

Sec. 3. **REPEALER.**

Minnesota Rules, part 3900.0400, subpart 11, is repealed.

Presented to the governor May 18, 2004

Signed by the governor May 27, 2004, 6:40 a.m.

CHAPTER 288—H.F.No. 2277

An act relating to human services; making changes to licensing provisions; regulating child protection dispositions; clarifying a mental health case management provision; changing a provision under child welfare targeted case management; regulating child care, long-term care, and health care; amending Minnesota Statutes 2002, sections 13.3806, by adding a subdivision; 13.43, subdivision 2, by adding a subdivision; 62A.042; 62A.28; 62A.30, subdivision 2, by adding a subdivision; 62C.14, subdivision 14; 62H.01; 62H.02; 62H.04; 62J.23, subdivision 2; 62T.02, by adding a subdivision; 72A.20, by adding a subdivision; 119B.011, by adding a subdivision; 119B.02, subdivision 4; 119B.03, subdivisions 3, 6a, by adding a subdivision; 144.2215; 145C.01, subdivision 7; 147.03, subdivision 1; 198.261; 243.55, subdivision 1; 245.462, subdivision 18; 245.464, by adding a subdivision; 245.4881, subdivision 1; 245.814, subdivision 1; 245A.02, subdivisions 2a, 5a, 7, 10, 14, by adding a subdivision; 245A.03, subdivision 3; 245A.04, subdivisions 5, 6, 7, by adding a subdivision; 245A.05; 245A.06, subdivisions 2, 4; 245A.07, subdivisions 2, 2a, 3; 245A.08, subdivision 5; 245A.14, subdivision 4; 245A.16, subdivision 4; 245A.22, subdivision 2; 245B.02, by adding a subdivision; 245B.05, subdivision 2; 245B.07, subdivisions 8, 12; 252.28, subdivision 1; 253B.02, by adding subdivisions; 253B.03, by adding a subdivision; 253B.185, by adding a subdivision; 256.01, by adding subdivisions; 256.955, subdivisions 2, 2b; 256B.055, by adding a subdivision; 256B.0625, by adding a subdivision; 256B.0911, subdivision 4a; 256B.0916, subdivision 2; 256B.431, by adding a subdivision; 256B.49, by adding a subdivision; 256D.051, subdivision 6c; 256F.10, subdivision 5; 256J.01, subdivision 1; 256J.08, subdivisions 73, 82a; 256J.21, subdivision 3; 256J.415; 256J.425, subdivision 5; 260C.007, subdivision 18; 260C.201, subdivision 11; 260C.212, subdivision 5; Minnesota Statutes 2003 Supplement, sections 119B.011, subdivisions 6, 8, 10, 15, 20; 119B.03, subdivision 4; 119B.05, subdivision 1; 119B.09, subdivision 7; 119B.12, subdivision 2; 119B.125, subdivisions 1, 2; 119B.13, subdivisions 1, 1a; 119B.189, subdivisions 2, 4; 119B.19, subdivision 1; 119B.24; 119B.25, subdivision 2; 128C.05, subdivision 1a; 241.021, subdivision 6; 245.4874; 245A.03, subdivision 2; 245A.04, subdivision 1; 245A.08, subdivisions 1, 2a; 245A.085; 245A.11, subdivisions 2a, 2b; 245A.16, subdivision 1; 245A.22, subdivision 3; 245B.03, subdivision 2; 245C.02, subdivision 18; 245C.03, subdivision 1, by adding a subdivision; 245C.05, subdivisions 1, 2, 5, 6; 245C.08, subdivisions 2, 3, 4; 245C.09, subdivision 1; 245C.13, subdivision 1; 245C.14, subdivision 1; 245C.15, subdivisions 2, 3, 4; 245C.16, subdivision 1; 245C.17, subdivisions 1, 3; 245C.18; 245C.20; 245C.21, subdivision 3, by adding a subdivision; 245C.22, subdivisions 3, 4, 5, 6; 245C.23, subdivisions 1, 2; 245C.25; 245C.26; 245C.27, subdivisions 1, 2; 245C.28, subdivisions 1, 2, 3; 245C.29, subdivision 2; 246.15, by adding a subdivision; 252.27, subdivision 2a; 256.01, subdivision 2; 256.045, subdivisions 3, 3b; 256.046, subdivision 1; 256.955, subdivision 2a; 256.98, subdivision 8; 256B.0596; 256B.06, subdivision 4; 256B.0622, subdivision 8; 256B.0625, subdivision 9; 256B.0915, subdivisions 3a, 3b; 256B.431, subdivision 32; 256B.69, subdivisions 4, 6b; 256D.03, subdivisions 3, 4; 256J.09, subdivision 3b;

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256J.21, subdivision 2; 256J.24, subdivision 5; 256J.32, subdivisions 2, 8; 256J.37, subdivision 9; 256J.425, subdivisions 1, 4, 6; 256J.46, subdivision 1; 256J.49, subdivision 4; 256J.515; 256J.521, subdivisions 1, 2; 256J.53, subdivision 2; 256J.56; 256J.57, subdivision 1; 256J.626, subdivisions 2, 6, 7; 256J.751, subdivision 2; 256J.95, subdivisions 1, 3, 11, 12, 19; 295.50, subdivision 9b; 295.53, subdivision 1; 626.556, subdivisions 10, 10i; 626.557, subdivision 9d; Laws 1997, chapter 245, article 2, section 11, as amended; proposing coding for new law in Minnesota Statutes, chapters 62J; 62Q; 119B; 144; 151; 245A; 245B; 246B; 253B; 256B; repealing Minnesota Statutes 2002, sections 62A.309; 62H.07; 119B.211; 256D.051, subdivision 17; Minnesota Statutes 2003 Supplement, section 245C.02, subdivision 17; Laws 2000, chapter 489, article 1, section 36; Laws 2003, First Special Session chapter 14, article 3, section 56; Minnesota Rules, parts 9525.1600; 9543.0040, subpart 3; 9543.1000; 9543.1010; 9543.1020; 9543.1030; 9543.1040; 9543.1050; 9543.1060.

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

ARTICLE 1

HUMAN SERVICES

Section 1. Minnesota Statutes 2002, section 245.814, subdivision 1, is amended to read:

Subdivision 1. **INSURANCE FOR FOSTER HOME PROVIDERS.** The commissioner of human services shall within the appropriation provided purchase and provide insurance to individuals licensed as foster home providers to cover their liability for:

(1) injuries or property damage caused or sustained by persons in foster care in their home; and

(2) actions arising out of alienation of affections sustained by the birth parents of a foster child or birth parents or children of a foster adult.

For purposes of this subdivision, insurance for homes licensed to provide adult foster care shall be limited to family adult foster care homes as defined in section 144D.01, subdivision 7, and family adult day services licensed under section 245A.143.

Sec. 2. Minnesota Statutes 2002, section 245A.02, subdivision 2a, is amended to read:

Subd. 2a. **ADULT DAY CARE OR FAMILY ADULT DAY SERVICES.** "Adult day care," means "adult day services," and "family adult day services" mean a program operating less than 24 hours per day that provides functionally impaired adults with an individualized and coordinated set of services including health services, social services, and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care. Adult day care ~~does~~, adult day services, and

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family adult day services do not include programs where adults gather or congregate primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.

Sec. 3. Minnesota Statutes 2002, section 245A.02, subdivision 5a, is amended to read:

Subd. 5a. **CONTROLLING INDIVIDUAL.** "Controlling individual" means a public body, governmental agency, business entity, officer, ~~program administrator, or director~~ owner, or managerial official whose responsibilities include the direction of the management or policies of a program. ~~Controlling individual also means an individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling individual~~ For purposes of this subdivision, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this chapter. For purposes of this subdivision, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program. Controlling individual does not include:

(1) a bank, savings bank, trust company, savings association, credit union, industrial loan and thrift company, investment banking firm, or insurance company unless the entity operates a program directly or through a subsidiary;

(2) an individual who is a state or federal official, or state or federal employee, or a member or employee of the governing body of a political subdivision of the state or federal government that operates one or more programs, unless the individual is also an officer, ~~owner, or director~~ managerial official of the program, receives remuneration from the program, or owns any of the beneficial interests not excluded in this subdivision;

(3) an individual who owns less than five percent of the outstanding common shares of a corporation:

(i) whose securities are exempt under section 80A.15, subdivision 1, clause (f); or

(ii) whose transactions are exempt under section 80A.15, subdivision 2, clause (b); or

(4) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer, ~~owner, or director~~ managerial official of the program or owns any of the beneficial interests not excluded in this subdivision. This clause does not exclude from the definition of controlling individual an organization that is exempt from taxation.

Sec. 4. Minnesota Statutes 2002, section 245A.02, is amended by adding a subdivision to read:

Subd. 6c. **FOSTER CARE FOR ADULTS.** "Foster care for adults" means a program operating 24 hours a day that provides functionally impaired adults with food,

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lodging, protection, supervision, and household services in a residence, in addition to services according to the individual service plans under Minnesota Rules, part 9555.5105, subpart 18.

Sec. 5. Minnesota Statutes 2002, section 245A.02, subdivision 7, is amended to read:

Subd. 7. **FUNCTIONAL IMPAIRMENT.** For the purposes of adult day care, adult day services, family adult day services, or adult foster care, "functional impairment" means:

(1) a condition that is characterized by substantial difficulty in carrying out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working; or

(2) a disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life and that requires support to maintain independence in the community.

Sec. 6. Minnesota Statutes 2002, section 245A.02, subdivision 10, is amended to read:

Subd. 10. **NONRESIDENTIAL PROGRAM.** "Nonresidential program" means care, supervision, rehabilitation, training or habilitation of a person provided outside the person's own home and provided for fewer than 24 hours a day, including adult day care programs; a nursing home that receives public funds to provide services for five or more persons whose primary diagnosis is mental retardation or a related condition or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a nursing home or hospital and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Nonresidential programs include home and community-based services and semi-independent living services for persons with mental retardation or a related condition that are provided in or outside of a person's own home.

Sec. 7. Minnesota Statutes 2002, section 245A.02, subdivision 14, is amended to read:

Subd. 14. **RESIDENTIAL PROGRAM.** "Residential program" means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment outside a person's own home, including a nursing home or hospital that receives public funds, administered by the commissioner, to provide services for five or more persons whose primary diagnosis is mental retardation or a related condition or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a program in an intermediate care facility for four or more persons with mental retardation or a related

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condition; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a hospital or nursing home and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Residential programs include home and community-based services for persons with mental retardation or a related condition that are provided in or outside of a person's own home.

Sec. 8. Minnesota Statutes 2003 Supplement, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **EXCLUSION FROM LICENSURE.** (a) This chapter does not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;

(4) sheltered workshops or work activity programs that are certified by the commissioner of economic security;

(5) programs operated by a public school for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school as defined in section 120A.22, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of education 33 months or older;

(6) nonresidential programs primarily for children that provide care or supervision, ~~without charge for ten or fewer days a year, and for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;~~

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness who have refused an appropriate residential program offered by a county agency that do not provide intensive residential treatment;

(9) homes providing programs for persons placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years;

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(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that operate for fewer than 40 calendar days in a calendar year or ~~programs operated~~ are operated or approved by a park and recreation board of a city of the first class whose primary purpose is to provide social and recreational activities to school age children, ~~provided the program is approved by the park and recreation board;~~

(12) programs operated by a school as defined in section 120A.22, subdivision 4, whose primary purpose is to provide child care to school-age children, ~~provided the program is approved by the district's school board;~~

(13) Head Start nonresidential programs which operate for less than 31 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;

(15) nonresidential programs for ~~nonhandicapped~~ children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;

(21) unrelated individuals who provide out-of-home respite care services to persons with mental retardation or related conditions from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with mental retardation or a related condition, in the person's primary residence;

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

(24) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;

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(25) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults; or

(26) consumer-directed community support service funded under the Medicaid waiver for persons with mental retardation and related conditions when the individual who provided the service is:

(i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and

(ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service.

(b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

(c) Nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Sec. 9. Minnesota Statutes 2002, section 245A.03, subdivision 3, is amended to read:

Subd. 3. **UNLICENSED PROGRAMS.** (a) It is a misdemeanor for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a residential or nonresidential program without a license and in willful disregard of this chapter unless the program is excluded from licensure under subdivision 2.

(b) ~~If, after receiving notice that a license is required, the individual, corporation, partnership, voluntary association, other organization, or controlling individual has failed to apply for a license, The commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program, if an individual, corporation, partnership, voluntary association, other organization, or controlling individual has:~~

(1) failed to apply for a license after receiving notice that a license is required;

(2) continued to operate without a license after the license has been revoked or suspended under section 245A.07, and the commissioner has issued a final order affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or

(3) continued to operate without a license after the license has been temporarily suspended under section 245A.07.

The county attorney and the attorney general have a duty to cooperate with the commissioner.

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Sec. 10. Minnesota Statutes 2003 Supplement, section 245A.04, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION FOR LICENSURE.** (a) An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner. The commissioner shall provide the applicant with instruction in completing the application and provide information about the rules and requirements of other state agencies that affect the applicant. An applicant seeking licensure in Minnesota with headquarters outside of Minnesota must have a program office located within the state.

The commissioner shall act on the application within 90 working days after a complete application and any required reports have been received from other state agencies or departments, counties, municipalities, or other political subdivisions. The commissioner shall not consider an application to be complete until the commissioner receives all of the information required under section 245C.05.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the commissioner of human services on all matters provided for in this chapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

(c) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

(d) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

Sec. 11. Minnesota Statutes 2002, section 245A.04, subdivision 5, is amended to read:

Subd. 5. **COMMISSIONER'S RIGHT OF ACCESS.** When the commissioner is exercising the powers conferred by this chapter and section 245.69, the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations

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conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Sec. 12. Minnesota Statutes 2002, section 245A.04, subdivision 6, is amended to read:

Subd. 6. **COMMISSIONER'S EVALUATION.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in rules adopted under this chapter 245C.

Sec. 13. Minnesota Statutes 2002, section 245A.04, subdivision 7, is amended to read:

Subd. 7. **ISSUANCE OF A LICENSE; EXTENSION OF A LICENSE.** (a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license. At minimum, the license shall state:

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

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(b) The commissioner may issue an initial license for a period not to exceed two years if:

(1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet operational;

(2) certain records and documents are not available because persons are not yet receiving services from the program; and

(3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the commissioner to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling or to another location.

(d) A license holder must notify the commissioner and obtain the commissioner's approval before making any changes that would alter the license information listed under paragraph (a).

(e) The commissioner shall not issue a license if the applicant, license holder, or controlling individual has:

(1) been disqualified and the disqualification was not set aside;

(2) has been denied a license within the past two years; or

(3) had a license revoked within the past five years.

For purposes of reimbursement for meals only, under the Child and Adult Care Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 226, relocation within the same county by a licensed family day care provider, shall be considered an extension of the license for a period of no more than 30 calendar days or until the new license is issued, whichever occurs first, provided the county agency has determined the family day care provider meets licensure requirements at the new location.

Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

Sec. 14. Minnesota Statutes 2002, section 245A.04, is amended by adding a subdivision to read:

Subd. 13. RESIDENTIAL PROGRAMS HANDLING RESIDENT FUNDS AND PROPERTY; ADDITIONAL REQUIREMENTS. (a) A license holder must ensure that residents retain the use and availability of personal funds or property unless restrictions are justified in the resident's individual plan.

(b) The license holder must ensure separation of resident funds from funds of the license holder, the residential program, or program staff.

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(c) Whenever the license holder assists a resident with the safekeeping of funds or other property, the license holder must:

(1) immediately document receipt and disbursement of the resident's funds or other property at the time of receipt or disbursement, including the signature of the resident, conservator, or payee;

(2) provide a statement, at least quarterly, itemizing receipts and disbursements of resident funds or other property; and

(3) return to the resident upon the resident's request, funds and property in the license holder's possession subject to restrictions in the resident's treatment plan, as soon as possible, but no later than three working days after the date of request.

(d) License holders and program staff must not:

(1) borrow money from a resident;

(2) purchase personal items from a resident;

(3) sell merchandise or personal services to a resident;

(4) require a resident to purchase items for which the license holder is eligible for reimbursement; or

(5) use resident funds to purchase items for which the facility is already receiving public or private payments.

Sec. 15. Minnesota Statutes 2002, section 245A.05, is amended to read:

245A.05 DENIAL OF APPLICATION.

The commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation. An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and successor rules. The applicant may appeal the denial by notifying the commissioner in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application.

Sec. 16. Minnesota Statutes 2002, section 245A.06, subdivision 2, is amended to read:

Subd. 2. **RECONSIDERATION OF CORRECTION ORDERS.** If the applicant or license holder believes that the contents of the commissioner's correction order are in error, the applicant or license holder may ask the Department of Human Services to reconsider the parts of the correction order that are alleged to be in error. The request for reconsideration must be made in writing and received by ~~must be~~ postmarked and

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sent to the commissioner within 20 calendar days after receipt of the correction order by the applicant or license holder, and:

- (1) specify the parts of the correction order that are alleged to be in error;
- (2) explain why they are in error; and
- (3) include documentation to support the allegation of error.

A request for reconsideration does not stay any provisions or requirements of the correction order. The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Sec. 17. Minnesota Statutes 2002, section 245A.06, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF CONDITIONAL LICENSE; RECONSIDERATION OF CONDITIONAL LICENSE.** If a license is made conditional, the license holder must be notified of the order by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the conditional license was ordered and must inform the license holder of the right to request reconsideration of the conditional license by the commissioner. The license holder may request reconsideration of the order of conditional license by notifying the commissioner by certified mail or personal service. The request must be made in writing and, if sent by certified mail, the request must be received by postmarked and sent to the commissioner within ten calendar days after the license holder received the order. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. The license holder may submit with the request for reconsideration written argument or evidence in support of the request for reconsideration. A timely request for reconsideration shall stay imposition of the terms of the conditional license until the commissioner issues a decision on the request for reconsideration. If the commissioner issues a dual order of conditional license under this section and an order to pay a fine under section 245A.07, subdivision 3, the license holder has a right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The scope of the contested case hearing shall include the fine and the conditional license. In this case, a reconsideration of the conditional license will not be conducted under this section.

The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Sec. 18. Minnesota Statutes 2002, section 245A.07, subdivision 2, is amended to read:

Subd. 2. **TEMPORARY IMMEDIATE SUSPENSION.** If the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license. No state funds shall be made available

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or be expended by any agency or department of state, county, or municipal government for use by a license holder regulated under this chapter while a license is under immediate suspension. A notice stating the reasons for the immediate suspension and informing the license holder of the right to an expedited hearing under chapter 14 and Minnesota Rules, parts 1400.8510 1400.8505 to 1400.8612 and successor rules, must be delivered by personal service to the address shown on the application or the last known address of the license holder. The license holder may appeal an order immediately suspending a license. The appeal of an order immediately suspending a license must be made in writing by certified mail and or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within five calendar days after the license holder receives notice that the license has been immediately suspended. If a request is made by personal service, it must be received by the commissioner within five calendar days after the license holder received the order. A license holder and any controlling individual shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

Sec. 19. Minnesota Statutes 2002, section 245A.07, subdivision 2a, is amended to read:

Subd. 2a. **IMMEDIATE SUSPENSION EXPEDITED HEARING.** (a) Within five working days of receipt of the license holder's timely appeal, the commissioner shall request assignment of an administrative law judge. The request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge within 30 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten working days before the hearing. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings under this subdivision shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

(b) The administrative law judge shall issue findings of fact, conclusions, and a recommendation within ten working days from the date of hearing. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten working days from receipt of the recommendation of the administrative law judge the close of the record. Within 90 calendar days after a final order affirming an immediate suspension, the commissioner shall make a determination regarding whether a final licensing sanction shall be issued under subdivision 3. The license holder shall continue to be prohibited from operation of the program during this 90-day period.

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(c) When the final order under paragraph (b) affirms an immediate suspension, and a final licensing sanction is issued under subdivision 3 and the license holder appeals that sanction, the license holder continues to be prohibited from operation of the program pending a final commissioner's order under section 245A.08, subdivision 5, regarding the final licensing sanction.

Sec. 20, Minnesota Statutes 2002, section 245A.07, subdivision 3, is amended to read:

Subd. 3. **LICENSE SUSPENSION, REVOCATION, OR FINE.** The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, has a disqualification which has not been set aside under section 245C.22, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, or during an investigation. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

(a) If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and successor rules. The license holder may appeal an order suspending or revoking a license. The appeal of an order suspending or revoking a license must be made in writing by certified mail and or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. Except as provided in subdivision 2a, paragraph (c), a timely appeal of an order suspending or revoking a license shall stay the suspension or revocation until the commissioner issues a final order.

(b)(1) If the license holder was ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to a contested case hearing under chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and successor rules. The appeal of an order to pay a fine must be made in writing by certified mail and or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the fine has been ordered. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order.

(2) The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or

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departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

(3) A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order.

(5) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Sec. 21. Minnesota Statutes 2003 Supplement, section 245A.08, subdivision 1, is amended to read:

Subdivision 1. **RECEIPT OF APPEAL; CONDUCT OF HEARING.** Upon receiving a timely appeal or petition pursuant to section 245A.05, 245A.07, subdivision 3, or 245C.28, the commissioner shall issue a notice of and order for hearing to the appellant under chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and successor rules.

Sec. 22. Minnesota Statutes 2003 Supplement, section 245A.08, subdivision 2a, is amended to read:

Subd. 2a. **CONSOLIDATED CONTESTED CASE HEARINGS FOR SANCTIONS BASED ON MALTREATMENT DETERMINATIONS AND DISQUALIFICATIONS.** (a) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3, is based on a disqualification for which reconsideration was requested and which was not set aside or was not ~~reseinded~~ under ~~sections 245C.24 to 245C.27~~ section 245C.22, the scope of the contested case hearing shall include the disqualification and the licensing sanction or denial of a license. When the licensing sanction or denial of a license is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside or was not ~~reseinded~~, the scope of the

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contested case hearing shall include the maltreatment determination, disqualification, and the licensing sanction or denial of a license. In such cases, a fair hearing under section 256.045 shall not be conducted as provided for in sections 626.556, subdivision 10i, and 626.557, subdivision 9d.

(b) In consolidated contested case hearings regarding sanctions issued in family child care, child foster care, and adult foster care, the county attorney shall defend the commissioner's orders in accordance with section 245A.16, subdivision 4.

(c) The commissioner's final order under subdivision 5 is the final agency action on the issue of maltreatment and disqualification, including for purposes of subsequent background studies under chapter 245C and is the only administrative appeal of the final agency determination, specifically, including a challenge to the accuracy and completeness of data under section 13.04.

(d) When consolidated hearings under this subdivision involve a licensing sanction based on a previous maltreatment determination for which the commissioner has issued a final order in an appeal of that determination under section 256.045, or the individual failed to exercise the right to appeal the previous maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, the commissioner's order is conclusive on the issue of maltreatment. In such cases, the scope of the administrative law judge's review shall be limited to the disqualification and the licensing sanction or denial of a license. In the case of a denial of a license or a licensing sanction issued to a facility based on a maltreatment determination regarding an individual who is not the license holder or a household member, the scope of the administrative law judge's review includes the maltreatment determination.

(e) If a maltreatment determination or disqualification, which was not set aside or was not rescinded under sections ~~245C.21 to 245C.27~~ section 245C.22, is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, and the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

Sec. 23. Minnesota Statutes 2002, section 245A.08, subdivision 5, is amended to read:

Subd. 5. **NOTICE OF THE COMMISSIONER'S FINAL ORDER.** After considering the findings of fact, conclusions, and recommendations of the administrative law judge, the commissioner shall issue a final order. The commissioner shall consider, but shall not be bound by, the recommendations of the administrative law judge. The appellant must be notified of the commissioner's final order as required by chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and ~~successor rules~~. The notice must also contain information about the appellant's rights under chapter 14 and Minnesota Rules, parts ~~1400.8510~~ 1400.8505 to 1400.8612 and ~~successor rules~~. The institution of proceedings for judicial review of the commissioner's final order shall not stay the enforcement of the final order except as provided in section 14.65. A license holder and each controlling individual of a license holder

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whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation. An applicant whose application was denied must not be granted a license for two years following a denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial.

Sec. 24. Minnesota Statutes 2003 Supplement, section 245A.085, is amended to read:

245A.085 CONSOLIDATION OF HEARINGS; RECONSIDERATION.

Hearings authorized under this chapter, chapter 245C, and sections 256.045, 626.556, and 626.557, shall be consolidated if feasible and in accordance with other applicable statutes and rules. Reconsideration under sections 245C.28; 626.556, subdivision 10i; and 626.557, subdivision 9d, shall also be consolidated if feasible.

Sec. 25. Minnesota Statutes 2003 Supplement, section 245A.11, subdivision 2b, is amended to read:

Subd. 2b. **ADULT FOSTER CARE; FAMILY ADULT DAY CARE SERVICES.** An adult foster care license holder licensed under the conditions in subdivision 2a may also provide family adult day care for adults age 55 or over if no persons in the adult foster or adult family adult day care services program have a serious and persistent mental illness or a developmental disability. ~~The maximum combined capacity for adult foster care and family adult day care is five adults, except that the commissioner may grant a variance for a family adult day care provider to admit up to seven individuals for day care services and one individual for respite care services, if all of the following requirements are met: (1) the variance complies with section 245A.04, subdivision 9; (2) a second caregiver is present whenever six or more clients are being served; and (3) the variance is recommended by the county social service agency in the county where the provider is located. A separate license is not required to provide family adult day care under this subdivision. Family adult day services provided in a licensed adult foster care setting must be provided as specified under section 245A.143. Authorization to provide family adult day services in the adult foster care setting shall be printed on the license certificate by the commissioner. Adult foster care homes providing services to five adults licensed under this section and family adult day services licensed under section 245A.143 shall not be subject to licensure by the commissioner of health under the provisions of chapter 144, 144A, 157, or any other law requiring facility licensure by the commissioner of health.~~

Sec. 26. Minnesota Statutes 2002, section 245A.14, subdivision 4, is amended to read:

Subd. 4. **SPECIAL FAMILY DAY CARE HOMES.** Nonresidential child care programs serving 14 or fewer children that are conducted at a location other than the license holder's own residence shall be licensed under this section and the rules governing family day care or group family day care if:

(a) the license holder is the primary provider of care and the nonresidential child care program is conducted in a dwelling that is located on a residential lot;

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(b) the license holder is an employer who may or may not be the primary provider of care, and the purpose for the child care program is to provide child care services to children of the license holder's employees; or

(c) the license holder is a church or religious organization; or

(d) the license holder is a community collaborative child care provider. For purposes of this subdivision, a community collaborative child care provider is a provider participating in a cooperative agreement with a community action agency as defined in section 119A.375.

Sec. 27. [245A.143] FAMILY ADULT DAY SERVICES.

Subdivision 1. SCOPE. (a) The licensing standards in this section must be met to obtain and maintain a license to provide family adult day services. For the purposes of this section, family adult day services means a program operating fewer than 24 hours per day that provides functionally impaired adults, none of which are under age 55, have serious or persistent mental illness, or have mental retardation or a related condition, with an individualized and coordinated set of services including health services, social services, and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care.

(b) A family adult day services license shall only be issued when the services are provided in the license holder's primary residence, and the license holder is the primary provider of care. The license holder may not serve more than eight adults at one time, including residents, if any, served under a license issued under Minnesota Rules, parts 9555.5105 to 9555.6265.

(c) An adult foster care license holder may provide family adult day services if the license holder meets the requirements of this section.

(d) When an applicant or license holder submits an application for initial licensure or relicensure for both adult foster care and family adult day services, the county agency shall process the request as a single application and shall conduct concurrent routine licensing inspections.

(e) Adult foster care license holders providing family adult day services under their foster care license on March 30, 2004, shall be permitted to continue providing these services with no additional requirements until their adult foster care license is due for renewal. At the time of relicensure, an adult foster care license holder may continue to provide family adult day services upon demonstration of compliance with this section. Adult foster care license holders who provide only family adult day services on August 1, 2004, may apply for a license under this section instead of an adult foster care license.

Subd. 2. DEFINITIONS. (a) For the purposes of this section, the terms defined in this subdivision have the following meanings unless otherwise provided for by text.

(b) CAREGIVER. "Caregiver" means a spouse, adult child, parent, relative, friend, or others who normally provide unpaid support or care to the individual needing

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assistance. For the purpose of this section, the caregiver may or may not have legal or financial responsibility for the participant.

(c) **PARTICIPANT.** “Participant” means a functionally impaired adult receiving family adult day services.

(d) **CONSULTATION BY A HEALTH CARE PROFESSIONAL.** “Consultation by a health care professional” means the review and oversight of the participant’s health-related services by a registered nurse, physician, or mental health professional.

Subd. 3. POLICY AND PROGRAM INFORMATION REQUIREMENTS.

(a) The license holder shall have available for review, and shall distribute to participants and their caregivers upon admission, written information about:

- (1) the scope of the programs, services, and care offered by the license holder;
- (2) a description of the population to be served by the license holder;
- (3) a description of individual conditions which the license holder is not prepared to accept, such as a communicable disease requiring isolation, a history of violence to self or others, unmanageable incontinence, or uncontrollable wandering;
- (4) the participants’ rights and procedure for presenting grievances, including the name, address, and telephone number of the Office of Ombudsman for Older Minnesotans and the county licensing department, to which a participant or participant’s caregiver may submit an oral or written complaint;
- (5) the license holder’s policy on and arrangements for providing transportation;
- (6) the license holder’s policy on providing meals and snacks;
- (7) the license holder’s fees, billing arrangements, and plans for payment;
- (8) the license holder’s policy governing the presence of pets in the home;
- (9) the license holder’s policy on smoking in the home;
- (10) types of insurance coverage carried by the license holder;
- (11) information on orientation requirements under section 245A.65, subdivisions 1, paragraph (c), and 2, paragraph (a), clause (4);
- (12) the terms and conditions of the license holder’s license issued by the department;
- (13) the license holder’s plan for emergency evacuation of participants involving fire, weather, and other disasters. The plan must include instructions for evacuation or rescue of participants, identification of an emergency shelter area, quarterly fire drill schedule, and staff responsibilities; and
- (14) the license holder’s policy for handling harmful objects, materials, or equipment including the storage of poisonous chemicals, use of appliances, sharp instruments, matches, or any other potentially harmful materials.

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(b) The information in paragraph (a) must be provided in writing to the commissioner's representative upon request and must be available for inspection by the commissioner's representative at the home.

Subd. 4. ADMISSION SCREENING AND EVALUATION. (a) Before admitting an individual into the family adult day services program, the license holder shall screen the individual to determine how or whether the license holder can serve the individual, based on the license holder's policies, services, expertise, and the individual's needs and condition. If possible, the screening shall include an interview with the individual and with the individual's caregiver.

(b) The screening required under paragraph (a) shall include an evaluation of the health, nutritional, and social services needs of the individual.

Subd. 5. SERVICE DELIVERY PLAN. Before providing family adult day services, an individual, the individual's caregiver, the legal representative if there is one, the county or private case manager, if applicable, and the license holder shall develop a service delivery plan. At a minimum, the service delivery plan shall include:

(1) a description of the health services, nutritional services, and social services to be arranged or provided by the license holder and the frequency of those services and that the services will be based on the needs of the individual;

(2) scheduled days and hours of participant's attendance at the license holder's home;

(3) transportation arrangements for getting the participant to and from the license holder's home;

(4) contingency plans if scheduled services cannot be provided by the license holder;

(5) identification of responsibilities of the participant and the license holder with respect to payment for the services;

(6) circumstances when emergency services will be called; and

(7) identification of the license holder's discharge policy when services are no longer needed or when the participant's needs can no longer be met by the license holder.

Subd. 6. INDIVIDUAL SERVICE PLAN. (a) The service plan must be coordinated with other plans of services for the participant, as appropriate.

(b) The service plan must be dated and revised when there is a change in the needs of the participant or annually, whichever occurs sooner.

Subd. 7. HEALTH SERVICES. (a) The license holder shall provide health services as specified in the service delivery plan under the direction of the designated caregiver or county or private case manager. Health services must include:

(1) monitoring the participant's level of function and health while participating; taking appropriate action for a change in condition including immediately reporting

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changes to the participant's caregiver, physician, mental health professional, or registered nurse; and seeking consultation;

(2) offering information to participants and caregivers on good health and safety practices; and

(3) maintaining a listing of health resources available for referrals as needed by participants and caregivers.

(b) Unless the person is a licensed health care practitioner qualified to administer medications, the person responsible for medication administration or assistance shall provide a certificate verifying successful completion of a trained medication aid program for unlicensed personnel approved by the Minnesota Department of Health or comparable program, or biennially provide evidence of competency as demonstrated to a registered nurse or physician.

(c) The license holder must have secure storage and safeguarding of all medications with storage of medications in their original container, know what information regarding medication administration must be reported to a health care professional, and must maintain a record of all medications administered.

Subd. 8. NUTRITIONAL SERVICES. (a) The license holder shall ensure that food served is nutritious and meets any special dietary needs of the participants as prescribed by the participant's physician or dietitian as specified in the service delivery plan.

(b) Food and beverages must be obtained, handled, and properly stored to prevent contamination, spoilage, or a threat to the health of a resident.

Subd. 9. SOCIAL SERVICES. The license holder, in consultation with the county or private case manager, when appropriate, shall actively assist the participant in identifying and achieving personal goals, support the participant in maintaining personal support networks and socially valued roles, provide assistance to the participant to enable community participation, and refer participants to the Office of Ombudsman for Older Minnesotans and other advocacy organizations for assistance when there is a potential conflict of interest between the license holder and the participant.

Subd. 10. PARTICIPANT RIGHTS. (a) The license holder shall adopt and comply with a participant bill of rights. The rights shall include the participants' right to:

- (1) participate in the development of the service plan;
- (2) refuse services or participation;
- (3) privacy;
- (4) confidentiality of participant information; and
- (5) present grievances regarding treatment or services to the Office of Ombudsman for Older Minnesotans or the county licensing department. The license holder's

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policies shall include a procedure for addressing participant grievances, including the name, address, and telephone number of the county licensing department, to which a participant or participant caregiver may submit an oral or written complaint.

(b) The license holder shall post the participant rights in the home and shall provide a copy to the participant and the participant's primary caregiver and legal representative if the participant has one.

Subd. 11. STAFFING. Whenever participants are in the home, there must be present at least one individual who is trained in basic first aid and certified in cardiopulmonary resuscitation and the treatment of obstructed airways. Whenever there are six, seven, or eight participants present, there must be a second staff person present.

Subd. 12. TRAINING. The license holder and license holder's staff must annually complete 12 hours of training related to the health, nutritional, and social needs of the license holder's target population. License holders with six or more years of licensure under this section or as an adult foster care provider must annually complete six hours of training. The annual training must include training on the reporting of maltreatment of vulnerable adults under sections 626.557 and 626.5572; license holder requirements governing maltreatment of vulnerable adults under section 245A.65; and, when a license holder serves participants who rely on medical monitoring equipment to sustain life or monitor a medical condition, training on medical equipment as required under section 245A.155 for foster care providers. A record of all training must be maintained in the home.

Subd. 13. RESIDENTIAL REQUIREMENTS. (a) The home where family adult day services are to be provided shall be classified as a residential group R-3 occupancy under the State Building Code and State Fire Code for purposes of building code and fire code inspections. A building code inspection is not required for licensure under this section. The state or local fire marshal must inspect the family adult day services home operating in the residence for compliance with the residential group R-3 occupancy provisions of the State Fire Code.

(b) The licensed capacity of the home shall be limited by the amount of indoor space available for use by participants. The total indoor space available for use by participants must equal at least 35 square feet for each participant, the license holder, and each staff member present in the home. In determining the square footage of usable indoor space available, the following must not be counted: hallways, stairways, closets, offices, restrooms, and utility and storage areas. The usable indoor space available must include a room or an area that can be used as private space for providing personal hygiene services or social services to participants.

(c) The residence must comply with all applicable local ordinances.

Subd. 14. VARIANCES. The commissioner may grant a variance to any of the requirements in this section if the conditions in section 245A.04, subdivision 9, are met.

Sec. 28. Minnesota Statutes 2003 Supplement, section 245A.16, subdivision 1, is amended to read:

New language is indicated by underline, deletions by strikeout.

Subdivision 1. **DELEGATION OF AUTHORITY TO AGENCIES.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 and chapter 245C, to recommend denial of applicants under section 245A.05, to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;

(2) adult foster care maximum capacity;

(3) adult foster care minimum age requirement;

(4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment; and

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

(b) County agencies must report information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner.

(c) For family day care programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(d) For family adult day services programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(e) A license issued under this section may be issued for up to two years.

Sec. 29. Minnesota Statutes 2002, section 245A.16, subdivision 4, is amended to read:

Subd. 4. **ENFORCEMENT OF THE COMMISSIONER'S ORDERS.** The county or private agency shall enforce the commissioner's orders under sections 245A.07 and, 245A.08, subdivision 5, and chapter 245C, according to the instructions of the commissioner. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's orders under sections 245A.07 and, 245A.08, and chapter 245C, according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner.

New language is indicated by underline, deletions by strikeout.

Sec. 30. Minnesota Statutes 2002, section 245A.22, subdivision 2, is amended to read:

Subd. 2. **ADMISSION.** (a) The license holder shall accept as clients in the independent living assistance program only individuals specified under section 256E.115 youth ages 16 to 21 who are in out-of-home placement, leaving out-of-home placement, at risk of becoming homeless, or homeless.

(b) Youth who have current drug or alcohol problems, a recent history of violent behaviors, or a mental health disorder or issue that is not being resolved through counseling or treatment are not eligible to receive the services described in subdivision 1.

(c) Youth who are not employed, participating in employment training, or enrolled in an academic program are not eligible to receive transitional housing or independent living assistance.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 31. Minnesota Statutes 2003 Supplement, section 245A.22, subdivision 3, is amended to read:

Subd. 3. **INDEPENDENT LIVING PLAN.** (a) Unless an independent living plan has been developed by the local agency, the license holder shall develop a plan based on the client's individual needs that specifies objectives for the client. The services provided shall include those specified in this section. The plan shall identify the persons responsible for implementation of each part of the plan. The plan shall be reviewed as necessary, but at least annually.

(b) The following services, or adequate access to referrals for the following services, must be made available to the targeted youth participating in the programs described in subdivision 1:

(1) counseling services for the youth and their families, if appropriate, on site, to help with problems that contributed to the homelessness or could impede making the transition to independent living;

(2) educational, vocational, or employment services;

(3) health care;

(4) transportation services including, where appropriate, assisting the child in obtaining a driver's license;

(5) money management skills training;

(6) planning for ongoing housing;

(7) social and recreational skills training; and

(8) assistance establishing and maintaining connections with the child's family and community.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 32. Minnesota Statutes 2002, section 245B.02, is amended by adding a subdivision to read:

Subd. 12a. INTERDISCIPLINARY TEAM. "Interdisciplinary team" means a team composed of the case manager, the person, the person's legal representative and advocate, if any, and representatives of providers of the service areas relevant to the needs of the person as described in the individual service plan.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 33. Minnesota Statutes 2003 Supplement, section 245B.03, subdivision 2, is amended to read:

Subd. 2. RELATIONSHIP TO OTHER STANDARDS GOVERNING SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS. (a) ICFs/MR are exempt from:

- (1) section 245B.04;
- (2) section 245B.06, subdivisions 4 and 6; and
- (3) section 245B.07, subdivisions 4, paragraphs (b) and (c); 7; and 8, paragraphs (1), clause (iv), and (2).

(b) License holders also licensed under chapter 144 as a supervised living facility are exempt from section 245B.04.

(c) Residential service sites controlled by license holders licensed under this chapter for home and community-based waived services for four or fewer adults are exempt from compliance with Minnesota Rules, parts 9543.0040, subpart 2, item C; 9555.5505; 9555.5515, items B and G; 9555.5605; 9555.5705; 9555.6125, subparts 3, item C, subitem (2), and 4 to 6; 9555.6185; 9555.6225, subpart 8; 9555.6245; 9555.6255; and 9555.6265; and as provided under section 245B.06, subdivision 2, the license holder is exempt from the program abuse prevention plans and individual abuse prevention plans otherwise required under sections 245A.65, subdivision 2, and 626.557, subdivision 14. The commissioner may approve alternative methods of providing overnight supervision using the process and criteria for granting a variance in section 245A.04, subdivision 9. This chapter does not apply to foster care homes that do not provide residential habilitation services funded under the home and community-based waiver programs defined in section 256B.092.

(d) Residential service sites controlled by license holders licensed under this chapter for home and community-based waived services for four or fewer children are exempt from compliance with Minnesota Rules, parts ~~9545.0130; 9545.0140; 9545.0150; 9545.0170; 9545.0220~~, subparts ~~1, items C, F, and I, and 3; and 9545.0230~~ 2960.3060, subpart 3, items B and C; 2960.3070; 2960.3100, subpart 1, items C, F, and I; and 2960.3210.

(e) The commissioner may exempt license holders from applicable standards of this chapter when the license holder meets the standards under section 245A.09, subdivision 7. License holders that are accredited by an independent accreditation body

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shall continue to be licensed under this chapter.

(f) License holders governed by sections 245B.02 to 245B.07 must also meet the licensure requirements in chapter 245A.

(g) Nothing in this chapter prohibits license holders from concurrently serving consumers with and without mental retardation or related conditions provided this chapter's standards are met as well as other relevant standards.

(h) The documentation that sections 245B.02 to 245B.07 require of the license holder meets the individual program plan required in section 256B.092 or successor provisions.

Sec. 34. Minnesota Statutes 2002, section 245B.05, subdivision 2, is amended to read:

Subd. 2. **LICENSED CAPACITY FOR FACILITY-BASED DAY TRAINING AND HABILITATION SERVICES.** The licensed capacity of each day training and habilitation service sites site must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of consumers receiving services at the site. Primary space does not include hallways, stairways, closets, utility areas, bathrooms, kitchens, and floor areas beneath stationary equipment. A facility-based day training and habilitation site must have a minimum of 40 square feet of primary space must be available for each consumer who is engaged in a day training and habilitation activity at the site for which the licensed capacity must be determined present at the site at any one time. Licensed capacity under this subdivision does not apply to: (1) consumers receiving community-based day training and habilitation services; and (2) the temporary use of a facility-based training and habilitation service site for the limited purpose of providing transportation to consumers receiving community-based day training and habilitation services from the license holder. The license holder must comply at all times with all applicable fire and safety codes under subdivision 4 and adequate supervision requirements under section 245B.055 for all persons receiving day training and habilitation services.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 35. **[245B.055] MINIMUM LEVEL OF STAFFING REQUIRED FOR DAY TRAINING AND HABILITATION SERVICES.**

Subdivision 1. **SCOPE.** This section applies only to license holders that provide day training and habilitation services.

Subd. 2. **FACTORS.** (a) The number of direct service staff members that a license holder must have on duty at a given time to meet the minimum staffing requirements established in this section varies according to:

(1) the number of persons who are enrolled and receiving direct services at that given time;

(2) the staff ratio requirement established under subdivision 3 for each of the persons who is present; and

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(3) whether the conditions described in subdivision 8 exist and warrant additional staffing beyond the number determined to be needed under subdivision 7.

(b) The commissioner shall consider the factors in paragraph (a) in determining a license holder's compliance with the staffing requirements and shall further consider whether the staff ratio requirement established under subdivision 3 for each person receiving services accurately reflects the person's need for staff time.

Subd. 3. DETERMINING AND DOCUMENTING THE STAFF RATIO REQUIREMENT FOR EACH PERSON RECEIVING SERVICES. The case manager, in consultation with the interdisciplinary team shall determine at least once each year which of the ratios in subdivisions 4, 5, and 6 is appropriate for each person receiving services on the basis of the characteristics described in subdivisions 4, 5, and 6. The ratio assigned each person and the documentation of how the ratio was arrived at must be kept in each person's individual service plan. Documentation must include an assessment of the person with respect to the characteristics in subdivisions 4, 5, and 6 recorded on a standard assessment form required by the commissioner.

Subd. 4. PERSON REQUIRING STAFF RATIO OF ONE TO FOUR. A person who has one or more of the following characteristics must be assigned a staff ratio requirement of one to four:

(1) on a daily basis the person requires total care and monitoring or constant hand-over-hand physical guidance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating; or

(2) the person assaults others, is self-injurious, or manifests severe dysfunctional behaviors at a documented level of frequency, intensity, or duration requiring frequent daily ongoing intervention and monitoring as established in an approved behavior management program.

Subd. 5. PERSON REQUIRING STAFF RATIO OF ONE TO EIGHT. A person who has all of the following characteristics must be assigned a staff ratio requirement of one to eight:

(1) the person does not meet the requirements in subdivision 4; and

(2) on a daily basis the person requires verbal prompts or spot checks and minimal or no physical assistance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

Subd. 6. PERSON REQUIRING STAFF RATIO OF ONE TO SIX. A person who does not have any of the characteristics described in subdivision 4 or 5 must be assigned a staff ratio requirement of one to six.

Subd. 7. DETERMINING NUMBER OF DIRECT SERVICE STAFF REQUIRED. The minimum number of direct service staff members required at any one time to meet the combined staff ratio requirements of the persons present at that time can be determined by following the steps in clauses (1) through (4):

(1) assign each person in attendance the three-digit decimal below that corresponds to the staff ratio requirement assigned to that person. A staff ratio requirement

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of one to four equals 0.250. A staff ratio requirement of one to eight equals 0.125. A staff ratio requirement of one to six equals 0.166;

(2) add all of the three-digit decimals (one three-digit decimal for every person in attendance) assigned in clause (1);

(3) when the sum in clause (2) falls between two whole numbers, round off the sum to the larger of the two whole numbers; and

(4) the larger of the two whole numbers in clause (3) equals the number of direct service staff members needed to meet the staff ratio requirements of the persons in attendance.

Subd. 8. CONDITIONS REQUIRING ADDITIONAL DIRECT SERVICE STAFF. The license holder shall increase the number of direct service staff members present at any one time beyond the number arrived at in subdivision 4 if necessary when any one or combination of the following circumstances can be documented by the commissioner as existing:

(1) the health and safety needs of the persons receiving services cannot be met by the number of staff members available under the staffing pattern in effect even though the number has been accurately calculated under subdivision 7; or

(2) the behavior of a person presents an immediate danger and the person is not eligible for a special needs rate exception under Minnesota Rules, parts 9510.1020 to 9510.1140.

Subd. 9. SUPERVISION REQUIREMENTS. At no time shall one direct service staff member be assigned responsibility for supervision and training of more than ten persons receiving supervision and training, except as otherwise stated in each person's risk management plan.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 36. Minnesota Statutes 2002, section 245B.07, subdivision 8, is amended to read:

Subd. 8. POLICIES AND PROCEDURES. The license holder must develop and implement the policies and procedures in paragraphs (1) to (3).

(1) policies and procedures that promote consumer health and safety by ensuring:

(i) consumer safety in emergency situations as identified in section 245B.05, subdivision 7;

(ii) consumer health through sanitary practices;

(iii) safe transportation, when the license holder is responsible for transportation of consumers, with provisions for handling emergency situations;

(iv) a system of record keeping for both individuals and the organization, for review of incidents and emergencies, and corrective action if needed;

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(v) a plan for responding to and reporting all emergencies, including deaths, medical emergencies, illnesses, accidents, missing consumers, all incidents, as defined in section 245B.02, subdivision 10, fires, severe weather and natural disasters, bomb threats, and other threats and reporting all incidents required to be reported under section 245B.05, subdivision 7;

(vi) safe medication administration as identified in section 245B.05, subdivision 5, incorporating an observed skill assessment to ensure that staff demonstrate the ability to administer medications consistent with the license holder's policy and procedures;

(vii) psychotropic medication monitoring when the consumer is prescribed a psychotropic medication, including the use of the psychotropic medication use checklist. If the responsibility for implementing the psychotropic medication use checklist has not been assigned in the individual service plan and the consumer lives in a licensed site, the residential license holder shall be designated; and

(viii) criteria for admission or service initiation developed by the license holder;

(2) policies and procedures that protect consumer rights and privacy by ensuring:

(i) consumer data privacy, in compliance with the Minnesota Data Practices Act, chapter 13; and

(ii) that complaint procedures provide consumers with a simple process to bring grievances and consumers receive a response to the grievance within a reasonable time period. The license holder must provide a copy of the program's grievance procedure and time lines for addressing grievances. The program's grievance procedure must permit consumers served by the program and the authorized representatives to bring a grievance to the highest level of authority in the program; and

(3) policies and procedures that promote continuity and quality of consumer supports by ensuring:

(i) continuity of care and service coordination, including provisions for service termination, temporary service suspension, and efforts made by the license holder to coordinate services with other vendors who also provide support to the consumer. The policy must include the following requirements:

(A) the license holder must notify the consumer or consumer's legal representative and the consumer's case manager in writing of the intended termination or temporary service suspension and the consumer's right to seek a temporary order staying the termination or suspension of service according to the procedures in section 256.045, subdivision 4a or subdivision 6, paragraph (c);

(B) notice of the proposed termination of services, including those situations that began with a temporary service suspension, must be given at least 60 days before the proposed termination is to become effective;

(C) the license holder must provide information requested by the consumer or consumer's legal representative or case manager when services are temporarily suspended or upon notice of termination;

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(D) use of temporary service suspension procedures are restricted to situations in which the consumer's behavior causes immediate and serious danger to the health and safety of the individual or others;

(E) prior to giving notice of service termination or temporary service suspension, the license holder must document actions taken to minimize or eliminate the need for service termination or temporary service suspension; and

(F) during the period of temporary service suspension, the license holder will work with the appropriate county agency to develop reasonable alternatives to protect the individual and others; and

(ii) quality services measured through a program evaluation process including regular evaluations of consumer satisfaction and sharing the results of the evaluations with the consumers and legal representatives.

Sec. 37. Minnesota Statutes 2002, section 245B.07, subdivision 12, is amended to read:

Subd. 12. **SEPARATE LICENSE REQUIRED FOR SEPARATE SITES.** The license holder shall apply for separate licenses for each day training and habilitation service site owned or leased by the license holder at which persons receiving services and the provider's employees who provide training and habilitation services are present for a cumulative total of more than 30 days within any 12-month period, and for each residential service site. Notwithstanding this subdivision, a separate license is not required for a day training and habilitation service site used only for the limited purpose of providing transportation to consumers receiving community-based day training and habilitation services from a license holder.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 38. Minnesota Statutes 2003 Supplement, section 245C.02, subdivision 18, is amended to read:

Subd. 18. **SERIOUS MALTREATMENT.** (a) "Serious maltreatment" means sexual abuse, maltreatment resulting in death, maltreatment resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury.

(b) For purposes of this definition, "care of a physician" is treatment received or ordered by a physician but does not include diagnostic testing, assessment, or observation.

(c) For purposes of this definition, "abuse resulting in serious injury" means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke.

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(d) Serious maltreatment includes neglect when it results in criminal sexual conduct against a child or vulnerable adult.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 39. Minnesota Statutes 2003 Supplement, section 245C.03, subdivision 1, is amended to read:

Subdivision 1. **LICENSED PROGRAMS.** (a) The commissioner shall conduct a background study on:

- (1) the applicant person or persons applying for a license;
- (2) an individual age 13 and over living in the household where the licensed program will be provided;
- (3) current employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program ;
- (4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);
- (5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause; ~~and~~
- (6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program licensed to provide:
 - (i) family child care for children;
 - (ii) foster care for children in the provider's own home; or
 - (iii) foster care or day care services for adults in the provider's own home; and
- (7) all managerial officials as defined under section 245A.02, subdivision 5a.

The commissioner must have reasonable cause to study an individual under this ~~clause~~ subdivision.

(b) For family child foster care settings, a short-term substitute caregiver providing direct contact services for a child for less than 72 hours of continuous care is not required to receive a background study under this chapter.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 40. Minnesota Statutes 2003 Supplement, section 245C.03, is amended by adding a subdivision to read:

Subd. 5. OTHER STATE AGENCIES. The commissioner shall conduct background studies on applicants and license holders under the jurisdiction of other state agencies who are required in other statutory sections to initiate background studies under this chapter, including the applicant's or license holder's employees, contractors, and volunteers when required under other statutory sections.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 41. Minnesota Statutes 2003 Supplement, section 245C.05, subdivision 1, is amended to read:

Subdivision 1. **INDIVIDUAL STUDIED.** (a) The individual who is the subject of the background study must provide the applicant, license holder, or other entity under section 245C.04 with sufficient information to ensure an accurate study, including:

(1) the individual's first, middle, and last name and all other names by which the individual has been known;

(2) home address, city, county, and state of residence for the past five years;

(3) zip code;

(4) sex;

(5) date of birth; and

(6) Minnesota driver's license number or state identification number.

(b) Every subject of a background study conducted by counties or private agencies under this chapter must also provide the home address, city, county, and state of residence for the past five years.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 42. Minnesota Statutes 2003 Supplement, section 245C.05, subdivision 2, is amended to read:

Subd. 2. **APPLICANT, LICENSE HOLDER, OR OTHER ENTITY.** The applicant, license holder, or other entity ~~under section 245C.04~~ entities as provided in this chapter shall provide the information collected under subdivision 1 about an individual who is the subject of the background study on forms or in a format prescribed by the commissioner.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 43. Minnesota Statutes 2003 Supplement, section 245C.05, subdivision 5, is amended to read:

Subd. 5. **FINGERPRINTS.** (a) For any background study completed under this ~~section~~ chapter, when the commissioner has reasonable cause to believe that further pertinent information may exist on the subject of the background study, the subject shall provide the commissioner with a set of classifiable fingerprints obtained from an authorized law enforcement agency.

(b) For purposes of requiring fingerprints, the commissioner has reasonable cause when, but not limited to, the:

(1) information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender;

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(2) information from the Bureau of Criminal Apprehension indicates that multistate offender status is undetermined; or

(3) commissioner has received a report from the subject or a third party indicating that the subject has a criminal history in a jurisdiction other than Minnesota.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 44. Minnesota Statutes 2003 Supplement, section 245C.05, subdivision 6, is amended to read:

Subd. 6. **APPLICANT, LICENSE HOLDER, REGISTRANT OTHER ENTITIES, AND AGENCIES.** (a) The applicant, license holder, registrant other entities as provided in this chapter, Bureau of Criminal Apprehension, commissioner of health, and county agencies shall help with the study by giving the commissioner criminal conviction data and reports about the maltreatment of adults substantiated under section 626.557 and the maltreatment of minors in licensed programs substantiated under section 626.556.

(b) If a background study is initiated by an applicant or license holder, or other entities as provided in this chapter, and the applicant or license holder, or other entity receives information about the possible criminal or maltreatment history of an individual who is the subject of the background study, the applicant or license holder, or other entity must immediately provide the information to the commissioner.

(c) The program or county or other agency must provide written notice to the individual who is the subject of the background study of the requirements under this subdivision.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 45. Minnesota Statutes 2003 Supplement, section 245C.08, subdivision 2, is amended to read:

Subd. 2. **BACKGROUND STUDIES CONDUCTED BY A COUNTY OR PRIVATE AGENCY; FOSTER CARE AND FAMILY CHILD CARE.** (a) For a background study conducted by a county or private agency for child foster care, adult foster care, and family child care homes, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

(3) information from the Bureau of Criminal Apprehension; and

(4) arrest and investigative records maintained by the Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the National Criminal Records Repository, and criminal records from other states.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or

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counties of residence for the past five years.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 46. Minnesota Statutes 2003 Supplement, section 245C.08, subdivision 3, is amended to read:

Subd. 3. **ARREST AND INVESTIGATIVE INFORMATION.** (a) For any background study completed under this section, if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual listed in section 245C.03, subdivisions 1 and 2, the commissioner also may review arrest and investigative information from:

- (1) the Bureau of Criminal Apprehension;
- (2) the commissioner of health;
- (3) a county attorney;
- (4) a county sheriff;
- (5) a county agency;
- (6) a local chief of police;
- (7) other states;
- (8) the courts; or
- (9) the Federal Bureau of Investigation.

(b) The commissioner is not required to conduct more than one review of a subject's records from the Federal Bureau of Investigation if a review of the subject's criminal history with the Federal Bureau of Investigation has already been completed by the commissioner and there has been no break in the subject's affiliation with the license holder who initiated the background study.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 47. Minnesota Statutes 2003 Supplement, section 245C.08, subdivision 4, is amended to read:

Subd. 4. **JUVENILE COURT RECORDS.** (a) The commissioner shall review records from the juvenile courts for an individual studied under section 245C.03, subdivision 1, clauses (2) and (5).

(b) For individuals studied under section 245C.03, subdivision 1, clauses (1), (3), (4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review records from the juvenile courts when the commissioner has reasonable cause.

(c) The juvenile courts shall help with the study by giving the commissioner existing juvenile court records on individuals described in section 245C.03, subdivision 1, clauses (2), (5), and (6), relating to delinquency proceedings held within either the five years immediately preceding the background study or the five years immediately preceding the individual's 18th birthday, whichever time period is longer.

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(d) For purposes of this chapter, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

(e) The commissioner shall destroy juvenile court records obtained under this subdivision when the subject of the records reaches age 23.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 48. Minnesota Statutes 2003 Supplement, section 245C.09, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFICATION; LICENSING ACTION.** An applicant's, license holder's, or ~~registrant's~~ other entity's failure or refusal to cooperate with the commissioner is reasonable cause to disqualify a subject, deny a license application, or immediately suspend or revoke a license or registration.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 49. Minnesota Statutes 2003 Supplement, section 245C.13, subdivision 1, is amended to read:

Subdivision 1. **TIMING.** Upon receipt of the background study forms from an applicant, license holder, ~~registrant, agency, organization, program, or other entity as provided in this chapter~~ required to initiate a background study under section 245C.04, the commissioner shall complete the background study and provide the notice required under section 245C.17, subdivision 1, within 15 working days.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 50. Minnesota Statutes 2003 Supplement, section 245C.14, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFICATION FROM DIRECT CONTACT.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder or entity identified in section 245C.03, upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

(1) a conviction of or admission to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;

(2) a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime; or

(3) an investigation results in an administrative determination listed under section 245C.15, subdivision 4, paragraph (b).

(b) No individual who is disqualified following a background study under section 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact

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with persons served by a program or entity identified in section 245C.03, unless the commissioner has provided written notice under section 245C.17 stating that:

(1) the individual may remain in direct contact during the period in which the individual may request reconsideration as provided in section 245C.21, subdivision 2;

(2) the commissioner has set aside the individual's disqualification for that program or entity identified in section 245C.03, as provided in section 245C.22, subdivision 4; or

(3) the license holder has been granted a variance for the disqualified individual under section 245C.30.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 51. Minnesota Statutes 2003 Supplement, section 245C.15, subdivision 2, is amended to read:

Subd. 2. **15-YEAR DISQUALIFICATION.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed for the offense; and (2) the individual has received a felony conviction for a violation of any of the following offenses: sections 260C.301 (grounds for termination of parental rights); 609.165 (felon ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); repeat offenses under 609.3451 (criminal sexual conduct in the fifth degree); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.562 (arson in the second degree); 609.563 (arson in the third degree); 609.582 (burglary); 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); repeat offenses under 617.23 (indecent exposure; penalties); repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); chapter 152 (drugs; controlled substance); or a felony level conviction involving alcohol or drug use.

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's attempt or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than 15 years has passed since the discharge of the sentence imposed for an offense in any other state or

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country, the elements of which are substantially similar to the elements of the offenses listed in paragraph (a).

(d) If the individual studied is convicted of one of the felonies listed in paragraph (a), but the sentence is a gross misdemeanor or misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the conviction is the period applicable to the gross misdemeanor or misdemeanor disposition.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 52. Minnesota Statutes 2003 Supplement, section 245C.15, subdivision 3, is amended to read:

Subd. 3. **TEN-YEAR DISQUALIFICATION.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed for the offense; and (2) the individual has received a gross misdemeanor conviction for a violation of any of the following offenses: sections 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.3451 (criminal sexual conduct in the fifth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.52 (theft); 609.582 (burglary); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); repeat offenses under 617.23 (indecent exposure); 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's attempt or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the defendant is convicted of one of the gross misdemeanors listed in paragraph (a), but the sentence is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the conviction is the period applicable to misdemeanors.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 53. Minnesota Statutes 2003 Supplement; section 245C.15, subdivision 4, is amended to read:

Subd. 4. **SEVEN-YEAR DISQUALIFICATION.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed for the offense; and (2) the individual has received a misdemeanor conviction for a violation of any of the following offenses: sections 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.52 (theft); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing phone calls); 609.795 (letter, telegram, or package; opening; harassment); 617.23 (indecent exposure; penalties); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556 or of a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

(c) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual's attempt or conspiracy to commit any of the offenses listed in paragraphs (a) and (b), as each of these offenses is defined in Minnesota Statutes.

(d) An individual is disqualified under section 245C.14 if less than seven years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraphs (a) and (b).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 54. Minnesota Statutes 2003 Supplement, section 245C.16, subdivision 1, is amended to read:

Subdivision 1. **DETERMINING IMMEDIATE RISK OF HARM.** (a) If the commissioner determines that the individual studied has a disqualifying characteristic, the commissioner shall review the information immediately available and make a

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determination as to the subject's immediate risk of harm to persons served by the program where the individual studied will have direct contact.

(b) The commissioner shall consider all relevant information available, including the following factors in determining the immediate risk of harm:

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic; and
- (6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact; and

(7) whether the individual has a disqualification from a previous background study that has not been set aside.

(c) This section does not apply when the subject of a background study is regulated by a health-related licensing board as defined in chapter 214, and the subject is determined to be responsible for substantiated maltreatment under section 626.556 or 626.557.

(d) If the commissioner has reason to believe, based on arrest information or an active maltreatment investigation, that an individual poses an imminent risk of harm to persons receiving services, the commissioner may order that the person be continuously supervised or immediately removed pending the conclusion of the maltreatment investigation or criminal proceedings.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 55. Minnesota Statutes 2003 Supplement, section 245C.17, subdivision 1, is amended to read:

Subdivision 1. **TIME FRAME FOR NOTICE OF STUDY RESULTS.** (a) Within 15 working days after the commissioner's receipt of the background study form, the commissioner shall notify the individual who is the subject of the study in writing or by electronic transmission of the results of the study or that more time is needed to complete the study.

(b) Within 15 working days after the commissioner's receipt of the background study form, the commissioner shall notify the applicant, license holder, or ~~registrant~~ other entity as provided in this chapter in writing or by electronic transmission of the results of the study or that more time is needed to complete the study.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 56. Minnesota Statutes 2003 Supplement, section 245C.17, subdivision 3, is amended to read:

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Subd. 3. **DISQUALIFICATION NOTICE SENT TO APPLICANT, LICENSE HOLDER, OR REGISTRANT OTHER ENTITY.** (a) The commissioner shall notify an applicant, license holder, or registrant other entity as provided in this chapter who is not the subject of the study:

(1) that the commissioner has found information that disqualifies the individual studied from direct contact with, or from access to, persons served by the program; and

(2) the commissioner's determination of the individual's risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual studied poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact, the commissioner shall order the license holder to immediately remove the individual studied from direct contact.

(c) If the commissioner determines under section 245C.16 that an individual studied poses a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from direct contact services; or

(2) assure that the individual studied is under continuous, direct supervision when providing direct contact services during the period in which the individual may request a reconsideration of the disqualification under section 245C.21.

(d) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires continuous, direct supervision, the commissioner shall send the license holder a notice that more time is needed to complete the individual's background study.

(e) The commissioner shall not notify the applicant, license holder, or registrant other entity as provided in this chapter of the information contained in the subject's background study unless:

(1) the basis for the disqualification is failure to cooperate with the background study or substantiated maltreatment under section 626.556 or 626.557;

(2) the Data Practices Act under chapter 13 provides for release of the information; or

(3) the individual studied authorizes the release of the information.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 57. Minnesota Statutes 2003 Supplement, section 245C.18, is amended to read:

245C.18 OBLIGATION TO REMOVE DISQUALIFIED INDIVIDUAL FROM DIRECT CONTACT.

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Upon receipt of notice from the commissioner, the license holder must remove a disqualified individual from direct contact with persons served by the licensed program if:

(1) the individual does not request reconsideration under section 245C.21 within the prescribed time, or if;

(2) the individual submits a timely request for reconsideration, and the commissioner does not set aside the disqualification under section 245C.22, subdivision 4, and the individual does not submit a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14; or

(3) the individual submits a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, and the commissioner does not set aside or rescind the disqualification under section 245A.08, subdivision 5, or 256.045.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 58. Minnesota Statutes 2003 Supplement, section 245C.20, is amended to read:

245C.20 LICENSE HOLDER RECORD KEEPING.

A licensed program shall document the date the program initiates a background study under this chapter in the program's personnel files. When a background study is completed under this chapter, a licensed program shall maintain a notice that the study was undertaken and completed in the program's personnel files. If a licensed program has not received a response from the commissioner under section 245C.17 within 45 days of initiation of the background study request, the licensed program must contact the commissioner to inquire about the status of the study.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 59. Minnesota Statutes 2003 Supplement, section 245C.21, subdivision 3, is amended to read:

Subd. 3. INFORMATION DISQUALIFIED INDIVIDUALS MUST PROVIDE WHEN REQUESTING RECONSIDERATION. The disqualified individual requesting reconsideration must submit information showing that:

(1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;

(2) for maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or

(3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or registrant other entities as provided in this chapter, by addressing the information required under section 245C.22, subdivision 4.

EFFECTIVE DATE. This section is effective the day following final enactment.

New language is indicated by underline, deletions by strikeout.

Sec. 60. Minnesota Statutes 2003 Supplement, section 245C.21, is amended by adding a subdivision to read:

Subd. 4. NOTICE OF REQUEST FOR RECONSIDERATION. Upon request, the commissioner may inform the applicant, license holder, or other entities as provided in this chapter who received a notice of the individual's disqualification under section 245C.17, subdivision 3, or has the consent of the disqualified individual, whether the disqualified individual has requested reconsideration.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 61. Minnesota Statutes 2003 Supplement, section 245C.22, subdivision 3, is amended to read:

Subd. 3. PREEMINENT WEIGHT GIVEN TO SAFETY OF PERSONS BEING SERVED. In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or ~~registrant~~ other entities as provided in this chapter over the interests of the license holder, applicant, or ~~registrant~~ other entity as provided in this chapter, and any single factor under subdivision 4, paragraph (b), may be determinative of the commissioner's decision whether to set aside the individual's disqualification.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 62. Minnesota Statutes 2003 Supplement, section 245C.22, subdivision 4, is amended to read:

Subd. 4. RISK OF HARM; SET ASIDE. (a) The commissioner may set aside the disqualification if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant, license holder, or ~~registrant~~ other entities as provided in this chapter.

(b) In determining if whether the individual has met the burden of proof by demonstrating the individual does not pose a risk of harm, the commissioner shall consider:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) the similarity between the victim and persons served by the program;
- (6) the time elapsed without a repeat of the same or similar event;
- (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (8) any other information relevant to reconsideration.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 63. Minnesota Statutes 2003 Supplement, section 245C.22, subdivision 5, is amended to read:

Subd. 5. **SCOPE OF SET ASIDE.** If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. The commissioner's set aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, unless otherwise specified in the notice.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 64. Minnesota Statutes 2003 Supplement, section 245C.22, subdivision 6, is amended to read:

Subd. 6. **RECISSION OF SET ASIDE.** The commissioner may rescind a previous set aside of a disqualification under this section based on new information that indicates the individual may pose a risk of harm to persons served by the applicant, license holder, or registrant other entities as provided in this chapter. If the commissioner rescinds a set aside of a disqualification under this paragraph subdivision, the appeal rights under sections 245C.21 and 245C.27, subdivision 1, and 245C.28, subdivision 3, shall apply.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 65. Minnesota Statutes 2003 Supplement, section 245C.23, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER'S NOTICE OF DISQUALIFICATION THAT IS SET ASIDE.** (a) Except as provided under paragraph (c), if the commissioner sets aside a disqualification, the commissioner shall notify the applicant or license holder in writing or by electronic transmission of the decision. In the notice from the commissioner that a disqualification has been set aside, the commissioner must inform the license holder that information about the nature of the disqualification and which factors under section 245C.22, subdivision 4, were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject.

(b) With the written consent of the background study subject, the commissioner may release to the license holder copies of all information related to the background study subject's disqualification and the commissioner's decision to set aside the disqualification as specified in the written consent.

(c) If the individual studied submits a timely request for reconsideration under section 245C.21 and the license holder was previously sent a notice under section 245C.17, subdivision 3, paragraph (d), and if the commissioner sets aside the disqualification for that license holder under section 245C.22, the commissioner shall send the license holder the same notification received by license holders in cases where the individual studied has no disqualifying characteristic.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 66. Minnesota Statutes 2003 Supplement, section 245C.23, subdivision 2, is amended to read:

Subd. 2. **COMMISSIONER'S NOTICE OF DISQUALIFICATION THAT IS NOT SET ASIDE.** (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:

(1) the individual studied does not submit a timely request for reconsideration under section 245C.21; or;

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section 245C.22, the commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder;

(3) an individual who has a right to request a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does not request a hearing within the specified time; or

(4) an individual submitted a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the disqualification under section 245A.08, subdivision 5, or 256.045.

(b) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous, direct supervision when providing direct contact services, the order remains in effect pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 67. Minnesota Statutes 2003 Supplement, section 245C.25, is amended to read:

245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT DETERMINATION AND DISQUALIFICATION.

(a) If an individual is disqualified on the basis of a determination of maltreatment under section 626.556 or 626.557, which was serious or recurring, and the individual requests reconsideration of the maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of the disqualification under section 245C.21, the commissioner shall consolidate the reconsideration of the maltreatment determination and the disqualification into a single reconsideration.

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(b) For maltreatment and disqualification determinations made by county agencies, the county agency shall conduct the consolidated reconsideration. If the county agency has disqualified an individual on multiple bases, one of which is a county maltreatment determination for which the individual has a right to request reconsideration, the county shall conduct the reconsideration of all disqualifications.

(c) If the county has previously conducted a consolidated reconsideration under paragraph (b) of a maltreatment determination and a disqualification based on serious or recurring maltreatment, and the county subsequently disqualifies the individual based on that determination, the county shall conduct the reconsideration of the subsequent disqualification. The scope of the subsequent disqualification shall be limited to whether the individual poses a risk of harm in accordance with section 245C.22, subdivision 4.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 68. Minnesota Statutes 2003 Supplement, section 245C.26, is amended to read:

245C.26 RECONSIDERATION OF A DISQUALIFICATION FOR AN INDIVIDUAL LIVING IN A LICENSED HOME.

In the case of any ground for disqualification under this chapter, if the act was committed by an individual other than the applicant, or license holder, or registrant residing in the applicant's, or license holder's, or registrant's home, the applicant, or license holder, or registrant may seek reconsideration when the individual who committed the act no longer resides in the home.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 69. Minnesota Statutes 2003 Supplement, section 245C.27, subdivision 1, is amended to read:

Subdivision 1. **FAIR HEARING WHEN DISQUALIFICATION IS NOT SET ASIDE.** (a) If the commissioner does not set aside or rescind a disqualification of an individual under section 245C.22 who is disqualified on the basis of a preponderance of evidence that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; for a determination under section 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under section 245C.15; or for failure to make required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request a fair hearing under section 256.045, unless the disqualification is deemed conclusive under section 245C.29.

(b) The fair hearing is the only administrative appeal of the final agency determination for purposes of appeal by the disqualified individual. The disqualified individual does not have the right to challenge the accuracy and completeness of data under section 13.04.

(c) If the individual was disqualified based on a conviction or admission to any crimes listed in section 245C.15, subdivisions 1 to 4, the reconsideration decision

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under this subdivision section 245C.22 is the final agency determination for purposes of appeal by the disqualified individual and is not subject to a hearing under section 256.045.

(d) This section subdivision does not apply to a public employee's appeal of a disqualification under section 245C.28, subdivision 3.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 70. Minnesota Statutes 2003 Supplement, section 245C.27, subdivision 2, is amended to read:

Subd. 2. **CONSOLIDATED FAIR HEARING FOR MALTREATMENT DETERMINATION AND DISQUALIFICATION NOT SET ASIDE.** (a) If an individual who is disqualified on the bases of serious or recurring maltreatment requests a fair hearing on the maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and requests a fair hearing under this section on the disqualification, which has not been set aside or ~~reseinded~~, the scope of the fair hearing under section 256.045 shall include the maltreatment determination and the disqualification.

(b) A fair hearing is the only administrative appeal of the final agency determination. The disqualified individual does not have the right to challenge the accuracy and completeness of data under section 13.04.

(c) This section subdivision does not apply to a public employee's appeal of a disqualification under section 245C.28, subdivision 3.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 71. Minnesota Statutes 2003 Supplement, section 245C.28, subdivision 1, is amended to read:

Subdivision 1. **LICENSE HOLDER.** (a) If a maltreatment determination or a disqualification for which reconsideration was requested and which was not set aside ~~or reseinded~~ is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.

(b) The license holder must submit the appeal in accordance with section 245A.05 or 245A.07, subdivision 3. As provided under section 245A.08, subdivision 2a, the scope of the consolidated contested case hearing must include the disqualification and the licensing sanction or denial of a license.

(c) If the disqualification was based on a determination of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the appeal must be submitted in accordance with sections 245A.07, subdivision 3, and 626.556, subdivision 10i, or 626.557, subdivision 9d. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing must include the maltreatment determination, the disqualification, and the licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 72. Minnesota Statutes 2003 Supplement, section 245C.28, subdivision 2, is amended to read:

Subd. 2. **INDIVIDUAL OTHER THAN LICENSE HOLDER.** If the basis for the commissioner's denial of a license under section 245A.05 or a licensing sanction under section 245A.07 is a maltreatment determination or disqualification that was not set aside or rescinded under section 245C.22, and the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03, the hearing of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 73. Minnesota Statutes 2003 Supplement, section 245C.28, subdivision 3, is amended to read:

Subd. 3. **EMPLOYEES OF PUBLIC EMPLOYER.** (a) If the commissioner does not set aside the disqualification of an individual who is an employee of an employer, as defined in section 179A.03, subdivision 15, the individual may request a contested case hearing under chapter 14. The request for a contested case hearing must be made in writing and must be postmarked and mailed within 30 calendar days after the employee receives notice that the disqualification has not been set aside.

(b) If the commissioner does not set aside or rescind a disqualification that is based on a maltreatment determination, the scope of the contested case hearing must include the maltreatment determination and the disqualification. In such cases, a fair hearing must not be conducted under section 256.045.

(c) Rules adopted under this chapter may not preclude an employee in a contested case hearing for a disqualification from submitting evidence concerning information gathered under this chapter.

(d) When a person has been disqualified from multiple licensed programs and the disqualifications have not been set aside under section 245C.22, if at least one of the disqualifications entitles the person to a contested case hearing under this subdivision, the scope of the contested case hearing shall include all disqualifications from licensed programs which were not set aside.

(e) In determining whether the disqualification should be set aside, the administrative law judge shall consider all of the characteristics that cause the individual to be disqualified, including those characteristics that were not subject to review under paragraph (b), in order to determine whether the individual poses a risk of harm. The administrative law judge's recommendation and the commissioner's order to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 74. Minnesota Statutes 2003 Supplement, section 245C.29, subdivision 2, is amended to read:

Subd. 2. **CONCLUSIVE DISQUALIFICATION DETERMINATION.** (a) Unless otherwise specified in statute, a determination that:

(1) the information the commissioner relied upon to disqualify an individual under section 245C.14 was correct based on serious or recurring maltreatment;

(2) a preponderance of the evidence shows that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; or

(3) the individual failed to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, is conclusive if:

(i) the commissioner has issued a final order in an appeal of that determination under section 245A.08, subdivision 5, or 256.045, or a court has issued a final decision;

(ii) the individual did not request reconsideration of the disqualification under section 245C.21; or

(iii) the individual did not request a hearing on the disqualification under section 256.045 or chapter 14.

(b) When a licensing action under section 245A.05, 245A.06, or 245A.07 is based on the disqualification of an individual in connection with a license to provide family child care, foster care for children in the provider's own home, or foster care services for adults in the provider's own home, that disqualification shall be conclusive for purposes of the licensing action if a request for reconsideration was not submitted within 30 calendar days of the individual's receipt of the notice of disqualification.

(c) If a determination that the information relied upon to disqualify an individual was correct and is conclusive under this section, and the individual is subsequently disqualified under section 245C.15, the individual has a right to request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding the risk of harm shall be made according to section 245C.22 and are not subject to another hearing under section 256.045 or chapter 14.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 75. Minnesota Statutes 2002, section 252.28, subdivision 1, is amended to read:

Subdivision 1. **DETERMINATIONS; REDETERMINATIONS.** In conjunction with the appropriate county boards, the commissioner of human services shall determine, and shall redetermine at least every four years, the need, anticipated growth or decline in need until the next anticipated redetermination, location, size, and program of public and private day training and habilitation services for persons with mental retardation or related conditions. This subdivision does not apply to semi-independent living services and residential-based habilitation services provided to four or fewer persons at a single site funded as home and community-based services. A determination of need shall not be required for a change in ownership.

EFFECTIVE DATE. This section is effective the day following final enactment.

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Sec. 76. Minnesota Statutes 2003 Supplement, section 256.045, subdivision 3, is amended to read:

Subd. 3. **STATE AGENCY HEARINGS.** (a) State agency hearings are available for the following: (1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid; (2) any patient or relative aggrieved by an order of the commissioner under section 252.27; (3) a party aggrieved by a ruling of a prepaid health plan; (4) except as provided under chapter 245C, any individual or facility determined by a lead agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557; (5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source; (6) any person to whom a right of appeal according to this section is given by other provision of law; (7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15; (8) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556; or (9) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (8) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, which has not been set aside or rescinded under sections 245C.22 and 245C.23, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit.

The hearing for an individual or facility under clause (4), (8), or (9) is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings

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requested under clause (4) apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under clause (8) apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under clause (8) is only available when there is no juvenile court or adult criminal action pending. If such action is filed in either court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

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

(b) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

(c) An applicant or recipient is not entitled to receive social services beyond the services included in the amended community social services plan.

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 77. Minnesota Statutes 2003 Supplement, section 256.045, subdivision 3b, is amended to read:

Subd. 3b. **STANDARD OF EVIDENCE FOR MALTREATMENT AND DISQUALIFICATION HEARINGS.** (a) The state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under sections 626.556 and 626.557. For purposes of hearings regarding disqualification, the state human services referee shall affirm the proposed disqualification in an appeal under subdivision 3, paragraph (a), clause (9), if a preponderance of the evidence shows the individual has:

(1) committed maltreatment under section 626.556 or 626.557, which is serious or recurring;

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(2) committed an act or acts meeting the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or

(3) failed to make required reports under section 626.556 or 626.557, for incidents in which the final disposition under section 626.556 or 626.557 was substantiated maltreatment that was serious or recurring.

(b) If the disqualification is affirmed, the state human services referee shall determine whether the individual poses a risk of harm in accordance with the requirements of section 245C.16, and whether the disqualification should be set aside or not set aside. In determining whether the disqualification should be set aside, the human services referee shall consider all of the characteristics that cause the individual to be disqualified, including those characteristics that were not subject to review under paragraph (a), in order to determine whether the individual poses a risk of harm. A decision to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside. If a determination that the information relied upon to disqualify an individual was correct and is conclusive under section 245C.29, and the individual is subsequently disqualified under section 245C.14, the individual has a right to again request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding risk of harm are not subject to another hearing under this section.

(c) The state human services referee shall recommend an order to the commissioner of health, education, or human services, as applicable, who shall issue a final order. The commissioner shall affirm, reverse, or modify the final disposition. Any order of the commissioner issued in accordance with this subdivision is conclusive upon the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided under section 245C.29.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 78. Minnesota Statutes 2003 Supplement, section 626.556, subdivision 10, is amended to read:

Subd. 10. DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT. (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct an assessment including gathering information on the existence of substance abuse and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and

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multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the assessment indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615. The local welfare agency shall report the determination of the chemical use assessment, and the recommendations and referrals for alcohol and other drug treatment services to the state authority on alcohol and drug abuse.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 49.02 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall

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be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If

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appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and mental retardation, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency or the agency responsible for assessing or investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

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(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding section 13.384 or 144.335, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (f), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) In the initial stages of an assessment or investigation, the local welfare agency shall conduct a face-to-face observation of the child reported to be maltreated and a face-to-face interview of the alleged offender. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) The local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. The following interviewing methods and procedures must be used whenever possible when collecting information:

- (1) audio recordings of all interviews with witnesses and collateral sources; and
- (2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (f), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (h), (i), and (j), provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (h), (i), and (j).

Sec. 79. Minnesota Statutes 2003 Supplement, section 626.556, subdivision 10i, is amended to read:

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Subd. 10i. **ADMINISTRATIVE RECONSIDERATION OF FINAL DETERMINATION OF MALTREATMENT AND DISQUALIFICATION BASED ON SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.** (a) Except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 calendar days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

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(e) Effective January 1, 2002, if an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or the disqualification is not set aside or rescinded under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510, 1400.8505 to 1400.8612 and successor rules. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination shall not be conducted under paragraph (b). If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 80. Minnesota Statutes 2003 Supplement, section 626.557, subdivision 9d, is amended to read:

Subd. 9d. **ADMINISTRATIVE RECONSIDERATION OF FINAL DISPOSITION OF MALTREATMENT AND DISQUALIFICATION BASED ON SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.** (a) Except as provided under paragraph (e), any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian. An individual

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who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17.

(b) Except as provided under paragraphs (e) and (f), if the lead agency denies the request or fails to act upon the request within 15 calendar days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or if the disqualification is not set aside or ~~reconsidered~~ under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a

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contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 ~~1400.8505~~ to 1400.8612 ~~and successor rules~~. As provided for under section 245A.08, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing shall not be conducted under paragraph (b). If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245C.31.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 81. DIRECTION TO COMMISSIONER; REPORT.

The commissioner of human services shall report on the number of adult foster care licenses, family adult day services licenses, combined adult foster care and family adult day services, and adult day services center licenses and their capacities with changes in the number of licenses and capacities from August 1, 2004, to August 1, 2006. The commissioner shall provide this report to the chairs of the senate and house committees with jurisdiction over health and human services policy by September 15, 2006.

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Sec. 82. REVISOR'S INSTRUCTION.

The revisor of statutes shall insert the phrase "or adult day services" after the phrase "adult day care," and the phrase "or adult day services center" after "adult day care center," wherever it appears in Minnesota Rules, parts 9555.9600 to 9555.9730, or the headnotes to the rule parts.

Sec. 83. REPEALER.

Minnesota Statutes 2003 Supplement, section 245C.02, subdivision 17; and Minnesota Rules, parts 9525.1600; 9543.0040, subpart 3; 9543.1000; 9543.1010; 9543.1020; 9543.1030; 9543.1040; 9543.1050; and 9543.1060, are repealed.

ARTICLE 2**CORRECTIONS**

Section 1. Minnesota Statutes 2003 Supplement, section 241.021, subdivision 6, is amended to read:

Subd. 6. **BACKGROUND STUDIES.** (a) The commissioner of corrections is authorized to do background studies on personnel employed by any facility serving children or youth that is licensed under this section. The commissioner of corrections shall contract with the commissioner of human services to conduct background studies of individuals providing services in secure and nonsecure residential facilities and detention facilities who have direct contact, as defined under section 245C.02, subdivision 11, with persons served in the facilities. A disqualification of an individual in this section shall disqualify the individual from positions allowing direct contact or access to persons and residents receiving services in programs licensed by the Departments of Health and Human Services as provided in chapter 245C.

(b) A clerk or administrator of any court, the Bureau of Criminal Apprehension, a prosecuting attorney, a county sheriff, or a chief of a local police department, shall assist in these studies by providing to the commissioner of human services, or the commissioner's representative, all criminal conviction data available from local, state, and national criminal history record repositories, including the criminal justice data communications network, pertaining to the following individuals: applicants, operators, all persons living in the household, and all staff of any facility subject to background studies under this subdivision.

(c) The Department of Human Services shall conduct the background studies required by paragraph (a) in compliance with the provisions of chapter 245C. For the purpose of this subdivision, the term "secure and nonsecure residential facility and detention facility" shall include programs licensed or certified under subdivision 2. The Department of Human Services shall provide necessary forms and instructions, shall conduct the necessary background studies of individuals, and shall provide notification of the results of the studies to the facilities, individuals, and the commissioner of

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corrections. Individuals shall be disqualified under the provisions of chapter 245C.

If an individual is disqualified, the Department of Human Services shall notify the facility and the individual and shall inform the individual of the right to request a reconsideration of the disqualification by submitting the request to the Department of Corrections.

(d) The commissioner of corrections shall review and decide reconsideration requests, including the granting of variances, in accordance with the procedures and criteria contained in chapter 245C. The commissioner's decision shall be provided to the individual and to the Department of Human Services. The commissioner's decision to grant or deny a reconsideration of disqualification is the final administrative agency action.

(e) Facilities described in paragraph (a) shall be responsible for cooperating with the departments in implementing the provisions of this subdivision. The responsibilities imposed on applicants and licensees under chapters 245A and 245C shall apply to these facilities. The provisions of sections 245C.03, subdivision 3, 245C.04, subdivision 4, paragraph (b), and 245C.10, subdivision 2, shall apply to applicants, licensees, and individuals.

ARTICLE 3

MISCELLANEOUS

Section 1. Minnesota Statutes 2002, section 13.43, subdivision 2, is amended to read:

Subd. 2. **PUBLIC DATA.** (a) Except for employees described in subdivision 5 and the limitations described in subdivision 5a, the following personnel data on current and former employees, volunteers, and independent contractors of a state agency, statewide system, or political subdivision and members of advisory boards or commissions is public:

(1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

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(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;

(7) work location; a work telephone number; badge number; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data; and city and county of residence.

(b) For purposes of this subdivision, a final disposition occurs when the state agency, statewide system, or political subdivision makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the state agency, statewide system, political subdivision, or arbitrator.

(c) The state agency, statewide system, or political subdivision may display a photograph of a current or former employee to a prospective witness as part of the state agency's, statewide system's, or political subdivision's investigation of any complaint or charge against the employee.

(d) A complainant has access to a statement provided by the complainant to a state agency, statewide system, or political subdivision in connection with a complaint or charge against an employee.

(e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "public official" means:

(1) the head of a state agency and deputy and assistant state agency heads;

(2) members of boards or commissions required by law to be appointed by the governor or other elective officers; and

(3) executive or administrative heads of departments, bureaus, divisions, or institutions.

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Sec. 2. Minnesota Statutes 2002, section 13.43, is amended by adding a subdivision to read:

Subd. 5a. LIMITATION ON DISCLOSURE OF CERTAIN PERSONNEL DATA. Notwithstanding any other provision of this section, the following data relating to employees of a secure treatment facility defined in section 253B.02, subdivision 18a, employees of a state correctional facility, or employees of the Department of Corrections directly involved in supervision of offenders in the community, shall not be disclosed to facility patients, corrections inmates, or other individuals whom facility or correction administrators reasonably believe will use the information to harass, intimidate, or assault any such employees: place where previous education or training occurred; place of prior employment; and payroll timesheets or other comparable data, to the extent that payroll timesheets or other comparable data may disclose: future work assignments, home address or telephone number, the location of employees during nonwork hours, or the location of employees' immediate family members.

Sec. 3. Minnesota Statutes 2002, section 62A.042, is amended to read:

62A.042 FAMILY COVERAGE; COVERAGE OF NEWBORN INFANTS.

Subdivision 1. INDIVIDUAL FAMILY POLICIES. (a) No policy of individual accident and sickness insurance which provides for insurance for more than one person under section 62A.03, subdivision 1, clause (3), and no individual health maintenance contract which provides for coverage for more than one person under chapter 62D, shall be renewed to insure or cover any person in this state or be delivered or issued for delivery to any person in this state unless the policy or contract includes as insured or covered members of the family any newborn infants immediately from the moment of birth and thereafter which insurance or contract shall provide coverage for illness, injury, congenital malformation, or premature birth. For purposes of this paragraph, "newborn infants" includes grandchildren who are financially dependent upon a covered grandparent and who reside with that covered grandparent continuously from birth. No policy or contract covered by this section may require notification to a health carrier as a condition for this dependent coverage. However, if the policy or contract mandates an additional premium for each dependent, the health carrier shall be entitled to all premiums that would have been collected had the health carrier been aware of the additional dependent. The health carrier may withhold payment of any health benefits for the new dependent until it has been compensated with the applicable premium which would have been owed if the health carrier had been informed of the additional dependent immediately.

(b) The coverage under paragraph (a) includes benefits for inpatient or outpatient expenses arising from medical and dental treatment up to age 18 the limiting age for coverage of the dependent, including orthodontic and oral surgery treatment, involved in the management of birth defects known as cleft lip and cleft palate. Benefits for individuals age 19 up to the limiting age for coverage of the dependent are limited to inpatient or outpatient expenses arising from medical and dental treatment that was scheduled or initiated prior to the dependent turning age 19. If orthodontic services are eligible for coverage under a dental insurance plan and another policy or contract, the

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dental plan shall be primary and the other policy or contract shall be secondary in regard to the coverage required under paragraph (a). Payment for dental or orthodontic treatment not related to the management of the congenital condition of cleft lip and cleft palate shall not be covered under this provision.

Subd. 2. **GROUP POLICIES.** (a) No group accident and sickness insurance policy and no group health maintenance contract which provide for coverage of family members or other dependents of an employee or other member of the covered group shall be renewed to cover members of a group located in this state or delivered or issued for delivery to any person in this state unless the policy or contract includes as insured or covered family members or dependents any newborn infants immediately from the moment of birth and thereafter which insurance or contract shall provide coverage for illness, injury, congenital malformation, or premature birth. For purposes of this paragraph, "newborn infants" includes grandchildren who are financially dependent upon a covered grandparent and who reside with that covered grandparent continuously from birth. No policy or contract covered by this section may require notification to a health carrier as a condition for this dependent coverage. However, if the policy or contract mandates an additional premium for each dependent, the health carrier shall be entitled to all premiums that would have been collected had the health carrier been aware of the additional dependent. The health carrier may reduce the health benefits owed to the insured, certificate holder, member, or subscriber by the amount of past due premiums applicable to the additional dependent.

(b) The coverage under paragraph (a) includes benefits for inpatient or outpatient expenses arising from medical and dental treatment up to age 18 the limiting age for coverage of the dependent, including orthodontic and oral surgery treatment, involved in the management of birth defects known as cleft lip and cleft palate. Benefits for individuals age 19 up to the limiting age for coverage of the dependent are limited to inpatient or outpatient expenses arising from medical and dental treatment that was scheduled or initiated prior to the dependent turning age 19. If orthodontic services are eligible for coverage under a dental insurance plan and another policy or contract, the dental plan shall be primary and the other policy or contract shall be secondary in regard to the coverage required under paragraph (a). Payment for dental or orthodontic treatment not related to the management of the congenital condition of cleft lip and cleft palate shall not be covered under this provision.

EFFECTIVE DATE. This section is effective January 1, 2005, and applies to coverage issued or renewed on or after that date.

Sec. 4. Minnesota Statutes 2002, section 62C.14, subdivision 14, is amended to read:

Subd. 14. **NEWBORN INFANT COVERAGE.** No subscriber's individual contract or any group contract which provides for coverage of family members or other dependents of a subscriber or of an employee or other group member of a group subscriber, shall be renewed, delivered, or issued for delivery in this state unless such contract includes as covered family members or dependents any newborn infants immediately from the moment of birth and thereafter which insurance shall provide

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coverage for illness, injury, congenital malformation or premature birth. The coverage described in this subdivision includes coverage of cleft lip and cleft palate to the same extent provided in section 62A.042, subdivisions 1, paragraph (b); and 2, paragraph (b). For purposes of this paragraph, "newborn infants" includes grandchildren who are financially dependent upon a covered grandparent and who reside with that covered grandparent continuously from birth. No policy, contract, or agreement covered by this section may require notification to a health carrier as a condition for this dependent coverage. However, if the policy, contract, or agreement mandates an additional premium for each dependent, the health carrier shall be entitled to all premiums that would have been collected had the health carrier been aware of the additional dependent. The health carrier may withhold payment of any health benefits for the new dependent until it has been compensated with the applicable premium which would have been owed if the health carrier had been informed of the additional dependent immediately.

EFFECTIVE DATE. This section is effective January 1, 2005, and applies to coverage issued or renewed on or after that date.

Sec. 5. [151.214] PAYMENT DISCLOSURE.

Subdivision 1. EXPLANATION OF PHARMACY BENEFITS. A pharmacist licensed under this chapter must provide to a purchaser, for each prescription dispensed where part or all of the cost of the prescription is being paid or reimbursed by an employer-sponsored plan or health plan company, or its contracted pharmacy benefit manager, the purchaser's co-payment amount and the usual and customary price of the prescription or the amount the pharmacy will be paid for the prescription drug by the purchaser's employer-sponsored plan or health plan company, or its contracted pharmacy benefit manager.

Subd. 2. NO PROHIBITION ON DISCLOSURE. No contracting agreement between an employer-sponsored health plan or health plan company, or its contracted pharmacy benefit manager, and a resident or nonresident pharmacy registered under this chapter, may prohibit the pharmacy from disclosing to patients information a pharmacy is required or given the option to provide under subdivision 1.

Sec. 6. Minnesota Statutes 2002, section 243.55, subdivision 1, is amended to read:

Subdivision 1. Any person who brings, sends, or in any manner causes to be introduced into any state correctional facility or state hospital, or within or upon the grounds belonging to or land or controlled by any such facility or hospital, or is found in possession of any controlled substance as defined in section 152.01, subdivision 4, or any firearms, weapons or explosives of any kind, without the consent of the chief executive officer thereof, shall be guilty of a felony and, upon conviction thereof, punished by imprisonment for a term of not more than ten years. Any person who brings, sends, or in any manner causes to be introduced into any state correctional facility or within or upon the grounds belonging to or land controlled by the facility, or is found in the possession of any intoxicating or alcoholic liquor or malt beverage of any kind without the consent of the chief executive officer thereof, shall be guilty

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of a gross misdemeanor. The provisions of this section shall not apply to physicians carrying drugs or introducing any of the above described liquors into such facilities for use in the practice of their profession; nor to sheriffs or other peace officers carrying revolvers or firearms as such officers in the discharge of duties.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2002, section 245.462, subdivision 18, is amended to read:

Subd. 18. **MENTAL HEALTH PROFESSIONAL.** "Mental health professional" means a person providing clinical services in the treatment of mental illness who is qualified in at least one of the following ways:

(1) in psychiatric nursing: a registered nurse who is licensed under sections 148.171 to 148.285; and:

(i) who is certified as a clinical specialist or as a nurse practitioner in adult or family psychiatric and mental health nursing by a national nurse certification organization; or

(ii) who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

(2) in clinical social work: a person licensed as an independent clinical social worker under section 148B.21, subdivision 6, or a person with a master's degree in social work from an accredited college or university, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

(3) in psychology: an individual licensed by the board of psychology under sections 148.88 to 148.98 who has stated to the board of psychology competencies in the diagnosis and treatment of mental illness;

(4) in psychiatry: a physician licensed under chapter 147 and certified by the American Board of Psychiatry and Neurology or eligible for board certification in psychiatry;

(5) in marriage and family therapy: the mental health professional must be a marriage and family therapist licensed under sections 148B.29 to 148B.39 with at least two years of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness; or

(6) in allied fields: a person with a master's degree from an accredited college or university in one of the behavioral sciences or related fields, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness.

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Sec. 8. Minnesota Statutes 2002, section 245.464, is amended by adding a subdivision to read:

Subd. 3. PUBLIC-PRIVATE PARTNERSHIPS. The commissioner may establish a mechanism by which counties, the Department of Human Services, hospitals, health plans, consumers, providers, and others may enter into agreements that allow for capacity building and oversight of any agreed-upon entity that is developed through these partnerships. The purpose of these partnerships is the development and provision of mental health services which would be more effective, efficient, and accessible than services that might be provided separately by each partner.

Sec. 9. Minnesota Statutes 2003 Supplement, section 245.4874, is amended to read:

245.4874 DUTIES OF COUNTY BOARD.

The county board in each county shall use its share of mental health and Community Social Services Act funds allocated by the commissioner according to a biennial children's mental health component of the community social services plan that is approved by the commissioner. The county board must:

(1) develop a system of affordable and locally available children's mental health services according to sections 245.487 to 245.4887;

(2) establish a mechanism providing for interagency coordination as specified in section 245.4875, subdivision 6;

(3) develop a biennial children's mental health component of the community social services plan which considers the assessment of unmet needs in the county as reported by the local children's mental health advisory council under section 245.4875, subdivision 5, paragraph (b), clause (3). The county shall provide, upon request of the local children's mental health advisory council, readily available data to assist in the determination of unmet needs;

(4) assure that parents and providers in the county receive information about how to gain access to services provided according to sections 245.487 to 245.4887;

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

(6) assure that mental health services delivered according to sections 245.487 to 245.4887 are delivered expeditiously and are appropriate to the child's diagnostic assessment and individual treatment plan;

(7) provide the community with information about predictors and symptoms of emotional disturbances and how to access children's mental health services according to sections 245.4877 and 245.4878;

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

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

(10) prudently administer grants and purchase-of-service contracts that the county board determines are necessary to fulfill its responsibilities under sections 245.487 to 245.4887;

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

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

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

(14) consistent with section 245.486, arrange for or provide a children's mental health screening to a child receiving child protective services or a child in out-of-home placement, a child for whom parental rights have been terminated, a child found to be delinquent, and a child found to have committed a juvenile petty offense for the third or subsequent time, unless a screening has been performed within the previous 180 days, or the child is currently under the care of a mental health professional. The court or county agency must notify a parent or guardian whose parental rights have not been terminated of the potential mental health screening and the option to prevent the screening by notifying the court or county agency in writing. The screening shall be conducted with a screening instrument approved by the commissioner of human services according to criteria that are updated and issued annually to ensure that approved screening instruments are valid and useful for child welfare and juvenile justice populations, and shall be conducted by a mental health practitioner as defined in section 245.4871, subdivision 26, or a probation officer or local social services agency staff person who is trained in the use of the screening instrument. Training in the use of the instrument shall include training in the administration of the instrument, the interpretation of its validity given the child's current circumstances, the state and federal data practices laws and confidentiality standards, the parental consent requirement, and providing respect for families and cultural values. If the screen indicates a need for assessment, the child's family, or if the family lacks mental health insurance, the local social services agency, in consultation with the child's family, shall have conducted a diagnostic assessment, including a functional assessment, as defined in section 245.4871. The administration of the screening shall safeguard the privacy of children receiving the screening and their families and shall comply with the Minnesota Government Data Practices Act, chapter 13, and the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Screening results shall be considered private data and the commissioner shall not collect individual screening results.

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Sec. 10. Minnesota Statutes 2002, section 245.4881, subdivision 1, is amended to read:

Subdivision 1. **AVAILABILITY OF CASE MANAGEMENT SERVICES.** (a) ~~By April 1, 1992,~~ The county board shall provide case management services for each child with severe emotional disturbance who is a resident of the county and the child's family who request or consent to the services. Case management services may be continued to be provided for a child with a serious emotional disturbance who is over the age of 18 consistent with section 245.4875, subdivision 8. Staffing ratios must be sufficient to serve the needs of the clients. The case manager must meet the requirements in section 245.4871, subdivision 4.

(b) Except as permitted by law and the commissioner under demonstration projects, case management services provided to children with severe emotional disturbance eligible for medical assistance must be billed to the medical assistance program under sections 256B.02, subdivision 8, and 256B.0625.

(c) Case management services are eligible for reimbursement under the medical assistance program. Costs of mentoring, supervision, and continuing education may be included in the reimbursement rate methodology used for case management services under the medical assistance program.

EFFECTIVE DATE. This section is effective July 1, 2004.

Sec. 11. Minnesota Statutes 2003 Supplement, section 246.15, is amended by adding a subdivision to read:

Subd. 3. **SAVINGS ACCOUNT.** The commissioner of human services shall create a savings account for each patient receiving treatment in a secure treatment facility as defined by section 253B.02, subdivision 18a. The source of money to be deposited in this account shall come from a portion of the patient's share of the cost of care. The money in this savings account shall be made available to the patient when the patient is ready to be transitioned into the community. The money in the account shall be used for expenses associated with obtaining housing and other personal needs necessary for the patient's smooth transition into the community. The savings account shall be called "forensic patient transition savings account."

Sec. 12. **[246B.05] MINNESOTA SEX OFFENDER PROGRAM; PRODUCTIVE DAY PROGRAM.**

Subdivision 1. **EMPLOYMENT OPTION.** The commissioner of human services, in consultation with the commissioner of corrections, shall develop an employment option for persons committed to a sexual psychopathic personality treatment center in order for patients to contribute to their cost of care. The employment may include work maintaining the center or work that is brought to the center by an outside source. The earnings generated must be deposited into the account created in subdivision 2 and divided between the participating patient and the center, in an effort to reduce state costs.

Subd. 2. **MINNESOTA SEX OFFENDER PROGRAM; PRODUCTIVE DAY PROGRAM ACCOUNT.** A productive day program account is created in the state

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treasury. Money collected by the commissioner of human services for the program under this section must be deposited in this account. Money in the account is appropriated to the commissioner for purposes of this section.

Subd. 3. MONEY. The commissioner has the authority to collect money resulting from the productive day program, and retain 50 percent to reimburse the state for the cost of administering the work program and for the purpose of reducing state costs associated with the Minnesota Sex Offender Program and return 50 percent of the earnings to the patient.

Sec. 13. Minnesota Statutes 2003 Supplement, section 252.27, subdivision 2a, is amended to read:

Subd. 2a. **CONTRIBUTION AMOUNT.** (a) The natural or adoptive parents of a minor child, including a child determined eligible for medical assistance without consideration of parental income, must contribute ~~monthly~~ to the cost of services used by making monthly payments on a sliding scale based on income, unless the child is married or has been married, parental rights have been terminated, or the child's adoption is subsidized according to section 259.67 or through title IV-E of the Social Security Act.

(b) For households with adjusted gross income equal to or greater than 100 percent of federal poverty guidelines, the parental contribution shall be computed by applying the following schedule of rates to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 100 percent of federal poverty guidelines and less than 175 percent of federal poverty guidelines, the parental contribution is \$4 per month;

(2) if the adjusted gross income is equal to or greater than 175 percent of federal poverty guidelines and less than or equal to 375 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at one percent of adjusted gross income at 175 percent of federal poverty guidelines and increases to 7.5 percent of adjusted gross income for those with adjusted gross income up to 375 percent of federal poverty guidelines;

(3) if the adjusted gross income is greater than 375 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be 7.5 percent of adjusted gross income;

(4) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 975 percent of federal poverty guidelines, the parental contribution shall be ten percent of adjusted gross income; and

(5) if the adjusted gross income is equal to or greater than 975 percent of federal poverty guidelines, the parental contribution shall be 12.5 percent of adjusted gross income.

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If the child lives with the parent, the annual adjusted gross income is reduced by \$2,400 prior to calculating the parental contribution. If the child resides in an institution specified in section 256B.35, the parent is responsible for the personal needs allowance specified under that section in addition to the parental contribution determined under this section. The parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid.

(c) The household size to be used in determining the amount of contribution under paragraph (b) includes natural and adoptive parents and their dependents ~~under age 21~~, including the child receiving services. Adjustments in the contribution amount due to annual changes in the federal poverty guidelines shall be implemented on the first day of July following publication of the changes.

(d) For purposes of paragraph (b), "income" means the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form, except, effective retroactive to July 1, 2003, taxable capital gains to the extent the funds have been used to purchase a home shall not be counted as income.

(e) The contribution shall be explained in writing to the parents at the time eligibility for services is being determined. The contribution shall be made on a monthly basis effective with the first month in which the child receives services. Annually upon redetermination or at termination of eligibility, if the contribution exceeded the cost of services provided, the local agency or the state shall reimburse that excess amount to the parents, either by direct reimbursement if the parent is no longer required to pay a contribution, or by a reduction in or waiver of parental fees until the excess amount is exhausted.

(f) The monthly contribution amount must be reviewed at least every 12 months; when there is a change in household size; and when there is a loss of or gain in income from one month to another in excess of ten percent. The local agency shall mail a written notice 30 days in advance of the effective date of a change in the contribution amount. A decrease in the contribution amount is effective in the month that the parent verifies a reduction in income or change in household size.

(g) Parents of a minor child who do not live with each other shall each pay the contribution required under paragraph (a). An amount equal to the annual court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the adjusted gross income of the parent making the payment prior to calculating the parental contribution under paragraph (b).

(h) The contribution under paragraph (b) shall be increased by an additional five percent if the local agency determines that insurance coverage is available but not obtained for the child. For purposes of this section, "available" means the insurance is a benefit of employment for a family member at an annual cost of no more than five percent of the family's annual income. For purposes of this section, "insurance" means health and accident insurance coverage, enrollment in a nonprofit health service plan, health maintenance organization, self-insured plan, or preferred provider organization.

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Parents who have more than one child receiving services shall not be required to pay more than the amount for the child with the highest expenditures. There shall be no resource contribution from the parents. The parent shall not be required to pay a contribution in excess of the cost of the services provided to the child, not counting payments made to school districts for education-related services. Notice of an increase in fee payment must be given at least 30 days before the increased fee is due.

(i) The contribution under paragraph (b) shall be reduced by \$300 per fiscal year if, in the 12 months prior to July 1:

- (1) the parent applied for insurance for the child;
- (2) the insurer denied insurance;
- (3) the parents submitted a complaint or appeal, in writing to the insurer, submitted a complaint or appeal, in writing, to the commissioner of health or the commissioner of commerce, or litigated the complaint or appeal; and
- (4) as a result of the dispute, the insurer reversed its decision and granted insurance.

For purposes of this section, "insurance" has the meaning given in paragraph (h).

A parent who has requested a reduction in the contribution amount under this paragraph shall submit proof in the form and manner prescribed by the commissioner or county agency, including, but not limited to, the insurer's denial of insurance, the written letter or complaint of the parents, court documents, and the written response of the insurer approving insurance. The determinations of the commissioner or county agency under this paragraph are not rules subject to chapter 14.

Sec. 14. Minnesota Statutes 2002, section 253B.02, is amended by adding a subdivision to read:

Subd. 24. ADMINISTRATIVE RESTRICTION. "Administrative restriction" means any measure utilized by the commissioner to maintain safety and security, protect possible evidence, and prevent the continuation of suspected criminal acts. Administrative restriction does not mean protective isolation as defined by Minnesota Rules, part 9515.3090, subpart 4. Administrative restriction may include increased monitoring, program limitations, loss of privileges, restricted access to and use of possessions, and separation of a patient from the normal living environment, as determined by the commissioner or the commissioner's designee. Administrative restriction applies only to patients in a secure treatment facility as defined in subdivision 18a who:

- (1) are suspected of committing a crime or charged with a crime;
- (2) are the subject of a criminal investigation;
- (3) are awaiting sentencing following a conviction of a crime; or
- (4) are awaiting transfer to a correctional facility.

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The commissioner shall establish policies and procedures according to section 246.014, paragraph (d), regarding the use of administrative restriction. The policies and procedures shall identify the implementation and termination of administrative restrictions. Use of administrative restriction and the reason associated with the use shall be documented in the patient's medical record.

Sec. 15. Minnesota Statutes 2002, section 253B.02, is amended by adding a subdivision to read:

Subd. 25. SAFETY. "Safety" means protection of persons or property from potential danger, risk, injury, harm, or damage.

Sec. 16. Minnesota Statutes 2002, section 253B.02, is amended by adding a subdivision to read:

Subd. 26. SECURITY. "Security" means the measures necessary to achieve the management and accountability of patients of the facility, staff, and visitors, as well as property of the facility.

Sec. 17. Minnesota Statutes 2002, section 253B.03, is amended by adding a subdivision to read:

Subd. 1a. ADMINISTRATIVE RESTRICTION. (a) A patient has the right to be free from unnecessary or excessive administrative restriction. Administrative restriction shall not be used for the convenience of staff, for retaliation for filing complaints, or as a substitute for program treatment. Administrative restriction may not involve any further deprivation of privileges than is necessary.

(b) Administrative restriction may include separate and secure housing.

(c) Patients under administrative restriction shall not be limited in access to their attorney.

(d) If a patient is placed on administrative restriction because the patient is suspected of committing a crime, the secure treatment facility must report the crime to the appropriate police agency within 24 hours of the beginning of administrative restriction. The patient must be released from administrative restriction if a police agency does not begin an investigation within 72 hours of the report.

(e) A patient placed on administrative restriction because the patient is a subject of a criminal investigation must be released from administrative restriction when the investigation is completed. If the patient is charged with a crime following the investigation, administrative restriction may continue until the charge is disposed of.

(f) The secure treatment facility must notify the patient's attorney of the patient's being placed on administrative restriction within 24 hours after the beginning of administrative restriction.

Sec. 18. Minnesota Statutes 2002, section 253B.185, is amended by adding a subdivision to read:

Subd. 7. RIGHTS OF PATIENTS COMMITTED UNDER THIS SECTION.

(a) The commissioner or the commissioner's designee may limit the statutory rights

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described in paragraph (b) for patients committed to the Minnesota sex offender program under this section or with the commissioner's consent under section 246B.02. The statutory rights described in paragraph (b) may be limited only as necessary to maintain a therapeutic environment or the security of the facility or to protect the safety and well-being of patients, staff, and the public.

(b) The statutory rights that may be limited in accordance with paragraph (a) are those set forth in section 144.651, subdivision 19, personal privacy; section 144.651, subdivision 21, private communications; section 144.651, subdivision 22, retain and use of personal property; section 144.651, subdivision 25, manage personal financial affairs; section 144.651, subdivision 26, meet with visitors and participate in groups; section 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3, receive visitors and make telephone calls. Other statutory rights enumerated by sections 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 19. Minnesota Statutes 2002, section 256.01, is amended by adding a subdivision to read:

Subd. 14a. SINGLE BENEFIT DEMONSTRATION. The commissioner may conduct a demonstration program under a federal Title IV-E waiver to demonstrate the impact of a single benefit level on the rate of permanency for children in long-term foster care through transfer of permanent legal custody or adoption. The commissioner of human services is authorized to waive enforcement of related statutory program requirements, rules, and standards in one or more counties for the purpose of this demonstration. The demonstration must comply with the requirements of the secretary of health and human services under federal waiver and be cost neutral to the state.

The commissioner may measure cost neutrality to the state by the same mechanism approved by the secretary of health and human services to measure federal cost neutrality. The commissioner is authorized to accept and administer county funds and to transfer state and federal funds among the affected programs as necessary for the conduct of the demonstration.

Sec. 20. Minnesota Statutes 2002, section 256.01, is amended by adding a subdivision to read:

Subd. 22. HOMELESS SERVICES. The commissioner of human services may contract directly with nonprofit organizations providing homeless services in two or more counties.

EFFECTIVE DATE. This section is effective immediately following final enactment.

Sec. 21. Minnesota Statutes 2002, section 256B.055, is amended by adding a subdivision to read:

Subd. 10b. CHILDREN. This subdivision supersedes subdivision 10 as long as the Minnesota health care reform waiver remains in effect. When the waiver expires,

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the commissioner of human services shall publish a notice in the State Register and notify the revisor of statutes. Medical assistance may be paid for a child less than two years of age with countable family income, as established for infants under section 256B.057, subdivision 1.

EFFECTIVE DATE. This section is effective retroactively from July 1, 2003.

Sec. 22. Minnesota Statutes 2003 Supplement, section 256B.0596, is amended to read:

256B.0596 MENTAL HEALTH CASE MANAGEMENT.

Counties shall contract with eligible providers willing to provide mental health case management services under section 256B.0625, subdivision 20. In order to be eligible, in addition to general provider requirements under this chapter, the provider must:

(1) be willing to provide the mental health case management services; and

(2) have a minimum of at least one contact with the client per week. This section is not intended to limit the ability of a county to provide its own mental health case management services.

Sec. 23. Minnesota Statutes 2003 Supplement, section 256B.0622, subdivision 8, is amended to read:

Subd. 8. MEDICAL ASSISTANCE PAYMENT FOR INTENSIVE REHABILITATIVE MENTAL HEALTH SERVICES. (a) Payment for residential and nonresidential services in this section shall be based on one daily rate per provider inclusive of the following services received by an eligible recipient in a given calendar day: all rehabilitative services under this section, staff travel time to provide rehabilitative services under this section, and nonresidential crisis stabilization services under section 256B.0624.

(b) Except as indicated in paragraph (c), payment will not be made to more than one entity for each recipient for services provided under this section on a given day. If services under this section are provided by a team that includes staff from more than one entity, the team must determine how to distribute the payment among the members.

(c) The host county shall recommend to the commissioner one rate for each entity that will bill medical assistance for residential services under this section and two rates for each nonresidential provider. The first nonresidential rate is for recipients who are not receiving residential services. The second nonresidential rate is for recipients who are temporarily receiving residential services and need continued contact with the nonresidential team to assure timely discharge from residential services. In developing these rates, the host county shall consider and document:

(1) the cost for similar services in the local trade area;

(2) actual costs incurred by entities providing the services;

(3) the intensity and frequency of services to be provided to each recipient;

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(4) the degree to which recipients will receive services other than services under this section;

(5) the costs of other services, ~~such as case management,~~ that will be separately reimbursed; and

(6) input from the local planning process authorized by the adult mental health initiative under section 245.4661, regarding recipients' service needs.

(d) The rate for intensive rehabilitative mental health services must exclude room and board, as defined in section 256I.03, subdivision 6, and services not covered under this section, such as ~~case management,~~ partial hospitalization, home care, and inpatient services. Physician services that are not separately billed may be included in the rate to the extent that a psychiatrist is a member of the treatment team. The county's recommendation shall specify the period for which the rate will be applicable, not to exceed two years.

(e) When services under this section are provided by an assertive community team, case management functions must be an integral part of the team. ~~The county must allocate costs which are reimbursable under this section versus costs which are reimbursable through case management or other reimbursement, so that payment is not duplicated.~~

(f) The rate for a provider must not exceed the rate charged by that provider for the same service to other payors.

(g) The commissioner shall approve or reject the county's rate recommendation, based on the commissioner's own analysis of the criteria in paragraph (c).

Sec. 24. Minnesota Statutes 2002, section 256B.0916, subdivision 2, is amended to read:

Subd. 2. DISTRIBUTION OF FUNDS; PARTNERSHIPS. (a) Beginning with fiscal year 2000, the commissioner shall distribute all funding available for home and community-based waiver services for persons with mental retardation or related conditions to individual counties or to groups of counties that form partnerships to jointly plan, administer, and authorize funding for eligible individuals. The commissioner shall encourage counties to form partnerships that have a sufficient number of recipients and funding to adequately manage the risk and maximize use of available resources.

(b) Counties must submit a request for funds and a plan for administering the program as required by the commissioner. The plan must identify the number of clients to be served, their ages, and their priority listing based on:

- (1) requirements in Minnesota Rules, part 9525.1880;
- (2) unstable living situations due to the age or incapacity of the primary caregiver;
- (3) the need for services to avoid out-of-home placement of children; ~~and~~
- (4) the need to serve persons affected by private sector ICF/MR closures; and

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(5) the need to serve persons whose consumer support grant exception amount was eliminated in 2004.

The plan must also identify changes made to improve services to eligible persons and to improve program management.

(c) In allocating resources to counties, priority must be given to groups of counties that form partnerships to jointly plan, administer, and authorize funding for eligible individuals and to counties determined by the commissioner to have sufficient waiver capacity to maximize resource use.

(d) Within 30 days after receiving the county request for funds and plans, the commissioner shall provide a written response to the plan that includes the level of resources available to serve additional persons.

(e) Counties are eligible to receive medical assistance administrative reimbursement for administrative costs under criteria established by the commissioner.

Sec. 25. Minnesota Statutes 2002, section 256B.49, is amended by adding a subdivision to read:

Subd. 21. **REPORT.** The commissioner shall expand on the annual report required under section 256B.0916, subdivision 7, to include information on the county of residence and financial responsibility, age, and major diagnoses for persons eligible for the home and community-based waivers authorized under subdivision 11 who are:

- (1) receiving those services;
- (2) screened and waiting for waiver services; and
- (3) residing in nursing facilities and are under age 65.

Sec. 26. Minnesota Statutes 2003 Supplement, section 256B.69, subdivision 4, is amended to read:

Subd. 4. **LIMITATION OF CHOICE.** (a) The commissioner shall develop criteria to determine when limitation of choice may be implemented in the experimental counties. The criteria shall ensure that all eligible individuals in the county have continuing access to the full range of medical assistance services as specified in subdivision 6.

(b) The commissioner shall exempt the following persons from participation in the project, in addition to those who do not meet the criteria for limitation of choice:

- (1) persons eligible for medical assistance according to section 256B.055, subdivision 1;
- (2) persons eligible for medical assistance due to blindness or disability as determined by the Social Security Administration or the state medical review team, unless:
 - (i) they are 65 years of age or older; or

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(ii) they reside in Itasca County or they reside in a county in which the commissioner conducts a pilot project under a waiver granted pursuant to section 1115 of the Social Security Act;

(3) recipients who currently have private coverage through a health maintenance organization;

(4) recipients who are eligible for medical assistance by spending down excess income for medical expenses other than the nursing facility per diem expense;

(5) recipients who receive benefits under the Refugee Assistance Program, established under United States Code, title 8, section 1522(e);

(6) children who are both determined to be severely emotionally disturbed and receiving case management services according to section 256B.0625, subdivision 20;

(7) adults who are both determined to be seriously and persistently mentally ill and received case management services according to section 256B.0625, subdivision 20;

(8) persons eligible for medical assistance according to section 256B.057, subdivision 10; and

(9) persons with access to cost-effective employer-sponsored private health insurance or persons enrolled in an individual health plan determined to be cost-effective according to section 256B.0625, subdivision 15.

Children under age 21 who are in foster placement may enroll in the project on an elective basis. Individuals excluded under clauses (1), (6), and (7) may choose to enroll on an elective basis. The commissioner may enroll recipients in the prepaid medical assistance program for seniors who are (1) age 65 and over, and (2) eligible for medical assistance by spending down excess income.

(c) The commissioner may allow persons with a one-month spenddown who are otherwise eligible to enroll to voluntarily enroll or remain enrolled, if they elect to prepay their monthly spenddown to the state.

(d) The commissioner may require those individuals to enroll in the prepaid medical assistance program who otherwise would have been excluded under paragraph (b), clauses (1), (3), and (8), and under Minnesota Rules, part 9500.1452, subpart 2, items H, K, and L.

(e) Before limitation of choice is implemented, eligible individuals shall be notified and after notification, shall be allowed to choose only among demonstration providers. The commissioner may assign an individual with private coverage through a health maintenance organization, to the same health maintenance organization for medical assistance coverage, if the health maintenance organization is under contract for medical assistance in the individual's county of residence. After initially choosing a provider, the recipient is allowed to change that choice only at specified times as allowed by the commissioner. If a demonstration provider ends participation in the project for any reason, a recipient enrolled with that provider must select a new

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provider but may change providers without cause once more within the first 60 days after enrollment with the second provider.

(f) An infant born to a woman who is eligible for and receiving medical assistance and who is enrolled in the prepaid medical assistance program shall be retroactively enrolled to the month of birth in the same managed care plan as the mother once the child is enrolled in medical assistance unless the child is determined to be excluded from enrollment in a prepaid plan under this section.

EFFECTIVE DATE. This section is effective July 1, 2004, or upon federal approval, whichever is later.

Sec. 27. Minnesota Statutes 2002, section 256F.10, subdivision 5, is amended to read:

Subd. 5. **CASE MANAGERS.** Case managers are individuals employed by and authorized by the certified child welfare targeted case management provider to provide case management services under section 256B.094 and this section. A case manager must have:

- (1) skills in identifying and assessing a wide range of children's needs;
- (2) knowledge of local child welfare and a variety of community resources and effective use of those resources for the benefit of the child; and
- (3) a bachelor's degree in social work, psychology, sociology, or a closely related field from an accredited four-year college or university; or a bachelor's degree from an accredited four-year college or university in a field other than social work, psychology, sociology or a closely related field, plus one year of experience in the delivery of social services to children as a supervised social worker in a public or private social services agency; or
- (4) been authorized to serve as a tribal child welfare case manager certified by a federally recognized tribal government within the state of Minnesota, pursuant to section 256B.02, subdivision 7, paragraph (c), and determined as meeting applicable standards.

Sec. 28. Minnesota Statutes 2002, section 260C.007, subdivision 18, is amended to read:

Subd. 18. **FOSTER CARE.** "Foster care" means the 24 hour a day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision or treatment they need but which for any reason cannot be furnished by their parents or legal guardians in their homes. substitute care for children placed away from their parents or guardian and for whom a responsible social services agency has placement and care responsibility. "Foster care" includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and proadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of

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care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. "Foster care" does not include placement in any of the following facilities: hospitals, in-patient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction's facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails.

Sec. 29. Minnesota Statutes 2002, section 260C.201, subdivision 11, is amended to read:

Subd. 11. REVIEW OF COURT ORDERED PLACEMENTS; PERMANENT PLACEMENT DETERMINATION. (a) Except for This subdivision and subdivision 11a do not apply in cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, and where legal custody has not been transferred to the responsible social services agency, and where the court finds compelling reasons under section 260C.007, subdivision 8, to continue the child in foster care past the time periods specified in this subdivision. Foster care placements of children due solely to their disability are governed by section 260C.141, subdivision 2b. In all other cases where the child is in foster care or in the care of a noncustodial parent under subdivision 1 of this section, the court shall conduct a hearing to determine the permanent status of a child not later than 12 months after the child is placed out of the home of the in foster care or in the care of a noncustodial parent.

For purposes of this subdivision, the date of the child's placement out of the home of the parent in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed out of the home in foster care by the child's parent or guardian. For purposes of this subdivision, time spent by a child under the protective supervision of the responsible social services agency in the home of a noncustodial parent pursuant to an order under subdivision 1 of this section counts towards the requirement of a permanency hearing under this subdivision or subdivision 11a.

For purposes of this subdivision, 12 months is calculated as follows:

(1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a child is placed out of the home of the in foster care or in the home of a noncustodial parent are cumulated;

(2) if a child has been placed out of the home of the parent in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed out of the home in foster care within the previous five years are cumulated. If a child under this clause has been out of the home in foster care for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.

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(b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to this hearing, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152. If a termination of parental rights petition is filed before the date required for the permanency planning determination and there is a trial under section 260C.163 scheduled on that petition within 90 days of the filing of the petition, no hearing need be conducted under this subdivision.

(c) At the conclusion of the hearing, the court shall order the child returned to the care of the parent or guardian from whom the child was removed or order a permanent placement in the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated. Transfer of permanent legal and physical custody, termination of parental rights, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.

(d) If the child is not returned to the home, the court must order one of the following dispositions:

(1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

(i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;

(ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260, and the procedures set out in the juvenile court rules;

(iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; and

(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring conditions

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ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights according to the following conditions:

(i) unless the social services agency has already filed a petition for termination of parental rights under section 260C.307, the court may order such a petition filed and all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests; and

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and reasonable efforts by the responsible social services agency have failed to locate an adoptive family for the child; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; or

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24;

(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

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(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;

(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner; and

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.

(f) Once a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if:

(1) the placement is long-term foster care or foster care for a specified period of time;

(2) the court orders further hearings because it has retained jurisdiction of a transfer of permanent legal and physical custody matter;

(3) an adoption has not yet been finalized; or

(4) there is a disruption of the permanent or long-term placement.

(g) Court reviews of an order for long-term foster care, whether under this section or section 260C.317, subdivision 3, paragraph (d), or foster care for a specified period of time must be conducted at least yearly and must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

(1) identify a specific long-term foster home for the child or a specific foster home for the time the child is specified to be out of the care of the parent, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of long-term foster care or foster care for a specified period of time;

(4) plan for the child's independence upon the child's leaving long-term foster care living as required under section 260C.212, subdivision 1; and

(5) where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

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(h) An order under this subdivision must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or parents;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) whether the conditions which led to the out-of-home placement have been corrected so that the child can return home.

(i) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(j) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

Sec. 30. Minnesota Statutes 2002, section 260C.212, subdivision 5, is amended to read:

Subd. 5. **RELATIVE SEARCH; NATURE.** (a) In implementing the requirement that the responsible social services agency must consider placement with a relative under subdivision 2 as soon as possible without delay after identifying the need for placement of the child in foster care, the responsible social services agency shall identify relatives of the child and notify them of the need for a foster care home for the child and of the possibility of the need for a permanent out-of-home placement of the child. The relative search required by this section shall be reasonable and comprehensive in scope and may last up to six months or until a fit and willing relative is identified. ~~Relatives should be notified that a decision not to be a placement resource at the beginning of the case may affect the relative being considered for placement of the child with that relative later.~~ The relative search required by this section shall include both maternal relatives of the child and paternal relatives of the child, if paternity is adjudicated. The relatives must be notified that they must keep the responsible social services agency informed of their current address in order to receive notice that a permanent placement is being sought for the child. A relative who fails to provide a current address to the responsible social services agency forfeits the right to notice of the possibility of permanent placement. A decision by a relative not to be a placement resource at the beginning of the case shall not affect whether the relative is considered for placement of the child with that relative later.

(b) A responsible social services agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a

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suitable placement. The agency shall disclose only data that is necessary to facilitate possible placement with relatives. If the child's parent refuses to give the responsible social services agency information sufficient to identify the maternal and paternal relatives of the child, the agency shall ~~determine whether the parent's refusal is in the child's best interests.~~ If the agency determines the parent's refusal is not in the child's best interests, the agency shall file a petition under section 260C.141, and shall ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that relatives or a specific relative not be contacted or considered for placement, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives or a specific relative unless authorized to do so by the juvenile court.

(c) When the placing agency determines that a permanent placement hearing is necessary because there is a likelihood that the child will not return to a parent's care, the agency may send the notice provided in paragraph (d), may ask the court to modify the requirements of the agency under this paragraph, or may ask the court to completely relieve the agency of the requirements of this paragraph. The relative notification requirements of this paragraph do not apply when the child is placed with an appropriate relative or a foster home that has committed to being the permanent legal placement for the child and the agency approves of that foster home for permanent placement of the child. The actions ordered by the court under this section must be consistent with the best interests, safety, and welfare of the child.

(d) Unless required under the Indian Child Welfare Act or relieved of this duty by the court under paragraph (c), when the agency determines that it is necessary to prepare for the permanent placement determination hearing, or in anticipation of filing a termination of parental rights petition, the agency shall send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The notice must state that within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

(e) The Department of Human Services shall develop a best practices guide and specialized staff training to assist the responsible social services agency in performing and complying with the relative search requirements under this subdivision.

Sec. 31. LEAD REDUCTION STUDY.

The commissioner of health, in consultation with the Department of Employment and Economic Development, the Minnesota Housing Finance Agency, and the Department of Human Services, shall develop and evaluate the best strategies to reduce the number of children endangered by lead paint. The study shall examine:

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- (1) how to promote and encourage primary prevention;
- (2) how to ensure that all children at risk are tested;
- (3) whether or not to reduce the state mandatory intervention from 20 to ten micrograms of lead per deciliter of whole blood and if a reduction is not recommended whether to develop guidelines on intervention for children with blood levels between ten and 20 micrograms of lead per deciliter of whole blood;
- (4) how to provide incentives and funding support to property owners for lead hazard prevention and reduction; and
- (5) ways to provide resources for local jurisdictions to conduct outreach.

The commissioner shall submit the results of the study and any recommendations, including any necessary legislative changes to the legislature by January 15, 2005.

Sec. 32. CONSUMER-DIRECTED COMMUNITY SUPPORT EVALUATION.

The commissioner of human services, in consultation with interested stakeholders, including representatives of consumers, families, guardians, advocacy groups, counties, and providers, shall evaluate the new consumer-directed community support option under the home and community-based waiver programs, as required by the federal Center for Medicare and Medicaid Services. The evaluation shall include, but not be limited to, an examination of whether any current consumer-directed option participants will have their funding reduced so significantly that their health, safety, and welfare at home will be jeopardized, and whether replacement services will cost more or be of lower quality than their current consumer-directed services. The preliminary findings of the evaluation shall be provided to the house and senate committees with jurisdiction over human services policy and finance by February 15, 2005.

Sec. 33. REPEALER.

Laws 2003, First Special Session chapter 14, article 3, section 56, is repealed effective immediately following final enactment.

ARTICLE 4

CHILD CARE; MINNESOTA FAMILY INVESTMENT PLAN

Section 1. Minnesota Statutes 2003 Supplement, section 119B.011, subdivision 6, is amended to read:

Subd. 6. **CHILD CARE FUND.** "Child care fund" means a program under this chapter providing:

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(1) financial assistance for child care to parents engaged in employment, job search, or education and training leading to employment, or an at-home infant child care subsidy; and

(2) grants to develop, expand, and improve the access and availability of child care services statewide.

EFFECTIVE DATE. This section is effective July 1, 2004.

Sec. 2. Minnesota Statutes 2003 Supplement, section 119B.011, subdivision 8, is amended to read:

Subd. 8. **COMMISSIONER.** "Commissioner" means the commissioner of education human services.

Sec. 3. Minnesota Statutes 2003 Supplement, section 119B.011, subdivision 10, is amended to read:

Subd. 10. **DEPARTMENT.** "Department" means the Department of Education Human Services.

Sec. 4. Minnesota Statutes 2002, section 119B.011, is amended by adding a subdivision to read:

Subd. 10a. **DIVERSIONARY WORK PROGRAM.** "Diversionsary work program" means the program established under section 256J.95.

Sec. 5. Minnesota Statutes 2003 Supplement, section 119B.011, subdivision 15, is amended to read:

Subd. 15. **INCOME.** "Income" means earned or unearned income received by all family members, including public assistance cash benefits and at-home infant child care subsidy payments, unless specifically excluded and child support and maintenance distributed to the family under section 256.741, subdivision 15. The following are excluded from income: funds used to pay for health insurance premiums for family members, Supplemental Security Income, scholarships, work-study income, and grants that cover costs or reimbursement for tuition, fees, books, and educational supplies; student loans for tuition, fees, books, supplies, and living expenses; state and federal earned income tax credits; assistance specifically excluded as income by law; in-kind income such as food support, energy assistance, foster care assistance, medical assistance, child care assistance, and housing subsidies; earned income of full-time or part-time students up to the age of 19, who have not earned a high school diploma or GED high school equivalency diploma including earnings from summer employment; grant awards under the family subsidy program; nonrecurring lump sum income only to the extent that it is earmarked and used for the purpose for which it is paid; and any income assigned to the public authority according to section 256.741.

EFFECTIVE DATE. This section is effective July 1, 2004.

Sec. 6. Minnesota Statutes 2003 Supplement, section 119B.011, subdivision 20, is amended to read:

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Subd. 20. **TRANSITION YEAR FAMILIES.** (a) "Transition year families" means families who have received MFIP assistance, or who were eligible to receive MFIP assistance after choosing to discontinue receipt of the cash portion of MFIP assistance under section 256J.31, subdivision 12, or families who have received DWP assistance under section 256J.95 for at least three of the last six months before losing eligibility for MFIP or DWP. Transition year child care may be used to support employment or job search. Transition year child care is not available to families who have been disqualified from MFIP or DWP due to fraud.

(b) Subd. 20a. **TRANSITION YEAR EXTENSION FAMILIES.** "Transition year extension year families" means families who have completed their transition year of child care assistance under this subdivision and who are eligible for, but on a waiting list for, services under section 119B.03. For purposes of sections 119B.03, subdivision 3, and 119B.05, subdivision 1, clause (2), families participating in extended transition year shall not be considered transition year families. Transition year extension child care may be used to support employment or a job search that meets the requirements of section 119B.10 for the length of time necessary for families to be moved from the basic sliding fee waiting list into the basic sliding fee program.

Sec. 7. Minnesota Statutes 2002, section 119B.02, subdivision 4, is amended to read:

Subd. 4. **UNIVERSAL APPLICATION FORM.** The commissioner must develop and make available to all counties a universal application form for child care assistance under this chapter. The commissioner may develop and make available to all counties a child care addendum form to be used to supplement the combined application form for MFIP, DWP, or Food Support or to supplement other statewide application forms for public assistance programs for families applying for one of these programs in addition to child care assistance. The application must provide notice of eligibility requirements for assistance and penalties for wrongfully obtaining assistance.

Sec. 8. Minnesota Statutes 2002, section 119B.03, subdivision 3, is amended to read:

Subd. 3. **ELIGIBLE PARTICIPANTS.** Families that meet the eligibility requirements under sections 119B.07, 119B.09, and 119B.10, except MFIP participants, ~~work first participants~~ diversionary work program, and transition year families are eligible for child care assistance under the basic sliding fee program. Families enrolled in the basic sliding fee program shall be continued until they are no longer eligible. Child care assistance provided through the child care fund is considered assistance to the parent.

Sec. 9. Minnesota Statutes 2003 Supplement, section 119B.03, subdivision 4, is amended to read:

Subd. 4. **FUNDING PRIORITY.** (a) First priority for child care assistance under the basic sliding fee program must be given to eligible non-MFIP families who do not have a high school or general equivalency diploma or who need remedial and basic

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skill courses in order to pursue employment or to pursue education leading to employment and who need child care assistance to participate in the education program. Within this priority, the following subpriorities must be used:

- (1) child care needs of minor parents;
- (2) child care needs of parents under 21 years of age; and
- (3) child care needs of other parents within the priority group described in this paragraph.

(b) Second priority must be given to parents who have completed their MFIP or work first DWP transition year, or parents who are no longer receiving or eligible for diversionary work program supports.

(c) Third priority must be given to families who are eligible for portable basic sliding fee assistance through the portability pool under subdivision 9.

(d) Families under paragraph (b) must be added to the basic sliding fee waiting list on the date they begin the transition year under section 119B.011, subdivision 20, and must be moved into the basic sliding fee program as soon as possible after they complete their transition year.

Sec. 10. Minnesota Statutes 2002, section 119B.03, subdivision 6a, is amended to read:

Subd. 6a. **ALLOCATION DUE TO INCREASED FUNDING.** When funding increases are implemented within a calendar year, every county must receive an allocation at least equal and proportionate to its original allocation for the same time period. The remainder of the allocation must be recalculated to reflect the funding increase, according to formulas identified in subdivision 6.

Sec. 11. Minnesota Statutes 2002, section 119B.03, is amended by adding a subdivision to read:

Subd. 6b. **ALLOCATION DUE TO DECREASED FUNDING.** When funding decreases are implemented within a calendar year, county allocations must be reduced in an amount proportionate to the reduction in the total allocation for the same time period. This applies when a funding decrease necessitates the revision of an existing calendar year allocation.

Sec. 12. **[119B.035] AT-HOME INFANT CHILD CARE PROGRAM.**

Subdivision 1. **ESTABLISHMENT.** A family in which a parent provides care for the family's infant child may receive a subsidy in lieu of assistance if the family is eligible for or is receiving assistance under the basic sliding fee program. An eligible family must meet the eligibility factors under section 119B.09, except as provided in subdivision 4, and the requirements of this section. Subject to federal match and maintenance of effort requirements for the child care and development fund, the commissioner shall establish a pool of up to three percent of the annual appropriation for the basic sliding fee program to provide assistance under the at-home infant child care program and for administrative costs associated with the program. At the end of

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a fiscal year, the commissioner may carry forward any unspent funds under this section to the next fiscal year within the same biennium for assistance under the basic sliding fee program.

Subd. 2. ELIGIBLE FAMILIES. A family with an infant under the age of one year is eligible for assistance if:

(1) the family is not receiving MFIP, other cash assistance, or other child care assistance;

(2) the family has not previously received a life-long total of 12 months of assistance under this section; and

(3) the family is participating in the basic sliding fee program or provides verification of participating in an authorized activity at the time of application and meets the program requirements.

Subd. 3. ELIGIBLE PARENT. A family is eligible for assistance under this section if one parent cares for the family's infant child. The eligible parent must:

(1) be over the age of 18;

(2) care for the infant full time in the infant's home; and

(3) care for any other children in the family who are eligible for child care assistance under this chapter.

For purposes of this section, "parent" means birth parent, adoptive parent, or stepparent.

Subd. 4. ASSISTANCE. (a) A family is limited to a lifetime total of 12 months of assistance under subdivision 2. The maximum rate of assistance is equal to 90 percent of the rate established under section 119B.13 for care of infants in licensed family child care in the applicant's county of residence.

(b) A participating family must report income and other family changes as specified in the county's plan under section 119B.08, subdivision 3.

(c) Persons who are admitted to the at-home infant child care program retain their position in any basic sliding fee program. Persons leaving the at-home infant child care program reenter the basic sliding fee program at the position they would have occupied.

(d) Assistance under this section does not establish an employer-employee relationship between any member of the assisted family and the county or state.

Subd. 5. IMPLEMENTATION. The commissioner shall implement the at-home infant child care program under this section through counties that administer the basic sliding fee program under section 119B.03. The commissioner must develop and distribute consumer information on the at-home infant child care program to assist parents of infants or expectant parents in making informed child care decisions.

EFFECTIVE DATE. This section is effective July 1, 2004.

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Sec. 13. Minnesota Statutes 2003 Supplement, section 119B.05, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBLE PARTICIPANTS.** Families eligible for child care assistance under the MFIP child care program are:

- (1) MFIP participants who are employed or in job search and meet the requirements of section 119B.10;
- (2) persons who are members of transition year families under section 119B.011, subdivision 20, and meet the requirements of section 119B.10;
- (3) families who are participating in employment orientation or job search, or other employment or training activities that are included in an approved employability development plan under ~~chapter 256K~~ section 256J.95;
- (4) MFIP families who are participating in work job search, job support, employment, or training activities as required in their ~~job search support or employment plan~~, or in appeals, hearings, assessments, or orientations according to chapter 256J;
- (5) MFIP families who are participating in social services activities under chapter 256J ~~or 256K~~ as required in their employment plan approved according to chapter 256J ~~or 256K~~;
- (6) families who are participating in programs as required in tribal contracts under section 119B.02, subdivision 2, or 256.01, subdivision 2; and
- (7) families who are participating in the transition year extension under section 119B.011, subdivision 20, ~~paragraph (a) 20a.~~

Sec. 14. Minnesota Statutes 2003 Supplement, section 119B.09, subdivision 7, is amended to read:

Subd. 7. **DATE OF ELIGIBILITY FOR ASSISTANCE.** (a) The date of eligibility for child care assistance under this chapter is the later of the date the application was signed; the beginning date of employment, education, or training; the date the infant is born for applicants to the at-home infant care program; or the date a determination has been made that the applicant is a participant in employment and training services under Minnesota Rules, part 3400.0080, subpart 2a, or chapter 256J ~~or 256K~~.

(b) Payment ceases for a family under the at-home infant child care program when a family has used a total of 12 months of assistance as specified under section 119B.035. Payment of child care assistance for employed persons on MFIP is effective the date of employment or the date of MFIP eligibility, whichever is later. Payment of child care assistance for MFIP or ~~work first DWP~~ participants in employment and training services is effective the date of commencement of the services or the date of MFIP or ~~work first DWP~~ eligibility, whichever is later. Payment of child care assistance for transition year child care must be made retroactive to the date of eligibility for transition year child care.

EFFECTIVE DATE. This section is effective July 1, 2004.

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Sec. 15. Minnesota Statutes 2003 Supplement, section 119B.12, subdivision 2, is amended to read:

Subd. 2. **PARENT FEE.** A family must be assessed a parent fee for each service period. A family's parent fee must be a fixed percentage of its annual gross income. Parent fees must apply to families eligible for child care assistance under sections 119B.03 and 119B.05. Income must be as defined in section 119B.011, subdivision 15. The fixed percent is based on the relationship of the family's annual gross income to 100 percent of the annual federal poverty guidelines. Parent fees must begin at 75 percent of the poverty level. The minimum parent fees for families between 75 percent and 100 percent of poverty level must be \$10 per month. Parent fees must provide for graduated movement to full payment.

Sec. 16. Minnesota Statutes 2003 Supplement, section 119B.125, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** Except as provided in subdivision 5, a county must authorize the provider chosen by an applicant or a participant before the county can authorize payment for care provided by that provider. The commissioner must establish the requirements necessary for authorization of providers. A provider must be reauthorized every two years. A legal, nonlicensed family child care provider also must be reauthorized when another person over the age of 13 joins the household, a current household member turns 13, or there is reason to believe that a household member has a factor that prevents authorization. The provider is required to report all family changes that would require reauthorization. When a provider has been authorized for payment for providing care for families in more than one county, the county responsible for reauthorization of that provider is the county of the family with a current authorization for that provider and who has used the provider for the longest length of time.

Sec. 17. Minnesota Statutes 2003 Supplement, section 119B.125, subdivision 2, is amended to read:

Subd. 2. **PERSONS WHO CANNOT BE AUTHORIZED.** (a) A person who meets any of the conditions under paragraphs (b) to (n) must not be authorized as a legal nonlicensed family child care provider. To determine whether any of the listed conditions exist, the county must request information about the provider from the Bureau of Criminal Apprehension, the juvenile courts, and social service agencies. When one of the listed entities does not maintain information on a statewide basis, the county must contact the entity in the county where the provider resides and any other county in which the provider previously resided in the past year. For purposes of this subdivision, a finding that a delinquency petition is proven in juvenile court must be considered a conviction in state district court. If a county has determined that a provider is able to be authorized in that county, and a family in another county later selects that provider, the provider is able to be authorized in the second county without undergoing a new background investigation unless one of the following conditions exists:

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(1) two years have passed since the first authorization;

(2) another person age 13 or older has joined the provider's household since the last authorization;

(3) a current household member has turned 13 since the last authorization; or

(4) there is reason to believe that a household member has a factor that prevents authorization.

(b) The person has been convicted of one of the following offenses or has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of one of the following offenses: sections 609.185 to 609.195, murder in the first, second, or third degree; 609.2661 to 609.2663, murder of an unborn child in the first, second, or third degree; 609.322, solicitation, inducement, or promotion of prostitution; 609.323, receiving profit from prostitution; 609.342 to 609.345, criminal sexual conduct in the first, second, third, or fourth degree; 609.352, solicitation of children to engage in sexual conduct; 609.365, incest; 609.377, felony malicious punishment of a child; 617.246, use of minors in sexual performance; 617.247, possession of pictorial representation of a minor; 609.2242 to 609.2243, felony domestic assault; a felony offense of spousal abuse; a felony offense of child abuse or neglect; a felony offense of a crime against children; or an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

(c) Less than 15 years have passed since the discharge of the sentence imposed for the offense and the person has received a felony conviction for one of the following offenses, or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a felony conviction for one of the following offenses: sections 609.20 to 609.205, manslaughter in the first or second degree; 609.21, criminal vehicular homicide; 609.215, aiding suicide or aiding attempted suicide; 609.221 to 609.2231, assault in the first, second, third, or fourth degree; 609.224, repeat offenses of fifth degree assault; 609.228, great bodily harm caused by distribution of drugs; 609.2325, criminal abuse of a vulnerable adult; 609.2335, financial exploitation of a vulnerable adult; 609.235, use of drugs to injure or facilitate a crime; 609.24, simple robbery; 617.241, repeat offenses of obscene materials and performances; 609.245, aggravated robbery; 609.25, kidnapping; 609.255, false imprisonment; 609.2664 to 609.2665, manslaughter of an unborn child in the first or second degree; 609.267 to 609.2672, assault of an unborn child in the first, second, or third degree; 609.268, injury or death of an unborn child in the commission of a crime; 609.27, coercion; 609.275, attempt to coerce; 609.324, subdivision 1, other prohibited acts, minor engaged in prostitution; 609.3451, repeat offenses of criminal sexual conduct in the fifth degree; 609.378, neglect or endangerment of a child; 609.52, theft; 609.521, possession of shoplifting gear; 609.561 to 609.563, arson in the first, second, or third degree; 609.582, burglary in the first, second, third, or fourth degree; 609.625, aggravated forgery; 609.63, forgery; 609.631, check forgery, offering a forged check; 609.635, obtaining signature by false pretenses;

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609.66, dangerous weapon; 609.665, setting a spring gun; 609.67, unlawfully owning, possessing, or operating a machine gun; 609.687, adulteration; 609.71, riot; 609.713, terrorist threats; 609.749, harassment, stalking; 260.221, grounds for termination of parental rights; 152.021 to 152.022, controlled substance crime in the first or second degree; 152.023, subdivision 1, clause (3) or (4), or 152.023, subdivision 2, clause (4), controlled substance crime in third degree; 152.024, subdivision 1, clause (2), (3), or (4), controlled substance crime in fourth degree; 617.23, repeat offenses of indecent exposure; an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

(d) Less than ten years have passed since the discharge of the sentence imposed for the offense and the person has received a gross misdemeanor conviction for one of the following offenses or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a gross misdemeanor conviction for one of the following offenses: sections 609.224, fifth degree assault; 609.2242 to 609.2243, domestic assault; 518B.01, subdivision 14, violation of an order for protection; 609.3451, fifth degree criminal sexual conduct; 609.746, repeat offenses of interference with privacy; 617.23, repeat offenses of indecent exposure; 617.241, obscene materials and performances; 617.243, indecent literature, distribution; 617.293, disseminating or displaying harmful material to minors; 609.71, riot; 609.66, dangerous weapons; 609.749, harassment, stalking; 609.224, subdivision 2, paragraph (c), fifth degree assault against a vulnerable adult by a caregiver; 609.23, mistreatment of persons confined; 609.231, mistreatment of residents or patients; 609.2325, criminal abuse of a vulnerable adult; 609.2335, financial exploitation of a vulnerable adult; 609.233, criminal neglect of a vulnerable adult; 609.234, failure to report maltreatment of a vulnerable adult; 609.72, subdivision 3, disorderly conduct against a vulnerable adult; 609.265, abduction; 609.378, neglect or endangerment of a child; 609.377, malicious punishment of a child; 609.324, subdivision 1a, other prohibited acts, minor engaged in prostitution; 609.33, disorderly house; 609.52, theft; 609.582, burglary in the first, second, third, or fourth degree; 609.631, check forgery, offering a forged check; 609.275, attempt to coerce; an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

(e) Less than seven years have passed since the discharge of the sentence imposed for the offense and the person has received a misdemeanor conviction for one of the following offenses or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a misdemeanor conviction for one of the following offenses: sections 609.224, fifth degree assault; 609.2242, domestic assault; 518B.01, violation of an order for protection; 609.3232, violation of an order for protection; 609.746, interference with privacy; 609.79, obscene or harassing telephone calls; 609.795, letter, telegram, or package opening, harassment; 617.23, indecent exposure; 609.2672, assault of an unborn child, third degree; 617.293, dissemination and display of harmful materials to minors; 609.66, dangerous weapons; 609.665, spring guns; an attempt or conspiracy to

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commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

(f) The person has been identified by the ~~county's~~ county's child protection agency in the county where the provider resides or a county where the provider has resided or by the statewide child protection database as the person allegedly responsible for physical or sexual abuse of a child within the last seven years.

(g) The person has been identified by the ~~county's~~ county's adult protection agency in the county where the provider resides or a county where the provider has resided or by the statewide adult protection database as the person responsible for abuse or neglect of a vulnerable adult within the last seven years.

(h) The person has refused to give written consent for disclosure of criminal history records.

(i) The person has been denied a family child care license or has received a fine or a sanction as a licensed child care provider that has not been reversed on appeal.

(j) The person has a family child care licensing disqualification that has not been set aside.

(k) The person has admitted or a county has found that there is a preponderance of evidence that fraudulent information was given to the county for child care assistance application purposes or was used in submitting child care assistance bills for payment.

(l) The person has been convicted or ~~there is a preponderance of evidence of the crime of theft by wrongfully obtaining public assistance.~~

(m) The person has a household member age 13 or older who has access to children during the hours that care is provided and who meets one of the conditions listed in paragraphs (b) to (l).

(n) The person has a household member ages ten to 12 who has access to children during the hours that care is provided; information or circumstances exist which provide the county with articulable suspicion that further pertinent information may exist showing the household member meets one of the conditions listed in paragraphs (b) to (l); and the household member actually meets one of the conditions listed in paragraphs (b) to (l).

Sec. 18. Minnesota Statutes 2003 Supplement, section 119B.13, subdivision 1, is amended to read:

Subdivision 1. **SUBSIDY RESTRICTIONS.** The maximum rate paid for child care assistance under the child care fund may not exceed the 75th percentile rate for like-care arrangements in the county as surveyed by the commissioner. A rate which includes a provider bonus paid under subdivision 2 or a special needs rate paid under subdivision 3 may be in excess of the maximum rate allowed under this subdivision. The department shall monitor the effect of this paragraph on provider rates. The county

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shall pay the provider's full charges for every child in care up to the maximum established. The commissioner shall determine the maximum rate for each type of care on an hourly, full-day, and weekly basis, including special needs and handicapped care. Not less than once every two years, the commissioner shall evaluate market practices for payment of absences and shall establish policies for payment of absent days that reflect current market practice.

When the provider charge is greater than the maximum provider rate allowed, the parent is responsible for payment of the difference in the rates in addition to any family co-payment fee.

Sec. 19. Minnesota Statutes 2003 Supplement, section 119B.13, subdivision 1a, is amended to read:

Subd. 1a. LEGAL NONLICENSED FAMILY CHILD CARE PROVIDER RATES. (a) Legal nonlicensed family child care providers receiving reimbursement under this chapter must be paid on an hourly basis for care provided to families receiving assistance.

(b) The maximum rate paid to legal nonlicensed family child care providers must be 80 percent of the county maximum hourly rate for licensed family child care providers. In counties where the maximum hourly rate for licensed family child care providers is higher than the maximum weekly rate for those providers divided by 50, the maximum hourly rate that may be paid to legal nonlicensed family child care providers is the rate equal to the maximum weekly rate for licensed family child care providers divided by 50 and then multiplied by 0.80.

(c) A rate which includes a provider bonus paid under subdivision 2 or a special needs rate paid under subdivision 3 may be in excess of the maximum rate allowed under this subdivision.

(d) Legal nonlicensed family child care providers receiving reimbursement under this chapter may not be paid registration fees for families receiving assistance.

Sec. 20. Minnesota Statutes 2003 Supplement, section 119B.189, subdivision 2, is amended to read:

Subd. 2. INTERIM FINANCING. "Interim financing" means funding for up to 18 months:

(1) for activities that are necessary to receive and maintain state child care licensing;

(2) to expand an existing child care program or to improve program quality; and

(3) to operate for a period of six consecutive months after a child care facility becomes licensed or satisfies standards of the commissioner of education human services.

Sec. 21. Minnesota Statutes 2003 Supplement, section 119B.189, subdivision 4, is amended to read:

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Subd. 4. **TRAINING PROGRAM.** "Training program" means child development courses offered by an accredited postsecondary institution or similar training approved by a county board or the commissioner. A training program must be a course of study that teaches specific skills to meet licensing requirements or requirements of the commissioner of education human services.

Sec. 22. Minnesota Statutes 2003 Supplement, section 119B.19, subdivision 1, is amended to read:

Subdivision 1. **DISTRIBUTION OF FUNDS FOR OPERATION OF CHILD CARE RESOURCE AND REFERRAL PROGRAMS.** The commissioner of education human services shall distribute funds to public or private nonprofit organizations for the planning, establishment, expansion, improvement, or operation of child care resource and referral programs under this section. The commissioner must adopt rules for programs under this section and sections 119B.189 and 119B.21. The commissioner must develop a process to fund organizations to operate child care resource and referral programs that includes application forms, timelines, and standards for renewal.

Sec. 23. Minnesota Statutes 2003 Supplement, section 119B.24, is amended to read:

119B.24 DUTIES OF COMMISSIONER.

In addition to the powers and duties already conferred by law, the commissioner of education human services shall:

(1) administer the child care fund, including the basic sliding fee program authorized under sections 119B.011 to 119B.16;

(2) monitor the child care resource and referral programs established under section 119B.19; and

(3) encourage child care providers to participate in a nationally recognized accreditation system for early childhood and school-age care programs. Subject to approval by the commissioner, family child care providers and early childhood and school-age care programs shall be reimbursed for one-half of the direct cost of accreditation fees, upon successful completion of accreditation.

Sec. 24. Minnesota Statutes 2003 Supplement, section 119B.25, subdivision 2, is amended to read:

Subd. 2. **GRANTS.** The commissioner shall distribute money provided by this section through a grant to a nonprofit corporation organized to plan, develop, and finance early childhood education and child care sites. The nonprofit corporation must have demonstrated the ability to analyze financing projects, have knowledge of other sources of public and private financing for child care and early childhood education sites, and have a relationship with the resource and referral programs under section 119B.211. The board of directors of the nonprofit corporation must include members who are knowledgeable about early childhood education, child care, development and improvement, and financing. The commissioners of the Departments of Education Human Services and Employment and Economic Development, and the commissioner

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of the Housing Finance Agency shall advise the board on the loan program. The grant must be used to make loans to improve child care or early childhood education sites, or loans to plan, design, and construct or expand licensed and legal unlicensed sites to increase the availability of child care or early childhood education. All loans made by the nonprofit corporation must comply with section 363A.16.

Sec. 25. Minnesota Statutes 2003 Supplement, section 256.046, subdivision 1, is amended to read:

Subdivision 1. **HEARING AUTHORITY.** A local agency must initiate an administrative fraud disqualification hearing for individuals, including child care providers caring for children receiving child care assistance, accused of wrongfully obtaining assistance or intentional program violations, in lieu of a criminal action when it has not been pursued, in the aid to families with dependent children program formerly codified in sections 256.72 to 256.87, MFIP, the diversionary work program, child care assistance programs, general assistance, family general assistance program formerly codified in section 256D.05, subdivision 1, clause (15), Minnesota supplemental aid, food stamp programs, general assistance medical care, MinnesotaCare for adults without children, and upon federal approval, all categories of medical assistance and remaining categories of MinnesotaCare except for children through age 18. The hearing is subject to the requirements of section 256.045 and the requirements in Code of Federal Regulations, title 7, section 273.16, for the food stamp program and title 45, section 235.112, as of September 30, 1995, for the cash grant, medical care programs, and child care assistance under chapter 119B.

Sec. 26. Minnesota Statutes 2003 Supplement, section 256.98, subdivision 8, is amended to read:

Subd. 8. **DISQUALIFICATION FROM PROGRAM.** (a) Any person found to be guilty of wrongfully obtaining assistance by a federal or state court or by an administrative hearing determination, or waiver thereof, through a disqualification consent agreement, or as part of any approved diversion plan under section 401.065, or any court-ordered stay which carries with it any probationary or other conditions, in the Minnesota family investment program, the diversionary work program, the food stamp or food support program, the general assistance program, the group residential housing program, or the Minnesota supplemental aid program shall be disqualified from that program. In addition, any person disqualified from the Minnesota family investment program shall also be disqualified from the food stamp or food support program. The needs of that individual shall not be taken into consideration in determining the grant level for that assistance unit:

- (1) for one year after the first offense;
- (2) for two years after the second offense; and
- (3) permanently after the third or subsequent offense.

The period of program disqualification shall begin on the date stipulated on the advance notice of disqualification without possibility of postponement for administrative stay or administrative hearing and shall continue through completion unless and

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until the findings upon which the sanctions were imposed are reversed by a court of competent jurisdiction. The period for which sanctions are imposed is not subject to review. The sanctions provided under this subdivision are in addition to, and not in substitution for, any other sanctions that may be provided for by law for the offense involved. A disqualification established through hearing or waiver shall result in the disqualification period beginning immediately unless the person has become otherwise ineligible for assistance. If the person is ineligible for assistance, the disqualification period begins when the person again meets the eligibility criteria of the program from which they were disqualified and makes application for that program.

(b) A family receiving assistance through child care assistance programs under chapter 119B with a family member who is found to be guilty of wrongfully obtaining child care assistance by a federal court, state court, or an administrative hearing determination or waiver, through a disqualification consent agreement, as part of an approved diversion plan under section 401.065, or a court-ordered stay with probationary or other conditions, is disqualified from child care assistance programs. The disqualifications must be for periods of three months, six months, and two years for the first, second, and third offenses respectively. Subsequent violations must result in permanent disqualification. During the disqualification period, disqualification from any child care program must extend to all child care programs and must be immediately applied.

(c) A provider caring for children receiving assistance through child care assistance programs under chapter 119B is disqualified from receiving payment for child care services from the child care assistance program under chapter 119B when the provider is found to have wrongfully obtained child care assistance by a federal court, state court, or an administrative hearing determination or waiver under section 256.046, through a disqualification consent agreement, as part of an approved diversion plan under section 401.065, or a court-ordered stay with probationary or other conditions. The disqualification must be for a period of one year for the first offense and two years for the second offense. Any subsequent violation must result in permanent disqualification. The disqualification period must be imposed immediately after a determination is made under this paragraph. During the disqualification period, the provider is disqualified from receiving payment from any child care program under chapter 119B.

(d) Any person found to be guilty of wrongfully obtaining general assistance medical care, MinnesotaCare for adults without children, and upon federal approval, all categories of medical assistance and remaining categories of MinnesotaCare, except for children through age 18, by a federal or state court or by an administrative hearing determination, or waiver thereof, through a disqualification consent agreement, or as part of any approved diversion plan under section 401.065, or any court-ordered stay which carries with it any probationary or other conditions, is disqualified from that program. The period of disqualification is one year after the first offense, two years after the second offense, and permanently after the third or subsequent offense. The period of program disqualification shall begin on the date stipulated on the advance notice of disqualification without possibility of postponement for administrative stay

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or administrative hearing and shall continue through completion unless and until the findings upon which the sanctions were imposed are reversed by a court of competent jurisdiction. The period for which sanctions are imposed is not subject to review. The sanctions provided under this subdivision are in addition to, and not in substitution for, any other sanctions that may be provided for by law for the offense involved.

Sec. 27. Minnesota Statutes 2002, section 256D.051, subdivision 6c, is amended to read:

Subd. 6c. **PROGRAM FUNDING.** (a) Within the limits of available resources, the commissioner shall reimburse the actual costs of county agencies and their employment and training service providers for the provision of food stamp employment and training services, including participant support services, direct program services, and program administrative activities. The cost of services for each county's food stamp employment and training program shall not exceed an average of \$400 per participant the annual allocated amount. No more than 15 percent of program funds may be used for administrative activities. The county agency may expend county funds in excess of the limits of this subdivision without state reimbursement.

Program funds shall be allocated based on the county's average number of food stamp cases as compared to the statewide total number of such cases. The average number of cases shall be based on counts of cases as of March 31, June 30, September 30, and December 31 of the previous calendar year. The commissioner may reallocate unexpended money appropriated under this section to those county agencies that demonstrate a need for additional funds.

(b) This subdivision expires effective June 30, 2005.

Sec. 28. Minnesota Statutes 2002, section 256J.01, subdivision 1, is amended to read:

Subdivision 1. **IMPLEMENTATION OF MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP).** Except for section 256J.95, this chapter and chapter 256K may be cited as the Minnesota family investment program (MFIP). MFIP is the statewide implementation of components of the Minnesota family investment plan (MFIP) authorized and formerly codified in section 256.031 and Minnesota family investment plan-Ramsey County (MFIP-R) formerly codified in section 256.047.

Sec. 29. Minnesota Statutes 2002, section 256J.08, subdivision 73, is amended to read:

Subd. 73. **QUALIFIED NONCITIZEN.** "Qualified noncitizen" means a person:

- (1) who was lawfully admitted for permanent residence pursuant according to United States Code, title 8;
- (2) who was admitted to the United States as a refugee pursuant according to United States Code, title 8; section 1157;
- (3) whose deportation is being withheld pursuant according to United States Code, title 8, section sections 1231(b)(3), 1253(h), and 1641(b)(5);

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(4) who was paroled for a period of at least one year pursuant according to United States Code, title 8, section 1182(d)(5);

(5) who was granted conditional entry pursuant according to United State Code, title 8, section 1153(a)(7);

(6) who is a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980, United States Code, title 8, section 1641(b)(7);

(7) who was granted asylum pursuant according to United States Code, title 8, section 1158;

(7) determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Title V of the Omnibus Consolidated Appropriations Bill, Public Law 104-208;

(8) who is a child of a noncitizen determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Responsibility Act of 1996, title V, Public Law 104-200 battered noncitizen according to United States Code, title 8, section 1641(c); or

(9) who was admitted as a Cuban or Haitian entrant is a parent or child of a battered noncitizen according to United States Code, title 8, section 1641(c).

Sec. 30. Minnesota Statutes 2002, section 256J.08, subdivision 82a, is amended to read:

Subd. 82a. **SHARED HOUSEHOLD STANDARD.** "Shared household standard" means the basic standard used when the household includes an unrelated member. The standard also applies to a member disqualified under section 256J.425. The cash portion of the shared household standard is equal to 90 percent of the cash portion of the transitional standard. The cash portion of the shared household standard plus the food portion equals the full shared household standard.

Sec. 31. Minnesota Statutes 2003 Supplement, section 256J.09, subdivision 3b, is amended to read:

Subd. 3b. **INTERVIEW TO DETERMINE REFERRALS AND SERVICES.** If the applicant is not diverted from applying for MFIP, and if the applicant meets the MFIP eligibility requirements, then a county agency must:

(1) identify an applicant who is under the age of 20 without a high school diploma or its equivalent and explain to the applicant the assessment procedures and employment plan requirements under section 256J.54;

(2) explain to the applicant the eligibility criteria in section 256J.545 for the family violence waiver, and what an applicant should do to develop an employment plan;

(3) determine if an applicant qualifies for an exemption under section 256J.56 from employment and training services requirements explain that the activities and hourly requirements of the employment plan may be adjusted to accommodate the

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personal and family circumstances of applicants who meet the criteria in section 256J.561, subdivision 2, paragraph (d), explain how a person should report to the county agency any status changes, and explain that an applicant who is exempt not required to participate in employment services under section 256J.561 may volunteer to participate in employment and training services;

(4) for applicants who are not exempt from the requirement to attend orientation, arrange for an orientation under section 256J.45 and an assessment under section 256J.521;

(5) inform an applicant who is not exempt from the requirement to attend orientation that failure to attend the orientation is considered an occurrence of noncompliance with program requirements and will result in an imposition of a sanction under section 256J.46; and

(6) explain how to contact the county agency if an applicant has questions about compliance with program requirements.

Sec. 32. Minnesota Statutes 2003 Supplement, section 256J.21, subdivision 2, is amended to read:

Subd. 2. **INCOME EXCLUSIONS.** The following must be excluded in determining a family's available income:

(1) payments for basic care, difficulty of care, and clothing allowances received for providing family foster care to children or adults under Minnesota Rules, parts 9545.0010 to 9545.0260 and 9555.5050 to 9555.6265, and payments received and used for care and maintenance of a third-party beneficiary who is not a household member;

(2) reimbursements for employment training received through the Workforce Investment Act of 1998, United States Code, title 20, chapter 73, section 9201;

(3) reimbursement for out-of-pocket expenses incurred while performing volunteer services, jury duty, employment, or informal carpooling arrangements directly related to employment;

(4) all educational assistance, except the county agency must count graduate student teaching assistantships, fellowships, and other similar paid work as earned income and, after allowing deductions for any unmet and necessary educational expenses, shall count scholarships or grants awarded to graduate students that do not require teaching or research as unearned income;

(5) loans, regardless of purpose, from public or private lending institutions, governmental lending institutions, or governmental agencies;

(6) loans from private individuals, regardless of purpose, provided an applicant or participant documents that the lender expects repayment;

(7)(i) state income tax refunds; and

(ii) federal income tax refunds;

(8)(i) federal earned income credits;

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- (ii) Minnesota working family credits;
- (iii) state homeowners and renters credits under chapter 290A; and
- (iv) federal or state tax rebates;

(9) funds received for reimbursement, replacement, or rebate of personal or real property when these payments are made by public agencies, awarded by a court, solicited through public appeal, or made as a grant by a federal agency, state or local government, or disaster assistance organizations, subsequent to a presidential declaration of disaster;

(10) the portion of an insurance settlement that is used to pay medical, funeral, and burial expenses, or to repair or replace insured property;

(11) reimbursements for medical expenses that cannot be paid by medical assistance;

(12) payments by a vocational rehabilitation program administered by the state under chapter 268A, except those payments that are for current living expenses;

(13) in-kind income, including any payments directly made by a third party to a provider of goods and services;

(14) assistance payments to correct underpayments, but only for the month in which the payment is received;

(15) payments for short-term emergency needs under section 256J.626, subdivision 2;

(16) funeral and cemetery payments as provided by section 256.935;

(17) nonrecurring cash gifts of \$30 or less, not exceeding \$30 per participant in a calendar month;

(18) any form of energy assistance payment made through Public Law 97-35, Low-Income Home Energy Assistance Act of 1981, payments made directly to energy providers by other public and private agencies, and any form of credit or rebate payment issued by energy providers;

(19) Supplemental Security Income (SSI), including retroactive SSI payments and other income of an SSI recipient, except as described in section 256J.37, subdivision 3b;

(20) Minnesota supplemental aid, including retroactive payments;

(21) proceeds from the sale of real or personal property;

(22) state adoption assistance payments under section 259.67, and up to an equal amount of county adoption assistance payments;

(23) state-funded family subsidy program payments made under section 252.32 to help families care for children with mental retardation or related conditions, consumer support grant funds under section 256.476, and resources and services for a disabled

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household member under one of the home and community-based waiver services programs under chapter 256B;

(24) interest payments and dividends from property that is not excluded from and that does not exceed the asset limit;

(25) rent rebates;

(26) income earned by a minor caregiver, minor child through age 6, or a minor child who is at least a half-time student in an approved elementary or secondary education program;

(27) income earned by a caregiver under age 20 who is at least a half-time student in an approved elementary or secondary education program;

(28) MFIP child care payments under section 119B.05;

(29) all other payments made through MFIP to support a caregiver's pursuit of greater economic stability;

(30) income a participant receives related to shared living expenses;

(31) reverse mortgages;

(32) benefits provided by the Child Nutrition Act of 1966, United States Code, title 42, chapter 13A, sections 1771 to 1790;

(33) benefits provided by the women, infants, and children (WIC) nutrition program, United States Code, title 42, chapter 13A, section 1786;

(34) benefits from the National School Lunch Act, United States Code, title 42, chapter 13, sections 1751 to 1769e;

(35) relocation assistance for displaced persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, chapter 61, subchapter II, section 4636, or the National Housing Act, United States Code, title 12, chapter 13, sections 1701 to 1750jj;

(36) benefits from the Trade Act of 1974, United States Code, title 19, chapter 12, part 2, sections 2271 to 2322;

(37) war reparations payments to Japanese Americans and Aleuts under United States Code, title 50, sections 1989 to 1989d;

(38) payments to veterans or their dependents as a result of legal settlements regarding Agent Orange or other chemical exposure under Public Law 101-239, section 10405, paragraph (a)(2)(E);

(39) income that is otherwise specifically excluded from MFIP consideration in federal law, state law, or federal regulation;

(40) security and utility deposit refunds;

(41) American Indian tribal land settlements excluded under Public Laws 98-123, 98-124, and 99-377 to the Mississippi Band Chippewa Indians of White Earth, Leech

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Lake, and Mille Lacs reservations and payments to members of the White Earth Band, under United States Code, title 25, chapter 9, section 331, and chapter 16, section 1407;

(42) all income of the minor parent's parents and stepparents when determining the grant for the minor parent in households that include a minor parent living with parents or stepparents on MFIP with other children;

(43) income of the minor parent's parents and stepparents equal to 200 percent of the federal poverty guideline for a family size not including the minor parent and the minor parent's child in households that include a minor parent living with parents or stepparents not on MFIP when determining the grant for the minor parent. The remainder of income is deemed as specified in section 256J.37, subdivision 1b;

(44) payments made to children eligible for relative custody assistance under section 257.85;

(45) vendor payments for goods and services made on behalf of a client unless the client has the option of receiving the payment in cash; and

(46) the principal portion of a contract for deed payment.

Sec. 33. Minnesota Statutes 2002, section 256J.21, subdivision 3, is amended to read:

Subd. 3. **INITIAL INCOME TEST.** The county agency shall determine initial eligibility by considering all earned and unearned income that is not excluded under subdivision 2. To be eligible for MFIP, the assistance unit's countable income minus the disregards in paragraphs (a) and (b) must be below the transitional standard of assistance according to section 256J.24 for that size assistance unit.

(a) The initial eligibility determination must disregard the following items:

(1) the employment disregard is 18 percent of the gross earned income whether or not the member is working full time or part time;

(2) dependent care costs must be deducted from gross earned income for the actual amount paid for dependent care up to a maximum of \$200 per month for each child less than two years of age, and \$175 per month for each child two years of age and older under this chapter and chapter 119B;

(3) all payments made according to a court order for spousal support or the support of children not living in the assistance unit's household shall be disregarded from the income of the person with the legal obligation to pay support, provided that, if there has been a change in the financial circumstances of the person with the legal obligation to pay support since the support order was entered, the person with the legal obligation to pay support has petitioned for a modification of the support order; and

(4) an allocation for the unmet need of an ineligible spouse or an ineligible child under the age of 21 for whom the caregiver is financially responsible and who lives with the caregiver according to section 256J.36.

(b) Notwithstanding paragraph (a), when determining initial eligibility for applicant units when at least one member has received ~~work first~~ MFIP in this state

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within four months of the most recent application for MFIP, apply the disregard as defined in section 256J.08, subdivision 24, for all unit members.

After initial eligibility is established, the assistance payment calculation is based on the monthly income test.

Sec. 34. Minnesota Statutes 2003 Supplement, section 256J.24, subdivision 5, is amended to read:

Subd. 5. **MFIP TRANSITIONAL STANDARD.** The MFIP transitional standard is based on the number of persons in the assistance unit eligible for both food and cash assistance unless the restrictions in subdivision 6 on the birth of a child apply. The following table represents the transitional standards effective October 1, ~~2002~~ 2003.

Number of Eligible People	Transitional Standard		Cash Portion	Food Portion	
1	\$370	\$371:	\$250	\$120	\$121
2	\$658	\$661:	\$437	\$221	\$224
3	\$844	\$852:	\$532	\$312	\$320
4	\$998	\$1,006:	\$621	\$377	\$385
5	\$1,135	\$1,146:	\$697	\$438	\$449
6	\$1,296	\$1,309:	\$773	\$523	\$536
7	\$1,414	\$1,428:	\$850	\$564	\$578
8	\$1,558	\$1,572:	\$916	\$642	\$656
9	\$1,700	\$1,715:	\$980	\$720	\$735
10	\$1,836	\$1,853:	\$1,035	\$801	\$818
over 10	add \$136	\$137:	\$53	\$83	\$84

per additional member.

The commissioner shall annually publish in the State Register the transitional standard for an assistance unit sizes 1 to 10 including a breakdown of the cash and food portions.

Sec. 35. Minnesota Statutes 2003 Supplement, section 256J.32, subdivision 2, is amended to read:

Subd. 2. **DOCUMENTATION.** The applicant or participant must document the information required under subdivisions 4 to 6 or authorize the county agency to verify the information. The applicant or participant has the burden of providing documentary evidence to verify eligibility. The county agency shall assist the applicant or participant in obtaining required documents when the applicant or participant is unable to do so. The county agency may accept an affidavit a signed personal statement from the applicant or participant only for factors specified under subdivision 8.

Sec. 36. Minnesota Statutes 2003 Supplement, section 256J.32, subdivision 8, is amended to read:

Subd. 8. **AFFIDAVIT PERSONAL STATEMENT.** The county agency may accept an affidavit a signed personal statement from the applicant or recipient participant explaining the reasons that the documentation requested in subdivision 2 is

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unavailable as sufficient documentation at the time of application or, recertification, or change related to eligibility only for the following factors:

(1) a claim of family violence if used as a basis to qualify for the family violence waiver;

(2) information needed to establish an exception under section 256J.24, subdivision 9;

(3) relationship of a minor child to caregivers in the assistance unit; and

(4) citizenship status from a noncitizen who reports to be, or is identified as, a victim of severe forms of trafficking in persons, if the noncitizen reports that the noncitizen's immigration documents are being held by an individual or group of individuals against the noncitizen's will. The noncitizen must follow up with the Office of Refugee Resettlement (ORR) to pursue certification. If verification that certification is being pursued is not received within 30 days, the MFIP case must be closed and the agency shall pursue overpayments. The ORR documents certifying the noncitizen's status as a victim of severe forms of trafficking in persons, or the reason for the delay in processing, must be received within 90 days, or the MFIP case must be closed and the agency shall pursue overpayments; and

(5) other documentation unavailable for reasons beyond the control of the applicant or participant. Reasonable attempts must have been made to obtain the documents requested under subdivision 2.

Sec. 37. Minnesota Statutes 2003 Supplement, section 256J.37, subdivision 9, is amended to read:

Subd. 9. **UNEARNED INCOME.** (a) The county agency must apply unearned income to the MFIP standard of need. When determining the amount of unearned income, the county agency must deduct the costs necessary to secure payments of unearned income. These costs include legal fees, medical fees, and mandatory deductions such as federal and state income taxes.

(b) The county agency must convert unearned income received on a periodic basis to monthly amounts by prorating the income over the number of months represented by the frequency of the payments. The county agency must begin counting the monthly amount in the month the periodic payment is received and budget it according to the assistance unit's budget cycle.

Sec. 38. Minnesota Statutes 2002, section 256J.415, is amended to read:

256J.415 NOTICE OF TIME LIMIT 12 MONTHS PRIOR TO 60-MONTH TIME LIMIT EXPIRING.

(a) The county agency shall mail a notice to each assistance unit when the assistance unit has 12 months of TANF assistance remaining and each month thereafter until the 60-month limit has expired. The notice must be developed by the commissioner of human services and must contain information about the 60-month limit, the number of months the participant has remaining, the hardship extension policy, and any

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other information that the commissioner deems pertinent to an assistance unit nearing the 60-month limit.

(b) For applicants who have less than 12 months remaining in the 60-month time limit because the unit previously received TANF assistance in Minnesota or another state, the county agency shall notify the applicant of the number of months of TANF remaining when the application is approved and begin the process required in paragraph (a).

Sec. 39. Minnesota Statutes 2003 Supplement, section 256J.425, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBILITY.** (a) To be eligible for a hardship extension, a participant in an assistance unit subject to the time limit under section 256J.42, subdivision 1, must be in compliance in the participant's 60th counted month. For purposes of determining eligibility for a hardship extension, a participant is in compliance in any month that the participant has not been sanctioned.

(b) If one participant in a two-parent assistance unit is determined to be ineligible for a hardship extension, the county shall give the assistance unit the option of disqualifying the ineligible participant from MFIP. In that case, the assistance unit shall be treated as a one-parent assistance unit and the assistance unit's MFIP grant shall be calculated using the shared household standard under section 256J.08, subdivision 82a.

(c) Prior to denying an extension, the county must review the sanction status and determine whether the sanction is appropriate or if good cause exists under section 256J.57. If the sanction was inappropriately applied or the participant is granted a good cause exception before the end of month 60, the participant shall be considered for an extension.

Sec. 40. Minnesota Statutes 2003 Supplement, section 256J.425, subdivision 4, is amended to read:

Subd. 4. **EMPLOYED PARTICIPANTS.** (a) An assistance unit subject to the time limit under section 256J.42, subdivision 1, is eligible to receive assistance under a hardship extension if the participant who reached the time limit belongs to:

(1) a one-parent assistance unit in which the participant is participating in work activities for at least 30 hours per week, of which an average of at least 25 hours per week every month are spent participating in employment;

(2) a two-parent assistance unit in which the participants are participating in work activities for at least 55 hours per week, of which an average of at least 45 hours per week every month are spent participating in employment; or

(3) an assistance unit in which a participant is participating in employment for fewer hours than those specified in clause (1), and the participant submits verification from a qualified professional, in a form acceptable to the commissioner, stating that the number of hours the participant may work is limited due to illness or disability, as long as the participant is participating in employment for at least the number of hours specified by the qualified professional. The participant must be following the treatment

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recommendations of the qualified professional providing the verification. The commissioner shall develop a form to be completed and signed by the qualified professional, documenting the diagnosis and any additional information necessary to document the functional limitations of the participant that limit work hours. If the participant is part of a two-parent assistance unit, the other parent must be treated as a one-parent assistance unit for purposes of meeting the work requirements under this subdivision.

(b) For purposes of this section, employment means:

- (1) unsubsidized employment under section 256J.49, subdivision 13, clause (1);
- (2) subsidized employment under section 256J.49, subdivision 13, clause (2);
- (3) on-the-job training under section 256J.49, subdivision 13, clause (2);
- (4) an apprenticeship under section 256J.49, subdivision 13, clause (1);
- (5) supported work under section 256J.49, subdivision 13, clause (2);
- (6) a combination of clauses (1) to (5); or
- (7) child care under section 256J.49, subdivision 13, clause (7), if it is in combination with paid employment.

(c) If a participant is complying with a child protection plan under chapter 260C, the number of hours required under the child protection plan count toward the number of hours required under this subdivision.

(d) The county shall provide the opportunity for subsidized employment to participants needing that type of employment within available appropriations.

(e) To be eligible for a hardship extension for employed participants under this subdivision, a participant must be in compliance for at least ten out of the 12 months the participant received MFIP immediately preceding the participant's 61st month on assistance. If ten or fewer months of eligibility for TANF assistance remain at the time the participant from another state applies for assistance, the participant must be in compliance every month.

(f) The employment plan developed under section 256J.521, subdivision 2, for participants under this subdivision must contain at least the minimum number of hours specified in paragraph (a) related to employment and work activities for the purpose of meeting the requirements for an extension under this subdivision. The job counselor and the participant must sign the employment plan to indicate agreement between the job counselor and the participant on the contents of the plan.

(g) Participants who fail to meet the requirements in paragraph (a), without good cause under section 256J.57, shall be sanctioned or permanently disqualified under subdivision 6. Good cause may only be granted for that portion of the month for which the good cause reason applies. Participants must meet all remaining requirements in the approved employment plan or be subject to sanction or permanent disqualification.

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(h) If the noncompliance with an employment plan is due to the involuntary loss of employment, the participant is exempt from the hourly employment requirement under this subdivision for one month. Participants must meet all remaining requirements in the approved employment plan or be subject to sanction or permanent disqualification. This exemption is available to a each participant two times in a 12-month period.

Sec. 41. Minnesota Statutes 2002, section 256J.425, subdivision 5, is amended to read:

Subd. 5. ACCRUAL OF CERTAIN EXEMPT MONTHS. (a) ~~A participant who received TANF assistance that counted towards the federal 60-month time limit while the participant was~~ Participants who meet the criteria in clause (1), (2), or (3) and who are not eligible for assistance under a hardship extension under subdivision 2, paragraph (a), clause (3), shall be eligible for a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit while the participant was:

(1) a caregiver with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (f), or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871, subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c), who was subject to the requirements in section 256J.561, subdivision 2;

(2) exempt under section 256J.56, paragraph (a), clause (7), from employment and training services requirements and who is no longer eligible for assistance under a hardship extension under subdivision 2, paragraph (a), clause (3), is eligible for assistance under a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit while the participant was exempt under section 256J.56, paragraph (a), clause (7), from the employment and training services requirements; or

(3) exempt under section 256J.56, paragraph (a), clause (3), and demonstrates at the time of the case review required under section 256J.42, subdivision 6, that the participant met the exemption criteria under section 256J.56, paragraph (a), clause (7), during one or more months the participant was exempt under section 256J.56, paragraph (a), clause (3). Only months during which the participant met the criteria under section 256J.56, paragraph (a), clause (7), shall be considered.

(b) A participant who received TANF assistance that counted towards the federal 60-month time limit while the participant met the state time limit exemption criteria under section 256J.42, subdivision 4 or 5, is eligible for assistance under a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit while the participant met the state time limit exemption criteria under section 256J.42, subdivision 4 or 5.

(c) A participant who received TANF assistance that counted towards the federal 60-month time limit while the participant was exempt under section 256J.56,

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paragraph (a), clause (3), from employment and training services requirements, who demonstrates at the time of the case review required under section 256J.42, subdivision 6, that the participant met the exemption criteria under section 256J.56, paragraph (a), clause (7), during one or more months the participant was exempt under section 256J.56, paragraph (a), clause (3), before or after July 1, 2002, is eligible for assistance under a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit during the time the participant met the criteria under section 256J.56, paragraph (a), clause (7) After the accrued months have been exhausted, the county agency must determine if the assistance unit is eligible for an extension under another extension category in section 256J.425, subdivision 2, 3, or 4.

(d) At the time of the case review, a county agency must explain to the participant the basis for receiving a hardship extension based on the accrual of exempt months. The participant must provide documentation necessary to enable the county agency to determine whether the participant is eligible to receive a hardship extension based on the accrual of exempt months or authorize a county agency to verify the information.

(e) While receiving extended MFIP assistance under this subdivision, a participant is subject to the MFIP policies that apply to participants during the first 60 months of MFIP, unless the participant is a member of a two-parent family in which one parent is extended under subdivision 3 or 4. For two-parent families in which one parent is extended under subdivision 3 or 4, the sanction provisions in subdivision 6, shall apply.

Sec. 42. Minnesota Statutes 2003 Supplement, section 256J.425, subdivision 6, is amended to read:

Subd. 6. **SANCTIONS FOR EXTENDED CASES.** (a) If one or both participants in an assistance unit receiving assistance under subdivision 3 or 4 are not in compliance with the employment and training service requirements in sections 256J.521 to 256J.57, the sanctions under this subdivision apply. For a first occurrence of noncompliance, an assistance unit must be sanctioned under section 256J.46, subdivision 1, paragraph (c), clause (1). For a second or third occurrence of noncompliance, the assistance unit must be sanctioned under section 256J.46, subdivision 1, paragraph (c), clause (2). For a fourth occurrence of noncompliance, the assistance unit is disqualified from MFIP. If a participant is determined to be out of compliance, the participant may claim a good cause exception under section 256J.57, however, the participant may not claim an exemption under section 256J.56.

(b) If both participants in a two-parent assistance unit are out of compliance at the same time, it is considered one occurrence of noncompliance.

(c) When a parent in an extended two-parent assistance unit who has not used 60 months of assistance is out of compliance with the employment and training service requirements in sections 256J.521 to 256J.57, sanctions must be applied as specified in clauses (1) and (2).

(1) If the assistance unit is receiving assistance under subdivision 3 or 4, the assistance unit is subject to the sanction policy in this subdivision.

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(2) If the assistance unit is receiving assistance under subdivision 2, the assistance unit is subject to the sanction policy in section 256J.46.

(d) If a two-parent assistance unit is extended under subdivision 3 or 4, and a parent who has not reached the 60-month time limit is out of compliance with the employment and training services requirements in sections 256J.521 to 256J.57 when the case is extended, the sanction in the 61st month is considered the first sanction for the purposes of applying the sanctions in this subdivision, except that the sanction amount shall be 30 percent.

Sec. 43. Minnesota Statutes 2003 Supplement, section 256J.46, subdivision 1, is amended to read:

Subdivision 1. **PARTICIPANTS NOT COMPLYING WITH PROGRAM REQUIREMENTS.** (a) A participant who fails without good cause under section 256J.57 to comply with the requirements of this chapter, and who is not subject to a sanction under subdivision 2, shall be subject to a sanction as provided in this subdivision. Prior to the imposition of a sanction, a county agency shall provide a notice of intent to sanction under section 256J.57, subdivision 2, and, when applicable, a notice of adverse action as provided in section 256J.31.

(b) A sanction under this subdivision becomes effective the month following the month in which a required notice is given. A sanction must not be imposed when a participant comes into compliance with the requirements for orientation under section 256J.45 prior to the effective date of the sanction. A sanction must not be imposed when a participant comes into compliance with the requirements for employment and training services under sections 256J.515 to 256J.57 ten days prior to the effective date of the sanction. For purposes of this subdivision, each month that a participant fails to comply with a requirement of this chapter shall be considered a separate occurrence of noncompliance. If both participants in a two-parent assistance unit are out of compliance at the same time, it is considered one occurrence of noncompliance.

(c) Sanctions for noncompliance shall be imposed as follows:

(1) For the first occurrence of noncompliance by a participant in an assistance unit, the assistance unit's grant shall be reduced by ten percent of the MFIP standard of need for an assistance unit of the same size with the residual grant paid to the participant. The reduction in the grant amount must be in effect for a minimum of one month and shall be removed in the month following the month that the participant returns to compliance.

(2) For a second, third, fourth, fifth, or sixth occurrence of noncompliance by a participant in an assistance unit, the assistance unit's shelter costs shall be vendor paid up to the amount of the cash portion of the MFIP grant for which the assistance unit is eligible. At county option, the assistance unit's utilities may also be vendor paid up to the amount of the cash portion of the MFIP grant remaining after vendor payment of the assistance unit's shelter costs. The residual amount of the grant after vendor payment, if any, must be reduced by an amount equal to 30 percent of the MFIP standard of need for an assistance unit of the same size before the residual grant is paid

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to the assistance unit. The reduction in the grant amount must be in effect for a minimum of one month and shall be removed in the month following the month that the participant in a one-parent assistance unit returns to compliance. In a two-parent assistance unit, the grant reduction must be in effect for a minimum of one month and shall be removed in the month following the month both participants return to compliance. The vendor payment of shelter costs and, if applicable, utilities shall be removed six months after the month in which the participant or participants return to compliance. If an assistance unit is sanctioned under this clause, the participant's case file must be reviewed to determine if the employment plan is still appropriate.

(d) For a seventh occurrence of noncompliance by a participant in an assistance unit, or when the participants in a two-parent assistance unit have a total of seven occurrences of noncompliance, the county agency shall close the MFIP assistance unit's financial assistance case, both the cash and food portions, and redetermine the family's continued eligibility for food support payments. ~~The MFIP case must remain closed for a minimum of one full month. Closure under this paragraph does not make a participant automatically ineligible for food support, if otherwise eligible.~~ Before the case is closed, the county agency must review the participant's case to determine if the employment plan is still appropriate and attempt to meet with the participant face-to-face. The participant may bring an advocate to the face-to-face meeting. If a face-to-face meeting is not conducted, the county agency must send the participant a written notice that includes the information required under clause (1).

(1) During the face-to-face meeting, the county agency must:

(i) determine whether the continued noncompliance can be explained and mitigated by providing a needed preemployment activity, as defined in section 256J.49, subdivision 13, clause (9);

(ii) determine whether the participant qualifies for a good cause exception under section 256J.57, or if the sanction is for noncooperation with child support requirements, determine if the participant qualifies for a good cause exemption under section 256.741, subdivision 10;

(iii) determine whether the participant qualifies for an exemption under section 256J.56 or the work activities in the employment plan are appropriate based on the criteria in section 256J.521, subdivision 2 or 3;

(iv) determine whether the participant qualifies for the family violence waiver;

(v) inform the participant of the participant's sanction status and explain the consequences of continuing noncompliance;

(vi) identify other resources that may be available to the participant to meet the needs of the family; and

(vii) inform the participant of the right to appeal under section 256J.40.

(2) If the lack of an identified activity or service can explain the noncompliance, the county must work with the participant to provide the identified activity.

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(3) The grant must be restored to the full amount for which the assistance unit is eligible retroactively to the first day of the month in which the participant was found to lack preemployment activities or to qualify for an exemption under section 256J.56, a family violence waiver, or for a good cause exemption under section 256.741, subdivision 10, or 256J.57.

(e) For the purpose of applying sanctions under this section, only occurrences of noncompliance that occur after July 1, 2003, shall be considered. If the participant is in 30 percent sanction in the month this section takes effect, that month counts as the first occurrence for purposes of applying the sanctions under this section, but the sanction shall remain at 30 percent for that month.

(f) An assistance unit whose case is closed under paragraph (d) or (g), may reapply for MFIP and shall be eligible if the participant complies with MFIP program requirements and demonstrates compliance for up to one month. No assistance shall be paid during this period.

(g) An assistance unit whose case has been closed for noncompliance, that reapplies under paragraph (f), is subject to sanction under paragraph (c), clause (2), for a first occurrence of noncompliance. Any subsequent occurrence of noncompliance shall result in case closure under paragraph (d).

Sec. 44. Minnesota Statutes 2003 Supplement, section 256J.49, subdivision 4, is amended to read:

Subd. 4. **EMPLOYMENT AND TRAINING SERVICE PROVIDER.** "Employment and training service provider" means:

(1) ~~a public, private, or nonprofit employment and training agency certified by the commissioner of economic security under sections 268.0122, subdivision 3, and 268.871, subdivision 1, or is approved under section 256J.51 and is included in the county service agreement submitted under section 256J.626, subdivision 4;~~

(2) ~~a public, private, or nonprofit agency that is not certified by the commissioner under clause (1), but with which a county has contracted to provide employment and training services and which is included in the county's service agreement submitted under section 256J.626, subdivision 4; or~~

(3) ~~(2)~~ (2) a county agency, if the county has opted to provide employment and training services and the county has indicated that fact in the service agreement submitted under section 256J.626, subdivision 4.

Notwithstanding section 268.871, an employment and training services provider meeting this definition may deliver employment and training services under this chapter.

Sec. 45. Minnesota Statutes 2003 Supplement, section 256J.515, is amended to read:

256J.515 OVERVIEW OF EMPLOYMENT AND TRAINING SERVICES.

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During the first meeting with participants, job counselors must ensure that an overview of employment and training services is provided that:

- (1) stresses the necessity and opportunity of immediate employment;
- (2) outlines the job search resources offered;
- (3) outlines education or training opportunities available;
- (4) describes the range of work activities, including activities under section 256J.49, subdivision 13, clause (18), that are allowable under MFIP to meet the individual needs of participants;
- (5) explains the requirements to comply with an employment plan;
- (6) explains the consequences for failing to comply;
- (7) explains the services that are available to support job search and work and education; and
- (8) provides referral information about shelters and programs for victims of family violence, ~~and the time limit exemption, and waivers of regular employment and training requirements for family violence victims.~~

Failure to attend the overview of employment and training services without good cause results in the imposition of a sanction under section 256J.46.

An applicant who requests and qualifies for a family violence waiver is exempt from attending a group overview. Information usually presented in an overview must be covered during the development of an employment plan under section 256J.521, subdivision 3.

Sec. 46. Minnesota Statutes 2003 Supplement, section 256J.521, subdivision 1, is amended to read:

Subdivision 1. **ASSESSMENTS.** (a) For purposes of MFIP employment services, assessment is a continuing process of gathering information related to employability for the purpose of identifying both participant's strengths and strategies for coping with issues that interfere with employment. The job counselor must use information from the assessment process to develop and update the employment plan under subdivision 2 or 3, as appropriate, and to determine whether the participant qualifies for a family violence waiver including an employment plan under subdivision 3.

(b) The scope of assessment must cover at least the following areas:

(1) basic information about the participant's ability to obtain and retain employment, including: a review of the participant's education level; interests, skills, and abilities; prior employment or work experience; transferable work skills; child care and transportation needs;

(2) identification of personal and family circumstances that impact the participant's ability to obtain and retain employment, including: any special needs of the

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children, the level of English proficiency, family violence issues, and any involvement with social services or the legal system;

(3) the results of a mental and chemical health screening tool designed by the commissioner and results of the brief screening tool for special learning needs. Screening tools for mental and chemical health and special learning needs must be approved by the commissioner and may only be administered by job counselors or county staff trained in using such screening tools. The commissioner shall work with county agencies to develop protocols for referrals and follow-up actions after screens are administered to participants, including guidance on how employment plans may be modified based upon outcomes of certain screens. Participants must be told of the purpose of the screens and how the information will be used to assist the participant in identifying and overcoming barriers to employment. Screening for mental and chemical health and special learning needs must be completed by participants who are unable to find suitable employment after six weeks of job search under subdivision 2, paragraph (b), and participants who are determined to have barriers to employment under subdivision 2, paragraph (d). Failure to complete the screens will result in sanction under section 256J.46; and

(4) a comprehensive review of participation and progress for participants who have received MFIP assistance and have not worked in unsubsidized employment during the past 12 months. The purpose of the review is to determine the need for additional services and supports, including placement in subsidized employment or unpaid work experience under section 256J.49, subdivision 13.

(c) Information gathered during a caregiver's participation in the diversionary work program under section 256J.95 must be incorporated into the assessment process.

(d) The job counselor may require the participant to complete a professional chemical use assessment to be performed according to the rules adopted under section 254A.03, subdivision 3, including provisions in the administrative rules which recognize the cultural background of the participant, or a professional psychological assessment as a component of the assessment process, when the job counselor has a reasonable belief, based on objective evidence, that a participant's ability to obtain and retain suitable employment is impaired by a medical condition. The job counselor may assist the participant with arranging services, including child care assistance and transportation, necessary to meet needs identified by the assessment. Data gathered as part of a professional assessment must be classified and disclosed according to the provisions in section 13.46.

Sec. 47. Minnesota Statutes 2003 Supplement, section 256J.521, subdivision 2, is amended to read:

Subd. 2. **EMPLOYMENT PLAN; CONTENTS.** (a) Based on the assessment under subdivision 1, the job counselor and the participant must develop an employment plan that includes participation in activities and hours that meet the requirements of section 256J.55, subdivision 1. The purpose of the employment plan is to identify for each participant the most direct path to unsubsidized employment and any subsequent steps that support long-term economic stability. The employment plan should be

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developed using the highest level of activity appropriate for the participant. Activities must be chosen from clauses (1) to (6), which are listed in order of preference. Notwithstanding this order of preference for activities, priority must be given for activities related to a family violence waiver when developing the employment plan. The employment plan must also list the specific steps the participant will take to obtain employment, including steps necessary for the participant to progress from one level of activity to another, and a timetable for completion of each step. Levels of activity include:

- (1) unsubsidized employment;
- (2) job search;
- (3) subsidized employment or unpaid work experience;
- (4) unsubsidized employment and job readiness education or job skills training;
- (5) unsubsidized employment or unpaid work experience and activities related to a family violence waiver or preemployment needs; and
- (6) activities related to a family violence waiver or preemployment needs.

(b) Participants who are determined to possess sufficient skills such that the participant is likely to succeed in obtaining unsubsidized employment must job search at least 30 hours per week for up to six weeks and accept any offer of suitable employment. The remaining hours necessary to meet the requirements of section 256J.55, subdivision 1, may be met through participation in other work activities under section 256J.49, subdivision 13. The participant's employment plan must specify, at a minimum: (1) whether the job search is supervised or unsupervised; (2) support services that will be provided; and (3) how frequently the participant must report to the job counselor. Participants who are unable to find suitable employment after six weeks must meet with the job counselor to determine whether other activities in paragraph (a) should be incorporated into the employment plan. Job search activities which are continued after six weeks must be structured and supervised.

(c) Beginning July 1, 2004, activities and hourly requirements in the employment plan may be adjusted as necessary to accommodate the personal and family circumstances of participants identified under section 256J.561, subdivision 2, paragraph (d). Participants who no longer meet the provisions of section 256J.561, subdivision 2, paragraph (d), must meet with the job counselor within ten days of the determination to revise the employment plan.

(d) Participants who are determined to have barriers to obtaining or retaining employment that will not be overcome during six weeks of job search under paragraph (b) must work with the job counselor to develop an employment plan that addresses those barriers by incorporating appropriate activities from paragraph (a), clauses (1) to (6). The employment plan must include enough hours to meet the participation requirements in section 256J.55, subdivision 1, unless a compelling reason to require fewer hours is noted in the participant's file.

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(e) The job counselor and the participant must sign the employment plan to indicate agreement on the contents. Failure to develop or comply with activities in the plan, or voluntarily quitting suitable employment without good cause, will result in the imposition of a sanction under section 256J.46.

(f) Employment plans must be reviewed at least every three months to determine whether activities and hourly requirements should be revised.

Sec. 48. Minnesota Statutes 2003 Supplement, section 256J.53, subdivision 2, is amended to read:

Subd. 2. **APPROVAL OF POSTSECONDARY EDUCATION OR TRAINING.** (a) In order for a postsecondary education or training program to be an approved activity in an employment plan, the participant must be working in unsubsidized employment at least 20 hours per week.

(b) Participants seeking approval of a postsecondary education or training plan must provide documentation that:

(1) the employment goal can only be met with the additional education or training;

(2) there are suitable employment opportunities that require the specific education or training in the area in which the participant resides or is willing to reside;

(3) the education or training will result in significantly higher wages for the participant than the participant could earn without the education or training;

(4) the participant can meet the requirements for admission into the program; and

(5) there is a reasonable expectation that the participant will complete the training program based on such factors as the participant's MFIP assessment, previous education, training, and work history; current motivation; and changes in previous circumstances.

(c) The hourly unsubsidized employment requirement ~~may be reduced~~ does not apply for intensive education or training programs lasting 12 weeks or less when full-time attendance is required.

(d) Participants with an approved employment plan in place on July 1, 2003, which includes more than 12 months of postsecondary education or training shall be allowed to complete that plan provided that hourly requirements in section 256J.55, subdivision 1, and conditions specified in paragraph (b), and subdivisions 3 and 5 are met. A participant whose case is subsequently closed for three months or less for reasons other than noncompliance with program requirements and who return to MFIP shall be allowed to complete that plan provided that hourly requirements in section 256J.55, subdivision 1, and conditions specified in paragraph (b) and subdivisions 3 and 5 are met.

Sec. 49. Minnesota Statutes 2003 Supplement, section 256J.56, is amended to read:

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256J.56 EMPLOYMENT AND TRAINING SERVICES COMPONENT; EXEMPTIONS.

(a) An MFIP Paragraphs (b) and (c) apply only to an MFIP participant who was exempt from participating in employment services as of June 30, 2004, has not been required to develop an employment plan under section 256J.561, and continues to qualify for an exemption under this section. All exemptions under this section expire at the time of the participant's recertification. No new exemptions shall be granted under this section after June 30, 2004.

(b) A participant is exempt from the requirements of sections 256J.515 to 256J.57 if the participant belongs continues to belong to any of the following groups:

- (1) participants who are age 60 or older;
- (2) participants who are suffering from a permanent or temporary illness, injury, or incapacity which has been certified by a qualified professional when the illness, injury, or incapacity is expected to continue for more than 30 days and prevents the person from obtaining or retaining employment. Persons in this category with a temporary illness, injury, or incapacity must be reevaluated at least quarterly;
- (3) participants whose presence in the home is required as a caregiver because of the illness, injury, or incapacity of another member in the assistance unit, a relative in the household, or a foster child in the household when the illness or incapacity and the need for a person to provide assistance in the home has been certified by a qualified professional and is expected to continue for more than 30 days;
- (4) women who are pregnant, if the pregnancy has resulted in an incapacity that prevents the woman from obtaining or retaining employment, and the incapacity has been certified by a qualified professional;
- (5) caregivers of a child under the age of one year who personally provide full-time care for the child. This exemption may be used for only 12 months in a lifetime. In two-parent households, only one parent or other relative may qualify for this exemption;
- (6) participants experiencing a personal or family crisis that makes them incapable of participating in the program, as determined by the county agency. If the participant does not agree with the county agency's determination, the participant may seek certification from a qualified professional, as defined in section 256J.08, that the participant is incapable of participating in the program.

Persons in this exemption category must be reevaluated every 60 days. A personal or family crisis related to family violence, as determined by the county or a job counselor with the assistance of a person trained in domestic violence, should not result in an exemption, but should be addressed through the development or revision of an employment plan under section 256J.521, subdivision 3; or

- (7) caregivers with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (f), or a home and community-based waiver services program under chapter

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256B, or meets the criteria for severe emotional disturbance under section 245.4871, subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c). Caregivers in this exemption category are presumed to be prevented from obtaining or retaining employment.

A caregiver who is exempt under clause (5) must enroll in and attend an early childhood and family education class, a parenting class, or some similar activity, if available, during the period of time the caregiver is exempt under this section. Notwithstanding section 256J.46, failure to attend the required activity shall not result in the imposition of a sanction.

(b) (c) The county agency must provide employment and training services to MFIP participants who are exempt under this section, but who volunteer to participate. Exempt volunteers may request approval for any work activity under section 256J.49, subdivision 13. The hourly participation requirements for nonexempt participants under section 256J.55, subdivision 1, do not apply to exempt participants who volunteer to participate.

(e) (d) This section expires on June 30, ~~2004~~ 2005.

Sec. 50. Minnesota Statutes 2003 Supplement, section 256J.57, subdivision 1, is amended to read:

Subdivision 1. **GOOD CAUSE FOR FAILURE TO COMPLY.** The county agency shall not impose the sanction under section 256J.46 if it determines that the participant has good cause for failing to comply with the requirements of sections 256J.515 to 256J.57. Good cause exists when:

- (1) appropriate child care is not available;
- (2) the job does not meet the definition of suitable employment;
- (3) the participant is ill or injured;
- (4) a member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan;
- (5) the parental caregiver participant is unable to secure necessary transportation;
- (6) the parental caregiver participant is in an emergency situation that prevents compliance with the employment plan;
- (7) the schedule of compliance with the employment plan conflicts with judicial proceedings;
- (8) a mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter, or a participant's work schedule;
- (9) the parental caregiver participant is already participating in acceptable work activities;

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(10) the employment plan requires an educational program for a caregiver under age 20, but the educational program is not available;

(11) activities identified in the employment plan are not available;

(12) the parental caregiver participant is willing to accept suitable employment, but suitable employment is not available; or

(13) the parental caregiver participant documents other verifiable impediments to compliance with the employment plan beyond the parental caregiver's participant's control.

The job counselor shall work with the participant to reschedule mandatory meetings for individuals who fall under clauses (1), (3), (4), (5), (6), (7), and (8).

Sec. 51. Minnesota Statutes 2003 Supplement, section 256J.626, subdivision 2, is amended to read:

Subd. 2. **ALLOWABLE EXPENDITURES.** (a) The commissioner must restrict expenditures under the consolidated fund to benefits and services allowed under title IV-A of the federal Social Security Act. Allowable expenditures under the consolidated fund may include, but are not limited to:

(1) short-term, nonrecurring shelter and utility needs that are excluded from the definition of assistance under Code of Federal Regulations, title 45, section 260.31, for families who meet the residency requirement in section 256J.12, subdivisions 1 and 1a. Payments under this subdivision are not considered TANF cash assistance and are not counted towards the 60-month time limit;

(2) transportation needed to obtain or retain employment or to participate in other approved work activities;

(3) direct and administrative costs of staff to deliver employment services for MFIP or the diversionary work program, to administer financial assistance, and to provide specialized services intended to assist hard-to-employ participants to transition to work;

(4) costs of education and training including functional work literacy and English as a second language;

(5) cost of work supports including tools, clothing, boots, and other work-related expenses;

(6) county administrative expenses as defined in Code of Federal Regulations, title 45, section 260(b);

(7) services to parenting and pregnant teens;

(8) supported work;

(9) wage subsidies;

(10) child care needed for MFIP or diversionary work program participants to participate in social services;

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(11) child care to ensure that families leaving MFIP or diversionary work program will continue to receive child care assistance from the time the family no longer qualifies for transition year child care until an opening occurs under the basic sliding fee child care program; and

(12) services to help noncustodial parents who live in Minnesota and have minor children receiving MFIP or DWP assistance, but do not live in the same household as the child, obtain or retain employment.

(b) Administrative costs that are not matched with county funds as provided in subdivision 8 may not exceed 7.5 percent of a county's or 15 percent of a tribe's reimbursement allocation under this section. The commissioner shall define administrative costs for purposes of this subdivision.

Sec. 52. Minnesota Statutes 2003 Supplement, section 256J.626, subdivision 6, is amended to read:

Subd. 6. **BASE ALLOCATION TO COUNTIES AND TRIBES.** (a) For purposes of this section, the following terms have the meanings given them:

(1) "2002 historic spending base" means the commissioner's determination of the sum of the reimbursement related to fiscal year 2002 of county or tribal agency expenditures for the base programs listed in clause (4), items (i) through (iv), and earnings related to calendar year 2002 in the base program listed in clause (4), item (v), and the amount of spending in fiscal year 2002 in the base program listed in clause (4), item (vi), issued to or on behalf of persons residing in the county or tribal service delivery area.

(2) "Initial allocation" means the amount potentially available to each county or tribe based on the formula in paragraphs (b) through (d).

(3) "Final allocation" means the amount available to each county or tribe based on the formula in paragraphs (b) through (d), after adjustment by subdivision 7.

(4) "Base programs" means the:

(i) MFIP employment and training services under Minnesota Statutes 2002, section 256J.62, subdivision 1, in effect June 30, 2002;

(ii) bilingual employment and training services to refugees under Minnesota Statutes 2002, section 256J.62, subdivision 6, in effect June 30, 2002;

(iii) work literacy language programs under Minnesota Statutes 2002, section 256J.62, subdivision 7, in effect June 30, 2002;

(iv) supported work program authorized in Laws 2001, First Special Session chapter 9, article 17, section 2, in effect June 30, 2002;

(v) administrative aid program under section 256J.76 in effect December 31, 2002; and

(vi) emergency assistance program under Minnesota Statutes 2002, section 256J.48, in effect June 30, 2002.

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(b)(1) Beginning July 1, 2003, the commissioner shall determine the initial allocation of funds available under this section according to clause (2).

(2) All of the funds available for the period beginning July 1, 2003, and ending December 31, 2004, shall be allocated to each county or tribe in proportion to the county's or tribe's share of the statewide 2002 historic spending base.

(c) For calendar year 2005, the commissioner shall determine the initial allocation of funds to be made available under this section in proportion to the county or tribe's initial allocation for the period of July 1, 2003, to December 31, 2004.

(d) The formula under this subdivision sunsets December 31, 2005.

(e) ~~Before November 30, 2003, a county or tribe may ask for a review of the commissioner's determination of the historic base spending when the county or tribe believes the 2002 information was inaccurate or incomplete. By January 1, 2004, the commissioner must adjust that county's or tribe's base when the commissioner has determined that inaccurate or incomplete information was used to develop that base. The commissioner shall adjust each county's or tribe's initial allocation under paragraph (e) and final allocation under subdivision 7 to reflect the base change~~ With the commencement of a new or expanded tribal TANF program or an agreement under section 256.01, subdivision 2, paragraph (g), in which some or all of the responsibilities of particular counties under this section are transferred to a tribe, the commissioner shall:

(1) in the case where all responsibilities under this section are transferred to a tribal program, determine the percentage of the county's current caseload that is transferring to a tribal program and adjust the affected county's allocation accordingly; and

(2) in the case where a portion of the responsibilities under this section are transferred to a tribal program, the commissioner shall consult with the affected county or counties to determine an appropriate adjustment to the allocation.

(f) Effective January 1, 2005, counties and tribes will have their final allocations adjusted based on the performance provisions of subdivision 7.

Sec. 53. Minnesota Statutes 2003 Supplement, section 256J.626, subdivision 7, is amended to read:

Subd. 7. **PERFORMANCE BASE FUNDS.** (a) Beginning calendar year 2005, each county and tribe will be allocated 95 percent of their initial calendar year 2005 allocation. Counties and tribes will be allocated additional funds based on performance as follows:

(1) for calendar year 2005, a county or tribe that achieves a 50 30 percent rate or higher on the MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

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(2) for calendar year 2006, a county or tribe that achieves a 40 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(3) for calendar year 2007, a county or tribe that achieves a 50 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(4) for calendar year 2008 and yearly thereafter, a county or tribe that achieves a 50 percent MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(5) for calendar years 2005 and thereafter, a county or tribe that performs above the top of its range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), in both measurements in the preceding year will receive an additional allocation equal to five percent of its initial allocation; or

~~(3)~~ (6) for calendar years 2005 and thereafter, a county or tribe that performs within its range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), in both measurements in the preceding year, or above the top of its range of expected performance in one measurement and within its expected range of performance in the other measurement, will receive an additional allocation equal to 2.5 percent of its initial allocation.

(b) Funds remaining unallocated after the performance-based allocations in paragraph (a) are available to the commissioner for innovation projects under subdivision 5.

(c)(1) If available funds are insufficient to meet county and tribal allocations under paragraph (a), the commissioner may make available for allocation funds that are unobligated and available from the innovation projects through the end of the current biennium.

(2) If after the application of clause (1) funds remain insufficient to meet county and tribal allocations under paragraph (a), the commissioner must proportionally reduce the allocation of each county and tribe with respect to their maximum allocation available under paragraph (a).

Sec. 54. Minnesota Statutes 2003 Supplement, section 256J.751, subdivision 2, is amended to read:

Subd. 2. **QUARTERLY COMPARISON REPORT.** The commissioner shall report quarterly to all counties on each county's performance on the following measures:

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- (1) percent of MFIP caseload working in paid employment;
- (2) percent of MFIP caseload receiving only the food portion of assistance;
- (3) number of MFIP cases that have left assistance;
- (4) federal participation requirements as specified in Title 1 of Public Law 104-193;
- (5) median placement wage rate;
- (6) caseload by months of TANF assistance;

(7) percent of MFIP and diversionary work program (DWP) cases off cash assistance or working 30 or more hours per week at one-year, two-year, and three-year follow-up points from a baseline quarter. This measure is called the self-support index. Twice annually, the commissioner shall report an expected range of performance for each county, county grouping, and tribe on the self-support index. The expected range shall be derived by a statistical methodology developed by the commissioner in consultation with the counties and tribes. The statistical methodology shall control differences across counties in economic conditions and demographics of the MFIP and DWP case load; and

(8) the MFIP work participation rate, defined as the participation requirements specified in title 1 of Public Law 104-193 applied to all MFIP cases except child only cases and cases exempt under section 256J.56.

Sec. 55. Minnesota Statutes 2003 Supplement, section 256J.95, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHING A DIVERSIONARY WORK PROGRAM (DWP).** (a) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, establishes block grants to states for temporary assistance for needy families (TANF). TANF provisions allow states to use TANF dollars for nonrecurrent, short-term diversionary benefits. The diversionary work program established on July 1, 2003, is Minnesota's TANF program to provide short-term diversionary benefits to eligible recipients of the diversionary work program.

(b) The goal of the diversionary work program is to provide short-term, necessary services and supports to families which will lead to unsubsidized employment, increase economic stability, and reduce the risk of those families needing longer term assistance, under the Minnesota family investment program (MFIP).

(c) When a family unit meets the eligibility criteria in this section, the family must receive a diversionary work program grant and is not eligible for MFIP.

(d) A family unit is eligible for the diversionary work program for a maximum of four consecutive months only once in a 12-month period. The 12-month period begins at the date of application or the date eligibility is met, whichever is later. During the ~~four-month period~~ four consecutive months, family maintenance needs as defined in subdivision 2, shall be vendor paid, up to the cash portion of the MFIP standard of need for the same size household. To the extent there is a balance available between the

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amount paid for family maintenance needs and the cash portion of the transitional standard, a personal needs allowance of up to \$70 per DWP recipient in the family unit shall be issued. The personal needs allowance payment plus the family maintenance needs shall not exceed the cash portion of the MFIP standard of need. Counties may provide supportive and other allowable services funded by the MFIP consolidated fund under section 256J.626 to eligible participants during the four-month diversionary period.

Sec. 56. Minnesota Statutes 2003 Supplement, section 256J.95, subdivision 3, is amended to read:

Subd. 3. **ELIGIBILITY FOR DIVERSIONARY WORK PROGRAM.** (a) Except for the categories of family units listed below, all family units who apply for cash benefits and who meet MFIP eligibility as required in sections 256J.11 to 256J.15 are eligible and must participate in the diversionary work program. Family units that are not eligible for the diversionary work program include:

(1) child only cases;

(2) a single-parent family unit that includes a child under 12 weeks of age. A parent is eligible for this exception once in a parent's lifetime and is not eligible if the parent has already used the previously allowed child under age one exemption from MFIP employment services;

(3) a minor parent without a high school diploma or its equivalent;

(4) a caregiver ~~an 18 or 19 years of age~~ year-old caregiver without a high school diploma or its equivalent who chooses to have an employment plan with an education option;

(5) a caregiver age 60 or over;

(6) family units with a parent caregiver who received DWP benefits within a 12-month period as defined in subdivision 1, paragraph (d) in the 12 months prior to the month the family applied for DWP, except as provided in paragraph (c); and

(7) family units with a parent caregiver who received MFIP within the past 12 months prior to the month the family unit applied for DWP;

(8) a family unit with a caregiver who received 60 or more months of TANF assistance; and

(9) a family unit with a caregiver who is disqualified from DWP or MFIP due to fraud.

(b) A two-parent family must participate in DWP unless both ~~parents~~ caregivers meet the criteria for an exception under paragraph (a), clauses (1) through (5), or the family unit includes a parent who meets the criteria in paragraph (a), clause (6) ~~or~~ (7), (8), or (9).

(c) Once DWP eligibility is determined, the four months run consecutively. If a participant leaves the program for any reason and reapplies during the four-month period, the county must redetermine eligibility for DWP.

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Sec. 57. Minnesota Statutes 2003 Supplement, section 256J.95, subdivision 11, is amended to read:

Subd. 11. **UNIVERSAL PARTICIPATION REQUIRED.** (a) All DWP caregivers, except caregivers who meet the criteria in paragraph (d), are required to participate in DWP employment services. Except as specified in paragraphs (b) and (c), employment plans under DWP must, at a minimum, meet the requirements in section 256J.55, subdivision 1.

(b) A caregiver who is a member of a two-parent family that is required to participate in DWP who would otherwise be ineligible for DWP under subdivision 3 may be allowed to develop an employment plan under section 256J.521, subdivision 2, paragraph (c), that may contain alternate activities and reduced hours.

(c) A participant who has is a victim of family violence waiver shall be allowed to develop an employment plan under section 256J.521, subdivision 3. A claim of family violence must be documented by the applicant or participant by providing a sworn statement which is supported by collateral documentation in section 256J.545, paragraph (b).

(d) One parent in a two-parent family unit that has a natural born child under 12 weeks of age is not required to have an employment plan until the child reaches 12 weeks of age unless the family unit has already used the exclusion under section 256J.561, subdivision 2, or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5).

(e) The provision in paragraph (d) ends the first full month after the child reaches 12 weeks of age. This provision is allowable only once in a caregiver's lifetime. In a two-parent household, only one parent shall be allowed to use this category.

(f) The participant and job counselor must meet within ten working days after the child reaches 12 weeks of age to revise the participant's employment plan. The employment plan for a family unit that has a child under 12 weeks of age that has already used the exclusion in section 256J.561 or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5), must be tailored to recognize the caregiving needs of the parent.

Sec. 58. Minnesota Statutes 2003 Supplement, section 256J.95, subdivision 12, is amended to read:

Subd. 12. **CONVERSION OR REFERRAL TO MFIP.** (a) If at any time during the DWP application process or during the four-month DWP eligibility period, it is determined that a participant is unlikely to benefit from the diversionary work program, the county shall convert or refer the participant to MFIP as specified in paragraph (d). Participants who are determined to be unlikely to benefit from the diversionary work program must develop and sign an employment plan. Participants who meet any one of the criteria in paragraph (b) shall be considered to be unlikely to

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benefit from DWP, provided the necessary documentation is available to support the determination.

(b) A participant who:

(1) has been determined by a qualified professional as being unable to obtain or retain employment due to an illness, injury, or incapacity that is expected to last at least 60 days;

(2) is required in the home as a caregiver because of the illness, injury, or incapacity, of a family member, or a relative in the household, or a foster child, and the illness, injury, or incapacity and the need for a person to provide assistance in the home has been certified by a qualified professional and is expected to continue more than 60 days;

(3) is determined by a qualified professional as being needed in the home to care for a child or adult meeting the special medical criteria in section ~~256J.425~~ 256J.561, subdivision 2, paragraph (d), clause (3);

(4) is pregnant and is determined by a qualified professional as being unable to obtain or retain employment due to the pregnancy; or

(5) has applied for SSI or ~~RSDI~~ SSDI.

(c) In a two-parent family unit, both parents must be determined to be unlikely to benefit from the diversionary work program before the family unit can be converted or referred to MFIP.

(d) A participant who is determined to be unlikely to benefit from the diversionary work program shall be converted to MFIP and, if the determination was made within 30 days of the initial application for benefits, no additional application form is required. A participant who is determined to be unlikely to benefit from the diversionary work program shall be referred to MFIP and, if the determination is made more than 30 days after the initial application, the participant must submit a program change request form. The county agency shall process the program change request form by the first of the following month to ensure that no gap in benefits is due to delayed action by the county agency. In processing the program change request form, the county must follow section 256J.32, subdivision 1, except that the county agency shall not require additional verification of the information in the case file from the DWP application unless the information in the case file is inaccurate, questionable, or no longer current.

(e) The county shall not request a combined application form for a participant who has exhausted the four months of the diversionary work program, has continued need for cash and food assistance, and has completed, signed, and submitted a program change request form within 30 days of the fourth month of the diversionary work program. The county must process the program change request according to section 256J.32, subdivision 1, except that the county agency shall not require additional verification of information in the case file unless the information is inaccurate, questionable, or no longer current. When a participant does not request MFIP within

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30 days of the diversionary work program benefits being exhausted, a new combined application form must be completed for any subsequent request for MFIP.

Sec. 59. Minnesota Statutes 2003 Supplement, section 256J.95, subdivision 19, is amended to read:

Subd. 19. ~~RECOVERY OF DWP OVERPAYMENTS AND UNDERPAYMENTS. When DWP benefits are subject to overpayments and underpayments. Anytime an overpayment or an ATM error underpayment is determined for DWP, the overpayment correction shall be recouped or calculated using prospective budgeting. Corrections shall be determined based on the policy in section 256J.34, subdivision 1, paragraphs (a), (b), and (c), and subdivision 3, paragraph (b), clause (1). ATM errors must be recovered as specified in section 256J.38, subdivision 5. DWP overpayments are not subject to cross program recoupment.~~

Sec. 60. Laws 1997, chapter 245, article 2, section 11, as amended by Laws 2003, First Special Session chapter 14, article 10, section 7, is amended to read:

Sec. 11. **FEDERAL FUNDS FOR VISITATION AND ACCESS.**

The commissioner of human services ~~may~~ shall apply for and accept on behalf of the state any federal funding received under Public Law Number 104-193 for access and visitation programs, and ~~must administer the funds for the activities allowed under federal law. The commissioner may distribute the funds on a competitive basis and shall transfer these funds in three equal amounts to the FATHER Project of Goodwill/Easter Seals Minnesota, the Hennepin County African American Men Project, and the Minnesota Fathers & Families Network for use of the activities allowed under federal law. These programs must monitor, evaluate, and report on the access and visitation programs in accordance with any applicable regulations.~~

Sec. 61. **TEMPORARY INELIGIBILITY OF MILITARY PERSONNEL.**

Counties must reserve a family's position under the child care assistance fund if a family has been receiving child care assistance but is temporarily ineligible for assistance due to increased income from active military service. Activated military personnel may be temporarily ineligible until deactivated. A county must reserve a military family's position on the basic sliding fee waiting list under the child care assistance fund if a family is approved to receive child care assistance and reaches the top of the waiting list but is temporarily ineligible for assistance.

Sec. 62. **REPEALER.**

(a) Minnesota Statutes 2002, sections 119B.211 and 256D.051, subdivision 17, are repealed.

(b) Laws 2000, chapter 489, article 1, section 36, is repealed.

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ARTICLE 5

LONG-TERM CARE

Section 1. Minnesota Statutes 2002, section 198.261, is amended to read:

198.261 CANTEEN AND, COFFEE SHOP, AND WOOD SHOP.

Any profits derived from the operation of canteens and, coffee shops, and wood shops at the Minnesota veterans homes shall be used by the board only for the direct benefit of the residents of the homes.

Sec. 2. Minnesota Statutes 2003 Supplement, section 245A.11, subdivision 2a, is amended to read:

Subd. 2a. **ADULT FOSTER CARE LICENSE CAPACITY.** (a) An adult foster care license holder may have a maximum license capacity of five if all persons in care are age 55 or over and do not have a serious and persistent mental illness or a developmental disability.

(b) The commissioner may grant variances to paragraph (a) to allow a foster care provider with a licensed capacity of five persons to admit an individual under the age of 55 if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(c) The commissioner may grant variances to paragraph (a) to allow the use of a fifth bed for emergency crisis services for a person with serious and persistent mental illness or a developmental disability, regardless of age, if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(d) Notwithstanding paragraph (a), the commissioner may issue an adult foster care license with a capacity of five adults when the capacity is recommended by the county licensing agency of the county in which the facility is located and if the recommendation verifies that:

(1) the facility meets the physical environment requirements in the adult foster care licensing rule;

(2) the five-bed living arrangement is specified for each resident in the resident's:

(i) individualized plan of care;

(ii) individual service plan under section 256B.092, subdivision 1b, if required; or

(iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required;

(3) the license holder obtains written and signed informed consent from each resident or resident's legal representative documenting the resident's informed choice

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to living in the home and that the resident's refusal to consent would not have resulted in service termination; and

(4) the facility was licensed for adult foster care before March 1, 2003.

(e) The commissioner shall not issue a new adult foster care license under paragraph (d) after June 30, 2005. The commissioner shall allow a facility with an adult foster care license issued under paragraph (d) before June 30, 2005, to continue with a capacity of five ~~or six~~ adults if the license holder continues to comply with the requirements in paragraph (d).

Sec. 3. Minnesota Statutes 2002, section 256B.0625, is amended by adding a subdivision to read:

Subd. 2a. SKILLED NURSING FACILITY AND HOSPICE SERVICES FOR DUAL ELIGIBLES. Medical assistance covers skilled nursing facility services for individuals eligible for both medical assistance and Medicare who have waived the Medicare skilled nursing facility room and board benefit and have enrolled in the Medicare hospice program. Medical assistance covers skilled nursing facility services regardless of whether an individual enrolled in the Medicare hospice program prior to, on, or after the date of the hospitalization that qualified the individual for Medicare skilled nursing facility services.

Sec. 4. Minnesota Statutes 2002, section 256B.0911, subdivision 4a, is amended to read:

Subd. 4a. PREADMISSION SCREENING ACTIVITIES RELATED TO NURSING FACILITY ADMISSIONS. (a) All applicants to Medicaid certified nursing facilities, including certified boarding care facilities, must be screened prior to admission regardless of income, assets, or funding sources for nursing facility care, except as described in subdivision 4b. The purpose of the screening is to determine the need for nursing facility level of care as described in paragraph (d) and to complete activities required under federal law related to mental illness and mental retardation as outlined in paragraph (b).

(b) A person who has a diagnosis or possible diagnosis of mental illness, mental retardation, or a related condition must receive a preadmission screening before admission regardless of the exemptions outlined in subdivision 4b, paragraph (b), to identify the need for further evaluation and specialized services, unless the admission prior to screening is authorized by the local mental health authority or the local developmental disabilities case manager, or unless authorized by the county agency according to Public Law ~~100-508~~ 101-508.

The following criteria apply to the preadmission screening:

(1) the county must use forms and criteria developed by the commissioner to identify persons who require referral for further evaluation and determination of the need for specialized services; and

(2) the evaluation and determination of the need for specialized services must be done by:

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(i) a qualified independent mental health professional, for persons with a primary or secondary diagnosis of a serious mental illness; or

(ii) a qualified mental retardation professional, for persons with a primary or secondary diagnosis of mental retardation or related conditions. For purposes of this requirement, a qualified mental retardation professional must meet the standards for a qualified mental retardation professional under Code of Federal Regulations, title 42, section 483.430.

(c) The local county mental health authority or the state mental retardation authority under Public Law Numbers 100-203 and 101-508 may prohibit admission to a nursing facility if the individual does not meet the nursing facility level of care criteria or needs specialized services as defined in Public Law Numbers 100-203 and 101-508. For purposes of this section, "specialized services" for a person with mental retardation or a related condition means active treatment as that term is defined under Code of Federal Regulations, title 42, section 483.440 (a)(1).

(d) The determination of the need for nursing facility level of care must be made according to criteria developed by the commissioner. In assessing a person's needs, consultation team members shall have a physician available for consultation and shall consider the assessment of the individual's attending physician, if any. The individual's physician must be included if the physician chooses to participate. Other personnel may be included on the team as deemed appropriate by the county.

Sec. 5. Minnesota Statutes 2003 Supplement, section 256B.0915, subdivision 3a, is amended to read:

Subd. 3a. **ELDERLY WAIVER COST LIMITS.** (a) The monthly limit for the cost of waived services to an individual elderly waiver client shall be the weighted average monthly nursing facility rate of the case mix resident class to which the elderly waiver client would be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, less the recipient's maintenance needs allowance as described in subdivision 1d, paragraph (a), until the first day of the state fiscal year in which the resident assessment system as described in section 256B.437 for nursing home rate determination is implemented. Effective on the first day of the state fiscal year in which the resident assessment system as described in section 256B.437 for nursing home rate determination is implemented and the first day of each subsequent state fiscal year, the monthly limit for the cost of waived services to an individual elderly waiver client shall be the rate of the case mix resident class to which the waiver client would be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, in effect on the last day of the previous state fiscal year, adjusted by the greater of any legislatively adopted home and community-based services ~~cost-of-living~~ percentage rate increase or any ~~legislatively adopted the average statewide percent rate~~ percentage increase for ~~in nursing facilities facility~~ payment rates.

(b) If extended medical supplies and equipment or environmental modifications are or will be purchased for an elderly waiver client, the costs may be prorated for up to 12 consecutive months beginning with the month of purchase. If the monthly cost of a recipient's waived services exceeds the monthly limit established in paragraph

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(a), the annual cost of all waived services shall be determined. In this event, the annual cost of all waived services shall not exceed 12 times the monthly limit of waived services as described in paragraph (a).

Sec. 6. Minnesota Statutes 2003 Supplement, section 256B.0915, subdivision 3b, is amended to read:

Subd. 3b. **COST LIMITS FOR ELDERLY WAIVER APPLICANTS WHO RESIDE IN A NURSING FACILITY.** (a) For a person who is a nursing facility resident at the time of requesting a determination of eligibility for elderly waived services, a monthly conversion limit for the cost of elderly waived services may be requested. The monthly conversion limit for the cost of elderly waiver services shall be the resident class assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, for that resident in the nursing facility where the resident currently resides until July 1 of the state fiscal year in which the resident assessment system as described in section 256B.437 for nursing home rate determination is implemented. Effective on July 1 of the state fiscal year in which the resident assessment system as described in section 256B.437 for nursing home rate determination is implemented, the monthly conversion limit for the cost of elderly waiver services shall be the per diem nursing facility rate as determined by the resident assessment system as described in section 256B.437 for that resident in the nursing facility where the resident currently resides multiplied by 365 and divided by 12, less the recipient's maintenance needs allowance as described in subdivision 1d. The initially approved conversion rate may be adjusted by the greater of any subsequent legislatively adopted home and community-based services cost-of-living percentage rate increase or any subsequent legislatively adopted the average statewide percentage rate increase for in nursing facilities facility payment rates. The limit under this subdivision only applies to persons discharged from a nursing facility after a minimum 30-day stay and found eligible for waived services on or after July 1, 1997.

(b) The following costs must be included in determining the total monthly costs for the waiver client:

(1) cost of all waived services, including extended medical supplies and equipment and environmental modifications; and

(2) cost of skilled nursing, home health aide, and personal care services reimbursable by medical assistance.

Sec. 7. Minnesota Statutes 2003 Supplement, section 256B.431, subdivision 32, is amended to read:

Subd. 32. **PAYMENT DURING FIRST 90 DAYS.** (a) For rate years beginning on or after July 1, 2001, the total payment rate for a facility reimbursed under this section, section 256B.434, or any other section for the first 90 paid days after admission shall be:

(1) for the first 30 paid days, the rate shall be 120 percent of the facility's medical assistance rate for each case mix class;

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(2) for the next 60 paid days after the first 30 paid days, the rate shall be 110 percent of the facility's medical assistance rate for each case mix class;

(3) beginning with the 91st paid day after admission, the payment rate shall be the rate otherwise determined under this section, section 256B.434, or any other section; and

(4) payments under this paragraph apply to admissions occurring on or after July 1, 2001, and before July 1, 2003, and to resident days occurring before July 30, 2003.

(b) For rate years beginning on or after July 1, 2003, the total payment rate for a facility reimbursed under this section, section 256B.434, or any other section shall be:

(1) for the first 30 calendar days after admission, the rate shall be 120 percent of the facility's medical assistance rate for each RUG class;

(2) beginning with the 31st calendar day after admission, the payment rate shall be the rate otherwise determined under this section, section 256B.434, or any other section; and

(3) payments under this paragraph apply to admissions occurring on or after July 1, 2003.

(c) Effective January 1, 2004, the enhanced rates under this subdivision shall not be allowed if a resident has resided during the previous 30 calendar days in:

(1) the same nursing facility;

(2) a nursing facility owned or operated by a related party; or

(3) a nursing facility or part of a facility that closed or was in the process of closing.

Sec. 8. Minnesota Statutes 2002, section 256B.431, is amended by adding a subdivision to read:

Subd. 40. DESIGNATION OF AREAS TO RECEIVE METROPOLITAN RATES. (a) For rate years beginning on or after July 1, 2004, and subject to paragraph (b), nursing facilities located in areas designated as metropolitan areas by the federal Office of Management and Budget using census bureau data shall be considered metro, in order to:

(1) determine rate increases under this section, section 256B.434, or any other section; and

(2) establish nursing facility reimbursement rates for the new nursing facility reimbursement system developed under Laws 2001, First Special Session chapter 9, article 5, section 35, as amended by Laws 2002, chapter 220, article 14, section 19.

(b) Paragraph (a) applies only if designation as a metro facility results in a level of reimbursement that is higher than the level the facility would have received without application of that paragraph.

EFFECTIVE DATE. This section is effective July 1, 2004.

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Sec. 9. Minnesota Statutes 2003 Supplement, section 256B.69, subdivision 6b, is amended to read:

Subd. 6b. **HOME AND COMMUNITY-BASED WAIVER SERVICES.** (a) For individuals enrolled in the Minnesota senior health options project authorized under subdivision 23, elderly waiver services shall be covered according to the terms and conditions of the federal agreement governing that demonstration project.

(b) For individuals under age 65 enrolled in demonstrations authorized under subdivision 23, home and community-based waiver services shall be covered according to the terms and conditions of the federal agreement governing that demonstration project.

(c) The commissioner of human services shall issue requests for proposals for collaborative service models between counties and managed care organizations to integrate the home and community-based elderly waiver services and additional nursing home services into the prepaid medical assistance program.

(d) Notwithstanding Minnesota Rules, part 9500.1457, subpart 1, item C, elderly waiver services shall be covered statewide no sooner than July 1, 2006, under the prepaid medical assistance program for all individuals who are eligible according to section 256B.0915. The commissioner may develop a schedule to phase in implementation of these waiver services, including collaborative service models under paragraph (c). The commissioner shall phase in implementation beginning with those counties participating under section 256B.692, and those counties where a viable collaborative service model has been developed. In consultation with counties and all managed care organizations that have expressed an interest in participating in collaborative service models, the commissioner shall evaluate the models. The commissioner shall consider the evaluation in selecting the most appropriate models for statewide implementation.

ARTICLE 6

HEALTH CARE

Section 1. Minnesota Statutes 2002, section 13.3806, is amended by adding a subdivision to read:

Subd. 4a. **BIRTH DEFECTS INFORMATION SYSTEM.** Information collected for the birth defects information system is governed by section 144.2217.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

Sec. 2. Minnesota Statutes 2002, section 62A.30, subdivision 2, is amended to read:

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Subd. 2. **REQUIRED COVERAGE.** Every policy, plan, certificate, or contract referred to in subdivision 1 ~~issued or renewed after August 1, 1988,~~ that provides coverage to a Minnesota resident must provide coverage for routine screening procedures for cancer, including mammograms, surveillance tests for ovarian cancer for women who are at risk for ovarian cancer as defined in subdivision 3, and pap smears, when ordered or provided by a physician in accordance with the standard practice of medicine.

Sec. 3. Minnesota Statutes 2002, section 62A.30, is amended by adding a subdivision to read:

Subd. 3. OVARIAN CANCER SURVEILLANCE TESTS. For purposes of subdivision 2:

(a) "At risk for ovarian cancer" means:

(1) having a family history:

(i) with one or more first or second degree relatives with ovarian cancer;

(ii) of clusters of women relatives with breast cancer; or

(iii) of nonpolyposis colorectal cancer; or

(2) testing positive for BRCA1 or BRCA2 mutations.

(b) "Surveillance tests for ovarian cancer" means annual screening using:

(1) CA-125 serum tumor marker testing;

(2) transvaginal ultrasound;

(3) pelvic examination; or

(4) other proven ovarian cancer screening tests currently being evaluated by the federal Food and Drug Administration or by the National Cancer Institute.

Sec. 4. Minnesota Statutes 2002, section 62H.01, is amended to read:

62H.01 AUTHORITY TO JOINTLY SELF-INSURE.

Any two or more employers, excluding the state and its political subdivisions as described in section 471.617, subdivision 1, who are authorized to transact business in Minnesota may jointly self-insure employee health, dental, short-term disability benefits, or other benefits permitted under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq. If an employer chooses to jointly self-insure in accordance with this chapter, the employer must participate in the joint plan for at least three consecutive years. If an employer terminates participation in the joint plan before the conclusion of this three-year period, a financial penalty may be assessed under the joint plan, not to exceed the amount contributed by the employer to the plan's reserves as determined under Minnesota Rules, part 2765.1200. Joint plans must have a minimum of 1,000 covered employees enrollees and meet all conditions and terms of sections 62H.01 to 62H.08. Joint plans covering employers not resident in Minnesota must meet the requirements of sections 62H.01 to

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62H.08 as if the portion of the plan covering Minnesota resident employees was treated as a separate plan. ~~A plan may cover employees resident in other states only if the plan complies with the applicable laws of that state.~~

A multiple employer welfare arrangement as defined in United States Code, title 29, section 1002(40)(a), is subject to this chapter to the extent authorized by the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq. The commissioner of commerce may, on behalf of the state, enter into an agreement with the United States Secretary of Labor for delegation to the state of some or all of the secretary's enforcement authority with respect to multiple employer welfare arrangements, as described in United States Code, title 29, section 1136(c).

Sec. 5. Minnesota Statutes 2002, section 62H.02, is amended to read:

62H.02 REQUIRED PROVISIONS.

A joint self-insurance plan must include aggregate excess stop-loss coverage and individual excess stop-loss coverage provided by an insurance company licensed by the state of Minnesota. Aggregate excess stop-loss coverage must include provisions to cover incurred, unpaid claim liability in the event of plan termination. In addition, the plan of self-insurance must have participating employers fund an amount at least equal to the point at which the excess or stop-loss insurer has contracted to assume 100 percent of additional liability. A joint self-insurance plan must submit its proposed excess or stop-loss insurance contract to the commissioner of commerce at least 30 days prior to the proposed plan's effective date and at least 30 days subsequent to any renewal date. The commissioner shall review the contract to determine if they meet the standards established by sections 62H.01 to 62H.08 and respond within a 30-day period. Any excess or stop-loss insurance plan must contain a provision that the excess or stop-loss insurer will give the plan and the commissioner of commerce a minimum of 180 days' notice of termination or nonrenewal. If the plan fails to secure replacement coverage within 60 days after receipt of the notice of cancellation or nonrenewal, the commissioner shall issue an order providing for the orderly termination of the plan. The commissioner may waive the requirements of this section and of any rule relating to the requirements of this section, if the commissioner determines that a joint self-insurance plan has established alternative arrangements that fully fund the plan's liability or incurred but unpaid claims. The commissioner may not waive the requirement that a joint self-insurance plan have excess stop-loss coverage.

Sec. 6. Minnesota Statutes 2002, section 62H.04, is amended to read:

62H.04 COMPLIANCE WITH OTHER LAWS.

(a) A joint self-insurance plan is subject to the requirements of chapters 62A, 62E, 62L, and 62Q, and sections 72A.17 to 72A.32 unless otherwise specifically exempt. A joint self-insurance plan must pay assessments made by the Minnesota Comprehensive Health Association, as required under section 62E.11.

(b) A joint self-insurance plan is exempt from providing the mandated health benefits described in chapters 62A, 62E, 62L, and 62Q if it otherwise provides the

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benefits required under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001, et seq., for all employers and not just for the employers with 50 or more employees who are covered by that federal law.

(c) A joint self-insurance plan is exempt from section 62L.03, subdivision 1, if the plan offers an annual open enrollment period of no less than 15 days during which all employers that qualify for membership may enter the plan without preexisting condition limitations or exclusions except those permitted under chapter 62L.

(d) A joint self-insurance plan is exempt from sections 62A.146, 62A.16, 62A.17, 62A.20, and 62A.21, 62A.65, subdivision 5, paragraph (b), and 62E.16 if the joint self-insurance plan complies with the continuation requirements under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001, et seq., for all employers and not just for the employers with 20 or more employees who are covered by that federal law.

(e) A joint self-insurance plan must provide to all employers the maternity coverage required by federal law for employers with 15 or more employees.

Sec. 7. Minnesota Statutes 2002, section 62J.23, subdivision 2, is amended to read:

Subd. 2. **INTERIM RESTRICTIONS.** (a) From July 1, 1992, until rules are adopted by the commissioner under this section, the restrictions in the federal Medicare antikickback statutes in section 1128B(b) of the Social Security Act, United States Code, title 42, section 1320a-7b(b), and rules adopted under the federal statutes, apply to all persons in the state, regardless of whether the person participates in any state health care program. ~~The commissioner shall approve a transition plan submitted to the commissioner by January 1, 1993, by a person who is in violation of this section that provides a reasonable time for the person to modify prohibited practices or divest financial interests in other persons in order to come into compliance with this section. Transition plans that identify individuals are private data. Transition plans that do not identify individuals are nonpublic data.~~

(b) Nothing in paragraph (a) shall be construed to prohibit an individual from receiving a discount or other reduction in price or a limited-time free supply or samples of a prescription drug, medical supply, or medical equipment offered by a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager, so long as:

(1) the discount or reduction in price is provided to the individual in connection with the purchase of a prescription drug, medical supply, or medical equipment prescribed for that individual;

(2) it otherwise complies with the requirements of state and federal law applicable to enrollees of state and federal public health care programs;

(3) the discount or reduction in price does not exceed the amount paid directly by the individual for the prescription drug, medical supply, or medical equipment; and

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(4) the limited-time free supply or samples are provided by a physician or pharmacist, as provided by the federal Prescription Drug Marketing Act.

(c) No benefit, reward, remuneration, or incentive for continued product use may be provided to an individual or an individual's family by a pharmaceutical manufacturer, medical supply or device manufacturer, or pharmacy benefit manager, except that this prohibition does not apply to:

(1) activities permitted under paragraph (b);

(2) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient, at a discount or reduced price or free of charge, ancillary products necessary for treatment of the medical condition for which the prescription drug, medical supply, or medical equipment was prescribed or provided; and

(3) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient a trinket or memento of insignificant value.

(d) Nothing in this subdivision shall be construed to prohibit a health plan company from offering a tiered formulary with different co-payment or cost-sharing amounts for different drugs.

EFFECTIVE DATE. This section is effective July 1, 2004.

Sec. 8. [62Q.37] AUDITS CONDUCTED BY NATIONALLY RECOGNIZED INDEPENDENT ORGANIZATION.

Subdivision 1. APPLICABILITY. This section applies only to (i) a nonprofit health service plan corporation operating under chapter 62C; (ii) a health maintenance organization operating under chapter 62D; (iii) a community integrated service network operating under chapter 62N; and (iv) managed care organizations operating under chapter 256B, 256D, or 256L.

Subd. 2. DEFINITIONS. For purposes of this section, the following terms have the meanings given them.

(a) "Commissioner" means the commissioner of health for purposes of regulating health maintenance organizations and community integrated service networks, the commissioner of commerce for purposes of regulating nonprofit health service plan corporations, or the commissioner of human services for the purpose of contracting with managed care organizations serving persons enrolled in programs under chapter 256B, 256D, or 256L.

(b) "Health plan company" means (i) a nonprofit health service plan corporation operating under chapter 62C; (ii) a health maintenance organization operating under chapter 62D; (iii) a community integrated service network operating under chapter 62N; or (iv) a managed care organization operating under chapter 256B, 256D, or 256L.

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(c) "Nationally recognized independent organization" means (i) an organization that sets specific national standards governing health care quality assurance processes, utilization review, provider credentialing, marketing, and other topics covered by this chapter and other chapters and audits and provides accreditation to those health plan companies that meet those standards. The American Accreditation Health Care Commission (URAC), the National Committee for Quality Assurance (NCQA), and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) are, at a minimum, defined as nationally recognized independent organizations; and (ii) the Centers for Medicare and Medicaid Services for purposes of reviews or audits conducted of health plan companies under Part C of Title XVIII of the Social Security Act or under section 1876 of the Social Security Act.

(d) "Performance standard" means those standards relating to quality management and improvement, access and availability of service, utilization review, provider selection, provider credentialing, marketing, member rights and responsibilities, complaints, appeals, grievance systems, enrollee information and materials, enrollment and disenrollment, subcontractual relationships and delegation, confidentiality, continuity and coordination of care, assurance of adequate capacity and services, coverage and authorization of services, practice guidelines, health information systems, and financial solvency.

Subd. 3. AUDITS. (a) The commissioner may conduct routine audits and investigations as prescribed under the commissioner's respective state authorizing statutes. If a nationally recognized independent organization has conducted an audit of the health plan company using audit procedures that are comparable to or more stringent than the commissioner's audit procedures:

(1) the commissioner may accept the independent audit and require no further audit if the results of the independent audit show that the performance standard being audited meets or exceeds state standards;

(2) the commissioner may accept the independent audit and limit further auditing if the results of the independent audit show that the performance standard being audited partially meets state standards;

(3) the health plan company must demonstrate to the commissioner that the nationally recognized independent organization that conducted the audit is qualified and that the results of the audit demonstrate that the particular performance standard partially or fully meets state standards; and

(4) if the commissioner has partially or fully accepted an independent audit of the performance standard, the commissioner may use the finding of a deficiency with regard to statutes or rules by an independent audit as the basis for a targeted audit or enforcement action.

(b) If a health plan company has formally delegated activities that are required under either state law or contract to another organization that has undergone an audit by a nationally recognized independent organization, that health plan company may use the nationally recognized accrediting body's determination on its own behalf under this section.

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Subd. 4. DISCLOSURE OF NATIONAL STANDARDS AND REPORTS. The health plan company shall:

(1) request that the nationally recognized independent organization provide to the commissioner a copy of the current nationally recognized independent organization's standards upon which the acceptable accreditation status has been granted; and

(2) provide the commissioner a copy of the most current final audit report issued by the nationally recognized independent organization.

Subd. 5. ACCREDITATION NOT REQUIRED. Nothing in this section requires a health plan company to seek an acceptable accreditation status from a nationally recognized independent organization.

Subd. 6. CONTINUED AUTHORITY. Nothing in this section precludes the commissioner from conducting audits and investigations or requesting data as granted under the commissioner's respective state authorizing statutes.

Subd. 7. HUMAN SERVICES. The commissioner of human services shall implement this section in a manner that is consistent with applicable federal laws and regulations.

Subd. 8. CONFIDENTIALITY. Any documents provided to the commissioner related to the audit report that may be accepted under this section are private data on individuals pursuant to chapter 13 and may only be released as permitted under section 60A.03, subdivision 9.

Sec. 9. Minnesota Statutes 2002, section 62T.02, is amended by adding a subdivision to read:

Subd. 3. SEASONAL EMPLOYEES. A purchasing alliance may define eligible employees to include seasonal employees. For purposes of this chapter, "seasonal employee" means an employee who is employed on a full-time basis for at least six months during the calendar year and is unemployed for no longer than four months during the calendar year. If seasonal employees are included:

(1) the alliance must not show bias in the selection of members based on the percentage of seasonal employees employed by an employer member;

(2) prior to issuance or renewal, the employer must inform the alliance that it will include seasonal employees;

(3) the employer must cover seasonal employees for the entire term of its plan year; and

(4) the purchasing alliance may require an employer-member contribution of at least 50 percent of the cost of employee coverage during the months the seasonal employee is unemployed.

Sec. 10. Minnesota Statutes 2003 Supplement, section 128C.05, subdivision 1a, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 1a. **SUPERVISED COMPETITIVE HIGH SCHOOL DIVING.** Notwithstanding Minnesota Rules, part 4717.3750, any pool built before January 1, 1987, that was used for a one-meter board high school diving program during the 2000-2001 school year may be used for supervised competitive one-meter board high school diving unless a pool that meets the requirements of Minnesota Rules, part 4717.3750, is located within the school district. A school or district using a pool for supervised training practice for competitive high school diving that does not meet the requirements of the rule Minnesota Rules, part 4717.3750, must provide appropriate notice to parents and participants as to the type of variance from Minnesota Rules and risk it may present.

Sec. 11. Minnesota Statutes 2002, section 144.2215, is amended to read:

144.2215 **MINNESOTA BIRTH DEFECTS REGISTRY INFORMATION SYSTEM.**

Subdivision 1. **ESTABLISHMENT.** The commissioner of health shall develop a statewide birth defects registry system to provide for the collection, analysis, and dissemination of birth defects information establish and maintain an information system containing data on the cause, treatment, prevention, and cure of major birth defects. The commissioner shall consult with representatives and experts in epidemiology, medicine, insurance, health maintenance organizations, genetics, consumers, and voluntary organizations in developing the system and may phase in the implementation of the system.

Subd. 2. **DUTIES OF COMMISSIONER.** The commissioner of health shall design a system that allows the commissioner to:

(1) monitor incidence trends of birth defects to detect potential public health problems, predict risks, and assist in responding to birth defects clusters;

(2) more accurately target intervention, prevention, and services for communities, patients, and their families;

(3) inform health professionals and citizens of the prevalence of and risks for birth defects;

(4) conduct scientific investigation and surveys of the causes, mortality, methods of treatment, prevention, and cure for birth defects;

(5) modify, as necessary, the birth defects information system through demonstration projects;

(6) remove identifying information about a child whose parent or legal guardian has chosen not to participate in the system as permitted by section 144.2216, subdivision 4;

(7) protect the individually identifiable information as required by section 144.2217;

(8) limit the dissemination of identifying information as required by sections 144.2218 and 144.2219; and

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(9) use the birth defects coding scheme defined by the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

Sec. 12. [144.2216] BIRTH DEFECTS RECORDS AND REPORTS REQUIRED.

Subdivision 1. HOSPITALS AND SIMILAR INSTITUTIONS. With the informed consent of a parent or guardian, as provided in subdivision 4, a hospital, medical clinic, medical laboratory, or other institution for the hospitalization, clinical or laboratory diagnosis, or care of human beings shall provide the commissioner of health with access to information on each birth defect case in the manner and at the times that the commissioner designates.

Subd. 2. OTHER INFORMATION REPOSITORIES. With the informed consent of a parent or guardian, as provided in subdivision 4, other repositories of information on the diagnosis or care of infants may provide the commissioner with access to information on each case of birth defects in the manner and at the times that the commissioner designates.

Subd. 3. REPORTING WITHOUT LIABILITY. Furnishing information in good faith in compliance with this section does not subject the person, hospital, medical clinic, medical laboratory, data repository, or other institution furnishing the information to any action for damages or relief.

Subd. 4. OPT OUT. A parent or legal guardian must be informed by the commissioner at the time of the initial data collection that they may request removal at any time of personal identifying information concerning a child from the birth defects information system using a written form prescribed by the commissioner. The commissioner shall advise parents or legal guardians of infants:

(1) that the information on birth defects may be retained by the Department of Health;

(2) the benefit of retaining birth defects records;

(3) that they may elect to have the birth defects information collected once, within one year of birth, but to require that all personally identifying information be destroyed immediately upon the commissioner receiving the information.

If the parents of an infant object in writing to the maintaining of birth defects information, the objection or election shall be recorded on a form that is signed by a parent or legal guardian and submitted to the commissioner of health; and

(4) that if the parent or legal guardian chooses to opt-out, the commissioner will not be able to inform the parent or legal guardian of a child of information related to the prevention, treatment, or cause of a particular birth defect.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

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Sec. 13. [144.2217] CLASSIFICATION OF BIRTH DEFECTS INFORMATION.

Information collected on individuals for the birth defects information system are private data on individuals as defined in section 13.02, subdivision 12, and may only be used for the purposes in sections 144.2215 to 144.2219. Any disclosure other than one provided for in sections 144.2215 to 144.2219 is a misdemeanor.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

Sec. 14. [144.2218] TRANSFERS OF INFORMATION TO OTHER GOVERNMENT AGENCIES.

Information collected by the birth defects information system may be disseminated to a state or local government agency in Minnesota or another state solely for purposes consistent with sections 144.2215 to 144.2219, provided that the state or local government agency agrees to maintain the classification of the information as provided under section 144.2217. Information collected by other states consistent with sections 144.2215 to 144.2219 may be received by the commissioner of health and must be maintained according to section 144.2217.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

Sec. 15. [144.2219] TRANSFERS OF INFORMATION TO RESEARCH ENTITIES.

Information from the birth defects information system that does not contain identifying information may be shared with research entities upon request for studies approved by the commissioner and appropriate institutional review boards. For studies approved by the commissioner that require identifying information about a child or a parent or legal guardian of the child, the commissioner shall contact the parent or legal guardian to obtain informed consent to share identifying information with the research entity. Notwithstanding section 144.335, subdivision 3a, paragraph (d), the parent or legal guardian must provide informed consent before the information may be shared. The commissioner must collect all reasonable costs of locating and obtaining consent from the research entity.

EFFECTIVE DATE. This section is effective upon receipt of a federal grant to establish a birth defects information system.

Sec. 16. Minnesota Statutes 2002, section 145C.01, subdivision 7, is amended to read:

Subd. 7. **HEALTH CARE FACILITY.** "Health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58, a nursing home licensed to serve adults under section 144A.02, a home care provider licensed under sections 144A.43 to 144A.47, an adult foster care provider licensed under chapter 245A and Minnesota Rules, parts 9555.5105 to 9555.6265, or a hospice provider licensed under sections 144A.75 to 144A.755.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 17. Minnesota Statutes 2003 Supplement, 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 carry out the specific duties in paragraphs (a) through (aa):

~~(1)~~ (a) 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. Administration and supervision of human services activities or services includes, but is not limited to, assuring timely and accurate distribution of benefits, completeness of service, and quality program management. In addition to administering and supervising human services activities vested by law in the department, the commissioner shall have the authority to:

~~(a)~~ (1) require county agency participation in training and technical assistance programs to promote compliance with statutes, rules, federal laws, regulations, and policies governing human services;

~~(b)~~ (2) monitor, on an ongoing basis, the performance of county agencies in the operation and administration of human services, enforce compliance with statutes, rules, federal laws, regulations, and policies governing welfare services and promote excellence of administration and program operation;

~~(c)~~ (3) develop a quality control program or other monitoring program to review county performance and accuracy of benefit determinations;

~~(d)~~ (4) require county agencies to make an adjustment to the public assistance benefits issued to any individual consistent with federal law and regulation and state law and rule and to issue or recover benefits as appropriate;

~~(e)~~ (5) delay or deny payment of all or part of the state and federal share of benefits and administrative reimbursement according to the procedures set forth in section 256.017;

~~(f)~~ (6) make contracts with and grants to public and private agencies and organizations, both profit and nonprofit, and individuals, using appropriated funds; and

~~(g)~~ (7) enter into contractual agreements with federally recognized Indian tribes with a reservation in Minnesota to the extent necessary for the tribe to operate a federally approved family assistance program or any other program under the supervision of the commissioner. The commissioner shall consult with the affected county or counties in the contractual agreement negotiations, if the county or counties wish to be included, in order to avoid the duplication of county and tribal assistance program services. The commissioner may establish necessary accounts for the purposes of receiving and disbursing funds as necessary for the operation of the programs.

(2) (b) Inform county agencies, on a timely basis, of changes in statute, rule, federal law, regulation, and policy necessary to county agency administration of the programs.

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(3) (c) 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.

(4) (d) 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.

(5) (e) 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.

(6) (f) 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.

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

(8) (h) Act as designated 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. For children under the guardianship of the commissioner whose interests would be best served by adoptive placement, the commissioner may contract with a licensed child-placing agency or a Minnesota tribal social services agency to provide adoption services. A contract with a licensed child-placing agency must be designed to supplement existing county efforts and may not replace existing county programs, unless the replacement is agreed to by the county board and the appropriate exclusive bargaining representative or the commissioner has evidence that child placements of the county continue to be substantially below that of other counties. Funds encumbered and obligated under an agreement for a specific child shall remain available until the terms of the agreement are fulfilled or the agreement is terminated.

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

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(10) (j) 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) (k) Establish county, regional, or statewide schedules of maximum fees and charges which may be paid by county 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) (l) 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 experimental projects, it is further provided that the commissioner of human services is authorized to waive the enforcement of existing specific statutory program requirements, rules, 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 four 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) (1) the secretary of health and human services of the United States has agreed, for the same project, to waive state plan requirements relative to statewide uniformity; and

(b) (2) a comprehensive plan, including estimated project costs, shall be approved by the Legislative Advisory Commission and filed with the commissioner of administration.

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

(14) (n) Allocate federal fiscal disallowances or sanctions which are based on quality control error rates for the aid to families with dependent children program formerly codified in sections 256.72 to 256.87, medical assistance, or food stamp program in the following manner:

(a) (1) one-half of the total amount of the disallowance shall be borne by the county boards responsible for administering the programs. For the medical assistance and the AFDC program formerly codified in sections 256.72 to 256.87, disallowances 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 the AFDC program formerly codified in sections 256.72 to 256.87, and medical assistance programs. For the food stamp program, sanctions shall be shared by each county board, with 50 percent of the sanction being distributed to each county in the same proportion as that county's administrative costs for food stamps are to the total of all food stamp administrative costs for all counties, and 50 percent of the sanctions

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being distributed to each county in the same proportion as that county's value of food stamp benefits issued are to the total of all benefits issued for all counties. 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; and

(b) (2) notwithstanding the provisions of paragraph (a) clause (1), 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) clause (1), 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) clause (1).

(15) (o) 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 \$1,000,000. When the balance in the account exceeds \$1,000,000, 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.

(16) (p) Have the authority to make direct payments to facilities providing shelter to women and their children according to section 256D.05, subdivision 3. Upon the written request of a shelter facility that has been denied payments under section 256D.05, subdivision 3, the commissioner shall review all relevant evidence and make a determination within 30 days of the request for review regarding issuance of direct payments to the shelter facility. Failure to act within 30 days shall be considered a determination not to issue direct payments.

(17) (q) Have the authority to establish and enforce the following county reporting requirements:

(a) (1) the commissioner shall establish fiscal and statistical reporting requirements necessary to account for the expenditure of funds allocated to counties for human services programs. When establishing financial and statistical reporting requirements, the commissioner shall evaluate all reports, in consultation with the counties, to determine if the reports can be simplified or the number of reports can be reduced;

(b) (2) the county board shall submit monthly or quarterly reports to the department as required by the commissioner. Monthly reports are due no later than 15 working days after the end of the month. Quarterly reports are due no later than 30 calendar days after the end of the quarter, unless the commissioner determines that the deadline must be shortened to 20 calendar days to avoid jeopardizing compliance with federal deadlines or risking a loss of federal funding. Only reports that are complete,

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legible, and in the required format shall be accepted by the commissioner;

(e) (3) if the required reports are not received by the deadlines established in clause ~~(b)~~ (2), the commissioner may delay payments and withhold funds from the county board until the next reporting period. When the report is needed to account for the use of federal funds and the late report results in a reduction in federal funding, the commissioner shall withhold from the county boards with late reports an amount equal to the reduction in federal funding until full federal funding is received;

~~(d)~~ (4) a county board that submits reports that are late, illegible, incomplete, or not in the required format for two out of three consecutive reporting periods is considered noncompliant. When a county board is found to be noncompliant, the commissioner shall notify the county board of the reason the county board is considered noncompliant and request that the county board develop a corrective action plan stating how the county board plans to correct the problem. The corrective action plan must be submitted to the commissioner within 45 days after the date the county board received notice of noncompliance;

~~(e)~~ (5) the final deadline for fiscal reports or amendments to fiscal reports is one year after the date the report was originally due. If the commissioner does not receive a report by the final deadline, the county board forfeits the funding associated with the report for that reporting period and the county board must repay any funds associated with the report received for that reporting period;

~~(f)~~ (6) the commissioner may not delay payments, withhold funds, or require repayment under ~~paragraph (e) clause (3) or (e) (5)~~ if the county demonstrates that the commissioner failed to provide appropriate forms, guidelines, and technical assistance to enable the county to comply with the requirements. If the county board disagrees with an action taken by the commissioner under ~~paragraph (e) clause (3) or (e) (5)~~, the county board may appeal the action according to sections 14.57 to 14.69; and

~~(g)~~ (7) counties subject to withholding of funds under ~~paragraph (e) clause (3) or forfeiture or repayment of funds under paragraph (e) clause (5)~~ shall not reduce or withhold benefits or services to clients to cover costs incurred due to actions taken by the commissioner under ~~paragraph (e) clause (3) or (e) (5)~~.

(18) (r) Allocate federal fiscal disallowances or sanctions for audit exceptions when federal fiscal disallowances or sanctions are based on a statewide random sample for the foster care program under title IV-E of the Social Security Act, United States Code, title 42, in direct proportion to each county's title IV-E foster care maintenance claim for that period.

(19) (s) Be responsible for ensuring the detection, prevention, investigation, and resolution of fraudulent activities or behavior by applicants, recipients, and other participants in the human services programs administered by the department.

(20) (t) Require county agencies to identify overpayments, establish claims, and utilize all available and cost-beneficial methodologies to collect and recover these overpayments in the human services programs administered by the department.

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~~(21)~~ (u) Have the authority to administer a drug rebate program for drugs purchased pursuant to the prescription drug program established under section 256.955 after the beneficiary's satisfaction of any deductible established in the program. The commissioner shall require a rebate agreement from all manufacturers of covered drugs as defined in section 256B.0625, subdivision 13. Rebate agreements for prescription drugs delivered on or after July 1, 2002, must include rebates for individuals covered under the prescription drug program who are under 65 years of age. For each drug, the amount of the rebate shall be equal to the rebate as defined for purposes of the federal rebate program in United States Code, title 42, section ~~1396r-8(e)(1)~~ 1396r-8. The manufacturers must provide full payment within 30 days of receipt of the state invoice for the rebate within the terms and conditions used for the federal rebate program established pursuant to section 1927 of title XIX of the Social Security Act. The manufacturers must provide the commissioner with any information necessary to verify the rebate determined per drug. The rebate program shall utilize the terms and conditions used for the federal rebate program established pursuant to section 1927 of title XIX of the Social Security Act.

~~(22)~~ (v) Have the authority to administer the federal drug rebate program for drugs purchased under the medical assistance program as allowed by section 1927 of title XIX of the Social Security Act and according to the terms and conditions of section 1927. Rebates shall be collected for all drugs that have been dispensed or administered in an outpatient setting and that are from manufacturers who have signed a rebate agreement with the United States Department of Health and Human Services.

~~(23)~~ (w) Have the authority to administer a supplemental drug rebate program for drugs purchased under the medical assistance program. The commissioner may enter into supplemental rebate contracts with pharmaceutical manufacturers and may require prior authorization for drugs that are from manufacturers that have not signed a supplemental rebate contract. Prior authorization of drugs shall be subject to the provisions of section 256B.0625, subdivision 13.

~~(24)~~ (x) Operate the department's communication systems account established in Laws 1993, First Special Session chapter 1, article 1, section 2, subdivision 2, to manage shared communication costs necessary for the operation of the programs the commissioner supervises. A communications account may also be established for each regional treatment center which operates communications systems. Each account must be used to manage shared communication costs necessary for the operations of the programs the commissioner supervises. The commissioner may distribute the costs of operating and maintaining communication systems to participants in a manner that reflects actual usage. Costs may include acquisition, licensing, insurance, maintenance, repair, staff time and other costs as determined by the commissioner. Nonprofit organizations and state, county, and local government agencies involved in the operation of programs the commissioner supervises may participate in the use of the department's communications technology and share in the cost of operation. The commissioner may accept on behalf of the state any gift, bequest, devise or personal property of any kind, or money tendered to the state for any lawful purpose pertaining to the communication activities of the department. Any money received for this

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purpose must be deposited in the department's communication systems accounts. Money collected by the commissioner for the use of communication systems must be deposited in the state communication systems account and is appropriated to the commissioner for purposes of this section.

(25) (y) Receive any federal matching money that is made available through the medical assistance program for the consumer satisfaction survey. Any federal money received for the survey is appropriated to the commissioner for this purpose. The commissioner may expend the federal money received for the consumer satisfaction survey in either year of the biennium.

(26) (z) Designate community information and referral call centers and incorporate cost reimbursement claims from First Call Minnesota and Greater Twin Cities United Way the designated community information and referral call centers into the federal cost reimbursement claiming processes of the department according to federal law, rule, and regulations. Existing information and referral centers provided by Greater Twin Cities United Way or existing call centers for which Greater Twin Cities United Way has legal authority to represent, shall be included in these designations upon review by the commissioner and assurance that these services are accredited and in compliance with national standards. Any reimbursement received is appropriated to the commissioner and all designated information and referral centers shall be disbursed to First Call Minnesota and Greater Twin receive payments Cities United Way according to normal department payment schedules established by the commissioner upon final approval of allocation methodologies from the United States Department of Health and Human Services Division of Cost Allocation or other appropriate authorities.

(27) (aa) Develop recommended standards for foster care homes that address the components of specialized therapeutic services to be provided by foster care homes with those services.

Sec. 18. Minnesota Statutes 2002, section 256.955, subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** (a) For purposes of this section, the following definitions apply.

(b) "Health plan" has the meaning provided in section 62Q.01, subdivision 3.

(c) "Health plan company" has the meaning provided in section 62Q.01, subdivision 4.

(d) "Qualified individual" means an individual who meets the requirements described in subdivision 2a or 2b, and:

(1) who is not determined eligible for medical assistance according to section 256B.0575, who is not determined eligible for medical assistance or general assistance medical care without a spenddown, or who is not enrolled in MinnesotaCare;

(2) is not enrolled in prescription drug coverage under a health plan;

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(3) is not enrolled in prescription drug coverage under a Medicare supplement plan, as defined in sections 62A.31 to 62A.44, or policies, contracts, or certificates that supplement Medicare issued by health maintenance organizations or those policies, contracts, or certificates governed by section 1833 or 1876 of the federal Social Security Act, United States Code, title 42, section 1395, et seq., as amended;

(4) has not had coverage described in clauses (2) and (3) for at least four months prior to application for the program; and

(5) is a permanent resident of Minnesota as defined in section 256L.09.

Sec. 19. Minnesota Statutes 2003 Supplement, section 256.955, subdivision 2a, is amended to read:

Subd. 2a. **ELIGIBILITY.** An individual satisfying the following requirements and the requirements described in subdivision 2, paragraph (d), is eligible for the prescription drug program:

(1) is at least 65 years of age or older; and

(2) is eligible as a qualified Medicare beneficiary according to section 256B.057, subdivision 3 or 3a, or is eligible under section 256B.057, subdivision 3 or 3a, and is also eligible for medical assistance or ~~general assistance medical care~~ with a spenddown as defined in section 256B.056, subdivision 5.

Sec. 20. Minnesota Statutes 2002, section 256.955, subdivision 2b, is amended to read:

Subd. 2b. **ELIGIBILITY.** Effective July 1, 2002, an individual satisfying the following requirements and the requirements described in subdivision 2, paragraph (d), is eligible for the prescription drug program:

(1) is under 65 years of age; and

(2) is eligible as a qualified Medicare beneficiary according to section 256B.057, subdivision 3 or 3a or is eligible under section 256B.057, subdivision 3 or 3a and is also eligible for medical assistance or ~~general assistance medical care~~ with a spenddown as defined in section 256B.056, subdivision 5.

Sec. 21. Minnesota Statutes 2003 Supplement, section 256B.06, subdivision 4, is amended to read:

Subd. 4. **CITIZENSHIP REQUIREMENTS.** (a) Eligibility for medical assistance is limited to citizens of the United States, qualified noncitizens as defined in this subdivision, and other persons residing lawfully in the United States.

(b) "Qualified noncitizen" means a person who meets one of the following immigration criteria:

(1) admitted for lawful permanent residence according to United States Code, title 8;

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(2) admitted to the United States as a refugee according to United States Code, title 8, section 1157;

(3) granted asylum according to United States Code, title 8, section 1158;

(4) granted withholding of deportation according to United States Code, title 8, section 1253(h);

(5) paroled for a period of at least one year according to United States Code, title 8, section 1182(d)(5);

(6) granted conditional entrant status according to United States Code, title 8, section 1153(a)(7);

(7) determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, title V of the Omnibus Consolidated Appropriations Bill, Public Law 104-200;

(8) is a child of a noncitizen determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, title V, of the Omnibus Consolidated Appropriations Bill, Public Law 104-200; or

(9) determined to be a Cuban or Haitian entrant as defined in section 501(e) of Public Law 96-422, the Refugee Education Assistance Act of 1980.

(c) All qualified noncitizens who were residing in the United States before August 22, 1996, who otherwise meet the eligibility requirements of this chapter, are eligible for medical assistance with federal financial participation.

(d) All qualified noncitizens who entered the United States on or after August 22, 1996, and who otherwise meet the eligibility requirements of this chapter, are eligible for medical assistance with federal financial participation through November 30, 1996.

Beginning December 1, 1996, qualified noncitizens who entered the United States on or after August 22, 1996, and who otherwise meet the eligibility requirements of this chapter are eligible for medical assistance with federal participation for five years if they meet one of the following criteria:

(i) refugees admitted to the United States according to United States Code, title 8, section 1157;

(ii) persons granted asylum according to United States Code, title 8, section 1158;

(iii) persons granted withholding of deportation according to United States Code, title 8, section 1253(h);

(iv) veterans of the United States armed forces with an honorable discharge for a reason other than noncitizen status, their spouses and unmarried minor dependent children; or

(v) persons on active duty in the United States armed forces, other than for training, their spouses and unmarried minor dependent children.

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Beginning December 1, 1996, qualified noncitizens who do not meet one of the criteria in items (i) to (v) are eligible for medical assistance without federal financial participation as described in paragraph (j).

(e) Noncitizens who are not qualified noncitizens as defined in paragraph (b), who are lawfully residing in the United States and who otherwise meet the eligibility requirements of this chapter, are eligible for medical assistance under clauses (1) to (3). These individuals must cooperate with the Immigration and Naturalization Service to pursue any applicable immigration status, including citizenship, that would qualify them for medical assistance with federal financial participation.

(1) Persons who were medical assistance recipients on August 22, 1996, are eligible for medical assistance with federal financial participation through December 31, 1996.

(2) Beginning January 1, 1997, persons described in clause (1) are eligible for medical assistance without federal financial participation as described in paragraph (j).

(3) Beginning December 1, 1996, persons residing in the United States prior to August 22, 1996, who were not receiving medical assistance and persons who arrived on or after August 22, 1996, are eligible for medical assistance without federal financial participation as described in paragraph (j).

(f) Nonimmigrants who otherwise meet the eligibility requirements of this chapter are eligible for the benefits as provided in paragraphs (g) to (i). For purposes of this subdivision, a "nonimmigrant" is a person in one of the classes listed in United States Code, title 8, section 1101(a)(15).

(g) Payment shall also be made for care and services that are furnished to noncitizens, regardless of immigration status, who otherwise meet the eligibility requirements of this chapter, if such care and services are necessary for the treatment of an emergency medical condition, except for organ transplants and related care and services and routine prenatal care.

(h) For purposes of this subdivision, the term "emergency medical condition" means a medical condition that meets the requirements of United States Code, title 42, section 1396b(v).

(i) Pregnant noncitizens who are undocumented or nonimmigrants, who otherwise meet the eligibility requirements of this chapter, are eligible for medical assistance payment without federal financial participation for care and services through the period of pregnancy, and 60 days postpartum, except for labor and delivery.

(j) Qualified noncitizens as described in paragraph (d), and all other noncitizens lawfully residing in the United States as described in paragraph (e), who are ineligible for medical assistance with federal financial participation and who otherwise meet the eligibility requirements of chapter 256B and of this paragraph, are eligible for medical assistance without federal financial participation. Qualified noncitizens as described in paragraph (d) are only eligible for medical assistance without federal financial participation for five years from their date of entry into the United States.

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(k) Beginning October 1, 2003, persons who are receiving care and rehabilitation services from a nonprofit center established to serve victims of torture and are otherwise ineligible for medical assistance under this chapter or ~~general assistance medical care under section 256D.03~~ are eligible for medical assistance without federal financial participation. These individuals are eligible only for the period during which they are receiving services from the center. Individuals eligible under this paragraph shall not be required to participate in prepaid medical assistance.

Sec. 22. Minnesota Statutes 2003 Supplement, section 256B.0625, subdivision 9, is amended to read:

Subd. 9. **DENTAL SERVICES.** (a) Medical assistance covers dental services. Dental services include, with prior authorization, fixed bridges that are cost-effective for persons who cannot use removable dentures because of their medical condition.

(b) Coverage of dental services for adults age 21 and over who are not pregnant is subject to a \$500 annual benefit limit and covered services are limited to:

- (1) diagnostic and preventative services;
- (2) basic restorative services; and
- (3) emergency services.

Emergency services, dentures, and extractions related to dentures are not included in the \$500 annual benefit limit.

Sec. 23. Minnesota Statutes 2003 Supplement, section 256D.03, subdivision 3, is amended to read:

Subd. 3. **GENERAL ASSISTANCE MEDICAL CARE; ELIGIBILITY.** (a) General assistance medical care may be paid for any person who is not eligible for medical assistance under chapter 256B, including eligibility for medical assistance based on a spenddown of excess income according to section 256B.056, subdivision 5, or MinnesotaCare as defined in paragraph (b), except as provided in paragraph (c), and:

(1) who is receiving assistance under section 256D.05, except for families with children who are eligible under Minnesota family investment program (MFIP), or who is having a payment made on the person's behalf under sections 256I.01 to 256I.06; or

(2) who is a resident of Minnesota; and

(i) who has gross countable income not in excess of 75 percent of the federal poverty guidelines for the family size, using a six-month budget period and whose equity in assets is not in excess of \$1,000 per assistance unit. Exempt assets, the reduction of excess assets, and the waiver of excess assets must conform to the medical assistance program in section 256B.056, subdivision 3, with the following exception: the maximum amount of undistributed funds in a trust that could be distributed to or on behalf of the beneficiary by the trustee, assuming the full exercise of the trustee's discretion under the terms of the trust, must be applied toward the asset maximum; or

(ii) who has gross countable income above 75 percent of the federal poverty guidelines but not in excess of 175 percent of the federal poverty guidelines for the

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family size, using a six-month budget period, whose equity in assets is not in excess of the limits in section 256B.056, subdivision 3c, and who applies during an inpatient hospitalization.

(b) General assistance medical care may not be paid for applicants or recipients who meet all eligibility requirements of MinnesotaCare as defined in sections 256L.01 to 256L.16, and are adults with dependent children under 21 whose gross family income is equal to or less than 275 percent of the federal poverty guidelines.

(c) For applications received on or after October 1, 2003, eligibility may begin no earlier than the date of application. For individuals eligible under paragraph (a), clause (2), item (i), a redetermination of eligibility must occur every 12 months. Individuals are eligible under paragraph (a), clause (2), item (ii), only during inpatient hospitalization but may reapply if there is a subsequent period of inpatient hospitalization. Beginning January 1, 2000, Minnesota health care program applications completed by recipients and applicants who are persons described in paragraph (b), may be returned to the county agency to be forwarded to the Department of Human Services or sent directly to the Department of Human Services for enrollment in MinnesotaCare. If all other eligibility requirements of this subdivision are met, eligibility for general assistance medical care shall be available in any month during which a MinnesotaCare eligibility determination and enrollment are pending. Upon notification of eligibility for MinnesotaCare, notice of termination for eligibility for general assistance medical care shall be sent to an applicant or recipient. If all other eligibility requirements of this subdivision are met, eligibility for general assistance medical care shall be available until enrollment in MinnesotaCare subject to the provisions of paragraph (e).

(d) The date of an initial Minnesota health care program application necessary to begin a determination of eligibility shall be the date the applicant has provided a name, address, and Social Security number, signed and dated, to the county agency or the Department of Human Services. If the applicant is unable to provide a name, address, Social Security number, and signature when health care is delivered due to a medical condition or disability, a health care provider may act on an applicant's behalf to establish the date of an initial Minnesota health care program application by providing the county agency or Department of Human Services with provider identification and a temporary unique identifier for the applicant. The applicant must complete the remainder of the application and provide necessary verification before eligibility can be determined. The county agency must assist the applicant in obtaining verification if necessary.

(e) County agencies are authorized to use all automated databases containing information regarding recipients' or applicants' income in order to determine eligibility for general assistance medical care or MinnesotaCare. Such use shall be considered sufficient in order to determine eligibility and premium payments by the county agency.

(f) General assistance medical care is not available for a person in a correctional facility unless the person is detained by law for less than one year in a county correctional or detention facility as a person accused or convicted of a crime, or

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admitted as an inpatient to a hospital on a criminal hold order, and the person is a recipient of general assistance medical care at the time the person is detained by law or admitted on a criminal hold order and as long as the person continues to meet other eligibility requirements of this subdivision.

(g) General assistance medical care is not available for applicants or recipients who do not cooperate with the county agency to meet the requirements of medical assistance.

(h) In determining the amount of assets of an individual eligible under paragraph (a), clause (2), item (i), there shall be included any asset or interest in an asset, including an asset excluded under paragraph (a), that was given away, sold, or disposed of for less than fair market value within the 60 months preceding application for general assistance medical care or during the period of eligibility. Any transfer described in this paragraph shall be presumed to have been for the purpose of establishing eligibility for general assistance medical care, unless the individual furnishes convincing evidence to establish that the transaction was exclusively for another purpose. For purposes of this paragraph, the value of the asset or interest shall be the fair market value at the time it was given away, sold, or disposed of, less the amount of compensation received. For any uncompensated transfer, the number of months of ineligibility, including partial months, shall be calculated by dividing the uncompensated transfer amount by the average monthly per person payment made by the medical assistance program to skilled nursing facilities for the previous calendar year. The individual shall remain ineligible until this fixed period has expired. The period of ineligibility may exceed 30 months, and a reapplication for benefits after 30 months from the date of the transfer shall not result in eligibility unless and until the period of ineligibility has expired. The period of ineligibility begins in the month the transfer was reported to the county agency, or if the transfer was not reported, the month in which the county agency discovered the transfer, whichever comes first. For applicants, the period of ineligibility begins on the date of the first approved application.

(i) When determining eligibility for any state benefits under this subdivision, the income and resources of all noncitizens shall be deemed to include their sponsor's income and resources as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, title IV, Public Law 104-193, sections 421 and 422, and subsequently set out in federal rules.

(j) Undocumented noncitizens and nonimmigrants are ineligible for general assistance medical care, ~~except an individual eligible under paragraph (a), clause (4), remains eligible through September 30, 2003.~~ For purposes of this subdivision, a nonimmigrant is an individual in one or more of the classes listed in United States Code, title 8, section 1101(a)(15), and an undocumented noncitizen is an individual who resides in the United States without the approval or acquiescence of the Immigration and Naturalization Service.

(k) Notwithstanding any other provision of law, a noncitizen who is ineligible for medical assistance due to the deeming of a sponsor's income and resources, is

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ineligible for general assistance medical care.

(1) Effective July 1, 2003, general assistance medical care emergency services end.

Sec. 24. Minnesota Statutes 2003 Supplement, section 256D.03, subdivision 4, is amended to read:

Subd. 4. **GENERAL ASSISTANCE MEDICAL CARE; SERVICES.** (a)(i) For a person who is eligible under subdivision 3, paragraph (a), clause (2), item (i), general assistance medical care covers, except as provided in paragraph (c):

- (1) inpatient hospital services;
- (2) outpatient hospital services;
- (3) services provided by Medicare certified rehabilitation agencies;
- (4) prescription drugs and other products recommended through the process established in section 256B.0625, subdivision 13;
- (5) equipment necessary to administer insulin and diagnostic supplies and equipment for diabetics to monitor blood sugar level;
- (6) eyeglasses and eye examinations provided by a physician or optometrist;
- (7) hearing aids;
- (8) prosthetic devices;
- (9) laboratory and X-ray services;
- (10) physician's services;
- (11) medical transportation except special transportation;
- (12) chiropractic services as covered under the medical assistance program;
- (13) podiatric services;
- (14) dental services and dentures, subject to the limitations specified in section 256B.0625, subdivision 9;
- (15) outpatient services provided by a mental health center or clinic that is under contract with the county board and is established under section 245.62;
- (16) day treatment services for mental illness provided under contract with the county board;
- (17) prescribed medications for persons who have been diagnosed as mentally ill as necessary to prevent more restrictive institutionalization;
- (18) psychological services, medical supplies and equipment, and Medicare premiums, coinsurance and deductible payments;

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(19) medical equipment not specifically listed in this paragraph when the use of the equipment will prevent the need for costlier services that are reimbursable under this subdivision;

(20) services performed by a certified pediatric nurse practitioner, a certified family nurse practitioner, a certified adult nurse practitioner, a certified obstetric/gynecological nurse practitioner, a certified neonatal nurse practitioner, or a certified geriatric nurse practitioner in independent practice, if, (1) the service is otherwise covered under this chapter as a physician service, (2) the service provided on an inpatient basis is not included as part of the cost for inpatient services included in the operating payment rate, and (3) the service is within the scope of practice of the nurse practitioner's license as a registered nurse, as defined in section 148.171;

(21) services of a certified public health nurse or a registered nurse practicing in a public health nursing clinic that is a department of, or that operates under the direct authority of, a unit of government, if the service is within the scope of practice of the public health nurse's license as a registered nurse, as defined in section 148.171; and

(22) telemedicine consultations, to the extent they are covered under section 256B.0625, subdivision 3b.

(ii) Effective October 1, 2003, for a person who is eligible under subdivision 3, paragraph (a), clause (2), item (ii), general assistance medical care coverage is limited to inpatient hospital services, including physician services provided during the inpatient hospital stay. A \$1,000 deductible is required for each inpatient hospitalization.

(b) Gender reassignment surgery and related services are not covered services under this subdivision unless the individual began receiving gender reassignment services prior to July 1, 1995.

(c) 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 sections 256B.02, subdivision 8, and 256B.0625. For payments made during fiscal year 1990 and later years, the commissioner shall consult with an

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independent actuary in establishing prepayment rates, but shall retain final control over the rate methodology.

(d) Recipients eligible under subdivision 3, paragraph (a), clause (2), item (i), shall pay the following co-payments for services provided on or after October 1, 2003:

(1) \$3 per nonpreventive visit. For purposes of this subdivision, a visit means an episode of service which is required because of a recipient's symptoms, diagnosis, or established illness, and which is delivered in an ambulatory setting by a physician or physician ancillary, chiropractor, podiatrist, nurse midwife, advanced practice nurse, audiologist, optician, or optometrist;

(2) \$25 for eyeglasses;

(3) \$25 for nonemergency visits to a hospital-based emergency room;

(4) \$3 per brand-name drug prescription and \$1 per generic drug prescription, subject to a \$20 per month maximum for prescription drug co-payments. No co-payments shall apply to antipsychotic drugs when used for the treatment of mental illness; and

(5) 50 percent coinsurance on basic restorative dental services.

(e) Co-payments shall be limited to one per day per provider for nonpreventive visits, eyeglasses, and nonemergency visits to a hospital-based emergency room. Recipients of general assistance medical care are responsible for all co-payments in this subdivision. The general assistance medical care reimbursement to the provider shall be reduced by the amount of the co-payment, except that reimbursement for prescription drugs shall not be reduced once a recipient has reached the \$20 per month maximum for prescription drug co-payments. The provider collects the co-payment from the recipient. Providers may not deny services to recipients who are unable to pay the co-payment, except as provided in paragraph (f).

(f) If it is the routine business practice of a provider to refuse service to an individual with uncollected debt, the provider may include uncollected co-payments under this section. A provider must give advance notice to a recipient with uncollected debt before services can be denied.

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

(h) Chemical dependency services that are reimbursed under chapter 254B must not be reimbursed under general assistance medical care.

(i) The maximum payment for new vendors enrolled in the general assistance medical care program after the base year shall be determined from the average usual and customary charge of the same vendor type enrolled in the base year.

(j) The conditions of payment for services under this subdivision are the same as the conditions specified in rules adopted under chapter 256B governing the medical assistance program, unless otherwise provided by statute or rule.

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(k) Inpatient and outpatient payments shall be reduced by five percent, effective July 1, 2003. This reduction is in addition to the five percent reduction effective July 1, 2003, and incorporated by reference in paragraph (i).

(l) Payments for all other health services except inpatient, outpatient, and pharmacy services shall be reduced by five percent, effective July 1, 2003.

(m) Payments to managed care plans shall be reduced by five percent for services provided on or after October 1, 2003.

(n) 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.

Sec. 25. Minnesota Statutes 2003 Supplement, section 295.50, subdivision 9b, is amended to read:

Subd. 9b. **PATIENT SERVICES.** (a) "Patient services" means inpatient and outpatient services and other goods and services provided by hospitals, surgical centers, or health care providers. They include the following health care goods and services provided to a patient or consumer:

- (1) bed and board;
- (2) nursing services and other related services;
- (3) use of hospitals, surgical centers, or health care provider facilities;
- (4) medical social services;
- (5) drugs, biologicals, supplies, appliances, and equipment;
- (6) other diagnostic or therapeutic items or services;
- (7) medical or surgical services;
- (8) items and services furnished to ambulatory patients not requiring emergency care; and
- (9) emergency services; and
- (10) ~~covered services listed in section 256B.0625 and in Minnesota Rules, parts 9505.0170 to 9505.0475.~~

(b) "Patient services" does not include:

- (1) services provided to nursing homes licensed under chapter 144A;
- (2) examinations for purposes of utilization reviews, insurance claims or eligibility, litigation, and employment, including reviews of medical records for those purposes;
- (3) services provided to and by community residential mental health facilities licensed under Minnesota Rules, parts 9520.0500 to 9520.0690, and to and by residential treatment programs for children with severe emotional disturbance licensed or certified under chapter 245A;

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(4) services provided to and by community support programs and family community support programs approved under Minnesota Rules, parts 9535.1700 to 9535.1760 or certified as mental health rehabilitative services under chapter 256B;

(5) services provided to and by community mental health centers as defined in section 245.62, subdivision 2;

(6) services provided to and by assisted living programs and congregate housing programs; and

(7) hospice care services;

(8) home and community-based waived services under sections 256B.0915, 256B.49, 256B.491, and 256B.501;

(9) targeted case management services under sections 256B.0621; 256B.0625, subdivisions 20, 20a, 33, and 44; and 256B.094; and

(10) services provided to the following: supervised living facilities for persons with mental retardation or related conditions licensed under Minnesota Rules, parts 4665.0100 to 4665.9900; housing with services establishments required to be registered under chapter 144D; board and lodging establishments providing only custodial services that are licensed under chapter 157 and registered under section 157.17 to provide supportive services or health supervision services; adult foster homes as defined in Minnesota Rules, part 9555.5105; day training and habilitation services for adults with mental retardation and related conditions as defined in section 252.41, subdivision 3; boarding care homes as defined in Minnesota Rules, part 4655.0100; adult day care services as defined in section 245A.02, subdivision 2a; and home health agencies as defined in Minnesota Rules, part 9505.0175, subpart 15, or licensed under chapter 144A.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2004.

Sec. 26. Minnesota Statutes 2003 Supplement, section 295.53, subdivision 1, is amended to read:

Subdivision 1. **EXEMPTIONS.** (a) The following payments are excluded from the gross revenues subject to the hospital, surgical center, or health care provider taxes under sections 295.50 to 295.59:

(1) payments received for services provided under the Medicare program, including payments received from the government, and organizations governed by sections 1833 and 1876 of title XVIII of the federal Social Security Act, United States Code, title 42, section 1395, and enrollee deductibles, coinsurance, and co-payments, whether paid by the Medicare enrollee or by a Medicare supplemental coverage as defined in section 62A.011, subdivision 3, clause (10), or by Medicaid payments under title XIX of the federal Social Security Act. Payments for services not covered by Medicare are taxable;

(2) payments received for home health care services;

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(3) payments received from hospitals or surgical centers for goods and services on which liability for tax is imposed under section 295.52 or the source of funds for the payment is exempt under clause (1), (7), (10), or (14);

(4) payments received from health care providers for goods and services on which liability for tax is imposed under this chapter or the source of funds for the payment is exempt under clause (1), (7), (10), or (14);

(5) amounts paid for legend drugs, other than nutritional products, to a wholesale drug distributor who is subject to tax under section 295.52, subdivision 3, reduced by reimbursements received for legend drugs otherwise exempt under this chapter;

(6) payments received by a health care provider or the wholly owned subsidiary of a health care provider for care provided outside Minnesota;

(7) payments received from the chemical dependency fund under chapter 254B;

(8) payments received in the nature of charitable donations that are not designated for providing patient services to a specific individual or group;

(9) payments received for providing patient services incurred through a formal program of health care research conducted in conformity with federal regulations governing research on human subjects. Payments received from patients or from other persons paying on behalf of the patients are subject to tax;

(10) payments received from any governmental agency for services benefiting the public, not including payments made by the government in its capacity as an employer or insurer or payments made by the government for services provided under medical assistance, general assistance medical care, or the MinnesotaCare program, or the medical assistance program governed by title XIX of the federal Social Security Act, United States Code, title 42, sections 1396 to 1396v;

(11) government payments received by a regional treatment center the commissioner of human services for state-operated services;

(12) payments received by a health care provider for hearing aids and related equipment or prescription eyewear delivered outside of Minnesota;

(13) payments received by an educational institution from student tuition, student activity fees, health care service fees, government appropriations, donations, or grants, and for services identified in and provided under an individualized education plan as defined in section 256B.0625 or Code of Federal Regulations, chapter 34, section 300.340(a). Fee for service payments and payments for extended coverage are taxable; and

(14) payments received under the federal Employees Health Benefits Act, United States Code, title 5, section 8909(f), as amended by the Omnibus Reconciliation Act of 1990.

(b) Payments received by wholesale drug distributors for legend drugs sold directly to veterinarians or veterinary bulk purchasing organizations are excluded from

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the gross revenues subject to the wholesale drug distributor tax under sections 295.50 to 295.59.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2004.

Sec. 27. FETAL ALCOHOL SPECTRUM DISORDER APPROPRIATION TRANSFER.

(a) On July 1 of each fiscal year, beginning July 1, 2004, a portion of the general fund appropriation to the commissioner of health for fetal alcohol spectrum disorder administration and grants shall be transferred to a statewide organization that focuses solely on prevention of and intervention with fetal alcohol spectrum disorder as follows:

- (1) on July 1, 2004, \$340,000;
- (2) on July 1, 2005, \$990,049; and
- (3) on July 1, 2006, and annually thereafter, \$1,190,000.

(b) The money shall be used for prevention and intervention services and programs, including, but not limited to, community grants, professional education, public awareness, and diagnosis. The organization may retain \$60,000 of the transferred money for administrative costs. The organization shall report to the commissioner annually by January 15 on the services and programs funded by the appropriation.

Sec. 28. RULE AMENDMENT.

The commissioner of human services shall amend Minnesota Rules, part 9555.5105, subpart 20, to expand the definition of "legal representative" to include a health care agent appointed by a principal in a health care power of attorney to make health care decisions as provided in Minnesota Statutes, chapter 145C. The commissioner shall adopt rule amendments required by this section using the authority of Minnesota Statutes, section 14.388, subdivision 1, clause (3).

Sec. 29. COST OF HEALTH CARE REPORTING.

The commissioners of human services, health, and commerce shall meet with representatives of health plan companies as defined in Minnesota Statutes, section 62Q.01, subdivision 4, and hospitals to evaluate reporting requirements for these regulated entities and develop recommendations for reducing required reports. The commissioner must meet with the specified representatives prior to August 30, 2004, and must submit a consolidated report to the legislature by January 15, 2005. The report must:

- (1) identify the name and scope of each required report;
- (2) evaluate the need for and use of each report, including the value of the report to consumers;

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(3) evaluate the extent to which the report is used to reduce costs and increase quality of care;

(4) identify reports that are no longer required; and

(5) specify any statutory changes necessary to eliminate required reports.

Sec. 30. TRANSFER FROM THE UNIVERSITY OF MINNESOTA.

The transfer provided in Minnesota Statutes, section 62J.692, subdivision 10, may occur twice in fiscal year 2005, with the approval of the commissioners of human services, health, and finance, for the purposes of Minnesota Statutes, section 62J.692, subdivision 8.

Sec. 31. REPEALER.

Minnesota Statutes 2002, section 62H.07, is repealed.

ARTICLE 7

HEALTH CARE COST CONTAINMENT

Section 1. Minnesota Statutes 2002, section 62A.28, is amended to read:

62A.28 COVERAGE FOR SCALP HAIR PROSTHESES.

Subdivision 1. **SCOPE OF COVERAGE.** This section applies to all policies of accident and health insurance, health maintenance contracts regulated under chapter 62D, health benefit certificates offered through a fraternal benefit society regulated under chapter 64B, and group subscriber contracts offered by nonprofit health service plan corporations regulated under chapter 62C. This section does not apply to policies designed primarily to provide coverage payable on a per diem, fixed indemnity or nonexpense incurred basis, or policies that provide only accident coverage.

Subd. 2. **REQUIRED COVERAGE.** Every policy, plan, certificate, or contract referred to in subdivision 1 issued or renewed after August 1, 1987, must provide coverage for scalp hair prostheses worn for hair loss suffered as a result of alopecia areata.

The coverage required by this section is subject to a policy's the co-payment requirement, coinsurance, deductible, and other enrollee cost sharing requirements that apply to similar types of items under the policy, plan, certificate, or contract, and is limited to a maximum of \$350 in any benefit year, exclusive of any deductible.

EFFECTIVE DATE. This section is effective retroactive to January 1, 2004.

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Sec. 2. [62J.43] BEST PRACTICES AND QUALITY IMPROVEMENT.

(a) To improve quality and reduce health care costs, state agencies shall encourage the adoption of best practice guidelines and participation in best practices measurement activities by physicians, other health care providers, and health plan companies. The commissioner of health shall facilitate access to best practice guidelines and quality of care measurement information to providers, purchasers, and consumers by:

(1) identifying and promoting local community-based, physician-designed best practices care across the Minnesota health care system;

(2) disseminating information available to the commissioner on adherence to best practices care by physicians and other health care providers in Minnesota;

(3) educating consumers and purchasers on how to effectively use this information in choosing their providers and in making purchasing decisions; and

(4) making best practices and quality care measurement information available to enrollees and program participants through the Department of Health's Web site. The commissioner may convene an advisory committee to ensure that the Web site is designed to provide user friendly and easy accessibility.

(b) The commissioner of health shall collaborate with a nonprofit Minnesota quality improvement organization specializing in best practices and quality of care measurements to provide best practices criteria and assist in the collection of the data.

(c) The initial best practices and quality of care measurement criteria developed shall include asthma, diabetes, and at least two other preventive health measures. Hypertension and coronary artery disease shall be included within one year following availability.

(d) The commissioners of human services and employee relations may use the data to make decisions about contracts they enter into with health plan companies.

(e) This section does not apply if the best practices guidelines authorize or recommend denial of treatment, food, or fluids necessary to sustain life on the basis of the patient's age or expected length of life or the patient's present or predicted disability, degree of medical dependency, or quality of life.

(f) The commissioner of health, human services, and employee relations shall report to the legislature by January 15, 2005, on the status of best practices and quality of care initiatives, and shall present recommendations to the legislature on any statutory changes needed to increase the effectiveness of these initiatives.

(g) This section expires June 30, 2006.

Sec. 3. [62J.81] DISCLOSURE OF PAYMENTS FOR HEALTH CARE SERVICES.

Subdivision 1. REQUIRED DISCLOSURE OF ESTIMATED PAYMENT. A health care provider, as defined in section 62J.03, subdivision 8, shall, at the request of a consumer, provide that consumer with a good faith estimate of the reimbursement the provider expects to receive from the health plan company in which the consumer is enrolled. Health plan companies must allow contracted providers to release this

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information. A good faith estimate must also be made available at the request of a consumer who is not enrolled in a health plan company. Payment information provided by a provider to a patient pursuant to this subdivision does not constitute a legally binding estimate of the cost of services.

Subd. 2. **APPLICABILITY.** For purposes of this section, "consumer" does not include a medical assistance, MinnesotaCare, or general assistance medical care enrollee, for services covered under those programs.

Sec. 4. Minnesota Statutes 2002, section 72A.20, is amended by adding a subdivision to read:

Subd. 37. **ELECTRONIC TRANSMISSION OF REQUIRED INFORMATION.** A health carrier, as defined in section 62A.011, subdivision 2, is not in violation of this chapter for electronically transmitting or electronically making available information otherwise required to be delivered in writing under chapters 62A to 62Q and 72A to an enrollee as defined in section 62Q.01, subdivision 2a, and with the requirements of those chapters if the following conditions are met:

(1) the health carrier informs the enrollee that electronic transmission or access is available and, at the discretion of the health carrier, the enrollee is given one of the following options:

(i) electronic transmission or access will occur only if the enrollee affirmatively requests to the health carrier that the required information be electronically transmitted or available and a record of that request is retained by the health carrier; or

(ii) electronic transmission or access will automatically occur if the enrollee has not opted out of that manner of transmission by request to the health carrier and requested that the information be provided in writing. If the enrollee opts out of electronic transmission, a record of that request must be retained by the health carrier;

(2) the enrollee is allowed to withdraw the request at any time;

(3) if the information transmitted electronically contains individually identifiable data, it must be transmitted to a secured mailbox. If the information made available electronically contains individually identifiable data, it must be made available at a password-protected secured Web site;

(4) the enrollee is provided a customer service number on the enrollee's member card that may be called to request a written copy of the document; and

(5) the electronic transmission or electronic availability meets all other requirements of this chapter including, but not limited to, size of the typeface and any required time frames for distribution.

Sec. 5. Minnesota Statutes 2002, section 147.03, subdivision 1, is amended to read:

Subdivision 1. **ENDORSEMENT; RECIPROCITY.** (a) The board may issue a license to practice medicine to any person who satisfies the requirements in paragraphs (b) to (f).

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(b) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (b), (d), (e), and (f).

(c) The applicant shall:

(1) have passed an examination prepared and graded by the Federation of State Medical Boards, the National Board of Medical Examiners, or the United States Medical Licensing Examination program in accordance with section 147.02, subdivision 1, paragraph (c), clause (2); the National Board of Osteopathic Examiners; or the Medical Council of Canada; and

(2) have a current license from the equivalent licensing agency in another state or Canada and, if the examination in clause (1) was passed more than ten years ago, either:

(i) pass the Special Purpose Examination of the Federation of State Medical Boards with a score of 75 or better within three attempts; or

(ii) have a current certification by a specialty board of the American Board of Medical Specialties, of the American Osteopathic Association Bureau of Professional Education, or of the Royal College of Physicians and Surgeons of Canada.

(d) The applicant shall pay a fee established by the board by rule. The fee may not be refunded.

(e) The applicant must not be under license suspension or revocation by the licensing board of the state or jurisdiction in which the conduct that caused the suspension or revocation occurred.

(f) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action other than as specified in paragraph (e). If an applicant does not satisfy the requirements stated in this paragraph, the board may issue a license only on the applicant's showing that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

(g) Upon the request of an applicant, the board may conduct the final interview of the applicant by teleconference.

Sec. 6. [256B.075] DISEASE MANAGEMENT PROGRAMS.

Subdivision 1. GENERAL. The commissioner shall implement disease management initiatives that seek to improve patient care and health outcomes and reduce health care costs by managing the care provided to recipients with chronic conditions.

Subd. 2. FEE-FOR-SERVICE. (a) The commissioner shall develop and implement a disease management program for medical assistance and general assistance medical care recipients who are not enrolled in the prepaid medical assistance or prepaid general assistance medical care programs and who are receiving services on a fee-for-service basis. The commissioner may contract with an outside organization to provide these services.

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(b) The commissioner shall seek any federal approval necessary to implement this section and to obtain federal matching funds.

Subd. 3. PREPAID MANAGED CARE PROGRAMS. For the prepaid medical assistance, prepaid general assistance medical care, and MinnesotaCare programs, the commissioner shall ensure that contracting health plans implement disease management programs that are appropriate for Minnesota health care program recipients and have been designed by the health plan to improve patient care and health outcomes and reduce health care costs by managing the care provided to recipients with chronic conditions.

Subd. 4. REPORT. The commissioner of human services shall report to the legislature by January 15, 2005, on the status of disease management initiatives, and shall present recommendations to the legislature on any statutory changes needed to increase the effectiveness of these initiatives.

Subd. 5. EXPIRATION. This section expires June 30, 2006.

Sec. 7. ELECTRONIC HEALTH RECORD WORK GROUP.

(a) The commissioner of health shall convene an Electronic Health Record Planning and Implementation Work Group. The work group shall consist of representatives of hospitals, health plans, physicians, nurses, other health care providers, academic institutions, state government purchasers, public health providers, citizens, and others with knowledge of health information technology and electronic health records systems.

(b) The work group shall:

(1) identify barriers to the adoption and implementation of electronic health record systems in Minnesota;

(2) identify core components of an electronic health record and standards for interoperability;

(3) assess the status of current implementation of electronic health records in Minnesota;

(4) assess the costs for primary and acute health care providers, including safety net clinics and hospitals, to implement electronic health records systems;

(5) identify partnership models and collaboration potential for implementing electronic health records systems;

(6) monitor the development of federal standards, coordinate input to the National Health Information Infrastructure Process, and ensure that Minnesota's recommendations are consistent with emerging federal standards; and

(7) identify barriers and develop a plan to develop a unified record system among public hospitals and clinics.

(c) By December 31, 2004, the work group shall provide preliminary assessments and recommendations to the chairs of the house and senate committees with

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jurisdiction over health care policy and financing.

The recommendations shall also include the appropriate role of the state in the development, financing, promotion, and implementation of an electronic health records system.

Sec. 8. REPEALER; BONE MARROW TRANSPLANT MANDATE.

Minnesota Statutes 2002, section 62A.309, is repealed.

Presented to the governor May 18, 2004

Signed by the governor May 29, 2004, 11:00 a.m.

CHAPTER 289—S.F.No. 1546

An act relating to legislative enactments; correcting miscellaneous oversights, inconsistencies, ambiguities, unintended results, and technical errors; amending Minnesota Statutes 2002, section 298.22, subdivision 1; Laws 2004, chapter 149, section 2.

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

Section 1. Minnesota Statutes 2002, section 298.22, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER OF IRON RANGE RESOURCES AND REHABILITATION.** (1) The office of the commissioner of Iron Range resources and rehabilitation is created. The governor shall appoint the commissioner of Iron Range resources and rehabilitation under section 15.06.

(2) The commissioner may hold other positions or appointments that are not incompatible with duties as commissioner of Iron Range resources and rehabilitation. The commissioner may appoint a deputy commissioner. All expenses of the commissioner, including the payment of such assistance as may be necessary, must be paid out of the amounts appropriated by section 298.28.

(3) When the commissioner determines that distress and unemployment exists or may exist in the future in any county by reason of the removal of natural resources or a possibly limited use of natural resources in the future and any resulting decrease in employment, the commissioner may use whatever amounts of the appropriation made to the commissioner of revenue in section 298.28 that are determined to be necessary and proper in the development of the remaining resources of the county and in the vocational training and rehabilitation of its residents, except that the amount needed to cover cost overruns awarded to a contractor by an arbitrator in relation to a contract awarded by the commissioner or in effect after July 1, 1985, is appropriated from the general fund. For the purposes of this section, "development of remaining resources" includes, but is not limited to, the promotion of tourism.

New language is indicated by underline, deletions by ~~strikeout~~.