

## CHAPTER 246

### STATE-OPERATED SERVICES

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**246.001** MS 2006 [Renumbered 15.001]

#### **246.01 POWERS AND DUTIES.**

The commissioner of human services is hereby specifically constituted the guardian of all persons with developmental disabilities, the guardianship of whom has heretofore been vested in the State Board of Control or in the director of social welfare whether by operation of law or by an order of court without any further act or proceeding, and all the powers and duties vested in or imposed upon the State Board of Control

or the director of social welfare, with reference to mental testing of persons with developmental disabilities, and with reference to the institutions of the state of Minnesota except correctional facilities administered and managed by the commissioner of corrections, are hereby transferred to, vested in, and imposed upon the commissioner of human services, and in relation thereto is hereby charged with and shall have the exclusive power of administration and management of all of the following state institutions: state hospitals for persons with developmental disabilities, mental illness, or chemical dependency. The commissioner shall have power and authority to determine all matters relating to the unified and continuous development of all of the foregoing institutions and of such other institutions, the supervision of which may, from time to time, be vested in the commissioner. It is intended that there be vested in the commissioner all of the powers, functions, and authority heretofore vested in the State Board of Control relative to such state institutions. The commissioner shall have the power and authority to accept, in behalf of the state, contributions and gifts of money and personal property for the use and benefit of the residents of the public institutions under the commissioner's control, and all money and securities so received shall be deposited in the state treasury subject to the order of the commissioner of human services. If the gift or contribution is designated by the donor for a certain institution or purpose, the commissioner of human services shall expend or use the same as nearly as may be in accordance with the conditions of the gift or contribution, compatible with the best interests of the inmates and the state. The commissioner of human services is hereby constituted the "state agency" as defined by the Social Security Act of the United States and the laws of this state for all purposes relating to mental health and mental hygiene.

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

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

**History:** (3199-103) 1939 c 431 art 7 s 3; 1943 c 570 s 2; 1943 c 612 s 3; 1947 c 211 s 1; 1949 c 512 s 7; 1949 c 561 s 1; 1951 c 713 s 23; 1953 c 562 s 1; 1957 c 287 s 3; 1959 c 158 s 16; 1959 c 638 s 2; 1965 c 45 s 18; 1973 c 540 s 3; 1976 c 271 s 76; 1979 c 102 s 13; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2005 c 10 art 4 s 7; 2005 c 56 s 1

**246.012** [Repealed, 2014 c 262 art 3 s 18]

### **246.013 PERSONS WITH MENTAL ILLNESS; CARE, TREATMENT.**

Within the limits of the appropriations for the commissioner of human services, the commissioner is directed, in the performance of the duties imposed by the laws of this state, to bring to the measure prescribed by section 246.014, the care and treatment of persons with mental illness as speedily as is possible, and to thereafter, subject to the paramount authority of the legislature with respect to appropriations, maintain said standards in the care and treatment of persons with mental illness.

**History:** 1949 c 512 s 2; 1953 c 724 s 1; 1967 c 839 s 3; 1984 c 654 art 5 s 58; 1985 c 21 s 8; 1986 c 444; 2014 c 262 art 3 s 18; art 5 s 6

**246.0135 OPERATION OF REGIONAL TREATMENT CENTERS.**

(a) The commissioner of human services is prohibited from closing any regional treatment center or state-operated nursing home or any program at any of the regional treatment centers or state-operated nursing homes, without specific legislative authorization. For persons with developmental disabilities who move from one regional treatment center to another regional treatment center, the provisions of section 256B.092, subdivision 10, must be followed for both the discharge from one regional treatment center and admission to another regional treatment center, except that the move is not subject to the consensus requirement of section 256B.092, subdivision 10, paragraph (b).

(b) Prior to closing or downsizing a regional treatment center, the commissioner of human services shall be responsible for assuring that community-based alternatives developed in response are adequate to meet the program needs identified by each county within the catchment area and do not require additional local county property tax expenditures.

(c) The nonfederal share of the cost of alternative treatment or care developed as the result of the closure of a regional treatment center, including costs associated with fulfillment of responsibilities under chapter 253B shall be paid from state funds appropriated for purposes specified in section 246.013.

(d) The commissioner may not divert state funds used for providing for care or treatment of persons residing in a regional treatment center for purposes unrelated to the care and treatment of such persons.

**History:** 1992 c 513 art 9 s 18; 1Sp1993 c 1 art 7 s 24; 2005 c 56 s 1; 2014 c 262 art 3 s 8

**246.0136 ESTABLISHING ENTERPRISE ACTIVITIES IN STATE-OPERATED SERVICES.**

Subdivision 1. **Planning for enterprise activities.** The commissioner of human services is directed to study and make recommendations to the legislature on establishing enterprise activities within state-operated services. Before implementing an enterprise activity, the commissioner must obtain statutory authorization for its implementation, except that the commissioner has authority to implement enterprise activities for adult mental health, adolescent services, and to establish a public group practice without statutory authorization. Enterprise activities are defined as the range of services, which are delivered by state employees, needed by people with disabilities and are fully funded by public or private third-party health insurance or other revenue sources available to clients that provide reimbursement for the services provided. Enterprise activities within state-operated services shall specialize in caring for vulnerable people for whom no other providers are available or for whom state-operated services may be the provider selected by the payer. In subsequent biennia after an enterprise activity is established within a state-operated service, the base state appropriation for that state-operated service shall be reduced proportionate to the size of the enterprise activity.

Subd. 2. **Required components of any proposal; considerations.** In any proposal for an enterprise activity brought to the legislature by the commissioner, the commissioner must demonstrate that there is public or private third-party health insurance or other revenue available to the people served, that the anticipated revenues to be collected will fully fund the services, that there will be sufficient funds for cash flow purposes, and that access to services by vulnerable populations served by state-operated services will not be limited by implementation of an enterprise activity. In studying the feasibility of establishing an enterprise activity, the commissioner must consider:

- (1) creating public or private partnerships to facilitate client access to needed services;
- (2) administrative simplification and efficiencies throughout the state-operated services system;

(3) converting or disposing of buildings not utilized and surplus lands; and

(4) exploring the efficiencies and benefits of establishing state-operated services as an independent state agency.

**History:** 1999 c 245 art 5 s 9; 1Sp2005 c 4 art 5 s 10

#### **246.014 SERVICES.**

The measure of services are:

(a) The commissioner of human services shall develop and maintain state-operated services in a manner consistent with sections 245.461 and 245.487 and chapters 252, 254A, and 254B. State-operated services shall be provided in coordination with counties and other vendors. State-operated services shall include regional treatment centers, specialized inpatient or outpatient treatment programs, enterprise services, community-based services and programs, community preparation services, consultative services, and other services consistent with the mission of the Department of Human Services. These services shall include crisis beds, waived homes, intermediate care facilities, and day training and habilitation facilities. The administrative structure of state-operated services must be statewide in character. The state-operated services staff may deliver services at any location throughout the state.

(b) The commissioner of human services shall create and maintain forensic services programs. Forensic services shall be provided in coordination with counties and other vendors. Forensic services shall include specialized inpatient programs at secure treatment facilities as defined in sections 253B.02, subdivision 18a, and 253D.02, subdivision 13, consultative services, aftercare services, community-based services and programs, transition services, nursing home services, or other services consistent with the mission of the Department of Human Services.

(c) Community preparation services as identified in paragraphs (a) and (b) are defined as specialized inpatient or outpatient services or programs operated outside of a secure environment but are administered by a secured treatment facility.

(d) The commissioner of human services may establish policies and procedures which govern the operation of the services and programs under the direct administrative authority of the commissioner.

**History:** 1949 c 512 s 3; 1953 c 561 s 1; 1967 c 839 s 4; 1973 c 507 s 45; 1980 c 357 s 16; 1980 c 614 s 126; 1980 c 617 s 47; 1984 c 654 art 5 s 58; 1985 c 21 s 9; 1986 c 444; 1Sp1994 c 1 art 2 s 23; 1Sp2003 c 14 art 6 s 21; 2004 c 228 art 1 s 36; 2013 c 49 s 22; 2013 c 59 art 2 s 3; 2014 c 262 art 3 s 18; art 5 s 6

#### **246.0141 TOBACCO USE PROHIBITED.**

No patient, staff, guest, or visitor on the grounds or in a state regional treatment center, the Minnesota Security Hospital, or the Minnesota sex offender program may possess or use tobacco or a tobacco-related device. For the purposes of this section, "tobacco" and "tobacco-related device" have the meanings given in section 609.685, subdivision 1. This section does not prohibit the possession or use of tobacco or a tobacco-related device by an adult as part of a traditional Indian spiritual or cultural ceremony. For purposes of this section, an Indian is a person who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

**History:** 1Sp2003 c 14 art 7 s 67; 2013 c 59 art 2 s 4

**246.015 CONSULTATIVE SERVICES; AFTERCARE OF PATIENTS.**

Subdivision 1. [Repealed, 1953 c 608 s 1]

Subd. 2. [Repealed, 1953 c 608 s 1]

Subd. 3. **Authorization.** The commissioner of human services may authorize state-operated services to provide consultative services for courts, state welfare agencies, and supervise the placement and aftercare of patients, on a fee-for-service basis as defined in section 246.50, provisionally or otherwise discharged from a state-operated services facility. State-operated services may also promote and conduct programs of education relating to mental health. The commissioner shall administer, expend, and distribute federal funds which may be made available to the state and other funds not appropriated by the legislature, which may be made available to the state for mental health purposes.

**History:** 1949 c 512 s 4; 1953 c 608 s 1,2; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp2003 c 14 art 6 s 22

**246.016** [Repealed, 2014 c 262 art 3 s 18]

**246.017** Subdivision 1. [Repealed, 2005 c 136 art 5 s 6]

Subd. 2. [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.018 OFFICE OF MEDICAL DIRECTOR.**

Subdivision 1. **Established.** The Office of Medical Director within the Department of Human Services is established.

Subd. 2. **Medical director.** The commissioner of human services shall appoint, and unless otherwise established by law, set the salary of a licensed physician to serve as medical director to assist in establishing and maintaining the medical policies of the Department of Human Services. The commissioner may place the medical director's position in the unclassified service if the position meets the criteria of section 43A.08, subdivision 1a. The medical director must be a psychiatrist certified by the Board of Psychiatry.

Subd. 3. **Duties.** The medical director shall:

(1) oversee the clinical provision of inpatient mental health services provided in the state's regional treatment centers;

(2) recruit and retain psychiatrists to serve on the state medical staff established in subdivision 4;

(3) consult with the commissioner of human services, community mental health center directors, and the state-operated services governing body to develop standards for treatment and care of patients in state-operated service programs;

(4) develop and oversee a continuing education program for members of the medical staff; and

(5) participate and cooperate in the development and maintenance of a quality assurance program for state-operated services that assures that residents receive quality inpatient care and continuous quality care once they are discharged or transferred to an outpatient setting.

Subd. 4. **State-operated services medical staff.** (a) The medical director shall establish a state-operated services medical staff which shall be under the clinical direction of the Office of Medical Director.

(b) The medical director, in conjunction with the medical staff, shall:

(1) establish standards and define qualifications for physicians who care for residents in state-operated services;

(2) monitor the performance of physicians who care for residents in state-operated services; and

(3) recommend to the commissioner changes in procedures for operating state-operated service facilities that are needed to improve the provision of medical care in those facilities.

**History:** *1989 c 282 art 4 s 62; 1Sp2003 c 14 art 6 s 23-25*

**246.02** [Repealed, 2001 c 70 s 5]

**246.022** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.023** Subdivision 1. [Repealed, 2014 c 262 art 3 s 18]

Subd. 2. [Repealed, 1988 c 689 art 2 s 269]

Subd. 3. [Repealed, 1988 c 689 art 2 s 269]

Subd. 4. [Repealed, 1988 c 689 art 2 s 269]

Subd. 5. [Repealed, 1988 c 689 art 2 s 269]

**246.025** [Repealed, 1965 c 45 s 73]

**246.0251** [Repealed, 2014 c 262 art 3 s 18]

**246.03** [Repealed, 1991 c 326 s 27]

**246.04** [Repealed, 2013 c 59 art 2 s 17]

**246.05** [Repealed, 2013 c 59 art 2 s 17]

**246.06** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.07** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.08** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.09** [Repealed, 1953 c 254 s 1]

**246.10** [Repealed, 1967 c 638 s 22]

**246.101** [Repealed, 1967 c 638 s 22]

**246.11** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.12 BIENNIAL ESTIMATES; SUGGESTIONS FOR LEGISLATION.**

The commissioner of human services shall prepare, for the use of the legislature, biennial estimates of appropriations necessary or expedient to be made for the support of the institutions and for extraordinary and special expenditures for buildings and other improvements. The commissioner shall, in connection therewith, make suggestions relative to legislation for the benefit of the institutions. The commissioner shall report the estimates and suggestions to the legislature on or before November 15 in each even-numbered

year. The commissioner of human services on request shall appear before any legislative committee and furnish any required information in regard to the condition of any such institution.

**History:** (4427) *RL s 1883; 1969 c 540 s 11; 1984 c 654 art 5 s 58; 1986 c 444; 2013 c 59 art 2 s 6*

**246.125** [Repealed, 2013 c 59 art 2 s 17]

#### **246.128 NOTIFICATION TO LEGISLATURE REQUIRED.**

The commissioner shall notify the chairs and ranking minority members of the relevant legislative committees regarding the redesign, closure, or relocation of state-operated services programs.

**History:** *1Sp2010 c 1 art 19 s 5; 2013 c 59 art 2 s 7*

#### **246.129 LEGISLATIVE APPROVAL REQUIRED.**

If the closure of a state-operated facility is proposed, and the department and respective bargaining units fail to arrive at a mutually agreed upon solution to transfer affected state employees to other state jobs, the closure of the facility requires legislative approval. This does not apply to state-operated enterprise services.

**History:** *1Sp2010 c 1 art 19 s 6*

#### **246.13 RECORDS OF PERSONS RECEIVING STATE-OPERATED SERVICES.**

Subdivision 1. **Commissioner's responsibilities.** (a) The commissioner of human services' office shall have, accessible only by consent of the commissioner or on the order of a judge or court of record, a record showing the residence, sex, age, nativity, occupation, civil condition, and date of entrance or commitment of every person, in the state-operated services facilities as defined under section 246.014 under exclusive control of the commissioner; the date of discharge and whether such discharge was final; the condition of the person when the person left the state-operated services facility; the vulnerable adult abuse prevention associated with the person; and the date and cause of all deaths. The record shall state every transfer from one state-operated services facility to another, naming each state-operated services facility. This information shall be furnished to the commissioner of human services by each public agency, along with other obtainable facts as the commissioner may require. When a patient or resident in a state-operated services facility is discharged, transferred, or dies, the head of the state-operated services facility or designee shall inform the commissioner of human services of these events within ten days on forms furnished by the commissioner.

(b) The commissioner of human services shall cause to be devised, installed, and operated an adequate system of records and statistics which shall consist of all basic record forms, including patient personal records and medical record forms, and the manner of their use shall be precisely uniform throughout all state-operated services facilities.

Subd. 2. **Definitions; risk assessment and management.** (a) As used in this section:

(1) "appropriate and necessary medical and other records" includes patient medical records and other protected health information as defined by Code of Federal Regulations, title 45, section 164.501, relating to a patient in a state-operated services facility including, but not limited to, the patient's treatment plan and abuse prevention plan that is pertinent to the patient's ongoing care, treatment, or placement in a community-based treatment facility or a health care facility that is not operated by state-operated services, and includes information describing the level of risk posed by a patient when the patient enters the facility;

(2) "community-based treatment" means the community support services listed in section 253B.02, subdivision 4b;

(3) "criminal history data" means those data maintained or used by the Departments of Corrections and Public Safety and by the supervisory authorities listed in section 13.84, subdivision 1, that relate to an individual's criminal history or propensity for violence, including data in the Corrections Offender Management System (COMS) and Statewide Supervision System (S3) maintained by the Department of Corrections; and criminal history data as defined in section 13.87, Integrated Search Service as defined in section 13.873, and the Predatory Offender Registration (POR) system maintained by the Department of Public Safety;

(4) "designated agency" means the agency defined in section 253B.02, subdivision 5;

(5) "law enforcement agency" means the law enforcement agency having primary jurisdiction over the location where the offender expects to reside upon release;

(6) "predatory offender" and "offender" mean a person who is required to register as a predatory offender under section 243.166; and

(7) "treatment facility" means a facility as defined in section 253B.02, subdivision 19.

(b) To promote public safety and for the purposes and subject to the requirements of this paragraph, the commissioner or the commissioner's designee shall have access to, and may review and disclose, medical and criminal history data as provided by this section, as necessary to comply with Minnesota Rules, part 1205.0400:

(1) to determine whether a patient is required under state law to register as a predatory offender according to section 243.166;

(2) to facilitate and expedite the responsibilities of the special review board and end-of-confinement review committees by corrections institutions and state treatment facilities;

(3) to prepare, amend, or revise the abuse prevention plans required under section 626.557, subdivision 14, and individual patient treatment plans required under section 253B.03, subdivision 7;

(4) to facilitate the custody, supervision, and transport of individuals transferred between the Department of Corrections and the Department of Human Services; or

(5) to effectively monitor and supervise individuals who are under the authority of the Department of Corrections, the Department of Human Services, and the supervisory authorities listed in section 13.84, subdivision 1.

(c) The state-operated services treatment facility must make a good faith effort to obtain written authorization from the patient before releasing information from the patient's medical record.

(d) If the patient refuses or is unable to give informed consent to authorize the release of information required above, the chief executive officer for state-operated services shall provide the appropriate and necessary medical and other records. The chief executive officer shall comply with the minimum necessary requirements.

(e) The commissioner may have access to the National Crime Information Center (NCIC) database, through the Department of Public Safety, in support of the law enforcement functions described in paragraph (b).

Subd. 3. **Community-based treatment and medical treatment.** (a) When a patient under the care and supervision of state-operated services is released to a community-based treatment facility or facility that



provides health care services, state-operated services may disclose all appropriate and necessary health and other information relating to the patient.

(b) The information that must be provided to the designated agency, community-based treatment facility, or facility that provides health care services includes, but is not limited to, the patient's abuse prevention plan required under section 626.557, subdivision 14, paragraph (b).

**Subd. 4. Predatory offender registration notification.** (a) When a state-operated facility determines that a patient is required under section 243.166 to register as a predatory offender or, under section 243.166, subdivision 4a, to provide notice of a change in status, the facility shall provide written notice to the patient of the requirement.

(b) If the patient refuses, is unable, or lacks capacity to comply with the requirement described in paragraph (a) within five days after receiving the notification of the duty to comply, state-operated services staff shall obtain and disclose the necessary data to complete the registration form or change of status notification for the patient. The treatment facility shall also forward the registration or change of status data that it completes to the Bureau of Criminal Apprehension and, as applicable, the patient's corrections agent and the law enforcement agency in the community in which the patient currently resides. If, after providing notification, the patient refuses to comply with the requirements described in paragraph (a), the treatment facility shall also notify the county attorney in the county in which the patient is currently residing of the refusal.

(c) The duties of state-operated services described in this subdivision do not relieve the patient of the ongoing individual duty to comply with the requirements of section 243.166.

**Subd. 5. Procedure for blood-borne pathogens.** Sections 246.71 to 246.722 apply to state-operated services facilities.

**History:** (4437) *RL s 1889; 1957 c 319 s 1; 1961 c 750 s 13 subd 1; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 10; 1986 c 444; 1994 c 631 s 31; 1Sp2003 c 14 art 6 s 26; 2005 c 136 art 3 s 30; art 5 s 2; 1Sp2005 c 4 art 1 s 46; 2009 c 59 art 6 s 5*

#### **246.131 REPORT ON ANOKA-METRO REGIONAL TREATMENT CENTER (AMRTC), MINNESOTA SECURITY HOSPITAL (MSH), AND COMMUNITY BEHAVIORAL HEALTH HOSPITALS (CBHH).**

The commissioner of human services shall issue a public quarterly report to the chairs and ranking minority leaders of the senate and house of representatives committees having jurisdiction over health and human services issues on the AMRTC, MSH, and CBHH. The report shall contain information on the number of licensed beds, budgeted capacity, occupancy rate, number of Occupational Safety and Health Administration (OSHA) recordable injuries and the number of OSHA recordable injuries due to patient aggression or restraint, number of clinical positions budgeted, the percentage of those positions that are filled, the number of direct care positions budgeted, and the percentage of those positions that are filled.

**History:** *2016 c 189 art 17 s 5*

#### **246.14 USE OF SPACE IN INSTITUTIONS.**

The commissioner of human services may use available space in any institution under jurisdiction of the commissioner, or in any institution under the jurisdiction of another department or agency of the state in which space is proffered the commissioner, by executive or legislative action, for the care and custody of persons, patients, or inmates of the institutions under exclusive control of the commissioner for whom

other, more suitable, space is not available. All laws relating to the commitment and care of such persons who may be so committed and institutionalized shall be applicable to such persons.

**History:** (4438) RL s 1890; 1953 c 515 s 1; 1957 c 261 s 1; 1961 c 750 s 14 subd 1; 1967 c 839 s 5; 1984 c 654 art 5 s 58; 1986 c 444

#### **246.141 PROJECT LABOR.**

Wages for project labor may be paid by the commissioner out of repairs and betterments money if the individual is to be engaged in a construction project or a repair project of short-term and nonrecurring nature. Compensation for project labor shall be based on the prevailing wage rates, as defined in section 177.42, subdivision 6. Project laborers are excluded from the provisions of sections 43A.22 to 43A.30, and shall not be eligible for state-paid insurance and benefits.

**History:** 1Sp2001 c 9 art 17 s 16; 2002 c 379 art 1 s 113

#### **246.15 MONEY OF PATIENTS OR RESIDENTS.**

Subdivision 1. **Record keeping of money.** The head of the state-operated services facility or designee under the jurisdiction of the commissioner of human services may have the care and custody of all money belonging to patients or residents which may come into the head of the state-operated services facility or designee's hands. The head of the state-operated services facility or designee shall keep accurate accounts of the money, and pay them out under rules prescribed by law or by the commissioner of human services, taking vouchers for the money. All money received by any officer or employee shall be paid to the head of the state-operated services facility or designee immediately. Every head of the state-operated services facility or designee, at the close of each month, or earlier if required by the commissioner, shall forward to the commissioner a statement of the amount of all money received and the names of the patients or residents from whom received, accompanied by a check for the amount, payable to the commissioner of management and budget. On receipt of the statement, the commissioner shall transmit the statement along with a check to the commissioner of management and budget. Upon the payment of the check, the amount shall be credited to a fund to be known as "Client Fund," for the institution from which the check was received. All funds shall be paid out by the commissioner of management and budget upon vouchers duly approved by the commissioner of human services. The commissioner may permit a contingent fund to remain in the hands of the head of the state-operated services facility or designee of the institution from which necessary expenditures may be made.

Subd. 2. **Correctional inmates fund.** Any money in the inmates fund provided for in this section, belonging to inmates of state institutions under the jurisdiction of the commissioner of corrections shall be immediately transferred by the commissioner of human services to the correctional inmates' fund created by section 241.08.

Subd. 3. **Savings account.** The commissioner of human services shall create a savings account for each patient receiving treatment in a secure treatment facility as defined by sections 253B.02, subdivision 18a, and 253D.02, subdivision 13. The source of money to be deposited in this account shall come from a portion of the patient's share of the cost of care. The money in this savings account shall be made available to the patient when the patient is ready to be transitioned into the community. The money in the account shall be used for expenses associated with obtaining housing and other personal needs necessary for the patient's

smooth transition into the community. The savings account shall be called "forensic patient transition savings account."

**History:** (4439) *RL s 1891; 1907 c 280 s 1; 1961 c 750 s 15 subds 1,2; 1973 c 492 s 14; 1984 c 654 art 5 s 58; 1985 c 248 s 70; 1986 c 444; 1991 c 326 s 10; 2003 c 112 art 2 s 32; 1Sp2003 c 14 art 6 s 27; 2004 c 288 art 3 s 11; 2009 c 101 art 2 s 109; 2013 c 49 s 22*

#### **246.151 COMPENSATION PAID TO PATIENT.**

Subdivision 1. **Compensation.** Notwithstanding any law to the contrary, the commissioners of human services and veterans affairs are authorized to provide for the payment to patients or residents of state institutions under their management and control of such pecuniary compensation as required by the United States Department of Labor. Payment of subminimum wages shall meet all requirements of United States Department of Labor Regulations, Code of Federal Regulations, title 29, part 525. The amount of compensation depends upon the quality and character of the work performed as determined by the commissioner and the chief executive officer pursuant to section 177.24.

Subd. 2. **Imprest cash fund.** The commissioners of human services and veterans affairs may establish an imprest cash fund at each of the state-operated residential facilities to be utilized for payment to residents participating in on-campus work programs.

**History:** *1978 c 560 s 1; 1981 c 360 art 1 s 21; 1984 c 654 art 5 s 58; 1986 c 355 s 1; 1986 c 444; 1Sp1993 c 1 art 7 s 26*

#### **246.16 UNCLAIMED MONEY OR PERSONAL PROPERTY.**

Subdivision 1. **Unclaimed money.** When money has accumulated in the hands of the head of the state-operated services facility or designee under the jurisdiction of the commissioner of human services money belonging to patients or residents of the institution who have died there, or disappeared from there, and for which there is no claimant or person entitled to the money known to the head of the state-operated services facility or designee the money may, at the discretion of the head of the state-operated services facility or designee, be expended under the direction of the head of the state-operated services facility or designee for the benefit of the patients or residents of the institution. No money shall be used until it has remained unclaimed for at least five years. If, at any time after the expiration of the five years, the legal heirs of the patients or residents appear and make proper proof of heirship, they shall be entitled to receive from the state the sum of money expended by the head of the state-operated services facility or designee belonging to the patient or resident.

Subd. 2. **Unclaimed personal property.** When any patient or resident of a state-operated services facility under the jurisdiction of the commissioner of human services dies or disappears from the state-operated services facility, leaving personal property exclusive of money in the custody of the head of the state-operated services facility or designee and the property remains unclaimed for a period of two years, with no person entitled to the property known to the head of the state-operated services or designee, the head of the state-operated services facility or designee may sell the property at public auction. Notice of the sale shall be published for two consecutive weeks in a legal newspaper in the county where the state-operated services facility is located and shall state the time and place of the sale. The proceeds of the sale, after deduction of the costs of publication and auction, may be expended, at the discretion of the head of the state-operated services facility or designee, for the benefit of the patients or residents of the state-operated services facility. Any patient or resident, or heir or representative of the patient or resident, may file with, and make proof of ownership to, the head of the state-operated services facility or designee of the state-operated services facility disposing of the personal property within four years after the sale, and, upon satisfactory proof to the head

of the state-operated services or designee, shall certify for payment to the commissioner of management and budget the amount received by the sale of the property. No suit shall be brought for damages consequent to the disposal of personal property or use of money in accordance with this section against the state or any official, employee, or agent thereof.

**History:** (4440) 1905 c 199 s 1; 1951 c 369 s 1; 1961 c 750 s 16 subd 1; 1984 c 654 art 5 s 58; 1986 c 444; 2003 c 112 art 2 s 50; 1Sp2003 c 14 art 6 s 28; 2009 c 101 art 2 s 109

**246.17** [Repealed, 1953 c 341 s 1]

#### **246.18 DISPOSAL OF FUNDS.**

Subdivision 1. **Generally.** Except as provided in subdivisions 2 and 4, every officer and employee of the several institutions under the jurisdiction of the commissioner of human services who has money belonging to an institution shall pay the money to the accounting officer thereof. Every accounting officer, at the close of each month or oftener, shall forward to the commissioner of human services a statement of the amount and sources of all money received. On receipt of the statement, the commissioner shall transmit the same to the commissioner of management and budget, who shall deliver a draft upon the accounting officer for the same specifying the funds to which it is to be credited. Upon payment of such draft, the amount shall be so credited.

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

Subd. 2a. **Disposition of interest for chemical dependency funds.** Beginning July 1, 1991, interest earned on cash balances on deposit with the commissioner of management and budget derived from receipts from chemical dependency programs affiliated with state-operated facilities under the commissioner of human services must be deposited in the state treasury and credited to a chemical dependency account under subdivision 2. Any interest earned is appropriated to the commissioner to operate chemical dependency programs according to subdivision 2.

Subd. 3. [Repealed, 1991 c 292 art 4 s 79]

Subd. 3a. [Repealed, 1991 c 292 art 4 s 79]

Subd. 4. **Collections deposited in the general fund.** Except as provided in subdivisions 5, 6, and 7, all receipts from collection efforts for the regional treatment centers, state nursing homes, and other state facilities as defined in section 246.50, subdivision 3, must be deposited in the general fund. The commissioner shall ensure that the departmental financial reporting systems and internal accounting procedures comply with federal standards for reimbursement for program and administrative expenditures and fulfill the purpose of this paragraph.

Subd. 5. **Funded depreciation accounts for state-operated, community-based programs.** Separate interest-bearing funded depreciation accounts shall be established in the state treasury for state-operated, community-based programs meeting the definition of a facility in Minnesota Rules, part 9553.0020, subpart 19, or a vendor in section 252.41, subdivision 9. As payments for state-operated community-based services are received by the commissioner, the portion of the payment rate representing allowable depreciation expense and the capital debt reduction allowance shall be deposited in the state treasury and credited to the separate interest-bearing accounts as dedicated receipts with unused funds carried over to the next fiscal year. Funds within these funded depreciation accounts are appropriated to the commissioner of human

services for the purchase or replacement of capital assets or payment of capitalized repairs for each respective program. These accounts will satisfy the requirements of Minnesota Rules, part 9553.0060, subparts 1, item E, and 5.

Subd. 6. **Collections dedicated.** Except for state-operated programs funded through a direct appropriation from the legislature, any state-operated program or service established and operated as an enterprise activity shall retain the revenues earned in an interest-bearing account.

When the commissioner determines the intent to transition from a direct appropriation to enterprise activity for which the commissioner has authority, all collections for the targeted state-operated service shall be retained and deposited into an interest-bearing account. At the end of the fiscal year, prior to establishing the enterprise activity, collections up to the amount of the appropriation for the targeted service shall be deposited to the general fund. All funds in excess of the amount of the appropriation will be retained and used by the enterprise activity for cash flow purposes.

These funds must be deposited in the state treasury in a revolving account and funds in the revolving account are appropriated to the commissioner to operate the services authorized, and any unexpended balances do not cancel but are available until spent.

Subd. 7. [Repealed, 1Sp2001 c 10 art 2 s 102]

Subd. 8. **State-operated services account.** (a) The state-operated services account is established in the special revenue fund. Revenue generated by new state-operated services listed under this section established after July 1, 2010, that are not enterprise activities must be deposited into the state-operated services account, unless otherwise specified in law:

- (1) intensive residential treatment services;
- (2) foster care services; and
- (3) psychiatric extensive recovery treatment services.

(b) Funds deposited in the state-operated services account are appropriated to the commissioner of human services for the purposes of:

- (1) providing services needed to transition individuals from institutional settings within state-operated services to the community when those services have no other adequate funding source; and
- (2) funding the operation of the intensive residential treatment service program in Willmar.

Subd. 9. **Transfers.** The commissioner may transfer state mental health grant funds to the account in subdivision 8 for noncovered allowable costs of a provider certified and licensed under section 256B.0622 and operating under section 246.014.

**History:** (4441) RL s 1892; 1961 c 750 s 17 subd 1; 1973 c 492 s 14; 1984 c 654 art 5 s 58; 1986 c 394 s 2; 1986 c 444; 1987 c 403 art 2 s 44,45; 1989 c 282 art 6 s 6,7; 1991 c 292 art 6 s 28,29; 1Sp1993 c 1 art 5 s 8; 1995 c 207 art 8 s 28,29; 1995 c 264 art 6 s 4,5; 1997 c 203 art 7 s 6; 1999 c 245 art 5 s 10; 2000 c 492 art 1 s 58; 2003 c 112 art 2 s 33,50; 2009 c 101 art 2 s 109; 1Sp2010 c 1 art 19 s 7; 2013 c 108 art 4 s 8,9; 2015 c 71 art 2 s 17; 2016 c 158 art 1 s 99

**246.19** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.20** [Repealed, 1973 c 400 s 2]

**246.21** [Repealed, 2013 c 59 art 2 s 17]

**246.22** [Repealed, 1961 c 750 s 28]

**246.23 PERSONS ADMISSIBLE TO REGIONAL TREATMENT CENTERS.**

Subdivision 1. **Residence.** No person who has not a settlement in a county, as defined in section 256G.02, subdivision 4, shall be admitted to a regional treatment center for persons with mental illness, developmental disabilities, or chemical dependency, except that the commissioner of human services may authorize admission thereto when the residence cannot be ascertained, or when the circumstances in the judgment of the commissioner make it advisable. When application is made to a judge exercising probate jurisdiction for admission to any of the regional treatment centers above named for admission thereto, if the judge finds that the person for whom application is made has not such residence, or that residence cannot be ascertained, the judge shall so report to the commissioner; and may recommend that such person be admitted notwithstanding, giving reasons therefor. The commissioner of human services shall thereupon investigate the question of residence and, if the commissioner finds that such person has not such residence and has a legal residence in another state or country, the commissioner may cause the person to be returned thereto at the expense of this state.

Subd. 2. **Chemical dependency treatment.** The commissioner shall maintain a regionally based, state-administered system of chemical dependency programs. Counties may refer individuals who are eligible for services under chapter 254B to the chemical dependency units in the regional treatment centers. A 15 percent county share of the per diem cost of treatment is required for individuals served within the treatment capacity funded by direct legislative appropriation. By July 1, 1991, the commissioner shall establish criteria for admission to the chemical dependency units that will maximize federal and private funding sources, fully utilize the regional treatment center capacity, and make state-funded treatment capacity available to counties on an equitable basis. The admission criteria may be adopted without rulemaking. Existing rules governing placements under chapters 254A and 254B do not apply to admissions to the capacity funded by direct appropriation. Private and third-party collections and payments are appropriated to the commissioner for the operation of the chemical dependency units. In addition to the chemical dependency treatment capacity funded by direct legislative appropriation, the regional treatment centers may provide treatment to additional individuals whose treatment is paid for out of the chemical dependency consolidated treatment fund under chapter 254B, in which case placement rules adopted under chapter 254B apply; to those individuals who are ineligible but committed for treatment under chapter 253B as provided in section 254B.05, subdivision 4; or to individuals covered through other nonstate payment sources.

**History:** (4447) RL s 1898; 1965 c 45 s 19; 1973 c 123 art 5 s 7; 1976 c 2 s 85; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 11; 1986 c 394 s 3; 1986 c 444; 1991 c 199 art 2 s 1; 1991 c 292 art 4 s 5; 1995 c 189 s 8; 1995 c 207 art 3 s 1; 1996 c 277 s 1; 2005 c 56 s 1

**246.234 RECIPROCAL EXCHANGE OF CERTAIN PERSONS.**

The commissioner of human services is hereby authorized and empowered with the approval of the governor to enter into reciprocal agreements with any other state or states, through the duly authorized authorities thereof, regarding the mutual exchange, return, and transportation of persons with mental illness or developmental disabilities who are within the confines of one state but have legal residence or legal settlement for the purposes of relief in another state. Such agreements shall contain no provisions conflicting with any law of this state.

**History:** 1945 c 228 s 1; 1965 c 45 s 20; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 12; 2005 c 56 s 1

**246.24 COMPROMISE OF CLAIMS.**

In case of any disagreement between the commissioner of human services and any person concerning a claim of such person to any right interest or estate in or lien upon lands occupied by or used in connection with any state institution under exclusive or partial control of the person, or of any claim by a person for damages to any such land, or the improvements thereon, the commissioner, with the approval of the governor and the commissioner of management and budget, may compromise and settle such claim; and in so doing may make any necessary conveyance of land. All moneys received by the commissioner upon any such settlement shall be paid into the state treasury to the credit of the general fund.

**History:** (4449) *RL s 1900; 1969 c 399 s 49; 1973 c 492 s 14; 1984 c 654 art 5 s 58; 1986 c 444; 2009 c 101 art 2 s 109*

**246.25** [Repealed, 1967 c 885 s 6]

**246.26** [Renumbered 241.05]

**246.27 PHYSICAL EXAMINATIONS FOR EMPLOYMENT REQUIRED.**

No new employee shall be given employment in any state institution under the direction of the Department of Human Services, whether certified for such employment by the state Department of Management and Budget, or otherwise selected, unless such person presents to the appointing officer of such institution a certificate showing that the employee has undergone the physical examination hereinafter provided for and has been found to be free of tuberculosis.

**History:** *1941 c 479 s 1; 1953 c 593 s 2; 1973 c 507 s 45; 1980 c 617 s 47; 1984 c 654 art 5 s 58; 1986 c 444; 2008 c 204 s 42; 2009 c 101 art 2 s 109*

**246.28** [Repealed, 2014 c 262 art 3 s 18]

**246.29** [Repealed, 1947 c 616 s 5; 1949 c 558 s 1; 1953 c 593 s 2]

**246.30** [Repealed, 1965 c 45 s 73]

**246.31** Subdivision 1. [Repealed, 1965 c 45 s 73]

Subd. 2. [Repealed, 1965 c 45 s 73]

Subd. 3. [Repealed, 1965 c 45 s 73]

Subd. 4. [Repealed, 1953 c 732 s 5; 1959 c 578 s 7]

**246.32** Subdivision 1. [Repealed, 1975 c 204 s 106]

Subd. 2. [Repealed, 1975 c 204 s 106]

Subd. 3. [Repealed, 1969 c 52 s 5]

Subd. 4. [Repealed, 1975 c 204 s 106]

Subd. 5. [Repealed, 1975 c 204 s 106]

**246.325 GARDEN OF REMEMBRANCE.**

The cemetery located on the grounds of the Cambridge State Hospital shall be known as the Garden of Remembrance.

**History:** 2005 c 29 s 1; 2014 c 262 art 3 s 9

**246.33 CEMETERY.**

Subdivision 1. **Cemetery and burial for individual in a state institution.** The commissioner of human services may establish and maintain a cemetery for the burial of any patient, inmate or person admitted to any state institution under control of the commissioner upon the public grounds of such institution in the manner set forth in the following subdivisions.

Subd. 2. **Land surveyance required.** The land shall be surveyed and a plat thereof made.

Subd. 3. **Marking cemetery boundary.** A stone or other monument shall be established to mark each corner of such cemetery, and its location shown on the plat.

Subd. 4. **Plots in cemetery.** The cemetery shall be platted into lots, which shall be numbered; it shall have streets and walks, and the same shall be shown on the plat. All containing graves shall be indicated by an appropriate marker of permanent nature for identification purposes. Notwithstanding section 13.46, the commissioner of human services may share private data on individuals for purposes of placing a marker on each grave.

Subd. 5. **Surveyor certification.** The surveyor shall certify as to the correctness of the plat by endorsement.

Subd. 6. **County recording.** The plat with the surveyor's endorsement thereon shall be filed for record with the county recorder in the county wherein the cemetery is located. A copy of the plat shall be kept in the office of the superintendent of the institution, together with a register showing the name of the persons buried in the cemetery and the lot in which they are buried.

**History:** 1949 c 155 s 1; 1976 c 181 s 2; 1984 c 654 art 5 s 58; 1986 c 444; 2013 c 59 art 2 s 8

**246.34 REBURIAL.**

Subdivision 1. **Requirements for reburial.** The commissioner of human services may remove the body of any person now buried in a cemetery situated upon the land belonging to the state for public institution purposes and rebury it in a cemetery created under the provisions of section 246.33, by complying with the provisions set forth in the following subdivisions of this section.

Subd. 2. **District court approval needed.** The commissioner shall petition the district court of the county wherein the present cemetery is situated setting forth the reasons for such removal, the place to which the body is to be removed, and praying for an order of the court authorizing such removal. Upon the presentation of such petition, the court shall make its order setting the time, which shall not be less than 60 days from the date of the order, and the place for hearing the same. The commissioner shall serve the nearest relative or, if the commissioner cannot locate any relative, some friend of the person whose body is to be removed by mailing a copy of the petition and court's order 30 days before the date of hearing and file the affidavit of mailing with the court administrator of district court. If the commissioner is unable to locate a relative or friend, the commissioner shall make an affidavit to that effect and file the same with the court administrator of district court.



Subd. 3. **Court order.** Upon the hearing of such petition, if the court determines that it is for the best interests of the public, the relatives and friends that such body be removed and that the same will be conducted in a manner commensurate with the methods commonly employed for the reburial of the dead in the community, the court shall make its order authorizing such removal, setting forth the time within which such removal shall be accomplished and the place to which the body is to be removed. Upon completion of such removal, the director shall cause the name of the person so removed to be entered in the register, together with the number of the lot in the cemetery and file an affidavit thereof with the court administrator of district court.

**History:** 1949 c 155 s 2; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### **246.35 ABANDONMENT OF CEMETERY; COURT ORDER.**

If the court makes its order under the provisions of section 246.34 authorizing the removal of bodies from a cemetery and the same is accomplished in accordance with such order and the commissioner files affidavits of such removal as hereinbefore provided, together with an affidavit that the commissioner has caused a thorough search to be made, and there are no more dead bodies remaining in such cemetery to the best of the commissioner's knowledge, information and belief, the court may make its order authorizing the abandonment of such cemetery and thereby discontinue its use as such.

**History:** 1949 c 155 s 3; 1986 c 444

#### **246.36 ACCEPTANCE OF VOLUNTARY, UNCOMPENSATED SERVICES.**

For the purpose of carrying out a duty, the commissioner of human services shall have authority to accept uncompensated and voluntary services and to enter into contracts or agreements with private or public agencies, or persons, for uncompensated and voluntary services, as the commissioner may deem practicable. Uncompensated and voluntary services do not include services mandated by licensure and certification requirements for health care facilities. The volunteer agencies, organizations, or persons who provide services to residents of state facilities operated under the authority of the commissioner are not subject to the procurement requirements of chapters 16A and 16C. The agencies, organizations, or persons may purchase supplies, services, and equipment to be used in providing services to residents of state facilities through the Department of Administration.

**History:** 1949 c 638 s 1; 1978 c 560 s 2; 1984 c 654 art 5 s 58; 1985 c 248 s 68; 1986 c 444; 1989 c 282 art 6 s 8; 1998 c 386 art 2 s 74

**246.37** [Renumbered 243.84]

**246.38** [Renumbered 243.85]

**246.39** [Renumbered 243.86]

**246.40** [Renumbered 243.87]

#### **246.41 BENEFIT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.**

Subdivision 1. **Acceptance.** The commissioner of human services is authorized to accept, for and in behalf of the state, contributions of money for the use and benefit of persons with developmental disabilities.

Subd. 2. **Special welfare fund.** Any money so received by the commissioner shall be deposited with the commissioner of management and budget in a special welfare fund, which fund is to be used by the commissioner of human services for the benefit of persons with developmental disabilities within the state,

including those within state hospitals. And, without excluding other possible uses, research relating to persons with developmental disabilities shall be considered an appropriate use of such funds; but such funds shall not be used for any structures or installations which by their nature would require state expenditures for their operation or maintenance without specific legislative enactment therefor.

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

**History:** 1953 c 519 s 1; 1959 c 158 s 17; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 13; 2003 c 112 art 2 s 50; 2005 c 56 s 1; 2009 c 101 art 2 s 109

**246.42** [Repealed, 1Sp2003 c 14 art 6 s 68]

**246.43** [Repealed, 1978 c 723 art 1 s 19; 1979 c 258 s 25]

**246.44** [Repealed, 1996 c 310 s 1]

**246.45** [Repealed, 1996 c 310 s 1]

**246.46** [Repealed, 1996 c 310 s 1]

**246.47** [Repealed, 1959 c 578 s 7]

**246.48** [Repealed, 1959 c 578 s 7]

**246.49** [Repealed, 1959 c 578 s 7]

#### **246.50 CARE OF CLIENTS AT STATE FACILITIES; DEFINITIONS.**

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

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

Subd. 3. **State facility.** "State facility" means any state facility owned or operated by the state of Minnesota and under the programmatic direction or fiscal control of the commissioner, except the Minnesota sex offender program under chapter 246B. State facility includes regional treatment centers; the state nursing homes; state-operated, community-based programs; and other facilities owned or operated by the state and under the commissioner's control.

Subd. 3a. [Repealed, 1989 c 282 art 2 s 219]

Subd. 4. **Client.** "Client" means any person receiving services at a state facility, whether or not those services require occupancy of a bed overnight.

Subd. 4a. [Repealed, 1989 c 282 art 2 s 219]

Subd. 5. **Cost of care.** "Cost of care" means the commissioner's charge for services provided to any person admitted to a state facility.

For purposes of this subdivision, "charge for services" means the usual and customary fee charged for services provided to clients. The usual and customary fee shall be established in a manner required to appropriately bill services to all payers and shall include the costs related to the operations of any program offered by the state.

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

Subd. 7. **Client's county.** "Client's county" means the county of financial responsibility under chapter 256G, except that where a client with no residence in this state is committed while serving a sentence at a penal institution, it means the county from which the client was sentenced.

Subd. 8. **Local social services agency.** "Local social services agency" means the local social services agency of the client's county as defined in subdivision 7 and of the county of commitment, and any other local social services agency possessing information regarding, or requested by the commissioner to investigate, the financial circumstances of a client or relatives thereof.

Subd. 9. [Repealed, 1989 c 282 art 2 s 219]

Subd. 10. **State-operated community-based program.** "State-operated community-based program" means any program operated in the community including community behavioral health hospitals, crisis centers, residential facilities, outpatient services, and other community-based services developed and operated by the state and under the commissioner's control.

Subd. 11. **Health plan company.** "Health plan company" has the meaning given it in section 62Q.01, subdivision 4, and also includes a demonstration provider as defined in section 256B.69, subdivision 2, paragraph (b), a county or group of counties participating in county-based purchasing according to section 256B.692, and a children's mental health collaborative under contract to provide medical assistance for individuals enrolled in the prepaid medical assistance and MinnesotaCare programs under sections 245.493 to 245.495.

**History:** 1959 c 578 s 1; 1967 c 386 s 1; 1969 c 205 s 1; 1971 c 637 s 1-4; 1973 c 235 s 1; 1982 c 641 art 1 s 4,5; 1984 c 534 s 12; 1984 c 654 art 5 s 58; 1985 c 21 s 14; 1986 c 394 s 4; 1986 c 444; 1987 c 403 art 2 s 46-50; 1989 c 271 s 32; 1989 c 282 art 2 s 87-89,218; 1994 c 465 art 3 s 26; 1994 c 631 s 31; 2009 c 79 art 3 s 1-3; 2009 c 173 art 1 s 11; 2016 c 189 art 17 s 1

## **246.51 PAYMENT FOR CARE AND TREATMENT; DETERMINATION.**

Subdivision 1. [Repealed, 2009 c 79 art 3 s 19]

Subd. 1a. **Clients in state-operated community-based programs; determination.** The commissioner shall determine available health plan coverage from a health plan company for services provided to clients admitted to a state-operated community-based program. If the health plan coverage requires a co-pay or deductible, or if there is no available health plan coverage, the commissioner shall determine or redetermine what part of the noncovered cost of care, if any, the client is able to pay. If the client is unable to pay the uncovered cost of care, the commissioner shall determine the client's relatives' ability to pay. The client and relatives shall provide to the commissioner documents and proof necessary to determine the client's and relatives' ability to pay. Failure to provide the commissioner with sufficient information to determine ability to pay may make the client or relatives liable for the full cost of care until the time when sufficient information is provided. If it is determined that the responsible party does not have the ability to pay, the commissioner shall waive payment of the portion that exceeds ability to pay under the determination.

Subd. 1b. **Clients served by regional treatment centers or nursing homes; determination.** The commissioner shall determine or redetermine, if necessary, what part of the cost of care, if any, a client served in regional treatment centers or nursing homes operated by state-operated services is able to pay. If the client is unable to pay the full cost of care, the commissioner shall determine if the client's relatives have the ability to pay. The client and relatives shall provide to the commissioner documents and proof necessary

to determine the client's and relatives' ability to pay. Failure to provide the commissioner with sufficient information to determine ability to pay may make the client or relatives liable for the full cost of care until the time when sufficient information is provided. No parent shall be liable for the cost of care given a client at a regional treatment center after the client has reached the age of 18 years.

Subd. 2. **Rules.** The commissioner shall adopt, pursuant to the Administrative Procedure Act, rules establishing uniform standards for determination of client liability and relative, guardian or conservator responsibility for care provided at state facilities. The standards may differ for mental illness, chemical dependency, or developmental disabilities. The standards established in rules adopted under chapter 254B shall determine the amount of client and relative responsibility when a portion of the client's cost of care has been paid under chapter 254B. These rules shall have the force and effect of law.

Subd. 3. **Applicability.** The commissioner may recover, under sections 246.50 to 246.55, the cost of any care provided in a state facility, including care provided prior to July 1, 1989, regardless of the terminology used to designate the status or condition of the person receiving the care or the terminology used to identify the facility. For purposes of recovering the cost of care provided prior to July 1, 1989, the term "state facility" as used in sections 246.50 to 246.55 includes "state hospital," "regional treatment center," or "regional center"; and the term "client" includes, but is not limited to, persons designated as "having a mental illness or developmental disability," or "chemically dependent."

**History:** 1959 c 578 s 2; 1969 c 399 s 1; 1971 c 637 s 5; 1973 c 35 s 46; 1973 c 138 s 1; 1973 c 235 s 2; 1973 c 725 s 45; 1977 c 331 s 1; 1982 c 641 art 1 s 6; 1986 c 394 s 5; 1987 c 299 s 1; 1987 c 384 art 1 s 20; 1987 c 403 art 2 s 51; 1989 c 282 art 2 s 90,218; 2003 c 112 art 2 s 50; 2005 c 56 s 1; 2009 c 79 art 3 s 4,5; 2009 c 101 art 2 s 109; 2013 c 59 art 3 s 1

#### **246.511 RELATIVE RESPONSIBILITY.**

Except for chemical dependency services paid for with funds provided under chapter 254B, a client's relatives shall not, pursuant to the commissioner's authority under section 246.51, be ordered to pay more than the following: (1) for services provided in a community-based service, the noncovered cost of care as determined under the ability to pay determination; and (2) for services provided at a regional treatment center operated by state-operated services, 20 percent of the cost of care, unless they reside outside the state. Parents of children in state facilities shall have their responsibility to pay determined according to section 252.27, subdivision 2, or in rules adopted under chapter 254B if the cost of care is paid under chapter 254B. The commissioner may accept voluntary payments in excess of 20 percent. The commissioner may require full payment of the full per capita cost of care in state facilities for clients whose parent, parents, spouse, guardian, or conservator do not reside in Minnesota.

**History:** 1Sp1981 c 2 s 17; 1982 c 641 art 1 s 7; 1984 c 530 s 1; 1985 c 21 s 15; 1987 c 299 s 2; 1987 c 403 art 2 s 52; 1989 c 282 art 2 s 218; 2009 c 79 art 3 s 6

#### **246.52 PAYMENT FOR CARE; ORDER; ACTION.**

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

**History:** 1959 c 578 s 3; 1985 c 21 s 16; 1986 c 444; 1989 c 282 art 2 s 218; 2009 c 79 art 3 s 7

**246.53 CLAIM AGAINST ESTATE OF DECEASED CLIENT.**

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

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

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

Subd. 3. [Repealed, 2009 c 79 art 3 s 19]

Subd. 4. **Exception from statute of limitations.** Any statute of limitations that limits the commissioner in recovering the cost of care obligation incurred by a client or former client shall not apply to any claim against an estate made under this section to recover the cost of care.

**History:** 1959 c 578 s 4; 1969 c 205 s 2; 1981 c 31 s 5; 1982 c 641 art 1 s 8; 1984 c 654 art 5 s 58; 1985 c 21 s 17; 1989 c 282 art 2 s 218; 2012 c 216 art 12 s 6

**246.531 SUBROGATION OF INSURANCE SETTLEMENTS.**

Subdivision 1. **Subrogation to client's rights.** The Department of Human Services shall be subrogated, to the extent of the cost of care for services given, to the rights a client who receives treatment or care at a state facility may have under private health care coverage. The right of subrogation does not attach to benefits paid or provided under private health care coverage before the carrier issuing the health care coverage receives written notice of the exercise of subrogation rights.

Subd. 2. **Civil action.** To recover under this section, the Department of Human Services, with counsel of the attorney general, may institute or join in a civil action against the carrier issuing the private health care coverage.

**History:** 1987 c 403 art 2 s 53; 1989 c 282 art 2 s 218

**246.54 LIABILITY OF COUNTY; REIMBURSEMENT.**

Subdivision 1. **Generally.** Except for chemical dependency services provided under sections 254B.01 to 254B.09, the client's county shall pay to the state of Minnesota a portion of the cost of care provided in a regional treatment center or a state nursing facility to a client legally settled in that county. A county's payment shall be made from the county's own sources of revenue and payments shall equal a percentage of the cost of care, as determined by the commissioner, for each day, or the portion thereof, that the client spends at a regional treatment center or a state nursing facility.

Subd. 1a. **Anoka-Metro Regional Treatment Center.** (a) A county's payment of the cost of care provided at Anoka-Metro Regional Treatment Center shall be according to the following schedule:

(1) zero percent for the first 30 days;

(2) 20 percent for days 31 and over if the stay is determined to be clinically appropriate for the client; and

(3) 100 percent for each day during the stay, including the day of admission, when the facility determines that it is clinically appropriate for the client to be discharged.

(b) If payments received by the state under sections 246.50 to 246.53 exceed 80 percent of the cost of care for days over 31 for clients who meet the criteria in paragraph (a), clause (2), the county shall be responsible for paying the state only the remaining amount. The county shall not be entitled to reimbursement from the client, the client's estate, or from the client's relatives, except as provided in section 246.53.

**Subd. 1b. Community behavioral health hospitals.** A county's payment of the cost of care provided at state-operated community-based behavioral health hospitals shall be according to the following schedule:

(1) 100 percent for each day during the stay, including the day of admission, when the facility determines that it is clinically appropriate for the client to be discharged; and

(2) the county shall not be entitled to reimbursement from the client, the client's estate, or from the client's relatives, except as provided in section 246.53.

**Subd. 1c. State-operated forensic services.** A county's payment of the cost of care provided at state-operated forensic services shall be according to the following schedule:

(1) Minnesota Security Hospital: ten percent for each day, or portion thereof, that the client spends in a Minnesota Security Hospital program. If payments received by the state under sections 246.50 to 246.53 for services provided at the Minnesota Security Hospital exceed 90 percent of the cost of care, the county shall be responsible for paying the state only the remaining amount. The county shall not be entitled to reimbursement from the client, the client's estate, or the client's relatives except as provided in section 246.53;

(2) forensic nursing home: ten percent for each day, or portion thereof, that the client spends in a forensic nursing home program. If payments received by the state under sections 246.50 to 246.53 for services provided at the forensic nursing home exceed 90 percent of the cost of care, the county shall be responsible for paying the state only the remaining amount. The county shall not be entitled to reimbursement from the client, the client's estate, or the client's relatives except as provided in section 246.53;

(3) forensic transition services: 50 percent for each day, or portion thereof, that the client spends in the forensic transition services program. If payments received by the state under sections 246.50 to 246.53 for services provided in the forensic transition services exceed 50 percent of the cost of care, the county shall be responsible for paying the state only the remaining amount. The county shall not be entitled to reimbursement from the client, the client's estate, or the client's relatives except as provided in section 246.53; and

(4) residential competency restoration program:

(i) 20 percent for each day, or portion thereof, that the client spends in a residential competency restoration program while the client is in need of restoration services;

(ii) 50 percent for each day, or portion thereof, that the client spends in a residential competency restoration program once the examiner determines that the client no longer needs restoration services; and

(iii) 100 percent for each day, or portion thereof, once charges against a client have been resolved or dropped.

Subd. 2. **Exceptions.** Regardless of the facility to which the client is committed, subdivisions 1, 1a, 1b, and 1c, do not apply to the following individuals:

(1) clients who are committed as sexual psychopathic personalities under section 253D.02, subdivision 15; and

(2) clients who are committed as sexually dangerous persons under section 253D.02, subdivision 16.

**History:** 1959 c 578 s 5; 1971 c 637 s 6; 1981 c 360 art 2 s 17; 1985 c 21 s 18; 1986 c 394 s 6; 1989 c 282 art 2 s 91,218; 1Sp2003 c 14 art 3 s 4; 2007 c 147 art 8 s 12,13; 2009 c 79 art 3 s 8; 2013 c 49 s 22; 2013 c 59 art 2 s 9; 2013 c 108 art 4 s 10; 2015 c 71 art 4 s 2; 2016 c 189 art 17 s 2

#### **246.55 APPEAL FROM ORDER OF COMMISSIONER.**

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

**History:** 1959 c 578 s 6; 1983 c 247 s 104; 1985 c 21 s 19; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 282 art 2 s 218

#### **246.56 WORK ACTIVITY FOR CERTAIN PATIENTS OR RESIDENTS.**

Subdivision 1. **Therapeutic work activities.** The commissioner of human services is hereby authorized to establish work activity programs for the purpose of providing therapeutic work activities for regional treatment center patients with mental illness and regional treatment center residents with developmental disabilities. Work activity programs may be established for the provision of services and for the manufacture, processing and repairing of goods, wares, and merchandise. Work activity programs may be located on the grounds of the regional treatment center or at work sites in the community. In establishing services the commissioner shall cooperate with existing agencies to avoid duplication of available services to the extent feasible.

Subd. 2. **Powers of commissioner.** (a) The work activity programs authorized herein shall be planned and designed exclusively to provide therapeutic activities for disabled workers whose physical or mental impairment is so severe as to make productive capacity inconsequential. Notwithstanding section 177.24, the activities within this program shall conform to the rules and regulations relating to work activity centers promulgated by the United States Department of Labor. To accomplish the foregoing purpose the commissioner of human services shall have the power and authority to:

(1) use the diversified labor fund established by Laws 1945, chapter 575, section 19, to purchase equipment and remodel facilities of the state hospitals referred to in subdivision 1 to initiate the work activity program;

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

(3) contract with public or private entities for the provision of custodial, domestic, maintenance, and other services carried out by patients or residents. To the extent that a qualified direct care employee of a regional treatment center is available, staff services required by the contract shall be provided by that direct care employee.

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

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

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

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

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

Subd. 3. **Indirect costs and reimbursements.** The commissioner of human services is not required to include indirect costs as defined in section 16A.127 in work activity contracts for patients of the regional treatment centers and is not required to reimburse the general fund for indirect costs related to work activity programs.

**History:** 1969 c 34 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 20; 1Sp1985 c 14 art 9 s 75; 1987 c 22 s 1; 1988 c 532 s 1; 1988 c 629 s 47; 1993 c 337 s 13; 1994 c 483 s 1; 1995 c 207 art 8 s 30; 1Sp1995 c 3 art 16 s 13; 2003 c 130 s 12; 2004 c 206 s 33; 2005 c 56 s 1

#### 246.57 SHARED SERVICE AGREEMENTS.

Subdivision 1. **Authorized.** The commissioner of human services may authorize any state-operated services to enter into agreement with other governmental entities and both nonprofit and for-profit organizations for participation in shared service agreements that would be of mutual benefit to the state, other governmental entities and organizations involved, and the public. Positions funded by a shared service agreement are authorized for the duration of the shared service agreement. The charges for the services shall be on an actual cost basis. All receipts for shared services may be retained by the state-operated service that provided the services.

Subd. 2. [Repealed, 1997 c 7 art 2 s 67]

Subd. 3. [Repealed, 1987 c 234 s 4]

Subd. 4. **Shared staff or services.** The commissioner of human services may authorize a state-operated services to provide staff or services to Camp Confidence in return for services to, or use of the camp's facilities by, residents of the facility who have developmental disabilities.

Subd. 5. [Repealed, 2013 c 59 art 2 s 17]



Subd. 6. **Dental services.** The commissioner of human services shall authorize any state-operated services facility under the commissioner's authority to provide dental services to disabled persons who are eligible for medical assistance and are not residing at the regional treatment center or state-operated nursing home, provided that the reimbursement received for these services is sufficient to cover actual costs. To provide these services, regional treatment centers and state-operated nursing homes may participate under contract with health networks in their service area. All receipts for these dental services shall be retained by the regional treatment center or state-operated nursing home that provides the services and shall be in addition to other funding the regional treatment center or state-operated nursing home receives.

**History:** 1976 c 163 s 47; 1982 c 530 s 1; 1983 c 312 art 1 s 20; 1984 c 654 art 5 s 58; 1985 c 213 s 1; 1987 c 234 s 1-3; 1987 c 403 art 2 s 54; 1989 c 282 art 6 s 9; 1996 c 451 art 6 s 6; 1998 c 386 art 2 s 75,76; 1Sp2003 c 14 art 6 s 29-31; 2005 c 56 s 1

**246.58** [Repealed, 2013 c 59 art 2 s 17]

**246.59** [Repealed, 2013 c 59 art 2 s 17]

#### **246.60 CONSOLIDATION; EMPLOYEES.**

When institutions under the control of the commissioner of human services or the commissioner of corrections are consolidated, the commissioner of management and budget and the commissioner of administration shall direct the department incorporating the consolidation and any other state department or agency, as necessary, to employ the affected employees at no loss in salary. The commissioner of management and budget shall temporarily suspend any rules or laws to accommodate these provisions. Any department or agency that employs an affected employee is authorized to temporarily exceed its approved complement. The commissioner of management and budget shall develop procedures to insure that moving expenses are reimbursed for those employees who relocate pursuant to the consolidation.

**History:** 1976 c 163 s 50; 1980 c 617 s 47; 1984 c 654 art 5 s 58; 2008 c 204 s 42; 2009 c 101 art 2 s 109

**246.61** [Repealed, 1987 c 234 s 4]

**246.62** [Repealed, 1987 c 234 s 4]

**246.63** [Repealed, 1987 c 234 s 4]

#### **246.64 CHEMICAL DEPENDENCY SERVICE AGREEMENTS.**

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

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

Subd. 3. **Responsibilities of commissioner.** The commissioner shall credit all receipts from billings for rates set in subdivision 1, except those credited according to subdivision 2, to the chemical dependency fund. This money must not be used for a regional treatment center activity that is not a chemical dependency service or an allocation of expenditures that are included in the base for computation of the rates under subdivision 1. The commissioner may expand chemical dependency services so long as expenditures are recovered by patient fees, transfer of funds, or supplementary appropriations. The commissioner may expand or reduce chemical dependency staff complement as long as expenditures are recovered by patient fees, transfer of funds, or supplementary appropriations. Notwithstanding chapters 176 and 268, the commissioner shall provide for the self-insurance of regional treatment center chemical dependency programs for the costs of unemployment benefits and workers' compensation claims.

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

**History:** 1986 c 394 s 7; 1989 c 271 s 33; 1991 c 292 art 4 s 6; 1993 c 4 s 23; 1994 c 488 s 8; 1997 c 7 art 2 s 36; 1999 c 107 s 66; 2000 c 343 s 4; 2013 c 59 art 2 s 10

## 246.70 SERVICES TO FAMILIES.

(a) The commissioner shall publicize the planned changes to the facilities operated by the commissioner. A parent, other involved family member, private guardian, or health care agent of a resident of a facility must be notified of the changes planned for each facility. When new services developed for a person require the person to move, the commissioner shall provide each parent, family member, health care agent, and guardian of that person with the following:

(1) names and telephone numbers of the state and county contacts;

(2) information on types of services to be developed;

(3) information on how the individual planning process works, including how alternative placements will be determined, and how family members can be involved;

(4) information on the process to be followed when a parent, other family member, health care agent, or guardian disagrees with the proposed services; and

(5) a list of additional resources such as advocates, local volunteer coordinators, and family groups.

(b) At least one staff person in each facility must be available to provide information about:

(1) community placements;

(2) the opportunity for interested family members, guardians, and health care agents to participate in program planning; and

(3) family support groups.

**History:** 1989 c 282 art 6 s 10; 2009 c 108 s 6

**BLOOD-BORNE PATHOGENS; SECURE  
TREATMENT FACILITY EMPLOYEES****246.71 DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of sections 246.71 to 246.722, the following terms have the meanings given them.

Subd. 2. **Blood-borne pathogens.** "Blood-borne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

Subd. 3. **Patient.** "Patient" means any person who is receiving treatment from or committed to a secure treatment facility.

Subd. 4. **Employee of a secure treatment facility or employee.** "Employee of a secure treatment facility" or "employee" means an employee of the Minnesota Security Hospital or a secure treatment facility operated by the Minnesota sex offender program.

Subd. 5. **Secure treatment facility.** "Secure treatment facility" means the Minnesota Security Hospital and the Minnesota sex offender program facility in Moose Lake and any portion of the Minnesota sex offender program operated by the Minnesota sex offender program at the Minnesota Security Hospital.

Subd. 6. **Significant exposure.** "Significant exposure" means contact likely to transmit a blood-borne pathogen, in a manner supported by the most current guidelines and recommendations of the United States Public Health Service at the time an evaluation takes place, that includes:

(1) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin; and

(2) contact, in a manner that may transmit a blood-borne pathogen, with blood, tissue, or potentially infectious body fluids.

**History:** 2000 c 422 s 40; 1Sp2003 c 14 art 6 s 32,33

**246.711 CONDITIONS FOR APPLICABILITY OF PROCEDURES.**

Subdivision 1. **Request for procedures.** An employee of a secure treatment facility may request that the procedures of sections 246.71 to 246.722 be followed when the employee may have experienced a significant exposure to a patient.

Subd. 2. **Conditions.** The secure treatment facility shall follow the procedures in sections 246.71 to 246.722 when all of the following conditions are met:

(1) a licensed physician determines that a significant exposure has occurred following the protocol under section 246.721;

(2) the licensed physician for the employee needs the patient's blood-borne pathogens test results to begin, continue, modify, or discontinue treatment in accordance with the most current guidelines of the United States Public Health Service, because of possible exposure to a blood-borne pathogen; and

(3) the employee consents to providing a blood sample for testing for a blood-borne pathogen.

**History:** 2000 c 422 s 41

**246.712 INFORMATION REQUIRED TO BE GIVEN TO INDIVIDUALS.**

Subdivision 1. **Information to patient.** (a) Before seeking any consent required by the procedures under sections 246.71 to 246.722, a secure treatment facility shall inform the patient that the patient's blood-borne pathogen test results, without the patient's name or other uniquely identifying information, shall be reported to the employee if requested and that test results collected under sections 246.71 to 246.722 are for medical purposes as set forth in section 246.718 and may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

(b) The secure treatment facility shall inform the patient of the insurance protections in section 72A.20, subdivision 29.

(c) The secure treatment facility shall inform the patient that the patient may refuse to provide a blood sample and that the patient's refusal may result in a request for a court order to require the patient to provide a blood sample.

(d) The secure treatment facility shall inform the patient that the secure treatment facility will advise the employee of a secure treatment facility of the confidentiality requirements and penalties before the employee's health care provider discloses any test results.

Subd. 2. **Information to secure treatment facility employee.** (a) Before disclosing any information about the patient, the secure treatment facility shall inform the employee of a secure treatment facility of the confidentiality requirements of section 246.719 and that the person may be subject to penalties for unauthorized release of test results about the patient under section 246.72.

(b) The secure treatment facility shall inform the employee of the insurance protections in section 72A.20, subdivision 29.

**History:** 2000 c 422 s 42

**246.713 DISCLOSURE OF POSITIVE BLOOD-BORNE PATHOGEN TEST RESULTS.**

If the conditions of sections 246.711 and 246.712 are met, the secure treatment facility shall ask the patient if the patient has ever had a positive test for a blood-borne pathogen. The secure treatment facility must attempt to get existing test results under this section before taking any steps to obtain a blood sample or to test for blood-borne pathogens. The secure treatment facility shall disclose the patient's blood-borne pathogen test results to the employee without the patient's name or other uniquely identifying information.

**History:** 2000 c 422 s 43

**246.714 CONSENT PROCEDURES GENERALLY.**

(a) For purposes of sections 246.71 to 246.722, whenever the secure treatment facility is required to seek consent, the secure treatment facility shall obtain consent from a patient or a patient's representative consistent with other law applicable to consent.

(b) Consent is not required if the secure treatment facility has made reasonable efforts to obtain the representative's consent and consent cannot be obtained within 24 hours of a significant exposure.

(c) If testing of available blood occurs without consent because the patient is unconscious or unable to provide consent, and a representative cannot be located, the secure treatment facility shall provide the information required in section 246.712 to the patient or representative whenever it is possible to do so.

(d) If a patient dies before an opportunity to consent to blood collection or testing under sections 246.71 to 246.722, the secure treatment facility does not need consent of the patient's representative for purposes of sections 246.71 to 246.722.

**History:** 2000 c 422 s 44

#### **246.715 TESTING OF AVAILABLE BLOOD.**

Subdivision 1. **Procedures with consent.** If a sample of the patient's blood is available, the secure treatment facility shall ensure that blood is tested for blood-borne pathogens with the consent of the patient, provided the conditions in sections 246.711 and 246.712 are met.

Subd. 2. **Procedures without consent.** If the patient has provided a blood sample, but does not consent to blood-borne pathogens testing, the secure treatment facility shall ensure that the blood is tested for blood-borne pathogens if the employee requests the test, provided all of the following criteria are met:

(1) the employee and secure treatment facility have documented exposure to blood or body fluids during performance of the employee's work duties;

(2) a licensed physician has determined that a significant exposure has occurred under section 246.711 and has documented that blood-borne pathogen test results are needed for beginning, modifying, continuing, or discontinuing medical treatment for the employee as recommended by the most current guidelines of the United States Public Health Service;

(3) the employee provides a blood sample for testing for blood-borne pathogens as soon as feasible;

(4) the secure treatment facility asks the patient to consent to a test for blood-borne pathogens and the patient does not consent;

(5) the secure treatment facility has provided the patient and the employee with all of the information required by section 246.712; and

(6) the secure treatment facility has informed the employee of the confidentiality requirements of section 246.719 and the penalties for unauthorized release of patient information under section 246.72.

Subd. 3. **Follow-up.** The secure treatment facility shall inform the patient whose blood was tested of the results. The secure treatment facility shall inform the employee's health care provider of the patient's test results without the patient's name or other uniquely identifying information.

**History:** 2000 c 422 s 45

#### **246.716 BLOOD SAMPLE COLLECTION FOR TESTING.**

Subdivision 1. **Procedures with consent.** (a) If a blood sample is not otherwise available, the secure treatment facility shall obtain consent from the patient before collecting a blood sample for testing for blood-borne pathogens. The consent process shall include informing the patient that the patient may refuse to provide a blood sample and that the patient's refusal may result in a request for a court order under subdivision 2 to require the patient to provide a blood sample.

(b) If the patient consents to provide a blood sample, the secure treatment facility shall collect a blood sample and ensure that the sample is tested for blood-borne pathogens.

(c) The secure treatment facility shall inform the employee's health care provider about the patient's test results without the patient's name or other uniquely identifying information. The secure treatment facility shall inform the patient of the test results.

(d) If the patient refuses to provide a blood sample for testing, the secure treatment facility shall inform the employee of the patient's refusal.

**Subd. 2. Procedures without consent.** (a) A secure treatment facility or an employee of a secure treatment facility may bring a petition for a court order to require a patient to provide a blood sample for testing for blood-borne pathogens. The petition shall be filed in the district court in the county where the patient is receiving treatment from the secure treatment facility. The secure treatment facility shall serve the petition on the patient three days before a hearing on the petition. The petition shall include one or more affidavits attesting that:

(1) the secure treatment facility followed the procedures in sections 246.71 to 246.722 and attempted to obtain blood-borne pathogen test results according to those sections;

(2) a licensed physician knowledgeable about the most current recommendations of the United States Public Health Service has determined that a significant exposure has occurred to the employee of a secure treatment facility under section 246.721; and

(3) a physician has documented that the employee has provided a blood sample and consented to testing for blood-borne pathogens and blood-borne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the employee under section 246.721.

(b) Facilities shall cooperate with petitioners in providing any necessary affidavits to the extent that facility staff can attest under oath to the facts in the affidavits.

(c) The court may order the patient to provide a blood sample for blood-borne pathogen testing if:

(1) there is probable cause to believe the employee of a secure treatment facility has experienced a significant exposure to the patient;

(2) the court imposes appropriate safeguards against unauthorized disclosure that must specify the persons who have access to the test results and the purposes for which the test results may be used;

(3) a licensed physician for the employee of a secure treatment facility needs the test results for beginning, continuing, modifying, or discontinuing medical treatment for the employee; and

(4) the court finds a compelling need for the test results. In assessing compelling need, the court shall weigh the need for the court-ordered blood collection and test results against the interests of the patient, including, but not limited to, privacy, health, safety, or economic interests. The court shall also consider whether involuntary blood collection and testing would serve the public interests.

(d) The court shall conduct the proceeding in camera unless the petitioner or the patient requests a hearing in open court and the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(e) The patient may arrange for counsel in any proceeding brought under this subdivision.

**History:** 2000 c 422 s 46

**246.717 NO DISCRIMINATION.**

A secure treatment facility shall not withhold care or treatment on the requirement that the patient consent to blood-borne pathogen testing under sections 246.71 to 246.722.

**History:** 2000 c 422 s 47

**246.718 USE OF TEST RESULTS.**

Blood-borne pathogen test results of a patient obtained under sections 246.71 to 246.722 are for diagnostic purposes and to determine the need for treatment or medical care specific to a blood-borne pathogen-related illness. The test results may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

**History:** 2000 c 422 s 48

**246.719 TEST INFORMATION CONFIDENTIALITY.**

Test results obtained under sections 246.71 to 246.722 are private data as defined in sections 13.02, subdivision 12, and 13.85, subdivision 2, but shall be released as provided by sections 246.71 to 246.722.

**History:** 2000 c 422 s 49

**246.72 PENALTY FOR UNAUTHORIZED RELEASE OF INFORMATION.**

Unauthorized release of the patient's name or other uniquely identifying information under sections 246.71 to 246.722 is subject to the remedies and penalties under sections 13.08 and 13.09. This section does not preclude private causes of action against an individual, state agency, statewide system, political subdivision, or person responsible for releasing private data, or confidential or private information on the inmate.

**History:** 2000 c 422 s 50

**246.721 PROTOCOL FOR EXPOSURE TO BLOOD-BORNE PATHOGENS.**

(a) A secure treatment facility shall follow applicable Occupational Safety and Health Administration guidelines under Code of Federal Regulations, title 29, part 1910.1030, for blood-borne pathogens.

(b) Every secure treatment facility shall adopt and follow a postexposure protocol for employees at a secure treatment facility who have experienced a significant exposure. The postexposure protocol must adhere to the most current recommendations of the United States Public Health Service and include, at a minimum, the following:

(1) a process for employees to report an exposure in a timely fashion;

(2) a process for an infectious disease specialist, or a licensed physician who is knowledgeable about the most current recommendations of the United States Public Health Service in consultation with an infectious disease specialist, (i) to determine whether a significant exposure to one or more blood-borne pathogens has occurred, and (ii) to provide, under the direction of a licensed physician, a recommendation or recommendations for follow-up treatment appropriate to the particular blood-borne pathogen or pathogens for which a significant exposure has been determined;

(3) if there has been a significant exposure, a process to determine whether the patient has a blood-borne pathogen through disclosure of test results, or through blood collection and testing as required by sections 246.71 to 246.722;

(4) a process for providing appropriate counseling prior to and following testing for a blood-borne pathogen regarding the likelihood of blood-borne pathogen transmission and follow-up recommendations according to the most current recommendations of the United States Public Health Service, recommendations for testing, and treatment;

(5) a process for providing appropriate counseling under clause (4) to the employee of a secure treatment facility and to the patient; and

(6) compliance with applicable state and federal laws relating to data practices, confidentiality, informed consent, and the patient bill of rights.

**History:** 2000 c 422 s 51

#### **246.722 IMMUNITY.**

A secure treatment facility, licensed physician, and designated health care personnel are immune from liability in any civil, administrative, or criminal action relating to the disclosure of test results of a patient to an employee of a secure treatment facility and the testing of a blood sample from the patient for blood-borne pathogens if a good faith effort has been made to comply with sections 246.71 to 246.722.

**History:** 2000 c 422 s 52