

CHAPTER 393—H.F.No. 2394

An act relating to veterans; requiring the POW-MIA flag to be flown on the capitol; providing for use of department of veterans affairs resources by certain organizations; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 196.

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

Section 1. **POW-MIA FLAG.**

The official flag representing those persons who are prisoners of war or are missing in action, or "POW-MIA" flag, shall be flown at most times on the north portico of the state capitol. The POW-MIA flag shall be flown in honor of all Minnesotans missing in action until the POW-MIA situation in southeast Asia is resolved. The flag shall be furnished by other than the department of veterans affairs and approved by the commissioner of veterans affairs and the capitol area architectural and planning board. A flag or flags other than the POW-MIA flag, such as the United Nations flag, may be flown on special occasions from the north portico.

Sec. 2. **[196.054] USE OF FACILITIES OR SERVICES BY OUTSIDE AGENCIES.**

Subdivision 1. COMMISSIONER'S AUTHORITY. The commissioner of veterans affairs may allow public or private social service, educational, or rehabilitation agencies or organizations and their clients to use the facilities, staff, and other resources of the department and may require the participating agencies or organizations to pay for that use.

Subd. 2. APPROPRIATION. There is a veterans affairs resources fund in the state treasury. All money received by the department pursuant to subdivision 1 must be deposited in the state treasury and credited to the veterans affairs resources fund. The commissioner may only use monies from the veterans affairs resources fund for operation, maintenance, repair of facilities, associated legal fees, and other related expenses used under subdivision 1.

Sec. 3. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Approved March 21, 1986

CHAPTER 394—S.F.No. 0912

An act relating to human services; providing regional treatment center revolving fund for chemical dependency; creating a consolidated fund for payment of chemical dependency treatment; appropriating money to counties for treatment; providing for client eligibility,

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vendor eligibility, and state collections; providing for American Indian special funding; removing chemical dependency treatment from medical assistance, general assistance medical care, and general assistance funding; amending Minnesota Statutes 1984, sections 246.04, 246.18, 246.50, by adding a subdivision; 246.51, subdivision 1; 256B.70; and 256E.08, subdivision 7; amending Minnesota Statutes 1985 Supplement, sections 246.23; 246.54; 256B.02, subdivision 8; and 256D.03, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 246; and proposing coding for new law as Minnesota Statutes, chapter 254B.

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

Section 1. Minnesota Statutes 1984, section 246.04, is amended to read:

246.04 BOOKS AND ACCOUNTS.

The commissioner of human services shall keep at his office a proper and complete system of books and accounts with each institution, showing every expenditure authorized and made therefor. Such books shall contain a separate account of each extraordinary or special appropriation made by the legislature, with every item of expenditure therefrom. The commissioner shall maintain a separate fund for all chemical dependency appropriations that will provide for an ascertainable review of receipts and expenditures under section 246.18, subdivision 2.

Sec. 2. Minnesota Statutes 1984, section 246.18, is amended to read:

246.18 DISPOSAL OF FUNDS.

Subdivision 1. GENERALLY. Except as provided in subdivision 2, every officer and employee of the several institutions under the jurisdiction of the commissioner of human services shall pay to the accounting officer thereof any funds in his hands belonging to the institution. Every accounting officer, at the close of each month or oftener, shall forward to the commissioner of human services a statement of the amount and sources of all moneys received. On receipt of such statement, the commissioner shall transmit the same to the commissioner of finance, who shall deliver to the state treasurer a draft upon the accounting officer for the same specifying the funds to which it is to be credited. Upon payment of such draft, the amount shall be so credited.

Subd. 2. CHEMICAL DEPENDENCY FUND. Money received by a chemical dependency treatment facility operated by a regional treatment center or nursing home under the jurisdiction of the commissioner of human services must be deposited in the state treasury and credited to a chemical dependency fund. Money in the chemical dependency fund is appropriated to the commissioner to operate chemical dependency programs.

Subd. 3. CHEMICAL DEPENDENCY ACCOUNTS. The commissioner of finance shall provide technical assistance and accounting procedures for separate interest bearing chemical dependency accounts within the chemical dependency fund for each state facility providing chemical dependency services that

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will allow money to be readily available to finance chemical dependency programs. After June 30, 1992, the commissioner must not allocate money to a state facility for chemical dependency programs in excess of the amount of deposits of money received by the facility and deposited in the facility's chemical dependency account without the approval of the governor after consultation with the legislative advisory commission, except that before June 30, 1992, the commissioner may transfer or supplement funds in chemical dependency accounts to cover any revenue shortfall in a particular regional treatment center chemical dependency program. Twenty percent of the money in the chemical dependency fund that was reappropriated from the regional treatment center account must be transferred to the regional treatment centers' chemical dependency accounts on a pro rata basis as an advance payment for chemical dependency services to be delivered under sections 8 to 16.

Sec. 3. Minnesota Statutes 1985 Supplement, section 246.23, is amended to read:

246.23 PERSONS ADMISSIBLE TO STATE HOSPITALS REGIONAL TREATMENT CENTERS.

No person who has not a settlement in a county, as defined in section 256D.18, shall be admitted to a ~~state hospital~~ regional treatment center for 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. Except for emergency admissions under sections 253B.05 and 253B.11, or when authorized by the commissioner, a chemical dependency program must not admit a chemically dependent person unless the cost of services will be paid for by private money or nongovernmental third-party payments, the person has been placed by a county or a federally recognized tribal unit that is responsible for payment, or the regional treatment center obtains approval of the admission from the county financially responsible for the person. The commissioner shall maintain and enhance cooperative and effective relationships between counties and regional treatment centers and between the various regional treatment center chemical dependency programs. In carrying out this responsibility the commissioner shall maintain a regionally based, state administered system of chemical dependency programs. When application is made to a judge of probate for admission to any of the ~~state hospitals~~ regional treatment centers 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.

Sec. 4. Minnesota Statutes 1984, section 246.50, is amended by adding a subdivision to read:

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Subd. 9. "Chemical dependency programs" means all planned services for chemically dependent persons provided by the commissioner in a specific regional treatment center, the chemical dependency unit operated by the Ah-Gwah-Ching nursing home, and diagnostic evaluation, prevention, referral, outpatient, or aftercare services developed as part of licensed residential or nonresidential chemical dependency treatment programs.

Sec. 5. Minnesota Statutes 1984, section 246.51, subdivision 1, is amended to read:

Subdivision 1. **PROCEDURES.** The commissioner shall make investigation as necessary to determine, and as circumstances require redetermine, what part of the cost of care, if any, the patient is able to pay. If the patient is unable to pay the full cost of care the commissioner shall make a determination as to the ability of the relatives to pay. The patient or relatives or both shall provide the commissioner documents and proofs necessary to determine their ability to pay. Failure to provide the commissioner with sufficient information to determine ability to pay may make the patient or relatives, both, liable for the full ~~per capita~~ cost of care until the time when sufficient information is provided. No parent shall be liable for the cost of care given a patient at a ~~state hospital~~ regional treatment center after the patient has reached the age of 18 years. The commissioner's determination shall be conclusive in any action to enforce payment of the cost of care unless appealed from as provided in section 246.55. All money received, except for chemical dependency receipts, shall be paid to the state treasurer and placed in the general fund of the state and a separate account kept of it. Responsibility under this section shall not apply to those relatives having gross earnings of less than \$11,000 per year.

Sec. 6. Minnesota Statutes 1985 Supplement, section 246.54, is amended to read:

246.54 LIABILITY OF COUNTY; REIMBURSEMENT.

Except for chemical dependency services provided under sections 8 to 16, 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~~ regional treatment center 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~~ regional treatment center. 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.

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Sec. 7. **[246.64] CHEMICAL DEPENDENCY SERVICE AGREEMENTS.**

Subdivision 1. CHEMICAL DEPENDENCY RATES. Notwithstanding sections 246.50, subdivision 5; 246.511; and 251.011, the commissioner shall establish separate rates for each chemical dependency service operated by the commissioner and may establish separate rates for each service component within the program by establishing fees for services or different per diem rates for each separate chemical dependency unit within the program based on actual costs attributable to the service or unit. The rate must allocate the cost of all anticipated maintenance, treatment, and expenses including depreciation of buildings and equipment, interest paid on bonds issued for capital improvements for chemical dependency programs, reimbursement and other indirect costs related to the operation of chemical dependency programs other than that paid from the Minnesota state building fund, and losses due to bad debt. The rate must not include allocations of chaplaincy, patient advocacy, or quality assurance costs that are not required for chemical dependency licensure by the commissioner or certification for chemical dependency by the Joint Commission on Accreditation of Hospitals. Notwithstanding any other law, the commissioner shall treat these costs as nonhospital department expenses.

Subd. 2. DEPRECIATION COLLECTIONS. Beginning July 1, 1987, depreciation collected under subdivision 1 must be credited to the general fund and principal and interest on the bonded debt collected under subdivision 1 must be deposited in the state bond fund.

Subd. 3. RESPONSIBILITIES OF COMMISSIONER. The commissioner shall credit all receipts from billings for rates set in subdivision 1, except those credited according to subdivision 2, to the chemical dependency fund. This money must not be used for a regional treatment center activity that is not a chemical dependency service or an allocation of expenditures that are included in the base for computation of the rates under subdivision 1. The commissioner may expand chemical dependency services so long as expenditures are recovered by patient fees, transfer of funds, or supplementary appropriations. The commissioner may expand or reduce chemical dependency staff complement as long as expenditures are recovered by patient fees, transfer of funds, or supplementary appropriations. An increase or decrease in chemical dependency staff shall not result in an increase or decrease in staff in any facility or unit not providing chemical dependency services. Notwithstanding chapters 176 and 268, the commissioner shall provide for the self-insurance of regional treatment center chemical dependency programs for the costs of unemployment compensation and workers' compensation claims. The commissioner shall provide a biennial report to the chairs of the senate finance subcommittee on health and human services, the house of representatives human services division of appropriations, and the senate and house of representatives health and human services committees.

Subd. 4. TRADE SECRET INFORMATION. Notwithstanding any law to the contrary, data concerning matters affecting the competitive position of the chemical dependency programs is "trade secret information" for purposes of classification under section 13.37, subdivision 2.

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Sec. 8. [254B.01] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 8 to 20.

Subd. 2. AMERICAN INDIAN. For purposes of services provided under section 16, subdivision 7, "American Indian" means a person who is a member of an Indian tribe, and the commissioner shall use the definitions of "Indian" and "Indian tribe" and "Indian organization" provided in Public Law Number 93-638. For purposes of services provided under section 16, subdivision 4, "American Indian" means a resident of federally recognized tribal lands who is recognized as an Indian person by the federally recognized tribal governing body.

Subd. 3. CHEMICAL DEPENDENCY SERVICES. "Chemical dependency services" means a planned program of care for the treatment of chemical dependency or chemical abuse to minimize or prevent further chemical abuse by the person. Diagnostic, evaluation, prevention, referral, detoxification, and after-care services that are not part of a program of care licensable as a residential or nonresidential chemical dependency treatment program are not chemical dependency services for purposes of this section.

Subd. 4. COMMISSIONER. Unless otherwise indicated, "commissioner" means the commissioner of human services.

Subd. 5. LOCAL AGENCY. "Local agency" means the agency designated by a board of county commissioners or a human services board to make placements and submit state invoices according to sections 8 to 20.

Subd. 6. LOCAL MONEY. "Local money" means county levies, community social services block grants, federal social services money, or other money that may be spent at county discretion to provide chemical dependency services eligible for payment according to sections 8 to 20.

Sec. 9. [254B.02] CHEMICAL DEPENDENCY ALLOCATION PROCESS.

Subdivision 1. CHEMICAL DEPENDENCY TREATMENT ALLOCATION. The commissioner shall annually divide the money available in the chemical dependency fund that is not held in reserve by counties from a previous allocation. Twelve percent of the money must be reserved for treatment of American Indians by eligible vendors under section 12. The remainder of the money must be allocated among the counties according to the following formula, using state demographer data and other data sources determined by the commissioner:

(a) The county non-Indian and over age 14 per capita-months of eligibility for aid to families with dependent children, general assistance, and medical assistance is divided by the total state non-Indian and over age 14 per capita-months of eligibility to determine the caseload factor for each county.

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(b) The average median family income for the previous three years for the state is divided by the average median family income for the previous three years for each county to determine the income factor.

(c) The non-Indian and over age 14 population of the county is multiplied by the sum of the income factor and the caseload factor to determine the adjusted population.

(d) \$15,000 shall be allocated to each county.

(e) The remaining funds shall be allocated proportional to the county adjusted population.

Subd. 2. COUNTY ADJUSTMENT; MAXIMUM ALLOCATION. The commissioner shall determine the state money used by each county in fiscal year 1986, using all state data sources. If available records do not provide specific chemical dependency expenditures for every county, the commissioner shall determine the amount of state money using estimates based on available data. In state fiscal year 1988, a county must not be allocated more than 150 percent of the state money spent by or on behalf of the county for chemical dependency treatment services eligible for payment under section 12. The allocation maximums must be increased by 25 percent each year. After fiscal year 1992, there must be no allocation maximum. The commissioner shall reallocate the excess over the maximum to counties allocated less than the fiscal year 1986 state money, using the following process:

(a) The allocation is divided by 1985 state expenditures to determine percentage of prior expenditure, and counties are ranked by percentage of prior expenditure.

(b) The allocation of the lowest ranked county is raised to the same percentage of prior expenditure as the second lowest ranked county. The allocation of these two counties is then raised to the percentage of prior expenditures of the third lowest ranked county.

(c) The operations under paragraph (b) are repeated with each county by ranking until the money in excess of the allocation maximum has been allocated.

Subd. 3. RESERVE ACCOUNT. The commissioner shall allocate money from the reserve account to counties that, during the current fiscal year, have met or exceeded the base level of expenditures for eligible chemical dependency services from local money. The commissioner shall establish the base level for fiscal year 1988 as the amount of local money used for eligible services in calendar year 1986. In later years, the base level must be increased in the same proportion as state appropriations to implement sections 8 to 20 are increased. The base level must not be decreased if appropriations are decreased in later years. The local match rate for the reserve account is the same rate as applied to the initial allocation. Reserve account payments must not be included when calculating the county adjustments made according to subdivision 2.

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Subd. 4. ALLOCATION SPENDING LIMITS. Money allocated according to subdivision 1 and section 16, subdivision 4, is available for payments for up to two years. The commissioner shall deduct payments from the most recent year allocation in which money is available. Allocations under this section that are not used within two years must be reallocated to the reserve account for payments under subdivision 3. Allocations under section 16, subdivision 4, that are not used within two years must be reallocated for payments under section 16, subdivision 5.

Subd. 5. ADMINISTRATIVE ADJUSTMENT. The commissioner may make payments to local agencies from money allocated under this section to support administrative activities under sections 10 and 11. The administrative payment must not exceed five percent of the first \$50,000, four percent of the next \$50,000, and three percent of the remaining county allocation and must not be paid if the level of expenditures indicates that the allocation for the year will be exhausted by payments for services from the allocation. Twenty-five percent of the administrative allowance shall be advanced at the beginning of each year and remaining payments must be made under this section at the end of each quarter from any unspent allocation for that year.

Sec. 10. [254B.03] RESPONSIBILITY TO PROVIDE CHEMICAL DEPENDENCY TREATMENT.

Subdivision 1. LOCAL AGENCY DUTIES. (a) Every local agency shall provide chemical dependency services to persons residing within its jurisdiction who meet criteria established by the commissioner for placement in a chemical dependency residential or nonresidential treatment service. Chemical dependency money must be administered by the local agencies according to law and rules adopted by the commissioner under sections 14.01 to 14.69.

(b) In order to contain costs, the county board shall, with the approval of the commissioner of human services, select eligible vendors of chemical dependency services who can provide economical and appropriate treatment. Unless the local agency is a social services department directly administered by a county or human services board, the local agency shall not be an eligible vendor under section 12. The commissioner may approve proposals from county boards to provide services in an economical manner or to control utilization, with safeguards to ensure that necessary services are provided. If a county implements a demonstration or experimental medical services funding plan, the commissioner shall transfer the money as appropriate.

Subd. 2. CHEMICAL DEPENDENCY SERVICES. (a) Payment from the chemical dependency fund is limited to payments for services other than detoxification that, if located outside of federally recognized tribal lands, would be required to be licensed by the commissioner as a residential or nonresidential treatment program under sections 245.781 to 245.812. Hospitals may apply for and receive licenses to be eligible vendors, notwithstanding the provisions of section 245.791. Vendors receiving payments from the chemical dependency

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fund must not require copayment from a recipient of benefits for services provided under this subdivision.

(b) A county may, from its own resources, provide chemical dependency services for which state payments are not made.

(c) The commissioner shall coordinate chemical dependency services and determine whether there is a need for any proposed expansion of chemical dependency treatment services. The commissioner shall deny vendor certification to any provider that has not received prior approval from the commissioner for the creation of new programs or the expansion of existing program capacity. The commissioner shall consider the provider's capacity to obtain clients from outside the state based on plans, agreements, and previous utilization history, when determining the need for new treatment services.

Subd. 3. LOCAL AGENCIES TO PAY STATE FOR COUNTY SHARE.
Local agencies shall submit invoices to the state on forms supplied by the commissioner and according to procedures established by the commissioner. Local agencies shall pay the state for the county share of the invoiced services.

Subd. 4. DIVISION OF COSTS. The county shall, out of local money, reimburse the state for 15 percent of the cost of chemical dependency services costs paid by the state under this section. Counties may use the indigent hospitalization levy for treatment and hospital payments made under this section. Fifteen percent of any state collections from private or third-party pay must be distributed to the county that paid for the treatment under this section. If all funds allocated according to section 9 are exhausted by a county and the county has met or exceeded the base level of expenditures under section 9, subdivision 3, the county shall reimburse the state for 15 percent of the costs paid by the state under this section. The commissioner may refuse to pay state funds for services to persons not eligible under section 11, subdivision 1, if the commissioner determines that funds will otherwise not be available for persons who are entitled to chemical dependency fund services.

Subd. 5. RULES; APPEAL. The commissioner shall adopt rules as necessary to implement sections 8 to 20. The commissioner shall establish an appeals process for use by vendors or recipients when services certified by the county are disputed. The commissioner shall adopt rules and standards for the appeal process to assure adequate redress for persons referred to inappropriate services.

Subd. 6. PILOT PROJECTS. The commissioner may transfer funds for chemical dependency services from the general fund appropriations for the general assistance, general assistance medical care, and medical assistance programs for pilot projects to design and test procedures legislation. The commissioner shall exempt funds from these sources that are used in pilot projects from relevant provisions of state laws and rules governing the use of these funds. The commissioner may make grants and contracts for this purpose, and the provisions of chapter 14 shall not apply to the procedures and criteria used to implement pilot projects. The commissioner shall submit a detailed plan of the

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proposed pilot project to the chair of the health and human services subcommittees of the senate finance committee and the chair of the human services division of the house appropriations committee for review prior to the implementation of the pilot project.

Subd. 7. COMMISSIONER REVIEW; COMPLAINTS. The commissioner shall:

(1) provide training and assistance to counties on procedures for processing placements and making payments;

(2) visit facilities and review records as necessary to determine compliance with procedures established by law and rule;

(3) take complaints from vendors and recipients and investigate county placement activities as needed to determine compliance with law and rule.

Counties and vendors shall make regular reports as required by the commissioner to facilitate commissioner review.

Subd. 8. REPORT TO LEGISLATURE. The commissioner shall report to the legislature each biennium beginning in 1989 on chemical dependency services provided and expenditures made, and shall make recommendations regarding funding levels and new legislation.

Sec. 11. [254B.04] ELIGIBILITY FOR CHEMICAL DEPENDENCY FUND SERVICES.

Subdivision 1. ELIGIBILITY. Persons eligible for benefits under sections 256D.01 to 256D.21 and persons eligible for federal health care benefits under section 256B.06 are entitled to chemical dependency fund services.

Subd. 2. AMOUNT OF CONTRIBUTION. The commissioner shall adopt a sliding fee scale to determine the amount of contribution to be required from persons whose income and nonexempt property are greater than the standard of assistance under sections 256B.06 and 256D.01 to 256D.21. The commissioner may adopt an existing fee scale from another assistance program or from the state facilities by publication in the state register. The fee scale must not provide assistance to persons whose income is more than 115 percent of the state median income. Payments of liabilities under this section are medical expenses for purposes of determining spend-down under sections 256B.06 and 256D.01 to 256D.21.

Sec. 12. [254B.05] VENDOR ELIGIBILITY.

Programs licensed by the commissioner are eligible vendors. Hospitals may apply for and receive licenses to be eligible vendors, notwithstanding the provisions of section 245.791. American Indian programs that, if located outside of federally recognized tribal lands, would be required to be licensed to provide chemical dependency primary treatment, extended care, transitional residence, or outpatient treatment services, are eligible vendors. Detoxification programs

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are not eligible vendors. Programs that, if located outside of federally recognized tribal lands, would not be licensed as a chemical dependency residential or nonresidential treatment program under sections 245.781 to 245.812 are not eligible vendors. To be eligible for payment under the Consolidated Chemical Dependency Treatment Fund, a vendor must participate in the Drug and Alcohol Abuse Normative Evaluation System or a comparable system approved by the commissioner.

Sec. 13. [254B.06] REIMBURSEMENT; PAYMENT; DENIAL.

Subdivision 1. STATE COLLECTIONS. The commissioner is responsible for all collections from persons determined to be partially responsible for the cost of care of an eligible person receiving services under sections 8 to 20. The commissioner may collect all third-party payments for chemical dependency services provided under sections 8 to 20, including private insurance and federal medicaid and medicare financial participation. The commissioner shall deposit in the general fund a percentage of collections to pay for the cost of billing and collections. The remaining receipts must be deposited in the chemical dependency fund.

Subd. 2. ALLOCATION OF COLLECTIONS. The commissioner shall allocate all federal financial participation collections to the reserve fund under section 9, subdivision 3. The commissioner shall retain 85 percent of patient payments and third-party payments and allocate the collections to the treatment allocation for the county that is financially responsible for the person. Fifteen percent of patient and third-party payments must be paid to the county financially responsible for the patient. Collections for patient payment and third-party payment for services provided under section 16 shall be allocated to the allocation of the tribal unit which placed the person. Collections of federal financial participation for services provided under section 16 shall be allocated to the tribal reserve account under section 16, subdivision 5.

Subd. 3. PAYMENT; DENIAL. The commissioner shall pay eligible vendors for placements made by local agencies under section 10, subdivision 1, and placements by tribal designated agencies according to section 16. The commissioner may reduce or deny payment of the state share when services are not provided according to the placement criteria established by the commissioner. The commissioner may pay for all or a portion of improper county chemical dependency placements and bill the county for the entire payment made when the placement did not comply with criteria established by the commissioner.

Sec. 14. [254B.07] THIRD-PARTY LIABILITY.

The state agency provision and payment of, or liability for, chemical dependency medical care is the same as in section 256B.042.

Sec. 15. [254B.08] FEDERAL WAIVERS.

The commissioner shall apply for any federal waivers necessary to secure, to the extent allowed by law, federal financial participation for the provision of

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services to persons who need chemical dependency services. The commissioner may seek amendments to the waivers or apply for additional waivers to contain costs. The commissioner shall ensure that payment for the cost of providing chemical dependency services under the federal waiver plan does not exceed the cost of chemical dependency services that would have been provided without the waived services.

Sec. 16. [254B.09] INDIAN RESERVATION ALLOCATION OF CHEMICAL DEPENDENCY FUND.

Subdivision 1. AMERICAN INDIAN CHEMICAL DEPENDENCY ACCOUNT. The commissioner shall pay eligible vendors for chemical dependency services to American Indians on the same basis as other payments, except that no local match is required when an invoice is submitted by the governing authority of a federally recognized American Indian tribal body on behalf of a current resident of the reservation under this section.

Subd. 2. AMERICAN INDIAN AGREEMENTS. The commissioner may enter into agreements with federally recognized tribal units to pay for chemical dependency treatment services provided under sections 8 to 20. The agreements must require the governing body of the tribal unit to fulfill all county responsibilities regarding the form and manner of invoicing, and provide that only invoices for eligible vendors according to section 12 will be included in invoices sent to the commissioner for payment, to the extent that money allocated under subdivisions 3, 4, and 5 is used.

Subd. 3. TRIBAL NONPARTICIPATION. If a federally recognized tribal governing body has not entered into an agreement under subdivision 2 or cancels the agreement, money must be reallocated to the account established by subdivision 5.

Subd. 4. TRIBAL ALLOCATION. Forty-two and one-half percent of the American Indian chemical dependency account must be allocated to the federally recognized American Indian tribal governing bodies that have entered into an agreement under subdivision 2 as follows: \$10,000 must be allocated to each governing body and the remainder must be allocated in direct proportion to the population of the reservation according to the most recently available estimates from the federal Bureau of Indian Affairs.

Subd. 5. TRIBAL RESERVE ACCOUNT. The commissioner shall reserve 7.5 percent of the American Indian chemical dependency account. The reserve must be allocated to those tribal units that have used all money allocated under subdivision 4 according to agreements made under subdivision 2. An American Indian tribal governing body may receive not more than 30 percent of the reserve account in a year. Money must be allocated as invoices are received.

Subd. 6. AMERICAN INDIAN TRIBAL PLACEMENTS. After entering into an agreement under subdivision 2, the governing authority of each reservation may submit invoices to the state for the cost of providing chemical depen-

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agency services to residents of the reservation according to the placement regulations governing county placements, except that local match requirements are waived. The governing body may designate an agency to act on its behalf to provide placement services and manage invoices by written notice to the commissioner and evidence of agreement by the agency designated.

Subd. 7. NONRESERVATION INDIAN ACCOUNT. Fifty percent of the American Indian chemical dependency allocation must be held in reserve by the commissioner in an account for treatment of Indians not residing on lands of a reservation receiving money under subdivision 4. This money must be used to pay for services certified by county invoice to have been provided to an American Indian eligible recipient. Money allocated under this subdivision may be used for payments on behalf of American Indian county residents only if, in addition to other placement standards, the county certifies that the placement was appropriate to the cultural orientation of the client.

Sec. 17. Minnesota Statutes 1985 Supplement, 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 persons with mental retardation or related conditions who are residing in intermediate care facilities for persons with mental retardation or related conditions. Medical assistance must not be used to pay the costs of nursing care provided to a patient in a swing bed as defined in section 144.562;

(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 provid-

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ers. "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 X-ray 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 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

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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 time, the commissioner shall have initiated rulemaking through the administrative procedure act;

(12) Diagnostic, screening, and preventive services;

(13) Health care prepayment 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;

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(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

(18) Any other medical or remedial care licensed and recognized under state law unless otherwise prohibited by law, except licensed chemical dependency treatment programs or primary treatment or extended care treatment units in hospitals that are covered under sections 8 to 20. The commissioner shall include chemical dependency services in the state medical assistance plan for federal reporting purposes, but payment must be made under sections 8 to 20.

Sec. 18. Minnesota Statutes 1984, section 256B.70, is amended to read:

256B.70 DEMONSTRATION PROJECT WAIVER.

Each hospital that participates as a provider in a demonstration project, established by the commissioner of human services to deliver medical assistance, or chemical dependency services on a prepaid, capitation basis, is exempt from the prospective payment system for inpatient hospital service during the period of its participation in that project.

Sec. 19. Minnesota Statutes 1985 Supplement, section 256D.03, subdivision 4, is amended to read:

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Subd. 4. **GENERAL ASSISTANCE MEDICAL CARE; SERVICES.** (a) Reimbursement under the general assistance medical care program shall be limited to the following categories of service: inpatient hospital care, outpatient hospital care, services provided by medicare certified rehabilitation agencies, prescription drugs, equipment necessary to administer insulin and diagnostic supplies and equipment for diabetics to monitor blood sugar level, eyeglasses and eye examinations provided by a physician or optometrist, hearing aids, prosthetic devices, laboratory and X-ray services, physician's services, medical transportation, chiropractic services as covered under the medical assistance program, podiatric services, and dental care. In addition, payments of state aid shall be made for day treatment services provided by a mental health center established under sections 245.61 to 245.69, subdivision 1, and funded through chapter 256E and for prescribed medications for persons who have been diagnosed as mentally ill as necessary to prevent more restrictive institutionalization.

(b) In order to contain costs, the commissioner of human services shall select vendors of medical care who can provide the most economical care consistent with high medical standards and shall where possible contract with organizations on a prepaid capitation basis to provide these services. The commissioner shall consider proposals by counties and vendors for prepaid health plans, competitive bidding programs, block grants, or other vendor payment mechanisms designed to provide services in an economical manner or to control utilization, with safeguards to ensure that necessary services are provided. Before implementing prepaid programs in counties with a county operated or affiliated public teaching hospital or a hospital or clinic operated by the University of Minnesota, the commissioner shall consider the risks the prepaid program creates for the hospital and allow the county or hospital the opportunity to participate in the program in a manner that reflects the risk of adverse selection and the nature of the patients served by the hospital, provided the terms of participation in the program are competitive with the terms of other participants considering the nature of the population served. Payment for services provided pursuant to this subdivision shall be as provided to medical assistance vendors of these services under section 256B.02, subdivision 8. The rates payable under this section must be calculated according to section 256.966, subdivision 2.

(c) The commissioner of human services may reduce payments provided under sections 256D.01 to 256D.21 and 261.23 in order to remain within the amount appropriated for general assistance medical care, within the following restrictions.

For the period July 1, 1985, to December 31, 1985, reductions below the cost per service unit allowable under section 256.966, are permitted only as follows: payments for inpatient and outpatient hospital care provided in response to a primary diagnosis of chemical dependency or mental illness may be reduced no more than 30 percent; payments for all other inpatient hospital care may be reduced no more than 20 percent. Reductions below the payments allowable under general assistance medical care for the remaining general assistance medi-

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cal care services allowable under this subdivision may be reduced no more than ten percent.

For the period January 1, 1986 to December 31, 1986, reductions below the cost per service unit allowable under section 256.966 are permitted only as follows: payments for inpatient and outpatient hospital care provided in response to a primary diagnosis of chemical dependency or mental illness may be reduced no more than 20 percent; payments for all other inpatient hospital care may be reduced no more than 15 percent. Reductions below the payments allowable under general assistance medical care for the remaining general assistance medical care services allowable under this subdivision may be reduced no more than five percent.

For the period January 1, 1987 to June 30, 1987, reductions below the cost per service unit allowable under section 256.966 are permitted only as follows: payments for inpatient and outpatient hospital care provided in response to a primary diagnosis of chemical dependency or mental illness may be reduced no more than 15 percent; payments for all other inpatient hospital care may be reduced no more than ten percent. Reductions below the payments allowable under medical assistance for the remaining general assistance medical care services allowable under this subdivision may be reduced no more than five percent.

There shall be no copayment required of any recipient of benefits for any services provided under this subdivision. A hospital receiving a reduced payment as a result of this section may apply the unpaid balance toward satisfaction of the hospital's bad debts.

(d) Any county may, from its own resources, provide medical 5 payments for which state payments are not made.

(e) Chemical dependency services that are reimbursed under sections 8 to 20 must not be reimbursed under general assistance medical care.

Sec. 20. Minnesota Statutes 1984, section 256E.08, subdivision 7, is amended to read:

Subd. 7. **COUNTY OF FINANCIAL RESPONSIBILITY.** (a) Except as described in paragraphs (b) and (c), the county responsible for payment for community social services is the county in which the recipient of services resides at the time of application if the applicant is not in a facility described in section 256B.02, subdivision 2, or has never resided in this state other than in such a facility. If the applicant is in a facility described in section 256B.02 and has previously resided in this state without being in such a facility, then the county of financial responsibility is the county in which he or she resided immediately before entering the facility. The county of financial responsibility does not change as a result of referral or approval of referral for services to another county by the county of financial responsibility. Minors are considered as residing in the county in which their parents or guardians reside. When a minor reaches the age of 18, the county of financial responsibility is the county in

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which the minor resides. If a person continues in residential care or treatment after reaching the age of 18, the county which initiated the treatment is the county of financial responsibility. When there is a dispute as to the county of financial responsibility, the county providing or arranging for services shall pay for them pending final determination of the county of residence. Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in section 256D.18, subdivision 4. When the county board providing the care or service is not the county of the minor's legal residence, it has a claim for recovery of costs upon the county where the minor has residence.

(b) The county of financial responsibility for detoxification services and chemical dependency emergency admissions is the county where the client is when the need for services is identified. If the client is a resident of a chemical dependency facility, paragraph (a) applies.

(c) The county of financial responsibility for social services for a person receiving aid to families with dependent children, general assistance, or medical assistance is the county from which that person is receiving the aid or assistance.

Sec. 21. APPROPRIATIONS.

Subdivision 1. CHEMICAL DEPENDENCY FUND. The general fund appropriations for the general assistance, general assistance medical care, and medical assistance programs are reduced by the amount attributable to chemical dependency services covered under sections 8 to 16 and this amount is reappropriated to the commissioner of human services for transfer to the chemical dependency fund.

The general fund appropriation for the regional treatment center account is reduced by the amount attributable to chemical dependency programs and this amount is reappropriated to the commissioner of human services for transfer to the chemical dependency fund. This amount must be increased by the amount of salary supplement funds allocated for chemical dependency services for each biennium.

Notwithstanding any other law, \$1,050,000 of the federal alcohol and drug block grant is appropriated to the commissioner of human services for the chemical dependency fund.

Subd. 2. AMERICAN INDIAN GRANTS. The general fund appropriation for chemical dependency services grants for American Indians is reduced by \$640,000 and reappropriated to the commissioner of human services for transfer to the chemical dependency services fund.

Sec. 22. [254B.10] EXEMPTION.

Medical assistance funding for all intermediate care facilities providing chemical dependency services on or before January 1, 1986, shall be exempted from the provisions of sections 8 to 20. The commissioner shall include in the

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biennial report required under section 10, subdivision 8, recommendations regarding the necessity for continuing this exception beyond July 1, 1989.

Sec. 23. **SUNSET.**

The new sections and subdivisions and amendments enacted by sections 1 to 22 are repealed July 1, 1987, unless adequate funding is made available to meet the cash-flow and capital needs of the regional treatment center chemical dependency units as determined by the commissioner in consultation with the chief executive officers of those units.

Sec. 24. **EFFECTIVE DATE.**

Section 10, subdivision 6, and section 15 are effective the day following final enactment. Sections 1 to 9; 10, subdivisions 1 to 5, 7, and 8; 11 to 14; and 16 to 23 are effective July 1, 1987.

Approved March 21, 1986

CHAPTER 395—S.F.No. 1581

An act relating to human services; setting forth legislative direction for child care services; excluding certain programs from licensing requirements; authorizing a study; ensuring safe, affordable, quality child care; directing the commissioner of human services to provide information to providers and consumers of day care; suspending administrative authority until further consideration by the legislature; indemnifying counties; amending Minnesota Statutes 1984, sections 245.791; 466.01, by adding subdivisions; 466.03, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 245 and 466.

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

Section 1. Minnesota Statutes 1984, section 245.791, is amended to read:

245.791 **EXCLUSIONS.**

Sections 245.781 to 245.812 shall not apply to:

- (1) Day care or residential care provided by a relative to related persons;
- (2) Day care or residential care provided for a cumulative total of less than 30 days in any 12-month period;
- (3) Day care provided for persons from a single unrelated family for any length of time;
- (4) A home caring for a person placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years after placement;

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