

CHAPTER 256N

NORTHSTAR CARE FOR CHILDREN

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256N.001 CITATION.

Sections 256N.001 to 256N.28 may be cited as the "Northstar Care for Children Act." Sections 256N.001 to 256N.28 establish Northstar Care for Children, which authorizes certain benefits to support a child in need who is served by the Minnesota child welfare system and who is the responsibility of the state, local county social service agencies, or tribal social service agencies authorized under section 256.01, subdivision 14b, or are otherwise eligible for federal adoption assistance. A child eligible under this chapter has experienced a child welfare intervention that has resulted in the child being placed away from the child's parents' care and is receiving foster care services consistent with chapter 260B, 260C, or 260D, or is in the permanent care of relatives through a transfer of permanent legal and physical custody, or in the permanent care of adoptive parents.

History: 2013 c 108 art 17 s 4

256N.01 PUBLIC POLICY.

(a) The legislature declares that the public policy of this state is to keep children safe from harm and to ensure that when children suffer harmful or injurious experiences in their lives, appropriate services are immediately available to keep them safe.

(b) Children do best in permanent, safe, nurturing homes where they can maintain lifelong relationships with adults. Whenever safely possible, children are best served when they can be nurtured and raised by their parents. Where services cannot be provided to allow a child to remain safely at home, an out-of-home placement may be required. When this occurs, reunification should be sought if it can be accomplished safely. When it is not possible for parents to provide safety and permanency for their children, an alternative permanent home must quickly be made available to the child, drawing from kinship sources whenever possible.

(c) Minnesota understands the importance of having a comprehensive approach to temporary out-of-home care and to permanent homes for children who cannot be reunited with their families. It is critical that stable benefits be available to caregivers to ensure that the child's needs can be met whether the child's situation and best interests call for temporary foster care, transfer of permanent legal and physical custody to a relative, or adoption. Northstar Care for Children focuses on the child's needs and strengths, and the actual level of care provided by the caregiver, without consideration for the type of placement setting. In this way caregivers are not faced with the burden of making specific long-term decisions based upon competing financial incentives.

History: 2013 c 108 art 17 s 5

256N.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 256N.001 to 256N.28, the terms defined in this section have the meanings given them.

Subd. 2. **Adoption assistance.** "Adoption assistance" means medical coverage as allowable under section 256B.055 and reimbursement of nonrecurring expenses associated with adoption and may include financial support provided under agreement with the financially responsible agency, the commissioner, and the parents of an adoptive child whose special needs would otherwise make it difficult to place the child for adoption to assist with the cost of caring for the child. Financial support may include a basic rate payment and a supplemental difficulty of care rate.

Subd. 3. **Assessment.** "Assessment" means the process under section 256N.24 that determines the benefits an eligible child may receive under section 256N.26.

Subd. 4. **At-risk child.** "At-risk child" means a child who does not have a documented disability but who is at risk of developing a physical, mental, emotional, or behavioral disability based on being related within the first or second degree to persons who have an inheritable physical, mental, emotional, or behavioral disabling condition, or from a background which has the potential to cause the child to develop a physical, mental, emotional, or behavioral disability that the child is at risk of developing. The disability must manifest during childhood.

Subd. 5. **Basic rate.** "Basic rate" means the maintenance payment made on behalf of a child to support the costs caregivers incur to provide for a child's needs consistent with the care parents customarily provide, including: food, clothing, shelter, daily supervision, school supplies, and a child's personal incidentals. It also supports typical travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

Subd. 6. **Caregiver.** "Caregiver" means the foster parent or parents of a child in foster care who meet the requirements of emergency relative placement, licensed foster parents under chapter 245A, or foster parents licensed or approved by a tribe; the relative custodian or custodians; or the adoptive parent or parents who have legally adopted a child.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of human services or any employee of the Department of Human Services to whom the commissioner has delegated appropriate authority.

Subd. 8. **County board.** "County board" means the board of county commissioners in each county.

Subd. 9. **Disability.** "Disability" means a physical, mental, emotional, or behavioral impairment that substantially limits one or more major life activities. Major life activities include, but are not limited to: thinking, walking, hearing, breathing, working, seeing, speaking, communicating, learning, developing and maintaining healthy relationships, safely caring for oneself, and performing manual tasks. The nature, duration, and severity of the impairment must be considered in determining if the limitation is substantial.

Subd. 10. **Financially responsible agency.** "Financially responsible agency" means the agency that is financially responsible for a child. These agencies include both local social service agencies under section 393.07 and tribal social service agencies authorized in section 256.01, subdivision 14b, as part of the American Indian Child Welfare Initiative, and Minnesota tribes who assume financial responsibility of children from other states. Under Northstar Care for Children,

the agency that is financially responsible at the time of placement for foster care continues to be responsible under section 256N.27 for the local share of any maintenance payments, even after finalization of the adoption or transfer of permanent legal and physical custody of a child.

Subd. 11. **Guardianship assistance.** "Guardianship assistance" means medical coverage, as allowable under section 256B.055, and reimbursement of nonrecurring expenses associated with obtaining permanent legal and physical custody of a child, and may include financial support provided under agreement with the financially responsible agency, the commissioner, and the relative who has received a transfer of permanent legal and physical custody of a child. Financial support may include a basic rate payment and a supplemental difficulty of care rate to assist with the cost of caring for the child.

Subd. 12. **Human services board.** "Human services board" means a board established under section 402.02; Laws 1974, chapter 293; or Laws 1976, chapter 340.

Subd. 13. **Initial assessment.** "Initial assessment" means the assessment conducted within the first 30 days of a child's initial placement into foster care under section 256N.24, subdivisions 4 and 5.

Subd. 14. **Legally responsible agency.** "Legally responsible agency" means the Minnesota agency that is assigned responsibility for placement, care, and supervision of the child through a court order, voluntary placement agreement, or voluntary relinquishment. These agencies include local social service agencies under section 393.07, tribal social service agencies authorized in section 256.01, subdivision 14b, and Minnesota tribes that assume court jurisdiction when legal responsibility is transferred to the tribal social service agency through a Minnesota district court order. A Minnesota local social service agency is otherwise financially responsible.

Subd. 15. **Maintenance payments.** "Maintenance payments" means the basic rate plus any supplemental difficulty of care rate under Northstar Care for Children. It specifically does not include the cost of initial clothing allowance, payment for social services, or administrative payments to a child-placing agency. Payments are paid consistent with section 256N.26.

Subd. 16. **Permanent legal and physical custody.** "Permanent legal and physical custody" means a transfer of permanent legal and physical custody to a relative ordered by a Minnesota juvenile court under section 260C.515, subdivision 4, or for a child under jurisdiction of a tribal court, a judicial determination under a similar provision in tribal code which means that a relative will assume the duty and authority to provide care, control, and protection of a child who is residing in foster care, and to make decisions regarding the child's education, health care, and general welfare until adulthood.

Subd. 17. **Reassessment.** "Reassessment" means an update of a previous assessment through the process under section 256N.24 for a child who has been continuously eligible for Northstar Care for Children, or when a child identified as an at-risk child (Level A) under guardianship or adoption assistance has manifested the disability upon which eligibility for the agreement was based according to section 256N.25, subdivision 3, paragraph (b). A reassessment may be used to update an initial assessment, a special assessment, or a previous reassessment.

Subd. 18. **Relative.** "Relative," as described in section 260C.007, subdivision 27, means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Subd. 19. **Relative custodian.** "Relative custodian" means a person to whom permanent legal and physical custody of a child has been transferred under section 260C.515, subdivision 4, or for a child under jurisdiction of a tribal court, a judicial determination under a similar provision in tribal code, which means that a relative will assume the duty and authority to provide care, control, and protection of a child who is residing in foster care, and to make decisions regarding the child's education, health care, and general welfare until adulthood.

Subd. 20. **Special assessment.** "Special assessment" means an assessment performed under section 256N.24 that determines the benefits that an eligible child may receive under section 256N.26 at the time when a special assessment is required. A special assessment is used when a child's status within Northstar Care is shifted from a pre-Northstar Care program into Northstar Care for Children and when the commissioner determines that a special assessment is appropriate instead of assigning the transition child to a level under section 256N.28.

Subd. 21. **Supplemental difficulty of care rate.** "Supplemental difficulty of care rate" means the supplemental payment under section 256N.26, if any, as determined by the financially responsible agency or the state, based upon an assessment under section 256N.24. The rate must support activities consistent with the care a parent provides a child with special needs and not the equivalent of a purchased service. The rate must consider the capacity and intensity of the activities associated with parenting duties provided in the home to nurture the child, preserve the child's connections, and support the child's functioning in the home and community.

History: 2013 c 108 art 17 s 6

256N.20 NORTHSTAR CARE FOR CHILDREN; GENERALLY.

Subdivision 1. **Eligibility.** A child is eligible for Northstar Care for Children if the child is eligible for:

- (1) foster care under section 256N.21;
- (2) guardianship assistance under section 256N.22; or
- (3) adoption assistance under section 256N.23.

Subd. 2. **Assessments.** Except as otherwise specified, a child eligible for Northstar Care for Children shall receive an assessment under section 256N.24.

Subd. 3. **Agreements.** When a child is eligible for guardianship assistance or adoption assistance, negotiations with caregivers and the development of a written, binding agreement must be conducted under section 256N.25.

Subd. 4. **Benefits and payments.** A child eligible for Northstar Care for Children is entitled to benefits specified in section 256N.26, based primarily on assessments under section 256N.24, and, if appropriate, negotiations and agreements under section 256N.25. Although paid to the caregiver, these benefits must be considered benefits of the child rather than of the caregiver.

Subd. 5. **Federal, state, and local shares.** The cost of Northstar Care for Children must be shared among the federal government, state, counties of financial responsibility, and certain tribes as specified in section 256N.27.

Subd. 6. **Administration and appeals.** The commissioner and financially responsible agency, or other agency designated by the commissioner, shall administer Northstar Care for Children according to section 256N.28. The notification and fair hearing process applicable to this chapter is defined in section 256N.28.

Subd. 7. **Transition.** A child in foster care, relative custody assistance, or adoption assistance prior to January 1, 2015, who remains with the same caregivers, continues to receive benefits under programs preceding Northstar Care for Children, unless the child moves to a new foster care placement, permanency is obtained for the child, or the commissioner initiates transition of a child receiving pre-Northstar Care for Children relative custody assistance, guardianship assistance, or adoption assistance under this chapter. Provisions for the transition to Northstar Care for Children for certain children in preceding programs are specified in section 256N.28, subdivisions 2 and 7. Additional provisions for children in: foster care are specified in section 256N.21, subdivision 6; relative custody assistance under section 257.85 are specified in section 256N.22, subdivision 12; and adoption assistance under chapter 259A are specified in section 256N.23, subdivision 13.

History: 2013 c 108 art 17 s 7

256N.21 ELIGIBILITY FOR FOSTER CARE BENEFITS.

Subdivision 1. **General eligibility requirements.** (a) A child is eligible for foster care benefits under this section if the child meets the requirements of subdivision 2 on or after January 1, 2015.

(b) The financially responsible agency shall make a title IV-E eligibility determination for all foster children meeting the requirements of subdivision 2, provided the agency has such authority under the state title IV-E plan. To be eligible for title IV-E foster care, a child must also meet any additional criteria specified in section 472 of the Social Security Act.

(c) Except as provided under section 256N.26, subdivision 1 or 6, the foster care benefit to the child under this section must be determined under sections 256N.24 and 256N.26 through an individual assessment. Information from this assessment must be used to determine a potential future benefit under guardianship assistance or adoption assistance, if needed.

(d) When a child is eligible for additional services, subdivisions 3 and 4 govern the co-occurrence of program eligibility.

Subd. 2. **Placement in foster care.** To be eligible for foster care benefits under this section, the child must be in placement away from the child's legal parent or guardian and all of the following criteria must be met:

(1) the legally responsible agency must have placement authority and care responsibility, including for a child 18 years old or older and under age 21, who maintains eligibility for foster care consistent with section 260C.451;

(2) the legally responsible agency must have authority to place the child with a voluntary placement agreement or a court order, consistent with sections 260B.198, 260C.001, 260D.01, or continued eligibility consistent with section 260C.451; and

(3) the child must be placed in an emergency relative placement under section 245A.035, a licensed foster family setting, foster residence setting, or treatment foster care setting licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, a family foster home licensed or approved by a tribal agency or, for a child 18 years old or older and under age 21, an unlicensed supervised independent living setting approved by the agency responsible for the youth's care.

Subd. 3. **Minor parent.** A child who is a minor parent in placement with the minor parent's child in the same home is eligible for foster care benefits under this section. The foster care

benefit is limited to the minor parent, unless the legally responsible agency has separate legal authority for placement of the minor parent's child.

Subd. 4. **Foster children ages 18 up to 21 placed in an unlicensed supervised independent living setting.** A foster child 18 years old or older and under age 21 who maintains eligibility consistent with section 260C.451 and who is placed in an unlicensed supervised independent living setting shall receive the level of benefit under section 256N.26.

Subd. 5. **Excluded activities.** The basic and supplemental difficulty of care payment represents costs for activities similar in nature to those expected of parents, and does not cover services rendered by the licensed or tribally approved foster parent, facility, or administrative costs or fees. The financially responsible agency may pay an additional fee for specific services provided by the licensed foster parent or facility. A foster parent or residence setting must distinguish such a service from the daily care of the child as assessed through the process under section 256N.24.

Subd. 6. **Transition from pre-Northstar Care for Children program.** (a) Section 256.82 establishes the pre-Northstar Care for Children foster care program for all children residing in family foster care on December 31, 2014. Unless transitioned under paragraph (b), a child in foster care with the same caregiver receives benefits under this pre-Northstar Care for Children foster care program.

(b) Transition from the pre-Northstar Care for Children foster care program to Northstar Care for Children takes place on or after January 1, 2015, when the child:

- (1) moves to a different foster home or unlicensed supervised independent living setting;
- (2) has permanent legal and physical custody transferred and, if applicable, meets eligibility requirements in section 256N.22;
- (3) is adopted and, if applicable, meets eligibility requirements in section 256N.23; or
- (4) re-enters foster care after reunification or a trial home visit.

(c) Upon becoming eligible, a foster child must be assessed according to section 256N.24 and then transitioned into Northstar Care for Children according to section 256N.28.

History: 2013 c 108 art 17 s 8

256N.22 GUARDIANSHIP ASSISTANCE ELIGIBILITY.

Subdivision 1. **General eligibility requirements.** (a) To be eligible for guardianship assistance under this section, there must be a judicial determination under section 260C.515, subdivision 4, that a transfer of permanent legal and physical custody to a relative is in the child's best interest. For a child under jurisdiction of a tribal court, a judicial determination under a similar provision in tribal code indicating that a relative will assume the duty and authority to provide care, control, and protection of a child who is residing in foster care, and to make decisions regarding the child's education, health care, and general welfare until adulthood, and that this is in the child's best interest is considered equivalent. Additionally, a child must:

(1) have been removed from the child's home pursuant to a voluntary placement agreement or court order;

(2)(i) have resided in foster care for at least six consecutive months in the home of the prospective relative custodian; or

(ii) have received an exemption from the requirement in item (i) from the court based on a determination that:

- (A) an expedited move to permanency is in the child's best interest;
- (B) expedited permanency cannot be completed without provision of guardianship assistance; and
- (C) the prospective relative custodian is uniquely qualified to meet the child's needs on a permanent basis;
 - (3) meet the agency determinations regarding permanency requirements in subdivision 2;
 - (4) meet the applicable citizenship and immigration requirements in subdivision 3;
 - (5) have been consulted regarding the proposed transfer of permanent legal and physical custody to a relative, if the child is at least 14 years of age or is expected to attain 14 years of age prior to the transfer of permanent legal and physical custody; and
 - (6) have a written, binding agreement under section 256N.25 among the caregiver or caregivers, the financially responsible agency, and the commissioner established prior to transfer of permanent legal and physical custody.
- (b) In addition to the requirements in paragraph (a), the child's prospective relative custodian or custodians must meet the applicable background study requirements in subdivision 4.
- (c) To be eligible for title IV-E guardianship assistance, a child must also meet any additional criteria in section 473(d) of the Social Security Act. The sibling of a child who meets the criteria for title IV-E guardianship assistance in section 473(d) of the Social Security Act is eligible for title IV-E guardianship assistance if the child and sibling are placed with the same prospective relative custodian or custodians, and the legally responsible agency, relatives, and commissioner agree on the appropriateness of the arrangement for the sibling. A child who meets all eligibility criteria except those specific to title IV-E guardianship assistance is entitled to guardianship assistance paid through funds other than title IV-E.

Subd. 2. Agency determinations regarding permanency. (a) To be eligible for guardianship assistance, the legally responsible agency must complete the following determinations regarding permanency for the child prior to the transfer of permanent legal and physical custody:

- (1) a determination that reunification and adoption are not appropriate permanency options for the child; and
- (2) a determination that the child demonstrates a strong attachment to the prospective relative custodian and the prospective relative custodian has a strong commitment to caring permanently for the child.

(b) The legally responsible agency shall document the determinations in paragraph (a) and the supporting information for completing each determination in the case file and make them available for review as requested by the financially responsible agency and the commissioner during the guardianship assistance eligibility determination process.

Subd. 3. Citizenship and immigration status. A child must be a citizen of the United States or otherwise be eligible for federal public benefits according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for guardianship assistance.

Subd. 4. Background study. (a) A background study under section 245C.33 must be completed on each prospective relative custodian and any other adult residing in the home of the prospective relative custodian. A background study on the prospective relative custodian or adult

residing in the household previously completed under section 245C.04 for the purposes of foster care licensure may be used for the purposes of this section, provided that the background study is current at the time of the application for guardianship assistance.

(b) If the background study reveals:

(1) a felony conviction at any time for:

(i) child abuse or neglect;

(ii) spousal abuse;

(iii) a crime against a child, including child pornography; or

(iv) a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(2) a felony conviction within the past five years for:

(i) physical assault;

(ii) battery; or

(iii) a drug-related offense;

the prospective relative custodian is prohibited from receiving guardianship assistance on behalf of an otherwise eligible child.

Subd. 5. Responsibility for determining guardianship assistance eligibility. The commissioner shall determine eligibility for:

(1) a child under the legal custody or responsibility of a Minnesota county social service agency who would otherwise remain in foster care;

(2) a Minnesota child under tribal court jurisdiction who would otherwise remain in foster care; and

(3) an Indian child being placed in Minnesota who meets title IV-E eligibility defined in section 473(d) of the Social Security Act. The agency or entity assuming responsibility for the child is responsible for the nonfederal share of the guardianship assistance payment.

Subd. 6. Exclusions. (a) A child with a guardianship assistance agreement under Northstar Care for Children is not eligible for the Minnesota family investment program child-only grant under chapter 256J.

(b) The commissioner shall not enter into a guardianship assistance agreement with:

(1) a child's biological parent;

(2) an individual assuming permanent legal and physical custody of a child or the equivalent under tribal code without involvement of the child welfare system; or

(3) an individual assuming permanent legal and physical custody of a child who was placed in Minnesota by another state or a tribe outside of Minnesota.

Subd. 7. Guardianship assistance eligibility determination. The financially responsible agency shall prepare a guardianship assistance eligibility determination for review and final approval by the commissioner. The eligibility determination must be completed according to requirements and procedures and on forms prescribed by the commissioner. Supporting documentation for the eligibility determination must be provided to the commissioner. The financially responsible agency and the commissioner must make every effort to establish a child's eligibility for title IV-E guardianship assistance. A child who is determined to be eligible for

guardianship assistance must have a guardianship assistance agreement negotiated on the child's behalf according to section 256N.25.

Subd. 8. **Termination of agreement.** (a) A guardianship assistance agreement must be terminated in any of the following circumstances:

(1) the child has attained the age of 18, or up to age 21 when the child meets a condition for extension in subdivision 11;

(2) the child has not attained the age of 18 years of age, but the commissioner determines the relative custodian is no longer legally responsible for support of the child;

(3) the commissioner determines the relative custodian is no longer providing financial support to the child up to age 21;

(4) the death of the child; or

(5) the relative custodian requests in writing termination of the guardianship assistance agreement.

(b) A relative custodian is considered no longer legally responsible for support of the child in any of the following circumstances:

(1) permanent legal and physical custody or guardianship of the child is transferred to another individual;

(2) the death of the relative custodian under subdivision 9;

(3) the child enlists in the military;

(4) the child gets married; or

(5) the child is determined an emancipated minor through legal action.

Subd. 9. **Death of relative custodian or dissolution of custody.** The guardianship assistance agreement ends upon death or dissolution of permanent legal and physical custody of both relative custodians in the case of assignment of custody to two individuals, or the sole relative custodian in the case of assignment of custody to one individual. Guardianship assistance eligibility may be continued according to subdivision 10.

Subd. 10. **Assigning a child's guardianship assistance to a court-appointed guardian or custodian.** (a) Guardianship assistance may be continued with the written consent of the commissioner to an individual who is a guardian or custodian appointed by a court for the child upon the death of both relative custodians in the case of assignment of custody to two individuals, or the sole relative custodian in the case of assignment of custody to one individual, unless the child is under the custody of a county, tribal, or child-placing agency.

(b) Temporary assignment of guardianship assistance may be approved for a maximum of six consecutive months from the death of the relative custodian or custodians as provided in paragraph (a) and must adhere to the policies and procedures prescribed by the commissioner. If a court has not appointed a permanent legal guardian or custodian within six months, the guardianship assistance must terminate and must not be resumed.

(c) Upon assignment of assistance payments under this subdivision, assistance must be provided from funds other than title IV-E.

Subd. 11. **Extension of guardianship assistance after age 18.** (a) Under the circumstances outlined in paragraph (e), a child may qualify for extension of the guardianship assistance agreement beyond the date the child attains age 18, up to the date the child attains the age of 21.

(b) A request for extension of the guardianship assistance agreement must be completed in writing and submitted, including all supporting documentation, by the relative custodian to the commissioner at least 60 calendar days prior to the date that the current agreement will terminate.

(c) A signed amendment to the current guardianship assistance agreement must be fully executed between the relative custodian and the commissioner at least ten business days prior to the termination of the current agreement. The request for extension and the fully executed amendment must be made according to requirements and procedures prescribed by the commissioner, including documentation of eligibility, and on forms prescribed by the commissioner.

(d) If an agency is certifying a child for guardianship assistance and the child will attain the age of 18 within 60 calendar days of submission, the request for extension must be completed in writing and submitted, including all supporting documentation, with the guardianship assistance application.

(e) A child who has attained the age of 16 prior to the effective date of the guardianship assistance agreement is eligible for extension of the agreement up to the date the child attains age 21 if the child:

- (1) is dependent on the relative custodian for care and financial support; and
- (2) meets at least one of the following conditions:
 - (i) is completing a secondary education program or a program leading to an equivalent credential;
 - (ii) is enrolled in an institution which provides postsecondary or vocational education;
 - (iii) is participating in a program or activity designed to promote or remove barriers to employment;
 - (iv) is employed for at least 80 hours per month; or
 - (v) is incapable of doing any of the activities described in items (i) to (iv) due to a medical condition where incapability is supported by professional documentation according to the requirements and procedures prescribed by the commissioner.

(f) A child who has not attained the age of 16 prior to the effective date of the guardianship assistance agreement is eligible for extension of the guardianship assistance agreement up to the date the child attains the age of 21 if the child is:

- (1) dependent on the relative custodian for care and financial support; and
- (2) possesses a physical or mental disability which impairs the capacity for independent living and warrants continuation of financial assistance, as determined by the commissioner.

Subd. 12. Beginning guardianship assistance component of Northstar Care for Children. Effective November 27, 2014, a child who meets the eligibility criteria for guardianship assistance in subdivision 1 may have a guardianship assistance agreement negotiated on the child's behalf according to section 256N.25. The effective date of the agreement must be January 1, 2015, or the date of the court order transferring permanent legal and physical custody, whichever is later. Except as provided under section 256N.26, subdivision 1, paragraph (c), the rate schedule for an agreement under this subdivision is determined under section 256N.26 based on the age of the child on the date that the prospective relative custodian signs the agreement.

Subd. 13. Transition to guardianship assistance under Northstar Care for Children. The commissioner may execute guardianship assistance agreements for a child with a relative

custody agreement under section 257.85 executed on the child's behalf on or before November 26, 2014, in accordance with the priorities outlined in section 256N.28, subdivision 7, paragraph (b). To facilitate transition into the guardianship assistance program, the commissioner may waive any guardianship assistance eligibility requirements for a child with a relative custody agreement under section 257.85 executed on the child's behalf on or before November 26, 2014. Agreements negotiated under this subdivision must be done according to the process outlined in section 256N.28, subdivision 7. The maximum rate used in the negotiation process for an agreement under this subdivision must be as outlined in section 256N.28, subdivision 7.

History: 2013 c 108 art 17 s 9

256N.23 ADOPTION ASSISTANCE ELIGIBILITY.

Subdivision 1. **General eligibility requirements.** (a) To be eligible for adoption assistance under this section, a child must:

- (1) be determined to be a child with special needs under subdivision 2;
- (2) meet the applicable citizenship and immigration requirements in subdivision 3;
- (3)(i) meet the criteria in section 473 of the Social Security Act; or

(ii) have had foster care payments paid on the child's behalf while in out-of-home placement through the county or tribe and be either under the guardianship of the commissioner or under the jurisdiction of a Minnesota tribe and adoption, according to tribal law, is in the child's documented permanency plan; and

(4) have a written, binding agreement under section 256N.25 among the adoptive parent, the financially responsible agency, or, if there is no financially responsible agency, the agency designated by the commissioner, and the commissioner established prior to finalization of the adoption.

(b) In addition to the requirements in paragraph (a), an eligible child's adoptive parent or parents must meet the applicable background study requirements in subdivision 4.

(c) A child who meets all eligibility criteria except those specific to title IV-E adoption assistance shall receive adoption assistance paid through funds other than title IV-E.

Subd. 2. **Special needs determination.** (a) A child is considered a child with special needs under this section if the requirements in paragraphs (b) to (g) are met.

(b) There must be a determination that the child must not or should not be returned to the home of the child's parents as evidenced by:

- (1) a court-ordered termination of parental rights;
- (2) a petition to terminate parental rights;
- (3) consent of parent to adoption accepted by the court under chapter 260C;

(4) in circumstances when tribal law permits the child to be adopted without a termination of parental rights, a judicial determination by a tribal court indicating the valid reason why the child cannot or should not return home;

(5) a voluntary relinquishment under section 259.25 or 259.47 or, if relinquishment occurred in another state, the applicable laws in that state; or

- (6) the death of the legal parent or parents if the child has two legal parents.

(c) There exists a specific factor or condition of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance as evidenced by:

(1) a determination by the Social Security Administration that the child meets all medical or disability requirements of title XVI of the Social Security Act with respect to eligibility for Supplemental Security Income benefits;

(2) a documented physical, mental, emotional, or behavioral disability not covered under clause (1);

(3) a member of a sibling group being adopted at the same time by the same parent;

(4) an adoptive placement in the home of a parent who previously adopted a sibling for whom they receive adoption assistance; or

(5) documentation that the child is an at-risk child.

(d) A reasonable but unsuccessful effort must have been made to place the child with adoptive parents without providing adoption assistance as evidenced by:

(1) a documented search for an appropriate adoptive placement; or

(2) a determination by the commissioner that a search under clause (1) is not in the best interests of the child.

(e) The requirement for a documented search for an appropriate adoptive placement under paragraph (d), including the registration of the child with the state adoption exchange and other recruitment methods under paragraph (f), must be waived if:

(1) the child is being adopted by a relative and it is determined by the child-placing agency that adoption by the relative is in the best interests of the child;

(2) the child is being adopted by a foster parent with whom the child has developed significant emotional ties while in the foster parent's care as a foster child and it is determined by the child-placing agency that adoption by the foster parent is in the best interests of the child; or

(3) the child is being adopted by a parent that previously adopted a sibling of the child, and it is determined by the child-placing agency that adoption by this parent is in the best interests of the child.

For an Indian child covered by the Indian Child Welfare Act, a waiver must not be granted unless the child-placing agency has complied with the placement preferences required by the Indian Child Welfare Act, United States Code, title 25, section 1915(a).

(f) To meet the requirement of a documented search for an appropriate adoptive placement under paragraph (d), clause (1), the child-placing agency minimally must:

(1) conduct a relative search as required by section 260C.221 and give consideration to placement with a relative, as required by section 260C.212, subdivision 2;

(2) comply with the placement preferences required by the Indian Child Welfare Act when the Indian Child Welfare Act, United States Code, title 25, section 1915(a), applies;

(3) locate prospective adoptive families by registering the child on the state adoption exchange, as required under section 259.75; and

(4) if registration with the state adoption exchange does not result in the identification of an appropriate adoptive placement, the agency must employ additional recruitment methods prescribed by the commissioner.

(g) Once the legally responsible agency has determined that placement with an identified parent is in the child's best interests and made full written disclosure about the child's social and medical history, the agency must ask the prospective adoptive parent if the prospective adoptive parent is willing to adopt the child without receiving adoption assistance under this section. If the identified parent is either unwilling or unable to adopt the child without adoption assistance, the legally responsible agency must provide documentation as prescribed by the commissioner to fulfill the requirement to make a reasonable effort to place the child without adoption assistance. If the identified parent is willing to adopt the child without adoption assistance, the parent must provide a written statement to this effect to the legally responsible agency and the statement must be maintained in the permanent adoption record of the legally responsible agency. For children under guardianship of the commissioner, the legally responsible agency shall submit a copy of this statement to the commissioner to be maintained in the permanent adoption record.

Subd. 3. Citizenship and immigration status. (a) A child must be a citizen of the United States or otherwise eligible for federal public benefits according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for the title IV-E adoption assistance program.

(b) A child must be a citizen of the United States or meet the qualified alien requirements as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for adoption assistance paid through funds other than title IV-E.

Subd. 4. Background study. A background study under section 259.41 must be completed on each prospective adoptive parent. If the background study reveals:

- (1) a felony conviction at any time for:
 - (i) child abuse or neglect;
 - (ii) spousal abuse;
 - (iii) a crime against a child, including child pornography; or
 - (iv) a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or
- (2) a felony conviction within the past five years for:
 - (i) physical assault;
 - (ii) battery; or
 - (iii) a drug-related offense;

the adoptive parent is prohibited from receiving adoption assistance on behalf of an otherwise eligible child.

Subd. 5. Responsibility for determining adoption assistance eligibility. The commissioner must determine eligibility for:

- (1) a child under the guardianship of the commissioner who would otherwise remain in foster care;
- (2) a child who is not under the guardianship of the commissioner who meets title IV-E eligibility defined in section 473 of the Social Security Act and no state agency has legal responsibility for placement and care of the child;
- (3) a Minnesota child under tribal jurisdiction who would otherwise remain in foster care; and

(4) an Indian child being placed in Minnesota who meets title IV-E eligibility defined in section 473 of the Social Security Act. The agency or entity assuming responsibility for the child is responsible for the nonfederal share of the adoption assistance payment.

Subd. 6. **Exclusions.** The commissioner must not enter into an adoption assistance agreement with the following individuals:

(1) a child's biological parent or stepparent;

(2) a child's relative under section 260C.007, subdivision 27, with whom the child resided immediately prior to child welfare involvement unless:

(i) the child was in the custody of a Minnesota county or tribal agency pursuant to an order under chapter 260C or equivalent provisions of tribal code and the agency had placement and care responsibility for permanency planning for the child; and

(ii) the child is under guardianship of the commissioner of human services according to the requirements of section 260C.325, subdivision 1 or 3, or is a ward of a Minnesota tribal court after termination of parental rights, suspension of parental rights, or a finding by the tribal court that the child cannot safely return to the care of the parent;

(3) an individual adopting a child who is the subject of a direct adoptive placement under section 259.47 or the equivalent in tribal code;

(4) a child's legal custodian or guardian who is now adopting the child; or

(5) an individual who is adopting a child who is not a citizen or resident of the United States and was either adopted in another country or brought to the United States for the purposes of adoption.

Subd. 7. **Adoption assistance eligibility determination.** (a) The financially responsible agency shall prepare an adoption assistance eligibility determination for review and final approval by the commissioner. When there is no financially responsible agency, the adoption assistance eligibility determination must be completed by the agency designated by the commissioner. The eligibility determination must be completed according to requirements and procedures and on forms prescribed by the commissioner. The financially responsible agency and the commissioner shall make every effort to establish a child's eligibility for title IV-E adoption assistance. Documentation from a qualified expert for the eligibility determination must be provided to the commissioner to verify that a child meets the special needs criteria in subdivision 2. A child who is determined to be eligible for adoption assistance must have an adoption assistance agreement negotiated on the child's behalf according to section 256N.25.

(b) Documentation from a qualified expert of a disability is limited to evidence deemed appropriate by the commissioner and must be submitted to the commissioner with the eligibility determination. Examples of appropriate documentation include, but are not limited to, medical records, psychological assessments, educational or early childhood evaluations, court findings, and social and medical history.

(c) Documentation that the child is at risk of developing physical, mental, emotional, or behavioral disabilities must be submitted according to policies and procedures prescribed by the commissioner.

Subd. 8. **Termination of agreement.** (a) An adoption assistance agreement must terminate in any of the following circumstances:

(1) the child has attained the age of 18, or up to age 21 when the child meets a condition for extension in subdivision 12;

(2) the child has not attained the age of 18, but the commissioner determines the adoptive parent is no longer legally responsible for support of the child;

(3) the commissioner determines the adoptive parent is no longer providing financial support to the child up to age 21;

(4) the death of the child; or

(5) the adoptive parent requests in writing the termination of the adoption assistance agreement.

(b) An adoptive parent is considered no longer legally responsible for support of the child in any of the following circumstances:

(1) parental rights to the child are legally terminated or a court accepted the parent's consent to adoption under chapter 260C;

(2) permanent legal and physical custody or guardianship of the child is transferred to another individual;

(3) death of the adoptive parent under subdivision 9;

(4) the child enlists in the military;

(5) the child gets married; or

(6) the child is determined an emancipated minor through legal action.

Subd. 9. Death of adoptive parent or adoption dissolution. The adoption assistance agreement ends upon death or termination of parental rights of both adoptive parents in the case of a two-parent adoption, or the sole adoptive parent in the case of a single-parent adoption. The child's adoption assistance eligibility may be continued according to subdivision 10.

Subd. 10. Continuing a child's title IV-E adoption assistance in a subsequent adoption. (a) The child maintains eligibility for title IV-E adoption assistance in a subsequent adoption if the following criteria are met:

(1) the child is determined to be a child with special needs as outlined in subdivision 2; and

(2) the subsequent adoptive parent resides in Minnesota.

(b) If a child had a title IV-E adoption assistance agreement in effect prior to the death of the adoptive parent or dissolution of the adoption, and the subsequent adoptive parent resides outside of Minnesota, the commissioner is not responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and making any adoption assistance payments outlined in the new agreement unless a state agency in Minnesota has responsibility for placement and care of the child at the time of the subsequent adoption. If there is no state agency in Minnesota that has responsibility for placement and care of the child at the time of the subsequent adoption, the public child welfare agency in the subsequent adoptive parent's residence is responsible for determining whether the child meets the definition of special needs and entering into the adoption assistance agreement.

Subd. 11. Assigning a child's adoption assistance to a court-appointed guardian or custodian. (a) State-funded adoption assistance may be continued with the written consent of the commissioner to an individual who is a guardian appointed by a court for the child upon the death

of both the adoptive parents in the case of a two-parent adoption, or the sole adoptive parent in the case of a single-parent adoption, unless the child is under the custody of a state agency.

(b) Temporary assignment of adoption assistance may be approved by the commissioner for a maximum of six consecutive months from the death of the adoptive parent or parents under subdivision 9 and must adhere to the requirements and procedures prescribed by the commissioner. If, within six months, the child has not been adopted by a person agreed upon by the commissioner, or a court has not appointed a permanent legal guardian under section 260C.325, 525.5-313, or similar law of another jurisdiction, the adoption assistance must terminate.

(c) Upon assignment of payments under this subdivision, assistance must be from funds other than title IV-E.

Subd. 12. **Extension of adoption assistance agreement.** (a) Under certain limited circumstances a child may qualify for extension of the adoption assistance agreement beyond the date the child attains age 18, up to the date the child attains the age of 21.

(b) A request for extension of the adoption assistance agreement must be completed in writing and submitted, including all supporting documentation, by the adoptive parent to the commissioner at least 60 calendar days prior to the date that the current agreement will terminate.

(c) A signed amendment to the current adoption assistance agreement must be fully executed between the adoptive parent and the commissioner at least ten business days prior to the termination of the current agreement. The request for extension and the fully executed amendment must be made according to the requirements and procedures prescribed by the commissioner, including documentation of eligibility, on forms prescribed by the commissioner.

(d) If an agency is certifying a child for adoption assistance and the child will attain the age of 18 within 60 calendar days of submission, the request for extension must be completed in writing and submitted, including all supporting documentation, with the adoption assistance application.

(e) A child who has attained the age of 16 prior to the finalization of the child's adoption is eligible for extension of the adoption assistance agreement up to the date the child attains age 21 if the child is:

- (1) dependent on the adoptive parent for care and financial support; and
- (2)(i) completing a secondary education program or a program leading to an equivalent credential;
- (ii) enrolled in an institution that provides postsecondary or vocational education;
- (iii) participating in a program or activity designed to promote or remove barriers to employment;
- (iv) employed for at least 80 hours per month; or
- (v) incapable of doing any of the activities described in items (i) to (iv) due to a medical condition where incapability is supported by documentation from an expert according to the requirements and procedures prescribed by the commissioner.

(f) A child who has not attained the age of 16 prior to finalization of the child's adoption is eligible for extension of the adoption assistance agreement up to the date the child attains the age of 21 if the child is:

- (1) dependent on the adoptive parent for care and financial support; and

(2)(i) enrolled in a secondary education program or a program leading to the equivalent; or
(ii) possesses a physical or mental disability that impairs the capacity for independent living and warrants continuation of financial assistance as determined by the commissioner.

Subd. 13. Beginning adoption assistance under Northstar Care for Children. Effective November 27, 2014, a child who meets the eligibility criteria for adoption assistance in subdivision 1 may have an adoption assistance agreement negotiated on the child's behalf according to section 256N.25, and the effective date of the agreement must be January 1, 2015, or the date of the court order finalizing the adoption, whichever is later. Except as provided under section 256N.26, subdivision 1, paragraph (c), the maximum rate schedule for the agreement must be determined according to section 256N.26 based on the age of the child on the date that the prospective adoptive parent or parents sign the agreement.

Subd. 14. Transition to adoption assistance under Northstar Care for Children. The commissioner may offer adoption assistance agreements under this chapter to a child with an adoption assistance agreement under chapter 259A executed on the child's behalf on or before November 26, 2014, according to the priorities outlined in section 256N.28, subdivision 7, paragraph (b). To facilitate transition into the Northstar Care for Children adoption assistance program, the commissioner has the authority to waive any Northstar Care for Children adoption assistance eligibility requirements for a child with an adoption assistance agreement under chapter 259A executed on the child's behalf on or before November 26, 2014. Agreements negotiated under this subdivision must be in accordance with the process in section 256N.28, subdivision 7. The maximum rate used in the negotiation process for an agreement under this subdivision must be as outlined in section 256N.28, subdivision 7.

History: 2013 c 108 art 17 s 10

256N.24 ASSESSMENTS.

Subdivision 1. Assessment. (a) Each child eligible under sections 256N.21, 256N.22, and 256N.23, must be assessed to determine the benefits the child may receive under section 256N.26, in accordance with the assessment tool, process, and requirements specified in subdivision 2.

(b) If an agency applies the emergency foster care rate for initial placement under section 256N.26, the agency may wait up to 30 days to complete the initial assessment.

(c) Unless otherwise specified in paragraph (d), a child must be assessed at the basic level, level B, or one of ten supplemental difficulty of care levels, levels C to L.

(d) An assessment must not be completed for:

(1) a child eligible for guardianship assistance under section 256N.22 or adoption assistance under section 256N.23 who is determined to be an at-risk child. A child under this clause must be assigned level A under section 256N.26, subdivision 1; and

(2) a child transitioning into Northstar Care for Children under section 256N.28, subdivision 7, unless the commissioner determines an assessment is appropriate.

Subd. 2. Establishment of assessment tool, process, and requirements. Consistent with sections 256N.001 to 256N.28, the commissioner shall establish an assessment tool to determine the basic and supplemental difficulty of care, and shall establish the process to be followed and other requirements, including appropriate documentation, when conducting the initial assessment of a child entering Northstar Care for Children or when the special assessment and reassessments may be needed for children continuing in the program. The assessment tool

must take into consideration the strengths and needs of the child and the extra parenting provided by the caregiver to meet the child's needs.

Subd. 3. **Child care allowance portion of assessment.** (a) The assessment tool established under subdivision 2 must include consideration of the caregiver's need for child care under this subdivision, with greater consideration for children of younger ages.

(b) The child's assessment must include consideration of the caregiver's need for child care if the following criteria are met:

- (1) the child is under age 13;
- (2) all available adult caregivers are employed or attending educational or vocational training programs; and
- (3) the caregiver does not receive child care assistance for the child under chapter 119B.

(c) For children younger than seven years of age, the level determined by the non-child care portions of the assessment must be adjusted based on the average number of hours child care is needed each week due to employment or attending a training or educational program as follows:

- (1) fewer than ten hours or if the caregiver is participating in the child care assistance program under chapter 119B, no adjustment;
- (2) ten to 19 hours or if needed during school summer vacation or equivalent only, increase one level;
- (3) 20 to 29 hours, increase two levels;
- (4) 30 to 39 hours, increase three levels; and
- (5) 40 or more hours, increase four levels.

(d) For children at least seven years of age but younger than 13, the level determined by the non-child care portions of the assessment must be adjusted based on the average number of hours child care is needed each week due to employment or attending a training or educational program as follows:

- (1) fewer than 20 hours, needed during school summer vacation or equivalent only, or if the caregiver is participating in the child care assistance program under chapter 119B, no adjustment;
- (2) 20 to 39 hours, increase one level; and
- (3) 40 or more hours, increase two levels.

(e) When the child attains the age of seven, the child care allowance must be reduced by reducing the level to that available under paragraph (d). For children in foster care, benefits under section 256N.26 must be automatically reduced when the child turns seven. For children who receive guardianship assistance or adoption assistance, agreements must include similar provisions to ensure that the benefit provided to these children does not exceed the benefit provided to children in foster care.

(f) When the child attains the age of 13, the child care allowance must be eliminated by reducing the level to that available prior to any consideration of the caregiver's need for child care. For children in foster care, benefits under section 256N.26 must be automatically reduced when the child attains the age of 13. For children who receive guardianship assistance or adoption assistance, agreements must include similar provisions to ensure that the benefit provided to these children does not exceed the benefit provided to children in foster care.

(g) The child care allowance under this subdivision is not available to caregivers who receive the child care assistance under chapter 119B. A caregiver receiving a child care allowance under this subdivision must notify the commissioner if the caregiver subsequently receives the child care assistance program under chapter 119B, and the level must be reduced to that available prior to any consideration of the caregiver's need for child care.

(h) In establishing the assessment tool under subdivision 2, the commissioner must design the tool so that the levels applicable to the non-child care portions of the assessment at a given age accommodate the requirements of this subdivision.

Subd. 4. **Extraordinary levels.** (a) The assessment tool established under subdivision 2 must provide a mechanism through which up to five levels can be added to the supplemental difficulty of care for a particular child under section 256N.26, subdivision 4. In establishing the assessment tool, the commissioner must design the tool so that the levels applicable to the portions of the assessment other than the extraordinary levels can accommodate the requirements of this subdivision.

(b) These extraordinary levels are available when all of the following circumstances apply:

(1) the child has extraordinary needs as determined by the assessment tool provided for under subdivision 2, and the child meets other requirements established by the commissioner, such as a minimum score on the assessment tool;

(2) the child's extraordinary needs require extraordinary care and intense supervision that is provided by the child's caregiver as part of the parental duties as described in the supplemental difficulty of care rate, section 256N.02, subdivision 21. This extraordinary care provided by the caregiver is required so that the child can be safely cared for in the home and community, and prevents residential placement;

(3) the child is physically living in a foster family setting, as defined in Minnesota Rules, part 2960.3010, subpart 23, or physically living in the home with the adoptive parent or relative custodian; and

(4) the child is receiving the services for which the child is eligible through medical assistance programs or other programs that provide necessary services for children with disabilities or other medical and behavioral conditions to live with the child's family, but the agency with caregiver's input has identified a specific support gap that cannot be met through home and community support waivers or other programs that are designed to provide support for children with special needs.

(c) The agency completing an assessment, under subdivision 2, that suggests an extraordinary level must document as part of the assessment, the following:

(1) the assessment tool that determined that the child's needs or disabilities require extraordinary care and intense supervision;

(2) a summary of the extraordinary care and intense supervision that is provided by the caregiver as part of the parental duties as described in the supplemental difficulty of care rate, section 256N.02, subdivision 21;

(3) confirmation that the child is currently physically residing in the foster family setting or in the home with the adoptive parent or relative custodian;

(4) the efforts of the agency, caregiver, parents, and others to request support services in the home and community that would ease the degree of parental duties provided by the caregiver for

the care and supervision of the child. This would include documentation of the services provided for the child's needs or disabilities, and the services that were denied or not available from the local social service agency, community agency, the local school district, local public health department, the parent, or child's medical insurance provider;

(5) the specific support gap identified that places the child's safety and well-being at risk in the home or community and is necessary to prevent residential placement; and

(6) the extraordinary care and intense supervision provided by the foster, adoptive, or guardianship caregivers to maintain the child safely in the child's home and prevent residential placement that cannot be supported by medical assistance or other programs that provide services, necessary care for children with disabilities, or other medical or behavioral conditions in the home or community.

(d) An agency completing an assessment under subdivision 2 that suggests an extraordinary level is appropriate must forward the assessment and required documentation to the commissioner. If the commissioner approves, the extraordinary levels must be retroactive to the date the assessment was forwarded.

Subd. 5. Timing of initial assessment. For a child entering Northstar Care for Children under section 256N.21, the initial assessment must be completed within 30 days after the child is placed in foster care.

Subd. 6. Completion of initial assessment. (a) The assessment must be completed in consultation with the child's caregiver. Face-to-face contact with the caregiver is not required to complete the assessment.

(b) Initial assessments are completed for foster children, eligible under section 256N.21.

(c) The initial assessment must be completed by the financially responsible agency, in consultation with the legally responsible agency if different, within 30 days of the child's placement in foster care.

(d) If the foster parent is unable or unwilling to cooperate with the assessment process, the child shall be assigned the basic level, level B under section 256N.26, subdivision 3.

(e) Notice to the foster parent shall be provided as specified in subdivision 12.

Subd. 7. Timing of special assessment. (a) A special assessment is required as part of the negotiation of the guardianship assistance agreement under section 256N.22 if:

(1) the child was not placed in foster care with the prospective relative custodian or custodians prior to the negotiation of the guardianship assistance agreement under section 256N.25; or

(2) any requirement for reassessment under subdivision 8 is met.

(b) A special assessment is required as part of the negotiation of the adoption assistance agreement under section 256N.23 if:

(1) the child was not placed in foster care with the prospective adoptive parent or parents prior to the negotiation of the adoption assistance agreement under section 256N.25; or

(2) any requirement for reassessment under subdivision 8 is met.

(c) A special assessment is required when a child transitions from a pre-Northstar Care for Children program into Northstar Care for Children if the commissioner determines that a special assessment is appropriate instead of assigning the transition child to a level under section 256N.28.

(d) The special assessment must be completed prior to the establishment of a guardianship assistance or adoption assistance agreement on behalf of the child.

Subd. 8. Completing the special assessment. (a) The special assessment must be completed in consultation with the child's caregiver. Face-to-face contact with the caregiver is not required to complete the special assessment.

(b) If a new special assessment is required prior to the effective date of the guardianship assistance agreement, it must be completed by the financially responsible agency, in consultation with the legally responsible agency if different. If the prospective relative custodian is unable or unwilling to cooperate with the special assessment process, the child shall be assigned the basic level, level B under section 256N.26, subdivision 3, unless the child is known to be an at-risk child, in which case, the child shall be assigned level A under section 256N.26, subdivision 1.

(c) If a special assessment is required prior to the effective date of the adoption assistance agreement, it must be completed by the financially responsible agency, in consultation with the legally responsible agency if different. If there is no financially responsible agency, the special assessment must be completed by the agency designated by the commissioner. If the prospective adoptive parent is unable or unwilling to cooperate with the special assessment process, the child must be assigned the basic level, level B under section 256N.26, subdivision 3, unless the child is known to be an at-risk child, in which case, the child shall be assigned level A under section 256N.26, subdivision 1.

(d) Notice to the prospective relative custodians or prospective adoptive parents must be provided as specified in subdivision 12.

Subd. 9. Timing of and requests for reassessments. Reassessments for an eligible child must be completed within 30 days of any of the following events:

(1) for a child in continuous foster care, when six months have elapsed since completion of the last assessment;

(2) for a child in continuous foster care, change of placement location;

(3) for a child in foster care, at the request of the financially responsible agency or legally responsible agency;

(4) at the request of the commissioner; or

(5) at the request of the caregiver under subdivision 9.

Subd. 10. Caregiver requests for reassessments. (a) A caregiver may initiate a reassessment request for an eligible child in writing to the financially responsible agency or, if there is no financially responsible agency, the agency designated by the commissioner. The written request must include the reason for the request and the name, address, and contact information of the caregivers. For an eligible child with a guardianship assistance or adoption assistance agreement, the caregiver may request a reassessment if at least six months have elapsed since any previously requested review. For an eligible foster child, a foster parent may request reassessment in less than six months with written documentation that there have been significant changes in the child's needs that necessitate an earlier reassessment.

(b) A caregiver may request a reassessment of an at-risk child for whom a guardianship assistance or adoption assistance agreement has been executed if the caregiver has satisfied the commissioner with written documentation from a qualified expert that the potential disability

upon which eligibility for the agreement was based has manifested itself, consistent with section 256N.25, subdivision 3, paragraph (b).

(c) If the reassessment cannot be completed within 30 days of the caregiver's request, the agency responsible for reassessment must notify the caregiver of the reason for the delay and a reasonable estimate of when the reassessment can be completed.

Subd. 11. Completion of reassessment. (a) The reassessment must be completed in consultation with the child's caregiver. Face-to-face contact with the caregiver is not required to complete the reassessment.

(b) For foster children eligible under section 256N.21, reassessments must be completed by the financially responsible agency, in consultation with the legally responsible agency if different.

(c) If reassessment is required after the effective date of the guardianship assistance agreement, the reassessment must be completed by the financially responsible agency.

(d) If a reassessment is required after the effective date of the adoption assistance agreement, it must be completed by the financially responsible agency or, if there is no financially responsible agency, the agency designated by the commissioner.

(e) If the child's caregiver is unable or unwilling to cooperate with the reassessment, the child must be assessed at level B under section 256N.26, subdivision 3, unless the child has an adoption assistance or guardianship assistance agreement in place and is known to be an at-risk child, in which case the child must be assessed at level A under section 256N.26, subdivision 1.

Subd. 12. Approval of initial assessments, special assessments, and reassessments. (a) Any agency completing initial assessments, special assessments, or reassessments must designate one or more supervisors or other staff to examine and approve assessments completed by others in the agency under subdivision 2. The person approving an assessment must not be the case manager or staff member completing that assessment.

(b) In cases where a special assessment or reassessment for guardian assistance and adoption assistance is required under subdivision 7 or 10, the commissioner shall review and approve the assessment as part of the eligibility determination process outlined in section 256N.22, subdivision 7, for guardianship assistance, or section 256N.23, subdivision 7, for adoption assistance. The assessment determines the maximum for the negotiated agreement amount under section 256N.25.

(c) The new rate is effective the calendar month that the assessment is approved, or the effective date of the agreement, whichever is later.

Subd. 13. Notice for caregiver. (a) The agency as defined in subdivision 5 or 10 that is responsible for completing the initial assessment or reassessment must provide the child's caregiver with written notice of the initial assessment or reassessment.

(b) Initial assessment notices must be sent within 15 days of completion of the initial assessment and must minimally include the following:

(1) a summary of the child's completed individual assessment used to determine the initial rating;

(2) statement of rating and benefit level;

(3) statement of the circumstances under which the agency must reassess the child;

(4) procedure to seek reassessment;

(5) notice that the caregiver has the right to a fair hearing review of the assessment and how to request a fair hearing, consistent with section 256.045, subdivision 3; and

(6) the name, telephone number, and e-mail, if available, of a contact person at the agency completing the assessment.

(c) Reassessment notices must be sent within 15 days after the completion of the reassessment and must minimally include the following:

(1) a summary of the child's individual assessment used to determine the new rating;

(2) any change in rating and its effective date;

(3) procedure to seek reassessment;

(4) notice that if a change in rating results in a reduction of benefits, the caregiver has the right to a fair hearing review of the assessment and how to request a fair hearing consistent with section 256.045, subdivision 3;

(5) notice that a caregiver who requests a fair hearing of the reassessed rating within ten days may continue at the current rate pending the hearing, but the agency may recover any overpayment; and

(6) name, telephone number, and e-mail, if available, of a contact person at the agency completing the reassessment.

(d) Notice is not required for special assessments since the notice is part of the guardianship assistance or adoption assistance negotiated agreement completed according to section 256N.25.

Subd. 14. **Assessment tool determines rate of benefits.** The assessment tool established by the commissioner in subdivision 2 determines the monthly benefit level for children in foster care. The monthly payment for guardian assistance or adoption assistance may be negotiated up to the monthly benefit level under foster care for those children eligible for a payment under section 256N.26, subdivision 1.

History: 2013 c 108 art 17 s 11

256N.25 AGREEMENTS.

Subdivision 1. **Agreement; guardianship assistance; adoption assistance.** (a) In order to receive guardianship assistance or adoption assistance benefits on behalf of an eligible child, a written, binding agreement between the caregiver or caregivers, the financially responsible agency, or, if there is no financially responsible agency, the agency designated by the commissioner, and the commissioner must be established prior to finalization of the adoption or a transfer of permanent legal and physical custody. The agreement must be negotiated with the caregiver or caregivers under subdivision 2.

(b) The agreement must be on a form approved by the commissioner and must specify the following:

(1) duration of the agreement;

(2) the nature and amount of any payment, services, and assistance to be provided under such agreement;

(3) the child's eligibility for Medicaid services;

(4) the terms of the payment, including any child care portion as specified in section 256N.24, subdivision 3;

(5) eligibility for reimbursement of nonrecurring expenses associated with adopting or obtaining permanent legal and physical custody of the child, to the extent that the total cost does not exceed \$2,000 per child;

(6) that the agreement must remain in effect regardless of the state of which the adoptive parents or relative custodians are residents at any given time;

(7) provisions for modification of the terms of the agreement, including renegotiation of the agreement; and

(8) the effective date of the agreement.

(c) The caregivers, the commissioner, and the financially responsible agency, or, if there is no financially responsible agency, the agency designated by the commissioner, must sign the agreement. A copy of the signed agreement must be given to each party. Once signed by all parties, the commissioner shall maintain the official record of the agreement.

(d) The effective date of the guardianship assistance agreement must be the date of the court order that transfers permanent legal and physical custody to the relative. The effective date of the adoption assistance agreement is the date of the finalized adoption decree.

(e) Termination or disruption of the preadoptive placement or the foster care placement prior to assignment of custody makes the agreement with that caregiver void.

Subd. 2. Negotiation of agreement. (a) When a child is determined to be eligible for guardianship assistance or adoption assistance, the financially responsible agency, or, if there is no financially responsible agency, the agency designated by the commissioner, must negotiate with the caregiver to develop an agreement under subdivision 1. If and when the caregiver and agency reach concurrence as to the terms of the agreement, both parties shall sign the agreement. The agency must submit the agreement, along with the eligibility determination outlined in sections 256N.22, subdivision 7, and 256N.23, subdivision 7, to the commissioner for final review, approval, and signature according to subdivision 1.

(b) A monthly payment is provided as part of the adoption assistance or guardianship assistance agreement to support the care of children unless the child is determined to be an at-risk child, in which case the special at-risk monthly payment under section 256N.26, subdivision 7, must be made until the caregiver obtains written documentation from a qualified expert that the potential disability upon which eligibility for the agreement was based has manifested itself.

(1) The amount of the payment made on behalf of a child eligible for guardianship assistance or adoption assistance is determined through agreement between the prospective relative custodian or the adoptive parent and the financially responsible agency, or, if there is no financially responsible agency, the agency designated by the commissioner, using the assessment tool established by the commissioner in section 256N.24, subdivision 2, and the associated benefit and payments outlined in section 256N.26. Except as provided under section 256N.24, subdivision 1, paragraph (c), the assessment tool establishes the monthly benefit level for a child under foster care. The monthly payment under a guardianship assistance agreement or adoption assistance agreement may be negotiated up to the monthly benefit level under foster care. In no case may the amount of the payment under a guardianship assistance agreement or adoption assistance agreement exceed the foster care maintenance payment which would have been paid during the month if the child with respect to whom the guardianship assistance or adoption assistance payment is made had been in a foster family home in the state.

(2) The rate schedule for the agreement is determined based on the age of the child on the date that the prospective adoptive parent or parents or relative custodian or custodians sign the agreement.

(3) The income of the relative custodian or custodians or adoptive parent or parents must not be taken into consideration when determining eligibility for guardianship assistance or adoption assistance or the amount of the payments under section 256N.26.

(4) With the concurrence of the relative custodian or adoptive parent, the amount of the payment may be adjusted periodically using the assessment tool established by the commissioner in section 256N.24, subdivision 2, and the agreement renegotiated under subdivision 3 when there is a change in the child's needs or the family's circumstances.

(5) The guardianship assistance or adoption assistance agreement of a child who is identified as at-risk receives the special at-risk monthly payment under section 256N.26, subdivision 7, unless and until the potential disability manifests itself, as documented by an appropriate professional, and the commissioner authorizes commencement of payment by modifying the agreement accordingly. A relative custodian or adoptive parent of an at-risk child with a guardianship assistance or adoption assistance agreement may request a reassessment of the child under section 256N.24, subdivision 9, and renegotiation of the guardianship assistance or adoption assistance agreement under subdivision 3 to include a monthly payment, if the caregiver has written documentation from a qualified expert that the potential disability upon which eligibility for the agreement was based has manifested itself. Documentation of the disability must be limited to evidence deemed appropriate by the commissioner.

(c) For guardianship assistance agreements:

(1) the initial amount of the monthly guardianship assistance payment must be equivalent to the foster care rate in effect at the time that the agreement is signed less any offsets under section 256N.26, subdivision 11, or a lesser negotiated amount if agreed to by the prospective relative custodian and specified in that agreement, unless the child is identified as at-risk or the guardianship assistance agreement is entered into when a child is under the age of six;

(2) an at-risk child must be assigned level A as outlined in section 256N.26 and receive the special at-risk monthly payment under section 256N.26, subdivision 7, unless and until the potential disability manifests itself, as documented by a qualified expert, and the commissioner authorizes commencement of payment by modifying the agreement accordingly; and

(3) the amount of the monthly payment for a guardianship assistance agreement for a child, other than an at-risk child, who is under the age of six must be as specified in section 256N.26, subdivision 5.

(d) For adoption assistance agreements:

(1) for a child in foster care with the prospective adoptive parent immediately prior to adoptive placement, the initial amount of the monthly adoption assistance payment must be equivalent to the foster care rate in effect at the time that the agreement is signed less any offsets in section 256N.26, subdivision 11, or a lesser negotiated amount if agreed to by the prospective adoptive parents and specified in that agreement, unless the child is identified as at-risk or the adoption assistance agreement is entered into when a child is under the age of six;

(2) an at-risk child must be assigned level A as outlined in section 256N.26 and receive the special at-risk monthly payment under section 256N.26, subdivision 7, unless and until the

potential disability manifests itself, as documented by an appropriate professional, and the commissioner authorizes commencement of payment by modifying the agreement accordingly;

(3) the amount of the monthly payment for an adoption assistance agreement for a child under the age of six, other than an at-risk child, must be as specified in section 256N.26, subdivision 5;

(4) for a child who is in the guardianship assistance program immediately prior to adoptive placement, the initial amount of the adoption assistance payment must be equivalent to the guardianship assistance payment in effect at the time that the adoption assistance agreement is signed or a lesser amount if agreed to by the prospective adoptive parent and specified in that agreement; and

(5) for a child who is not in foster care placement or the guardianship assistance program immediately prior to adoptive placement or negotiation of the adoption assistance agreement, the initial amount of the adoption assistance agreement must be determined using the assessment tool and process in this section and the corresponding payment amount outlined in section 256N.26.

Subd. 3. Renegotiation of agreement. (a) A relative custodian or adoptive parent of a child with a guardianship assistance or adoption assistance agreement may request renegotiation of the agreement when there is a change in the needs of the child or in the family's circumstances. When a relative custodian or adoptive parent requests renegotiation of the agreement, a reassessment of the child must be completed consistent with section 256N.24, subdivisions 9 and 10. If the reassessment indicates that the child's level has changed, the financially responsible agency or, if there is no financially responsible agency, the agency designated by the commissioner or the commissioner's designee, and the caregiver must renegotiate the agreement to include a payment with the level determined through the reassessment process. The agreement must not be renegotiated unless the commissioner, the financially responsible agency, and the caregiver mutually agree to the changes. The effective date of any renegotiated agreement must be determined by the commissioner.

(b) A relative custodian or adoptive parent of an at-risk child with a guardianship assistance or adoption assistance agreement may request renegotiation of the agreement to include a monthly payment higher than the special at-risk monthly payment under section 256N.26, subdivision 7, if the caregiver has written documentation from a qualified expert that the potential disability upon which eligibility for the agreement was based has manifested itself. Documentation of the disability must be limited to evidence deemed appropriate by the commissioner. Prior to renegotiating the agreement, a reassessment of the child must be conducted as outlined in section 256N.24, subdivision 9. The reassessment must be used to renegotiate the agreement to include an appropriate monthly payment. The agreement must not be renegotiated unless the commissioner, the financially responsible agency, and the caregiver mutually agree to the changes. The effective date of any renegotiated agreement must be determined by the commissioner.

(c) Renegotiation of a guardianship assistance or adoption assistance agreement is required when one of the circumstances outlined in section 256N.26, subdivision 13, occurs.

History: 2013 c 108 art 17 s 12

256N.26 BENEFITS AND PAYMENTS.

Subdivision 1. **Benefits.** (a) There are three benefits under Northstar Care for Children: medical assistance, basic payment, and supplemental difficulty of care payment.

(b) A child is eligible for medical assistance under subdivision 2.

(c) A child is eligible for the basic payment under subdivision 3, except for a child assigned level A under section 256N.24, subdivision 1, because the child is determined to be an at-risk child receiving guardianship assistance or adoption assistance.

(d) A child, including a foster child age 18 to 21, is eligible for an additional supplemental difficulty of care payment under subdivision 4, as determined by the assessment under section 256N.24.

(e) An eligible child entering guardianship assistance or adoption assistance under the age of six receives a basic payment and supplemental difficulty of care payment as specified in subdivision 5.

(f) A child transitioning in from a pre-Northstar Care for Children program under section 256N.28, subdivision 7, shall receive basic and difficulty of care supplemental payments according to those provisions.

Subd. 2. **Medical assistance.** Eligibility for medical assistance under this chapter must be determined according to section 256B.055.

Subd. 3. **Basic monthly rate.** From January 1, 2015, to June 30, 2016, the basic monthly rate must be according to the following schedule:

| | |
|-------------------|-----------------|
| Ages 0-5 | \$565 per month |
| Ages 6-12 | \$670 per month |
| Ages 13 and older | \$790 per month |

Subd. 4. **Difficulty of care supplemental monthly rate.** From January 1, 2015, to June 30, 2016, the supplemental difficulty of care monthly rate is determined by the following schedule:

| | |
|---------|---|
| Level A | none (special rate under subdivision 7 applies) |
| Level B | none (basic under subdivision 3 only) |
| Level C | \$100 per month |
| Level D | \$200 per month |
| Level E | \$300 per month |
| Level F | \$400 per month |
| Level G | \$500 per month |
| Level H | \$600 per month |
| Level I | \$700 per month |
| Level J | \$800 per month |
| Level K | \$900 per month |
| Level L | \$1,000 per month |
| Level M | \$1,100 per month |
| Level N | \$1,200 per month |
| Level O | \$1,300 per month |

| | |
|---------|-------------------|
| Level P | \$1,400 per month |
| Level Q | \$1,500 per month |

A child assigned level A is not eligible for either the basic or supplemental difficulty of care payment, while a child assigned level B is not eligible for the supplemental difficulty of care payment but is eligible for the basic monthly rate under subdivision 3.

Subd. 5. **Alternate rates for preschool entry and certain transitioned children.** A child who entered the guardianship assistance or adoption assistance components of Northstar Care for Children while under the age of six shall receive 50 percent of the amount the child would otherwise be entitled to under subdivisions 3 and 4. The commissioner may also use the 50 percent rate for a child who was transitioned into those components through declaration of the commissioner under section 256N.28, subdivision 7.

Subd. 6. **Emergency foster care rate for initial placement.** (a) A child who enters foster care due to immediate custody by a police officer or court order, consistent with section 260C.175, subdivisions 1 and 2, or equivalent provision under tribal code, shall receive the emergency foster care rate for up to 30 days. The emergency foster care rate cannot be extended beyond 30 days of the child's placement.

(b) For this payment rate to be applied, at least one of three conditions must apply:

- (1) the child's initial placement must be in foster care in Minnesota;
- (2) the child's previous placement was more than two years ago; or
- (3) the child's previous placement was for fewer than 30 days and an assessment under section 256N.24 was not completed by an agency under section 256N.24.

(c) The emergency foster care rate consists of the appropriate basic monthly rate under subdivision 3 plus a difficulty of care supplemental monthly rate of level D under subdivision 4.

(d) The emergency foster care rate ends under any of three conditions:

- (1) when an assessment under section 256N.24 is completed;
- (2) when the placement ends; or
- (3) after 30 days have elapsed.

(e) The financially responsible agency, in consultation with the legally responsible agency, if different, may replace the emergency foster care rate at any time by completing an initial assessment on which a revised difficulty of care supplemental monthly rate would be based. Consistent with section 256N.24, subdivision 9, the caregiver may request a reassessment in writing for an initial assessment to replace the emergency foster care rate. This written request would initiate an initial assessment under section 256N.24, subdivision 5. If the revised difficulty of care supplemental level based on the initial assessment is higher than level D, then the revised higher rate shall apply retroactively to the beginning of the placement. If the revised level is lower, the lower rate shall apply on the date the initial assessment was completed.

(f) If a child remains in foster care placement for more than 30 days, the emergency foster care rate ends after the 30th day of placement and an assessment under section 256N.26 must be completed.

Subd. 7. **Special at-risk monthly payment for at-risk children in guardianship assistance and adoption assistance.** A child eligible for guardianship assistance under section 256N.22 or adoption assistance under section 256N.23 who is determined to be an at-risk child

shall receive a special at-risk monthly payment of \$1 per month basic, unless and until the potential disability manifests itself and the agreement is renegotiated to include reimbursement. Such an at-risk child shall receive neither a supplemental difficulty of care monthly rate under subdivision 4 nor home and vehicle modifications under subdivision 10, but must be considered for medical assistance under subdivision 2.

Subd. 8. **Daily rates.** (a) The commissioner shall establish prorated daily rates to the nearest cent for the monthly rates under subdivisions 3 to 7. Daily rates must be routinely used when a partial month is involved for foster care, guardianship assistance, or adoption assistance.

(b) A full month payment is permitted if a foster child is temporarily absent from the foster home if the brief absence does not exceed 14 days and the child's placement continues with the same caregiver.

Subd. 9. **Revision.** By April 1, 2016, for fiscal year 2017, and by each succeeding April 1 for the subsequent fiscal year, the commissioner shall review and revise the rates under subdivisions 3 to 7 based on the United States Department of Agriculture, Estimates of the Cost of Raising a Child, published by the United States Department of Agriculture, Agricultural Resources Service, Publication 1411. The revision shall be the average percentage by which costs increase for the age ranges represented in the United States Department of Agriculture, Estimates of the Cost of Raising a Child, except that in no instance must the increase be more than three percent per annum. The monthly rates must be revised to the nearest dollar and the daily rates to the nearest cent.

Subd. 10. **Home and vehicle modifications.** (a) Except for a child assigned level A under section 256N.24, subdivision 1, paragraph (d), clause (1), a child who is eligible for an adoption assistance agreement may have reimbursement of home and vehicle modifications necessary to accommodate the child's special needs upon which eligibility for adoption assistance was based and included as part of the negotiation of the agreement under section 256N.25, subdivision 2. Reimbursement of home and vehicle modifications must not be available for a child who is assessed at level A under subdivision 1, unless and until the potential disability manifests itself and the agreement is renegotiated to include reimbursement.

(b) Application for and reimbursement of modifications must be completed according to a process specified by the commissioner. The type and cost of each modification must be preapproved by the commissioner. The type of home and vehicle modifications must be limited to those specified by the commissioner.

(c) Reimbursement for home modifications as outlined in this subdivision is limited to once every five years per child. Reimbursement for vehicle modifications as outlined in this subdivision is limited to once every five years per family.

Subd. 11. **Child income or income attributable to the child.** (a) A monthly guardianship assistance or adoption assistance payment must be considered as income and resources attributable to the child. Guardianship assistance and adoption assistance are exempt from garnishment, except as permissible under the laws of the state where the child resides.

(b) When a child is placed into foster care, any income and resources attributable to the child are treated as provided in sections 252.27 and 260C.331, or 260B.331, as applicable to the child being placed.

(c) Consideration of income and resources attributable to the child must be part of the negotiation process outlined in section 256N.25, subdivision 2. In some circumstances, the receipt of other income on behalf of the child may impact the amount of the monthly payment received

by the relative custodian or adoptive parent on behalf of the child through Northstar Care for Children. Supplemental Security Income (SSI), retirement survivor's disability insurance (RSDI), veteran's benefits, railroad retirement benefits, and black lung benefits are considered income and resources attributable to the child.

Subd. 12. Treatment of Supplemental Security Income. If a child placed in foster care receives benefits through Supplemental Security Income (SSI) at the time of foster care placement or subsequent to placement in foster care, the financially responsible agency may apply to be the payee for the child for the duration of the child's placement in foster care. If a child continues to be eligible for SSI after finalization of the adoption or transfer of permanent legal and physical custody and is determined to be eligible for a payment under Northstar Care for Children, a permanent caregiver may choose to receive payment from both programs simultaneously. The permanent caregiver is responsible to report the amount of the payment to the Social Security Administration and the SSI payment will be reduced as required by the Social Security Administration.

Subd. 13. Treatment of retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, and black lung benefits. (a) If a child placed in foster care receives retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, or black lung benefits at the time of foster care placement or subsequent to placement in foster care, the financially responsible agency may apply to be the payee for the child for the duration of the child's placement in foster care. If it is anticipated that a child will be eligible to receive retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, or black lung benefits after finalization of the adoption or assignment of permanent legal and physical custody, the permanent caregiver shall apply to be the payee of those benefits on the child's behalf. The monthly amount of the other benefits must be considered an offset to the amount of the payment the child is determined eligible for under Northstar Care for Children.

(b) If a child becomes eligible for retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, or black lung benefits, after the initial amount of the payment under Northstar Care for Children is finalized, the permanent caregiver shall contact the commissioner to redetermine the payment under Northstar Care for Children. The monthly amount of the other benefits must be considered an offset to the amount of the payment the child is determined eligible for under Northstar Care for Children.

(c) If a child ceases to be eligible for retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, or black lung benefits after the initial amount of the payment under Northstar Care for Children is finalized, the permanent caregiver shall contact the commissioner to redetermine the payment under Northstar Care for Children. The monthly amount of the payment under Northstar Care for Children must be the amount the child was determined to be eligible for prior to consideration of any offset.

(d) If the monthly payment received on behalf of the child under retirement survivor's disability insurance, veteran's benefits, railroad retirement benefits, or black lung benefits changes after the adoption assistance or guardianship assistance agreement is finalized, the permanent caregiver shall notify the commissioner as to the new monthly payment amount, regardless of the amount of the change in payment. If the monthly payment changes by \$75 or more, even if the change occurs incrementally over the duration of the term of the adoption assistance or guardianship assistance agreement, the monthly payment under Northstar Care for Children must be adjusted without further consent to reflect the amount of the increase or decrease in the

offset amount. Any subsequent change to the payment must be reported and handled in the same manner. A change of monthly payments of less than \$75 is not a permissible reason to renegotiate the adoption assistance or guardianship assistance agreement under section 256N.25, subdivision 3. The commissioner shall review and revise the limit at which the adoption assistance or guardianship assistance agreement must be renegotiated in accordance with subdivision 9.

Subd. 14. Treatment of child support and Minnesota family investment program.

(a) If a child placed in foster care receives child support, the child support payment may be redirected to the financially responsible agency for the duration of the child's placement in foster care. In cases where the child qualifies for Northstar Care for Children by meeting the adoption assistance eligibility criteria or the guardianship assistance eligibility criteria, any court-ordered child support must not be considered income attributable to the child and must have no impact on the monthly payment.

(b) Consistent with section 256J.24, a child eligible for Northstar Care for Children whose caregiver receives a payment on the child's behalf is excluded from a Minnesota family investment program assistance unit.

Subd. 15. Payments. (a) Payments to caregivers under Northstar Care for Children must be made monthly. Consistent with section 256N.24, subdivision 12, the financially responsible agency must send the caregiver the required written notice within 15 days of a completed assessment or reassessment.

(b) Unless paragraph (c) or (d) applies, the financially responsible agency shall pay foster parents directly for eligible children in foster care.

(c) When the legally responsible agency is different than the financially responsible agency, the legally responsible agency may make the payments to the caregiver, provided payments are made on a timely basis. The financially responsible agency must pay the legally responsible agency on a timely basis. Caregivers must have access to the financially and legally responsible agencies' records of the transaction, consistent with the retention schedule for the payments.

(d) For eligible children in foster care, the financially responsible agency may pay the foster parent's payment for a licensed child-placing agency instead of paying the foster parents directly. The licensed child-placing agency must timely pay the foster parents and maintain records of the transaction. Caregivers must have access to the financially responsible agency's records of the transaction and the child-placing agency's records of the transaction, consistent with the retention schedule for the payments.

Subd. 16. Effect of benefit on other aid. Payments received under this section must not be considered as income for child care assistance under chapter 119B or any other financial benefit. Consistent with section 256J.24, a child receiving a maintenance payment under Northstar Care for Children is excluded from any Minnesota family investment program assistance unit.

Subd. 17. Home and community-based services waiver for persons with disabilities. A child in foster care may qualify for home and community-based waived services, consistent with section 256B.092 for developmental disabilities, or section 256B.49 for community alternative care, community alternatives for disabled individuals, or traumatic brain injury waivers. A waiver service must not be substituted for the foster care program. When the child is simultaneously eligible for waived services and for benefits under Northstar Care for Children, the financially responsible agency must assess and provide basic and supplemental difficulty of care rates as determined by the assessment according to section 256N.24. If it is determined that additional

services are needed to meet the child's needs in the home that are not or cannot be met by the foster care program, the need would be referred to the local waived service program.

Subd. 18. **Overpayments.** The commissioner has the authority to collect any amount of foster care payment, adoption assistance, or guardianship assistance paid to a caregiver in excess of the payment due. Payments covered by this subdivision include basic maintenance needs payments, supplemental difficulty of care payments, and reimbursement of home and vehicle modifications under subdivision 10. Prior to any collection, the commissioner or the commissioner's designee shall notify the caregiver in writing, including:

- (1) the amount of the overpayment and an explanation of the cause of overpayment;
- (2) clarification of the corrected amount;
- (3) a statement of the legal authority for the decision;
- (4) information about how the caregiver can correct the overpayment;
- (5) if repayment is required, when the payment is due and a person to contact to review a repayment plan;
- (6) a statement that the caregiver has a right to a fair hearing review by the department; and
- (7) the procedure for seeking a fair hearing review by the department.

Subd. 19. **Payee.** For adoption assistance and guardianship assistance cases, the payment must only be made to the adoptive parent or relative custodian specified on the agreement. If there is more than one adoptive parent or relative custodian, both parties will be listed as the payee unless otherwise specified in writing according to policies outlined by the commissioner. In the event of divorce or separation of the caregivers, a change of payee must be made in writing according to policies outlined by the commissioner. If both caregivers are in agreement as to the change, it may be made according to a process outlined by the commissioner. If there is not agreement as to the change, a court order indicating the party who is to receive the payment is needed before a change can be processed. If the change of payee is disputed, the commissioner may withhold the payment until agreement is reached. A noncustodial caregiver may request notice in writing of review, modification, or termination of the adoption assistance or guardianship assistance agreement. In the event of the death of a payee, a change of payee consistent with sections 256N.22 and 256N.23 may be made in writing according to policies outlined by the commissioner.

Subd. 20. **Notification of change.** (a) A caregiver who has an adoption assistance agreement or guardianship assistance agreement in place shall keep the agency administering the program informed of changes in status or circumstances which would make the child ineligible for the payments or eligible for payments in a different amount.

(b) For the duration of the agreement, the caregiver agrees to notify the agency administering the program in writing within 30 days of any of the following:

- (1) a change in the child's or caregiver's legal name;
- (2) a change in the family's address;
- (3) a change in the child's legal custody status;
- (4) the child's completion of high school, if this occurs after the child attains age 18;

(5) the end of the caregiver's legal responsibility to support the child based on termination of parental rights of the caregiver, transfer of guardianship to another person, or transfer of permanent legal and physical custody to another person;

(6) the end of the caregiver's financial support of the child;

(7) the death of the child;

(8) the death of the caregiver;

(9) the child enlists in the military;

(10) the child gets married;

(11) the child becomes an emancipated minor through legal action;

(12) the caregiver separates or divorces; and

(13) the child is residing outside the caregiver's home for a period of more than 30 consecutive days.

Subd. 21. **Correct and true information.** The caregiver must be investigated for fraud if the caregiver reports information the caregiver knows is untrue, the caregiver fails to notify the commissioner of changes that may affect eligibility, or the agency administering the program receives relevant information that the caregiver did not report.

Subd. 22. **Termination notice for caregiver.** The agency that issues the maintenance payment shall provide the child's caregiver with written notice of termination of payment. Termination notices must be sent at least 15 days before the final payment or, in the case of an unplanned termination, the notice is sent within three days of the end of the payment. The written notice must minimally include the following:

(1) the date payment will end;

(2) the reason payments will end and the event that is the basis to terminate payment;

(3) a statement that the provider has a right to a fair hearing review by the department consistent with section 256.045, subdivision 3;

(4) the procedure to request a fair hearing; and

(5) the name, telephone number, and e-mail address of a contact person at the agency.

History: 2013 c 108 art 17 s 13

256N.27 FEDERAL, STATE, AND LOCAL SHARES.

Subdivision 1. **Federal share.** For the purposes of determining a child's eligibility under title IV-E of the Social Security Act for a child in foster care, the financially responsible agency shall use the eligibility requirements outlined in section 472 of the Social Security Act. For a child who qualifies for guardianship assistance or adoption assistance, the financially responsible agency and the commissioner shall use the eligibility requirements outlined in section 473 of the Social Security Act. In each case, the agency paying the maintenance payments must be reimbursed for the costs from the federal money available for this purpose.

Subd. 2. **State share.** The commissioner shall pay the state share of the maintenance payments as determined under subdivision 4, and an identical share of the pre-Northstar Care foster care program under section 260C.4411, subdivision 1, the relative custody assistance program under section 257.85, and the pre-Northstar Care for Children adoption assistance

program under chapter 259A. The commissioner may transfer funds into the account if a deficit occurs.

Subd. 3. Local share. (a) The financially responsible agency at the time of placement for foster care or finalization of the agreement for guardianship assistance or adoption assistance shall pay the local share of the maintenance payments as determined under subdivision 4, and an identical share of the pre-Northstar Care for Children foster care program under section 260C.4411, subdivision 1, the relative custody assistance program under section 257.85, and the pre-Northstar Care for Children adoption assistance program under chapter 259A.

(b) The financially responsible agency shall pay the entire cost of any initial clothing allowance, administrative payments to child caring agencies specified in section 317A.907, or other support services it authorizes, except as provided under other provisions of law.

(c) In cases of federally required adoption assistance where there is no financially responsible agency as provided in section 256N.24, subdivision 5, the commissioner shall pay the local share.

(d) When an Indian child being placed in Minnesota meets title IV-E eligibility defined in section 473(d) of the Social Security Act and is receiving guardianship assistance or adoption assistance, the agency or entity assuming responsibility for the child is responsible for the nonfederal share of the payment.

Subd. 4. Nonfederal share. (a) The commissioner shall establish a percentage share of the maintenance payments, reduced by federal reimbursements under title IV-E of the Social Security Act, to be paid by the state and to be paid by the financially responsible agency.

(b) These state and local shares must initially be calculated based on the ratio of the average appropriate expenditures made by the state and all financially responsible agencies during calendar years 2011, 2012, 2013, and 2014. For purposes of this calculation, appropriate expenditures for the financially responsible agencies must include basic and difficulty of care payments for foster care reduced by federal reimbursements, but not including any initial clothing allowance, administrative payments to child care agencies specified in section 317A.907, child care, or other support or ancillary expenditures. For purposes of this calculation, appropriate expenditures for the state shall include adoption assistance and relative custody assistance, reduced by federal reimbursements.

(c) For each of the periods January 1, 2015, to June 30, 2016, and fiscal years 2017, 2018, and 2019, the commissioner shall adjust this initial percentage of state and local shares to reflect the relative expenditure trends during calendar years 2011, 2012, 2013, and 2014, taking into account appropriations for Northstar Care for Children and the turnover rates of the components. In making these adjustments, the commissioner's goal shall be to make these state and local expenditures other than the appropriations for Northstar Care for Children to be the same as they would have been had Northstar Care for Children not been implemented, or if that is not possible, proportionally higher or lower, as appropriate. The state and local share percentages for fiscal year 2019 must be used for all subsequent years.

Subd. 5. Adjustments for proportionate shares among financially responsible agencies.

(a) The commissioner shall adjust the expenditures under subdivision 4 by each financially responsible agency so that its relative share is proportional to its foster care expenditures, with the goal of making the local share similar to what the county or tribe would have spent had Northstar Care for Children not been enacted.

(b) For the period January 1, 2015, to June 30, 2016, the relative shares must be as determined under subdivision 4 for calendar years 2011, 2012, 2013, and 2014 compared with similar costs of all financially responsible agencies.

(c) For subsequent fiscal years, the commissioner shall update the relative shares based on actual utilization of Northstar Care for Children by the financially responsible agencies during the previous period, so that those using relatively more than they did historically are adjusted upward and those using less are adjusted downward.

(d) The commissioner must ensure that the adjustments are not unduly influenced by onetime events, anomalies, small changes that appear large compared to a narrow historic base, or fluctuations that are the results of the transfer of responsibilities to tribal social service agencies authorized in section 256.01, subdivision 14b, as part of the American Indian Child Welfare Initiative.

History: 2013 c 108 art 17 s 14

256N.28 ADMINISTRATION AND APPEALS.

Subdivision 1. **Responsibilities.** (a) The financially responsible agency shall determine the eligibility for Northstar Care for Children for children in foster care under section 256N.21, and for those children determined eligible, shall further determine each child's eligibility for title IV-E of the Social Security Act, provided the agency has such authority under the state title IV-E plan.

(b) Subject to commissioner review and approval, the financially responsible agency shall prepare the eligibility determination for Northstar Care for Children for children in guardianship assistance under section 256N.22 and children in adoption assistance under section 256N.23. The AFDC relatedness determination, when necessary to determine a child's eligibility for title IV-E funding, shall be made only by an authorized agency according to policies and procedures prescribed by the commissioner.

(c) The financially responsible agency is responsible for the administration of Northstar Care for Children for children in foster care. The agency designated by the commissioner is responsible for assisting the commissioner with the administration of Northstar Care for Children for children in guardianship assistance and adoption assistance by conducting assessments, reassessments, negotiations, and other activities as specified by the commissioner under subdivision 2.

Subd. 2. **Procedures, requirements, and deadlines.** The commissioner shall specify procedures, requirements, and deadlines for the administration of Northstar Care for Children in accordance with sections 256N.001 to 256N.28, including for children transitioning into Northstar Care for Children under subdivision 7. The commissioner shall periodically review all procedures, requirements, and deadlines, including the assessment tool and process under section 256N.24, in consultation with counties, tribes, and representatives of caregivers, and may alter them as needed.

Subd. 3. **Administration of title IV-E programs.** The title IV-E foster care, guardianship assistance, and adoption assistance programs must operate within the statutes, rules, and policies set forth by the federal government in the Social Security Act.

Subd. 4. **Reporting.** The commissioner shall specify required fiscal and statistical reports under section 256.01, subdivision 2, paragraph (q), and other reports as necessary.

Subd. 5. **Promotion of programs.** Families who adopt a child under the commissioner's guardianship must be informed as to the adoption tax credit. The commissioner shall actively seek ways to promote the guardianship assistance and adoption assistance programs, including

informing prospective caregivers of eligible children of the availability of guardianship assistance and adoption assistance.

Subd. 6. Appeals and fair hearings. (a) A caregiver has the right to appeal to the commissioner under section 256.045 when eligibility for Northstar Care for Children is denied, and when payment or the agreement for an eligible child is modified or terminated.

(b) A relative custodian or adoptive parent has additional rights to appeal to the commissioner pursuant to section 256.045. These rights include when the commissioner terminates or modifies the guardianship assistance or adoption assistance agreement or when the commissioner denies an application for guardianship assistance or adoption assistance. A prospective relative custodian or adoptive parent who disagrees with a decision by the commissioner before transfer of permanent legal and physical custody or finalization of the adoption may request review of the decision by the commissioner or may appeal the decision under section 256.045. A guardianship assistance or adoption assistance agreement must be signed and in effect before the court order that transfers permanent legal and physical custody or the adoption finalization; however, in some cases, there may be extenuating circumstances as to why an agreement was not entered into before finalization of permanency for the child. Caregivers who believe that extenuating circumstances exist in the case of their child may request a fair hearing. Caregivers have the responsibility of proving that extenuating circumstances exist. Caregivers must be required to provide written documentation of each eligibility criterion at the fair hearing. Examples of extenuating circumstances include: relevant facts regarding the child were known by the placing agency and not presented to the caregivers before transfer of permanent legal and physical custody or finalization of the adoption, or failure by the commissioner or a designee to advise potential caregivers about the availability of guardianship assistance or adoption assistance for children in the state foster care system. If a human services judge finds through the fair hearing process that extenuating circumstances existed and that the child met all eligibility criteria at the time the transfer of permanent legal and physical custody was ordered or the adoption was finalized, the effective date and any associated federal financial participation shall be retroactive from the date of the request for a fair hearing.

Subd. 7. Transitions from pre-Northstar Care for Children programs. (a) A child in foster care who remains with the same caregiver shall continue to receive benefits under the pre-Northstar Care for Children foster care program under section 256.82. Transitions to Northstar Care for Children must occur as provided in section 256N.21, subdivision 6.

(b) The commissioner may seek to transition into Northstar Care for Children a child who is in pre-Northstar Care for Children relative custody assistance under section 257.85 or pre-Northstar Care for Children adoption assistance under chapter 259A, in accordance with these priorities, in order of priority:

- (1) financial and budgetary constraints;
- (2) complying with federal regulations;
- (3) converting pre-Northstar Care for Children relative custody assistance under section 257.85 to the guardianship assistance component of Northstar Care for Children;
- (4) improving permanency for a child or children;
- (5) maintaining permanency for a child or children;
- (6) accessing additional federal funds; and
- (7) administrative simplification.

(c) Transitions shall be accomplished according to procedures, deadlines, and requirements specified by the commissioner under subdivision 2.

(d) The commissioner may accomplish a transition of a child from pre-Northstar Care for Children relative custody assistance under section 257.85 to the guardianship assistance component of Northstar Care for Children by declaration and appropriate notice to the caregiver, provided that the benefit for a child under this paragraph is not reduced.

(e) The commissioner may offer a transition of a child from pre-Northstar Care for Children adoption assistance under chapter 259A to the adoption assistance component of Northstar Care for Children by contacting the caregiver with an offer. The transition must be accomplished only when the caregiver agrees to the offer. The caregiver shall have a maximum of 90 days to review and accept the commissioner's offer. If the commissioner's offer is not accepted within 90 days, the pre-Northstar Care for Children adoption assistance agreement remains in effect until it terminates or a subsequent offer is made by the commissioner.

(f) For a child transitioning into Northstar Care for Children, the commissioner shall assign an equivalent assessment level based on the most recently completed supplemental difficulty of care level assessment, unless the commissioner determines that arranging for a new assessment under section 256N.24 would be more appropriate based on the priorities specified in paragraph (b).

(g) For a child transitioning into Northstar Care for Children, regardless of the age of the child, the commissioner shall use the rates under section 256N.26, subdivision 5, unless the rates under section 256N.26, subdivisions 3 and 4, are more appropriate based on the priorities specified in paragraph (b), as determined by the commissioner.

Subd. 8. **Purchase of child-specific adoption services.** The commissioner may reimburse the placing agency for appropriate adoption services for children eligible under section 259A.75.

History: 2013 c 107 art 1 s 9; 2013 c 108 art 17 s 15