HOSPITAL.

The commissioner of human services is hereby authorized and directed to erect, equip, and maintain in connection with a state hospital at St. Peter a suitable building to be known as the Minnesota Security Hospital, for the purpose of holding in custody and caring for such ~~insane persons, idiots, imbeciles, and persons having epilepsy~~ persons with mental illness or mental retardation as may be committed thereto by courts of criminal jurisdiction, or otherwise, or transferred thereto by the commissioner of human services, and for such persons as may be declared insane while confined in any penal institution, or who may be found to be mentally ~~inferm~~ ill and dangerous, and he shall supervise and manage the same as in the case of other state hospitals ~~or asylums~~.

Sec. 45. Minnesota Statutes 1984, section 253.21, is amended to read:

253.21 COMMITMENT; PROCEEDINGS; RESTORATION OF SANITY MENTAL HEALTH.

When any person confined in the Minnesota correctional facility-Stillwater or the Minnesota correctional facility-St. Cloud is alleged to be ~~insane~~ mentally ill, the chief executive officer or other person in charge shall forthwith notify the commissioner of human services, who shall cause the prisoner to be examined by the probate court of the county where he is confined, as in the case of other ~~insane~~ mentally ill persons. In case he is found to be ~~insane~~ mentally ill, he shall be transferred by the order of the court to the Minnesota Security Hospital or to a state hospital for the ~~insane~~ mentally ill people in the discretion of the court, there to be kept and maintained as in the case of other ~~insane~~ mentally ill persons. If, in the judgment of the ~~superintendent~~ chief executive officer, his sanity mental health is restored before the period of his commitment to the penal

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institution has expired, he shall be removed by the commissioner, upon the certificate of the ~~superintendent~~ chief executive officer, to the institution whence he came, and there complete the period of his sentence.

Sec. 46. Minnesota Statutes 1984, section 253.25, is amended to read:

253.25 COMMITMENT BEFORE CONVICTION.

When any person under indictment or information and before trial thereon shall be found to be ~~insane, an idiot, or an imbecile~~ incompetent to proceed and to have homicidal tendencies; or when during the trial of any person on an indictment or information such person shall be found to be ~~insane, an idiot, or an imbecile~~ incompetent to proceed and to have homicidal tendencies, the court in which such indictment or information is filed shall forthwith commit such person to the Minnesota Security Hospital for safekeeping and treatment and such person shall be received and cared for thereat until he shall recover when he shall be returned to the court from which he was received there to be dealt with according to law.

Sec. 47. Minnesota Statutes 1984, section 253.26, is amended to read:

253.26 TRANSFERS OF PATIENTS OR RESIDENTS.

When any ~~patient person~~ of the state ~~institution for the mentally ill, mentally defective or persons having epilepsy hospital for patients with mental illness or residents with mental retardation~~ is found by the commissioner of human services to have homicidal tendencies or to be under sentence or indictment or information he may be transferred by the commissioner to the Minnesota Security Hospital for safekeeping and treatment.

Sec. 48. Minnesota Statutes 1984, section 256.01, subdivision 2, is amended to read:

Subd. 2. **SPECIFIC POWERS.** Subject to the provisions of section 241.021, subdivision 2, the commissioner of human services shall:

(1) Administer and supervise all forms of public assistance provided for by state law and other welfare activities or services as are vested in the commissioner.

(2) Administer and supervise all child welfare activities; promote the enforcement of laws protecting handicapped, dependent, neglected and delinquent children, and children born to mothers who were not married to the children's fathers at the times of the conception nor at the births of the children; license and supervise child-caring and child-placing agencies and institutions; supervise the care of children in boarding and foster homes or in private institutions; and generally perform all functions relating to the field of child welfare now vested in the state board of control.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(3) Administer and supervise all noninstitutional service to handicapped persons, including those who are visually impaired, hearing impaired, or physically impaired or otherwise handicapped. The commissioner may provide and contract for the care and treatment of qualified indigent children in facilities other than those located and available at state hospitals when it is not feasible to provide the service in state hospitals.

(4) Assist and actively cooperate with other departments, agencies and institutions, local, state, and federal, by performing services in conformity with the purposes of Laws 1939, chapter 431.

(5) Act as the agent of and cooperate with the federal government in matters of mutual concern relative to and in conformity with the provisions of Laws 1939, chapter 431, including the administration of any federal funds granted to the state to aid in the performance of any functions of the commissioner as specified in Laws 1939, chapter 431, and including the promulgation of rules making uniformly available medical care benefits to all recipients of public assistance, at such times as the federal government increases its participation in assistance expenditures for medical care to recipients of public assistance, the cost thereof to be borne in the same proportion as are grants of aid to said recipients.

(6) Establish and maintain any administrative units reasonably necessary for the performance of administrative functions common to all divisions of the department.

(7) Administer and supervise any additional welfare activities and services as are vested by law in the department.

(8) The commissioner is designated as guardian of both the estate and the person of all the wards of the state of Minnesota, whether by operation of law or by an order of court, without any further act or proceeding whatever, except as to persons committed as mentally retarded ~~or having epilepsy.~~

(9) Act as coordinating referral and informational center on requests for service for newly arrived immigrants coming to Minnesota.

(10) The specific enumeration of powers and duties as hereinabove set forth shall in no way be construed to be a limitation upon the general transfer of powers herein contained.

(11) Establish county, regional, or statewide schedules of maximum fees and charges which may be paid by local agencies for medical, dental, surgical, hospital, nursing and nursing home care and medicine and medical supplies under all programs of medical care provided by the state and for congregate living care under the income maintenance programs.

(12) Have the authority to conduct and administer experimental projects to test methods and procedures of administering assistance and services to recipients or potential recipients of public welfare. To carry out such experimen-

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tal projects, it is further provided that the commissioner of human services is authorized to waive the enforcement of existing specific statutory program requirements, regulations, and standards in one or more counties. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, and in no event shall the duration of a project exceed two years. It is further provided that no order establishing an experimental project as authorized by the provisions of this section shall become effective until the following conditions have been met:

(a) The proposed comprehensive plan including estimated project costs and the proposed order establishing the waiver shall be filed with the secretary of the senate and chief clerk of the house of representatives at least 60 days prior to its effective date.

(b) The secretary of health, education, and welfare of the United States has agreed, for the same project, to waive state plan requirements relative to statewide uniformity.

(c) A comprehensive plan, including estimated project costs, shall be approved by the legislative advisory commission and filed with the commissioner of administration.

(13) In accordance with federal requirements establish procedures to be followed by local welfare boards in creating citizen advisory committees, including procedures for selection of committee members.

(14) Allocate federal fiscal disallowances or sanctions which are based on quality control error rates for the aid to families with dependent children, medical assistance, or food stamp program in the following manner:

(a) One-half of the total amount of the disallowance shall be borne by the county boards responsible for administering the programs and shall be shared by each county board in the same proportion as that county's expenditures for the sanctioned program are to the total of all counties' expenditures for that program. Each county shall pay its share of the disallowance to the state of Minnesota. When a county fails to pay the amount due hereunder, the commissioner may deduct the amount from reimbursement otherwise due the county, or the attorney general, upon the request of the commissioner, may institute civil action to recover the amount due.

(b) Notwithstanding the provisions of paragraph (a), if the disallowance results from knowing noncompliance by one or more counties with a specific program instruction, and that knowing noncompliance is a matter of official county board record, the commissioner may require payment or recover from the county or counties, in the manner prescribed in paragraph (a), an amount equal to the portion of the total disallowance which resulted from the noncompliance, and may distribute the balance of the disallowance according to paragraph (a).

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(15) Develop and implement special projects that maximize reimbursements and result in the recovery of money to the state. For the purpose of recovering state money, the commissioner may enter into contracts with third parties. Any recoveries that result from projects or contracts entered into under this paragraph shall be deposited in the state treasury and credited to a special account until the balance in the account reaches \$400,000. When the balance in the account exceeds \$400,000, the excess shall be transferred and credited to the general fund. All money in the account is appropriated to the commissioner for the purposes of this paragraph.

Sec. 49. Minnesota Statutes 1984, section 256.01, subdivision 5, is amended to read:

Subd. 5. **GIFTS, CONTRIBUTIONS, PENSIONS AND BENEFITS; ACCEPTANCE.** The commissioner shall have the power and authority to accept in behalf of the state contributions and gifts for the use and benefit of children under the guardianship or custody of the commissioner; he may also receive and accept on behalf of such children, and on behalf of patients and residents at the several state institutions for the mentally ill, the mentally retarded, or persons having epilepsy hospitals for persons with mental illness or mental retardation during the period of their hospitalization and while on provisional discharge therefrom, moneys due and payable to them as old age and survivors insurance benefits, veterans benefits, pensions or other such monetary benefits. Such gifts, contributions, pensions and benefits shall be deposited in and disbursed from the social welfare fund provided for in sections 256.88 to 256.92.

Sec. 50. Minnesota Statutes 1984, section 256.91, is amended to read:
256.91 PURPOSES.

From that part of the social welfare fund held in the state treasury subject to disbursement as provided in section 256.90 the commissioner of human services at any time may pay out such amounts as he deems proper for the support, maintenance, or other legal benefit of any of the handicapped, dependent, neglected, and delinquent children, children born to mothers who were not married to the children's fathers at the times of the conception nor at the births of the children, persons ~~found to be mentally retarded, chemically dependent or mentally ill~~ with mental retardation, chemical dependency, or mental illness, or other wards or persons entitled thereto, not exceeding in the aggregate to or for any person the principal amount previously received for the benefit of the person, together with the increase in it from an equitable apportionment of interest realized from the social welfare fund.

When any such person dies or is finally discharged from the guardianship, care, custody, and control of the commissioner of human services, the amount then remaining subject to use for the benefit of the person shall be paid as soon as may be from the social welfare fund to the persons thereto entitled by law.

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Sec. 51. Minnesota Statutes 1984, section 256.93, subdivision 1, is amended to read:

Subdivision 1. **LIMITATIONS.** In any case where the guardianship of the person of any mentally retarded, handicapped, dependent, neglected or delinquent child, or a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born, has been committed to the commissioner of human services, and in any case where the guardianship or conservatorship of the person of any ~~mentally retarded person or person having epilepsy~~ person with mental retardation has been committed to the commissioner of human services, the probate court having jurisdiction of the estate may on such notice as the court may direct, authorize the commissioner to take possession of the personal property in the estate, liquidate it, and hold the proceeds in trust for the ward, to be invested, expended and accounted for as provided by sections 256.88 to 256.92.

Sec. 52. Minnesota Statutes 1984, section 256B.02, subdivision 2, is amended to read:

Subd. 2. "Excluded time" means any period of time an applicant spends in a hospital, sanatorium, nursing home, boarding home, shelter, halfway house, foster home, semi-independent living domicile, residential facility offering care, board and lodging facility offering 24-hour care or supervision of ~~mentally ill, mentally retarded, or physically disabled persons, or other institution persons with mental illness, mental retardation, related conditions, or physical disabilities; or other treatment facility~~ for the hospitalization or care of human beings, as defined in sections 144.50, 144A.01, or 245.782, subdivision 6.

Sec. 53. Minnesota Statutes 1984, section 256B.02, subdivision 8, is amended to read:

Subd. 8. **MEDICAL ASSISTANCE; MEDICAL CARE.** "Medical assistance" or "medical care" means payment of part or all of the cost of the following care and services for eligible individuals whose income and resources are insufficient to meet all of this cost:

(1) Inpatient hospital services. A second medical opinion is required prior to reimbursement for elective surgeries. The commissioner shall publish in the State Register a proposed list of elective surgeries that require a second medical opinion prior to reimbursement. The list is not subject to the requirements of sections 14.01 to 14.70. The commissioner's decision whether a second medical opinion is required, made in accordance with rules governing that decision, is not subject to administrative appeal;

(2) Skilled nursing home services and services of intermediate care facilities, including training and habilitation services, as defined in section 256B.50, subdivision 1, for ~~mentally retarded individuals~~ persons with mental retardation

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or related conditions who are residing in intermediate care facilities for the mentally retarded persons with mental retardation or related conditions;

(3) Physicians' services;

(4) Outpatient hospital or nonprofit community health clinic services or physician-directed clinic services. The physician-directed clinic staff shall include at least two physicians, one of whom is on the premises whenever the clinic is open, and all services shall be provided under the direct supervision of the physician who is on the premises. Hospital outpatient departments are subject to the same limitations and reimbursements as other enrolled vendors for all services, except initial triage, emergency services, and services not provided or immediately available in clinics, physicians' offices, or by other enrolled providers. "Emergency services" means those medical services required for the immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death or are necessary to alleviate severe pain. Neither the hospital, its employees, nor any physician or dentist, shall be liable in any action arising out of a determination not to render emergency services or care if reasonable care is exercised in determining the condition of the person, or in determining the appropriateness of the facilities, or the qualifications and availability of personnel to render these services consistent with this section;

(5) Community mental health center services, as defined in rules adopted by the commissioner pursuant to section 256B.04, subdivision 2, and provided by a community mental health center as defined in section 245.62, subdivision 2;

(6) Home health care services;

(7) Private duty nursing services;

(8) Physical therapy and related services;

(9) Dental services, excluding cast metal restorations;

(10) Laboratory and xray services;

(11) The following if prescribed by a licensed practitioner: drugs, eyeglasses, dentures, and prosthetic devices. The commissioner shall designate a formulary committee which shall advise the commissioner on the names of drugs for which payment shall be made, recommend a system for reimbursing providers on a set fee or charge basis rather than the present system, and develop methods encouraging use of generic drugs when they are less expensive and equally effective as trademark drugs. The commissioner shall appoint the formulary committee members no later than 30 days following July 1, 1981. The formulary committee shall consist of nine members, four of whom shall be physicians who are not employed by the department of human services, and a majority of whose practice is for persons paying privately or through health insurance, three of whom shall be pharmacists who are not employed by the department of human

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services, and a majority of whose practice is for persons paying privately or through health insurance, a consumer representative, and a nursing home representative. Committee members shall serve two year terms and shall serve without compensation. The commissioner may establish a drug formulary. Its establishment and publication shall not be subject to the requirements of the Administrative Procedure Act, but the formulary committee shall review and comment on the formulary contents. Prior authorization may be required by the commissioner, with the consent of the drug formulary committee, before certain formulary drugs are eligible for payment. The formulary shall not include: drugs or products for which there is no federal funding; over the counter drugs, except for antacids, acetaminophen, family planning products, aspirin, insulin, prenatal vitamins, and vitamins for children under the age of seven; or any other over the counter drug identified by the commissioner, in consultation with the appropriate professional consultants under contract with or employed by the state agency, as necessary, appropriate and cost effective for the treatment of certain specified chronic diseases, conditions or disorders, and this determination shall not be subject to the requirements of chapter 14, the Administrative Procedure Act; nutritional products, except for those products needed for treatment of phenylketonuria, hyperlysinemia, maple syrup urine disease, a combined allergy to human milk, cow milk, and soy formula, or any other childhood or adult diseases, conditions, or disorders identified by the commissioner as requiring a similarly necessary nutritional product; anorectics; and drugs for which medical value has not been established. Separate payment shall not be made for nutritional products for residents of long-term care facilities; payment for dietary requirements is a component of the per diem rate paid to these facilities. Payment to drug vendors shall not be modified before the formulary is established except that the commissioner shall not permit payment for any drugs which may not by law be included in the formulary, and his determination shall not be subject to chapter 14, the Administrative Procedure Act. The commissioner shall publish conditions for prohibiting payment for specific drugs after considering the formulary committee's recommendations.

The basis for determining the amount of payment shall be the actual acquisition costs of the drugs plus a fixed dispensing fee established by the commissioner. Actual acquisition cost includes quantity and other special discounts except time and cash discounts. Establishment of this fee shall not be subject to the requirements of the Administrative Procedure Act. Whenever a generically equivalent product is available, payment shall be on the basis of the actual acquisition cost of the generic drug, unless the prescriber specifically indicates "dispense as written" on the prescription as required by section 151.21, subdivision 2.

Notwithstanding the above provisions, implementation of any change in the fixed dispensing fee which has not been subject to the Administrative Procedure Act shall be limited to not more than 180 days, unless, during that

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time, the commissioner shall have initiated rulemaking through the Administrative Procedure Act;

(12) Diagnostic, screening, and preventive services;

(13) Health care pre-payment plan premiums and insurance premiums if paid directly to a vendor and supplementary medical insurance benefits under Title XVIII of the Social Security Act;

(14) Abortion services, but only if one of the following conditions is met:

(a) The abortion is a medical necessity. "Medical necessity" means (1) the signed written statement of two physicians indicating the abortion is medically necessary to prevent the death of the mother, and (2) the patient has given her consent to the abortion in writing unless the patient is physically or legally incapable of providing informed consent to the procedure, in which case consent will be given as otherwise provided by law;

(b) The pregnancy is the result of criminal sexual conduct as defined in section 609.342, clauses (c), (d), (e)(i), and (f), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation, unless the victim is physically unable to report the criminal sexual conduct, in which case the report shall be made within 48 hours after the victim becomes physically able to report the criminal sexual conduct; or

(c) The pregnancy is the result of incest, but only if the incident and relative are reported to a valid law enforcement agency for investigation prior to the abortion;

(15) Transportation costs incurred solely for obtaining emergency medical care or transportation costs incurred by nonambulatory persons in obtaining emergency or nonemergency medical care when paid directly to an ambulance company, common carrier, or other recognized providers of transportation services. For the purpose of this clause, a person who is incapable of transport by taxicab or bus shall be considered to be nonambulatory;

(16) To the extent authorized by rule of the state agency, costs of bus or taxicab transportation incurred by any ambulatory eligible person for obtaining nonemergency medical care;

(17) Personal care attendant services provided by an individual, not a relative, who is qualified to provide the services, where the services are prescribed by a physician in accordance with a plan of treatment and are supervised by a registered nurse. Payments to personal care attendants shall be adjusted annually to reflect changes in the cost of living or of providing services by the average annual adjustment granted to vendors such as nursing homes and home health agencies; and

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(18) Any other medical or remedial care licensed and recognized under state law unless otherwise prohibited by law.

Sec. 54. Minnesota Statutes 1984, section 256B.02, is amended by adding a subdivision to read:

Subd. 11. "Related condition" means that condition defined in section 252.27, subdivision 1.

Sec. 55. Minnesota Statutes 1984, section 256B.092, is amended to read:

256B.092 CASE MANAGEMENT OF MENTALLY RETARDED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

Subdivision 1. COUNTY OF FINANCIAL RESPONSIBILITY; DUTIES. Before any services shall be rendered to ~~mentally retarded~~ persons with mental retardation or related conditions who are in need of social service and medical assistance, the county of financial responsibility shall conduct a diagnostic evaluation in order to determine whether the person is or may be mentally retarded or has or may have a related condition. If a client is diagnosed as mentally retarded or as having a related condition, that county must conduct a needs assessment, develop an individual service plan, and authorize placement for services. If the county of financial responsibility places a client in another county for services, the placement shall be made in cooperation with the host county of service, and arrangements shall be made between the two counties for ongoing social service, including annual reviews of the client's individual service plan. The host county may not make changes in the service plan without approval by the county of financial responsibility.

Subd. 2. MEDICAL ASSISTANCE. To assure quality case management to those county clients who are eligible for medical assistance, the commissioner shall: (a) provide consultation on the case management process; (b) assist county agencies in the screening and annual reviews of clients to assure that appropriate levels of service are provided; (c) provide consultation on service planning and development of services with appropriate options; (d) provide training and technical assistance to county case managers; and (e) authorize payment for medical assistance services.

Subd. 3. TERMINATION OF SERVICES. County agency case managers, under rules of the commissioner, shall authorize and terminate services of community and state hospital providers in accordance with individual service plans. Medical assistance services not needed shall not be authorized by county agencies nor funded by the commissioner.

Subd. 4. ALTERNATIVE HOME AND COMMUNITY-BASED SERVICES. The commissioner shall make payments to county boards participating in the medical assistance program to pay costs of providing alternative home and community-based services to medical assistance eligible ~~mentally~~

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retarded persons with mental retardation or related conditions who have been screened under subdivision 7. Payment is available under this subdivision only for persons who, if not provided these services, would require the level of care provided in an intermediate care facility for mentally retarded persons with mental retardation or related conditions.

Subd. 5. **FEDERAL WAIVERS.** The commissioner shall apply for any federal waivers necessary to secure, to the extent allowed by law, federal financial participation under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, for the provision of services to persons who, in the absence of the services, would need the level of care provided in a state hospital or a community intermediate care facility for mentally retarded persons with mental retardation or related conditions. The commissioner may seek amendments to the waivers or apply for additional waivers under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, to contain costs. The commissioner shall ensure that payment for the cost of providing home and community-based alternative services under the federal waiver plan shall not exceed the cost of intermediate care services that would have been provided without the waived services.

Subd. 6. **RULES.** The commissioner shall adopt emergency and permanent rules to establish required controls, documentation, and reporting of services provided in order to assure proper administration of the approved waiver plan.

Subd. 7. **SCREENING TEAMS ESTABLISHED.** Each county agency shall establish a screening team which, under the direction of the county case manager, shall make an evaluation of need for home and community-based services of persons who are entitled to the level of care provided by an intermediate care facility for mentally retarded persons with mental retardation or related conditions or for whom there is a reasonable indication that they might need the services in the near future. The screening team shall make an evaluation of need within 15 working days of the request for service and within five working days of an emergency admission of an individual to an intermediate care facility for mentally retarded persons with mental retardation or related conditions. The screening team shall consist of the case manager, the client, a parent or guardian, a qualified mental retardation professional, as defined in the Code of Federal Regulations, title 42, section 442.401, as amended through December 31, 1982, assigned by the commissioner. The case manager shall consult with the client's physician or other persons as necessary to make this evaluation. Other persons may be invited to attend meetings of the screening team. No member of the screening team shall have any direct or indirect service provider interest in the case.

Subd. 8. **SCREENING TEAM DUTIES.** The screening team shall:

- (a) review diagnostic data;

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(b) review health, social, and developmental assessment data using a uniform screening tool specified by the commissioner;

(c) identify the level of services needed to maintain the person in the most normal and least restrictive setting that is consistent with treatment needs;

(d) identify other noninstitutional public assistance or social service that may prevent or delay long-term residential placement;

(e) determine whether a client is in serious need of long-term residential care;

(f) make recommendations to the county agency regarding placement and payment for: (1) social service or public assistance support to maintain a client in the client's own home or other place of residence; (2) training and habilitation service, vocational rehabilitation, and employment training activities; (3) community residential placement; (4) state hospital placement; or (5) a home and community-based alternative to community residential placement or state hospital placement;

(g) make recommendations to a court as may be needed to assist the court in making commitments of mentally retarded persons; and

(h) inform clients that appeal may be made to the commissioner pursuant to section 256.045.

Subd. 9. **REIMBURSEMENT.** Payment shall not be provided to a service provider for any recipient placed in an intermediate care facility for ~~the mentally retarded persons with mental retardation or related conditions~~ prior to the recipient being screened by the screening team. The commissioner shall not deny reimbursement for: (a) an individual admitted to an intermediate care facility for ~~mentally retarded persons with mental retardation or related conditions~~ who is assessed to need long-term supportive services, if long-term supportive services other than intermediate care are not available in that community; (b) any individual admitted to an intermediate care facility for ~~the mentally retarded persons with mental retardation or related conditions~~ under emergency circumstances; (c) any eligible individual placed in the intermediate care facility for ~~the mentally retarded persons with mental retardation or related conditions~~ pending an appeal of the screening team's decision; or (d) any medical assistance recipient when, after full discussion of all appropriate alternatives including those that are expected to be less costly than intermediate care for ~~mentally retarded persons with mental retardation or related conditions~~, the individual or the individual's legal representative insists on intermediate care placement. The screening team shall provide documentation that the most cost effective alternatives available were offered to this individual or the individual's legal representative.

Sec. 56. Minnesota Statutes 1984, section 256B.36, is amended to read:

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256B.36 PERSONAL ALLOWANCE, HANDICAPPED OR MENTALLY RETARDED FOR CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE.

In addition to the personal allowance established in section 256B.35, any handicapped or mentally retarded recipient of medical assistance with a handicap, mental retardation, or a related condition, confined in a skilled nursing home or intermediate care facility shall also be permitted a special personal allowance drawn solely from earnings from any productive employment under an individual plan of rehabilitation. This special personal allowance shall not exceed (1) the limits set therefor by the commissioner, or (2) the amount of disregarded income the individual would have retained had he or she been a recipient of aid to the disabled benefits in December, 1973, whichever amount is lower.

Sec. 57. Minnesota Statutes 1984, section 256B.501, is amended to read:

256B.501 RATES FOR COMMUNITY-BASED SERVICES FOR THE MENTALLY RETARDED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meaning given them.

(a) "Commissioner" means the commissioner of human services.

(b) "Facility" means a facility licensed as a mental retardation residential facility under section 252.28, licensed as a supervised living facility under chapter 144, and certified as an intermediate care facility for the mentally retarded persons with mental retardation or related conditions.

(c) "Waivered service" means home or community-based service authorized under United States Code, title 42, section 1396n(c), as amended through December 31, 1982, and defined in the Minnesota state plan for the provision of medical assistance services. Waivered services include, at a minimum, case management, family training and support, developmental training homes, supervised living arrangements, semi-independent living services, respite care, and training and habilitation services.

(d) "Training and habilitation services" are those health and social services needed to ensure optimal functioning of persons who are mentally retarded or have with mental retardation or related conditions. Training and habilitation services shall be provided to a client away from the residence unless medically contraindicated by an organization which does not have a direct or indirect financial interest in the organization which provides the person's residential services. This requirement shall not apply to any developmental achievement center which has applied for licensure prior to April 15, 1983.

Subd. 2. **AUTHORITY.** The commissioner shall establish procedures and rules for determining rates for care of residents of intermediate care facilities

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for the ~~mentally retarded~~ persons with mental retardation or related conditions which qualify as vendors of medical assistance, waived services, and for provision of training and habilitation services. Approved rates shall be established on the basis of methods and standards that the commissioner finds adequate to provide for the costs that must be incurred for the quality care of residents in efficiently and economically operated facilities and services. The procedures shall specify the costs that are allowable for payment through medical assistance. The commissioner may use experts from outside the department in the establishment of the procedures.

Subd. 3. **RATES FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.** The commissioner shall establish, by rule, procedures for determining rates for care of residents of intermediate care facilities for the ~~mentally retarded~~ persons with mental retardation or related conditions. The procedures shall be based on methods and standards that the commissioner finds are adequate to provide for the costs that must be incurred for the care of residents in efficiently and economically operated facilities. In developing the procedures, the commissioner shall include:

(a) cost containment measures that assure efficient and prudent management of capital assets and operating cost increases which do not exceed increases in other sections of the economy;

(b) limits on the amounts of reimbursement for property, general and administration, and new facilities;

(c) requirements to ensure that the accounting practices of the facilities conform to generally accepted accounting principles; and

(d) incentives to reward accumulation of equity.

In establishing rules and procedures for setting rates for care of residents in intermediate care facilities for ~~mentally retarded~~ persons with mental retardation or related conditions, the commissioner shall consider the recommendations contained in the February 11, 1983, Report of the Legislative Auditor on Community Residential Programs for the Mentally Retarded and the recommendations contained in the 1982 Report of the Department of Public Welfare Rule 52 Task Force. Rates paid to supervised living facilities for rate years beginning during the fiscal biennium ending June 30, 1985, shall not exceed the final rate allowed the facility for the previous rate year by more than five percent.

Subd. 4. **WAIVERED SERVICES.** In establishing rates for waived services the commissioner shall consider the need for flexibility in the provision of those services to meet individual needs identified by the screening team.

Subd. 5. **TRAINING AND HABILITATION SERVICES.** (a) Except as provided in subdivision 6, rates for reimbursement under medical assistance for

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training and habilitation services provided by a developmental achievement center either as a waived service or to residents of an intermediate care facility for mentally retarded persons with mental retardation or related conditions shall be established and paid in accordance with this subdivision effective January 1, 1984.

(b) Prior to August 1, 1983, the county board shall submit to the commissioner its contractual per diem rate and its maximum per client annual payment limitations, if any, for each developmental achievement center it administers pursuant to section 252.24, subdivision 1, for the period from July 1, 1983, through December 31, 1983, which shall be the medical assistance reimbursement rate established for that developmental achievement center for 1983. If the county rate is based on average daily attendance which is less than 93 percent of the developmental achievement center's average enrollment for the period from July 1, 1983, to December 31, 1983, the commissioner shall adjust that rate based on 93 percent average daily attendance.

(c) The base per diem reimbursement rate established for 1983 may be increased by the commissioner in 1984 in an amount up to the projected percentage change in the average value of the consumer price index (all urban) for 1984 over 1983. In subsequent years, the increase in the per diem rate shall not exceed the projected percentage change in the average annual value of the consumer price index (all urban) for the same time period.

(d) The county board in which an intermediate care facility for mentally retarded persons with mental retardation or related conditions is located shall contract annually with that facility and with the appropriate developmental achievement center or training and habilitation service provider for provision of training and habilitation services for each resident of the facility for whom the services are required by the resident's individual service plan. This contract shall specify the county payment rate or the medical assistance reimbursement rate, as appropriate; the training and habilitation services to be provided; and the performance standards for program provision and evaluation. A similar contract shall be entered into between the county and the developmental achievement center for persons receiving training and habilitation services from that center as a waived service.

(e) The commissioner shall reimburse under medical assistance up to 210 days of training and habilitation services at developmental achievement centers for those centers which provided less than or equal to 210 days of training and habilitation services in calendar year 1982. For developmental achievement centers providing more than 210 days of services in 1982, the commissioner shall not reimburse under medical assistance in excess of the number of days provided by those programs in 1982.

(f) Medical assistance payments for training and habilitation services shall be made directly to the training and habilitation provider after submission of

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invoices to the medical assistance program following procedures established by the medical assistance program.

(g) Nothing in this subdivision shall prohibit county boards from contracting for rates for services not reimbursed under medical assistance.

Subd. 6. NEW DEVELOPMENTAL ACHIEVEMENT PROGRAMS; RATES. The commissioner, upon the recommendation of the local county board, shall determine the medical assistance reimbursement rate for new developmental achievement programs. The payment rate shall not exceed 125 percent of the average payment rate in the region.

Subd. 7. ALTERNATIVE RATES FOR TRAINING AND HABILITATION SERVICES. Alternative methods may be proposed by the counties or the commissioner for provision of training and habilitation services during daytime hours apart from a residential facility to persons for whom needs identified in their individual service plan are not met by the training and habilitation services provided at a developmental achievement center. The commissioner shall establish procedures for approval of the proposals and for medical assistance payment of rates which shall not exceed the average rate allowed in that county for training and habilitation services pursuant to subdivision 5. Nothing in this subdivision prohibits a county from contracting with a developmental achievement center for those purposes.

Subd. 8. PAYMENT FOR PERSONS WITH SPECIAL NEEDS. The commissioner shall establish by December 31, 1983, procedures to be followed by the counties to seek authorization from the commissioner for medical assistance reimbursement for waived services or training and habilitation services for very dependent persons with special needs in an amount in excess of the rates allowed pursuant to subdivisions 2, 4, 5, and 6, and procedures to be followed for rate limitation exemptions for intermediate care facilities for ~~mentally retarded~~ persons with mental retardation or related conditions. No excess payment or limitation exemption shall be authorized unless the need for the service is documented in the individual service plan of the person or persons to be served, the type and duration of the services needed are stated, and there is a basis for estimated cost of the services.

The commissioner shall evaluate the services provided pursuant to this subdivision through program and fiscal audits.

Subd. 9. REPORTING REQUIREMENTS. The developmental achievement center shall submit to the county and the commissioner no later than March 1 of each year an annual report which includes the actual program revenues and expenditures, client information, and program information. The information shall be submitted on forms prescribed by the commissioner.

Subd. 10. RULES. To implement this section, the commissioner shall promulgate emergency and permanent rules in accordance with chapter 14. To

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implement subdivision 3, the commissioner shall promulgate emergency rules and permanent rules in accordance with sections 14.01 to 14.38. Notwithstanding the provisions of section 14.35, the emergency rule promulgated to implement subdivision 3 shall be effective for up to 720 days.

Sec. 58. Minnesota Statutes 1984, section 256E.03, subdivision 2, is amended to read:

Subd. 2. "Community social services" means services provided or arranged for by county boards to fulfill the responsibilities prescribed in section 256E.08, subdivision 1 to the following groups of persons:

(a) Families with children under age 18, who are experiencing child dependency, neglect or abuse, and also pregnant adolescents, adolescent parents under the age of 18, and their children;

(b) Persons who are under the guardianship of the commissioner of human services as dependent and neglected wards;

(c) Adults who are in need of protection and vulnerable as defined in section 626.557;

(d) Persons age 60 and over who are experiencing difficulty living independently and are unable to provide for their own needs;

(e) Emotionally disturbed children and adolescents, chronically and acutely mentally ill persons who are unable to provide for their own needs or to independently engage in ordinary community activities;

(f) ~~Mentally retarded persons~~ Persons with mental retardation as defined in section 252A.02, subdivision 2, or with related conditions as defined in section 252.27, subdivision 1, who are unable to provide for their own needs or to independently engage in ordinary community activities;

(g) Drug dependent and intoxicated persons as defined in section 254A.02, subdivisions 5 and 7, and persons at risk of harm to self or others due to the ingestion of alcohol or other drugs;

(h) Parents whose income is at or below 70 percent of the state median income and who are in need of child care services in order to secure or retain employment or to obtain the training or education necessary to secure employment; and

(i) Other groups of persons who, in the judgment of the county board, are in need of social services.

Community social services do not include public assistance programs known as aid to families with dependent children, Minnesota supplemental aid, medical assistance, general assistance, general assistance medical care, or community health services authorized by sections 145.911 to 145.922.

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Sec. 59. Minnesota Statutes 1984, section 256E.06, subdivision 2a, is amended to read:

Subd. 2a. **STATE TRANSFER OF FUNDS.** Notwithstanding subdivisions 1 and 2, for the purpose of funding training and habilitation services provided to residents of intermediate care facilities for ~~mentally retarded~~ persons with mental retardation or related conditions as defined in section 252.27, subdivision 1, as required under federal regulation, the commissioner is authorized to transfer on a quarterly basis to the medical assistance state account from each county's Community Social Services Act allocation an amount equal to the state share of medical assistance reimbursement for such services provided to clients for whom the county is financially responsible. Upon federal approval and state implementation of the state medical assistance plan, county boards will not be responsible for the funding of training and habilitation services as a social service to residents of intermediate care facilities for ~~the mentally retarded~~ persons with mental retardation or related conditions. County board responsibility for training and habilitation services shall be assumed under section 256B.20. County boards continue to be responsible for funding developmental achievement center services not covered under the medical assistance program established by United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, and shall develop contractual agreements for these services under the authority of this chapter.

Sec. 60. Minnesota Statutes 1984, section 260.092, is amended to read:
260.092 **EXPERT ASSISTANCE.**

In any county the court may provide for the physical and mental diagnosis of cases of minors who are believed to be physically ~~or mentally diseased or defective~~ handicapped, mentally ill, or mentally retarded, and for such purpose may appoint professionally qualified persons, whose compensation shall be fixed by the judge with the approval of the county board.

Sec. 61. Minnesota Statutes 1984, section 260.36, is amended to read:
260.36 **SPECIAL PROVISIONS IN CERTAIN CASES.**

When the commissioner of human services shall find that a child transferred to his guardianship after parental rights to the child are terminated or that a child committed to his guardianship as a dependent or neglected child is handicapped physically or whose mentality has not been satisfactorily determined or who is affected by habits, ailments, or handicaps that produce erratic and unstable conduct, and is not suitable or desirable for placement in a home for permanent care or adoption, the commissioner of human services shall make special provision for his care and treatment designed to fit him, if possible, for such placement or to become self-supporting. The facilities of the commissioner of human services and all state ~~institutions~~ treatment facilities, the Minnesota general hospital, and the child guidance clinic of its psychopathic department, as

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well as the facilities available through reputable clinics, private child-caring agencies, and foster boarding homes, accredited as provided by law, may be used as the particular needs of the child may demand. When it appears that the child is suitable for permanent placement or adoption, the commissioner of human services shall cause him to be placed as provided in section 260.35. If the commissioner of human services is satisfied that the child is feebleminded mentally retarded he may bring him before the probate court of the county where he is found or the county of his legal settlement for examination and commitment as provided by law.

Sec. 62. Minnesota Statutes 1984, section 284.05, is amended to read:

284.05 WHEN DEFENDANT A MINOR, WARD, OR INSANE MENTALLY ILL.

If any defendant in any action mentioned in sections 284.01 to 284.04 was the owner of record of any of the lands involved in any such action during the period of three years next after the sale thereof for nonpayment of taxes, and was a minor, an ~~insane person, an idiot~~ a person with mental illness or mental retardation, or person in captivity or in any country with which the United States was at war, and the period of redemption from such sale by such person has not expired, the court shall dismiss such action as to such person.

Sec. 63. Minnesota Statutes 1984, section 299F.77, is amended to read:

299F.77 ISSUANCE OF A LICENSE OR PERMIT TO CERTAIN PERSONS PROHIBITED.

The following persons shall not be entitled to receive an explosives license or permit:

(a) Any person who within the past five years has been convicted of a felony or gross misdemeanor involving moral turpitude, is on parole or probation therefor, or is currently under indictment for any such crime;

(b) Any ~~mentally ill person or any mentally deficient person~~ person with mental illness or mental retardation as defined in section 253A.02 who has been confined or committed in Minnesota or elsewhere for a ~~mental disorder or defect~~ illness or mental retardation to any hospital, mental institution or sanitarium, or who has been certified by a medical doctor as being mentally ill or mentally ~~deficient retarded~~, unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in this state, or other satisfactory proof, that he is no longer ~~suffering from~~ has this disability;

(c) Any person who is or has been hospitalized or committed for treatment for the habitual use of a narcotic drug, as defined in section 152.01, subdivision 10 or a controlled substance, as defined in section 152.01, subdivision 4, or who has been certified by a medical doctor as being addicted to narcotic drugs or depressant or stimulant drugs, unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in this state, or other satisfactory proof, that he is no longer ~~suffering from~~ has this disability;

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(d) Any person who by reason of the habitual and excessive use of intoxicating liquors is incapable of managing himself or his affairs and who has been confined or committed to any hospital, ~~mental institution or sanitarium treatment facility~~ in this state or elsewhere as an "inebriate chemically dependent person" as defined in section ~~253A.02~~ 253B.02, or who has been certified by a medical doctor or psychiatrist licensed to practice in this state, or other satisfactory proof, that he is no longer ~~suffering from~~ has this disability;

(e) Any person under the age of 18 years.

Sec. 64. Minnesota Statutes 1984, section 447.42, is amended to read:

447.42 ESTABLISHMENT AND OPERATION OF COMMUNITY RESIDENTIAL FACILITIES FOR RETARDED AND CEREBRAL PALSIED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

Subdivision 1. Notwithstanding any provision of Minnesota Statutes to the contrary, any city, county, town, or any nonprofit corporation approved by the commissioner of human services, or any combination thereof may establish and operate a community residential facility for mentally retarded and cerebral palsied persons with mental retardation or related conditions, as defined in section 252.27, subdivision 1.

Subd. 2. Community residential facilities established under this section may be administered by a nonprofit corporation, by the political subdivision establishing same or by a community mental health-mental retardation board organized under sections 245.66 and 245.67.

Subd. 3. The premises and facilities for any community residential facility may be acquired by purchase, lease or gift and may be established and operated in connection with existing public and private facilities and institutions.

Subd. 4. Any political subdivision, as described in subdivision 1, may use unexpended funds, accept gifts, grants and subsidies from any lawful source, or make application for federal funds and may use such moneys or grant or loan such moneys to any nonprofit corporation approved by the commissioner of human services for the establishment and operation of a community residential facility.

Subd. 5. Any community residential facility established and operated pursuant to this section shall meet all applicable licensure standards established by the commissioners of health and human services.

Sec. 65. Minnesota Statutes 1984, section 447.45, is amended to read:

447.45 HOSPITALS AND NURSING HOMES, FACILITIES FOR MENTALLY RETARDED PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS; FINANCING AND LEASING.

Subdivision 1. Any county, city, or hospital district, except cities of the first class and counties in which are located any cities of the first class, is

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authorized, in addition to and not in substitution for any other power granted to it by law, to issue revenue bonds by resolution or resolutions of its governing body to finance the acquisition and betterment of hospital, nursing home and related medical facilities, or any of them, including but without limitation the payment of interest during construction and for a reasonable period thereafter and the establishment of reserves for bond payment and for working capital, and, in connection with the acquisition of any existing hospital or nursing home facilities, to retire outstanding indebtedness incurred to finance the construction of the existing facilities.

Subd. 2. Any county or city, including cities of the first class and counties in which are located any cities of the first class, is authorized to exercise with respect to facilities, including health care facilities, for the care, treatment and training of the mentally retarded and persons with cerebral palsy persons with mental retardation or related conditions, as defined in section 252.27, subdivision 1, all of the powers conferred by sections 447.45 to 447.50 with the same force and effect as if these facilities were hospital or nursing home facilities within the meaning of sections 447.45 to 447.50.

Sec. 66. Minnesota Statutes 1984, section 501.27, is amended to read:

501.27 INCOMPETENTS LEGAL INCOMPETENCE; NOTICE; SERVICE; GUARDIAN AD LITEM.

In case any person, whose name is set out in such petition, is a minor, lunatic mentally ill, idiot mentally retarded, or person of unsound mind, or an habitual drunkard chemically dependent, or spendthrift a person who has difficulty managing money, such notice of hearing shall be served upon the duly appointed guardian, conservator, committee, or other legal representative, of such person, if any. If there be none, then the court in which such proceedings are pending shall appoint a guardian ad litem to such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian ad litem.

Sec. 67. Minnesota Statutes 1984, section 517.03, is amended to read:

517.03 PROHIBITED MARRIAGES.

The following marriages are prohibited:

(a) A marriage entered into before the dissolution of an earlier marriage of one of the parties becomes final, as provided in section 518.145 or by the law of the jurisdiction where the dissolution was granted;

(b) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;

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(c) A marriage between an uncle and a niece, between an aunt and a nephew, or between first cousins, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

provided, however, that mentally ~~deficient~~ retarded persons committed to the guardianship of the commissioner of human services and mentally ~~deficient~~ retarded persons committed to the conservatorship of the commissioner of human services in which the terms of the conservatorship limit the right to marry, may marry on receipt of written consent of the commissioner. The commissioner shall grant consent unless it appears from his investigation that the marriage is not in the best interest of the ward or conservatee and the public. The clerk of the district court in the county where the application for a license is made by the ward or conservatee shall not issue the license unless he has received a signed copy of the consent of the commissioner of human services.

Approved April 16, 1985

CHAPTER 22 — H.F.No. 894

An act relating to utilities; defining independent telephone company; amending Minnesota Statutes 1984, section 237.01, subdivision 3.

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

Section 1. Minnesota Statutes 1984, section 237.01, subdivision 3, is amended to read:

Subd. 3. **INDEPENDENT TELEPHONE COMPANY.** "Independent telephone company" means a telephone company organized and operating under chapter 301 or 302A or authorized to do business in Minnesota under chapter 303 as of January 1, 1983, and providing local exchange service to fewer than 15,000 subscribers within the state.

Approved April 16, 1985

CHAPTER 23 — H.F.No. 470

An act relating to education; authorizing the establishment of joint vocational technical districts; providing for a governing board; authorizing post-secondary and adult vocational programs, secondary educational programs, and secondary services; providing for separate bargaining units and certain other labor issues; transferring all school district real and personal property to the joint district; authorizing the joint district to levy for certain

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