

## STATE OF MINNESOTA

## EIGHTY-SEVENTH SESSION — 2012

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 NINETY-EIGHTH DAY

SAINT PAUL, MINNESOTA, MONDAY, APRIL 2, 2012

The House of Representatives convened at 12:30 p.m. and was called to order by Kurt Zellers, Speaker of the House.

Prayer was offered by the Reverend Jim Fleming, Bethel Evangelical Free Church, Fairmont, Minnesota.

The members of the House gave the pledge of allegiance to the flag of the United States of America.

The roll was called and the following members were present:

Abeler	Davnie	Hansen	Leidiger	Murdock	Shimanski
Allen	Dean	Hausman	LeMieur	Murphy, E.	Simon
Anderson, B.	Dettmer	Hilty	Lenczewski	Murray	Slawik
Anderson, D.	Dill	Holberg	Lesch	Myhra	Slocum
Anderson, P.	Dittrich	Hoppe	Liebling	Nelson	Smith
Anderson, S.	Doepke	Hornstein	Lillie	Nornes	Stensrud
Anzelc	Downey	Hortman	Loeffler	Norton	Swedzinski
Atkins	Drazkowski	Hosch	Lohmer	O'Driscoll	Thissen
Banaian	Erickson	Howes	Loon	Paymar	Tillberry
Beard	Fabian	Huntley	Mahoney	Pelowski	Torkelson
Benson, J.	Falk	Johnson	Mariani	Peppin	Urdahl
Benson, M.	Franson	Kahn	Marquart	Persell	Vogel
Bills	Fritz	Kath	Mazorol	Petersen, B.	Wagenius
Brynaert	Garofalo	Kelly	McDonald	Poppe	Ward
Buesgens	Gauthier	Kieffer	McElfatrick	Quam	Wardlow
Carlson	Gottwalt	Kiel	McFarlane	Rukavina	Winkler
Champion	Gruenhagen	Kiffmeyer	McNamara	Runbeck	Woodard
Cornish	Gunther	Knuth	Melin	Sanders	Spk. Zellers
Crawford	Hackbarth	Kriesel	Moran	Scalze	
Daudt	Hamilton	Laine	Morrow	Schomacker	
Davids	Hancock	Lanning	Mullery	Scott	

A quorum was present.

Greiling was excused.

Barrett, Eken, Greene and Peterson, S., were excused until 12:55 p.m. Mack and Murphy, M., were excused until 1:00 p.m. Koenen was excused until 1:10 p.m. Westrom was excused until 1:15 p.m. Clark was excused until 2:10 p.m. Hilstrom was excused until 3:45 p.m.

The Chief Clerk proceeded to read the Journal of the preceding day. There being no objection, further reading of the Journal was dispensed with and the Journal was approved as corrected by the Chief Clerk.

## REPORTS OF CHIEF CLERK

S. F. No. 1689 and H. F. No. 1416, which had been referred to the Chief Clerk for comparison, were examined and found to be identical with certain exceptions.

## SUSPENSION OF RULES

Gruenhagen moved that the rules be so far suspended that S. F. No. 1689 be substituted for H. F. No. 1416 and that the House File be indefinitely postponed. The motion prevailed.

## PETITIONS AND COMMUNICATIONS

The following communications were received:

STATE OF MINNESOTA  
OFFICE OF THE GOVERNOR  
SAINT PAUL 55155

March 29, 2012

The Honorable Kurt Zellers  
Speaker of the House of Representatives  
The State of Minnesota

Dear Speaker Zellers:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State H. F. Nos. 392, 2376 and 1524.

Sincerely,

MARK DAYTON  
Governor

STATE OF MINNESOTA  
OFFICE OF THE SECRETARY OF STATE  
ST. PAUL 55155

The Honorable Kurt Zellers  
Speaker of the House of Representatives

The Honorable Michelle L. Fischbach  
President of the Senate

I have the honor to inform you that the following enrolled Acts of the 2012 Session of the State Legislature have been received from the Office of the Governor and are deposited in the Office of the Secretary of State for preservation, pursuant to the State Constitution, Article IV, Section 23:

<i>S. F. No.</i>	<i>H. F. No.</i>	<i>Session Laws Chapter No.</i>	<i>Time and Date Approved 2012</i>	<i>Date Filed 2012</i>
	392	137	10:32 a.m. March 29	March 29
	2376	138	10:33 a.m. March 29	March 29
	1524	139	10:34 a.m. March 29	March 29

Sincerely,

MARK RITCHIE  
Secretary of State

STATE OF MINNESOTA  
OFFICE OF THE GOVERNOR  
SAINT PAUL 55155

March 29, 2012

The Honorable Kurt Zellers  
Speaker of the House of Representatives  
The State of Minnesota

Dear Speaker Zellers:

I have vetoed and am returning Chapter No. 140, House File No. 545, a bill requiring state agencies to conduct risk analysis for federal insolvency and include their contingency planning in Biennial Budget documents.

This bill would require state agency employees to spend hundreds of hours each year monitoring "indicators of the federal government's inability to meet its obligations." While the Legislature claims to want to reduce the size of state government, it continues to load employees with additional assignments of dubious value.

This bill perpetuates one of the majority party's current political stratagems: to raise doubts about the reliability of government generally and, in this instance, of the federal government specifically. As such, it joins the list of such attempts as privatizing Social Security and the systematic undermining of public schools.

It is not that the federal government's current budget deficit should not be a source of concern. Where, however, were the outcries during the previous decade from the legislators, who now tout this legislation? When I joined the United States Senate in January 2001, outgoing-President Bill Clinton, a Republican-controlled Congress, and an improving national economy had produced the federal government's first operating surplus in 29 years. What's more, those operating surpluses were projected to continue for every year in the coming decade. Added to them would be annual \$180 billion surpluses in the separate Social Security Trust Fund. Staying on that course, we could have virtually eliminated the national debt.

So what happened? President George Bush spearheaded not one, but two, enormous tax cuts, which inordinately benefitted wealthy Americans, large corporations, and powerful special interest groups. They were followed by two wars and two recessions, the last one the most severe since the Great Depression. All of those projected operating surpluses were wiped out, as were the Social Security Trust Fund's surpluses; yet recent annual deficits have skyrocketed to over \$1.3 Trillion.

Where were the outcries, when that drastic reversal of sound fiscal stewardship was occurring?

The federal government's current and projected budget deficits are urgent national problems, and fixing them will require bi-partisan, difficult, even painful solutions. They are, however, still fixable, according to most leading economists. The debt instruments of the U.S. Government continue to be purchased all over the world, because our country is still considered to have the safest and most reliable economy anywhere.

Meanwhile, the financial obligations of the federal government are embedded in current federal laws. They cannot be changed at someone's whim, as the rhetoric surrounding this legislation implies. Those laws would have to be changed, through Congress' laborious public process, and signed by the President before any of those financial commitments could be altered or rescinded.

I believe the people of Minnesota will be far better served by the state's financial experts focusing on their continued improvements in the cost-efficiencies of state services, as well as ways to reduce the additional \$1.5 Billion in debt the Legislature enacted in the last session.

Therefore, I am vetoing this bill.

Sincerely,

MARK DAYTON  
Governor

## REPORTS OF STANDING COMMITTEES AND DIVISIONS

Abeler from the Committee on Health and Human Services Finance to which was referred:

H. F. No. 462, A bill for an act relating to health occupations; providing for a Nurse Licensure Compact; providing for appointments; proposing coding for new law in Minnesota Statutes, chapter 148.

Reported the same back with the recommendation that the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Abeler from the Committee on Health and Human Services Finance to which was referred:

H. F. No. 1191, A bill for an act relating to health occupations; modifying provisions for licensure of social workers; amending Minnesota Statutes 2010, sections 148E.055, subdivision 1; 148E.060, subdivisions 1, 2, 3, 5, by adding a subdivision; 148E.065, subdivisions 2, 4, 5; 148E.120; 148E.195, subdivision 2; 148E.280; proposing coding for new law in Minnesota Statutes, chapter 148E; repealing Minnesota Statutes 2010, section 148E.065, subdivision 3.

Reported the same back with the following amendments:

Page 2, line 15, delete "2011" and insert "2012"

Page 8, lines 9 and 26, delete "2011" and insert "2012"

Page 9, lines 11 and 32, delete "2011" and insert "2012"

Page 10, line 20, delete "2011" and insert "2012"

Page 11, lines 12 and 29, delete "2011" and insert "2012"

Page 12, line 12, delete "2011" and insert "2012"

Page 12, delete sections 11 and 12 and insert:

"Sec. 11. Minnesota Statutes 2010, section 148E.065, subdivision 4, is amended to read:

Subd. 4. **City, county, and state agency social workers.** The licensure of city, county, and state agency social workers is voluntary. City, county, and state agencies employing social workers are not required to employ licensed social workers.

This subdivision expires July 1, 2016.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 12. Minnesota Statutes 2010, section 148E.065, is amended by adding a subdivision to read:

Subd. 4a. **City, county, and state social workers.** (a) Beginning July 1, 2016, the licensure of city, county, and state agency social workers is voluntary, except an individual who is newly employed by a city or state agency after July 1, 2016, must be licensed if the individual who provides social work services, as those services are defined in section 148E.010, subdivision 11, paragraph (b), is presented to the public by any title incorporating the words "social work" or "social worker."

(b) City, county, and state agencies employing social workers are not required to employ licensed social workers.

**EFFECTIVE DATE.** This section is effective July 1, 2012.

Sec. 13. Minnesota Statutes 2010, section 148E.065, subdivision 5, is amended to read:

Subd. 5. **Tribes and private nonprofit agencies; voluntary licensure.** The licensure of social workers who are employed by federally recognized tribes, or by private nonprofit agencies whose primary service focus addresses ethnic minority populations, and who are themselves members of ethnic minority populations within those agencies, is voluntary.

This subdivision expires July 1, 2016.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 14. Minnesota Statutes 2010, section 148E.065, is amended by adding a subdivision to read:

Subd. 5a. **Tribes and private nonprofit agencies; voluntary licensure.** (a) The licensure of social workers who are employed by federally recognized tribes is voluntary.

(b) The licensure of private, nonprofit, nontribal agency social workers whose primary service focus addresses ethnic minority populations, and who are themselves members of ethnic minority populations within those agencies, is voluntary until July 1, 2016, when newly employed individuals who practice social work must be licensed as required under section 148E.055, subdivision 1.

**EFFECTIVE DATE.** This section is effective July 1, 2012."

Page 15, line 32, delete "2011" and insert "2012"

Page 16, line 1, reinstate the stricken language

Page 16, line 2, delete the new language and reinstate the stricken language

Page 16, delete line 19 and insert:

"(e) This subdivision expires July 1, 2016.

**EFFECTIVE DATE.** This section is effective August 1, 2012."

Page 16, delete section 15 and insert:

"Sec. 17. Minnesota Statutes 2010, section 148E.195, is amended by adding a subdivision to read:

Subd. 2a. **Representations.** Effective July 1, 2016:

(a) No applicant or other individual may be represented to the public by any title incorporating the words "social work" or "social worker" unless the individual is employed by a county or holds a license according to this chapter.

(b) In all professional use of a social worker's name, the social worker must use the license designation "LSW" or "licensed social worker" for a licensed social worker, "LGSW" or "licensed graduate social worker" for a licensed graduate social worker, "LISW" or "licensed independent social worker" for a licensed independent social worker, or "LICSW" or "licensed independent clinical social worker" for a licensed independent clinical social worker.

(c) Public statements or advertisements must not be untruthful, misleading, false, fraudulent, deceptive, or potentially exploitative of clients, former clients, interns, students, supervisees, or the public.

(d) A social worker must not:

(1) use licensure status as a claim, promise, or guarantee of successful service;

(2) obtain a license by cheating or employing fraud or deception;

(3) make false statements or misrepresentations to the board or in materials submitted to the board; or

(4) engage in conduct that has the potential to deceive or defraud a social work client, intern, student, supervisee, or the public.

**EFFECTIVE DATE.** This section is effective July 1, 2012.

Sec. 18. Minnesota Statutes 2010, section 148E.280, is amended to read:

**148E.280 USE OF TITLES.**

(a) No individual may be presented to the public by any title incorporating the words "social work" or "social worker" or in the titles in section 148E.195, unless that individual holds a license under sections 148E.055 and 148E.060, or practices in a setting exempt from licensure under section 148E.065.

This paragraph expires July 1, 2016.

(b) Effective July 1, 2016, no individual may be presented to the public by any title incorporating the words "social work" or "social worker" or in the titles in section 148E.195, unless that individual is employed by a county or holds a license under this chapter.

**EFFECTIVE DATE.** This section is effective August 1, 2012."

Renumber the sections in sequence and correct the internal references

Correct the title numbers accordingly

With the recommendation that when so amended the bill pass.

The report was adopted.

Davids from the Committee on Taxes to which was referred:

H. F. No. 1954, A bill for an act relating to local governments; requiring counties and certain cities to report additional budgetary information; amending Minnesota Statutes 2010, section 275.065, subdivisions 1, 3; proposing coding for new law in Minnesota Statutes, chapter 471.

Reported the same back with the following amendments:

Page 1, line 12, delete "2,500" and insert "5,000"

Page 3, line 2, delete "with a population over 2,500" and after "county" insert "with a population over 5,000"

Page 6, line 12, delete "with a population"

Page 6, line 13, delete "greater than 2,500" and after "county" insert "with a population over 5,000"

Page 6, line 21, delete "September 30" and insert "July 31"

Page 6, line 24, delete "two" and insert "three"

Page 6, line 25, after the first comma, insert "and" and delete ", and projected data for the"

Page 6, delete lines 26 to 31

Page 6, line 32, delete everything before the period

Page 7, line 7, delete "2,500" and insert "5,000"

Page 7, line 19, delete "October 30" and insert "August 31"

With the recommendation that when so amended the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Abeler from the Committee on Health and Human Services Finance to which was referred:

H. F. No. 2340, A bill for an act relating to health; requiring licensure of certain facilities that perform abortions; proposing coding for new law in Minnesota Statutes, chapter 145.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"Section 1. **[145.417] LICENSURE OF CERTAIN FACILITIES THAT PERFORM ABORTIONS.**

**Subdivision 1. License required for facilities that perform ten or more abortions per month.** (a) A clinic, health center, or other facility in which the pregnancies of ten or more women known to be pregnant are willfully terminated or aborted each month, including nonsurgical abortions, shall be licensed by the commissioner of health and, notwithstanding Minnesota Rules, part 4675.0100, subparts 8 and 9, is subject to the licensure requirements provided in Minnesota Rules, chapter 4675. The commissioner shall not require a facility licensed as a hospital or outpatient surgical center, pursuant to section 144.55, to obtain a separate license under this section; however such facility may be subject to inspections and investigations as permitted under subdivision 2.

(b) Establishing or operating a facility described in this section without obtaining a license is a misdemeanor punishable by a fine of not more than \$300. The commissioner of health, attorney general, an appropriate county attorney, or a woman upon whom an abortion has been performed or attempted to be performed, at an unlicensed facility may seek an injunction in district court against the continuing operation of the facility. Proceedings for securing an injunction may be brought by the attorney general or by the appropriate county attorney.

(c) Sanctions provided in this subdivision do not restrict other available sanctions.

**Subd. 2. Inspections; no notice required.** No more than two times per year, the commissioner of health shall perform routine and comprehensive inspections and investigations of facilities described under subdivision 1. Every clinic, health center, or other facility described under subdivision 1, and any other premise proposed to be conducted as a facility by an applicant for a license, shall be open at all reasonable times to inspection authorized in writing by the commissioner of health. No notice need be given to any person prior to any inspection.

**Subd. 3. Licensure fee.** (a) The license fee for a facility is \$.....

(b) Fees shall be collected and deposited according to section 144.122.

**Subd. 4. Suspension, revocation and refusal to renew.** The commissioner of health may refuse to grant or renew, or may suspend or revoke, a license on any of the following grounds:



(1) violation of any of the provisions of this section or Minnesota Rules, chapter 4675;

(2) permitting, aiding, or abetting the commission of any illegal act in the facility;

(3) conduct or practices detrimental to the welfare of the patient; or

(4) obtaining or attempting to obtain a license by fraud or misrepresentation; or

(5) with respect to the facility, if the commissioner of health determines that there is a pattern of conduct that one or more physicians who have a financial or economic interest in the facility, as defined in section 144.6521, subdivision 3, and have not provided notice and disclosure of the financial or economic interest as required by section 144.6521.

Subd. 5. **Hearing.** Prior to any suspension, revocation or refusal to renew a license, the licensee shall be entitled to notice and a hearing as provided by sections 14.57 to 14.69. At each hearing, the commissioner of health shall have the burden of establishing that a violation described in subdivision 4 has occurred. If a license is revoked, suspended, or not renewed, a new application for license may be considered by the commissioner if the conditions upon which revocation, suspension, or refusal to renew was based have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made and all provisions of this section and Minnesota Rules, chapter 4675, have been complied with and recommendation has been made by the inspector as an agent of the commissioner of health.

Subd. 6. **Severability.** If any one or more provision, section, subdivision, sentence, clause, phrase, or word of this section or the application of it to any person or circumstance is found to be unconstitutional, it is declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality. The legislature intends that it would have passed this section, and each provision, section, subdivision, sentence, clause, phrase, or word, regardless of the fact that any one provision, section, subdivision, sentence, clause, phrase, or word is declared unconstitutional."

Amend the title as follows:

Page 1, line 2, after the second semicolon, insert "setting a facility license fee;"

With the recommendation that when so amended the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Abeler from the Committee on Health and Human Services Finance to which was referred:

H. F. No. 2456, A bill for an act relating to human services; amending continuing care policy provisions; making changes to disability services and licensing provisions; establishing home and community-based services standards; establishing payment methodologies; requiring a report; providing rulemaking authority; amending Minnesota Statutes 2010, sections 245A.03, subdivision 2; 245A.041, by adding subdivisions; 245A.085; 245B.02, subdivision 10, by adding a subdivision; 245B.04, subdivisions 1, 2, 3; 245B.05, subdivision 1; 245B.07, subdivisions 5, 9, 10, by adding a subdivision; 252.40; 252.41, subdivision 3; 252.42; 252.43; 252.44; 252.45; 252.451, subdivisions 2, 5; 252.46, subdivision 1a; 256B.0911, by adding a subdivision; 256B.0916, subdivision 2; 256B.092, subdivision 4;

256B.49, subdivision 17; 256B.4912; 256B.501, subdivision 4b; 256B.5013, subdivision 1; Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 16a; proposing coding for new law in Minnesota Statutes, chapters 245A; 256B; proposing coding for new law as Minnesota Statutes, chapter 245D.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2010, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

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

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

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

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

(5) programs operated by a public school for children 33 months or older;

(6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

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

(8) board and lodge facilities licensed by the commissioner of health that do not provide children's residential services under Minnesota Rules, chapter 2960, mental health or chemical dependency treatment;

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

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;

(12) programs operated by a school as defined in section 120A.22, subdivision 4; YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as defined in section 315.51, whose primary purpose is to provide child care or services to school-age children;

(13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;

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

(15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals;

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

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

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

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

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

~~(22) respite care services provided as a home and community based service to a person with a developmental disability, in the person's primary residence;~~

~~(23)~~ (21) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

~~(24)~~ (22) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;

~~(25)~~ (23) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults;

~~(26)~~ (24) chemical dependency or substance abuse treatment activities of licensed professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart 15, when the treatment activities are not paid for by the consolidated chemical dependency treatment fund;

~~(27)~~ (25) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:

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

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

~~(28)~~ (26) a program serving only children who are age 33 months or older, that is operated by a nonpublic school, for no more than four hours per day per child, with no more than 20 children at any one time, and that is accredited by:

(i) an accrediting agency that is formally recognized by the commissioner of education as a nonpublic school accrediting organization; or

(ii) an accrediting agency that requires background studies and that receives and investigates complaints about the services provided.

A program that asserts its exemption from licensure under item (ii) shall, upon request from the commissioner, provide the commissioner with documentation from the accrediting agency that verifies: that the accreditation is current; that the accrediting agency investigates complaints about services; and that the accrediting agency's standards require background studies on all people providing direct contact services.

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

(c) Except for the home and community-based services identified in section 245D.03, subdivision 1, nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Sec. 2. Minnesota Statutes 2010, section 245A.041, is amended by adding a subdivision to read:

**Subd. 3. Record retention; license holder requirements.** (a) A license holder must maintain and store records in a manner that will allow for review by the commissioner as identified in section 245A.04, subdivision 5. The following records must be maintained as specified and in accordance with applicable state or federal law, regulation, or rule:

(1) service recipient records, including verification of service delivery, must be maintained for a minimum of five years following discharge or termination of service;

(2) personnel records must be maintained for a minimum of five years following termination of employment; and

(3) program administration and financial records must be maintained for a minimum of five years from the date the program closes.

(b) A license holder who ceases to provide services must maintain all records related to the licensed program for five years from the date the program closes. The license holder must notify the commissioner of the location where the licensing records will be stored and the name of the person responsible for maintaining the stored records.

(c) If the ownership of a licensed program or service changes, the transferor, unless otherwise provided by law or written agreement with the transferee, is responsible for maintaining, preserving, and making available to the commissioner on demand the license records generated before the date of the transfer.

(d) In the event of a contested case, the license holder must retain records as required in paragraph (a) or until the final agency decision is issued and the conclusion of any related appeal, whichever period is longer.

Sec. 3. Minnesota Statutes 2010, section 245A.041, is amended by adding a subdivision to read:

**Subd. 4. Electronic records; license holder use.** A license holder's use of electronic record keeping or electronic signatures must meet the following requirements:

(1) use of electronic record keeping or electronic signatures does not alter the license holder's obligations under state or federal law, regulation, or rule;

(2) the license holder must ensure that the use of electronic record keeping does not limit the commissioner's access to records as specified under section 245A.04, subdivision 5;

(3) upon request, the license holder must assist the commissioner in accessing and copying all records, including encrypted records and electronic signatures; and

(4) the license holder must establish a mechanism or procedure to ensure that:

(i) the act of creating the electronic record or signature is attributable to the license holder, according to section 325L.09;

(ii) the electronic records and signatures are maintained in a form capable of being retained and accurately reproduced;

(iii) the commissioner has access to information that establishes the date and time that data and signatures were entered into the electronic record; and

(iv) the license holder's use of electronic record keeping or electronic signatures does not compromise the security of the records.

Sec. 4. **[245A.042] HOME AND COMMUNITY-BASED SERVICES; ADDITIONAL STANDARDS AND PROCEDURES.**

**Subdivision 1. Standards governing the provision of home and community-based services.** Residential and nonresidential programs for persons with disabilities or age 65 and older must obtain a license according to this chapter to provide home and community-based services defined in the federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the state's alternative care program according to section 256B.0913, and identified in section 245D.03, subdivision 1. As a condition of licensure, an applicant or license holder must demonstrate and maintain verification of compliance with:

(1) licensing requirements under this chapter and chapter 245D;

(2) applicable health care program requirements under Minnesota Rules, parts 9505.0170 to 9505.0475 and 9505.2160 to 9505.2245; and

(3) provider standards and qualifications identified in the federal waiver plans or the alternative care program.

**Subd. 2. Modified application procedures.** (a) Applicants seeking chapter 245D licensure who meet the following criteria are subject to modified application procedures:

(1) the applicant holds a chapter 245B license issued on or before December 31, 2012, at the time of application;

(2) the applicant's chapter 245B license or licenses are in substantial compliance according to the licensing standards in this chapter and chapter 245B; and

(3) the commissioner has conducted at least one on-site inspection of the chapter 245B license or licenses within the two-year period before submitting the chapter 245D license application.

For purposes of this subdivision, substantial compliance means the commissioner has not issued a sanction according to section 245A.07 against any chapter 245B license held by the applicant or made the chapter 245B license or licenses conditional according to section 245A.06 within the 12-month period before submitting the application for chapter 245D licensure.

(b) The modified application procedures mean the commissioner must accept the applicant's attestation of compliance with certain requirements in lieu of providing information to the commissioner for evaluation that is otherwise required when seeking chapter 245D licensure.

Subd. 3. **Implementation.** (a) Licensure of home and community-based services according to this section will be implemented upon authorization for the commissioner to collect fees according to section 245A.10, subdivisions 3 and 4, necessary to support licensing functions. License applications will be received on a phased in schedule as determined by the commissioner. Licenses will be issued on or after January 1, 2013, according to section 245A.04.

(b) Implementation of compliance monitoring must be phased in after January 1, 2013.

(1) Applicants who do not currently hold a license issued under this chapter must receive an initial compliance monitoring visit within 12 months of the effective date of the initial license for the purpose of providing technical assistance on how to achieve and maintain compliance with the applicable law or rules governing the provision of home and community-based services under chapter 245D. If during the review the commissioner finds that the license holder has failed to achieve compliance with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a licensing review report with recommendations for achieving and maintaining compliance.

(2) Applicants who do currently hold a license issued under this chapter must receive a compliance monitoring visit after 24 months of the effective date of the initial license.

(c) Nothing in this subdivision shall be construed to limit the commissioner's authority to suspend or revoke a license or issue a fine at any time under section 245A.07, or make correction orders and make a license conditional for failure to comply with applicable laws or rules under section 245A.06, based on the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

Sec. 5. Minnesota Statutes 2010, section 245A.085, is amended to read:

**245A.085 CONSOLIDATION OF HEARINGS; RECONSIDERATION.**

Hearings authorized under this chapter, chapter 245C, and sections 256.045, 256B.04, 626.556, and 626.557, shall be consolidated if feasible and in accordance with other applicable statutes and rules. Reconsideration under sections 245C.28; 626.556, subdivision 10i; and 626.557, subdivision 9d, shall also be consolidated if feasible.

Sec. 6. Minnesota Statutes 2010, section 245B.02, is amended by adding a subdivision to read:

Subd. 8a. **Emergency.** "Emergency" means any fires, severe weather, natural disasters, power failures, or any event that affects the ordinary daily operation of the program, including, but not limited to, events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site.

Sec. 7. Minnesota Statutes 2010, section 245B.02, subdivision 10, is amended to read:

Subd. 10. **Incident.** "Incident" means an occurrence that affects the ordinary provision of services to a person and includes any of the following:

- (1) serious injury as determined by section 245.91, subdivision 6;
- (2) a consumer's death;
- (3) any medical ~~emergencies~~ emergency, unexpected serious ~~illnesses~~ illness, or ~~accidents~~ significant unexpected changes in an illness or medical condition, or the mental health status of a person that require requires calling 911 or a mental health mobile crisis intervention team, physician treatment, or hospitalization;
- (4) a consumer's unauthorized or unexplained absence;
- ~~(5) any fires or other events that require the relocation of services for more than 24 hours, or circumstances involving a law enforcement agency or fire department related to the health, safety, or supervision of a consumer;~~
- ~~(6)~~ (5) physical aggression by a consumer against another consumer that causes physical pain, injury, or persistent emotional distress, including, but not limited to, hitting, slapping, kicking, scratching, pinching, biting, pushing, and spitting;
- ~~(7)~~ (6) any sexual activity between consumers involving force or coercion as defined under section 609.341, subdivisions 3 and 14; or
- ~~(8)~~ (7) a report of child or vulnerable adult maltreatment under section 626.556 or 626.557.

Sec. 8. Minnesota Statutes 2010, section 245B.04, subdivision 1, is amended to read:

Subdivision 1. **License holder's responsibility for consumers' rights.** The license holder must:

- (1) provide the consumer or the consumer's legal representative a copy of the consumer's rights on the day that services are initiated and an explanation of the rights in subdivisions 2 and 3 within five working days of service initiation and annually thereafter. Reasonable accommodations shall be made by the license holder to provide this information in other formats as needed to facilitate understanding of the rights by the consumer and the consumer's legal representative, if any;
- (2) document the consumer's or the consumer's legal representative's receipt of a copy of the rights and an explanation of the rights; and
- (3) ensure the exercise and protection of the consumer's rights in the services provided by the license holder and authorized in the individual service plan.

Sec. 9. Minnesota Statutes 2010, section 245B.04, subdivision 2, is amended to read:

Subd. 2. **Service-related rights.** A consumer's service-related rights include the right to:

- (1) refuse or terminate services and be informed of the consequences of refusing or terminating services;
- (2) know, in advance, limits to the services available from the license holder;

(3) know conditions and terms governing the provision of services, including ~~those~~ the license holder's policies and procedures related to initiation and termination;

(4) know what the charges are for services, regardless of who will be paying for the services, and be notified upon request of changes in those charges;

(5) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the consumer or other private party may have to pay; and

(6) receive licensed services from individuals who are competent and trained, who have professional certification or licensure, as required, and who meet additional qualifications identified in the individual service plan.

Sec. 10. Minnesota Statutes 2010, section 245B.04, subdivision 3, is amended to read:

Subd. 3. **Protection-related rights.** (a) The consumer's protection-related rights include the right to:

(1) have personal, financial, services, and medical information kept private, and be advised of the license holder's policies and procedures regarding disclosure of such information;

(2) access records and recorded information about the person in accordance with applicable state and federal law, regulation, or rule;

(3) be free from maltreatment;

(4) be treated with courtesy and respect for the consumer's individuality, mode of communication, and culture, and receive respectful treatment of the consumer's property;

(5) reasonable observance of cultural and ethnic practice and religion;

(6) be free from bias and harassment regarding race, gender, age, disability, spirituality, and sexual orientation;

(7) be informed of and use the license holder's grievance policy and procedures, including knowing how to contact persons responsible for addressing problems and to appeal under section 256.045;

(8) know the name, telephone number, and the Web site, e-mail, and street addresses of protection and advocacy services, including the appropriate state-appointed ombudsman, and a brief description of how to file a complaint with these offices;

~~(9)~~ (9) voice grievances, know the contact persons responsible for addressing problems and how to contact those persons;

~~(6)~~ (10) any procedures for grievance or complaint resolution and the right to appeal under section 256.045;

~~(7)~~ (11) know the name and address of the state, county, or advocacy agency to contact for additional information or assistance;

~~(8)~~ (12) assert these rights personally, or have them asserted by the consumer's family or legal representative, without retaliation;

~~(9)~~ (13) give or withhold written informed consent to participate in any research or experimental treatment;



(14) have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the resident;

(15) receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication;

(16) marital privacy for visits with the consumer's spouse and, if both are residents of the site, the right to share a bedroom and bed;

(17) associate with other persons of the consumer's choice;

(18) personal privacy; and

(19) engage in chosen activities.

(b) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or this paragraph is allowed only if determined necessary to ensure the health, safety, and well-being of the person. Any restriction of these rights must be documented in the service plan for the person and must include the following information:

(1) the justification for the restriction based on an assessment of the person's vulnerability related to exercising the right without restriction;

(2) the objective measures set as conditions for ending the restriction;

(3) a schedule for reviewing the need for the restriction based on the conditions for ending the restriction to occur, at a minimum, every three months for persons who do not have a legal representative and annually for persons who do have a legal representative from the date of initial approval; and

(4) signed and dated approval for the restriction from the person, or the person's legal representative, if any. A restriction may be implemented only when the required approval has been obtained. Approval may be withdrawn at any time. If approval is withdrawn, the right must be immediately and fully restored.

Sec. 11. Minnesota Statutes 2010, section 245B.05, subdivision 1, is amended to read:

Subdivision 1. **Environment.** The license holder must:

(1) ensure that services are provided in a safe and hazard-free environment when the license holder is the owner, lessor, or tenant of the service site. All other license holders shall inform the consumer or the consumer's legal representative and case manager about any environmental safety concerns in writing;

(2) ~~lock doors~~ ensure that doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers only to protect the safety of consumers and not as a substitute for staff supervision or interactions with consumers. If doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers, the license holder must justify and document how this determination was made in consultation with the person or the person's legal representative and how access will otherwise be provided to the person and all other affected persons receiving services;

(3) follow procedures that minimize the consumer's health risk from communicable diseases; and

(4) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition.

Sec. 12. Minnesota Statutes 2010, section 245B.07, subdivision 5, is amended to read:

Subd. 5. **Staff orientation.** (a) Within 60 days of hiring staff who provide direct service, the license holder must provide 30 hours of staff orientation. Direct care staff must complete 15 of the 30 hours orientation before providing any unsupervised direct service to a consumer. If the staff person has received orientation training from a license holder licensed under this chapter, or provides semi-independent living services only, the 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may be reduced to 15 hours if the staff person has previously received orientation training from a license holder licensed under this chapter.

(b) The 30 hours of orientation must combine supervised on-the-job training with ~~coverage~~ review of and instruction on the following material:

(1) review of the consumer's service plans and risk management plan to achieve an understanding of the consumer as a unique individual and staff responsibilities related to implementation of those plans;

(2) review and instruction on implementation of the license holder's policies and procedures, including their location and access;

(3) staff responsibilities related to emergency procedures;

(4) explanation of specific job functions, including implementing objectives from the consumer's individual service plan;

(5) explanation of responsibilities related to section 245A.65; sections 626.556 and 626.557, governing maltreatment reporting and service planning for children and vulnerable adults; and section 245.825, governing use of aversive and deprivation procedures;

(6) medication administration as it applies to the individual consumer, from a training curriculum developed by a health services professional described in section 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding health care needs, then medication administration taught by a health services professional. Staff may administer medications only after they demonstrate the ability, as defined in the license holder's medication administration policy and procedures. Once a consumer with overriding health care needs is admitted, staff will be provided with remedial training as deemed necessary by the license holder and the health professional to meet the needs of that consumer.

For purposes of this section, overriding health care needs means a health care condition that affects the service options available to the consumer because the condition requires:

(i) specialized or intensive medical or nursing supervision; and

(ii) nonmedical service providers to adapt their services to accommodate the health and safety needs of the consumer;

(7) consumer rights and staff responsibilities related to protecting and ensuring the exercise of the consumer rights; and

(8) other topics necessary as determined by the consumer's individual service plan or other areas identified by the license holder.

(c) The license holder must document each employee's orientation received.

Sec. 13. Minnesota Statutes 2010, section 245B.07, is amended by adding a subdivision to read:

Subd. 7a. **Subcontractors.** If the license holder uses a subcontractor to perform services licensed under this chapter on the license holder's behalf, the license holder must ensure that the subcontractor meets and maintains compliance with all requirements under this chapter that apply to the services to be provided.

Sec. 14. Minnesota Statutes 2010, section 245B.07, subdivision 9, is amended to read:

Subd. 9. **Availability of current written policies and procedures.** The license holder shall:

(1) review and update, as needed, the written policies and procedures in this chapter;

(2) inform consumers or the consumer's legal representatives of the written policies and procedures in this chapter upon service initiation. Copies of policies and procedures affecting a consumer's rights under section 245D.04 must be provided upon service initiation. Copies of all other policies and procedures must be available to consumers or the consumer's legal representatives, case managers, the county where services are located, and the commissioner upon request;

(3) provide all consumers or the consumers' legal representatives and case managers a copy of the revised policies and procedures and explanation of the revisions to policies and procedures that affect consumers' service-related or protection-related rights under section 245B.04 and maltreatment reporting policies and procedures. Unless there is reasonable cause, the license holder must provide this notice at least 30 days before implementing the revised policy and procedure. The license holder must document the reason for not providing the notice at least 30 days before implementing the revisions;

(4) annually notify all consumers or the consumers' legal representatives and case managers of any revised policies and procedures under this chapter, other than those in clause (3). Upon request, the license holder must provide the consumer or consumer's legal representative and case manager copies of the revised policies and procedures;

(5) before implementing revisions to policies and procedures under this chapter, inform all employees of the revisions and provide training on implementation of the revised policies and procedures; and

(6) document and maintain relevant information related to the policies and procedures in this chapter.

Sec. 15. Minnesota Statutes 2010, section 245B.07, subdivision 10, is amended to read:

Subd. 10. **Consumer funds.** (a) The license holder must ensure that consumers retain the use and availability of personal funds or property unless restrictions are justified in the consumer's individual service plan.

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

(c) Whenever the license holder assists a consumer with the safekeeping of funds or other property, the license holder must have written authorization to do so by the consumer or the consumer's legal representative, and the case manager. In addition, the license holder must:

(1) document receipt and disbursement of the consumer's funds or the property;

(2) annually survey, document, and implement the preferences of the consumer, consumer's legal representative, and the case manager for frequency of receiving a statement that itemizes receipts and disbursements of consumer funds or other property; and

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

(d) License holders and program staff must not:

(1) borrow money from a consumer;

(2) purchase personal items from a consumer;

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

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

(5) use consumer funds in a manner that would violate section 256B.04, or any rules promulgated under that section; or

(6) accept powers-of-attorney from a person receiving services from the license holder for any purpose, and may not accept an appointment as guardian or conservator of a person receiving services from the license holder. This does not apply to license holders that are Minnesota counties or other units of government.

Sec. 16. **[245D.01] CITATION.**

This chapter may be cited as the "Home and Community-Based Services Standards" or "HCBS Standards."

Sec. 17. **[245D.02] DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them in this section.

Subd. 2. **Annual and annually.** "Annual" and "annually" have the meaning given in section 245A.02, subdivision 2b.

Subd. 3. **Case manager.** "Case manager" means the individual designated to provide waiver case management services, care coordination, or long-term care consultation, as specified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49, or successor provisions.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subd. 5. **Department.** "Department" means the Department of Human Services.

Subd. 6. **Direct contact.** "Direct contact" has the meaning given in section 245C.02, subdivision 11, and is used interchangeably with the term "direct service."

Subd. 7. **Drug.** "Drug" has the meaning given in section 151.01, subdivision 5.

Subd. 8. **Emergency.** "Emergency" means any event that affects the ordinary daily operation of the program including, but not limited to, fires, severe weather, natural disasters, power failures, or other events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site.

Subd. 9. **Health services.** "Health services" means any service or treatment consistent with the physical and mental health needs of the person, such as medication administration and monitoring, medical, dental, nutritional, health monitoring, wellness education, and exercise.

Subd. 10. **Home and community-based services.** "Home and community-based services" means the services subject to the provisions of this chapter and defined in the federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the state's alternative care program according to section 256B.0913, including the brain injury (BI) waiver, the community alternative care (CAC) waiver, the community alternatives for disabled individuals (CADI) waiver, the developmental disability (DD) waiver, the elderly waiver (EW), and the alternative care (AC) program.

Subd. 11. **Incident.** "Incident" means an occurrence that affects the ordinary provision of services to a person and includes any of the following:

(1) serious injury as determined by section 245.91, subdivision 6;

(2) a person's death;

(3) any medical emergency, unexpected serious illness, or significant unexpected change in an illness or medical condition, or the mental health status of a person that requires calling 911 or a mental health crisis intervention team, physician treatment, or hospitalization;

(4) a person's unauthorized or unexplained absence from a program;

(5) physical aggression by a person receiving services against another person receiving services that causes physical pain, injury, or persistent emotional distress, including, but not limited to, hitting, slapping, kicking, scratching, pinching, biting, pushing, and spitting;

(6) any sexual activity between persons receiving services involving force or coercion as defined under section 609.341, subdivisions 3 and 14; or

(7) a report of alleged or suspected child or vulnerable adult maltreatment under section 626.556 or 626.557.

Subd. 12. **Legal representative.** "Legal representative" means the parent of a person who is under 18 years of age, a court-appointed guardian, or other representative with legal authority to make decisions about services for a person.

Subd. 13. **License.** "License" has the meaning given in section 245A.02, subdivision 8.

Subd. 14. **Licensed health professional.** "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 15. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 16. **Medication.** "Medication" means a prescription drug or over-the-counter drug. For purposes of this chapter, "medication" includes dietary supplements.

Subd. 17. **Medication administration.** "Medication administration" means performing the following set of tasks to ensure a person takes both prescription and over-the-counter medications and treatments according to orders issued by appropriately licensed professionals, and includes the following:

- (1) checking the person's medication record;
- (2) preparing the medication for administration;
- (3) administering the medication to the person;
- (4) documenting the administration of the medication or the reason for not administering the medication; and
- (5) reporting to the prescriber or a nurse any concerns about the medication, including side effects, adverse reactions, effectiveness, or the person's refusal to take the medication or the person's self-administration of the medication.

Subd. 18. **Medication assistance.** "Medication assistance" means providing verbal or visual reminders to take regularly scheduled medication, which includes either of the following:

- (1) bringing to the person and opening a container of previously set up medications and emptying the container into the person's hand or opening and giving the medications in the original container to the person, or bringing to the person liquids or food to accompany the medication; or
- (2) providing verbal or visual reminders to perform regularly scheduled treatments and exercises.

Subd. 19. **Medication management.** "Medication management" means the provision of any of the following:

- (1) medication-related services to a person;
- (2) medication setup;
- (3) medication administration;
- (4) medication storage and security;
- (5) medication documentation and charting;
- (6) verification and monitoring of effectiveness of systems to ensure safe medication handling and administration;
- (7) coordination of medication refills;
- (8) handling changes to prescriptions and implementation of those changes;
- (9) communicating with the pharmacy; or
- (10) coordination and communication with prescriber.

For the purposes of this chapter, medication management does not mean "medication therapy management services" as identified in section 256B.0625, subdivision 13h.

Subd. 20. **Mental health crisis intervention team.** "Mental health crisis intervention team" means mental health crisis response providers as identified in section 256B.0624, subdivision 2, paragraph (d), for adults, and in section 256B.0944, subdivision 1, paragraph (d), for children.

Subd. 21. **Over-the-counter drug.** "Over-the-counter drug" means a drug that is not required by federal law to bear the statement "Caution: Federal law prohibits dispensing without prescription."

Subd. 22. **Person.** "Person" has the meaning given in section 245A.02, subdivision 11.

Subd. 23. **Person with a disability.** "Person with a disability" means a person determined to have a disability by the commissioner's state medical review team as identified in section 256B.055, subdivision 7, the Social Security Administration, or the person is determined to have a developmental disability as defined in Minnesota Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section 252.27, subdivision 1a.

Subd. 24. **Prescriber.** "Prescriber" means a licensed practitioner as defined in section 151.01, subdivision 23, who is authorized under section 151.37 to prescribe drugs. For the purposes of this chapter, the term "prescriber" is used interchangeably with "physician."

Subd. 25. **Prescription drug.** "Prescription drug" has the meaning given in section 151.01, subdivision 17.

Subd. 26. **Program.** "Program" means either the nonresidential or residential program as defined in section 245A.02, subdivisions 10 and 14.

Subd. 27. **Psychotropic medication.** "Psychotropic medication" means any medication prescribed to treat the symptoms of mental illness that affect thought processes, mood, sleep, or behavior. The major classes of psychotropic medication are antipsychotic (neuroleptic), antidepressant, antianxiety, mood stabilizers, anticonvulsants, and stimulants and nonstimulants for the treatment of attention deficit/hyperactivity disorder. Other miscellaneous medications are considered to be a psychotropic medication when they are specifically prescribed to treat a mental illness or to control or alter behavior.

Subd. 28. **Restraint.** "Restraint" means physical or mechanical limiting of the free and normal movement of body or limbs.

Subd. 29. **Seclusion.** "Seclusion" means separating a person from others in a way that prevents social contact and prevents the person from leaving the situation if he or she chooses.

Subd. 30. **Service.** "Service" means care, training, supervision, counseling, consultation, or medication assistance assigned to the license holder in the service plan.

Subd. 31. **Service plan.** "Service plan" means the individual service plan or individual care plan identified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49, or successor provisions, and includes any support plans or service needs identified as a result of long-term care consultation, or a support team meeting that includes the participation of the person, the person's legal representative, and case manager, or assigned to a license holder through an authorized service agreement.

Subd. 32. **Service site.** "Service site" means the location where the service is provided to the person, including but not limited to, a facility licensed according to chapter 245A; a location where the license holder is the owner, lessor, or tenant; a person's own home; or a community-based location.

Subd. 33. **Staff.** "Staff" means an employee who will have direct contact with a person served by the facility, agency, or program.

Subd. 34. **Support team.** "Support team" means the service planning team identified in section 256B.49, subdivision 15, or the interdisciplinary team identified in Minnesota Rules, part 9525.0004, subpart 14.

Subd. 35. **Unit of government.** "Unit of government" means every city, county, town, school district, other political subdivisions of the state, and any agency of the state or the United States, and includes any instrumentality of a unit of government.

Subd. 36. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides direct services without pay to a person served by the license holder.

Sec. 18. **[245D.03] APPLICABILITY AND EFFECT.**

Subdivision 1. **Applicability.** The commissioner shall regulate the provision of home and community-based services to persons with disabilities and persons age 65 and older pursuant to this chapter. The licensing standards in this chapter govern the provision of the following services:

- (1) housing access coordination as defined under the current BI, CADI, and DD waiver plans or successor plans;
- (2) respite services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans when the provider is an individual who is not an employee of a residential or nonresidential program licensed by the Department of Human Services or the Department of Health that is otherwise providing the respite service;
- (3) behavioral programming as defined under the current BI and CADI waiver plans or successor plans;
- (4) specialist services as defined under the current DD waiver plan or successor plans;
- (5) companion services as defined under the current BI, CADI, and EW waiver plans or successor plans, excluding companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;
- (6) personal support as defined under the current DD waiver plan or successor plans;
- (7) 24-hour emergency assistance, on-call and personal emergency response as defined under the current CADI and DD waiver plans or successor plans;
- (8) night supervision services as defined under the current BI waiver plan or successor plans;
- (9) homemaker services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only;
- (10) independent living skills training as defined under the current BI and CADI waiver plans or successor plans;
- (11) prevocational services as defined under the current BI and CADI waiver plans or successor plans;
- (12) structured day services as defined under the current BI waiver plan or successor plans; or
- (13) supported employment as defined under the current BI and CADI waiver plans or successor plans.

Subd. 2. **Relationship to other standards governing home and community-based services.** (a) A license holder governed by this chapter is also subject to the licensure requirements under chapter 245A.



(b) A license holder concurrently providing child foster care services licensed according to Minnesota Rules, chapter 2960, to the same person receiving a service licensed under this chapter is exempt from section 245D.04, as it applies to the person.

(c) A license holder concurrently providing home care services registered according to sections 144A.43 to 144A.49 to the same person receiving home management services licensed under this chapter is exempt from section 245D.04, as it applies to the person.

(d) A license holder identified in subdivision 1, clauses (1), (5), and (9), is exempt from compliance with sections 245A.65, subdivision 2, paragraph (a), and 626.557, subdivision 14, paragraph (b).

(e) Notwithstanding section 245D.06, subdivision 5, a license holder providing structured day, prevocational, or supported employment services under this chapter and day training and habilitation or supported employment services licensed under chapter 245B within the same program is exempt from compliance with this chapter, when the license holder notifies the commissioner in writing that the requirements under chapter 245B will be met for all persons receiving these services from the program. For the purposes of this paragraph, if the license holder has obtained approval from the commissioner for an alternative inspection status according to section 245B.031, that approval will apply to all persons receiving services in the program.

Subd. 3. **Variance.** If the conditions in section 245A.04, subdivision 9, are met, the commissioner may grant a variance to any of the requirements in this chapter, except sections 245D.04, and 245D.10, subdivision 4, paragraph (b), or provisions governing data practices and information rights of persons.

Subd. 4. **License holders with multiple 245D licenses.** (a) When a person changes service from one license to a different license held by the same license holder, the license holder is exempt from the requirements in section 245D.10, subdivision 4, paragraph (b).

(b) When a staff person begins providing direct service under one or more licenses held by the same license holder, other than the license for which staff orientation was initially provided according to section 245D.09, subdivision 4, the license holder is exempt from those staff orientation requirements; except the staff person must review each person's service plan and medication administration procedures in accordance with section 245D.09, subdivision 4, paragraph (c), if not previously reviewed by the staff person.

Sec. 19. **[245D.04] SERVICE RECIPIENT RIGHTS.**

Subdivision 1. **License holder responsibility for individual rights of persons served by the program.** The license holder must:

(1) provide each person or each person's legal representative with a written notice that identifies the service recipient rights in subdivisions 2 and 3, and an explanation of those rights within five working days of service initiation and annually thereafter;

(2) make reasonable accommodations to provide this information in other formats or languages as needed to facilitate understanding of the rights by the person and the person's legal representative, if any;

(3) maintain documentation of the person's or the person's legal representative's receipt of a copy and an explanation of the rights; and

(4) ensure the exercise and protection of the person's rights in the services provided by the license holder and as authorized in the service plan.

Subd. 2. **Service-related rights.** A person's service-related rights include the right to:

- (1) participate in the development and evaluation of the services provided to the person;
- (2) have services identified in the service plan provided in a manner that respects and takes into consideration the person's preferences;
- (3) refuse or terminate services and be informed of the consequences of refusing or terminating services;
- (4) know, in advance, limits to the services available from the license holder;
- (5) know conditions and terms governing the provision of services, including the license holder's policies and procedures related to temporary service suspension and service termination;
- (6) know what the charges are for services, regardless of who will be paying for the services, and be notified of changes in those charges;
- (7) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the person or other private party may have to pay; and
- (8) receive services from an individual who is competent and trained, who has professional certification or licensure, as required, and who meets additional qualifications identified in the person's service plan.

Subd. 3. **Protection-related rights.** (a) A person's protection-related rights include the right to:

- (1) have personal, financial, service, health, and medical information kept private, and be advised of disclosure of this information by the license holder;
- (2) access records and recorded information about the person in accordance with applicable state and federal law, regulation, or rule;
- (3) be free from maltreatment;
- (4) be free from restraint or seclusion used for a purpose other than to protect the person from imminent danger to self or others;
- (5) receive services in a clean and safe environment when the license holder is the owner, lessor, or tenant of the service site;
- (6) be treated with courtesy and respect and receive respectful treatment of the person's property;
- (7) reasonable observance of cultural and ethnic practice and religion;
- (8) be free from bias and harassment regarding race, gender, age, disability, spirituality, and sexual orientation;
- (9) be informed of and use the license holder's grievance policy and procedures, including knowing how to contact persons responsible for addressing problems and to appeal under section 256.045;
- (10) know the name, telephone number, and the Web site, e-mail, and street addresses of protection and advocacy services, including the appropriate state-appointed ombudsman, and a brief description of how to file a complaint with these offices;

(11) assert these rights personally, or have them asserted by the person's family, authorized representative, or legal representative, without retaliation;

(12) give or withhold written informed consent to participate in any research or experimental treatment;

(13) associate with other persons of the person's choice;

(14) personal privacy; and

(15) engage in chosen activities.

(b) For a person residing in a residential site licensed according to chapter 245A, or where the license holder is the owner, lessor, or tenant of the residential service site, protection-related rights also include the right to:

(1) have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the person;

(2) receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication; and

(3) privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor, or others, in accordance with section 363A.09 of the Human Rights Act, including privacy in the person's bedroom.

(c) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or paragraph (b) is allowed only if determined necessary to ensure the health, safety, and well-being of the person. Any restriction of those rights must be documented in the service plan for the person and must include the following information:

(1) the justification for the restriction based on an assessment of the person's vulnerability related to exercising the right without restriction;

(2) the objective measures set as conditions for ending the restriction;

(3) a schedule for reviewing the need for the restriction based on the conditions for ending the restriction to occur, at a minimum, every three months for persons who do not have a legal representative and annually for persons who do have a legal representative from the date of initial approval; and

(4) signed and dated approval for the restriction from the person, or the person's legal representative, if any. A restriction may be implemented only when the required approval has been obtained. Approval may be withdrawn at any time. If approval is withdrawn, the right must be immediately and fully restored.

#### Sec. 20. **[245D.05] HEALTH SERVICES.**

Subdivision 1. **Health needs.** (a) The license holder is responsible for providing health services assigned in the service plan and consistent with the person's health needs. The license holder is responsible for promptly notifying the person or the person's legal representative and the case manager of changes in a person's physical and mental health needs affecting assigned health services, when discovered by the license holder, unless the license holder has reason to know the change has already been reported. The license holder must document when the notice is provided.

(b) When assigned in the service plan, the license holder is required to maintain documentation on how the person's health needs will be met, including a description of the procedures the license holder will follow in order to:

(1) provide medication administration, medication assistance, or medication management according to this chapter;

(2) monitor health conditions according to written instructions from the person's physician or a licensed health professional;

(3) assist with or coordinate medical, dental, and other health service appointments; or

(4) use medical equipment, devices, or adaptive aides or technology safely and correctly according to written instructions from the person's physician or a licensed health professional.

Subd. 2. **Medication administration.** (a) The license holder must ensure that the following criteria have been met before staff that is not a licensed health professional administers medication or treatment:

(1) written authorization has been obtained from the person or the person's legal representative to administer medication or treatment orders;

(2) the staff person has completed medication administration training according to section 245D.09, subdivision 4, paragraph (c), clause (2); and

(3) the medication or treatment will be administered under administration procedures established for the person in consultation with a licensed health professional. Written instruction from the person's physician may constitute the medication administration procedures. A prescription label or the prescriber's order for the prescription is sufficient to constitute written instructions from the prescriber. A licensed health professional may delegate medication administration procedures.

(b) The license holder must ensure the following information is documented in the person's medication administration record:

(1) the information on the prescription label or the prescriber's order that includes directions for safely and correctly administering the medication to ensure effectiveness;

(2) information on any discomforts, risks, or other side effects that are reasonable to expect, and any contraindications to its use;

(3) the possible consequences if the medication or treatment is not taken or administered as directed;

(4) instruction from the prescriber on when and to whom to report the following:

(i) if the medication or treatment is not administered as prescribed, whether by error by the staff or the person or by refusal by the person; and

(ii) the occurrence of possible adverse reactions to the medication or treatment;

(5) notation of any occurrence of medication not being administered as prescribed or of adverse reactions, and when and to whom the report was made; and

(6) notation of when a medication or treatment is started, changed, or discontinued.

(c) The license holder must ensure that the information maintained in the medication administration record is current and is regularly reviewed with the person or the person's legal representative and the staff administering the medication to identify medication administration issues or errors. At a minimum, the review must be conducted

every three months or more often if requested by the person or the person's legal representative. Based on the review, the license holder must develop and implement a plan to correct medication administration issues or errors. If issues or concerns are identified related to the medication itself, the license holder must report those as required under subdivision 4.

Subd. 3. **Medication assistance.** The license holder must ensure that the requirements of subdivision 2, paragraph (a), have been met when staff provides assistance to enable a person to self-administer medication when the person is capable of directing the person's own care, or when the person's legal representative is present and able to direct care for the person.

Subd. 4. **Reporting medication and treatment issues.** The following medication administration issues must be reported to the person or the person's legal representative and case manager as they occur or following timelines established in the person's service plan or as requested in writing by the person or the person's legal representative, or the case manager:

- (1) any reports made to the person's physician or prescriber required under subdivision 2, paragraph (b), clause (4);
- (2) a person's refusal or failure to take medication or treatment as prescribed; or
- (3) concerns about a person's self-administration of medication.

Subd. 5. **Injectable medications.** Injectable medications may be administered according to a prescriber's order and written instructions when one of the following conditions has been met:

- (1) a registered nurse or licensed practical nurse will administer the subcutaneous or intramuscular injection;
- (2) a supervising registered nurse with a physician's order has delegated the administration of subcutaneous injectable medication to an unlicensed staff member and has provided the necessary training; or
- (3) there is an agreement signed by the license holder, the prescriber, and the person or the person's legal representative, specifying what subcutaneous injections may be given, when, how, and that the prescriber must retain responsibility for the license holder's giving the injections. A copy of the agreement must be placed in the person's service recipient record.

Only licensed health professionals are allowed to administer psychotropic medications by injection.

#### Sec. 21. **[245D.06] PROTECTION STANDARDS.**

Subdivision 1. **Incident response and reporting.** (a) The license holder must respond to all incidents under section 245D.02, subdivision 11, that occur while providing services to protect the health and safety of and minimize risk of harm to the person.

(b) The license holder must maintain information about and report incidents to the person's legal representative or designated emergency contact and case manager within 24 hours of an incident occurring while services are being provided, or within 24 hours of discovery or receipt of information that an incident occurred, unless the license holder has reason to know that the incident has already been reported. An incident of suspected or alleged maltreatment must be reported as required under paragraph (d), and an incident of serious injury or death must be reported as required under paragraph (e).

(c) When the incident involves more than one person, the license holder must not disclose personally identifiable information about any other person when making the report to each person and case manager unless the license holder has the consent of the person.

(d) Within 24 hours of reporting maltreatment as required under section 626.556 or 626.557, the license holder must inform the case manager of the report unless there is reason to believe that the case manager is involved in the suspected maltreatment. The license holder must disclose the nature of the activity or occurrence reported and the agency that received the report.

(e) Within 24 hours of the occurrence, or within 24 hours of receipt of the information, the license holder must report the death or serious injury of the person to the legal representative, if any, and case manager, the Department of Human Services Licensing Division, and the Office of Ombudsman for Mental Health and Developmental Disabilities as required under section 245.94, subdivision 2a, within 24 hours of the death, discovery of the death, or receipt of information that the death occurred unless the license holder has reason to know that the death has already been reported.

(f) The license holder must conduct a review of incident reports, for identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences.

Subd. 2. **Environment and safety.** The license holder must:

(1) ensure the following when the license holder is the owner, lessor, or tenant of the service site:

(i) the service site is a safe and hazard-free environment;

(ii) doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers only to protect the safety of a person receiving services and not as a substitute for staff supervision or interactions with a person who is receiving services. If doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers, the license holder must justify and document how this determination was made in consultation with the person or person's legal representative, and how access will otherwise be provided to the person and all other affected persons receiving services; and

(iii) a staff person is available on site who is trained in basic first aid whenever persons are present and staff are required to be at the site to provide direct service;

(2) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition when used to provide services;

(3) follow procedures to ensure safe transportation, handling, and transfers of the person and any equipment used by the person, when the license holder is responsible for transportation of a person or a person's equipment;

(4) be prepared for emergencies and follow emergency response procedures to ensure the person's safety in an emergency; and

(5) follow sanitary practices for infection control and to prevent communicable diseases.

Subd. 3. **Compliance with fire and safety codes.** When services are provided at a service site licensed according to chapter 245A or where the license holder is the owner, lessor, or tenant of the service site, the license holder must document compliance with applicable building codes, fire and safety codes, health rules, and zoning ordinances, or document that an appropriate waiver has been granted.

Subd. 4. **Funds and property.** (a) Whenever the license holder assists a person with the safekeeping of funds or other property according to section 245A.04, subdivision 13, the license holder must have written authorization to do so from the person and the case manager.

(b) A license holder or staff person may not accept powers-of-attorney from a person receiving services from the license holder for any purpose, and may not accept an appointment as guardian or conservator of a person receiving services from the license holder. This does not apply to license holders that are Minnesota counties or other units of government or to staff persons employed by license holders who were acting as power-of-attorney, guardian, or conservator for specific individuals prior to enactment of this section. The license holder must maintain documentation of the power-of-attorney, guardianship, or conservatorship in the service recipient record.

Subd. 5. **Prohibitions.** The license holder is prohibited from using psychotropic medication as a substitute for adequate staffing, as punishment, for staff convenience, or for any reason other than as prescribed. The license holder is prohibited from using restraints or seclusion under any circumstance, unless the commissioner has approved a variance request from the license holder that allows for the emergency use of restraints and seclusion according to terms and conditions approved in the variance.

Sec. 22. **[245D.07] SERVICE NEEDS.**

Subdivision 1. **Provision of services.** The license holder must provide services as specified in the service plan and assigned to the license holder. The provision of services must comply with the requirements of this chapter and the federal waiver plans.

Subd. 2. **Service planning.** The license holder must participate in support team meetings related to the person following stated timelines established in the person's service plan or as requested by the support team, the person, or the person's legal representative.

Subd. 3. **Reports.** The license holder must provide written reports regarding the person's progress or status as requested by the person, the person's legal representative, the case manager, or the team.

Sec. 23. **[245D.08] RECORD REQUIREMENTS.**

Subdivision 1. **Record-keeping systems.** The license holder must ensure that the content and format of service recipient, personnel, and program records are uniform, legible, and in compliance with the requirements of this chapter.

Subd. 2. **Service recipient record.** (a) The license holder must:

(1) maintain a record of current services provided to each person on the premises where the services are provided or coordinated; and

(2) protect service recipient records against loss, tampering, or unauthorized disclosure in compliance with sections 13.01 to 13.10 and 13.46.

(b) The license holder must maintain the following information for each person:

(1) identifying information, including the person's name, date of birth, address, and telephone number;

(2) the name, address, and telephone number of the person's legal representative, if any, an emergency contact, the case manager, and family members or others as identified by the person or case manager;

(3) service information, including service initiation information, verification of the person's eligibility for services, and documentation verifying that services have been provided as identified in the service plan according to paragraph (a);

(4) health information, including medical history and allergies; and when the license holder is assigned responsibility for meeting the person's health needs according to section 245D.05:

(i) current orders for medication, treatments, or medical equipment;

(ii) medication administration procedures;

(iii) a medication administration record documenting the implementation of the medication administration procedures, including any agreements for administration of injectable medications by the license holder; and

(iv) a medical appointment schedule;

(5) the person's current service plan or that portion of the plan assigned to the license holder. When a person's case manager does not provide a current service plan, the license holder must make a written request to the case manager to provide a copy of the service plan and inform the person of the right to a current service plan and the right to appeal under section 256.045;

(6) a record of other service providers serving the person when the person's service plan identifies the need for coordination between the service providers, that includes a contact person and telephone numbers, services being provided, and names of staff responsible for coordination;

(7) documentation of orientation to the service recipient rights according to section 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to section 245A.65, subdivision 1, paragraph (c);

(8) copies of authorizations to handle a person's funds, according to section 245D.06, subdivision 4, paragraph (a);

(9) documentation of complaints received and grievance resolution;

(10) incident reports required under section 245D.06, subdivision 1;

(11) copies of written reports regarding the person's status when requested according to section 245D.07, subdivision 3; and

(12) discharge summary, including service termination notice and related documentation, when applicable.

**Subd. 3. Access to service recipient records. The license holder must ensure that the following people have access to the information in subdivision 1 in accordance with applicable state and federal law, regulation, or rule:**

(1) the person, the person's legal representative, and anyone properly authorized by the person;

(2) the person's case manager;

(3) staff providing services to the person unless the information is not relevant to carrying out the service plan; and

(4) the county adult foster care licenser, when services are also licensed as adult foster care.



Subd. 4. **Personnel records.** The license holder must maintain a personnel record of each employee, direct service volunteer, and subcontractor to document and verify staff qualifications, orientation, and training. For the purposes of this subdivision, the terms "staff" or "staff person" mean paid employee, direct service volunteer, or subcontractor. The personnel record must include:

(1) the staff person's date of hire, completed application, a position description signed by the staff person, documentation that the staff person meets the position requirements as determined by the license holder, the date of first supervised direct contact with a person served by the program, and the date of first unsupervised direct contact with a person served by the program;

(2) documentation of staff qualifications, orientation, training, and performance evaluations as required under section 245D.09, subdivisions 3, 4, and 5, including the date the training was completed, the number of hours per subject area, and the name and qualifications of the trainer or instructor; and

(3) a completed background study as required under chapter 245C.

Sec. 24. **[245D.09] STAFFING STANDARDS.**

Subdivision 1. **Staffing requirements.** The license holder must provide direct service staff sufficient to ensure the health, safety, and protection of rights of each person and to be able to implement the responsibilities assigned to the license holder in each person's service plan.

Subd. 2. **Supervision of staff having direct contact.** Except for a license holder who are the sole direct service staff, the license holder must provide adequate supervision of staff providing direct service to ensure the health, safety, and protection of rights of each person and implementation of the responsibilities assigned to the license holder in each person's service plan.

Subd. 3. **Staff qualifications.** (a) The license holder must ensure that staff is competent through training, experience, and education to meet the person's needs and additional requirements as written in the service plan, or when otherwise required by the case manager or the federal waiver plan. The license holder must verify and maintain evidence of staff competency, including documentation of:

(1) education and experience qualifications, including a valid degree and transcript, or a current license, registration, or certification, when a degree or licensure, registration, or certification is required;

(2) completion of required orientation and training, including completion of continuing education required to maintain professional licensure, registration, or certification requirements; and

(3) except for a license holder who is the sole direct service staff, performance evaluations completed by the license holder of the direct service staff person's ability to perform the job functions based on direct observation.

(b) Staff under 18 years of age may not perform overnight duties or administer medication.

Subd. 4. **Orientation.** (a) Except for a license holder who does not supervise any direct service staff, within 90 days of hiring direct service staff, the license holder must provide and ensure completion of orientation that combines supervised on-the-job training with review of and instruction on the following:

(1) the job description and how to complete specific job functions, including:

(i) responding to and reporting incidents as required under section 245D.06, subdivision 1; and

(ii) following safety practices established by the license holder and as required in section 245D.06, subdivision 2;

(2) the license holder's current policies and procedures required under this chapter, including their location and access, and staff responsibilities related to implementation of those policies and procedures;

(3) data privacy requirements according to sections 13.01 to 13.10 and 13.46, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and staff responsibilities related to complying with data privacy practices;

(4) the service recipient rights under section 245D.04, and staff responsibilities related to ensuring the exercise and protection of those rights;

(5) sections 245A.65; 245A.66, 626.556, and 626.557, governing maltreatment reporting and service planning for children and vulnerable adults, and staff responsibilities related to protecting persons from maltreatment and reporting maltreatment;

(6) what constitutes use of restraints, seclusion, and psychotropic medications, and staff responsibilities related to the prohibitions of their use; and

(7) other topics as determined necessary in the person's service plan by the case manager or other areas identified by the license holder.

(b) License holders who provide direct service themselves must complete the orientation required in paragraph (a), clauses (3) to (7).

(c) Before providing unsupervised direct service to a person served by the program, or for whom the staff person has not previously provided direct service, or any time the plans or procedures identified in clauses (1) and (2) are revised, the staff person must review and receive instruction on the following as it relates to the staff person's job functions for that person:

(1) the person's service plan as it relates to the responsibilities assigned to the license holder, and when applicable, the person's individual abuse prevention plan according to section 245A.65, to achieve an understanding of the person as a unique individual, and how to implement those plans; and

(2) medication administration procedures established for the person when assigned to the license holder according to section 245D.05, subdivision 1, paragraph (b). Unlicensed staff may administer medications only after successful completion of a medication administration training, from a training curriculum developed by a registered nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse practitioner, physician's assistant, or physician incorporating an observed skill assessment conducted by the trainer to ensure staff demonstrate the ability to safely and correctly follow medication procedures. Medication administration must be taught by a registered nurse, clinical nurse specialist, certified nurse practitioner, physician's assistant, or physician, if at the time of service initiation or any time thereafter, the person has or develops a health care condition that affects the service options available to the person because the condition requires:

(i) specialized or intensive medical or nursing supervision;

(ii) nonmedical service providers to adapt their services to accommodate the health and safety needs of the person; and

(iii) necessary training in order to meet the health service needs of the person as determined by the person's physician.

Subd. 5. **Training.** (a) A license holder must provide annual training to direct service staff on the topics identified in subdivision 4, paragraph (a), clauses (3) to (6).

(b) A license holder providing behavioral programming, specialist services, personal support, 24-hour emergency assistance, night supervision, independent living skills, structured day, prevocational, or supported employment services must provide a minimum of eight hours of annual training to direct service staff that addresses:

(1) topics related to the general health, safety, and service needs of the population served by the license holder; and

(2) other areas identified by the license holder or in the person's current service plan.

Training on relevant topics received from sources other than the license holder may count toward training requirements.

(c) When the license holder is the owner, lessor, or tenant of the service site and whenever a person receiving services is present at the site, the license holder must have a staff person available on site who is trained in basic first aid and, when required in a person's service plan, cardiopulmonary resuscitation.

Subd. 6. **Subcontractors.** If the license holder uses a subcontractor to perform services licensed under this chapter on their behalf, the license holder must ensure that the subcontractor meets and maintains compliance with all requirements under this chapter that apply to the services to be provided.

Subd. 7. **Volunteers.** The license holder must ensure that volunteers who provide direct services to persons served by the program receive the training, orientation, and supervision necessary to fulfill their responsibilities.

#### Sec. 25. **[245D.10] POLICIES AND PROCEDURES.**

Subdivision 1. **Policy and procedure requirements.** The license holder must establish, enforce, and maintain policies and procedures as required in this chapter.

Subd. 2. **Grievances.** The license holder must establish policies and procedures that provide a simple complaint process for persons served by the program and their authorized representatives to bring a grievance that:

(1) provides staff assistance with the complaint process when requested, and the addresses and telephone numbers of outside agencies to assist the person;

(2) allows the person to bring the complaint to the highest level of authority in the program if the grievance cannot be resolved by other staff members, and that provides the name, address, and telephone number of that person;

(3) requires the license holder to promptly respond to all complaints affecting a person's health and safety. For all other complaints the license holder must provide an initial response within 14 calendar days of receipt of the complaint. All complaints must be resolved within 30 calendar days of receipt or the license holder must document the reason for the delay and a plan for resolution;

(4) requires a complaint review that includes an evaluation of whether:

(i) related policies and procedures were followed and adequate;

(ii) there is a need for additional staff training;

(iii) the complaint is similar to past complaints with the persons, staff, or services involved; and

(iv) there is a need for corrective action by the license holder to protect the health and safety of persons receiving services;

(5) based on the review in clause (4), requires the license holder to develop, document, and implement a corrective action plan, designed to correct current lapses and prevent future lapses in performance by staff or the license holder, if any;

(6) provides a written summary of the complaint and a notice of the complaint resolution to the person and case manager, that:

(i) identifies the nature of the complaint and the date it was received;

(ii) includes the results of the complaint review;

(iii) identifies the complaint resolution, including any corrective action; and

(7) requires that the complaint summary and resolution notice be maintained in the service recipient record.

**Subd. 3. Service suspension and service termination.** (a) The license holder must establish policies and procedures for temporary service suspension and service termination that promote continuity of care and service coordination with the person and the case manager, and with other licensed caregivers, if any, who also provide support to the person.

(b) The policy must include the following requirements:

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

(2) notice of the proposed termination of services, including those situations that began with a temporary service suspension, must be given at least 60 days before the proposed termination is to become effective when a license holder is providing independent living skills training, structured day, prevocational or supported employment services to the person, and 30 days prior to termination for all other services licensed under this chapter;

(3) the license holder must provide information requested by the person or case manager when services are temporarily suspended or upon notice of termination;

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

(5) during the temporary service suspension or service termination notice period, the license holder will work with the appropriate county agency to develop reasonable alternatives to protect the person and others;

(6) the license holder must maintain information about the service suspension or termination, including the written termination notice, in the service recipient record; and

(7) the license holder must restrict temporary service suspension to situations in which the person's behavior causes immediate and serious danger to the health and safety of the person or others.

Subd. 4. **Availability of current written policies and procedures.** (a) The license holder must review and update, as needed, the written policies and procedures required under this chapter.

(b) The license holder must inform the person and case manager of the policies and procedures affecting a person's rights under section 245D.04, and provide copies of those policies and procedures, within five working days of service initiation.

(c) The license holder must provide a written notice at least 30 days before implementing any revised policies and procedures affecting a person's rights under section 245D.04. The notice must explain the revision that was made and include a copy of the revised policy and procedure. The license holder must document the reason for not providing the notice at least 30 days before implementing the revisions.

(d) Before implementing revisions to required policies and procedures the license holder must inform all employees of the revisions and provide training on implementation of the revised policies and procedures.

Sec. 26. Minnesota Statutes 2010, section 256B.4912, is amended to read:

**256B.4912 HOME AND COMMUNITY-BASED WAIVERS; PROVIDERS AND PAYMENT.**

Subdivision 1. **Provider qualifications.** For the home and community-based waivers providing services to seniors and individuals with disabilities, the commissioner shall establish:

- (1) agreements with enrolled waiver service providers to ensure providers meet ~~qualifications defined in the waiver plans~~ Minnesota health care program requirements;
- (2) regular reviews of provider qualifications, and including requests of proof of documentation; and
- (3) processes to gather the necessary information to determine provider qualifications.

By July 2010; Beginning July 1, 2012, staff that provide direct contact, as defined in section 245C.02, subdivision 11, that are employees of waiver service providers for services specified in the federally approved waiver plans must meet the requirements of chapter 245C prior to providing waiver services and as part of ongoing enrollment. Upon federal approval, this requirement must also apply to consumer-directed community supports.

Subd. 2. **Rate-setting Payment methodologies.** (a) The commissioner shall establish statewide ~~rate-setting payment~~ methodologies that meet federal waiver requirements for home and community-based waiver services for individuals with disabilities. The ~~rate-setting payment~~ methodologies must abide by the principles of transparency and equitability across the state. The methodologies must involve a uniform process of structuring rates for each service and must promote quality and participant choice.

(b) As of January 1, 2012, counties shall not implement changes to established processes for rate-setting methodologies for individuals using components of or data from research rates.

Subd. 3. **Payment requirements.** The payment methodologies established under this section shall accommodate:

- (1) supervision costs;
- (2) staffing patterns;
- (3) program-related expenses;

(4) general and administrative expenses; and

(5) consideration of recipient intensity.

Subd. 4. **Payment rate criteria.** (a) The payment methodologies under this section shall reflect the payment rate criteria in paragraphs (b), (c), and (d).

(b) Payment rates shall reflect the reasonable, ordinary, and necessary costs of service delivery.

(c) Payment rates shall be sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act.

(d) The commissioner must not reimburse:

(1) unauthorized service delivery;

(2) services provided under a receipt of a special grant;

(3) services provided under contract to a local school district;

(4) extended employment services under Minnesota Rules, parts 3300.2005 to 3300.3100, or vocational rehabilitation services provided under the federal Rehabilitation Act, as amended, Title I, section 110, or Title VI-C, and not through use of medical assistance or county social service funds; or

(5) services provided to a client by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee-for-service basis.

Subd. 5. **County and tribal provider contract elimination.** County and tribal contracts with providers of home and community-based waiver services provided under sections 256B.0913, 256B.0915, 256B.092, and 256B.49 are eliminated effective January 1, 2014.

Subd. 6. **Program standards.** The commissioner of human services must establish uniform program standards for services identified in chapter 245D for persons with disabilities and people age 65 and older. The commissioner must grant licenses according to the provisions of chapter 245A.

Subd. 7. **Applicant and license holder training.** An applicant or license holder that is not enrolled as a Minnesota health care program home and community-based services waiver provider at the time of application must ensure that at least one controlling individual completes a onetime training on the requirements for providing home and community-based services from a qualified source as determined by the commissioner, before a provider is enrolled or license is issued.

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

Sec. 27. **[256B.4913] PAYMENT METHODOLOGY DEVELOPMENT.**

Subdivision 1. **Research period and rates.** (a) For the purposes of this section, "research rate" means a proposed payment rate for the provision of home and community-based waived services to meet federal requirements and assess the implications of changing resources on the provision of services and "research period" means the time period during which the research rate is being assessed by the commissioner.

(b) The commissioner shall determine and publish initial frameworks and values to generate research rates for individuals receiving home and community-based services.

(c) The initial values issued by the commissioner shall ensure projected spending for home and community-based services for each service area is equivalent to projected spending under current law in the most recent expenditure forecast.

(d) The initial values issued shall be based on the most updated information and cost data available on supervision, employee-related costs, client programming and supports, programming planning supports, transportation, administrative overhead, and utilization costs. These service areas are:

(1) residential services, defined as corporate foster care, family foster care, residential care, supported living services, customized living, and 24-hour customized living;

(2) day program services, defined as adult day care, day training and habilitation, prevocational services, structured day services, and transportation;

(3) unit-based services with programming, defined as in-home family support, independent living services, supported living services, supported employment, behavior programming, and housing access coordination; and

(4) unit-based services without programming, defined as respite, personal support, and night supervision.

(e) The commissioner shall make available the underlying assessment information, without any identifying information, and the statistical modeling used to generate the initial research rate and calculate budget neutrality.

**Subd. 2. Framework values.** (a) The commissioner shall propose legislation with the specific payment methodology frameworks, process for calculation, and specific values to populate the frameworks by February 15, 2013.

(b) The commissioner shall provide underlying data and information used to formulate the final frameworks and values to the existing stakeholder workgroup by January 15, 2013.

(c) The commissioner shall provide recommendations for the final frameworks and values, and the basis for the recommendations to the legislative committees with jurisdiction over health and human services finance by February 15, 2013.

(d) The commissioner shall review the following topics during the research period and propose, as necessary, recommendations to address the following research questions:

(1) underlying differences in the cost to provide services throughout the state;

(2) a data-driven process for determining labor costs and customizations for staffing classifications included in each rate framework based on the services performed;

(3) the allocation of resources previously established under section 256B.501, subdivision 4b;

(4) further definition and development of unit-based services;

(5) the impact of splitting the allocation of resources for unit-based services for those with programming aspects and those without;

(6) linking assessment criteria to future assessment processes for determination of customizations;

(7) recognition of cost differences in the use of monitoring technology where it is appropriate to substitute for supervision;

(8) implications for day services of reimbursement based on a unit rate and a daily rate;

(9) a definition of shared and individual staffing for unit-based services;

(10) the underlying costs of providing transportation associated with day services; and

(11) an exception process for individuals with exceptional needs that cannot be met under the initial research rate, and an alternative payment structure for those individuals.

(e) The commissioner shall develop a comprehensive plan based on information gathered during the research period that uses statistically reliable and valid assessment data to refine payment methodologies.

(f) The commissioner shall make recommendations and provide underlying data and information used to formulate these research recommendations to the existing stakeholder workgroup by January 15, 2013.

**Subd. 3. Data collection.** (a) The commissioner shall conduct any necessary research and gather additional data for the further development and refinement of payment methodology components. These include but are not limited to:

(1) levels of service utilization and patterns of use;

(2) staffing patterns for each service;

(3) profile of individual service needs; and

(4) cost factors involved in providing transportation services.

(b) The commissioner shall provide this information to the existing stakeholder workgroup by January 15, 2013.

**Subd. 4. Rate stabilization adjustment.** Beginning January 1, 2014, the commissioner shall adjust individual rates determined by the new payment methodology so that the new rate varies no more than one percent per year from the rate effective on December 31 of the prior calendar year. This adjustment is made annually and is effective for three calendar years from the date of implementation. This subdivision expires January 1, 2017.

**Subd. 5. Stakeholder consultation.** The commissioner shall continue consultation on regular intervals with the existing stakeholder group established as part of the rate-setting methodology process to gather input, concerns, data, and exchange ideas for the legislative proposals for the new rate payment system and make pertinent information available to the public through the department's Web site.

**Subd. 6. Implementation.** The commissioner may implement changes no sooner than January 1, 2014, to payment rates for individuals receiving home and community-based waived services after the enactment of legislation that establishes specific payment methodology frameworks, processes for rate calculations, and specific values to populate the payment methodology frameworks.

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



Delete the title and insert:

"A bill for an act relating to human services; amending continuing care policy provisions; making changes to disability services and licensing provisions; establishing home and community-based services standards; developing payment methodologies; amending Minnesota Statutes 2010, sections 245A.03, subdivision 2; 245A.041, by adding subdivisions; 245A.085; 245B.02, subdivision 10, by adding a subdivision; 245B.04, subdivisions 1, 2, 3; 245B.05, subdivision 1; 245B.07, subdivisions 5, 9, 10, by adding a subdivision; 256B.4912; proposing coding for new law in Minnesota Statutes, chapters 245A; 256B; proposing coding for new law as Minnesota Statutes, chapter 245D."

With the recommendation that when so amended the bill pass.

The report was adopted.

Abeler from the Committee on Health and Human Services Finance to which was referred:

H. F. No. 2555, A bill for an act relating to state government; implementing changes to the sunset review; changing certain agency requirements; requiring posting of convictions of felonies or gross misdemeanors and malpractice settlements or judgments for a regulated practitioner; requiring certain information on regulated practitioners; requiring a study; prohibiting transfer of certain funds; requiring reports; setting fees; abolishing the Combative Sports Commission and transferring combative sports duties to the commissioner of labor and industry; establishing a Combative Sports Advisory Council; requiring a review of the Minnesota Board of Medical Practice; amending Minnesota Statutes 2010, sections 3.922, by adding a subdivision; 3.9223, subdivision 7; 3.9225, subdivision 7; 3.9226, subdivision 7; 147.01, subdivision 4; 147.111, by adding a subdivision; 148.102, by adding a subdivision; 148.263, by adding a subdivision; 148B.07, by adding a subdivision; 148C.095, by adding a subdivision; 148E.285, by adding a subdivision; 150A.13, by adding a subdivision; 153.24, by adding a subdivision; 214.06, subdivision 1, by adding a subdivision; 341.21, by adding a subdivision; 341.28, subdivision 1; 341.37; Minnesota Statutes 2011 Supplement, sections 3D.04; 3D.06; 3D.21, subdivisions 1, 2; proposing coding for new law in Minnesota Statutes, chapters 3D; 16B; 214; 341; repealing Minnesota Statutes 2010, sections 138A.01; 138A.02; 138A.03; 138A.04; 138A.05; 138A.06; 341.21, subdivisions 3, 4a; 341.22; 341.23; 341.24; 341.26.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"ARTICLE 1  
SUNSET REVIEW

Section 1. Minnesota Statutes 2011 Supplement, section 3D.04, is amended to read:

**3D.04 STAFF; CONTRACTS.**

The Legislative Coordinating Commission shall provide staff and administrative services for the commission. The Sunset Advisory Commission may enter into contracts for evaluations of agencies under review.

Sec. 2. Minnesota Statutes 2011 Supplement, section 3D.06, is amended to read:

**3D.06 AGENCY REPORT TO COMMISSION.**

(a) Before September 1 of the odd-numbered year before the year in which a state agency is subject to sunset review, the agency commissioner shall report to the commission:

- (1) information regarding the application to the agency of the criteria in section 3D.10;
- (2) ~~a priority-based~~ an outcome-based budget for the agency;
- (3) an inventory of all boards, commissions, committees, and other entities related to the agency; and
- (4) any other information that the agency commissioner considers appropriate or that is requested by the commission.

~~The September 1 deadline in this section does not apply in 2011.~~

(b) The outcome-based budget required by paragraph (a) must be for each of the agency's activities, as the term activity is used in state budgeting:

- (1) identify the statutory authority for the activity;
- (2) include one or more performance goals and associated performance measures that measure outcomes, not inputs;
- (3) discuss the extent to which each performance measure is reliable and verifiable, and can be accurately measured;
- (4) discuss the extent to which the agency has met each performance measure, and the extent to which the budget devoted to the activity has permitted or prevented the agency from meeting its performance goals;
- (5) discuss efficiencies that would allow the agency to better meet its goals; and
- (6) identify agencies at any level of government or private sector entities that provide the same activities, and describe agency interaction with the activities provided by others.

Sec. 3. Minnesota Statutes 2011 Supplement, section 3D.21, subdivision 1, is amended to read:

Subdivision 1. **Group 1.** The following agencies are sunset and, except as provided in section 3D.14, expire on June 30, ~~2012~~ 2024: Capitol Area Architectural and Planning Board, Amateur Sports Commission, ~~Combative Sports Commission~~, all health-related licensing boards listed in section 214.01, Council on Affairs of Chicano/Latino People, ~~Council on Black Minnesotans~~, Council on Asian-Pacific Minnesotans, Indian Affairs Council, Council on Disabilities, and all advisory groups associated with these agencies.

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

Sec. 4. Minnesota Statutes 2011 Supplement, section 3D.21, subdivision 2, is amended to read:

Subd. 2. **Group 2.** The following agencies are sunset and, except as provided in section 3D.14, expire on June 30, 2014: Department of Health, Department of Human Services, Department of Human Rights, Department of Education, Board of Teaching, Minnesota Office of Higher Education, Council on Black Minnesotans, Emergency Medical Services Regulatory Board, and all advisory groups associated with these agencies.

Sec. 5. **COUNCIL ON BLACK MINNESOTANS INTERIM REVIEW.**

(a) The Council on Black Minnesotans is continued for two years and added to the 2014 Sunset Advisory Commission review schedule. In the council's report to the Sunset Advisory Commission, the council must submit an interim report and respond to issues raised in previous audits by the Office of the Legislative Auditor.

(b) The Office of the Legislative Auditor should conduct a financial audit of the Council of Black Minnesotans by December 1, 2013, prior to sunset review in 2014.

ARTICLE 2  
ADMINISTRATIVE PROCEDURES AND FEES

Section 1. Minnesota Statutes 2010, section 3.922, is amended by adding a subdivision to read:

Subd. 11. **Report.** The council shall prepare and distribute a report to the governor and legislature by November 15 of each year. The report shall summarize the activities of the council since its last report, list receipts and expenditures, identify the major problems and issues confronting American Indian people, and list the specific objectives that the council seeks to attain during the biennium. To the extent possible, the council shall report on outcome measures.

Sec. 2. Minnesota Statutes 2010, section 3.9223, subdivision 7, is amended to read:

Subd. 7. **Report.** The council shall prepare and distribute a report to the governor and legislature by November 15 of each ~~even-numbered~~ year. The report shall summarize the activities of the council since its last report, list receipts and expenditures, identify the major problems and issues confronting Chicano/Latino people, and list the specific objectives that the council seeks to attain during the next biennium. To the extent possible, the council shall report on outcome measures.

Sec. 3. Minnesota Statutes 2010, section 3.9225, subdivision 7, is amended to read:

Subd. 7. **Report.** The council shall prepare and distribute a report to the governor and legislature by November 15 of each ~~even-numbered~~ year. The report shall summarize the activities of the council since its last report, list receipts and expenditures, identify the major problems and issues confronting Black people, and list the specific objectives which the council seeks to attain during the next biennium. To the extent possible, the council shall report on outcome measures.

Sec. 4. Minnesota Statutes 2010, section 3.9226, subdivision 7, is amended to read:

Subd. 7. **Report.** The council shall prepare and distribute a report to the governor and legislature by November 15 of each ~~even-numbered~~ year. The report shall summarize the activities of the council since its last report, list receipts and expenditures, identify the major problems and issues confronting Asian-Pacific people, and list the specific objectives that the council seeks to attain during the next biennium. To the extent possible, the council shall report on outcome measures.

Sec. 5. **[3D.045] COORDINATION WITH LEGISLATIVE AUDITOR.**

To the extent possible, the commission and the Office of the Legislative Auditor shall align their work so that audits and program evaluations conducted by the Office of the Legislative Auditor can inform the work of the commission. The commission may request the Office of the Legislative Auditor to provide updates on financial audits and program evaluations the Office of the Legislative Auditor has prepared on agencies scheduled for Sunset Advisory Commission review.

Sec. 6. **[3D.065] REPORT ON PERSONNEL.**

By September 1 of the odd-numbered year before the year in which a state agency is subject to sunset review, the commissioner of management and budget must report to the Sunset Advisory Commission on the number of full-time equivalent employees and the salary structure for each agency under review.

Sec. 7. [16B.371] ASSISTANCE TO SMALL AGENCIES.

(a) The commissioner may provide administrative support services to small agencies. To promote efficiency and cost-effective use of state resources, and to improve financial controls, the commissioner may require a small agency to receive administrative support services through the Department of Administration or through another agency designated by the commissioner. Services subject to this section include finance, accounting, payroll, purchasing, human resources, and other services designated by the commissioner. The commissioner may determine what constitutes a small agency for purposes of this section. The commissioner, in consultation with the commissioner of management and budget and small agencies, shall evaluate small agencies' needs for administrative support services. If the commissioner provides administrative support services to a small agency, the commissioner must enter into a service level agreement with the agency, specifying the services to be provided and the costs and anticipated outcomes of the services.

(b) The Chicano Latino Affairs Council, the Council on Black Minnesotans, the Council on Asian-Pacific Minnesotans, the Indian Affairs Council, and the Minnesota State Council on Disability must use the services specified in paragraph (a).

(c) The commissioner of administration may assess agencies for services it provides under this section. The amounts assessed are appropriated to the commissioner.

(d) For agencies covered in this section, the commissioner has the authority to require the agency to comply with applicable state finance, accounting, payroll, purchasing, and human resources policies. The agencies served retain the ownership and responsibility for spending decisions and for ongoing implementation of appropriate business operations.

Sec. 8. Minnesota Statutes 2010, section 147.01, subdivision 4, is amended to read:

Subd. 4. **Disclosure.** Subject to the exceptions listed in this subdivision, all communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction are confidential and privileged and any disciplinary hearing shall be closed to the public.

(a) Upon application of a party in a proceeding before the board under section 147.091, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings, in accordance with the provisions of rule 34, Minnesota Rules of Civil Procedure.

(b) If the board takes corrective action or imposes disciplinary measures of any kind, whether by contested case or by settlement agreement, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data. If disciplinary action is taken by settlement agreement, the entire agreement is public data. The board shall decide disciplinary matters, whether by settlement or by contested case, by roll call vote. The votes are public data.

(c) The board shall exchange information with other licensing boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (c), and may release information in the reports required under section 147.02, subdivision 6.

(d) The board shall upon request furnish to a person who made a complaint, or the alleged victim of a violation of section 147.091, subdivision 1, paragraph (t), or both, a description of the activities and actions of the board relating to that complaint, a summary of the results of an investigation of that complaint, and the reasons for actions taken by the board.

(e) A probable cause hearing held pursuant to section 147.092 shall be closed to the public, except for the notices of hearing made public by operation of section 147.092.

(f) Findings of fact, conclusions, and recommendations issued by the administrative law judge, and transcripts of oral arguments before the board pursuant to a contested case proceeding in which an administrative law judge found a violation of section 147.091, subdivision 1, paragraph (t), are public data.

**EFFECTIVE DATE.** This section is effective for all corrective action taken on or after August 1, 2012.

Sec. 9. Minnesota Statutes 2010, section 147.111, is amended by adding a subdivision to read:

**Subd. 10. Failure to report.** On or after August 1, 2012, any person, health care facility, business, or organization that fails to report as required under subdivisions 2 to 6 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 10. Minnesota Statutes 2010, section 148.102, is amended by adding a subdivision to read:

**Subd. 8. Failure to report.** On or after August 1, 2012, any person or insurer that fails to report as required under subdivisions 2 to 4 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 11. Minnesota Statutes 2010, section 148.261, subdivision 1, is amended to read:

Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional, advanced practice registered, or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

(1) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in sections 148.171 to 148.285 or rules of the board. In the case of a person applying for a license, the burden of proof is upon the applicant to demonstrate the qualifications or satisfaction of the requirements.

(2) Employing fraud or deceit in procuring or attempting to procure a permit, license, or registration certificate to practice professional or practical nursing or attempting to subvert the licensing examination process. Conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to:

(i) conduct that violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination;

(ii) conduct that violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or

(iii) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(3) Conviction ~~during the previous five years~~ of a felony or gross misdemeanor reasonably related to the practice of professional, advanced practice registered, or practical nursing. Conviction as used in this subdivision includes a conviction of an offense that if committed in this state would be considered a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered.

(4) Revocation, suspension, limitation, conditioning, or other disciplinary action against the person's professional or practical nursing license or advanced practice registered nursing credential, in another state, territory, or country; failure to report to the board that charges regarding the person's nursing license or other credential are pending in another state, territory, or country; or having been refused a license or other credential by another state, territory, or country.

(5) Failure to or inability to perform professional or practical nursing as defined in section 148.171, subdivision 14 or 15, with reasonable skill and safety, including failure of a registered nurse to supervise or a licensed practical nurse to monitor adequately the performance of acts by any person working at the nurse's direction.

(6) Engaging in unprofessional conduct, including, but not limited to, a departure from or failure to conform to board rules of professional or practical nursing practice that interpret the statutory definition of professional or practical nursing as well as provide criteria for violations of the statutes, or, if no rule exists, to the minimal standards of acceptable and prevailing professional or practical nursing practice, or any nursing practice that may create unnecessary danger to a patient's life, health, or safety. Actual injury to a patient need not be established under this clause.

(7) Failure of an advanced practice registered nurse to practice with reasonable skill and safety or departure from or failure to conform to standards of acceptable and prevailing advanced practice registered nursing.

(8) Delegating or accepting the delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care.

(9) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

(10) Adjudication as mentally incompetent, mentally ill, a chemically dependent person, or a person dangerous to the public by a court of competent jurisdiction, within or without this state.

(11) Engaging in any unethical conduct, including, but not limited to, conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause.

(12) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

(13) Obtaining money, property, or services from a patient, other than reasonable fees for services provided to the patient, through the use of undue influence, harassment, duress, deception, or fraud.

(14) Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.

(15) Engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state medical assistance laws.

(16) Improper management of patient records, including failure to maintain adequate patient records, to comply with a patient's request made pursuant to sections 144.291 to 144.298, or to furnish a patient record or report required by law.

(17) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of professional, advanced practice registered, or practical nursing.

(18) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of professional, advanced practice registered, or practical nursing, or a state or federal narcotics or controlled substance law.

(19) Knowingly providing false or misleading information that is directly related to the care of that patient unless done for an accepted therapeutic purpose such as the administration of a placebo.

(20) Aiding suicide or aiding attempted suicide in violation of section 609.215 as established by any of the following:

(i) a copy of the record of criminal conviction or plea of guilty for a felony in violation of section 609.215, subdivision 1 or 2;

(ii) a copy of the record of a judgment of contempt of court for violating an injunction issued under section 609.215, subdivision 4;

(iii) a copy of the record of a judgment assessing damages under section 609.215, subdivision 5; or

(iv) a finding by the board that the person violated section 609.215, subdivision 1 or 2. The board shall investigate any complaint of a violation of section 609.215, subdivision 1 or 2.

(21) Practicing outside the scope of practice authorized by section 148.171, subdivision 5, 10, 11, 13, 14, 15, or 21.

(22) Practicing outside the specific field of nursing practice for which an advanced practice registered nurse is certified unless the practice is authorized under section 148.284.

(23) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

(24) Engaging in false, fraudulent, deceptive, or misleading advertising.

(25) Failure to inform the board of the person's certification status as a nurse anesthetist, nurse-midwife, nurse practitioner, or clinical nurse specialist.

(26) Engaging in clinical nurse specialist practice, nurse-midwife practice, nurse practitioner practice, or registered nurse anesthetist practice without current certification by a national nurse certification organization acceptable to the board, except during the period between completion of an advanced practice registered nurse course of study and certification, not to exceed six months or as authorized by the board.

(27) Engaging in conduct that is prohibited under section 145.412.

(28) Failing to report employment to the board as required by section 148.211, subdivision 2a, or knowingly aiding, assisting, advising, or allowing a person to fail to report as required by section 148.211, subdivision 2a.

Sec. 12. Minnesota Statutes 2010, section 148.263, is amended by adding a subdivision to read:

Subd. 7. **Failure to report.** On or after August 1, 2012, any person, institution, insurer, or organization that fails to report as required under subdivisions 2 to 5 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 13. Minnesota Statutes 2010, section 148B.07, is amended by adding a subdivision to read:

Subd. 10. **Failure to report.** On or after August 1, 2012, any person, institution, insurer, or organization that fails to report as required under subdivisions 2 to 6 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 14. Minnesota Statutes 2010, section 148C.095, is amended by adding a subdivision to read:

Subd. 8. **Failure to report.** On or after August 1, 2012, any person, institution, insurer, or organization that fails to report as required under subdivisions 2 to 5 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 15. Minnesota Statutes 2010, section 148E.285, is amended by adding a subdivision to read:

Subd. 4. **Failure to report.** On or after August 1, 2012, any person, institution, or organization that fails to report as required under subdivisions 1 and 2 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 16. Minnesota Statutes 2010, section 150A.13, is amended by adding a subdivision to read:

Subd. 10. **Failure to report.** On or after August 1, 2012, any person, institution, insurer, or organization that fails to report as required under subdivisions 2 to 6 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 17. Minnesota Statutes 2010, section 153.24, is amended by adding a subdivision to read:

Subd. 8. **Failure to report.** On or after August 1, 2012, any person, institution, or insurer that fails to report as required under subdivisions 2 to 5 shall be subject to civil penalties for failing to report as required by law.

**EFFECTIVE DATE.** This section is effective August 1, 2012.

Sec. 18. Minnesota Statutes 2010, section 214.06, subdivision 1, is amended to read:

Subdivision 1. ~~Fee adjustment~~ **Fees to recover expenditures.** Notwithstanding any law to the contrary, the commissioner of health as authorized by section 214.13, all health-related licensing boards and all non health-related licensing boards shall by rule, with the approval of the commissioner of management and budget, adjust, as



~~needed, any fee which the commissioner of health or the board is empowered to assess. The commissioner of health as authorized by section 214.13 and all health-related licensing boards and non-health-related licensing boards shall propose or adjust any fee according to section 16A.1283.~~ As provided in section 16A.1285, the ~~adjustment fees~~ shall be an amount sufficient so that the total fees collected by each board will be based on anticipated expenditures, including expenditures for the programs authorized by sections 214.10, 214.103, 214.11, 214.17 to 214.24, 214.28 to 214.37, and 214.40, except that a health-related licensing board may have anticipated expenditures in excess of anticipated revenues in a biennium by using accumulated surplus revenues from fees collected by that board in previous bienniums. A health-related licensing board may accumulate up to six months of operating funds, and then must reduce fees. A health-related licensing board shall not spend more money than the amount appropriated by the legislature for a biennium. For members of an occupation registered after July 1, 1984, by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation. All fees received shall be deposited in the state treasury.

Sec. 19. Minnesota Statutes 2010, section 214.06, subdivision 1a, is amended to read:

Subd. 1a. **Health occupations licensing account.** (a) Fees received by the commissioner of health or health-related licensing boards must be credited to the health occupations licensing account in the state government special revenue fund. The commissioner of management and budget shall ensure that the revenues and expenditures of each health-related licensing board are tracked separately in the health occupations licensing account.

(b) The fees collected must be used only by the boards identified in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, and only for the purposes of the programs they administer. The legislature must not transfer money generated by these fees from the state government special revenue fund to the general fund.

Sec. 20. Minnesota Statutes 2010, section 214.06, is amended by adding a subdivision to read:

Subd. 1b. **Health-related licensing boards; surcharges.** When a health-related licensing board imposes a surcharge, the surcharge must not be incorporated as a fee increase, but must be made as a separate assessment to be paid by the individuals regulated by the board.

Sec. 21. **[214.072] HEALTH-RELATED LICENSING BOARDS; WEB SITE.**

(a) Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, are required to post on its public Web site the name and business address of each regulated individual who has:

(1) a conviction during the previous ten years of a felony or gross misdemeanor. Conviction includes a conviction of an offense that if committed in this state would be considered a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered;

(2) a malpractice judgment entered against the regulated individual in any state or jurisdiction within the past ten years and malpractice settlements entered against the regulated individual in any state or jurisdiction if there have been more than three within the past ten years. Information describing the judgments and settlements shall be developed by the boards, shall be stated in plain English, and shall ensure the public understands the context of the action involving the licensee; or

(3) any disciplinary or corrective action or restriction of privileges taken against the individual's license by a licensing board in this state or in any other state or jurisdiction. The Web site shall identify the basis for disciplinary action, the type of disciplinary action taken, and whether the action was taken by a licensing board in this or another state or by the federal government.

(b) Each board and the commissioner of health must post in-state information required in paragraph (a) no later than January 1, 2013. Information from other states and jurisdictions must be posted no later than July 1, 2013.

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

Sec. 22. **[214.073] HEALTH-RELATED LICENSING BOARDS; AUTHORITY.**

(a) Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall require an applicant on or after August 1, 2012, to provide the individual's primary business address at the time of initial application and all subsequent renewals.

(b) Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall have the authority to conduct criminal background checks on all applicants, at the expense of the individual. The boards and the commissioner shall establish a protocol for conducting criminal background checks no later than January 1, 2013. This protocol must be effective January 1, 2014, and require the applicant to:

(1) submit a full set of fingerprints to the board or its designee in a form and manner specified by the board; and

(2) provide consent authorizing the board to obtain the individual's state and national criminal history record information for the purpose of determining the individual's suitability for receiving a credential to practice.

(c) The health-related licensing boards and the commissioner of health shall study: the value of implementing a requirement for criminal background checks for existing regulated individuals; how to utilize criminal background checks that have already been performed on these individuals; and how to implement any new requirements in the most cost effective way possible. The plan will include recommendations for any necessary statutory changes and shall seek to minimize duplication of requirements for background studies.

(d) Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall submit legislation for consideration in 2013 to require institutions, professional societies, other licensed professionals, and insurers and other entities to report conduct constituting grounds for disciplinary action to the respective regulatory entity. Each board and the commissioner must include penalties that may be imposed for failure to report. Boards with reporting obligations in statutes are exempt from this paragraph.

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

Sec. 23. **[214.0732] REQUIREMENT FOR CRIMINAL BACKGROUND CHECK.**

Subdivision 1. **Applicants.** Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall complete a fingerprint-based criminal background check on each applicant for initial licensure or other credential prior to granting a credential to practice. Each applicant must:

(1) submit a full set of fingerprints to the commissioner or board or its designee in a form and manner specified by the commissioner or board; and

(2) provide consent authorizing the board or commissioner to obtain the applicant's state and national criminal history record information for the purpose of determining the applicant's suitability and eligibility for a credential to practice.

Subd. 2. **Fees.** The applicant shall be responsible for all fees associated with preparation of the fingerprints and the criminal background check and the fees are not refundable.

Subd. 3. **Refusal to consent.** The boards and the commissioner of health shall not issue a credential to practice to any applicant who refuses to consent to a criminal background check or fails to submit fingerprints within 90 days after the application is submitted. Any fees paid by the applicant to a board or commissioner shall be forfeited if the applicant refuses to consent to the criminal background check or fails to submit fingerprints.

Subd. 4. **Submission of fingerprints.** A board or its designee and the commissioner of health shall submit applicant fingerprints to the Minnesota Bureau of Criminal Apprehension (BCA). The BCA shall perform a check for state criminal justice information and shall forward the applicant's fingerprints to the Federal Bureau of Investigation to perform a check for national criminal justice information regarding the applicant. The BCA shall report to the board or the commissioner the results of the state and national background checks.

Subd. 5. **Alternative to fingerprint-based background check.** A board or the commissioner of health may require an alternative method of criminal history background check for an applicant who has submitted at least three sets of fingerprints under this section that cannot be read.

Subd. 6. **Opportunity to challenge accuracy of report.** Prior to taking disciplinary action against an applicant based on a criminal conviction, a board or the commissioner of health shall provide the applicant with the opportunity to complete, or challenge the accuracy of, the criminal justice information reported to the board or commissioner. The applicant shall have 30 calendar days following notice from a board or the commissioner of the intent to take disciplinary action on a license to request an opportunity to correct or complete the record prior to a board or the commissioner taking disciplinary action based on the report. The applicant shall be allowed up to 180 days to challenge the accuracy or completeness of the report with the agency that is responsible for the record.

Subd. 7. **Disciplinary action.** A board or the commissioner of health shall review each criminal history report and determine whether the criminal convictions, if any, relate to the practice of the regulated profession or occupation. If the criminal convictions are found to relate to the profession or occupation, the regulating board or commissioner may take any disciplinary action allowed by the respective practice act and pursuant to sections 214.10 and 214.103.

Subd. 8. **Factors to be considered.** In determining whether an applicant is suitable to receive a credential to practice, a board or the commissioner of health shall consider:

(1) the number of crimes for which the applicant has been convicted;

(2) the nature and seriousness of the crimes and vulnerability of the victims of the crimes, including whether the commission of the crimes involved the abuse of trust or the exploitation of a unique position or knowledge;

(3) the relationship between the crimes and the practice of the applicable profession or occupation;

(4) the age of the applicant at the time the crimes were committed;

(5) the amount of time that has elapsed since the crimes occurred;

(6) steps taken by the applicant to address substance abuse or mental or physical health issues present at the time of the crimes or subsequent to the crimes;

(7) evidence of the applicant's work history;

(8) whether the applicant has successfully completed the terms of any sentence imposed; and

(9) any other evidence demonstrating the applicant does not pose a risk of harm to the health or safety of the public.

**Subd. 9. Conviction.** For purposes of this section, an applicant is considered to have been convicted of a crime if the applicant has pleaded guilty or nolo contendere, been found guilty, or entered an Alford plea to any offense by any court in the state of Minnesota or similar offense in another state or United States territory or federal court. An applicant is considered to have been convicted of a crime if the applicant has been convicted or found guilty but adjudication was withheld. A board or the commissioner of health may consider public records from a juvenile delinquency proceeding where there has been a judicial determination that the elements of the offense occurred.

**Subd. 10. Data practices.** Fingerprints and all criminal history record information obtained by the boards or the commissioner of health is private data on individuals under section 13.02, subdivision 12, and restricted to the exclusive use of the board and its members and staff, the commissioner, investigative staff, agents, and attorneys for the purpose of evaluating an applicant's eligibility or qualifications to practice. The boards and the commissioner shall maintain fingerprints and the criminal history records information in a secure manner and comply with all applicable state and federal requirements.

**EFFECTIVE DATE.** This section is effective July 1, 2013, or as soon as the necessary agency interagency infrastructure and related business processes are operational, whichever is later.

**Sec. 24. SUNSET ADVISORY COMMISSION; DEPARTMENT OF HEALTH REVIEW.**

The Sunset Advisory Commission review of the Department of Health in 2013 and 2014 must include an analysis of the extent to which health occupations should be licensed by the Department of Health, and the extent to which occupations should be licensed by licensing boards.

**Sec. 25. REPORT; INVESTIGATIONS FOR HEALTH-RELATED LICENSING BOARDS.**

The health-related licensing boards and the attorney general shall review and make recommendations to the legislature by January 15, 2013, on the respective roles of the boards and the attorney general in conducting investigations of licensees of the health-related licensing boards.

**Sec. 26. REPORT; INFORMATION SYSTEMS FOR LICENSING BOARDS.**

The chief information officer of the Office of Enterprise Technology and the commissioner of administration shall report to the legislature by January 15, 2013, on the best method of providing electronic licensing systems to the health-related licensing boards.

**Sec. 27. REPORT; HEALTH-RELATED LICENSING BOARD FEES.**

Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall report to the chair and lead minority member of the senate and house of representatives

committees with jurisdiction over health and human services finance by January 15, 2013, on the degree to which fees imposed by the board comply with Minnesota Statutes, sections 214.055 and 214.06. If a board determines that its fees are expected to produce more revenue than needed to recover expenditures during a five-year period, the board must propose reductions in those fees to the legislature.

Sec. 28. **REPORTS; ADMINISTRATIVE SUPPORT SERVICES.**

(a) The commissioner of administration shall report to the legislature by January 15, 2013, on use of the SMART program by executive branch agencies.

(b) The administrative services unit of health-related licensing boards shall report to the legislature by January 15, 2013, evaluating use of the units' services by health-related licensing boards.

Sec. 29. **MEDICAL PRACTICE ACT; STUDY.**

(a) The commissioner of health shall convene a working group to evaluate the state's Medical Practice Act to ensure that it effectively protects the safety and well-being of the citizens of the state and allows transparency. In this evaluation, the working group shall consider practice acts in other states, including conduct that may result in disciplinary action.

(b) Members of the working group shall include:

(1) two members of the Board of Medical Practice;

(2) two practicing physicians recommended by the Minnesota Medical Association;

(3) two medical educators, one from the University of Minnesota and one from the Mayo Clinic;

(4) two senators, one from each caucus, appointed by the subcommittee on committees, and two members of the house of representatives, one from each caucus, appointed by the speaker;

(5) consumers; and

(6) experts in the field of medical practice.

The majority of the working group must be composed of members who have no current or past affiliation with the Board of Medical Practice.

(c) Compensation for working group members is subject to Minnesota Statutes, section 15.059, subdivision 3, and must be paid from the operating funds of the Board of Medical Practice. The cost of the contract under paragraph (a) must be paid from the operating funds of the Board of Medical Practice.

(d) The working group must elect a chair from its members.

(e) Meetings of the working group shall be open to the public.

(f) The board shall submit the report of the working group and legislation modifying the practice act for consideration during the 2013 legislative session.

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

Sec. 30. **BOARD OF MEDICAL PRACTICE REVIEW.**

(a) As provided in Minnesota Statutes, section 3.97, subdivision 3a, paragraph (b), the Legislative Audit Commission is requested to direct the legislative auditor to prepare a scoping document in response to the Sunset Advisory Commission's request for an evaluation of the Minnesota Medical Practice Act and its implementation by the Minnesota Board of Medical Practice.

(b) If the Office of the Legislative Auditor is not authorized to carry out the study in paragraph (a) by July 1, 2012, the commissioner of administration must contract for a programmatic and structural review of the Minnesota Board of Medical Practice. The commissioner must contract with the Federation of State Medical Boards to conduct the study. A copy of the review's work plan must be submitted to the chair and vice-chair of the Sunset Advisory Commission for review and comment. The review must be completed and submitted to the Sunset Advisory Commission and the senate and house of representatives policy committees having jurisdiction over the board by January 1, 2013.

(c) \$45,000 from the state government special revenue fund is appropriated to the commissioner for the study. Up to five percent of the appropriation is available to the commissioner for administrative costs related to the study.

Sec. 31. **APPROPRIATION.**

\$127,000 is appropriated to the Legislative Coordinating Commission from the general fund for the fiscal year ending June 30, 2013, to provide staff services or to enter into contracts to assist the Sunset Advisory Commission. The general fund budget base for the Legislative Coordinating Commission, as established in Laws 2011, First Special Session chapter 10, article 1, section 2, and as increased by the appropriation in this section, is increased by an additional \$33,000 per year.

Sec. 32. **REPEALER.**

Minnesota Statutes 2010, sections 138A.01; 138A.02; 138A.03; 138A.04; 138A.05; and 138A.06, are repealed effective the day following final enactment.

ARTICLE 3  
TRANSFER OF COMBATIVE SPORTS DUTIES

Section 1. Minnesota Statutes 2010, section 341.21, is amended by adding a subdivision to read:

Subd. 3a. **Commissioner.** "Commissioner" means the commissioner of labor and industry.

Sec. 2. **[341.221] ADVISORY COUNCIL.**

The commissioner must appoint a Combative Sports Advisory Council to advise the commissioner on administration of duties under this chapter. The council must include members knowledgeable in the boxing and mixed martial arts industries and public members. Membership terms, removal of members, filling of vacancies, and compensation of members is as provided in section 15.059.

Sec. 3. Minnesota Statutes 2010, section 341.28, subdivision 1, is amended to read:

Subdivision 1. **Regulatory authority; combative sports.** All combative sport contests are subject to this chapter. ~~The commission shall, for every combative sport contest:~~

~~(1) direct a commission member to be present; and~~

~~(2) direct the attending commission member to make a written report of the contest.~~

All combative sport contests within this state must be conducted according to the requirements of this chapter.

Sec. 4. Minnesota Statutes 2010, section 341.37, is amended to read:

**341.37 APPROPRIATION.**

A ~~commission~~ combative sports account is created in the special revenue fund. Money in the account is annually appropriated to the ~~commission~~ commissioner for the purposes of conducting its statutory responsibilities and obligations under this chapter.

Sec. 5. **TRANSFER OF DUTIES.**

The Combative Sports Commission is abolished. Duties of the commission are transferred to the commissioner of labor and industry. Minnesota Statutes, section 15.039, subdivisions 1 to 6, apply to this transfer.

Sec. 6. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall substitute the term "commissioner" for "commission" in each place the term "commission" appears in Minnesota Statutes, chapter 341.

Sec. 7. **REPEALER.**

Minnesota Statutes 2010, sections 341.21, subdivisions 3 and 4a; 341.22; 341.23; 341.24; and 341.26, are repealed.

Sec. 8. **EFFECTIVE DATE.**

This article is effective July 1, 2013.

ARTICLE 4  
ALCOHOL AND DRUG COUNSELORS

Section 1. **[148F.001] SCOPE.**

This chapter applies to all applicants and licensees, all persons who use the title alcohol and drug counselor, and all persons in or out of this state who provide alcohol and drug counseling services to clients who reside in this state unless there are specific applicable exemptions provided by law.

Sec. 2. **[148F.010] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of this chapter, the terms in this section have the meanings given.

Subd. 2. **Abuse.** "Abuse" means a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) recurrent substance use in situations in which it is physically hazardous;

(3) recurrent substance-related legal problems; and

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

**Subd. 3. Accredited school or educational program.** "Accredited school or educational program" means a school of alcohol and drug counseling, university, college, or other postsecondary education program that, at the time the student completes the program, is accredited by a regional accrediting association whose standards are substantially equivalent to those of the North Central Association of Colleges and Postsecondary Education Institutions or an accrediting association that evaluates schools of alcohol and drug counseling for inclusion of the education, practicum, and core function standards in this chapter.

**Subd. 4. Alcohol and drug counseling practicum.** "Alcohol and drug counseling practicum" means formal experience gained by a student and supervised by a person either licensed under this chapter or exempt under its provisions, as part of an accredited school or educational program of alcohol and drug counseling.

**Subd. 5. Alcohol and drug counselor.** "Alcohol and drug counselor" means a person who holds a valid license issued under this chapter to engage in the practice of alcohol and drug counseling.

**Subd. 6. Applicant.** "Applicant" means a person seeking a license or temporary permit under this chapter.

**Subd. 7. Board.** "Board" means the Board of Behavioral Health and Therapy established in section 148B.51.

**Subd. 8. Client.** "Client" means an individual who is the recipient of any of the alcohol and drug counseling services described in this section. Client also means "patient" as defined in section 144.291, subdivision 2, paragraph (g).

**Subd. 9. Competence.** "Competence" means the ability to provide services within the practice of alcohol and drug counseling as defined in subdivision 19, that:

(1) are rendered with reasonable skill and safety;

(2) meet minimum standards of acceptable and prevailing practice as described in section 148F.120; and

(3) take into account human diversity.

**Subd. 10. Core functions.** "Core functions" means the following services provided in alcohol and drug treatment:

(1) "screening" means the process by which a client is determined appropriate and eligible for admission to a particular program;

(2) "intake" means the administrative and initial assessment procedures for admission to a program;

(3) "orientation" means describing to the client the general nature and goals of the program; rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program; in a nonresidential program, the hours during which services are available; treatment costs to be borne by the client, if any; and client's rights;

(4) "assessment" means those procedures by which a counselor identifies and evaluates an individual's strengths, weaknesses, problems, and needs to develop a treatment plan or make recommendations for level of care placement;



(5) "treatment planning" means the process by which the counselor and the client identify and rank problems needing resolution; establish agreed-upon immediate and long-term goals; and decide on a treatment process and the sources to be utilized;

(6) "counseling" means the utilization of special skills to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications; examination of attitudes and feelings; consideration of alternative solutions; and decision making;

(7) "case management" means activities that bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals;

(8) "crisis intervention" means those services which respond to an alcohol or other drug user's needs during acute emotional or physical distress;

(9) "client education" means the provision of information to clients who are receiving or seeking counseling concerning alcohol and other drug abuse and the available services and resources;

(10) "referral" means identifying the needs of the client which cannot be met by the counselor or agency and assisting the client to utilize the support systems and available community resources;

(11) "reports and record keeping" means charting the results of the assessment and treatment plan and writing reports, progress notes, discharge summaries, and other client-related data; and

(12) "consultation with other professionals regarding client treatment and services" means communicating with other professionals in regard to client treatment and services to assure comprehensive, quality care for the client.

Subd. 11. **Credential.** "Credential" means a license, permit, certification, registration, or other evidence of qualification or authorization to engage in the practice of an occupation in any state or jurisdiction.

Subd. 12. **Dependent on the provider.** "Dependent on the provider" means that the nature of a former client's emotional or cognitive condition and the nature of the services by the provider are such that the provider knows or should have known that the former client is unable to withhold consent to sexually exploitative behavior by the provider.

Subd. 13. **Familial.** "Familial" means of, involving, related to, or common to a family member as defined in subdivision 14.

Subd. 14. **Family member or member of the family.** "Family member" or "member of the family" means a spouse, parent, offspring, sibling, grandparent, grandchild, uncle, aunt, niece, or nephew, or an individual who serves in the role of one of the foregoing.

Subd. 15. **Group clients.** "Group clients" means two or more individuals who are each a corecipient of alcohol and drug counseling services. Group clients may include, but are not limited to, two or more family members, when each is the direct recipient of services, or each client receiving group counseling services.

Subd. 16. **Informed consent.** "Informed consent" means an agreement between a provider and a client that authorizes the provider to engage in a professional activity affecting the client. Informed consent requires:

(1) the provider to give the client sufficient information so the client is able to decide knowingly whether to agree to the proposed professional activity;

(2) the provider to discuss the information in language that the client can reasonably be expected to understand; and

(3) the client's consent to be given without undue influence by the provider.

Subd. 17. **Licensee.** "Licensee" means a person who holds a valid license under this chapter.

Subd. 18. **Practice of alcohol and drug counseling.** "Practice of alcohol and drug counseling" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of core functions as it relates to the harmful or pathological use or abuse of alcohol or other drugs. The practice of alcohol and drug counseling includes, but is not limited to, the following activities, regardless of whether the counselor receives compensation for the activities:

(1) assisting clients who use alcohol or drugs, evaluating that use, and recognizing dependency if it exists;

(2) assisting clients with alcohol or other drug problems to gain insight and motivation aimed at resolving those problems;

(3) providing experienced professional guidance, assistance, and support for the client's efforts to develop and maintain a responsible functional lifestyle;

(4) recognizing problems outside the scope of the counselor's training, skill, or competence and referring the client to other appropriate professional services;

(5) diagnosing the level of alcohol or other drug use involvement to determine the level of care;

(6) individual planning to prevent a return to harmful alcohol or chemical use;

(7) alcohol and other drug abuse education for clients;

(8) consultation with other professionals;

(9) gaining diversity awareness through ongoing training and education; and

(10) providing the above services, as needed, to family members or others who are directly affected by someone using alcohol or other drugs.

Subd. 19. **Practice foundation.** "Practice foundation" means that an alcohol and drug counseling service or continuing education activity is based upon observations, methods, procedures, or theories that are generally accepted by the professional community in alcohol and drug counseling.

Subd. 20. **Private information.** "Private information" means any information, including, but not limited to, client records as defined in section 148F.150, test results, or test interpretations developed during a professional relationship between a provider and a client.

Subd. 21. **Provider.** "Provider" means a licensee, a temporary permit holder, or an applicant.

Subd. 22. **Public statement.** "Public statement" means any statement, communication, or representation by a provider to the public regarding the provider or the provider's professional services or products. Public statements include, but are not limited to, advertising, representations in reports or letters, descriptions of credentials and qualifications, brochures and other descriptions of services, directory listings, personal resumes or curricula vitae, comments for use in the media, Web sites, grant and credentialing applications, or product endorsements.

Subd. 23. **Report.** "Report" means any written or oral professional communication, including a letter, regarding a client or subject that includes one or more of the following: historical data, behavioral observations, opinions, diagnostic or evaluative statements, or recommendations. The testimony of a provider as an expert or fact witness in a legal proceeding also constitutes a report. For purposes of this chapter, letters of recommendation for academic or career purposes are not considered reports.

Subd. 24. **Significant risks and benefits.** "Significant risks and benefits" means those risks and benefits that are known or reasonably foreseeable by the provider, including the possible range and likelihood of outcomes, and that are necessary for the client to know in order to decide whether to give consent to proposed services or to reasonable alternative services.

Subd. 25. **Student.** "Student" means an individual who is enrolled in a program in alcohol and drug counseling at an accredited educational institution, or who is taking an alcohol and drug counseling course or practicum for credit.

Subd. 26. **Supervisee.** "Supervisee" means an individual whose supervision is required to obtain credentialing by a licensure board or to comply with a board order.

Subd. 27. **Supervisor.** "Supervisor" means a licensed alcohol and drug counselor licensed under this chapter or other licensed professional practicing alcohol and drug counseling under section 148F.110, who meets the requirements of section 148F.040, subdivision 3, and who provides supervision to persons seeking licensure under section 148F.025, subdivision 3, paragraph (2), clause (ii).

Subd. 28. **Test.** "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing, describing, or predicting personality, behavior, traits, cognitive functioning, aptitudes, attitudes, skills, values, interests, abilities, or other characteristics of individuals.

Subd. 29. **Unprofessional conduct.** "Unprofessional conduct" means any conduct violating sections 148F.001 to 148F.205, or any conduct that fails to conform to the minimum standards of acceptable and prevailing practice necessary for the protection of the public.

Subd. 30. **Variance.** "Variance" means board-authorized permission to comply with a law or rule in a manner other than that generally specified in the law or rule.

### Sec. 3. **[148F.015] DUTIES OF THE BOARD.**

The board shall:

(1) adopt and enforce rules for licensure and regulation of alcohol and drug counselors and temporary permit holders, including a standard disciplinary process and rules of professional conduct;

(2) issue licenses and temporary permits to qualified individuals under sections 148F.001 to 148F.205;

(3) carry out disciplinary actions against licensees and temporary permit holders;

(4) educate the public about the existence and content of the regulations for alcohol and drug counselor licensing to enable consumers to file complaints against licensees who may have violated the rules; and

(5) collect nonrefundable license fees for alcohol and drug counselors.

Sec. 4. **[148F.020] DUTY TO MAINTAIN CURRENT INFORMATION.**

All individuals licensed as alcohol and drug counselors, all individuals with temporary permits, and all applicants for licensure must notify the board within 30 days of the occurrence of any of the following:

- (1) a change of name, address, place of employment, and home or business telephone number; and
- (2) a change in any other application information.

Sec. 5. **[148F.025] REQUIREMENTS FOR LICENSURE.**

Subdivision 1. **Form; fee.** Individuals seeking licensure as a licensed alcohol and drug counselor shall fully complete and submit a notarized written application on forms provided by the board together with the appropriate fee in the amount set under section 148F.115. No portion of the fee is refundable.

Subd. 2. **Education requirements for licensure.** An applicant for licensure must submit evidence satisfactory to the board that the applicant has:

- (1) received a bachelor's degree from an accredited school or educational program; and
- (2) received 18 semester credits or 270 clock hours of academic course work and 880 clock hours of supervised alcohol and drug counseling practicum from an accredited school or education program. The course work and practicum do not have to be part of the bachelor's degree earned under clause (1). The academic course work must be in the following areas:
  - (i) an overview of the transdisciplinary foundations of alcohol and drug counseling, including theories of chemical dependency, the continuum of care, and the process of change;
  - (ii) pharmacology of substance abuse disorders and the dynamics of addiction, including medication-assisted therapy;
  - (iii) professional and ethical responsibilities;
  - (iv) multicultural aspects of chemical dependency;
  - (v) co-occurring disorders; and
  - (vi) the core functions defined in section 148F.010, subdivision 10.

Subd. 3. **Examination requirements for licensure.** (a) To be eligible for licensure, the applicant must:

- (1) satisfactorily pass the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse Counselor (IC&RC AODA) written examination adopted June 2008, or other equivalent examination as determined by the board; or
- (2) satisfactorily pass a written examination for licensure as an alcohol and drug counselor, as determined by the board, and one of the following:
  - (i) complete a written case presentation and pass an oral examination that demonstrates competence in the core functions as defined in section 148F.010, subdivision 10; or

(ii) complete 2,000 hours of postdegree supervised professional practice under section 148F.040.

Sec. 6. **[148F.030] RECIPROCITY.**

(a) An individual who holds a current license or national certification as an alcohol and drug counselor from another jurisdiction must file with the board a completed application for licensure by reciprocity containing the information required in this section.

(b) The applicant must request the credentialing authority of the jurisdiction in which the credential is held to send directly to the board a statement that the credential is current and in good standing, the applicant's qualifications that entitled the applicant to the credential, and a copy of the jurisdiction's credentialing laws and rules that were in effect at the time the applicant obtained the credential.

(c) The board shall issue a license if the board finds that the requirements which the applicant met to obtain the credential from the other jurisdiction were substantially similar to the current requirements for licensure in this chapter and that the applicant is not otherwise disqualified under section 148F.090.

Sec. 7. **[148F.035] TEMPORARY PERMIT.**

(a) The board may issue a temporary permit to practice alcohol and drug counseling to an individual prior to being licensed under this chapter if the person:

(1) received an associate degree, or an equivalent number of credit hours, completed 880 clock hours of supervised alcohol and drug counseling practicum, and 18 semester credits or 270 clock hours of academic course work in alcohol and drug counseling from an accredited school or education program; and

(2) completed academic course work in the following areas:

(i) overview of the transdisciplinary foundations of alcohol and drug counseling, including theories of chemical dependency, the continuum of care, and the process of change;

(ii) pharmacology of substance abuse disorders and the dynamics of addiction, including medication-assisted therapy;

(iii) professional and ethical responsibilities;

(iv) multicultural aspects of chemical dependency;

(v) co-occurring disorders; and

(vi) core functions defined in section 148F.010, subdivision 10.

(b) An individual seeking a temporary permit shall fully complete and submit a notarized written application on forms provided by the board together with the nonrefundable temporary permit fee specified in section 148F.115, subdivision 3, clause (1).

(c) An individual practicing under this section:

(1) must be supervised by a licensed alcohol and drug counselor or other licensed professional practicing alcohol and drug counseling under section 148F.110, subdivision 1;

(2) is subject to all statutes and rules to the same extent as an individual who is licensed under this chapter, except the individual is not subject to the continuing education requirements of section 148F.075; and

(3) must use the title "Alcohol and Drug Counselor-Trainee" or the letters "ADC-T" in professional activities.

(d)(1) An individual practicing with a temporary permit must submit a renewal application annually on forms provided by the board with the renewal fee required in section 148F.115, subdivision 3.

(2) A temporary permit is automatically terminated if not renewed, upon a change in supervision, or upon the granting or denial by the board of the applicant's application for licensure as an alcohol and drug counselor.

(3) A temporary permit may be renewed no more than five times.

Sec. 8. **[148F.040] SUPERVISED POSTDEGREE PROFESSIONAL PRACTICE.**

Subdivision 1. **Supervision.** For the purposes of this section, "supervision" means documented interactive consultation, which, subject to the limitations of subdivision 4, paragraph (b), may be conducted in person, by telephone, or by audio or audiovisual electronic device by a supervisor with a supervisee. The supervision must be adequate to ensure the quality and competence of the activities supervised. Supervisory consultation must include discussions on the nature and content of the practice of the supervisee, including, but not limited to, a review of a representative sample of alcohol and drug counseling services in the supervisee's practice.

Subd. 2. **Postdegree professional practice.** "Postdegree professional practice" means paid or volunteer work experience and training following graduation from an accredited school or educational program that involves professional oversight by a supervisor approved by the board and that satisfies the supervision requirements in subdivision 4.

Subd. 3. **Supervisor requirements.** For the purposes of this section, a supervisor shall:

(1) be a licensed alcohol and drug counselor or other qualified professional as determined by the board;

(2) have three years of experience providing alcohol and drug counseling services; and

(3) have received a minimum of 12 hours of training in clinical and ethical supervision, which may include course work, continuing education courses, workshops, or a combination thereof.

Subd. 4. **Supervised practice requirements for licensure.** (a) The content of supervision must include:

(1) knowledge, skills, values, and ethics with specific application to the practice issues faced by the supervisee, including the core functions in section 148F.010, subdivision 10;

(2) the standards of practice and ethical conduct, with particular emphasis given to the counselor's role and appropriate responsibilities, professional boundaries, and power dynamics; and

(3) the supervisee's permissible scope of practice, as defined in section 148F.010, subdivision 18.

(b) The supervision must be obtained at the rate of one hour of supervision per 40 hours of professional practice, for a total of 50 hours of supervision. The supervision must be evenly distributed over the course of the supervised professional practice. At least 75 percent of the required supervision hours must be received in person. The remaining 25 percent of the required hours may be received by telephone or by audio or audiovisual electronic device. At least 50 percent of the required hours of supervision must be received on an individual basis. The remaining 50 percent may be received in a group setting.

(c) The supervision must be completed in no fewer than 12 consecutive months and no more than 36 consecutive months.

(d) The applicant shall include with an application for licensure a verification of completion of the 2,000 hours of supervised professional practice. Verification must be on a form specified by the board. The supervisor shall verify that the supervisee has completed the required hours of supervision according to this section. The supervised practice required under this section is unacceptable if the supervisor attests that the supervisee's performance, competence, or adherence to the standards of practice and ethical conduct has been unsatisfactory.

Sec. 9. **[148F.045] ALCOHOL AND DRUG COUNSELOR TECHNICIAN.**

An alcohol and drug counselor technician may perform the screening, intake, and orientation services described in section 148F.010, subdivision 10, clauses (1), (2), and (3), while under the direct supervision of a licensed alcohol and drug counselor.

Sec. 10. **[148F.050] LICENSE RENEWAL REQUIREMENTS.**

Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

Subd. 2. **License renewal notice.** At least 60 calendar days before the renewal deadline date, the board shall mail a renewal notice to the licensee's last known address on file with the board. The notice must include instructions for accessing an online application for license renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure to receive notice does not relieve the licensee of the obligation to meet the renewal deadline and other requirements for license renewal.

Subd. 3. **Renewal requirements.** (a) To renew a license, a licensee must submit to the board:

(1) a completed, signed, and notarized application for license renewal;

(2) the renewal fee required under section 148F.115, subdivision 2; and

(3) evidence satisfactory to the board that the licensee has completed 40 clock hours of continuing education during the preceding two-year renewal period that meet the requirements of section 148F.075.

(b) The application must be postmarked or received by the board by the end of the day on which the license expires or the following business day if the expiration date falls on a Saturday, Sunday, or holiday. An application which is not completed, signed, notarized, or which is not accompanied by the correct fee, is void and must be returned to the licensee.

Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked or received by the board by the end of the business day on the expiration date of the license, the licensee may continue to practice after the expiration date while the application for license renewal is pending with the board.

Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or received after the expiration date, the licensee shall pay a late fee as specified by section 148F.115, subdivision 5, clause (1), in addition to the renewal fee, before the application for license renewal will be considered by the board.

Sec. 11. **[148F.055] EXPIRED LICENSE.**

Subdivision 1. **Expiration of license.** A licensee who fails to submit an application for license renewal, or whose application for license renewal is not postmarked or received by the board as required, is not authorized to practice after the expiration date and is subject to disciplinary action by the board for any practice after the expiration date.

Subd. 2. **Termination for nonrenewal.** (a) Within 30 days after the renewal date, a licensee who has not renewed the license shall be notified by letter sent to the last known address of the licensee in the board's file that the renewal is overdue and that failure to pay the current fee and current late fee within 60 days after the renewal date will result in termination of the license.

(b) The board shall terminate the license of a licensee whose license renewal is at least 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure of a licensee to receive notification is not grounds for later challenge of the termination. The former licensee shall be notified of the termination by letter within seven days after the board action, in the same manner as provided in paragraph (a).

Sec. 12. **[148F.060] VOLUNTARY TERMINATION.**

A license may be voluntarily terminated by the licensee at any time upon written notification to the board, unless a complaint is pending against the licensee. The notification must be received by the board prior to termination of the license for failure to renew. A former licensee may be licensed again only after complying with the relicensure following termination requirements under section 148F.065. For purposes of this section, the board retains jurisdiction over any licensee whose license has been voluntarily terminated and against whom the board receives a complaint for conduct occurring during the period of licensure.

Sec. 13. **[148F.065] RELICENSURE FOLLOWING TERMINATION.**

Subdivision 1. **Relicensure.** For a period of two years, a former licensee whose license has been voluntarily terminated or terminated for nonrenewal as provided in section 148F.055, subdivision 2, may be relicensed by completing an application for relicensure, paying the applicable fee, and verifying that the former licensee has not engaged in the practice of alcohol and drug counseling in this state since the date of termination. The verification must be accompanied by a notarized affirmation that the statement is true and correct to the best knowledge and belief of the former licensee.

Subd. 2. **Continuing education for relicensure.** A former licensee seeking relicensure after license termination must provide evidence of having completed at least 20 hours of continuing education activities for each year, or portion thereof, that the former licensee did not hold a license.

Subd. 3. **Cancellation of license.** The board shall not renew, reissue, reinstate, or restore the license of a former licensee which was terminated for nonrenewal, or voluntarily terminated, and for which relicensure was not sought for more than two years from the date the license was terminated for nonrenewal, or voluntarily terminated. A former licensee seeking relicensure after this two-year period must obtain a new license by applying for licensure and fulfilling all requirements then in existence for an initial license to practice alcohol and drug counseling in Minnesota.

Sec. 14. **[148F.070] INACTIVE LICENSE STATUS.**

Subdivision 1. **Request for inactive status.** Unless a complaint is pending against the licensee, a licensee whose license is in good standing may request, in writing, that the license be placed on the inactive list. If a complaint is pending against a licensee, a license may not be placed on the inactive list until action relating to the complaint is concluded. The board must receive the request for inactive status before expiration of the license, or the person must pay the late fee. A licensee may renew a license that is inactive under this subdivision by meeting the renewal requirements of subdivision 2. A licensee must not practice alcohol and drug counseling while the license is inactive.



Subd. 2. **Renewal of inactive license.** A licensee whose license is inactive must renew the inactive status by the inactive status expiration date determined by the board, or the license will expire. An application for renewal of inactive status must include evidence satisfactory to the board that the licensee has completed 40 clock hours of continuing education required in section 148F.075. Late renewal of inactive status must be accompanied by a late fee as required in section 148F.115, subdivision 5, paragraph (2).

Sec. 15. **[148F.075] CONTINUING EDUCATION REQUIREMENTS.**

Subdivision 1. **Purpose.** (a) The purpose of mandatory continuing education is to promote the professional development of alcohol and drug counselors so that the services they provide promote the health and well-being of clients who receive services.

(b) Continued professional growth and maintaining competence in providing alcohol and drug counseling services are the ethical responsibilities of each licensee.

Subd. 2. **Requirement.** Every two years, all licensees must complete a minimum of 40 clock hours of continuing education activities that meet the requirements in this section. The 40 clock hours shall include a minimum of nine clock hours on diversity, and a minimum of three clock hours on professional ethics. Diversity training includes, but is not limited to, the topics listed in Minnesota Rules, part 4747.1100, subpart 2. A licensee may be given credit only for activities that directly relate to the practice of alcohol and drug counseling.

Subd. 3. **Standards for approval.** In order to obtain clock hour credit for a continuing education activity, the activity must:

- (1) constitute an organized program of learning;
- (2) reasonably be expected to advance the knowledge and skills of the alcohol and drug counselor;
- (3) pertain to subjects that directly relate to the practice of alcohol and drug counseling;
- (4) be conducted by individuals who have education, training, and experience and are knowledgeable about the subject matter; and
- (5) be presented by a sponsor who has a system to verify participation and maintains attendance records for three years, unless the sponsor provides dated evidence to each participant with the number of clock hours awarded.

Subd. 4. **Qualifying activities.** Clock hours may be earned through the following:

(1) attendance at educational programs of annual conferences, lectures, panel discussions, workshops, in-service training, seminars, and symposia;

(2) successful completion of college or university courses offered by a regionally accredited school or education program, if not being taken in order to meet the educational requirements for licensure under this chapter. The licensee must obtain a grade of at least a "C" or its equivalent or a pass in a pass/fail course in order to receive the following continuing education credits:

- (i) one semester credit equals 15 clock hours;
- (ii) one trimester credit equals 12 clock hours; and
- (iii) one quarter credit equals 10 clock hours;

(3) successful completion of home study or online courses offered by an accredited school or education program and that require a licensee to demonstrate knowledge following completion of the course;

(4) teaching a course at a regionally accredited institution of higher education. To qualify for continuing education credit, the course must directly relate to the practice of alcohol and drug counseling, as determined by the board. Continuing education hours may be earned only for the first time the licensee teaches the course. Ten continuing education hours may be earned for each semester credit hour taught; or

(5) presentations at workshops, seminars, symposia, meetings of professional organizations, in-service trainings, or postgraduate institutes. The presentation must be related to alcohol and drug counseling. A presenter may claim one hour of continuing education for each hour of presentation time. A presenter may also receive continuing education hours for development time at the rate of three hours for each hour of presentation time. Continuing education hours may be earned only for the licensee's first presentation on the subject developed.

Subd. 5. **Activities not qualifying for continuing education clock hours.** Approval shall not be given for courses that do not meet the requirements of this section or are limited to the following:

(1) any subject contrary to the rules of professional conduct;

(2) supervision of personnel;

(3) entertainment or recreational activities;

(4) employment orientation sessions;

(5) policy meetings;

(6) marketing;

(7) business;

(8) first aid, CPR, and similar training classes; and

(9) training related to payment systems, including covered services, coding, and billing.

Subd. 6. **Documentation of reporting compliance.** (a) When the licensee applies for renewal of the license, the licensee must complete and submit an affidavit of continuing education compliance showing that the licensee has completed a minimum of 40 approved continuing education clock hours since the last renewal. Failure to submit the affidavit when required makes the licensee's renewal application incomplete and void.

(b) All licensees shall retain original documentation of completion of continuing education hours for a period of five years. For purposes of compliance with this section, a receipt for payment of the fee for the course is not sufficient evidence of completion of the required hours of continuing education. Information retained shall include:

(1) the continuing education activity title;

(2) a brief description of the continuing education activity;

(3) the sponsor, presenter, or author;

(4) the location and the dates attended;

(5) the number of clock hours; and

(6) the certificate of attendance, if applicable.

(c) Only continuing education obtained during the two-year reporting period may be considered at the time of reporting.

Subd. 7. **Continuing education audit.** (a) At the time of renewal, the board may randomly audit a percentage of its licensees for compliance with continuing education requirements.

(b) The board shall mail a notice to a licensee selected for an audit of continuing education hours. The notice must include the reporting periods selected for audit.

(c) Selected licensees shall submit copies of the original documentation of completed continuing education hours. Upon specific request, the licensee shall submit original documentation. Failure to submit required documentation shall result in the renewal application being considered incomplete and void and constitute grounds for nonrenewal of the license and disciplinary action.

Subd. 8. **Variance of continuing education requirements.** (a) If a licensee is unable to meet the continuing education requirements by the renewal date, the licensee may request a time-limited variance to fulfill the requirements after the renewal date. A licensee seeking a variance is considered to be renewing late and is subject to the late renewal fee, regardless of when the request is received or whether the variance is granted.

(b) The licensee shall submit the variance request on a form designated by the board, include the variance fee subject to section 14.056, subdivision 2, and the late fee for license renewal under section 148F.115. The variance request is subject to the criteria for rule variances in section 14.055, subdivision 4, and must include a written plan listing the activities offered to meet the requirement. Hours completed after the renewal date pursuant to the written plan count toward meeting only the requirements of the previous renewal period.

(c) A variance granted under this subdivision expires six months after the license renewal date. A licensee who is granted a variance but fails to complete the required continuing education within the six-month period may apply for a second variance according to this subdivision.

(d) If an initial variance request is denied, the license of the licensee shall not be renewed until the licensee completes the continuing education requirements. If an initial variance is granted, and the licensee fails to complete the required continuing education within the six-month period, the license shall be administratively suspended until the licensee completes the required continuing education, unless the licensee has obtained a second variance according to paragraph (c).

Sec. 16. **[148F.080] SPONSOR'S APPLICATION FOR APPROVAL.**

Subdivision 1. **Content.** Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer continuing education activities for approval must submit to the board the sponsor application fee and a completed application for approval on a form provided by the board. The sponsor must comply with the following to receive and maintain approval:

(1) submit the application for approval at least 60 days before the activity is scheduled to begin; and

(2) include the following information in the application for approval to enable the board to determine whether the activity complies with section 148F.075:

(i) a statement of the objectives of the activity and the knowledge the participants will have gained upon completion of the activity;

(ii) a description of the content and methodology of the activity which will allow the participants to meet the objectives;

(iii) a description of the method the participants will use to evaluate the activity;

(iv) a list of the qualifications of each instructor or developer that shows the instructor's or developer's current knowledge and skill in the activity's subject;

(v) a description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the activity;

(vi) the sponsor's agreement to retain attendance lists for a period of five years from the date of the activity; and

(vii) a copy of any proposed advertisement or other promotional literature.

**Subd. 2. Approval expiration.** If the board approves an activity it shall assign the activity a number. The approval remains in effect for one year from the date of initial approval. Upon expiration, a sponsor must submit a new application for activity approval to the board as required by subdivision 1.

**Subd. 3. Statement of board approval.** Each sponsor of an approved activity shall include in any promotional literature a statement that "This activity has been approved by the Minnesota Board of Behavioral Health and Therapy for ... hours of credit."

**Subd. 4. Changes.** The activity sponsor must submit proposed changes in an approved activity to the board for its approval.

**Subd. 5. Denial of approval.** The board shall not approve an activity if it does not meet the continuing education requirements in section 148F.075. The board shall notify the sponsor in writing of its reasons for denial.

**Subd. 6. Revocation of approval.** The board shall revoke its approval of an activity if a sponsor falsifies information contained in its application for approval, or if a sponsor fails to notify the board of changes to an approved activity as required in subdivision 4.

**Sec. 17. [148F.085] NONTRANSFERABILITY OF LICENSES.**

An alcohol and drug counselor license is not transferable.

**Sec. 18. [148F.090] DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.**

**Subdivision 1. Grounds.** The board may impose disciplinary action as described in subdivision 2 against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of licensed alcohol and drug counseling that adversely affects the person's ability or fitness to practice alcohol and drug counseling;

(3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of alcohol and drug counseling;

(5) has employed fraud or deception in obtaining or renewing a license, or in passing an examination;

(6) has had any license, certificate, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, or not renewed for cause in any jurisdiction or has surrendered or voluntarily terminated a license or certificate during a board investigation of a complaint, as part of a disciplinary order, or while under a disciplinary order;

(7) has failed to meet any requirement for the issuance or renewal of the person's license. The burden of proof is on the applicant or licensee to demonstrate the qualifications or satisfy the requirements for a license under this chapter;

(8) has failed to cooperate with an investigation by the board;

(9) has demonstrated an inability to practice alcohol and drug counseling with reasonable skill and safety as a result of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition;

(10) has engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a client;

(11) has been subject to a corrective action or similar, nondisciplinary action in another jurisdiction or by another regulatory authority;

(12) has been adjudicated as mentally incompetent, mentally ill, or developmentally disabled or as a chemically dependent person, a person dangerous to the public, a sexually dangerous person, or a person who has a sexual psychopathic personality by a court of competent jurisdiction within this state or an equivalent adjudication from another state. Adjudication automatically suspends a license for the duration thereof unless the board orders otherwise;

(13) fails to comply with a client's request for health records made under sections 144.291 to 144.298, or to furnish a client record or report required by law;

(14) has engaged in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws; or

(15) has engaged in fee splitting. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the licensee or under a licensee's administrative authority. Fee splitting includes, but is not limited to:

(i) dividing fees with another person or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional;

(ii) referring a client to any health care provider as defined in sections 144.291 to 144.298 in which the referring licensee has a significant financial interest, unless the licensee has disclosed in advance to the client the licensee's own financial interest; or

(iii) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients.

Subd. 2. **Forms of disciplinary action.** If grounds for disciplinary action exist under subdivision 1, the board may take one or more of the following actions:

(1) refuse to grant or renew a license;

(2) revoke a license;

(3) suspend a license;

(4) impose limitations or conditions on a licensee's practice of alcohol and drug counseling, including, but not limited to, limiting the scope of practice to designated competencies, imposing retraining or rehabilitation requirements, requiring the licensee to practice under supervision, or conditioning continued practice on the demonstration of knowledge or skill by appropriate examination or other review of skill and competence;

(5) censure or reprimand the licensee;

(6) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the applicant or licensee of any economic advantage gained by reason of the violation charged, to discourage similar violations or to reimburse the board for the cost of the investigation and proceeding, including, but not limited to, fees paid for services provided by the Office of Administrative Hearings, legal and investigative services provided by the Office of the Attorney General, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and travel costs and expenses incurred by board staff and board members; or

(7) any other action justified by the case.

Subd. 3. **Evidence.** In disciplinary actions alleging violations of subdivision 1, clause (4), (12), or (14), a copy of the judgment or proceedings under the seal of the court administrator or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

Subd. 4. **Temporary suspension.** (a) In addition to any other remedy provided by law, the board may issue an order to temporarily suspend the credentials of a licensee after conducting a preliminary inquiry to determine if the board reasonably believes that the licensee has violated a statute or rule that the board is empowered to enforce and whether continued practice by the licensee would create an imminent risk of harm to others.

(b) The order may prohibit the licensee from engaging in the practice of alcohol and drug counseling in whole or in part and may condition the end of a suspension on the licensee's compliance with a statute, rule, or order that the board has issued or is empowered to enforce.

(c) The order shall give notice of the right to a hearing according to this subdivision and shall state the reasons for the entry of the order.

(d) Service of the order is effective when the order is served on the licensee personally or by certified mail, which is complete upon receipt, refusal, or return for nondelivery to the most recent address of the licensee provided to the board.

(e) At the time the board issues a temporary suspension order, the board shall schedule a hearing to be held before its own members. The hearing shall begin no later than 60 days after issuance of the temporary suspension order or within 15 working days of the date of the board's receipt of a request for hearing by a licensee, on the sole issue of whether there is a reasonable basis to continue, modify, or lift the temporary suspension. The hearing is not subject to chapter 14. Evidence presented by the board or the licensee shall be in affidavit form only. The licensee or counsel of record may appear for oral argument.

(f) Within five working days of the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 30 days of the issuance of the order. Notwithstanding chapter 14, the administrative law judge shall issue a report within 30 days after closing the contested case hearing record. The board shall issue a final order within 30 days of receipt of the administrative law judge's report.

Subd. 5. **Automatic suspension.** (a) The right to practice is automatically suspended when:

(1) a guardian of an alcohol and drug counselor is appointed by order of a district court under sections 524.5-101 to 524.5-502; or

(2) the counselor is committed by order of a district court under chapter 253B.

(b) The right to practice remains suspended until the counselor is restored to capacity by a court and, upon petition by the counselor, the suspension is terminated by the board after a hearing or upon agreement between the board and the counselor.

Subd. 6. **Mental, physical, or chemical health evaluation.** (a) If the board has probable cause to believe that an applicant or licensee is unable to practice alcohol and drug counseling with reasonable skill and safety due to a mental or physical illness or condition, the board may direct the individual to submit to a mental, physical, or chemical dependency examination or evaluation.

(1) For the purposes of this section, every licensee and applicant is deemed to have consented to submit to a mental, physical, or chemical dependency examination or evaluation when directed in writing by the board and to have waived all objections to the admissibility of the examining professionals' testimony or examination reports on the grounds that the testimony or examination reports constitute a privileged communication.

(2) Failure of a licensee or applicant to submit to an examination when directed by the board constitutes an admission of the allegations against the person, unless the failure was due to circumstances beyond the person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence.

(3) A licensee or applicant affected under this subdivision shall at reasonable intervals be given an opportunity to demonstrate that the licensee or applicant can resume the competent practice of licensed alcohol and drug counseling with reasonable skill and safety to the public.

(4) In any proceeding under this subdivision, neither the record of proceedings nor the orders entered by the board shall be used against the licensee or applicant in any other proceeding.

(b) In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.384 or 144.291 to 144.298, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that subdivision 1, clause (9), applies to the licensee or applicant. The medical data may be requested from:

(1) a provider, as defined in section 144.291, subdivision 2, paragraph (h);

(2) an insurance company; or

(3) a government agency, including the Department of Human Services.

(c) A provider, insurance company, or government agency must comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the provider giving the information knew, or had reason to believe, the information was false.

(d) Information obtained under this subdivision is private data on individuals as defined in section 13.02, subdivision 12.

Sec. 19. **[148F.095] ADDITIONAL REMEDIES.**

Subdivision 1. **Cease and desist.** (a) The board may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the board has issued or has authority to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the board and is not reviewable by a court or agency.

(b) A hearing must be initiated by the board no later than 30 days from the date of the board's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, and any written agreement or exceptions filed by the parties, the board shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the board.

(c) When a request for a stay accompanies a timely hearing request, the board may, in the board's discretion, grant the stay. If the board does not grant a requested stay, the board shall refer the request to the Office of Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the board, an administrative law judge shall issue a recommendation to grant or deny the stay. The board shall grant or deny the stay within five working days of receiving the administrative law judge's recommendation.

(d) In the event of noncompliance with a cease and desist order, the board may institute a proceeding in district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the board, not to exceed \$10,000 for each separate violation.

Subd. 2. **Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the board may in the board's own name bring an action in district court for injunctive relief to restrain an alcohol and drug counselor from a violation or threatened violation of any statute, rule, or order which the board has authority to administer, enforce, or issue.

Subd. 3. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a counselor from criminal prosecution by a competent authority or from disciplinary action by the board.

Sec. 20. **[148F.100] COOPERATION.**

An alcohol and drug counselor who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the board, shall cooperate fully with the investigation. Cooperation includes responding fully to any question raised by or on behalf of the board relating to the subject of the investigation, whether tape recorded or not. Challenges to requests of the board may be brought before the appropriate agency or court.



Sec. 21. **[148F.105] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

Subdivision 1. Practice. No person shall engage in alcohol and drug counseling without first being licensed under this chapter as an alcohol and drug counselor. For purposes of this chapter, an individual engages in the practice of alcohol and drug counseling if the individual performs or offers to perform alcohol and drug counseling services as defined in section 148F.010, subdivision 19, or if the individual is held out as able to perform those services.

Subd. 2. Use of titles. (a) No individual shall present themselves or any other individual to the public by any title incorporating the words "licensed alcohol and drug counselor," "alcohol and drug counselor," or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed or otherwise qualified to practice alcohol and drug counseling, unless that individual holds a valid license.

(b) An individual issued a temporary permit must use titles consistent with section 148F.035, subdivisions 1 and 2, paragraph (c), clause (3).

(c) An individual who is participating in an alcohol and drug counseling practicum for purposes of licensure by the board may be designated an "alcohol and drug counselor intern."

(d) Individuals who are trained in alcohol and drug counseling and employed by an educational institution recognized by a regional accrediting organization, by a federal, state, county, or local government institution, by agencies, or research facilities, may represent themselves by the titles designated by that organization provided the title does not indicate the individual is licensed by the board.

Subd. 3. Penalty. A person who violates sections 148F.001 to 148F.205 is guilty of a misdemeanor.

Sec. 22. **[148F.110] EXCEPTIONS TO LICENSE REQUIREMENT.**

Subdivision 1. Other professionals. (a) Nothing in this chapter prevents members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to: licensed physicians; registered nurses; licensed practical nurses; licensed psychologists and licensed psychological practitioners; members of the clergy provided such services are provided within the scope of regular ministries; American Indian medicine men and women; licensed attorneys; probation officers; licensed marriage and family therapists; licensed social workers; social workers employed by city, county, or state agencies; licensed professional counselors; licensed professional clinical counselors; licensed school counselors; registered occupational therapists or occupational therapy assistants; Upper Midwest Indian Council on Addictive Disorders (UMICAD) certified counselors when providing services to Native American people; city, county, or state employees when providing assessments or case management under Minnesota Rules, chapter 9530; and individuals defined in section 256B.0623, subdivision 5, clauses (1) and (2), providing integrated dual-diagnosis treatment in adult mental health rehabilitative programs certified by the Department of Human Services under section 256B.0622 or 256B.0623.

(b) Nothing in this chapter prohibits technicians and resident managers in programs licensed by the Department of Human Services from discharging their duties as provided in Minnesota Rules, chapter 9530.

(c) Any person who is exempt from licensure under this section must not use a title incorporating the words "alcohol and drug counselor" or "licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of alcohol and drug counseling, or that they are licensed to engage in the practice of alcohol and drug counseling, unless that person is also licensed as an alcohol and drug counselor. Persons engaged in the practice of alcohol and drug counseling are not exempt from the board's jurisdiction solely by the use of one of the titles in paragraph (a).

Subd. 2. **Students.** Nothing in sections 148F.001 to 148F.110 shall prevent students enrolled in an accredited school of alcohol and drug counseling from engaging in the practice of alcohol and drug counseling while under qualified supervision in an accredited school of alcohol and drug counseling.

Subd. 3. **Federally recognized tribes.** Alcohol and drug counselors practicing alcohol and drug counseling according to standards established by federally recognized tribes, while practicing under tribal jurisdiction, are exempt from the requirements of this chapter. In practicing alcohol and drug counseling under tribal jurisdiction, individuals practicing under that authority shall be afforded the same rights, responsibilities, and recognition as persons licensed under this chapter.

Sec. 23. **[148F.115] FEES.**

Subdivision 1. **Application fee.** The application fee is \$295.

Subd. 2. **Biennial renewal fee.** The license renewal fee is \$295. If the board establishes a renewal schedule, and the scheduled renewal date is less than two years, the fee may be prorated.

Subd. 3. **Temporary permit fee.** Temporary permit fees are as follows:

(1) initial application fee is \$100; and

(2) annual renewal fee is \$150. If the initial term is less or more than one year, the fee may be prorated.

Subd. 4. **Inactive license renewal fee.** The inactive license renewal fee is \$150.

Subd. 5. **Late fees.** Late fees are as follows:

(1) biennial renewal late fee is \$74;

(2) inactive license renewal late fee is \$37; and

(3) annual temporary permit late fee is \$37.

Subd. 6. **Fee to renew after expiration of license.** The fee for renewal of a license that has been expired for less than two years is the total of the biennial renewal fee in effect at the time of late renewal and the late fee.

Subd. 7. **Fee for license verification.** The fee for license verification is \$25.

Subd. 8. **Surcharge fee.** Notwithstanding section 16A.1285, subdivision 2, a surcharge of \$99 shall be paid at the time of initial application for or renewal of an alcohol and drug counselor license until June 30, 2013.

Subd. 9. **Sponsor application fee.** The fee for a sponsor application for approval of a continuing education course is \$60.

Subd. 10. **Order or stipulation fee.** The fee for a copy of a board order or stipulation is \$10.

Subd. 11. **Duplicate certificate fee.** The fee for a duplicate certificate is \$25.

Subd. 12. **Supervisor application processing fee.** The fee for licensure supervisor application processing is \$30.

Subd. 13. **Nonrefundable fees.** All fees in this section are nonrefundable.

Sec. 24. **[148F.120] CONDUCT.**

Subdivision 1. **Scope.** Sections 148F.120 to 148F.205 apply to the conduct of all alcohol and drug counselors, licensees, and applicants, including conduct during the period of education, training, and employment that is required for licensure.

Subd. 2. **Purpose.** Sections 148F.120 to 148F.205 constitute the standards by which the professional conduct of alcohol and drug counselors is measured.

Subd. 3. **Violations.** A violation of sections 148F.120 to 148F.205 is unprofessional conduct and constitutes grounds for disciplinary action, corrective action, or denial of licensure.

Subd. 4. **Conflict with organizational demands.** If the organizational policies at the provider's work setting conflict with any provision in sections 148F.120 to 148F.205, the provider shall discuss the nature of the conflict with the employer, make known the requirement to comply with these sections of law, and attempt to resolve the conflict in a manner that does not violate the law.

Sec. 25. **[148F.125] COMPETENT PROVISION OF SERVICES.**

Subdivision 1. **Limits on practice.** Alcohol and drug counselors shall limit their practice to the client populations and services for which they have competence or for which they are developing competence.

Subd. 2. **Developing competence.** When an alcohol and drug counselor is developing competence in a service, method, procedure, or to treat a specific client population, the alcohol and drug counselor shall obtain professional education, training, continuing education, consultation, supervision, or experience, or a combination thereof, necessary to demonstrate competence.

Subd. 3. **Experimental, emerging, or innovative services.** Alcohol and drug counselors may offer experimental services, methods, or procedures competently and in a manner that protects clients from harm. However, when doing so, they have a heightened responsibility to understand and communicate the potential risks to clients, to use reasonable skill and safety, and to undertake appropriate preparation as required in subdivision 2.

Subd. 4. **Limitations.** Alcohol and drug counselors shall recognize the limitations to the scope of practice of alcohol and drug counseling. When the needs of clients appear to be outside their scope of practice, providers shall inform the clients that there may be other professional, technical, community, and administrative resources available to them. Providers shall assist with identifying resources when it is in the best interests of clients to be provided with alternative or complementary services.

Subd. 5. **Burden of proof.** Whenever a complaint is submitted to the board involving a violation of this section, the burden of proof is on the provider to demonstrate that the elements of competence have reasonably been met.

Sec. 26. **[148F.130] PROTECTING CLIENT PRIVACY.**

Subdivision 1. **Protecting private information.** The provider shall safeguard private information obtained in the course of the practice of alcohol and drug counseling. Private information may be disclosed to others only according to section 148F.135, or with certain exceptions as specified in subdivisions 2 to 13.

Subd. 2. **Duty to warn; limitation on liability.** Private information may be disclosed without the consent of the client when a duty to warn arises, or as otherwise provided by law or court order. The duty to warn of, or take reasonable precautions to provide protection from, violent behavior arises only when a client or other person has communicated to the provider a specific, serious threat of physical violence to self or a specific, clearly identified or

identifiable potential victim. If a duty to warn arises, the duty is discharged by the provider if reasonable efforts are made to communicate the threat to law enforcement agencies, the potential victim, the family of the client, or appropriate third parties who are in a position to prevent or avert the harm. No monetary liability and no cause of action or disciplinary action by the board may arise against a provider for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide.

Subd. 3. **Services to group clients.** Whenever alcohol and drug counseling services are provided to group clients, the provider shall initially inform each client of the provider's responsibility and each client's individual responsibility to treat any information gained in the course of rendering the services as private information, including any limitations to each client's right to privacy.

Subd. 4. **Obtaining collateral information.** Prior to obtaining collateral information about a client from other individuals, the provider shall obtain consent from the client unless the consent is not required by law or court order, and shall inform the other individuals that the information obtained may become part of the client's records and may therefore be accessed or released by the client, unless prohibited by law. For purposes of this subdivision, "other individual" means any individual, except for credentialed health care providers acting in their professional capacities, who participates adjunctively in the provision of services to a client. Examples of other individuals include, but are not limited to, family members, friends, coworkers, day care workers, guardians ad litem, foster parents, or school personnel.

Subd. 5. **Minor clients.** At the beginning of a professional relationship, the provider shall inform a minor client that the law imposes limitations on the right of privacy of the minor with respect to the minor's communications with the provider. This requirement is waived when the minor cannot reasonably be expected to understand the privacy statement.

Subd. 6. **Limited access to client records.** The provider shall limit access to client records. The provider shall make reasonable efforts to inform individuals associated with the provider's agency or facility, such as staff members, students, volunteers, or community aides, that access to client records, regardless of their format, is limited only to the provider with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, or individuals authorized to have access by the written informed consent of the client.

Subd. 7. **Billing statements for services.** The provider shall comply with the privacy wishes of clients regarding to whom and where statements for services are to be sent.

Subd. 8. **Case reports.** The identification of the client shall be reasonably disguised in case reports or other clinical materials used in teaching, presentations, professional meetings, or publications.

Subd. 9. **Observation and recording.** Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with the client's written informed consent.

Subd. 10. **Continued protection of client information.** The provider shall maintain the privacy of client data indefinitely after the professional relationship has ended.

Subd. 11. **Court-ordered or other mandated disclosures.** The proper disclosure of private client data upon a court order or to conform with state or federal law shall not be considered a violation of sections 148F.120 to 148F.205.

Subd. 12. **Abuse or neglect of minor or vulnerable adults.** An applicant or licensee must comply with the reporting of maltreatment of minors established in section 626.556 and the reporting of maltreatment of vulnerable adults established in section 626.557.

Subd. 13. **Initial contacts.** When an individual initially contacts a provider regarding alcohol and drug counseling services, the provider or another individual designated by the provider may, with oral consent from the potential client, contact third parties to determine payment or benefits information, arrange for precertification of services when required by the individual's health plan, or acknowledge a referral from another health care professional.

Sec. 27. **[148F.135] PRIVATE INFORMATION; ACCESS AND RELEASE.**

Subdivision 1. **Client right to access and release private information.** A client has the right to access and release private information maintained by the provider, including client records as provided in sections 144.291 to 144.298, relating to the provider's counseling services to that client, except as otherwise provided by law or court order.

Subd. 2. **Release of private information.** (a) When a client makes a request for the provider to release the client's private information, the request must be in writing and signed by the client. Informed consent is not required. When the request involves client records, all pertinent information shall be released in compliance with sections 144.291 to 144.298.

(b) If the provider initiates the request to release the client's private information, written authorization for the release of information must be obtained from the client and must include, at a minimum:

- (1) the name of the client;
- (2) the name of the individual or entity providing the information;
- (3) the name of the individual or entity to which the release is made;
- (4) the types of information to be released, such as progress notes, diagnoses, assessment data, or other specific information;
- (5) the purpose of the release, such as whether the release is to coordinate professional care with another provider, to obtain insurance payment for services, or for other specified purposes;
- (6) the time period covered by the consent;
- (7) a statement that the consent is valid for one year, except as otherwise allowed by statute, or for a lesser period that is specified in the consent;
- (8) a declaration that the individual signing the statement has been told of and understands the nature and purpose of the authorized release;
- (9) a statement that the consent may be rescinded, except to the extent that the consent has already been acted upon or that the right to rescind consent has been waived separately in writing;
- (10) the signature of the client or the client's legally authorized representative, whose relationship to the client must be stated; and
- (11) the date on which the consent is signed.

Subd. 3. **Group client records.** Whenever counseling services are provided to group clients, each client has the right to access or release only that information in the records that the client has provided directly or has authorized other sources to provide, unless otherwise directed by law or court order. Upon a request by one client to access or release group client records, that information in the records that has not been provided directly or by authorization of the requesting client must be redacted unless written authorization to disclose this information has been obtained from the other clients.

Subd. 4. **Board investigation.** The board shall be allowed access to any records of a client provided services by an applicant or licensee who is under investigation. If the client has not signed a consent permitting access to the client's records, the applicant or licensee must delete any data that identifies the client before providing them to the board. The board shall maintain any records as investigative data pursuant to chapter 13.

Sec. 28. **[148F.140] INFORMED CONSENT.**

Subdivision 1. **Obtaining informed consent for services.** The provider shall obtain informed consent from the client before initiating services. The informed consent must be in writing, signed by the client, and include the following, at a minimum:

- (1) authorization for the provider to engage in an activity which directly affects the client;
- (2) the goals, purposes, and procedures of the proposed services;
- (3) the factors that may impact the duration of the service;
- (4) the applicable fee schedule;
- (5) the limits to the client's privacy, including, but not limited to, the provider's duty to warn pursuant to section 148F.130, subdivision 2;
- (6) the provider's responsibilities if the client terminates the service;
- (7) the significant risks and benefits of the service, including whether the service may affect the client's legal or other interests;
- (8) the provider's responsibilities under section 148F.125, subdivision 3, if the proposed service, method, or procedure is of an experimental, emerging, or innovative nature; and
- (9) if applicable, information that the provider is developing competence in the proposed service, method, or procedure, and alternatives to the proposed service, if any.

Subd. 2. **Updating informed consent.** If there is a substantial change in the nature or purpose of a service, the provider must obtain a new informed consent from the client.

Subd. 3. **Emergency or crisis services.** Informed consent is not required when a provider is providing emergency or crisis services. If services continue after the emergency or crisis has abated, informed consent must be obtained.

Sec. 29. **[148F.145] TERMINATION OF SERVICES.**

Subdivision 1. **Right to terminate services.** Either the client or the provider may terminate the professional relationship unless prohibited by law or court order.

Subd. 2. **Mandatory termination of services.** The provider shall promptly terminate services to a client whenever:

(1) the provider's objectivity or effectiveness is impaired, unless a resolution can be achieved as permitted in section 148F.155, subdivision 2; or

(2) the client would be harmed by further services.

Subd. 3. **Notification of termination.** When the provider initiates a termination of professional services, the provider shall inform the client either orally or in writing. This requirement shall not apply when the termination is due to the successful completion of a predefined service such as an assessment, or if the client terminates the professional relationship.

Subd. 4. **Recommendation upon termination.** (a) Upon termination of counseling services, the provider shall make a recommendation for alcohol and drug counseling services if requested by the client or if the provider believes the services are needed by the client.

(b) A recommendation for alcohol and drug counseling services is not required if the professional service provided is limited to an alcohol and drug assessment and a recommendation for continued services is not requested.

Subd. 5. **Absence from practice.** Nothing in this section requires the provider to terminate a client due to an absence from practice that is the result of a period of illness or injury that does not affect the provider's ability to practice with reasonable skill and safety, as long as arrangements have been made for temporary counseling services that may be needed by the client during the provider's absence.

Sec. 30. **[148F.150] RECORD KEEPING.**

Subdivision 1. **Record-keeping requirements.** Providers must maintain accurate and legible client records. Records must include, at a minimum:

(1) an accurate chronological listing of all substantive contacts with the client;

(2) documentation of services, including:

(i) assessment methods, data, and reports;

(ii) an initial treatment plan and any revisions to the plan;

(iii) the name of the individual providing services;

(iv) the name and credentials of the individual who is professionally responsible for the services provided;

(v) case notes for each date of service, including interventions;

(vi) consultations with collateral sources;

(vii) diagnoses or presenting problems; and

(viii) documentation that informed consent was obtained, including written informed consent documents;

(3) copies of all correspondence relevant to the client;

(4) a client personal data sheet;

(5) copies of all client authorizations for release of information;

(6) an accurate chronological listing of all fees charged, if any, to the client or a third-party payer; and

(7) any other documents pertaining to the client.

Subd. 2. **Duplicate records.** If the client records containing the documentation required by subdivision 1 are maintained by the agency, clinic, or other facility where the provider renders services, the provider is not required to maintain duplicate records of client information.

Subd. 3. **Record retention.** The provider shall retain a client's record for a minimum of seven years after the date of the provider's last professional service to the client, except as otherwise provided by law. If the client is a minor, the record retention period does not begin until the client reaches the age of 18, except as otherwise provided by law.

Sec. 31. **[148F.155] IMPAIRED OBJECTIVITY OR EFFECTIVENESS.**

Subdivision 1. **Situations involving impaired objectivity or effectiveness.** (a) An alcohol and drug counselor must not provide alcohol and drug counseling services to a client or potential client when the counselor's objectivity or effectiveness is impaired.

(b) The provider shall not provide alcohol and drug counseling services to a client if doing so would create a multiple relationship. For purposes of this section, "multiple relationship" means one that is both professional and:

(1) cohabitational;

(2) familial;

(3) one in which there has been personal involvement with the client or family member of the client that is reasonably likely to adversely affect the client's welfare or ability to benefit from services; or

(4) one in which there is significant financial involvement other than legitimate payment for professional services rendered that is reasonably likely to adversely affect the client's welfare or ability to benefit from services.

If an unforeseen multiple relationship arises after services have been initiated, the provider shall promptly terminate the professional relationship.

(c) The provider shall not provide alcohol and drug counseling services to a client who is also the provider's student or supervisee. If an unforeseen situation arises in which both types of services are required or requested by the client or a third party, the provider shall decline to provide the services.

(d) The provider shall not provide alcohol and drug counseling services to a client when the provider is biased for or against the client for any reason that interferes with the provider's impartial judgment, including where the client is a member of a class legally protected from discrimination. The provider may provide services if the provider is working to resolve the impairment in the manner required under subdivision 2.

(e) The provider shall not provide alcohol and drug counseling services to a client when there is a fundamental divergence or conflict of service goals, interests, values, or attitudes between the client and the provider that adversely affects the professional relationship. The provider may provide services if the provider is working to resolve the impairment in the manner required under subdivision 2.



Subd. 2. **Resolution of impaired objectivity or effectiveness.** (a) When an impairment occurs that is listed in subdivision 1, paragraph (d) or (e), the provider may provide services only if the provider actively pursues resolution of the impairment and is able to do so in a manner that results in minimal adverse effects on the client or potential client.

(b) If the provider attempts to resolve the impairment, it must be by means of professional education, training, continuing education, consultation, psychotherapy, intervention, supervision, or discussion with the client or potential client, or an appropriate combination thereof.

Sec. 32. **[148F.160] PROVIDER IMPAIRMENT.**

The provider shall not provide counseling services to clients when the provider is unable to provide services with reasonable skill and safety as a result of a physical or mental illness or condition, including, but not limited to, substance abuse or dependence. During the period the provider is unable to practice with reasonable skill and safety, the provider shall either promptly terminate the professional relationship with all clients or shall make arrangements for other alcohol and drug counselors to provide temporary services during the provider's absence.

Sec. 33. **[148F.165] CLIENT WELFARE.**

Subdivision 1. **Explanation of procedures.** A client has the right to have, and a counselor has the responsibility to provide, a nontechnical explanation of the nature and purpose of the counseling procedures to be used and the results of tests administered to the client. The counselor shall establish procedures to be followed if the explanation is to be provided by another individual under the direction of the counselor.

Subd. 2. **Client bill of rights.** The client bill of rights required by section 144.652 shall be prominently displayed on the premises of the professional practice or provided as a handout to each client. The document must state that consumers of alcohol and drug counseling services have the right to:

- (1) expect that the provider meets the minimum qualifications of training and experience required by state law;
- (2) examine public records maintained by the Board of Behavioral Health and Therapy that contain the credentials of the provider;
- (3) report complaints to the Board of Behavioral Health and Therapy;
- (4) be informed of the cost of professional services before receiving the services;
- (5) privacy as defined and limited by law and rule;
- (6) be free from being the object of unlawful discrimination while receiving counseling services;
- (7) have access to their records as provided in sections 144.291 to 144.298 and 148F.135, subdivision 1, except as otherwise provided by law;
- (8) be free from exploitation for the benefit or advantage of the provider;
- (9) terminate services at any time, except as otherwise provided by law or court order;
- (10) know the intended recipients of assessment results;

(11) withdraw consent to release assessment results, unless the right is prohibited by law or court order or was waived by prior written agreement;

(12) a nontechnical description of assessment procedures; and

(13) a nontechnical explanation and interpretation of assessment results, unless this right is prohibited by law or court order or was waived by prior written agreement.

Subd. 3. **Stereotyping.** The provider shall treat the client as an individual and not impose on the client any stereotypes of behavior, values, or roles related to human diversity.

Subd. 4. **Misuse of client relationship.** The provider shall not misuse the relationship with a client due to a relationship with another individual or entity.

Subd. 5. **Exploitation of client.** The provider shall not exploit the professional relationship with a client for the provider's emotional, financial, sexual, or personal advantage or benefit. This prohibition extends to former clients who are vulnerable or dependent on the provider.

Subd. 6. **Sexual behavior with client.** A provider shall not engage in any sexual behavior with a client including:

(1) sexual contact, as defined in section 604.20, subdivision 7; or

(2) any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing to the client.

Subd. 7. **Sexual behavior with a former client.** A provider shall not engage in any sexual behavior as described in subdivision 6 within the two-year period following the date of the last counseling service to a former client. This prohibition applies whether or not the provider has formally terminated the professional relationship. This prohibition extends indefinitely for a former client who is vulnerable or dependent on the provider.

Subd. 8. **Preferences and options for treatment.** A provider shall disclose to the client the provider's preferences for choice of treatment or outcome and shall present other options for the consideration or choice of the client.

Subd. 9. **Referrals.** A provider shall make a prompt and appropriate referral of the client to another professional when requested to make a referral by the client.

Sec. 34. **[148F.170] WELFARE OF STUDENTS, SUPERVISEES, AND RESEARCH SUBJECTS.**

Subdivision 1. **General.** Due to the evaluative, supervisory, or other authority that providers who teach, evaluate, supervise, or conduct research have over their students, supervisees, or research subjects, they shall protect the welfare of these individuals.

Subd. 2. **Student, supervisee, and research subject protections.** To protect the welfare of their students, supervisees, or research subjects, providers shall not:

(1) discriminate on the basis of race, ethnicity, national origin, religious affiliation, language, age, gender, physical disabilities, mental capabilities, sexual orientation or identity, marital status, or socioeconomic status;

(2) exploit or misuse the professional relationship for the emotional, financial, sexual, or personal advantage or benefit of the provider or another individual or entity;

(3) engage in any sexual behavior with a current student, supervisee, or research subject, including sexual contact, as defined in section 604.20, subdivision 7, or any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing. Nothing in this section shall prohibit a provider from engaging in teaching or research with an individual with whom the provider has a preexisting and ongoing sexual relationship;

(4) engage in any behavior likely to be deceptive or fraudulent;

(5) disclose evaluative information except for legitimate professional or scientific purposes; or

(6) engage in any other unprofessional conduct.

Sec. 35. **[148F.175] MEDICAL AND OTHER HEALTH CARE CONSIDERATIONS.**

Subdivision 1. **Coordinating services with other health care professionals.** Upon initiating services, the provider shall inquire whether the client has a preexisting relationship with another health care professional. If the client has such a relationship, and it is relevant to the provider's services to the client, the provider shall, to the extent possible and consistent with the wishes and best interests of the client, coordinate services for the client with the other health care professional. This requirement does not apply if brief crisis intervention services are provided.

Subd. 2. **Reviewing health care information.** If the provider determines that a client's preexisting relationship with another health care professional is relevant to the provider's services to the client, the provider shall, to the extent possible and consistent with the wishes and best interests of the client, review this information with the treating health care professional.

Subd. 3. **Relevant medical conditions.** If the provider believes that a client's psychological condition may have medical etiology or consequence, the provider shall, within the limits of the provider's competence, discuss this with the client and offer to assist in identifying medical resources for the client.

Sec. 36. **[148F.180] ASSESSMENTS; TESTS; REPORTS.**

Subdivision 1. **Assessments.** Providers who conduct assessments of individuals shall base their assessments on records, information, observations, and techniques sufficient to substantiate their findings. They shall render opinions only after they have conducted an examination of the individual adequate to support their statements or conclusions, unless an examination is not practical despite reasonable efforts. An assessment may be limited to reviewing records or providing testing services when an individual examination is not necessary for the opinion requested.

Subd. 2. **Tests.** Providers may administer and interpret tests within the scope of the counselor's training, skill, and competence.

Subd. 3. **Reports.** Written and oral reports, including testimony as an expert witness and letters to third parties concerning a client, must be based on information and techniques sufficient to substantiate their findings. Reports must include:

(1) a description of all assessments, evaluations, or other procedures, including materials reviewed, which serve as a basis for the provider's conclusions;

(2) reservations or qualifications concerning the validity or reliability of the opinions and conclusions formulated and recommendations made;

(3) a statement concerning any discrepancy, disagreement, or inconsistent or conflicting information regarding the circumstances of the case that may have a bearing on the provider's conclusions;

(4) a statement of the nature of and reason for the use of a test that is administered, recorded, scored, or interpreted in other than a standard and objective manner; and

(5) a statement indicating when test interpretations or report conclusions are not based on direct contact between the client and the provider.

Subd. 4. **Private information.** Test results and interpretations regarding an individual are private information.

Sec. 37. **[148F.185] PUBLIC STATEMENTS.**

Subdivision 1. **Prohibition against false or misleading information.** Public statements by providers must not include false or misleading information. Providers shall not solicit or use testimonials by quotation or implication from current clients or former clients who are vulnerable to undue influence. The provider shall make reasonable efforts to ensure that public statements by others on behalf of the provider are truthful and shall make reasonable remedial efforts to bring a public statement into compliance with sections 148F.120 to 148F.205 when the provider becomes aware of a violation.

Subd. 2. **Misrepresentation.** The provider shall not misrepresent directly or by implication, professional qualifications including education, training, experience, competence, credentials, or areas of specialization. The provider shall not misrepresent, directly or by implication, professional affiliations or the purposes and characteristics of institutions and organizations with which the provider is professionally associated.

Subd. 3. **Use of specialty board designation.** Providers may represent themselves as having an area of specialization from a specialty board, such as a designation as a diplomate or fellow, if the specialty board used, at a minimum, the following criteria to award such a designation:

(1) specified educational requirements defined by the specialty board;

(2) specified experience requirements defined by the specialty board;

(3) a work product evaluated by other specialty board members; and

(4) a face-to-face examination by a committee of specialty board members or a comprehensive written examination in the area of specialization.

Sec. 38. **[148F.190] FEES; STATEMENTS.**

Subdivision 1. **Disclosure.** The provider shall disclose the fees for professional services to a client before providing services.

Subd. 2. **Itemized statement.** The provider shall itemize fees for all services for which the client or a third party is billed and make the itemized statement available to the client. The statement shall identify the date the service was provided, the nature of the service, the name of the individual who provided the service, and the name of the individual who is professionally responsible for the service.

Subd. 3. **Representation of billed services.** The provider shall not directly or by implication misrepresent to the client or to a third party billed for services the nature or the extent of the services provided.

Subd. 4. **Claiming fees.** The provider shall not claim a fee for counseling services unless the provider is either the direct provider of the services or is clinically responsible for providing the services and under whose supervision the services were provided.

Subd. 5. **Referrals.** No commission, rebate, or other form of remuneration may be given or received by a provider for the referral of clients for counseling services.

Sec. 39. **[148F.195] AIDING AND ABETTING UNLICENSED PRACTICE.**

A provider shall not aid or abet an unlicensed individual to engage in the practice of alcohol and drug counseling. A provider who supervises a student as part of an alcohol and drug counseling practicum is not in violation of this section. Properly qualified individuals who administer and score testing instruments under the direction of a provider who maintains responsibility for the service are not considered in violation of this section.

Sec. 40. **[148F.200] VIOLATION OF LAW.**

A provider shall not violate any law in which the facts giving rise to the violation involve the practice of alcohol and drug counseling as defined in sections 148F.001 to 148F.205. In any board proceeding alleging a violation of this section, the proof of a conviction of a crime constitutes proof of the underlying factual elements necessary to that conviction.

Sec. 41. **[148F.205] COMPLAINTS TO BOARD.**

Subdivision 1. **Mandatory reporting requirements.** A provider is required to file a complaint when the provider knows or has reason to believe that another provider:

(1) is unable to practice with reasonable skill and safety as a result of a physical or mental illness or condition, including, but not limited to, substance abuse or dependence, except that this mandated reporting requirement is deemed fulfilled by a report made to the Health Professionals Services Program (HPSP) as provided by section 214.33, subdivision 1;

(2) is engaging in or has engaged in sexual behavior with a client or former client in violation of section 148F.165, subdivision 6 or 7;

(3) has failed to report abuse or neglect of children or vulnerable adults in violation of section 626.556 or 626.557; or

(4) has employed fraud or deception in obtaining or renewing an alcohol and drug counseling license.

Subd. 2. **Optional reporting requirements.** Other than conduct listed in subdivision 1, a provider who has reason to believe that the conduct of another provider appears to be in violation of sections 148F.001 to 148F.205 may file a complaint with the board.

Subd. 3. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an alcohol and drug counselor's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any

other disciplinary action for conduct that might constitute grounds for disciplinary action by the board under sections 148F.001 to 148F.205. The institution, organization, or governmental entity shall also report the resignation of any alcohol and drug counselors before the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or before the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

**Subd. 4. Professional societies.** A state or local professional society for alcohol and drug counselors shall report to the board any termination, revocation, or suspension of membership or any other disciplinary action taken against an alcohol and drug counselor. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the board.

**Subd. 5. Insurers.** Each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to alcohol and drug counselors or the Medical Joint Underwriting Association under chapter 62F, shall submit to the board quarterly reports concerning the alcohol and drug counselors against whom malpractice settlements and awards have been made. The report must contain at least the following information:

(1) the total number of malpractice settlements or awards made;

(2) the date the malpractice settlements or awards were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made;

(4) the dollar amount of each settlement or award;

(5) the address of the practice of the alcohol and drug counselor against whom an award was made or with whom a settlement was made; and

(6) the name of the alcohol and drug counselor against whom an award was made or with whom a settlement was made. The insurance company shall, in addition to the above information, submit to the board any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that a licensed alcohol and drug counselor may have engaged in conduct violating this chapter.

**Subd. 6. Self-reporting.** An alcohol and drug counselor shall report to the board any personal action that would require that a report be filed with the board by any person, health care facility, business, or organization under subdivisions 1 and 3 to 5. The alcohol and drug counselor shall also report the revocation, suspension, restriction, limitation, or other disciplinary action in this state and report the filing of charges regarding the practitioner's license or right of practice in another state or jurisdiction.

**Subd. 7. Permission to report.** A person who has knowledge of any conduct constituting grounds for disciplinary action relating to the practice of alcohol and drug counseling under this chapter may report the violation to the board.

**Subd. 8. Client complaints to the board.** A provider shall, upon request, provide information regarding the procedure for filing a complaint with the board and shall, upon request, assist with filing a complaint. A provider shall not attempt to dissuade a client from filing a complaint with the board, or require that the client waive the right to file a complaint with the board as a condition for providing services.

Subd. 9. **Deadlines; forms.** Reports required by subdivisions 1 and 3 to 6 must be submitted no later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The board may provide forms for the submission of the reports required by this section and may require that reports be submitted on the forms provided.

Sec. 42. **REPORT; BOARD OF BEHAVIORAL HEALTH AND THERAPY.**

(a) The Board of Behavioral Health and Therapy shall convene a working group to evaluate the feasibility of a tiered licensure system for alcohol and drug counselors in Minnesota. This evaluation shall include proposed scopes of practice for each tier, specific degree and other education and examination requirements for each tier, the clinical settings in which each tier of practitioner would be utilized, and any other issues the board deems necessary.

(b) Members of the working group shall include, but not be limited to, members of the board, licensed alcohol and drug counselors, alcohol and drug counselor temporary permit holders, faculty members from two- and four-year education programs, professional organizations, and employers.

(c) The board shall present its written report, including any proposed legislation, to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services no later than December 15, 2015.

(d) The working group is not subject to the provisions of Minnesota Statutes, section 15.059.

Sec. 43. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall consult with the Board of Behavioral Health and Therapy to make any necessary cross-reference changes that are needed as a result of the passage of this act.

Sec. 44. **REPEALER.**

(a) Minnesota Statutes 2010, sections 148C.01, subdivisions 1, 1a, 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 4, 4a, 5, 7, 9, 10, 11, 11a, 12, 12a, 13, 14, 15, 16, 17, and 18; 148C.015; 148C.03, subdivisions 1 and 4; 148C.0351, subdivisions 1, 3, and 4; 148C.0355; 148C.04, subdivisions 1, 2, 3, 4, 5a, 6, and 7; 148C.044; 148C.045; 148C.05, subdivisions 1, 1a, 5, and 6; 148C.055; 148C.07; 148C.075; 148C.08; 148C.09, subdivisions 1, 1a, 2, and 4; 148C.091; 148C.093; 148C.095; 148C.099; 148C.10, subdivisions 1, 2, and 3; 148C.11; and 148C.12, subdivisions 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, are repealed.

(b) Minnesota Rules, parts 4747.0010; 4747.0020; 4747.0030, subparts 1, 2, 3, 4, 5, 7, 8, 9, 10, 15, 17, 18, 20, 21, 22, 24, and 29; 4747.0040; 4747.0050; 4747.0060; 4747.0070, subparts 1, 2, 3, and 6; 4747.0200; 4747.0400, subpart 1; 4747.0700; 4747.0800; 4747.0900; 4747.1100, subparts 1, 4, 5, 6, 7, 8, and 9; 4747.1400, subparts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, and 13; 4747.1500; 6310.3100, subpart 2; 6310.3600; and 6310.3700, subpart 1, are repealed.

Sec. 45. **EFFECTIVE DATE.**

This article is effective August 1, 2012.

ARTICLE 5  
LICENSED PROFESSIONAL COUNSELING

Section 1. Minnesota Statutes 2010, section 148B.5301, subdivision 1, is amended to read:

Subdivision 1. **General requirements.** (a) To be licensed as a licensed professional clinical counselor (LPCC), an applicant must provide satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed a master's or doctoral degree program in counseling or a related field, as determined by the board based on the criteria in items (i) to (x), that includes a minimum of 48 semester hours or 72 quarter hours and a supervised field experience in counseling that is not fewer than 700 hours. The degree must be from a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP) or from an institution of higher education that is accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA). Specific academic course content and training must include coursework in each of the following subject areas:

(i) helping relationship, including counseling theory and practice;

(ii) human growth and development;

(iii) lifestyle and career development;

(iv) group dynamics, processes, counseling, and consulting;

(v) assessment and appraisal;

(vi) social and cultural foundations, including multicultural issues;

(vii) principles of etiology, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(viii) family counseling and therapy;

(ix) research and evaluation; and

(x) professional counseling orientation and ethics;

(4) has demonstrated competence in professional counseling by passing the National Clinical Mental Health Counseling Examination (NCMHCE), administered by the National Board for Certified Counselors, Inc. (NBCC) and ethical, oral, and situational examinations as prescribed by the board. ~~In lieu of the NCMHCE, applicants who have taken and passed the National Counselor Examination (NCE) administered by the NBCC, or another board-approved examination, need only take and pass the Examination of Clinical Counseling Practice (ECCP) administered by the NBCC;~~

(5) has earned graduate-level semester credits or quarter-credit equivalents in the following clinical content areas as follows:

(i) six credits in diagnostic assessment for child or adult mental disorders; normative development; and psychopathology, including developmental psychopathology;

(ii) three credits in clinical treatment planning, with measurable goals;



(iii) six credits in clinical intervention methods informed by research evidence and community standards of practice;

(iv) three credits in evaluation methodologies regarding the effectiveness of interventions;

(v) three credits in professional ethics applied to clinical practice; and

(vi) three credits in cultural diversity; and

(6) has demonstrated successful completion of 4,000 hours of supervised, post-master's degree professional practice in the delivery of clinical services in the diagnosis and treatment of child and adult mental illnesses and disorders, conducted according to subdivision 2.

(b) If coursework in paragraph (a) was not completed as part of the degree program required by paragraph (a), clause (3), the coursework must be taken and passed for credit, and must be earned from a counseling program or institution that meets the requirements of paragraph (a), clause (3).

Sec. 2. Minnesota Statutes 2010, section 148B.5301, is amended by adding a subdivision to read:

**Subd. 3a. Conversion from licensed professional counselor to licensed professional clinical counselor.** (a) Until August 1, 2014, an individual currently licensed in the state of Minnesota as a licensed professional counselor may convert to a LPCC by providing evidence satisfactory to the board that the applicant has met the following requirements:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has a license that is active and in good standing;

(4) has no complaints pending, uncompleted disciplinary orders, or corrective action agreements;

(5) has completed a master's or doctoral degree program in counseling or a related field, as determined by the board, and whose degree was from a counseling program recognized by CACREP or from an institution of higher education that is accredited by a regional accrediting organization recognized by CHEA;

(6) has earned 24 graduate-level semester credits or quarter-credit equivalents in clinical coursework which includes content in the following clinical areas:

(i) diagnostic assessment for child and adult mental disorders; normative development; and psychopathology, including developmental psychopathology;

(ii) clinical treatment planning, with measurable goals;

(iii) clinical intervention methods informed by research evidence and community standards of practice;

(iv) evaluation methodologies regarding the effectiveness of interventions;

(v) professional ethics applied to clinical practice; and

(vi) cultural diversity;

(7) has demonstrated, to the satisfaction of the board, successful completion of 4,000 hours of supervised, post-master's degree professional practice in the delivery of clinical services in the diagnosis and treatment of child and adult mental illnesses and disorders; and

(8) has paid the LPCC application and licensure fees required in section 148B.53, subdivision 3.

(b) If the coursework in paragraph (a) was not completed as part of the degree program required by paragraph (a), clause (5), the coursework must be taken and passed for credit, and must be earned from a counseling program or institution that meets the requirements in paragraph (a), clause (5).

(c) This subdivision expires August 1, 2014.

**EFFECTIVE DATE.** This section is effective retroactively from August 1, 2011.

Sec. 3. Minnesota Statutes 2010, section 148B.5301, subdivision 4, is amended to read:

Subd. 4. **Conversion to licensed professional clinical counselor after August 1, 2011 2014.** After August 1, 2014, an individual licensed in the state of Minnesota as a licensed professional counselor may convert to a LPCC by providing evidence satisfactory to the board that the applicant has met the requirements of subdivisions 1 and 2, subject to the following:

(1) the individual's license must be active and in good standing;

(2) the individual must not have any complaints pending, uncompleted disciplinary orders, or corrective action agreements; and

(3) the individual has paid the LPCC application and licensure fees required in section 148B.53, subdivision 3.

Sec. 4. Minnesota Statutes 2010, section 148B.54, subdivision 2, is amended to read:

Subd. 2. **Continuing education.** At the completion of the first four years of licensure, a licensee must provide evidence satisfactory to the board of completion of 12 additional postgraduate semester credit hours or its equivalent in counseling as determined by the board, except that no licensee shall be required to show evidence of greater than 60 semester hours or its equivalent. In addition to completing the requisite graduate coursework, each licensee shall also complete in the first four years of licensure a minimum of 40 hours of continuing education activities approved by the board under Minnesota Rules, part 2150.2540. Graduate credit hours successfully completed in the first four years of licensure may be applied to both the graduate credit requirement and to the requirement for 40 hours of continuing education activities. A licensee may receive 15 continuing education hours per semester credit hour or ten continuing education hours per quarter credit hour. Thereafter, at the time of renewal, each licensee shall provide evidence satisfactory to the board that the licensee has completed during each two-year period at least the equivalent of 40 clock hours of professional postdegree continuing education in programs approved by the board and continues to be qualified to practice under sections 148B.50 to 148B.593.

Sec. 5. Minnesota Statutes 2010, section 148B.54, subdivision 3, is amended to read:

Subd. 3. **Relicensure following termination.** An individual whose license was terminated prior to August 1, 2010, and who can demonstrate completion of the graduate credit requirement in subdivision 2, does not need to comply with the continuing education requirement of Minnesota Rules, part 2150.2520, subpart 4, or with the continuing education requirements for relicensure following termination in Minnesota Rules, part 2150.0130, subpart 2. This section does not apply to an individual whose license has been canceled.

Sec. 6. **EFFECTIVE DATE.**

Sections 1 to 5 are effective August 1, 2012, unless a different effective date is specified.

ARTICLE 6  
HEALTH BOARDS

Section 1. Minnesota Statutes 2010, section 148.10, subdivision 7, is amended to read:

Subd. 7. **Conviction of a felony-level criminal sexual conduct offense.** (a) Except as provided in paragraph ~~(e)~~ (f), the board shall not grant or renew a license to practice chiropractic to any person who has been convicted on or after August 1, 2010, of any of the provisions of sections 609.342, subdivision 1, 609.343, subdivision 1, 609.344, subdivision 1, paragraphs (c) to (o), or 609.345, subdivision 1, paragraphs (b) to (o).

(b) The board shall not grant or renew a license to practice chiropractic to any person who has been convicted in any other state or country on or after August 1, 2011, of an offense where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a).

~~(b)~~ (c) A license to practice chiropractic is automatically revoked if the licensee is convicted of an offense listed in paragraph (a) ~~of this section~~.

~~(e)~~ (d) A license to practice chiropractic that has been denied or revoked under this subdivision is not subject to chapter 364.

~~(d)~~ (e) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, unless the court stays imposition or execution of the sentence and final disposition of the case is accomplished at a nonfelony level.

~~(e)~~ (f) The board may establish criteria whereby an individual convicted of an offense listed in paragraph (a) of this subdivision may become licensed provided that the criteria:

(1) utilize a rebuttable presumption that the applicant is not suitable for licensing or credentialing;

(2) provide a standard for overcoming the presumption; and

(3) require that a minimum of ten years has elapsed since the applicant was released from any incarceration or supervisory jurisdiction related to the offense.

The board shall not consider an application under this paragraph if the board determines that the victim involved in the offense was a patient or a client of the applicant at the time of the offense.

Sec. 2. Minnesota Statutes 2010, section 214.09, is amended by adding a subdivision to read:

Subd. 5. **Health-related boards.** No current member of a health-related licensing board may seek a paid employment position with that board.

Sec. 3. Minnesota Statutes 2010, section 214.103, is amended to read:

**214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINT, INVESTIGATION, AND HEARING.**

Subdivision 1. **Application.** For purposes of this section, "board" means "health-related licensing board" and does not include the non-health-related licensing boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they apply to the health-related licensing boards.

Subd. 1a. **Notifications and resolution.** (a) No more than 14 calendar days after receiving a complaint regarding a licensee, the board shall notify the complainant that the board has received the complaint and shall provide the complainant with the written description of the board's complaint process. The board shall periodically, but no less than every 120 days, notify the complainant of the status of the complaint consistent with section 13.41.

(b) Except as provided in paragraph (d), no more than 60 calendar days after receiving a complaint regarding a licensee, the board must notify the licensee that the board has received a complaint and inform the licensee of:

(1) the substance of the complaint;

(2) the sections of the law that have allegedly been violated;

(3) the sections of the professional rules that have allegedly been violated; and

(4) whether an investigation is being conducted.

(c) The board shall periodically, but no less than every 120 days, notify the licensee of the status of the complaint consistent with section 13.41.

(d) Paragraphs (b) and (c) do not apply if the board determines that such notice would compromise the board's investigation and that such notice cannot reasonably be accomplished within this time.

(e) No more than one year after receiving a complaint regarding a licensee, the board must resolve or dismiss the complaint unless the board determines that resolving or dismissing the complaint cannot reasonably be accomplished in this time and is not in the public interest.

(f) Failure to make notifications or to resolve the complaint within the time established in this subdivision shall not deprive the board of jurisdiction to complete the investigation or to take corrective, disciplinary, or other action against the licensee that is authorized by law. Such a failure by the board shall not be the basis for a licensee's request for the board to dismiss a complaint, and shall not be considered by an administrative law judge, the board, or any reviewing court.

Subd. 2. **Receipt of complaint.** The boards shall receive and resolve complaints or other communications, whether oral or written, against regulated persons. Before resolving an oral complaint, the executive director or a board member designated by the board to review complaints ~~may~~ shall require the complainant to state the complaint in writing or authorize transcribing the complaint. The executive director or the designated board member shall determine whether the complaint alleges or implies a violation of a statute or rule which the board is empowered to enforce. The executive director or the designated board member may consult with the designee of the attorney general as to a board's jurisdiction over a complaint. If the executive director or the designated board member determines that it is necessary, the executive director may seek additional information to determine whether the complaint is jurisdictional or to clarify the nature of the allegations by obtaining records or other written material, obtaining a handwriting sample from the regulated person, clarifying the alleged facts with the complainant, and requesting a written response from the subject of the complaint.

Subd. 3. **Referral to other agencies.** The executive director shall forward to another governmental agency any complaints received by the board which do not relate to the board's jurisdiction but which relate to matters within the jurisdiction of another governmental agency. The agency shall advise the executive director of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule which a board is empowered to enforce must be forwarded to the executive director of the board to be processed in accordance with this section. Governmental agencies may coordinate and conduct joint investigations of complaints that involve more than one governmental agency.

Subd. 4. **Role of the attorney general.** The executive director or the designated board member shall forward a complaint and any additional information to the designee of the attorney general when the executive director or the designated board member determines that a complaint is jurisdictional and:

(1) requires investigation before the executive director or the designated board member may resolve the complaint;

(2) that attempts at resolution for disciplinary action or the initiation of a contested case hearing is appropriate;

(3) that an agreement for corrective action is warranted; or

(4) that the complaint should be dismissed, consistent with subdivision 8.

Subd. 5. **Investigation by attorney general.** (a) If the executive director or the designated board member determines that investigation is necessary before resolving the complaint, the executive director shall forward the complaint and any additional information to the designee of the attorney general. The designee of the attorney general shall evaluate the communications forwarded and investigate as appropriate.

(b) The designee of the attorney general may also investigate any other complaint forwarded under subdivision 3 when the designee of the attorney general determines that investigation is necessary.

(c) In the process of evaluation and investigation, the designee shall consult with or seek the assistance of the executive director or the designated board member. The designee may also consult with or seek the assistance of other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation.

(d) Upon completion of the investigation, the designee shall forward the investigative report to the executive director with recommendations for further consideration or dismissal.

Subd. 6. **Attempts at resolution.** (a) At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes of investigation, negotiation, education, or conciliation. Neither the executive director nor any member of a board's staff shall be a voting member in any attempts at resolutions which may result in disciplinary or corrective action. The results of attempts at resolution with the regulated person may include a recommendation to the board for disciplinary action, an agreement between the executive director or the designated board member and the regulated person for corrective action, or the dismissal of a complaint. If attempts at resolution are not in the public interest ~~or are not satisfactory to the executive director or the designated board member, then the executive director or the designated board member may initiate~~ a contested case hearing may be initiated.

(1) The designee of the attorney general shall represent the board in all attempts at resolution which the executive director or the designated board member anticipate may result in disciplinary action. A stipulation between the executive director or the designated board member and the regulated person shall be presented to the board for the board's consideration. An approved stipulation and resulting order shall become public data.

(2) The designee of the attorney general shall represent the board upon the request of the executive director or the designated board member in all attempts at resolution which the executive director or the designated board member anticipate may result in corrective action. Any agreement between the executive director or the designated board member and the regulated person for corrective action shall be in writing and shall be reviewed by the designee of the attorney general prior to its execution. The agreement for corrective action shall provide for dismissal of the complaint upon successful completion by the regulated person of the corrective action.

(b) Upon receipt of a complaint alleging sexual contact or sexual conduct with a client, the board must forward the complaint to the designee of the attorney general for an investigation. If, after it is investigated, the complaint appears to provide a basis for disciplinary action, the board shall resolve the complaint by disciplinary action or initiate a contested case hearing. Notwithstanding paragraph (a), clause (2), a board may not take corrective action or dismiss a complaint alleging sexual contact or sexual conduct with a client unless, in the opinion of the executive director, the designated board member, and the designee of the attorney general, there is insufficient evidence to justify disciplinary action.

Subd. 7. **Contested case hearing.** If the executive director or the designated board member determines that attempts at resolution of a complaint are not in the public interest ~~or are not satisfactory to the executive director or the designated board member~~, the executive director or the designated board member, after consultation with the designee of the attorney general, and the concurrence of a second board member, may initiate a contested case hearing under chapter 14. The designated board member or any board member who was consulted during the course of an investigation may participate at the contested case hearing. A designated or consulted board member may not deliberate or vote in any proceeding before the board pertaining to the case.

Subd. 8. **Dismissal and reopening of a complaint.** (a) A complaint may not be dismissed without the concurrence of at least two board members and, upon the request of the complainant, a review by a representative of the attorney general's office. The designee of the attorney general must review before dismissal any complaints which allege any violation of chapter 609, any conduct which would be required to be reported under section 626.556 or 626.557, any sexual contact or sexual conduct with a client, any violation of a federal law, any actual or potential inability to practice the regulated profession or occupation by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental or physical condition, any violation of state medical assistance laws, or any disciplinary action related to credentialing in another jurisdiction or country which was based on the same or related conduct specified in this subdivision.

(b) The board may reopen a dismissed complaint if the board receives newly discovered information that was not available to the board during the initial investigation of the complaint, or if the board receives a new complaint that indicates a pattern of behavior or conduct.

Subd. 9. **Information to complainant.** A board shall furnish to a person who made a complaint a written description of the board's complaint process, and actions of the board relating to the complaint.

Subd. 10. **Prohibited participation by board member.** A board member who has actual bias or a current or former direct financial or professional connection with a regulated person may not vote in board actions relating to the regulated person.

Sec. 4. **[214.108] HEALTH-RELATED LICENSING BOARDS; LICENSEE GUIDANCE.**

A health-related licensing board may offer guidance to current licensees about the application of laws and rules the board is empowered to enforce. This guidance shall not bind any court or other adjudicatory body.

Sec. 5. **[214.109] RECORD KEEPING.**

(a) A board may take administrative action against a regulated person whose records do not meet the standards of professional practice. Action taken under this paragraph shall not be considered disciplinary action.

(b) Records that are fraudulent or could result in patient harm may be handled through disciplinary or other corrective action.

Sec. 6. Laws 2010, chapter 349, section 1, the effective date, is amended to read:

**EFFECTIVE DATE.** This section is effective for ~~new~~ licenses issued or renewed on or after August 1, 2010.

ARTICLE 7  
DENTISTRY

Section 1. Minnesota Statutes 2010, section 150A.06, subdivision 1c, is amended to read:

Subd. 1c. **Specialty dentists.** (a) The board may grant a specialty license in the specialty areas of dentistry that are recognized by the American Dental Association.

(b) An applicant for a specialty license shall:

(1) have successfully completed a postdoctoral specialty education program accredited by the Commission on Dental Accreditation of the American Dental Association, or have announced a limitation of practice before 1967;

(2) have been certified by a specialty examining board approved by the Minnesota Board of Dentistry, or provide evidence of having passed a clinical examination for licensure required for practice in any state or Canadian province, or in the case of oral and maxillofacial surgeons only, have a Minnesota medical license in good standing;

(3) have been in active practice or a postdoctoral specialty education program or United States government service at least 2,000 hours in the 36 months prior to applying for a specialty license;

(4) if requested by the board, be interviewed by a committee of the board, which may include the assistance of specialists in the evaluation process, and satisfactorily respond to questions designed to determine the applicant's knowledge of dental subjects and ability to practice;

(5) if requested by the board, present complete records on a sample of patients treated by the applicant. The sample must be drawn from patients treated by the applicant during the 36 months preceding the date of application. The number of records shall be established by the board. The records shall be reasonably representative of the treatment typically provided by the applicant;

(6) at board discretion, pass a board-approved English proficiency test if English is not the applicant's primary language;

(7) pass all components of the National ~~Dental~~ Board Dental Examinations;

(8) pass the Minnesota Board of Dentistry jurisprudence examination;

(9) abide by professional ethical conduct requirements; and

(10) meet all other requirements prescribed by the Board of Dentistry.

(c) The application must include:

(1) a completed application furnished by the board;

(2) at least two character references from two different dentists, one of whom must be a dentist practicing in the same specialty area, and the other the director of the specialty program attended;

- (3) a licensed physician's statement attesting to the applicant's physical and mental condition;
- (4) a statement from a licensed ophthalmologist or optometrist attesting to the applicant's visual acuity;
- (5) a nonrefundable fee; and

(6) a notarized, unmounted passport-type photograph, three inches by three inches, taken not more than six months before the date of application.

(d) A specialty dentist holding a specialty license is limited to practicing in the dentist's designated specialty area. The scope of practice must be defined by each national specialty board recognized by the American Dental Association.

(e) A specialty dentist holding a general dentist license is limited to practicing in the dentist's designated specialty area if the dentist has announced a limitation of practice. The scope of practice must be defined by each national specialty board recognized by the American Dental Association.

(f) All specialty dentists who have fulfilled the specialty dentist requirements and who intend to limit their practice to a particular specialty area may apply for a specialty license.

Sec. 2. Minnesota Statutes 2010, section 150A.06, subdivision 3, is amended to read:

Subd. 3. **Waiver of examination.** (a) All or any part of the examination for dentists or dental hygienists, except that pertaining to the law of Minnesota relating to dentistry and the rules of the board, may, at the discretion of the board, be waived for an applicant who presents a certificate of ~~qualification from~~ having passed all components of the National Board of Dental ~~Examiners~~ Examinations or evidence of having maintained an adequate scholastic standing as determined by the board, in dental school as to dentists, or dental hygiene school as to dental hygienists.

(b) The board shall waive the clinical examination required for licensure for any dentist applicant who is a graduate of a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, who has ~~successfully completed~~ passed all components of the National ~~Dental Board Examination~~ Dental Examinations, and who has satisfactorily completed a Minnesota-based postdoctoral general dentistry residency program (GPR) or an advanced education in general dentistry (AEGD) program after January 1, 2004. The postdoctoral program must be accredited by the Commission on Dental Accreditation of the American Dental Association, be of at least one year's duration, and include an outcome assessment evaluation assessing the resident's competence to practice dentistry. The board may require the applicant to submit any information deemed necessary by the board to determine whether the waiver is applicable. The board may waive the clinical examination for an applicant who meets the requirements of this paragraph and has satisfactorily completed an accredited postdoctoral general dentistry residency program located outside of Minnesota.

Sec. 3. Minnesota Statutes 2010, section 150A.06, subdivision 4, is amended to read:

Subd. 4. **Licensure by credentials.** (a) Any dentist or dental hygienist may, upon application and payment of a fee established by the board, apply for licensure based on the applicant's performance record in lieu of passing an examination approved by the board according to section 150A.03, subdivision 1, and be interviewed by the board to determine if the applicant:

(1) has passed all components of the National Board Dental Examinations;

~~(2)~~ (2) has been in active practice at least 2,000 hours within 36 months of the application date, or passed a board-approved reentry program within 36 months of the application date;



(2) (3) currently has a license in another state or Canadian province and is not subject to any pending or final disciplinary action, or if not currently licensed, previously had a license in another state or Canadian province in good standing that was not subject to any final or pending disciplinary action at the time of surrender;

(3) (4) is of good moral character and abides by professional ethical conduct requirements;

(4) (5) at board discretion, has passed a board-approved English proficiency test if English is not the applicant's primary language; and

(5) (6) meets other credentialing requirements specified in board rule.

(b) An applicant who fulfills the conditions of this subdivision and demonstrates the minimum knowledge in dental subjects required for licensure under subdivision 1 or 2 must be licensed to practice the applicant's profession.

(c) If the applicant does not demonstrate the minimum knowledge in dental subjects required for licensure under subdivision 1 or 2, the application must be denied. When denying a license, the board may notify the applicant of any specific remedy that the applicant could take which, when passed, would qualify the applicant for licensure. A denial does not prohibit the applicant from applying for licensure under subdivision 1 or 2.

(d) A candidate whose application has been denied may appeal the decision to the board according to subdivision 4a.

Sec. 4. Minnesota Statutes 2010, section 150A.06, subdivision 6, is amended to read:

Subd. 6. **Display of name and certificates.** (a) The initial license and subsequent renewal, ~~or current registration certificate,~~ of every dentist, a dental therapist, dental hygienist, or dental assistant shall be conspicuously displayed in every office in which that person practices, in plain sight of patients. When available from the board, the board shall allow the display of a wallet-sized initial license and wallet-sized subsequent renewal certificate only at nonprimary practice locations instead of displaying an original-sized initial license and subsequent renewal certificate.

(b) Near or on the entrance door to every office where dentistry is practiced, the name of each dentist practicing there, as inscribed on the current license certificate, shall be displayed in plain sight.

Sec. 5. Minnesota Statutes 2010, section 150A.09, subdivision 3, is amended to read:

Subd. 3. **Current address, change of address.** Every dentist, dental therapist, dental hygienist, and dental assistant shall maintain with the board a correct and current mailing address and electronic mail address. For dentists engaged in the practice of dentistry, the postal address shall be that of the location of the primary dental practice. Within 30 days after changing postal or electronic mail addresses, every dentist, dental therapist, dental hygienist, and dental assistant shall provide the board written notice of the new address either personally or by first class mail.

Sec. 6. Minnesota Statutes 2010, section 150A.105, subdivision 7, is amended to read:

Subd. 7. **Use of dental assistants.** (a) A licensed dental therapist may supervise dental assistants to the extent permitted in the collaborative management agreement and according to section 150A.10, subdivision 2.

(b) Notwithstanding paragraph (a), a licensed dental therapist is limited to supervising no more than four ~~registered licensed~~ dental assistants or ~~nonregistered nonlicensed~~ dental assistants at any one practice setting.

Sec. 7. Minnesota Statutes 2010, section 150A.106, subdivision 1, is amended to read:

Subdivision 1. **General.** In order to be certified by the board to practice as an advanced dental therapist, a person must:

- (1) complete a dental therapy education program;
- (2) pass an examination to demonstrate competency under the dental therapy scope of practice;
- (3) be licensed as a dental therapist;
- (4) complete 2,000 hours of dental therapy clinical practice under direct or indirect supervision;
- (5) graduate from a master's advanced dental therapy education program;
- (6) pass a board-approved certification examination to demonstrate competency under the advanced scope of practice; and
- (7) submit an application and fee for certification as prescribed by the board.

Sec. 8. Minnesota Statutes 2010, section 150A.14, is amended to read:

**150A.14 IMMUNITY.**

Subdivision 1. **Reporting immunity.** A person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report in good faith to the board under section 150A.13, or for cooperating with an investigation of a report or with staff of the board relative to violations or alleged violations of section 150A.08. Reports are confidential data on individuals under section 13.02, subdivision 3, and are privileged communications.

Subd. 2. **Program Investigation immunity.** (a) Members of the board, persons employed by the board, and board consultants retained by the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under ~~section 150A.13~~ sections 150A.02 to 150A.21, 214.10, and 214.103.

(b) For purposes of this section, a member of the board or a consultant described in paragraph (a) is considered a state employee under section 3.736, subdivision 9."

Delete the title and insert:

"A bill for an act relating to state government; implementing changes to the sunset review; changing certain agency requirements; requiring posting of convictions of felonies or gross misdemeanors and malpractice settlements or judgments for a regulated practitioner; requiring certain information on regulated practitioners; requiring a study; prohibiting transfer of certain funds; requiring reports; setting fees; abolishing the Combative Sports Commission and transferring combative sports duties to the commissioner of labor and industry; establishing a Combative Sports Advisory Council; requiring a review of the Minnesota Board of Medical Practice; regulating alcohol and drug counselors; changing requirements for licensed professional clinical counselors; changing provisions for health-related licensing boards; changing provisions for the practice of dentistry; appropriating money; amending Minnesota Statutes 2010, sections 3.922, by adding a subdivision; 3.9223, subdivision 7; 3.9225, subdivision 7; 3.9226, subdivision 7; 147.01, subdivision 4; 147.111, by adding a subdivision; 148.10, subdivision 7; 148.102, by adding a subdivision; 148.261, subdivision 1; 148.263, by adding a subdivision; 148B.07, by adding

a subdivision; 148B.5301, subdivisions 1, 4, by adding a subdivision; 148B.54, subdivisions 2, 3; 148C.095, by adding a subdivision; 148E.285, by adding a subdivision; 150A.06, subdivisions 1c, 3, 4, 6; 150A.09, subdivision 3; 150A.105, subdivision 7; 150A.106, subdivision 1; 150A.13, by adding a subdivision; 150A.14; 153.24, by adding a subdivision; 214.06, subdivisions 1, 1a, by adding a subdivision; 214.09, by adding a subdivision; 214.103; 341.21, by adding a subdivision; 341.28, subdivision 1; 341.37; Minnesota Statutes 2011 Supplement, sections 3D.04; 3D.06; 3D.21, subdivisions 1, 2; Laws 2010, chapter 349, section 1; proposing coding for new law in Minnesota Statutes, chapters 3D; 16B; 214; 341; proposing coding for new law as Minnesota Statutes, chapter 148F; repealing Minnesota Statutes 2010, sections 138A.01; 138A.02; 138A.03; 138A.04; 138A.05; 138A.06; 148C.01, subdivisions 1, 1a, 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 4, 4a, 5, 7, 9, 10, 11, 11a, 12, 12a, 13, 14, 15, 16, 17, 18; 148C.015; 148C.03, subdivisions 1, 4; 148C.0351, subdivisions 1, 3, 4; 148C.0355; 148C.04, subdivisions 1, 2, 3, 4, 5a, 6, 7; 148C.044; 148C.045; 148C.05, subdivisions 1, 1a, 5, 6; 148C.055; 148C.07; 148C.075; 148C.08; 148C.09, subdivisions 1, 1a, 2, 4; 148C.091; 148C.093; 148C.095; 148C.099; 148C.10, subdivisions 1, 2, 3; 148C.11; 148C.12, subdivisions 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; 341.21, subdivisions 3, 4a; 341.22; 341.23; 341.24; 341.26; Minnesota Rules, parts 4747.0010; 4747.0020; 4747.0030, subparts 1, 2, 3, 4, 5, 7, 8, 9, 10, 15, 17, 18, 20, 21, 22, 24, 29; 4747.0040; 4747.0050; 4747.0060; 4747.0070, subparts 1, 2, 3, 6; 4747.0200; 4747.0400, subpart 1; 4747.0700; 4747.0800; 4747.0900; 4747.1100, subparts 1, 4, 5, 6, 7, 8, 9; 4747.1400, subparts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13; 4747.1500; 6310.3100, subpart 2; 6310.3600; 6310.3700, subpart 1."

With the recommendation that when so amended the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Davids from the Committee on Taxes to which was referred:

H. F. No. 2690, A bill for an act relating to taxation; making technical, administrative, and clarifying changes to individual income, corporate franchise, estate, property, sales and use, special, mineral, and various taxes and tax-related provisions; amending Minnesota Statutes 2010, sections 13.4965, subdivision 3; 16A.46; 270.41, subdivision 5; 270C.42, subdivision 2; 272.01, subdivision 2; 273.124, subdivision 13; 273.1315, subdivisions 1, 2; 273.19, subdivision 1; 273.39; 279.06, subdivision 1; 287.20, by adding a subdivision; 287.385, subdivision 7; 289A.02, by adding a subdivision; 289A.10, by adding a subdivision; 289A.12, by adding a subdivision; 289A.18, by adding a subdivision; 289A.20, subdivision 3, by adding a subdivision; 289A.26, subdivisions 3, 4, 7, 9; 289A.38, subdivisions 7, 8, 9; 289A.42, subdivision 2; 289A.55, subdivision 9; 289A.60, subdivisions 4, 24; 290.01, subdivisions 6b, 19d; 290.0921, subdivision 3; 290.095, subdivision 3; 290.17, subdivision 4; 290A.25; 290B.04, subdivision 2; 296A.22; 297E.14, subdivision 7; 297F.09, subdivision 9; 297F.18, subdivision 7; 297G.09, subdivision 8; 297G.17, subdivision 7; 297I.05, subdivision 11; 297I.80, subdivision 1; 298.018, subdivision 2; Minnesota Statutes 2011 Supplement, sections 270C.34, subdivision 1; 272.02, subdivision 97; 273.13, subdivision 23; 290.01, subdivisions 19b, 19c; 291.03, subdivision 11; 298.01, subdivision 3; 373.01, subdivision 1; Laws 2011, First Special Session chapter 7, article 10, section 7; repealing Minnesota Statutes 2010, sections 272.69; 273.11, subdivision 22.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"ARTICLE 1  
ESTATE TAXES

Section 1. Minnesota Statutes 2010, section 289A.10, is amended by adding a subdivision to read:

Subd. 1a. **Recapture tax return required.** If a disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a), has occurred, the qualified heir, as defined under section 291.03, subdivision 8, paragraph (c), or personal representative of the decedent's estate must submit a recapture tax return to the commissioner.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 2. Minnesota Statutes 2010, section 289A.12, is amended by adding a subdivision to read:

Subd. 18. **Returns by qualified heirs.** Within 24 months and within 36 months after a decedent's death, a qualified heir, as defined under section 291.03, subdivision 8, paragraph (c), must file a return with the commissioner relating to the qualified property received from the decedent.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 3. Minnesota Statutes 2010, section 289A.18, is amended by adding a subdivision to read:

Subd. 3a. **Recapture tax return.** A recapture tax return is due within six months after the date of the disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a).

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 4. Minnesota Statutes 2010, section 289A.20, subdivision 3, is amended to read:

Subd. 3. **Estate tax.** Taxes imposed by ~~chapter 291~~ section 291.03, subdivision 1, take effect at and upon the death of the person whose estate is subject to taxation and are due and payable on or before the expiration of nine months from that death.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 5. Minnesota Statutes 2010, section 289A.20, is amended by adding a subdivision to read:

Subd. 3a. **Recapture tax.** Taxes imposed by section 291.03, subdivision 11, paragraph (b), are due and payable on or before the expiration of six months from the date of disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a).

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 6. Minnesota Statutes 2011 Supplement, section 291.03, subdivision 8, is amended to read:

Subd. 8. **Definitions.** (a) For purposes of this section, the following terms have the meanings given in this subdivision.

(b) "Family member" means a family member as defined in section 2032A(e)(2) of the Internal Revenue Code ~~or a trust whose present beneficiaries are all family members as defined in section 2032A(e)(2) of the Internal Revenue Code.~~

(c) "Qualified heir" means a family member who acquired qualified property ~~from~~ upon the death of the decedent and satisfies the requirement under subdivision 9, clause ~~(6)~~ (7), or subdivision 10, clause ~~(4)~~ (5), for the property.

(d) "Qualified property" means qualified small business property under subdivision 9 and qualified farm property under subdivision 10.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 7. Minnesota Statutes 2011 Supplement, section 291.03, subdivision 9, is amended to read:

Subd. 9. **Qualified small business property.** Property satisfying all of the following requirements is qualified small business property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of the assets of a trade or business or shares of stock or other ownership interests in a corporation or other entity engaged in a trade or business. ~~The decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469 of the Internal Revenue Code during the taxable year that ended before the date of the decedent's death.~~ Shares of stock in a corporation or an ownership interest in another type of entity do not qualify under this subdivision if the shares or ownership interests are traded on a public stock exchange at any time during the three-year period ending on the decedent's date of death. For purposes of this subdivision, an ownership interest includes the interest the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code.

~~(3) During the decedent's taxable year that ended before the decedent's death, the trade or business must not have been a passive activity within the meaning of section 469(c) of the Internal Revenue Code and the decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the taxable year that ended before the decedent's death.~~

~~(3)~~ (4) The gross annual sales of the trade or business were \$10,000,000 or less for the last taxable year that ended before the date of the death of the decedent.

~~(4)~~ (5) The property does not consist of cash ~~or~~ cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business. For property consisting of shares of stock or other ownership interests in an entity, the ~~amount~~ value of cash ~~or~~ cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business held by the corporation or other entity must be deducted from the value of the property qualifying under this subdivision in proportion to the decedent's share of ownership of the entity on the date of death.

~~(5)~~ (6) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent. In the case of a sole proprietor, if the property replaced similar property within the three-year period, the replacement property will be treated as having been owned for the three-year period ending on the date of death of the decedent.

~~(6) A family member continuously uses the property in the operation of the trade or business for three years following the date of death of the decedent.~~

(7) For three years following the date of death of the decedent, the trade or business is not a passive activity within the meaning of section 469(c) of the Internal Revenue Code and a family member materially participates in the operation of the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the three years following the date of death of the decedent.

~~(7)~~ (8) The estate and the qualified heir elect to treat the property as qualified small business property and agree, in the form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 8. Minnesota Statutes 2011 Supplement, section 291.03, subdivision 10, is amended to read:

Subd. 10. **Qualified farm property.** Property satisfying all of the following requirements is qualified farm property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of agricultural land as defined by section 500.24, subdivision 2, paragraph (g), and owned by a farm meeting the requirements of person or entity that is not excluded from owning agricultural land by section 500.24, and was classified for property tax purposes as the homestead of the decedent or the decedent's spouse or both under section 273.124, and as class 2a property under section 273.13, subdivision 23.

(3) For property taxes payable in the year of decedent's death, the decedent's interest in the property was classified as the homestead of the decedent or the decedent's spouse or both under section 273.124, and as class 2a property under section 273.13, subdivision 23.

(4) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent either by ownership of the agricultural land or pursuant to holding an interest in an entity that is not excluded from owning agricultural land under section 500.24.

~~(4) A family member continuously uses the property in the operation of the trade or business~~ (5) The property is classified for property tax purposes as class 2a property under section 273.13, subdivision 23, for three years following the date of death of the decedent.

~~(5)~~ (6) The estate and the qualified heir elect to treat the property as qualified farm property and agree, in a form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

Sec. 9. Minnesota Statutes 2011 Supplement, section 291.03, subdivision 11, is amended to read:

Subd. 11. **Recapture tax.** (a) If, within three years after the decedent's death and before the death of the qualified heir, the qualified heir disposes of any interest in the qualified property, other than by a disposition to a family member or qualifying entity, or a family member ceases to use the qualified property which was acquired or passed from the decedent satisfy the requirement under subdivision 9, clause (7); or 10, clause (5), an additional estate tax is imposed on the property. In the case of a sole proprietor, if the qualified heir replaces qualified small business property excluded under subdivision 9 with similar property, then the qualified heir will not be treated as having disposed of an interest in the qualified property.

(b) The amount of the additional tax equals the amount of the exclusion claimed with respect to the qualified interest disposed of by the estate under subdivision 8, paragraph (d), multiplied by 16 percent.

~~(c) The additional tax under this subdivision is due on the day which is six months after the date of the disposition or cessation in paragraph (a).~~

(c) For purposes of paragraph (a), "qualifying entity" means a corporation or other entity owned by a family member or family members that is not excluded from owning agricultural land under section 500.24.

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after June 30, 2011.

## ARTICLE 2 OBSOLETE PROVISIONS

Section 1. Minnesota Statutes 2010, section 16C.16, subdivision 7, is amended to read:

Subd. 7. **Economically disadvantaged areas.** (a) Except as otherwise provided in paragraph (b), the commissioner may award up to a six percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award up to a four percent preference in the amount bid on state construction to small businesses located in an economically disadvantaged area.

(c) A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a certified rehabilitation facility or extended employment provider as described in chapter 268A.

(d) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as border city enterprise zones under section ~~469.167~~ 469.166 as economically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

(e) The Department of Revenue shall gather data necessary to make the determinations required by paragraph (c), clause (1), and shall annually certify counties that qualify under paragraph (c), clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

Sec. 2. Minnesota Statutes 2010, section 41A.036, subdivision 2, is amended to read:

Subd. 2. **Small business development loans; preferences.** The following eligible small businesses have preference among all business applicants for small business development loans:

(1) businesses located in rural areas of the state that are experiencing the most severe unemployment rates in the state;

(2) businesses that are likely to expand and provide additional permanent employment in rural areas of the state, or enhance the quality of existing jobs in those areas;

(3) businesses located in border communities that experience a competitive disadvantage due to location;

(4) businesses that have been unable to obtain traditional financial assistance due to a disadvantageous location, minority ownership, or other factors rather than due to the business having been considered a poor financial risk;

(5) businesses that utilize state resources and reduce state dependence on outside resources, and that produce products or services consistent with the long-term social and economic needs of the state; and

(6) businesses located in ~~designated border city~~ enterprise zones, as described in section ~~469.168~~ 469.166.

Sec. 3. Minnesota Statutes 2010, section 117.025, subdivision 10, is amended to read:

Subd. 10. **Public service corporation.** "Public service corporation" means a utility, as defined by section 216E.01, subdivision 10; gas, electric, telephone, or cable communications company; cooperative association; natural gas pipeline company; crude oil or petroleum products pipeline company; municipal utility; municipality when operating its municipally owned utilities; joint venture created pursuant to section 452.25 or 452.26; or municipal power or gas agency. Public service corporation also means a municipality or public corporation when operating an airport under chapter 360 or 473, a common carrier, a watershed district, or a drainage authority. ~~Public service corporation also means an entity operating a regional distribution center within an international economic development zone designated under section 469.322.~~

Sec. 4. Minnesota Statutes 2010, section 270B.14, subdivision 3, is amended to read:

Subd. 3. **Administration of enterprise, job opportunity, and biotechnology and health sciences industry zone programs.** The commissioner may disclose return information relating to the taxes imposed by chapters 290 and 297A to the Department of Employment and Economic Development or a municipality ~~receiving an~~ with a border city enterprise zone ~~designation as defined~~ under section ~~469.169~~ 469.166, but only as necessary to administer the funding limitations under section 469.169, ~~subdivision 7~~, or to the Department of Employment and Economic Development and appropriate officials from the local government units in which a qualified business is located but only as necessary to enforce the job opportunity building zone benefits under section 469.315, or biotechnology and health sciences industry zone benefits under section 469.336.

Sec. 5. Minnesota Statutes 2010, section 272.02, subdivision 77, is amended to read:

Subd. 77. **Property of housing and redevelopment authorities.** Property of projects of housing and redevelopment authorities are exempt to the extent permitted by ~~sections~~ section 469.042, subdivision 1, ~~and 469.043, subdivisions 2 and 5.~~

Sec. 6. Minnesota Statutes 2010, section 273.13, subdivision 24, is amended to read:

Subd. 24. **Class 3.** ~~(a)~~ Commercial and industrial property and utility real and personal property is class 3a.

(1) Except as otherwise provided, each parcel of commercial, industrial, or utility real property has a class rate of 1.5 percent of the first tier of market value, and 2.0 percent of the remaining market value. In the case of contiguous parcels of property owned by the same person or entity, only the value equal to the first-tier value of the contiguous parcels qualifies for the reduced class rate, except that contiguous parcels owned by the same person or entity shall be eligible for the first-tier value class rate on each separate business operated by the owner of the property, provided the business is housed in a separate structure. For the purposes of this subdivision, the first tier means the first \$150,000 of market value. Real property owned in fee by a utility for transmission line right-of-way shall be classified at the class rate for the higher tier.



For purposes of this subdivision, parcels are considered to be contiguous even if they are separated from each other by a road, street, waterway, or other similar intervening type of property. Connections between parcels that consist of power lines or pipelines do not cause the parcels to be contiguous. Property owners who have contiguous parcels of property that constitute separate businesses that may qualify for the first-tier class rate shall notify the assessor by July 1, for treatment beginning in the following taxes payable year.

(2) All personal property that is: (i) part of an electric generation, transmission, or distribution system; or (ii) part of a pipeline system transporting or distributing water, gas, crude oil, or petroleum products; and (iii) not described in clause (3), and all railroad operating property has a class rate as provided under clause (1) for the first tier of market value and the remaining market value. In the case of multiple parcels in one county that are owned by one person or entity, only one first tier amount is eligible for the reduced rate.

(3) The entire market value of personal property that is: (i) tools, implements, and machinery of an electric generation, transmission, or distribution system; (ii) tools, implements, and machinery of a pipeline system transporting or distributing water, gas, crude oil, or petroleum products; or (iii) the mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings, has a class rate as provided under clause (1) for the remaining market value in excess of the first tier.

~~(b) Employment property defined in section 469.166, during the period provided in section 469.170, shall constitute class 3b. The class rates for class 3b property are determined under paragraph (a).~~

Sec. 7. Minnesota Statutes 2010, section 273.1398, subdivision 4, is amended to read:

Subd. 4. **Disparity reduction credit.** (a) Beginning with taxes payable in 1989, class 4a, and class 3a, ~~and class 3b~~ property qualifies for a disparity reduction credit if: (1) the property is located in a border city that has an enterprise zone ~~designated pursuant to section 469.168, subdivision 4, as defined in section 469.166~~; (2) the property is located in a city with a population greater than 2,500 and less than 35,000 according to the 1980 decennial census; (3) the city is adjacent to a city in another state or immediately adjacent to a city adjacent to a city in another state; and (4) the adjacent city in the other state has a population of greater than 5,000 and less than 75,000 according to the 1980 decennial census.

(b) The credit is an amount sufficient to reduce (i) the taxes levied on class 4a property to 2.3 percent of the property's market value and (ii) the tax on class 3a ~~and class 3b~~ property to 2.3 percent of market value.

(c) The county auditor shall annually certify the costs of the credits to the Department of Revenue. The department shall reimburse local governments for the property taxes forgone as the result of the credits in proportion to their total levies.

Sec. 8. Minnesota Statutes 2010, section 276A.01, subdivision 3, is amended to read:

Subd. 3. **Commercial-industrial property.** "Commercial-industrial property" means the following categories of property, as defined in section 273.13, excluding that portion of the property (i) that may, by law, constitute the tax base for a tax increment pledged pursuant to ~~section 469.042 or 469.162 or~~ sections 469.174 to 469.178, certification of which was requested prior to May 1, 1996, to the extent and while the tax increment is so pledged; or (ii) that is exempt from taxation under section 272.02:

(1) that portion of class 5 property consisting of unmined iron ore and low-grade iron-bearing formations as defined in section 273.14, tools, implements, and machinery, except the portion of high voltage transmission lines, the value of which is deducted from net tax capacity under section 273.425; and

(2) that portion of class 3 and class 5 property which is either used or zoned for use for any commercial or industrial purpose, including property that becomes taxable under section 298.25, except for such property which is, or, in the case of property under construction, will when completed be used exclusively for residential occupancy and the provision of services to residential occupants thereof. Property must be considered as used exclusively for residential occupancy only if each of not less than 80 percent of its occupied residential units is, or, in the case of property under construction, will when completed be occupied under an oral or written agreement for occupancy over a continuous period of not less than 30 days.

If the classification of property prescribed by section 273.13 is modified by legislative amendment, the references in this subdivision are to the successor class or classes of property, or portions thereof, that include the kinds of property designated in this subdivision.

Sec. 9. Minnesota Statutes 2011 Supplement, section 290.01, subdivision 19b, is amended to read:

Subd. 19b. **Subtractions from federal taxable income.** For individuals, estates, and trusts, there shall be subtracted from federal taxable income:

(1) net interest income on obligations of any authority, commission, or instrumentality of the United States to the extent includable in taxable income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) if included in federal taxable income, the amount of any overpayment of income tax to Minnesota or to any other state, for any previous taxable year, whether the amount is received as a refund or as a credit to another taxable year's income tax liability;

(3) the amount paid to others, less the amount used to claim the credit allowed under section 290.0674, not to exceed \$1,625 for each qualifying child in grades kindergarten to 6 and \$2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and transportation of each qualifying child in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363A. For the purposes of this clause, "tuition" includes fees or tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause, "textbooks" includes books and other instructional materials and equipment purchased or leased for use in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. Equipment expenses qualifying for deduction includes expenses as defined and limited in section 290.0674, subdivision 1, clause (3). "Textbooks" does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs. No deduction is permitted for any expense the taxpayer incurred in using the taxpayer's or the qualifying child's vehicle to provide such transportation for a qualifying child. For purposes of the subtraction provided by this clause, "qualifying child" has the meaning given in section 32(c)(3) of the Internal Revenue Code;

(4) income as provided under section 290.0802;

(5) to the extent included in federal adjusted gross income, income realized on disposition of property exempt from tax under section 290.491;

(6) to the extent not deducted or not deductible pursuant to section 408(d)(8)(E) of the Internal Revenue Code in determining federal taxable income by an individual who does not itemize deductions for federal income tax purposes for the taxable year, an amount equal to 50 percent of the excess of charitable contributions over \$500 allowable as a deduction for the taxable year under section 170(a) of the Internal Revenue Code, under the provisions of Public Law 109-1 and Public Law 111-126;

(7) for individuals who are allowed a federal foreign tax credit for taxes that do not qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover of subnational foreign taxes for the taxable year, but not to exceed the total subnational foreign taxes reported in claiming the foreign tax credit. For purposes of this clause, "federal foreign tax credit" means the credit allowed under section 27 of the Internal Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed under section 904(c) of the Internal Revenue Code minus national level foreign taxes to the extent they exceed the federal foreign tax credit;

(8) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (7), or 19c, clause (15), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19a, clause (7), or subdivision 19c, clause (15), in the case of a shareholder of an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. The resulting delayed depreciation cannot be less than zero;

(9) job opportunity building zone income as provided under section 469.316;

(10) to the extent included in federal taxable income, the amount of compensation paid to members of the Minnesota National Guard or other reserve components of the United States military for active service, excluding compensation for services performed under the Active Guard Reserve (AGR) program. For purposes of this clause, "active service" means (i) state active service as defined in section 190.05, subdivision 5a, clause (1); or (ii) federally funded state active service as defined in section 190.05, subdivision 5b, but "active service" excludes service performed in accordance with section 190.08, subdivision 3;

(11) to the extent included in federal taxable income, the amount of compensation paid to Minnesota residents who are members of the armed forces of the United States or United Nations for active duty performed under United States Code, title 10; or the authority of the United Nations;

(12) an amount, not to exceed \$10,000, equal to qualified expenses related to a qualified donor's donation, while living, of one or more of the qualified donor's organs to another person for human organ transplantation. For purposes of this clause, "organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow; "human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person; "qualified expenses" means unreimbursed expenses for both the individual and the qualified donor for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses may be subtracted under this clause only once; and "qualified donor" means the individual or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An individual may claim the subtraction in this clause for each instance of organ donation for transplantation during the taxable year in which the qualified expenses occur;

(13) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (8), or 19c, clause ~~(16)~~ (15), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the addition made by the taxpayer under subdivision 19a, clause (8), or 19c, clause ~~(16)~~ (15), in the case of a shareholder of a corporation that is an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. If the net operating loss exceeds the addition for the tax year, a subtraction is not allowed under this clause;

(14) to the extent included in the federal taxable income of a nonresident of Minnesota, compensation paid to a service member as defined in United States Code, title 10, section 101(a)(5), for military service as defined in the Servicemembers Civil Relief Act, Public Law 108-189, section 101(2);

(15) ~~international economic development zone income as provided under section 469.325;~~

~~(46)~~ to the extent included in federal taxable income, the amount of national service educational awards received from the National Service Trust under United States Code, title 42, sections 12601 to 12604, for service in an approved Americorps National Service program;

~~(47)~~ (16) to the extent included in federal taxable income, discharge of indebtedness income resulting from reacquisition of business indebtedness included in federal taxable income under section 108(i) of the Internal Revenue Code. This subtraction applies only to the extent that the income was included in net income in a prior year as a result of the addition under section 290.01, subdivision 19a, clause (16); and

~~(48)~~ (17) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c).

Sec. 10. Minnesota Statutes 2010, section 290.01, subdivision 29, is amended to read:

Subd. 29. **Taxable income.** The term "taxable income" means:

- (1) for individuals, estates, and trusts, the same as taxable net income;
- (2) for corporations, the taxable net income less
  - (i) the net operating loss deduction under section 290.095;
  - (ii) the dividends received deduction under section 290.21, subdivision 4;
  - (iii) the exemption for operating in a job opportunity building zone under section 469.317; and
  - (iv) the exemption for operating in a biotechnology and health sciences industry zone under section 469.337; ~~and~~
  - (v) ~~the exemption for operating in an international economic development zone under section 469.326.~~

Sec. 11. Minnesota Statutes 2011 Supplement, section 290.06, subdivision 2c, is amended to read:

Subd. 2c. **Schedules of rates for individuals, estates, and trusts.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code must be computed by applying to their taxable net income the following schedule of rates:

- (1) On the first \$25,680, 5.35 percent;
- (2) On all over \$25,680, but not over \$102,030, 7.05 percent;
- (3) On all over \$102,030, 7.85 percent.

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

- (1) On the first \$17,570, 5.35 percent;
- (2) On all over \$17,570, but not over \$57,710, 7.05 percent;

(3) On all over \$57,710, 7.85 percent.

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code must be computed by applying to taxable net income the following schedule of rates:

(1) On the first \$21,630, 5.35 percent;

(2) On all over \$21,630, but not over \$86,910, 7.05 percent;

(3) On all over \$86,910, 7.85 percent.

(d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than \$100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to \$1.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) the numerator is the individual's Minnesota source federal adjusted gross income as defined in section 62 of the Internal Revenue Code and increased by the additions required under section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), (12), (13), and (16) to (18), and reduced by the Minnesota assignable portion of the subtraction for United States government interest under section 290.01, subdivision 19b, clause (1), and the subtractions under section 290.01, subdivision 19b, clauses (8), (9), (13), (14), ~~(15)~~, ~~(17)~~, (16), and ~~(18)~~ (17), after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, increased by the amounts specified in section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), (12), (13), and (16) to (18), and reduced by the amounts specified in section 290.01, subdivision 19b, clauses (1), (8), (9), (13), (14), ~~(15)~~, ~~(17)~~ (16), and ~~(18)~~ (17).

Sec. 12. Minnesota Statutes 2010, section 290.067, subdivision 1, is amended to read:

Subdivision 1. **Amount of credit.** (a) A taxpayer may take as a credit against the tax due from the taxpayer and a spouse, if any, under this chapter an amount equal to the dependent care credit for which the taxpayer is eligible pursuant to the provisions of section 21 of the Internal Revenue Code subject to the limitations provided in subdivision 2 except that in determining whether the child qualified as a dependent, income received as a Minnesota family investment program grant or allowance to or on behalf of the child must not be taken into account in determining whether the child received more than half of the child's support from the taxpayer, and the provisions of section 32(b)(1)(D) of the Internal Revenue Code do not apply.

(b) If a child who has not attained the age of six years at the close of the taxable year is cared for at a licensed family day care home operated by the child's parent, the taxpayer is deemed to have paid employment-related expenses. If the child is 16 months old or younger at the close of the taxable year, the amount of expenses deemed to have been paid equals the maximum limit for one qualified individual under section 21(c) and (d) of the Internal Revenue Code. If the child is older than 16 months of age but has not attained the age of six years at the close of the taxable year, the amount of expenses deemed to have been paid equals the amount the licensee would charge for the care of a child of the same age for the same number of hours of care.

(c) If a married couple:

(1) has a child who has not attained the age of one year at the close of the taxable year;

(2) files a joint tax return for the taxable year; and

(3) does not participate in a dependent care assistance program as defined in section 129 of the Internal Revenue Code, in lieu of the actual employment related expenses paid for that child under paragraph (a) or the deemed amount under paragraph (b), the lesser of (i) the combined earned income of the couple or (ii) the amount of the maximum limit for one qualified individual under section 21(c) and (d) of the Internal Revenue Code will be deemed to be the employment related expense paid for that child. The earned income limitation of section 21(d) of the Internal Revenue Code shall not apply to this deemed amount. These deemed amounts apply regardless of whether any employment-related expenses have been paid.

(d) If the taxpayer is not required and does not file a federal individual income tax return for the tax year, no credit is allowed for any amount paid to any person unless:

(1) the name, address, and taxpayer identification number of the person are included on the return claiming the credit; or

(2) if the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence does not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information required.

In the case of a nonresident, part-year resident, or a person who has earned income not subject to tax under this chapter including earned income excluded pursuant to section 290.01, subdivision 19b, clause (9) ~~or (15)~~, the credit determined under section 21 of the Internal Revenue Code must be allocated based on the ratio by which the earned income of the claimant and the claimant's spouse from Minnesota sources bears to the total earned income of the claimant and the claimant's spouse.

For residents of Minnesota, the subtractions for military pay under section 290.01, subdivision 19b, clauses (10) and (11), are not considered "earned income not subject to tax under this chapter."

For residents of Minnesota, the exclusion of combat pay under section 112 of the Internal Revenue Code is not considered "earned income not subject to tax under this chapter."

Sec. 13. Minnesota Statutes 2011 Supplement, section 290.0671, subdivision 1, is amended to read:

Subdivision 1. **Credit allowed.** (a) An individual is allowed a credit against the tax imposed by this chapter equal to a percentage of earned income. To receive a credit, a taxpayer must be eligible for a credit under section 32 of the Internal Revenue Code.

(b) For individuals with no qualifying children, the credit equals 1.9125 percent of the first \$4,620 of earned income. The credit is reduced by 1.9125 percent of earned income or adjusted gross income, whichever is greater, in excess of \$5,770, but in no case is the credit less than zero.

(c) For individuals with one qualifying child, the credit equals 8.5 percent of the first \$6,920 of earned income and 8.5 percent of earned income over \$12,080 but less than \$13,450. The credit is reduced by 5.73 percent of earned income or adjusted gross income, whichever is greater, in excess of \$15,080, but in no case is the credit less than zero.

(d) For individuals with two or more qualifying children, the credit equals ten percent of the first \$9,720 of earned income and 20 percent of earned income over \$14,860 but less than \$16,800. The credit is reduced by 10.3 percent of earned income or adjusted gross income, whichever is greater, in excess of \$17,890, but in no case is the credit less than zero.

(e) For a nonresident or part-year resident, the credit must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

(f) For a person who was a resident for the entire tax year and has earned income not subject to tax under this chapter, including income excluded under section 290.01, subdivision 19b, clause (9) ~~or (15)~~, the credit must be allocated based on the ratio of federal adjusted gross income reduced by the earned income not subject to tax under this chapter over federal adjusted gross income. For purposes of this paragraph, the subtractions for military pay under section 290.01, subdivision 19b, clauses (10) and (11), are not considered "earned income not subject to tax under this chapter."

For the purposes of this paragraph, the exclusion of combat pay under section 112 of the Internal Revenue Code is not considered "earned income not subject to tax under this chapter."

(g) For tax years beginning after December 31, 2007, and before December 31, 2010, the \$5,770 in paragraph (b), the \$15,080 in paragraph (c), and the \$17,890 in paragraph (d), after being adjusted for inflation under subdivision 7, are each increased by \$3,000 for married taxpayers filing joint returns. For tax years beginning after December 31, 2008, the commissioner shall annually adjust the \$3,000 by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B), the word "2007" shall be substituted for the word "1992." For 2009, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2007, to the 12 months ending on August 31, 2008, and in each subsequent year, from the 12 months ending on August 31, 2007, to the 12 months ending on August 31 of the year preceding the taxable year. The earned income thresholds as adjusted for inflation must be rounded to the nearest \$10. If the amount ends in \$5, the amount is rounded up to the nearest \$10. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

(h) For tax years beginning after December 31, 2010, and before January 1, 2012, the \$5,770 in paragraph (b), the \$15,080 in paragraph (c), and the \$17,890 in paragraph (d), after being adjusted for inflation under subdivision 7, are each increased by \$5,000 for married taxpayers filing joint returns. For tax years beginning after December 31, 2010, and before January 1, 2012, the commissioner shall annually adjust the \$5,000 by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B), the word "2008" shall be substituted for the word "1992." For 2011, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2008, to the 12 months ending on August 31, 2010. The earned income thresholds as adjusted for inflation must be rounded to the nearest \$10. If the amount ends in \$5, the amount is rounded up to the nearest \$10. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

(i) The commissioner shall construct tables showing the amount of the credit at various income levels and make them available to taxpayers. The tables shall follow the schedule contained in this subdivision, except that the commissioner may graduate the transition between income brackets.

Sec. 14. Minnesota Statutes 2011 Supplement, section 290.091, subdivision 2, is amended to read:

Subd. 2. **Definitions.** For purposes of the tax imposed by this section, the following terms have the meanings given:

(a) "Alternative minimum taxable income" means the sum of the following for the taxable year:

(1) the taxpayer's federal alternative minimum taxable income as defined in section 55(b)(2) of the Internal Revenue Code;

(2) the taxpayer's itemized deductions allowed in computing federal alternative minimum taxable income, but excluding:

(i) the charitable contribution deduction under section 170 of the Internal Revenue Code;

(ii) the medical expense deduction;

(iii) the casualty, theft, and disaster loss deduction; and

(iv) the impairment-related work expenses of a disabled person;

(3) for depletion allowances computed under section 613A(c) of the Internal Revenue Code, with respect to each property (as defined in section 614 of the Internal Revenue Code), to the extent not included in federal alternative minimum taxable income, the excess of the deduction for depletion allowable under section 611 of the Internal Revenue Code for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year);

(4) to the extent not included in federal alternative minimum taxable income, the amount of the tax preference for intangible drilling cost under section 57(a)(2) of the Internal Revenue Code determined without regard to subparagraph (E);

(5) to the extent not included in federal alternative minimum taxable income, the amount of interest income as provided by section 290.01, subdivision 19a, clause (1); and

(6) the amount of addition required by section 290.01, subdivision 19a, clauses (7) to (9), (12), (13), and (16) to (18);

less the sum of the amounts determined under the following:

(1) interest income as defined in section 290.01, subdivision 19b, clause (1);

(2) an overpayment of state income tax as provided by section 290.01, subdivision 19b, clause (2), to the extent included in federal alternative minimum taxable income;

(3) the amount of investment interest paid or accrued within the taxable year on indebtedness to the extent that the amount does not exceed net investment income, as defined in section 163(d)(4) of the Internal Revenue Code. Interest does not include amounts deducted in computing federal adjusted gross income;

(4) amounts subtracted from federal taxable income as provided by section 290.01, subdivision 19b, clauses (6), (8) to ~~(15)~~ (14), and ~~(17)~~ (16); and

(5) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c).



In the case of an estate or trust, alternative minimum taxable income must be computed as provided in section 59(c) of the Internal Revenue Code.

(b) "Investment interest" means investment interest as defined in section 163(d)(3) of the Internal Revenue Code.

(c) "Net minimum tax" means the minimum tax imposed by this section.

(d) "Regular tax" means the tax that would be imposed under this chapter (without regard to this section and section 290.032), reduced by the sum of the nonrefundable credits allowed under this chapter.

(e) "Tentative minimum tax" equals 6.4 percent of alternative minimum taxable income after subtracting the exemption amount determined under subdivision 3.

Sec. 15. Minnesota Statutes 2010, section 290.0921, subdivision 3, is amended to read:

Subd. 3. **Alternative minimum taxable income.** "Alternative minimum taxable income" is Minnesota net income as defined in section 290.01, subdivision 19, and includes the adjustments and tax preference items in sections 56, 57, 58, and 59(d), (e), (f), and (h) of the Internal Revenue Code. If a corporation files a separate company Minnesota tax return, the minimum tax must be computed on a separate company basis. If a corporation is part of a tax group filing a unitary return, the minimum tax must be computed on a unitary basis. The following adjustments must be made.

(1) For purposes of the depreciation adjustments under section 56(a)(1) and 56(g)(4)(A) of the Internal Revenue Code, the basis for depreciable property placed in service in a taxable year beginning before January 1, 1990, is the adjusted basis for federal income tax purposes, including any modification made in a taxable year under section 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c).

For taxable years beginning after December 31, 2000, the amount of any remaining modification made under section 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c), not previously deducted is a depreciation allowance in the first taxable year after December 31, 2000.

(2) The portion of the depreciation deduction allowed for federal income tax purposes under section 168(k) of the Internal Revenue Code that is required as an addition under section 290.01, subdivision 19c, clause (15), is disallowed in determining alternative minimum taxable income.

(3) The subtraction for depreciation allowed under section 290.01, subdivision 19d, clause (17), is allowed as a depreciation deduction in determining alternative minimum taxable income.

(4) The alternative tax net operating loss deduction under sections 56(a)(4) and 56(d) of the Internal Revenue Code does not apply.

(5) The special rule for certain dividends under section 56(g)(4)(C)(ii) of the Internal Revenue Code does not apply.

(6) The special rule for dividends from section 936 companies under section 56(g)(4)(C)(iii) does not apply.

(7) The tax preference for depletion under section 57(a)(1) of the Internal Revenue Code does not apply.

(8) The tax preference for intangible drilling costs under section 57(a)(2) of the Internal Revenue Code must be calculated without regard to subparagraph (E) and the subtraction under section 290.01, subdivision 19d, clause (4).

(9) The tax preference for tax exempt interest under section 57(a)(5) of the Internal Revenue Code does not apply.

(10) The tax preference for charitable contributions of appreciated property under section 57(a)(6) of the Internal Revenue Code does not apply.

(11) For purposes of calculating the tax preference for accelerated depreciation or amortization on certain property placed in service before January 1, 1987, under section 57(a)(7) of the Internal Revenue Code, the deduction allowable for the taxable year is the deduction allowed under section 290.01, subdivision 19e.

For taxable years beginning after December 31, 2000, the amount of any remaining modification made under section 290.01, subdivision 19e, not previously deducted is a depreciation or amortization allowance in the first taxable year after December 31, 2004.

(12) For purposes of calculating the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code, the term "alternative minimum taxable income" as it is used in section 56(g) of the Internal Revenue Code, means alternative minimum taxable income as defined in this subdivision, determined without regard to the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code.

(13) For purposes of determining the amount of adjusted current earnings under section 56(g)(3) of the Internal Revenue Code, no adjustment shall be made under section 56(g)(4) of the Internal Revenue Code with respect to (i) the amount of foreign dividend gross-up subtracted as provided in section 290.01, subdivision 19d, clause (1), (ii) the amount of refunds of income, excise, or franchise taxes subtracted as provided in section 290.01, subdivision 19d, clause (9), or (iii) the amount of royalties, fees or other like income subtracted as provided in section 290.01, subdivision 19d, clause (10).

(14) Alternative minimum taxable income excludes the income from operating in a job opportunity building zone as provided under section 469.317.

(15) Alternative minimum taxable income excludes the income from operating in a biotechnology and health sciences industry zone as provided under section 469.337.

~~(16) Alternative minimum taxable income excludes the income from operating in an international economic development zone as provided under section 469.326.~~

Items of tax preference must not be reduced below zero as a result of the modifications in this subdivision.

Sec. 16. Minnesota Statutes 2011 Supplement, section 290.0922, subdivision 2, is amended to read:

Subd. 2. **Exemptions.** The following entities are exempt from the tax imposed by this section:

(1) corporations exempt from tax under section 290.05;

(2) real estate investment trusts;

(3) regulated investment companies or a fund thereof; and

(4) entities having a valid election in effect under section 860D(b) of the Internal Revenue Code;

(5) town and farmers' mutual insurance companies;

(6) cooperatives organized under chapter 308A or 308B that provide housing exclusively to persons age 55 and over and are classified as homesteads under section 273.124, subdivision 3; and

(7) a qualified business as defined under section 469.310, subdivision 11, if for the taxable year all of its property is located in a job opportunity building zone designated under section 469.314 and all of its payroll is a job opportunity building zone payroll under section 469.310; ~~and~~.

~~(8) an entity, if for the taxable year all of its property is located in an international economic development zone designated under section 469.322, and all of its payroll is international economic development zone payroll under section 469.321. The exemption under this clause applies to taxable years beginning during the duration of the international economic development zone.~~

Entities not specifically exempted by this subdivision are subject to tax under this section, notwithstanding section 290.05.

Sec. 17. Minnesota Statutes 2011 Supplement, section 290.0922, subdivision 3, is amended to read:

Subd. 3. **Definitions.** (a) "Minnesota sales or receipts" means the total sales apportioned to Minnesota pursuant to section 290.191, subdivision 5, the total receipts attributed to Minnesota pursuant to section 290.191, subdivisions 6 to 8, and/or the total sales or receipts apportioned or attributed to Minnesota pursuant to any other apportionment formula applicable to the taxpayer.

(b) "Minnesota property" means total Minnesota tangible property as provided in section 290.191, subdivisions 9 to 11, any other tangible property located in Minnesota, but does not include: (1) the property of a qualified business as defined under section 469.310, subdivision 11, that is located in a job opportunity building zone designated under section 469.314; ~~and~~ (2) property of a qualified business located in a biotechnology and health sciences industry zone designated under section 469.334; ~~or (3) for taxable years beginning during the duration of the zone, property of a qualified business located in the international economic development zone designated under section 469.322.~~ Intangible property shall not be included in Minnesota property for purposes of this section. Taxpayers who do not utilize tangible property to apportion income shall nevertheless include Minnesota property for purposes of this section. On a return for a short taxable year, the amount of Minnesota property owned, as determined under section 290.191, shall be included in Minnesota property based on a fraction in which the numerator is the number of days in the short taxable year and the denominator is 365.

(c) "Minnesota payrolls" means total Minnesota payrolls as provided in section 290.191, subdivision 12, but does not include: (1) the job opportunity building zone payroll under section 469.310, subdivision 8, of a qualified business as defined under section 469.310, subdivision 11, ~~and~~ (2) biotechnology and health sciences industry zone payrolls under section 469.330, subdivision 8; ~~or (3) for taxable years beginning during the duration of the zone, international economic development zone payrolls under section 469.321, subdivision 9.~~ Taxpayers who do not utilize payrolls to apportion income shall nevertheless include Minnesota payrolls for purposes of this section.

Sec. 18. Minnesota Statutes 2011 Supplement, section 297A.75, subdivision 1, is amended to read:

Subdivision 1. **Tax collected.** The tax on the gross receipts from the sale of the following exempt items must be imposed and collected as if the sale were taxable and the rate under section 297A.62, subdivision 1, applied. The exempt items include:

- (1) capital equipment exempt under section 297A.68, subdivision 5;
- (2) building materials for an agricultural processing facility exempt under section 297A.71, subdivision 13;
- (3) building materials for mineral production facilities exempt under section 297A.71, subdivision 14;
- (4) building materials for correctional facilities under section 297A.71, subdivision 3;

- (5) building materials used in a residence for disabled veterans exempt under section 297A.71, subdivision 11;
- (6) elevators and building materials exempt under section 297A.71, subdivision 12;
- (7) building materials for the Long Lake Conservation Center exempt under section 297A.71, subdivision 17;
- (8) materials and supplies for qualified low-income housing under section 297A.71, subdivision 23;
- (9) materials, supplies, and equipment for municipal electric utility facilities under section 297A.71, subdivision 35;
- (10) equipment and materials used for the generation, transmission, and distribution of electrical energy and an aerial camera package exempt under section 297A.68, subdivision 37;
- (11) ~~tangible personal property and taxable services and construction materials, supplies, and equipment exempt under section 297A.68, subdivision 41;~~
- ~~(12)~~ commuter rail vehicle and repair parts under section 297A.70, subdivision 3, clause (11);
- ~~(13)~~ (12) materials, supplies, and equipment for construction or improvement of projects and facilities under section 297A.71, subdivision 40;
- ~~(14)~~ (13) materials, supplies, and equipment for construction or improvement of a meat processing facility exempt under section 297A.71, subdivision 41;
- ~~(15)~~ (14) materials, supplies, and equipment for construction, improvement, or expansion of an aerospace defense manufacturing facility exempt under section 297A.71, subdivision 42; and
- ~~(16)~~ (15) enterprise information technology equipment and computer software for use in a qualified data center exempt under section 297A.68, subdivision 42.

Sec. 19. Minnesota Statutes 2010, section 469.015, subdivision 4, is amended to read:

Subd. 4. **Exceptions.** (a) An authority need not require competitive bidding in the following circumstances:

- (1) in the case of a contract for the acquisition of a low-rent housing project:
  - (i) for which financial assistance is provided by the federal government;
  - (ii) which does not require any direct loan or grant of money from the municipality as a condition of the federal financial assistance; and
  - (iii) for which the contract provides for the construction of the project upon land that is either owned by the authority for redevelopment purposes or not owned by the authority at the time of the contract but the contract provides for the conveyance or lease to the authority of the project or improvements upon completion of construction;
- (2) with respect to a structured parking facility:
  - (i) constructed in conjunction with, and directly above or below, a development; and

- (ii) financed with the proceeds of tax increment or parking ramp general obligation or revenue bonds; and
- (3) ~~until August 1, 2009, with respect to a facility built for the purpose of facilitating the operation of public transit or encouraging its use:~~
  - (i) ~~constructed in conjunction with, and directly above or below, a development; and~~
  - (ii) ~~financed with the proceeds of parking ramp general obligation or revenue bonds or with at least 60 percent of the construction cost being financed with funding provided by the federal government; and~~
- (4) in the case of any building in which at least 75 percent of the usable square footage constitutes a housing development project if:
  - (i) the project is financed with the proceeds of bonds issued under section 469.034 or from nongovernmental sources;
  - (ii) the project is either located on land that is owned or is being acquired by the authority only for development purposes, or is not owned by the authority at the time the contract is entered into but the contract provides for conveyance or lease to the authority of the project or improvements upon completion of construction; and
  - (iii) the authority finds and determines that elimination of the public bidding requirements is necessary in order for the housing development project to be economical and feasible.
- (b) An authority need not require a performance bond for the following projects:
  - (1) a contract described in paragraph (a), clause (1);
  - (2) a construction change order for a housing project in which 30 percent of the construction has been completed;
  - (3) a construction contract for a single-family housing project in which the authority acts as the general construction contractor; or
  - (4) a services or materials contract for a housing project.

For purposes of this paragraph, "services or materials contract" does not include construction contracts.

Sec. 20. Minnesota Statutes 2010, section 469.033, subdivision 7, is amended to read:

Subd. 7. **Inactive authorities; transfer of funds; dissolution.** The authority may transfer to the city in and for which it was created all property, assets, cash or other funds held or used by the authority ~~which were derived from the special benefit tax for redevelopment levied pursuant to subdivision 6 prior to March 6, 1953, whenever collected.~~ Upon any such transfer, an authority shall not thereafter levy the tax or exercise the redevelopment powers of sections 469.001 to 469.047. All cash or other funds transferred to the city shall be used exclusively for permanent improvements in the city or the retirement of debts or bonds incurred for permanent improvements in the city. An authority which transfers its property, assets, cash, or other funds ~~derived from the special benefit tax for redevelopment and which has not entered into a contract with the federal government with respect to any low rent public housing project prior to March 6, 1953,~~ shall be dissolved as ~~herein~~ provided in this subdivision. After a public hearing after ten days' published notice thereof in a newspaper of general circulation in the city, the governing body of a city in and for which an authority has been created may dissolve the authority if the authority has not entered into any contract with the federal government or any agency or instrumentality thereof for a loan or a

grant with respect to any urban redevelopment or low-rent public housing project that remains in effect. The resolution or ordinance dissolving the authority shall be published in the same manner in which ordinances are published in the city and the authority shall be dissolved when the resolution or ordinance becomes finally effective. The clerk of the governing body of the municipality shall furnish to the commissioner of employment and economic development a certified copy of the resolution or ordinance of the governing body dissolving the authority. All property, records, assets, cash, or other funds held or used by an authority shall be transferred to and become the property of the municipality and cash or other funds shall be used as herein provided. Upon dissolution of an authority, all rights of an authority against any person, firm, or corporation shall accrue to and be enforced by the municipality.

Sec. 21. Minnesota Statutes 2010, section 469.166, subdivision 3, is amended to read:

Subd. 3. **Border city enterprise zone.** "Border city enterprise zone" means an area in the state designated as ~~such an enterprise zone~~ by the commissioner in the cities of Breckenridge, Dilworth, East Grand Forks, Moorhead, or Ortonville.

Sec. 22. Minnesota Statutes 2010, section 469.166, subdivision 5, is amended to read:

Subd. 5. **Municipality.** "Municipality" means a city, ~~or a county for an area located outside the boundaries of a city. If an area lies in two or more cities or in both incorporated and unincorporated areas, "municipality" shall include an entity formed pursuant to section 471.59 by the governing bodies of the cities with jurisdiction over the incorporated area and the counties with jurisdiction over the unincorporated area.~~

Sec. 23. Minnesota Statutes 2010, section 469.166, subdivision 6, is amended to read:

Subd. 6. **Governing body.** "Governing body" means ~~the county board in the case of a county, the city council or other body designated by its the charter in the case of a of the city, or the tribal or federal agency recognized as the governing body of an Indian reservation by the United States Secretary of the Interior.~~

Sec. 24. Minnesota Statutes 2010, section 469.167, subdivision 2, is amended to read:

Subd. 2. **Duration.** The designation of ~~an area as an a border city enterprise zone shall be effective for seven years after the date of designation, except that enterprise zones in border cities eligible to receive allocations for tax reductions under section 469.169, subdivisions 7 and 8, and under section 469.171, subdivision 6a or 6b, shall be is~~ effective until terminated by resolution adopted by the city in which the border city enterprise zone is located.

Sec. 25. Minnesota Statutes 2010, section 469.171, subdivision 1, is amended to read:

Subdivision 1. **Authorized types.** (a) The following types of tax reductions may be approved by the commissioner for businesses located in an a border city enterprise zone, after the governing body of the border city has designated an area or areas, each consisting of at least 100 acres, of the city not in excess of a total of 400 acres in which the tax reductions may be provided:

(1) an exemption from the general sales tax imposed by chapter 297A for purchases of construction materials or equipment for use in the zone if the purchase was made after the date of application for the zone;

(2) a credit against the income tax of an employer for additional workers employed in the zone, other than workers employed in construction, up to a maximum of \$3,000 per employee per year;

(3) an income tax credit for a percentage of the cost of debt financing to construct new or expanded facilities in the zone; and

(4) a state paid property tax credit for a portion of the property taxes paid by a new commercial or industrial facility or the additional property taxes paid by an expansion of an existing commercial or industrial facility in the zone.

(b) An application for a tax reduction under this subdivision may not be approved unless the governing body finds that the construction or improvement of the facility is not likely to have the effect of transferring existing employment from a location outside of the municipality but within the state.

Sec. 26. Minnesota Statutes 2010, section 469.171, subdivision 4, is amended to read:

Subd. 4. **Restriction.** The tax reductions provided by this section shall not apply to (1) a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment, or a private or commercial golf course, country club, massage parlor, tennis club, skating facility including roller skating, skateboard, and ice skating, racquet sports facility, including any handball or racquetball court, hot tub facility, suntan facility, or racetrack; (2) property of a public utility; (3) property used in the operation of a financial institution; (4) property owned by a fraternal or veterans' organization; or (5) property of a business operating under a franchise agreement that requires the business to be located in the state; except that, ~~in an enterprise zone designated under section 469.168, subdivision 4, paragraph (e), that is not in a city of the first class,~~ tax reductions may be provided to a retail food or beverage facility or an automobile sales or service facility, or a business operating under a franchise agreement that requires the business to be located in this state except for such a franchised retail food or beverage facility.

Sec. 27. Minnesota Statutes 2010, section 469.171, subdivision 7, is amended to read:

Subd. 7. **Duration.** ~~Each tax reduction provided to a business pursuant to this subdivision shall terminate not longer than five years after the effective date of the tax reduction for the business unless the business is located in a border city enterprise zone designated under section 469.168, subdivision 4, paragraph (e), that is not a city of the first class.~~ Each tax reduction provided to a business that is located in a border city enterprise zone ~~designated under section 469.168, subdivision 4, paragraph (e), that is not located in a city of the first class,~~ may be provided until the allocations provided under subdivision 6a, and under section 469.169, ~~subdivisions 7 and 8,~~ have been expended. Subject to the limitation in this subdivision, the tax reductions may be provided after expiration of the zone's designation.

Sec. 28. Minnesota Statutes 2010, section 469.171, subdivision 9, is amended to read:

Subd. 9. **Recapture.** Any business that (1) receives tax reductions authorized by subdivisions 1 to 8; ~~classification as employment property pursuant to section 469.170, or an alternative local contribution under section 469.169, subdivision 5;~~ and (2) ceases to operate its facility located within the border city enterprise zone shall repay the amount of the tax reduction or local contribution received during the two years immediately before it ceased to operate in the zone.

The repayment must be paid to the state to the extent it represents a tax reduction under subdivisions 1 to 8 and to the municipality to the extent it represents a property tax reduction or other local contribution. Any amount repaid to the state must be credited to the amount certified as available for tax reductions in the zone pursuant to ~~section 469.169, subdivision 7~~ the city's allocation. Any amount repaid to the municipality must be used by the municipality for economic development purposes. The commissioner of revenue may seek repayment of tax credits from a business ceasing to operate within an enterprise zone by utilizing any remedies available for the collection of tax.

Sec. 29. Minnesota Statutes 2010, section 469.171, subdivision 11, is amended to read:

Subd. 11. **Limitations; last eight months of duration.** This subdivision applies only to state tax reductions first authorized by the municipality to be provided to a business within eight months of the expiration of the border city enterprise zone's designation.

Before agreeing with a business to provide tax reductions, the municipality must submit the proposed tax reductions to the commissioner for approval. The commissioner shall review and analyze the proposal in light of, at least: (1) the proposed investment that the business will make in the zone, (2) the number and quality of new jobs that will be created in the zone, (3) the overall positive impact on economic activity in the zone, and (4) the extent to which the impacts in clauses (1) to (3) are dependent upon providing the state tax reductions to the business. The commissioner shall disapprove the proposal if the commissioner determines the public benefits of increased investment and employment resulting from the tax reductions is disproportionately small relative to the cost of the state tax reductions. If the commissioner disapproves of the proposal, the tax reductions are not allowed to the business.

If the municipality submits the proposal to the commissioner before expiration of the zone designation, the authority to grant the tax reductions continues until the commissioner acts on the proposal.

Sec. 30. Minnesota Statutes 2010, section 469.172, is amended to read:

#### **469.172 DEVELOPMENT AND REDEVELOPMENT POWERS.**

Notwithstanding any contrary provision of law or charter, any city ~~of the first or second class that contains an a~~ border city enterprise zone ~~or that has been designated as an enterprise zone~~ may, in addition to its other powers, exercise the powers granted to a governmental subdivision by sections 469.001 to 469.047, 469.048 to 469.068, and 469.109 to 469.113. Section 469.059, subdivision 15, ~~shall apply~~ applies to the city in the exercise of the powers granted pursuant to this section. It may exercise the powers assigned to redevelopment agencies pursuant to sections 469.152 to 469.165, without limitation to further the purposes of sections 469.001 to 469.047, 469.048 to 469.068, and 469.109 to 469.134. It may exercise the powers set forth in sections 469.001 to 469.047, 469.048 to 469.068, and 469.109 to 469.164 without limitation to further the purposes and policies set forth in sections 469.152 to 469.165. It may exercise the powers granted by this subdivision and any other development or redevelopment powers authorized by other laws, including sections 469.124 to 469.134 and 469.152 to 469.165, independently or in conjunction with each other as though all the powers had been granted to a single entity. Any project undertaken to accomplish the purposes of sections 469.001 to 469.047 that qualifies as single-family housing under section 462C.02, subdivision 4, ~~shall be~~ is subject to the provisions of chapter 462C.

Upon expiration of the designation of the enterprise zone, the powers granted by this subdivision may be exercised only with respect to any project, program, or activity commenced or established prior to that date. The powers granted by this subdivision may only be exercised within the zone.

Sec. 31. Minnesota Statutes 2010, section 469.173, subdivision 5, is amended to read:

Subd. 5. **Information sharing.** Pursuant to section 270B.14, subdivision 3, the commissioner of revenue may share information with the commissioner or with a municipality receiving an enterprise zone designation, insofar as necessary to administer the funding limitations provided by section 469.169, ~~subdivision 7.~~

Sec. 32. Minnesota Statutes 2010, section 469.173, subdivision 6, is amended to read:

Subd. 6. **Zone boundary realignment.** The commissioner may approve specific applications by a municipality to amend the boundaries of a border city enterprise zone ~~or of an area or areas designated pursuant to section 469.171, subdivision 5,~~ at any time. Boundaries of a zone may not be amended to create noncontiguous



subdivisions. If the commissioner approves the amended boundaries, the change is effective on the date of approval. ~~Notwithstanding the area limitation under section 469.168, subdivision 3, the commissioner may approve a specific application to amend the boundaries of an enterprise zone which is located within five municipalities and was designated in 1984, to increase its area to not more than 800 acres, and may approve an additional specific application to amend the boundaries of that enterprise zone to include a sixth municipality or to further increase its area to include all or part of the territory of a town that surrounds one of the five municipalities, or both.~~

~~Notwithstanding the area limitation under section 469.168, subdivision 3, the commissioner may approve a specific application to amend the boundaries of an enterprise zone that is located within four municipalities to include a fifth municipality. The addition of the fifth municipality may only be approved after the existing municipalities, by adoption of a resolution by each municipality's governing board, agree to the addition of the fifth municipality.~~

Sec. 33. Minnesota Statutes 2010, section 469.174, subdivision 20, is amended to read:

Subd. 20. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended ~~through December 31, 1993.~~

Sec. 34. Minnesota Statutes 2010, section 469.174, subdivision 25, is amended to read:

Subd. 25. **Increment.** "Increment," "tax increment," "tax increment revenues," "revenues derived from tax increment," and other similar terms for a district include:

- (1) taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under section 469.177;
- (2) the proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments;
- (3) principal and interest received on loans or other advances made by the authority with tax increments;
- (4) interest or other investment earnings on or from tax increments; and
- (5) repayments or return of tax increments made to the authority under agreements for districts for which the request for certification was made after August 1, 1993; ~~and~~
- ~~(6) the market value homestead credit paid to the authority under section 273.1384.~~

Sec. 35. Minnesota Statutes 2010, section 469.176, subdivision 7, is amended to read:

Subd. 7. **Parcels not includable in districts.** (a) The authority may request inclusion in a tax increment financing district and the county auditor may certify the original tax capacity of a parcel or a part of a parcel that qualified under the provisions of section 273.111 ~~or~~ 273.112, 273.114, or chapter 473H for taxes payable in any of the five calendar years before the filing of the request for certification only for:

- (1) a district in which 85 percent or more of the planned buildings and facilities (determined on the basis of square footage) are a qualified manufacturing facility or a qualified distribution facility or a combination of both; or
- (2) a housing district.

(b)(1) A distribution facility means buildings and other improvements to real property that are used to conduct activities in at least each of the following categories:

- (i) to store or warehouse tangible personal property;
- (ii) to take orders for shipment, mailing, or delivery;
- (iii) to prepare personal property for shipment, mailing, or delivery; and
- (iv) to ship, mail, or deliver property.

(2) A manufacturing facility includes space used for manufacturing or producing tangible personal property, including processing resulting in the change in condition of the property, and space necessary for and related to the manufacturing activities.

(3) To be a qualified facility, the owner or operator of a manufacturing or distribution facility must agree to pay and pay 90 percent or more of the employees of the facility at a rate equal to or greater than 160 percent of the federal minimum wage for individuals over the age of 20.

Sec. 36. Minnesota Statutes 2010, section 469.1763, subdivision 6, is amended to read:

Subd. 6. **Pooling permitted for deficits.** (a) This subdivision applies only to districts for which the request for certification was made before August 1, 2001, and without regard to whether the request for certification was made prior to August 1, 1979.

(b) The municipality for the district may transfer available increments from another tax increment financing district located in the municipality, if the transfer is necessary to eliminate a deficit in the district to which the increments are transferred. The municipality may transfer increments as provided by this subdivision without regard to whether the transfer or expenditure is authorized by the tax increment financing plan for the district from which the transfer is made. A deficit in the district for purposes of this subdivision means the lesser of the following two amounts:

- (1)(i) the amount due during the calendar year to pay preexisting obligations of the district; minus
  - (ii) the total increments collected or to be collected from properties located within the district that are available for the calendar year including amounts collected in prior years that are currently available; plus
  - (iii) total increments from properties located in other districts in the municipality including amounts collected in prior years that are available to be used to meet the district's obligations under this section, excluding this subdivision, or other provisions of law ~~(but excluding a special tax under section 469.1791 and the grant program under Laws 1997, chapter 231, article 1, section 19, or Laws 2001, First Special Session chapter 5);~~ or
- (2) the reduction in increments collected from properties located in the district for the calendar year as a result of the changes in class rates in Laws 1997, chapter 231, article 1; Laws 1998, chapter 389, article 2; and Laws 1999, chapter 243, and Laws 2001, First Special Session chapter 5, or the elimination of the general education tax levy under Laws 2001, First Special Session chapter 5.

The authority may compute the deficit amount under clause (1) only (without regard to the limit under clause (2)) if the authority makes an irrevocable commitment, by resolution, to use increments from the district to which increments are to be transferred and any transferred increments are only used to pay preexisting obligations and administrative expenses for the district that are required to be paid under section 469.176, subdivision 4h, paragraph (a).

- (c) A preexisting obligation means:

(1) bonds issued and sold before August 1, 2001, or bonds issued pursuant to a binding contract requiring the issuance of bonds entered into before July 1, 2001, and bonds issued to refund such bonds or to reimburse expenditures made in conjunction with a signed contractual agreement entered into before August 1, 2001, to the extent that the bonds are secured by a pledge of increments from the tax increment financing district; and

(2) binding contracts entered into before August 1, 2001, to the extent that the contracts require payments secured by a pledge of increments from the tax increment financing district.

(d) The municipality may require a development authority, other than a seaway port authority, to transfer available increments including amounts collected in prior years that are currently available for any of its tax increment financing districts in the municipality to make up an insufficiency in another district in the municipality, regardless of whether the district was established by the development authority or another development authority. This authority applies notwithstanding any law to the contrary, but applies only to a development authority that:

(1) was established by the municipality; or

(2) the governing body of which is appointed, in whole or part, by the municipality or an officer of the municipality or which consists, in whole or part, of members of the governing body of the municipality. The municipality may use this authority only after it has first used all available increments of the receiving development authority to eliminate the insufficiency and exercised any permitted action under section 469.1792, subdivision 3, for preexisting districts of the receiving development authority to eliminate the insufficiency.

(e) The authority under this subdivision to spend tax increments outside of the area of the district from which the tax increments were collected:

(1) is an exception to the restrictions under section 469.176, subdivisions 4b, 4c, 4d, 4e, 4i, and 4j; the expenditure limits under section 469.176, subdivision 1c; and the other provisions of this section; and the percentage restrictions under subdivision 2 must be calculated after deducting increments spent under this subdivision from the total increments for the district; and

(2) applies notwithstanding the provisions of the Tax Increment Financing Act in effect for districts for which the request for certification was made before June 30, 1982, or any other law to the contrary.

(f) If a preexisting obligation requires the development authority to pay an amount that is limited to the increment from the district or a specific development within the district and if the obligation requires paying a higher amount to the extent that increments are available, the municipality may determine that the amount due under the preexisting obligation equals the higher amount and may authorize the transfer of increments under this subdivision to pay up to the higher amount. The existence of a guarantee of obligations by the individual or entity that would receive the payment under this paragraph is disregarded in the determination of eligibility to pool under this subdivision. The authority to transfer increments under this paragraph may only be used to the extent that the payment of all other preexisting obligations in the municipality due during the calendar year have been satisfied.

(g) For transfers of increments made in calendar year 2005 and later, the reduction in increments as a result of the elimination of the general education tax levy for purposes of paragraph (b), clause (2), for a taxes payable year equals the general education tax rate for the school district under Minnesota Statutes 2000, section 273.1382, subdivision 1, for taxes payable in 2001, multiplied by the captured tax capacity of the district for the current taxes payable year.

Sec. 37. Minnesota Statutes 2010, section 469.1764, subdivision 1, is amended to read:

Subdivision 1. **Scope; application.** (a) This section applies to a tax increment financing district or area added to a district, if the request for certification of the district or the area added to the district was made after July 31, 1979, and before July 1, 1982.

(b) This section, section 469.1763, subdivision 6, and any special law applying to the district are the exclusive authority to spend tax increments on activities located outside of the geographic area of a tax increment financing district that is subject to this section.

(c) This section does not apply to increments from a district that is subject to the provisions of this section, if:

(1) the district was decertified before the enactment of this section and all increments spent on activities located outside of the geographic area of the district were repaid and distributed as excess increments under section 469.176, subdivision 2; or

(2) the use of increments on activities located outside of the geographic area of the district consists solely of payment of debt service on bonds under section 469.129, subdivision 2, before its repeal, and any bonds issued to refund bonds issued under that subdivision.

Sec. 38. Minnesota Statutes 2010, section 469.177, subdivision 1, is amended to read:

Subdivision 1. **Original net tax capacity.** (a) Upon or after adoption of a tax increment financing plan, the auditor of any county in which the district is situated shall, upon request of the authority, certify the original net tax capacity of the tax increment financing district and that portion of the district overlying any subdistrict as described in the tax increment financing plan and shall certify in each year thereafter the amount by which the original net tax capacity has increased or decreased as a result of a change in tax exempt status of property within the district and any subdistrict, reduction or enlargement of the district or changes pursuant to subdivision 4. The auditor shall certify the amount within 30 days after receipt of the request and sufficient information to identify the parcels included in the district. The certification relates to the taxes payable year as provided in subdivision 6.

(b) If the classification under section 273.13 of property located in a district changes to a classification that has a different assessment ratio, the original net tax capacity of that property must be redetermined at the time when its use is changed as if the property had originally been classified in the same class in which it is classified after its use is changed.

(c) The amount to be added to the original net tax capacity of the district as a result of previously tax exempt real property within the district becoming taxable equals the net tax capacity of the real property as most recently assessed pursuant to section 273.18 or, if that assessment was made more than one year prior to the date of title transfer rendering the property taxable, the net tax capacity assessed by the assessor at the time of the transfer. If improvements are made to tax exempt property after the municipality approves the district and before the parcel becomes taxable, the assessor shall, at the request of the authority, separately assess the estimated market value of the improvements. If the property becomes taxable, the county auditor shall add to original net tax capacity, the net tax capacity of the parcel, excluding the separately assessed improvements. If substantial taxable improvements were made to a parcel after certification of the district and if the property later becomes tax exempt, in whole or part, as a result of the authority acquiring the property through foreclosure or exercise of remedies under a lease or other revenue agreement or as a result of tax forfeiture, the amount to be added to the original net tax capacity of the district as a result of the property again becoming taxable is the amount of the parcel's value that was included in original net tax capacity when the parcel was first certified. The amount to be added to the original net tax capacity of the district as a result of enlargements equals the net tax capacity of the added real property as most recently certified by the commissioner of revenue as of the date of modification of the tax increment financing plan pursuant to section 469.175, subdivision 4.

(d) If the net tax capacity of a property increases because the property no longer qualifies under the Minnesota Agricultural Property Tax Law, section 273.111; the Minnesota Open Space Property Tax Law, section 273.112; or the Metropolitan Agricultural Preserves Act, chapter 473H, the Rural Preserve Property Tax Program under section 273.114, or because platted, unimproved property is improved or market value is increased after approval of the plat under section 273.11, subdivision ~~14~~, 14a, or 14b, the increase in net tax capacity must be added to the original net tax capacity.

(e) The amount to be subtracted from the original net tax capacity of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of original net tax capacity initially attributed to the property becoming tax exempt or being removed from the district. If the net tax capacity of property located within the tax increment financing district is reduced by reason of a court-ordered abatement, stipulation agreement, voluntary abatement made by the assessor or auditor or by order of the commissioner of revenue, the reduction shall be applied to the original net tax capacity of the district when the property upon which the abatement is made has not been improved since the date of certification of the district and to the captured net tax capacity of the district in each year thereafter when the abatement relates to improvements made after the date of certification. The county auditor may specify reasonable form and content of the request for certification of the authority and any modification thereof pursuant to section 469.175, subdivision 4.

(f) If a parcel of property contained a substandard building or improvements described in section 469.174, subdivision 10, paragraph (e), that were demolished or removed and if the authority elects to treat the parcel as occupied by a substandard building under section 469.174, subdivision 10, paragraph (b), or by improvements under section 469.174, subdivision 10, paragraph (e), the auditor shall certify the original net tax capacity of the parcel using the greater of (1) the current net tax capacity of the parcel, or (2) the estimated market value of the parcel for the year in which the building or other improvements were demolished or removed, but applying the class rates for the current year.

(g) For a redevelopment district qualifying under section 469.174, subdivision 10, paragraph (a), clause (4), as a qualified disaster area, the auditor shall certify the value of the land as the original tax capacity for any parcel in the district that contains a building that suffered substantial damage as a result of the disaster or emergency.

Sec. 39. Minnesota Statutes 2010, section 469.1793, is amended to read:

**469.1793 DEVELOPER OBLIGATIONS CONTINUED.**

If a developer or other private entity agreed to make payments to the authority or municipality to reimburse the municipality for the state aid offset under Minnesota Statutes 2000, section 273.1399, the obligation continues in effect, notwithstanding the repeal of section 273.1399. ~~Payments received by the development authority are increments for purposes of the state grant program under section 469.1799.~~

Sec. 40. Minnesota Statutes 2010, section 469.1813, subdivision 6b, is amended to read:

Subd. 6b. **Extended duration limit.** ~~(a)~~ Notwithstanding the provisions of subdivision 6, a political subdivision may grant an abatement for a period of up to 20 years, if the abatement is for ~~a qualified business.~~

~~(b) To be a qualified business for purposes of this subdivision, at least 50 percent of the payroll of the operations of the business that qualify for the abatement must be for employees engaged in one of the following lines of business or any combination of them:~~

~~(1) manufacturing;~~

~~(2) agricultural processing;~~

- (3) mining;
- (4) research and development;
- (5) warehousing; or
- (6) qualified high technology.

Alternatively, a qualified business also includes a taxpayer whose real and personal property is subject to valuation under Minnesota Rules, chapter 8100.

~~(c)(1) "Manufacturing" means the material staging and production of tangible personal property by procedures commonly regarded as manufacturing, processing, fabrication, or assembling which changes some existing material into new shapes, new qualities, or new combinations.~~

~~(2) "Mining" has the meaning given in section 613(c) of the Internal Revenue Code of 1986.~~

~~(3) "Agricultural processing" means transforming, packaging, sorting, or grading livestock or livestock products, agricultural commodities, or plants or plant products into goods that are used for intermediate or final consumption including goods for nonfood use.~~

~~(4) "Research and development" means qualified research as defined in section 41(d) of the Internal Revenue Code of 1986.~~

~~(5) "Qualified high technology" means one or more of the following activities:~~

~~(i) advanced computing, which is any technology used in the design and development of any of the following:~~

~~(A) computer hardware and software;~~

~~(B) data communications; and~~

~~(C) information technologies;~~

~~(ii) advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology;~~

~~(iii) biotechnology, which is any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop microorganisms for useful purposes;~~

~~(iv) electronic device technology, which is any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic electrical devices, or data and digital communications and imaging devices;~~

~~(v) engineering or laboratory testing related to the development of a product;~~

~~(vi) technology that assists in the assessment or prevention of threats or damage to human health or the environment, including, but not limited to, environmental cleanup technology, pollution prevention technology, or development of alternative energy sources;~~

~~(vii) medical device technology, which is any technology that involves medical equipment or products other than a pharmaceutical product that has therapeutic or diagnostic value and is regulated; or~~

~~(viii) advanced vehicles technology which is any technology that involves electric vehicles, hybrid vehicles, or alternative fuel vehicles, or components used in the construction of electric vehicles, hybrid vehicles, or alternative fuel vehicles. An electric vehicle is a road vehicle that draws propulsion energy only from an onboard source of electrical energy. A hybrid vehicle is a road vehicle that can draw propulsion energy from both a consumable fuel and a rechargeable energy storage system.~~

~~(d) The authority to grant new abatements under this subdivision expires on July 1, 2004, except that the authority to grant new abatements for real and personal property subject to valuation under Minnesota Rules, chapter 8100, does not expire.~~

Sec. 41. Minnesota Statutes 2010, section 473F.02, subdivision 3, is amended to read:

Subd. 3. **Commercial-industrial property.** "Commercial-industrial property" means the following categories of property, as defined in section 273.13, excluding that portion of such property ~~(1) which may, by law, constitute the tax base for a tax increment pledged under section 469.042 or 469.162, certification of which was requested prior to August 1, 1979, to the extent and while such tax increment is so pledged; or (2) which is exempt from taxation under section 272.02:~~

(a) That portion of class 3 property defined in Minnesota Statutes 1971, section 273.13, consisting of stocks of merchandise and furniture and fixtures used therewith; manufacturers' materials and manufactured articles; and tools, implements and machinery, whether fixtures or otherwise.

(b) That portion of class 4 property defined in Minnesota Statutes 1971, section 273.13, which is either used or zoned for use for any commercial or industrial purpose, except for such property which is, or, in the case of property under construction, will when completed be used exclusively for residential occupancy and the provision of services to residential occupants thereof. Property shall be considered as used exclusively for residential occupancy only if each of not less than 80 percent of its occupied residential units is, or, in the case of property under construction, will when completed be occupied under an oral or written agreement for occupancy over a continuous period of not less than 30 days.

If the classification of property prescribed by section 273.13 is modified by legislative amendment, the references in this subdivision shall be to such successor class or classes of property, or portions thereof, as embrace the kinds of property designated in this subdivision.

Sec. 42. **REPEALER.**

Minnesota Statutes 2010, sections 272.02, subdivision 83; 290.06, subdivisions 24 and 32; 297A.68, subdivision 41; 469.042, subdivisions 2, 3, and 4; 469.043; 469.059, subdivision 13; 469.129; 469.134; 469.162, subdivision 2; 469.1651; 469.166, subdivisions 7, 8, 9, 10, 11, and 12; 469.167, subdivisions 1 and 3; 469.168; 469.169, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13; 469.170, subdivisions 1, 2, 3, 4, 5, 5a, 5b, 5c, 5d, 5e, 6, 7, and 8; 469.171, subdivisions 2, 5, 6a, and 6b; 469.173, subdivisions 1 and 3; 469.1765; 469.1791; 469.1799, subdivision 2; 469.301, subdivisions 1, 2, 3, 4, and 5; 469.302; 469.303; 469.304; 469.321; 469.3215; 469.322; 469.323; 469.324; 469.325; 469.326; 469.327; 469.328; 469.329; and 473.680, are repealed.

Sec. 43. **EFFECTIVE DATE.**

This act is effective August 1, 2012, and the tax increment financing provisions apply to all districts, regardless of when the request for certification was made.

ARTICLE 3  
PUBLIC FINANCE

Section 1. Minnesota Statutes 2010, section 216C.436, subdivision 7, is amended to read:

Subd. 7. **Repayment.** An implementing entity that finances an energy improvement under this section must:

(1) secure payment with a lien against the ~~benefited~~ qualifying real property; and

(2) collect repayments as a special assessment as provided for in section 429.101 or by charter, provided that special assessments may be made payable in up to 20 equal annual installments.

If the implementing entity is an authority, the local government that authorized the authority to act as implementing entity shall impose and collect special assessments necessary to pay debt service on bonds issued by the implementing entity under subdivision 8, and shall transfer all collections of the assessments upon receipt to the authority.

Sec. 2. Minnesota Statutes 2010, section 216C.436, subdivision 8, is amended to read:

Subd. 8. **Bond issuance; repayment.** (a) An implementing entity may issue revenue bonds as provided in chapter 475 for the purposes of this section, provided that the revenue bonds must not be payable more than 20 years from the date of issuance.

(b) The bonds must be payable as to both principal and interest solely from the revenues from the assessments established in subdivision 7.

(c) No holder of bonds issued under this subdivision may compel any exercise of the taxing power of the implementing entity that issued the bonds to pay principal or interest on the bonds, and if the implementing entity is an authority, no holder of the bonds may compel any exercise of the taxing power of the local government. Bonds issued under this subdivision are not a debt or obligation of the issuer or any local government that issued them, nor is the payment of the bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

Sec. 3. Minnesota Statutes 2010, section 373.40, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Bonds" means an obligation as defined under section 475.51.

(b) "Capital improvement" means acquisition or betterment of public lands, buildings, or other improvements within the county for the purpose of a county courthouse, administrative building, health or social service facility, correctional facility, jail, law enforcement center, hospital, morgue, library, park, qualified indoor ice arena, roads and bridges, public works facilities, fairgrounds buildings, and records and data storage facilities and the acquisition of development rights in the form of conservation easements under chapter 84C. An improvement must have an expected useful life of five years or more to qualify. "Capital improvement" does not include a recreation or sports facility building (such as, but not limited to, a gymnasium, ice arena, racquet sports facility, swimming pool, exercise room or health spa), unless the building is part of an outdoor park facility and is incidental to the primary purpose of outdoor recreation.

(c) "Metropolitan county" means a county located in the seven-county metropolitan area as defined in section 473.121 or a county with a population of 90,000 or more.



(d) "Population" means the population established by the most recent of the following (determined as of the date the resolution authorizing the bonds was adopted):

- (1) the federal decennial census,
  - (2) a special census conducted under contract by the United States Bureau of the Census, or
  - (3) a population estimate made either by the Metropolitan Council or by the state demographer under section 4A.02.
- (e) "Qualified indoor ice arena" means a facility that meets the requirements of section 373.43.
- (f) "Tax capacity" means total taxable market value, but does not include captured market value.

Sec. 4. Minnesota Statutes 2010, section 373.40, subdivision 2, is amended to read:

Subd. 2. **Application of election requirement.** (a) Bonds issued by a county to finance capital improvements under an approved capital improvement plan are not subject to the election requirements of section 375.18 or 475.58. The bonds must be approved by vote of at least three-fifths of the members of the county board. In the case of a metropolitan county, the bonds must be approved by vote of at least two-thirds of the members of the county board.

(b) Before issuance of bonds qualifying under this section, the county must publish a notice of its intention to issue the bonds and the date and time of a hearing to obtain public comment on the matter. The notice must be published in the official newspaper of the county or in a newspaper of general circulation in the county. The notice must be published at least ~~14~~ ten, but not more than 28, days before the date of the hearing.

(c) A county may issue the bonds only upon obtaining the approval of a majority of the voters voting on the question of issuing the obligations, if a petition requesting a vote on the issuance is signed by voters equal to five percent of the votes cast in the county in the last county general election and is filed with the county auditor within 30 days after the public hearing. ~~The commissioner of revenue shall prepare a suggested form of the question to be presented at the election. If the county elects not to submit the question to the voters, the county shall not propose the issuance of bonds under this section for the same purpose and in the same amount for a period of 365 days from the date of receipt of the petition. If the question of issuing the bonds is submitted and not approved by the voters, the provisions of section 475.58, subdivision 1a, apply.~~

Sec. 5. Minnesota Statutes 2010, section 373.40, subdivision 4, is amended to read:

Subd. 4. **Limitations on amount.** A county may not issue bonds under this section if the maximum amount of principal and interest to become due in any year on all the outstanding bonds issued pursuant to this section (including the bonds to be issued) will equal or exceed 0.12 percent of taxable market value of property in the county. Calculation of the limit must be made using the taxable market value for the taxes payable year in which the obligations are issued and sold, provided that, for purposes of determining the principal and interest due in any year, the county may deduct the amount of interest expected to be paid or reimbursed to the county by the federal government in that year on any outstanding bonds or the bonds to be issued. This section does not limit the authority to issue bonds under any other special or general law.

Sec. 6. Minnesota Statutes 2010, section 474A.02, subdivision 23a, is amended to read:

Subd. 23a. **Qualified bonds.** "Qualified bonds" means the specific type or types of obligations that are subject to the annual volume cap. Qualified bonds include the following types of obligations as defined in federal tax law:

(a) "public facility bonds" means "exempt facility bonds" as defined in federal tax law, except for residential rental project bonds, ~~which are those obligations issued to finance airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, and qualified hazardous waste facilities.~~ New bonds and other obligations are ineligible to receive state allocations or entitlement authority for public facility projects under this section if they have been issued:

(1) for the purpose of refinancing, refunding, or otherwise defeasing existing debt; and

(2) more than one calendar year prior to the date of application;

(b) "residential rental project bonds" which are those obligations issued to finance qualified residential rental projects;

(c) "mortgage bonds";

(d) "small issue bonds" issued to finance manufacturing projects and the acquisition or improvement of agricultural real or personal property under sections 41C.01 to 41C.13;

(e) "student loan bonds" issued by or on behalf of the Minnesota Office of Higher Education;

(f) "redevelopment bonds";

(g) "governmental bonds" with a nonqualified amount in excess of \$15,000,000 as set forth in section 141(b)5 of federal tax law; and

(h) "enterprise zone facility bonds" issued to finance facilities located within empowerment zones or enterprise communities, as authorized under ~~Public Law 103-66, section 13304~~ section 1394 of the Internal Revenue Code.

Sec. 7. Minnesota Statutes 2010, section 475.521, subdivision 2, is amended to read:

Subd. 2. **Election requirement.** (a) Bonds issued by a municipality to finance capital improvements under an approved capital improvements plan are not subject to the election requirements of section 475.58. The bonds must be approved by an affirmative vote of three-fifths of the members of a five-member governing body. In the case of a governing body having more or less than five members, the bonds must be approved by a vote of at least two-thirds of the members of the governing body.

(b) Before the issuance of bonds qualifying under this section, the municipality must publish a notice of its intention to issue the bonds and the date and time of the hearing to obtain public comment on the matter. The notice must be published in the official newspaper of the municipality or in a newspaper of general circulation in the municipality. Additionally, the notice may be posted on the official Web site, if any, of the municipality. The notice must be published at least ~~44~~ ten but not more than 28 days before the date of the hearing.

(c) A municipality may issue the bonds only after obtaining the approval of a majority of the voters voting on the question of issuing the obligations, if a petition requesting a vote on the issuance is signed by voters equal to five percent of the votes cast in the municipality in the last municipal general election and is filed with the clerk within 30 days after the public hearing. ~~The commissioner of revenue shall prepare a suggested form of the question to be presented at the election. If the municipality elects not to submit the question to the voters, the municipality shall not propose the issuance of bonds under this section for the same purpose and in the same amount for a period of 365 days from the date of receipt of the petition. If the question of issuing the bonds is submitted and not approved by the voters, the provisions of section 475.58, subdivision 1a, apply.~~

Sec. 8. Minnesota Statutes 2010, section 475.521, subdivision 4, is amended to read:

Subd. 4. **Limitations on amount.** A municipality may not issue bonds under this section if the maximum amount of principal and interest to become due in any year on all the outstanding bonds issued under this section, including the bonds to be issued, will equal or exceed 0.16 percent of the taxable market value of property in the municipality. Calculation of the limit must be made using the taxable market value for the taxes payable year in which the obligations are issued and sold, provided that, for purposes of determining the principle and interest due in any year, the municipality may deduct the amount of interest expected to be paid or reimbursed to the municipality by the federal government in that year on any outstanding bonds or the bonds to be issued. In the case of a municipality with a population of 2,500 or more, the bonds are subject to the net debt limits under section 475.53. In the case of a shared facility in which more than one municipality participates, upon compliance by each participating municipality with the requirements of subdivision 2, the limitations in this subdivision and the net debt represented by the bonds shall be allocated to each participating municipality in proportion to its required financial contribution to the financing of the shared facility, as set forth in the joint powers agreement relating to the shared facility. This section does not limit the authority to issue bonds under any other special or general law.

Sec. 9. Minnesota Statutes 2010, section 475.58, subdivision 3b, is amended to read:

Subd. 3b. **Street reconstruction.** (a) A municipality may, without regard to the election requirement under subdivision 1, issue and sell obligations for street reconstruction, if the following conditions are met:

(1) the streets are reconstructed under a street reconstruction plan that describes the street reconstruction to be financed, the estimated costs, and any planned reconstruction of other streets in the municipality over the next five years, and the plan and issuance of the obligations has been approved by a vote of all of the members of the governing body present at the meeting following a public hearing for which notice has been published in the official newspaper at least ten days but not more than 28 days prior to the hearing; and

(2) if a petition requesting a vote on the issuance is signed by voters equal to five percent of the votes cast in the last municipal general election and is filed with the municipal clerk within 30 days of the public hearing, the municipality may issue the bonds only after obtaining the approval of a majority of the voters voting on the question of the issuance of the obligations. If the municipality elects not to submit the question to the voters, the municipality shall not propose the issuance of bonds under this section for the same purpose and in the same amount for a period of 365 days from the date of receipt of the petition. If the question of issuing the bonds is submitted and not approved by the voters, the provisions of subdivision 1a, apply.

(b) Obligations issued under this subdivision are subject to the debt limit of the municipality and are not excluded from net debt under section 475.51, subdivision 4.

(c) For purposes of this subdivision, street reconstruction includes utility replacement and relocation and other activities incidental to the street reconstruction, turn lanes and other improvements having a substantial public safety function, realignments, other modifications to intersect with state and county roads, and the local share of state and county road projects.

(d) Except in the case of turn lanes, safety improvements, realignments, intersection modifications, and the local share of state and county road projects, street reconstruction does not include the portion of project cost allocable to widening a street or adding curbs and gutters where none previously existed."

Delete the title and insert:

"A bill for an act relating to taxation; making technical, administrative, and clarifying changes to individual income, corporate franchise, estate, property, sales and use, special, mineral, and various taxes and tax-related provisions; amending Minnesota Statutes 2010, sections 16C.16, subdivision 7; 41A.036, subdivision 2; 117.025,

subdivision 10; 216C.436, subdivisions 7, 8; 270B.14, subdivision 3; 272.02, subdivision 77; 273.13, subdivision 24; 273.1398, subdivision 4; 276A.01, subdivision 3; 289A.10, by adding a subdivision; 289A.12, by adding a subdivision; 289A.18, by adding a subdivision; 289A.20, subdivision 3, by adding a subdivision; 290.01, subdivision 29; 290.067, subdivision 1; 290.0921, subdivision 3; 373.40, subdivisions 1, 2, 4; 469.015, subdivision 4; 469.033, subdivision 7; 469.166, subdivisions 3, 5, 6; 469.167, subdivision 2; 469.171, subdivisions 1, 4, 7, 9, 11; 469.172; 469.173, subdivisions 5, 6; 469.174, subdivisions 20, 25; 469.176, subdivision 7; 469.1763, subdivision 6; 469.1764, subdivision 1; 469.177, subdivision 1; 469.1793; 469.1813, subdivision 6b; 473F.02, subdivision 3; 474A.02, subdivision 23a; 475.521, subdivisions 2, 4; 475.58, subdivision 3b; Minnesota Statutes 2011 Supplement, sections 290.01, subdivision 19b; 290.06, subdivision 2c; 290.0671, subdivision 1; 290.091, subdivision 2; 290.0922, subdivisions 2, 3; 291.03, subdivisions 8, 9, 10, 11; 297A.75, subdivision 1; repealing Minnesota Statutes 2010, sections 272.02, subdivision 83; 290.06, subdivisions 24, 32; 297A.68, subdivision 41; 469.042, subdivisions 2, 3, 4; 469.043; 469.059, subdivision 13; 469.129; 469.134; 469.162, subdivision 2; 469.1651; 469.166, subdivisions 7, 8, 9, 10, 11, 12; 469.167, subdivisions 1, 3; 469.168; 469.169, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13; 469.170, subdivisions 1, 2, 3, 4, 5, 5a, 5b, 5c, 5d, 5e, 6, 7, 8; 469.171, subdivisions 2, 5, 6a, 6b; 469.173, subdivisions 1, 3; 469.1765; 469.1791; 469.1799, subdivision 2; 469.301, subdivisions 1, 2, 3, 4, 5; 469.302; 469.303; 469.304; 469.321; 469.3215; 469.322; 469.323; 469.324; 469.325; 469.326; 469.327; 469.328; 469.329; 473.680."

With the recommendation that when so amended the bill pass.

The report was adopted.

Davids from the Committee on Taxes to which was referred:

H. F. No. 2786, A bill for an act relating to local government aid; exempting certain cities from 2011 aid penalties.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"Section 1. **2011 CITY AID PENALTIES.**

Notwithstanding Minnesota Statutes, section 477A.017, subdivision 3, any city that did not meet the requirements for filing calendar year 2010 financial reports with the state auditor imposed under Minnesota Statutes, section 477A.017, subdivision 2, shall receive its 2011 aid payment as calculated pursuant to Minnesota Statutes, section 477A.013, subdivision 11. The commissioner shall make payment to the cities of Bigfork, Biscay, Bluffton, Bovey, Dalton, Dennison, Echo, Elysian, Henriette, Hoffman, Holland, Jeffers, Lake Henry, McGregor, Nelson, Vesta, and Villard provided that the state auditor certifies that all forms for calendar year 2010 have been submitted by the city by May 31, 2012, no later than June 30, 2012. Up to \$794,597 of the fiscal year 2012 appropriation for local government aid in Minnesota Statutes 2011 Supplement, section 477A.013, subdivision 11, is available for the payment under this section.

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

With the recommendation that when so amended the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Dauids from the Committee on Taxes to which was referred:

H. F. No. 2792, A bill for an act relating to education; expanding lease levy to include administrative space; amending Minnesota Statutes 2011 Supplement, section 126C.40, subdivision 1.

Reported the same back with the recommendation that the bill pass and be re-referred to the Committee on Education Finance.

The report was adopted.

Beard from the Committee on Transportation Policy and Finance to which was referred:

H. F. No. 2973, A bill for an act relating to transportation capital improvements; authorizing spending to acquire and better public land and buildings for trunk highway purposes; authorizing the sale and issuance of trunk highway bonds; appropriating money.

Reported the same back with the following amendments:

Page 2, after line 18, insert:

"This appropriation is only available if legislation is enacted in the 2012 legislative session authorizing the commissioner to collect a surcharge or additional registration tax on motor vehicles."

Page 2, after line 27, insert:

"Sec. 2. **FLOOD MITIGATION.**

\$10,000,000 is appropriated from the bond proceeds account in the trunk highway fund to the commissioner of transportation to provide supplemental funds for one project that, prior to the effective date of this section, has been awarded or allocated funding under the department's flood mitigation program. Notwithstanding Minnesota Statutes, section 16A.642, this appropriation is available until expended."

Page 2, line 29, delete "\$15,000" and insert "\$2,610,000"

Page 3, line 4, delete "\$16,115,000" and insert "\$28,710,000"

Renumber the sections in sequence

Amend the title as follows:

Page 1, line 3, after the semicolon, insert "providing supplemental funds for flood mitigation;"

With the recommendation that when so amended the bill pass and be re-referred to the Committee on Ways and Means.

The report was adopted.

Abeler from the Committee on Health and Human Services Finance to which was referred:

S. F. No. 1675, A bill for an act relating to human services; modifying provisions related to children and family services; reforming adoptions under guardianship of the commissioner; modifying statutory provisions related to child support, child care, child safety, and MFIP; amending Minnesota Statutes 2010, sections 13.46, subdivision 2; 13.461, subdivision 17; 13.465, by adding a subdivision; 119B.09, subdivision 7; 119B.12, subdivisions 1, 2; 119B.125, subdivisions 1a, 2, 6; 119B.13, subdivision 6; 145.902, subdivisions 1, 3; 256.998, subdivisions 1, 5; 256J.08, subdivision 11; 256J.24, subdivisions 2, 5; 256J.32, subdivision 6; 256J.621; 256J.68, subdivision 7; 256J.95, subdivision 3; 257.01; 257.75, subdivision 7; 259.22, subdivision 2; 259.23, subdivision 1; 259.24, subdivisions 1, 3, 5, 6a, 7; 259.29, subdivision 2; 259.69; 259.73; 260.012; 260C.001; 260C.007, subdivision 4, by adding subdivisions; 260C.101, subdivision 2; 260C.150, subdivision 1; 260C.157, subdivision 1; 260C.163, subdivisions 1, 4; 260C.178, subdivisions 1, 7; 260C.193, subdivisions 3, 6; 260C.201, subdivisions 2, 10, 11a; 260C.212, subdivisions 1, 2, 5, 7; 260C.215, subdivisions 4, 6; 260C.217; 260C.301, subdivisions 1, 8; 260C.317, subdivisions 3, 4; 260C.325, subdivisions 1, 3, 4; 260C.328; 260C.451; 260D.08; 518C.205; 541.04; 548.09, subdivision 1; 609.3785; 626.556, subdivisions 2, 10, 10e, 10f, 10i, 10k, 11; Minnesota Statutes 2011 Supplement, sections 119B.13, subdivision 1; 256.01, subdivision 14b; proposing coding for new law in Minnesota Statutes, chapters 260C; 611; proposing coding for new law as Minnesota Statutes, chapter 259A; repealing Minnesota Statutes 2010, sections 256.022; 259.67; 259.71; 260C.201, subdivision 11; 260C.215, subdivision 2; 260C.456; Minnesota Rules, parts 9560.0071; 9560.0082; 9560.0083; 9560.0091; 9560.0093, subparts 1, 3, 4; 9560.0101; 9560.0102.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"ARTICLE 1  
CHILDREN AND FAMILIES POLICY PROVISIONS

Section 1. Minnesota Statutes 2010, section 13.461, subdivision 17, is amended to read:

Subd. 17. **Maltreatment review panels.** Data of the vulnerable adult maltreatment review panel ~~or the child maltreatment review panel~~ are classified under section 256.021 ~~or 256.022~~.

Sec. 2. Minnesota Statutes 2010, section 13.465, is amended by adding a subdivision to read:

Subd. 5a. **Adoptive parent.** Certain data that may be disclosed to a prospective adoptive parent is governed by section 260C.613, subdivision 2.

Sec. 3. Minnesota Statutes 2010, section 256.998, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Date of hiring" means the earlier of: (1) the first day for which an employee is owed compensation by an employer; or (2) the first day that an employee reports to work or performs labor or services for an employer.

(c) "Earnings" means payment owed by an employer for labor or services rendered by an employee.

(d) "Employee" means a person who resides or works in Minnesota, performs services for compensation, in whatever form, for an employer and satisfies the criteria of an employee under chapter 24 of the Internal Revenue Code. Employee does not include:

- (1) persons hired for domestic service in the private home of the employer, as defined in the Federal Tax Code; or
- (2) an employee of the federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting according to this law would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(e) "Employer" means a person or entity located or doing business in this state that employs one or more employees for payment, and satisfies the criteria of an employer under chapter 24 of the Internal Revenue Code. Employer includes a labor organization as defined in paragraph (g). Employer also includes the state, political or other governmental subdivisions of the state, and the federal government.

(f) "Hiring" means engaging a person to perform services for compensation and includes the reemploying or return to work of any previous employee who was laid off, furloughed, separated, granted a leave without pay, or terminated from employment when a period of 90 ~~60~~ days elapses from the date of layoff, furlough, separation, leave, or termination to the date of the person's return to work.

(g) "Labor organization" means entities located or doing business in this state that meet the criteria of labor organization under section 2(5) of the National Labor Relations Act. This includes any entity, that may also be known as a hiring hall, used to carry out requirements described in chapter 7 of the National Labor Relations Act.

(h) "Payor" means a person or entity located or doing business in Minnesota who pays money to an independent contractor according to an agreement for the performance of services.

Sec. 4. Minnesota Statutes 2010, section 256.998, subdivision 5, is amended to read:

Subd. 5. **Report contents.** Reports required under this section must contain: all the information required by federal law.

~~(1) the employee's name, address, Social Security number, and date of birth when available, which can be handwritten or otherwise added to the W-4 form, W-9 form, or other document submitted; and~~

~~(2) the employer's name, address, and federal identification number.~~

Sec. 5. Minnesota Statutes 2010, section 256J.24, subdivision 5, is amended to read:

Subd. 5. **MFIP transitional standard.** The MFIP transitional standard is based on the number of persons in the assistance unit eligible for both food and cash assistance unless the restrictions in subdivision 6 on the birth of a child apply. ~~The following table represents the transitional standards including a breakdown of the cash and food portions effective October 1, 2009.~~

Number of Eligible People	Transitional Standard	Cash Portion	Food Portion
1	<del>\$428:</del>	\$250	\$178
2	<del>\$764:</del>	\$437	\$327
3	<del>\$1,005:</del>	\$532	\$473
4	<del>\$1,222:</del>	\$621	\$601
5	<del>\$1,399:</del>	\$697	\$702
6	<del>\$1,608:</del>	\$773	\$835
7	<del>\$1,754:</del>	\$850	\$904
8	<del>\$1,940:</del>	\$916	\$1,024

9	\$2,125:	\$980	\$1,145
10	\$2,304:	\$1,035	\$1,269
over 10			
per additional member.	add \$178:	\$53	\$125

The amount of the transitional standard is published annually by the Department of Human Services.

Sec. 6. Minnesota Statutes 2010, section 259.22, subdivision 2, is amended to read:

Subd. 2. **Persons who may be adopted.** No petition for adoption shall be filed unless the person sought to be adopted has been placed by ~~the commissioner of human services, the commissioner's agent, or~~ a licensed child-placing agency. The provisions of this subdivision shall not apply if:

- (1) the person to be adopted is over 14 years of age;
- (2) the child is sought to be adopted by an individual who is related to the child, as defined by section 245A.02, subdivision 13;
- (3) the child has been lawfully placed under the laws of another state while the child and petitioner resided in that other state;
- (4) the court waives the requirement of this subdivision in the best interests of the child or petitioners, provided that the adoption does not involve a placement as defined in section 259.21, subdivision 8; or
- (5) the child has been lawfully placed under section 259.47.

Sec. 7. Minnesota Statutes 2010, section 259.23, subdivision 1, is amended to read:

Subdivision 1. **Venue.** (a) ~~Except as provided in section 260C.101, subdivision 2,~~ The juvenile court shall have original jurisdiction in all adoption proceedings. The proper venue for an adoption proceeding shall be the county of the petitioner's residence, except as provided in ~~paragraph (b)~~ section 260C.621, subdivision 2, for the adoption of children under the guardianship of the commissioner.

~~(b) Venue for the adoption of a child committed to the guardianship of the commissioner of human services shall be the county with jurisdiction in the matter according to section 260C.317, subdivision 3.~~

~~(c) Upon request of the petitioner, the court having jurisdiction over the matter under section 260C.317, subdivision 3, may transfer venue of an adoption proceeding involving a child under the guardianship of the commissioner to the county of the petitioner's residence upon determining that:~~

- ~~(1) the commissioner has given consent to the petitioner's adoption of the child or that consent is unreasonably withheld;~~
- ~~(2) there is no other adoption petition for the child that has been filed or is reasonably anticipated by the commissioner or the commissioner's delegate to be filed; and~~
- ~~(3) transfer of venue is in the best interests of the child.~~

Transfer of venue under this paragraph shall be according to the rules of adoption court procedure.



~~(d)~~ (b) In all ~~other~~ adoptions under this chapter, if the petitioner has acquired a new residence in another county and requests a transfer of the adoption proceeding, the court in which an adoption is initiated may transfer the proceeding to the appropriate court in the new county of residence if the transfer is in the best interests of the person to be adopted. The court transfers the proceeding by ordering a continuance and by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of transfer. The transferring court also shall forward copies of the order of transfer to the commissioner of human services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case; provided, however, the receiving court may in its discretion require the filing of a new petition prior to the hearing.

Sec. 8. Minnesota Statutes 2010, section 259.24, subdivision 1, is amended to read:

Subdivision 1. **Exceptions.** (a) No child shall be adopted without the consent of the child's parents and the child's guardian, if there be one, except in the following instances consent is not required of a parent:

~~(a) Consent shall not be required of a parent (1) who is not entitled to notice of the proceedings;~~

~~(b) Consent shall not be required of a parent (2) who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree or a decree of dissolution, and upon whom notice has been served as required by section 259.49; or~~

~~(c) Consent shall not be required of a parent (3) whose parental rights to the child have been terminated by a juvenile court or who has lost custody of a child through a final commitment of the juvenile court or through a decree in a prior adoption proceeding.~~

~~(d) If there be no parent or guardian qualified to consent to the adoption, the consent shall be given by the commissioner. After the court accepts a parent's consent to the adoption under section 260C.201, subdivision 11, consent by the commissioner or commissioner's delegate is also necessary. Agreement to the identified prospective adoptive parent by the responsible social services agency under section 260C.201, subdivision 11, does not constitute the required consent.~~

~~(e) (b) If there is no parent or guardian qualified to consent to the adoption, the commissioner or agency having authority to place a child for adoption pursuant to section 259.25, subdivision 1, shall have the exclusive right to consent to the adoption of such the child. The commissioner or agency shall make every effort to place siblings together for adoption. Notwithstanding any rule to the contrary, the commissioner may delegate the right to consent to the adoption or separation of siblings, if it is in the child's best interest, to a local social services agency.~~

Sec. 9. Minnesota Statutes 2010, section 259.24, subdivision 3, is amended to read:

Subd. 3. **Child.** When the child to be adopted is over 14 years of age, the child's written consent to adoption by a particular person is also necessary. ~~A child of any age who is under the guardianship of the commissioner and is legally available for adoption may not refuse or waive the commissioner's agent's exhaustive efforts to recruit, identify, and place the child in an adoptive home required under section 260C.317, subdivision 3, paragraph (b), or sign a document relieving county social services agencies of all recruitment efforts on the child's behalf.~~

Sec. 10. Minnesota Statutes 2010, section 259.24, subdivision 5, is amended to read:

Subd. 5. **Execution.** All consents to an adoption shall be in writing, executed before two competent witnesses, and acknowledged by the consenting party. ~~In addition, all consents to an adoption, except those by the commissioner, the commissioner's agent, a licensed child placing agency, an adult adoptee, or the child's parent in a petition for adoption by a stepparent, shall be executed before a representative of the commissioner, the commissioner's agent, or a licensed child placing agency. All consents by a parent to adoption under this chapter:~~

(1) shall contain notice to the parent of the substance of subdivision 6a, providing for the right to withdraw consent unless the parent will not have the right to withdraw consent ~~because consent was executed under section 260C.201, subdivision 11, following proper notice that consent given under that provision is irrevocable upon acceptance by the court as provided in subdivision 6a; and~~

(2) shall contain the following written notice in all capital letters at least one-eighth inch high:

~~This~~ The agency responsible for supervising the adoptive placement of the child will submit your consent to adoption to the court. ~~If you are consenting to adoption by the child's stepparent, the consent will be submitted to the court by the petitioner in your child's adoption.~~ The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Consents shall be filed in the adoption proceedings at any time before the matter is heard provided, however, that a consent executed and acknowledged outside of this state, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Sec. 11. Minnesota Statutes 2010, section 259.24, subdivision 6a, is amended to read:

Subd. 6a. **Withdrawal of consent.** ~~Except for consents executed under section 260C.201, subdivision 11, A parent's consent to adoption under this chapter may be withdrawn for any reason within ten working days after the consent is executed and acknowledged. No later than the tenth working day after the consent is executed and acknowledged, written notification of withdrawal of consent must be received by: (1) the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged; (2) the agency supervising the adoptive placement of the child; or (3) in the case of adoption by the step parent or any adoption not involving agency placement or supervision, by the district court where the adopting stepparent or parent resides. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that consent was obtained by fraud. A consent to adopt executed under section 260C.201, subdivision 11, is irrevocable upon proper notice to both parents of the effect of a consent to adopt and acceptance by the court, except upon order of the same court after written findings that the consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the birth parents over the adoptive parents.~~

Sec. 12. Minnesota Statutes 2010, section 259.24, subdivision 7, is amended to read:

Subd. 7. **Withholding consent; reason.** Consent to an adoption shall not be unreasonably withheld by a guardian, who is not a parent of the child, ~~by the commissioner~~ or by an agency.

Sec. 13. Minnesota Statutes 2010, section 259.29, subdivision 2, is amended to read:

Subd. 2. **Placement with relative or friend.** The authorized child-placing agency shall consider placement, consistent with the child's best interests and in the following order, with (1) a relative or relatives of the child, or (2) an important friend with whom the child has resided or had significant contact. In implementing this section, an authorized child-placing agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable adoptive home. The agency shall disclose only data that is necessary to facilitate implementing the preference.

If the child's birth parent or parents explicitly request that placement with relatives a specific relative or important ~~friends~~ friend not be considered, the authorized child-placing agency shall honor that request if it is consistent with the best interests of the child and consistent with the requirements of sections 260C.212, subdivision 2, and 260C.221.

If the child's birth parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the birth parent or parents, the agency shall place the child with a family that meets the birth parent's religious preference.

This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.

Sec. 14. Minnesota Statutes 2010, section 260C.193, subdivision 3, is amended to read:

Subd. 3. **Best interest of the child in foster care ~~or residential care~~.** (a) The policy of the state is to ensure that the best interests of children in foster ~~or residential~~ care are met by requiring individualized determinations under section 260C.212, subdivision 2, paragraph (b), of the needs of the child and of how the selected placement will serve the needs of the child in foster care placements.

(b) The court shall review whether the responsible social services agency made efforts as required under section ~~260C.212, subdivision 5~~ 260C.221, and made an individualized determination as required under section 260C.212, subdivision 2. If the court finds the agency has not made efforts as required under section ~~260C.212, subdivision 5~~ 260C.221, and there is a relative who qualifies to be licensed to provide family foster care under chapter 245A, the court may order the child placed with the relative consistent with the child's best interests.

(c) If the child's birth parent or parents explicitly request that a relative or important friend not be considered, the court shall honor that request if it is consistent with the best interests of the child and consistent with the requirements of section 260C.221. If the child's birth parent or parents express a preference for placing the child in a foster or adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

(d) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(e) Whenever possible, siblings requiring foster care placement should be placed together unless it is determined not to be in the best interests of a sibling after weighing the benefits of separate placement against the benefits of sibling connections for each sibling. If siblings are not placed together according to section 260C.212, subdivision 2, paragraph (d), the responsible social services agency shall report to the court the efforts made to place the siblings together and why the efforts were not successful. If the court is not satisfied with the agency's efforts to place siblings together, the court may order the agency to make further efforts. If siblings are not placed together the court shall review the responsible social services agency's plan for visitation among siblings required as part of the out-of-home placement plan under section 260C.212.

(f) This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.

Sec. 15. Minnesota Statutes 2010, section 260C.201, subdivision 11a, is amended to read:

Subd. 11a. **Permanency progress review for children under eight in foster care for six months.** (a) ~~If the child was under eight years of age at the time the petition was filed alleging the child was in need of protection or services, and the~~ When a child continues in placement out of the home of the parent or guardian from whom the child was removed, no later than six months after the child's placement the court shall conduct a permanency progress hearing to review:

(1) the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and whichever is applicable;

(2) the agency's reasonable, or in the case of an Indian child, active efforts for reunification and its provision of services;

(3) the agency's reasonable efforts to finalize the permanent plan for the child under section 260.012, paragraph (e), and to make a placement as required under section 260C.212, subdivision 2, in a home that will commit to being the legally permanent family for the child in the event the child cannot return home according to the timelines in this section; and

(4) in the case of an Indian child, active efforts to prevent the breakup of the Indian family and to make a placement according to the placement preferences under United States Code, title 25, chapter 21, section 1915.

~~(b) Based on its assessment of the parent's or guardian's progress on the out of home placement plan, the responsible social services agency must ask the county attorney to file a petition for termination of parental rights, a petition for transfer of permanent legal and physical custody to a relative, or the report required under juvenile court rules.~~

(b) The court shall ensure that notice of the hearing is sent to any relative who:

(1) responded to the agency's notice provided under section 260C.221, indicating an interest in participating in planning for the child or being a permanency resource for the child and who has kept the court apprised of the relative's address; or

(2) asked to be notified of court proceedings regarding the child as is permitted in section 260C.152, subdivision 5.

(c)(1) If the parent or guardian has maintained contact with the child and is complying with the court-ordered out-of-home placement plan, and if the child would benefit from reunification with the parent, the court may either:

(i) return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated that it is safe and in the child's best interests to return home; or

(ii) continue the matter up to a total of six additional months. If the child has not returned home by the end of the additional six months, the court must conduct a hearing according to subdivision 11.

(2) If the court determines that the parent or guardian is not complying with the out-of-home placement plan or is not maintaining regular contact with the child as outlined in the visitation plan required as part of the out-of-home placement plan under section 260C.212, the court may order the responsible social services agency:

(i) to develop a plan for legally permanent placement of the child away from the parent and;

(ii) to consider, identify, recruit, and support one or more permanency resources from the child's relatives and foster parent to be the legally permanent home in the event the child cannot be returned to the parent. Any relative or the child's foster parent may ask the court to order the agency to consider them for permanent placement of the child in the event the child cannot be returned to the parent. A relative or foster parent who wants to be considered under this item shall cooperate with the background study required under section 245C.08, if the individual has not already done so, and with the home study process required under chapter 245A for providing child foster care and for adoption under section 259.41. The home study referred to in this item shall be a single-home study in the form required by the commissioner of human services or similar study required by the individual's state of residence when the subject of the study is not a resident of Minnesota. The court may order the responsible social services agency to make a referral under the Interstate Compact on the Placement of Children when necessary to obtain a home study for an individual who wants to be considered for transfer of permanent legal and physical custody or adoption of the child; and

(iii) to file a petition to support an order for the legally permanent placement plan.

(d) Following the review under ~~paragraphs (b) and (c)~~ this subdivision:

(1) if the court has either returned the child home or continued the matter up to a total of six additional months, the agency shall continue to provide services to support the child's return home or to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

(2) if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within ~~30~~ 60 days of the filing of the pleadings; or

(3) if the court orders the agency to file a termination of parental rights, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within ~~90~~ 60 days of the filing of the petition.

Sec. 16. Minnesota Statutes 2010, section 260C.212, subdivision 1, is amended to read:

Subdivision 1. **Out-of-home placement; plan.** (a) An out-of-home placement plan shall be prepared within 30 days after any child is placed in foster care by court order or a voluntary placement agreement between the responsible social services agency and the child's parent pursuant to subdivision 8 or chapter 260D.

(b) An out-of-home placement plan means a written document which is prepared by the responsible social services agency jointly with the parent or parents or guardian of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the ~~residential~~ foster care facility, and, where appropriate, the child. For a child in voluntary foster care for treatment under chapter 260D, preparation of the out-of-home placement plan shall additionally include the child's mental health treatment provider. As appropriate, the plan shall be:

(1) submitted to the court for approval under section 260C.178, subdivision 7;

(2) ordered by the court, either as presented or modified after hearing, under section 260C.178, subdivision 7, or 260C.201, subdivision 6; and

(3) signed by the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social services agency, and, if possible, the child.

(c) The out-of-home placement plan shall be explained to all persons involved in its implementation, including the child who has signed the plan, and shall set forth:

(1) a description of the ~~residential facility~~ foster care home or facility selected including how the out-of-home placement plan is designed to achieve a safe placement for the child in the least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification, and how the placement is consistent with the best interests and special needs of the child according to the factors under subdivision 2, paragraph (b);

(2) the specific reasons for the placement of the child in a ~~residential facility~~ foster care, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make in order for the child to safely return home;

(3) a description of the services offered and provided to prevent removal of the child from the home and to reunify the family including:

(i) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (2), and the time period during which the actions are to be taken; and

(ii) the reasonable efforts, or in the case of an Indian child, active efforts to be made to achieve a safe and stable home for the child including social and other supportive services to be provided or offered to the parent or parents or guardian of the child, the child, and the residential facility during the period the child is in the residential facility;

(4) a description of any services or resources that were requested by the child or the child's parent, guardian, foster parent, or custodian since the date of the child's placement in the residential facility, and whether those services or resources were provided and if not, the basis for the denial of the services or resources;

(5) the visitation plan for the parent or parents or guardian, other relatives as defined in section 260C.007, subdivision 27, and siblings of the child if the siblings are not placed together in foster care, and whether visitation is consistent with the best interest of the child, during the period the child is in foster care;

(6) documentation of steps to finalize the adoption or legal guardianship of the child if the court has issued an order terminating the rights of both parents of the child or of the only known, living parent of the child. At a minimum, the documentation must include child-specific recruitment efforts such as relative search and the use of state, regional, and national adoption exchanges to facilitate orderly and timely placements in and outside of the state. A copy of this documentation shall be provided to the court in the review required under section 260C.317, subdivision 3, paragraph (b);

(7) efforts to ensure the child's educational stability while in foster care, including:

(i) efforts to ensure that the child ~~in placement~~ remains in the same school in which the child was enrolled prior to placement or upon the child's move from one placement to another, including efforts to work with the local education authorities to ensure the child's educational stability; or

(ii) if it is not in the child's best interest to remain in the same school that the child was enrolled in prior to placement or move from one placement to another, efforts to ensure immediate and appropriate enrollment for the child in a new school;

(8) the educational records of the child including the most recent information available regarding:

(i) the names and addresses of the child's educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) a statement about how the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; and

(v) any other relevant educational information;

(9) the efforts by the local agency to ensure the oversight and continuity of health care services for the foster child, including:

- (i) the plan to schedule the child's initial health screens;
  - (ii) how the child's known medical problems and identified needs from the screens, including any known communicable diseases, as defined in section 144.4172, subdivision 2, will be monitored and treated while the child is in foster care;
  - (iii) how the child's medical information will be updated and shared, including the child's immunizations;
  - (iv) who is responsible to coordinate and respond to the child's health care needs, including the role of the parent, the agency, and the foster parent;
  - (v) who is responsible for oversight of the child's prescription medications;
  - (vi) how physicians or other appropriate medical and nonmedical professionals will be consulted and involved in assessing the health and well-being of the child and determine the appropriate medical treatment for the child; and
  - (vii) the responsibility to ensure that the child has access to medical care through either medical insurance or medical assistance;
- (10) the health records of the child including information available regarding:
- (i) the names and addresses of the child's health care and dental care providers;
  - (ii) a record of the child's immunizations;
  - (iii) the child's known medical problems, including any known communicable diseases as defined in section 144.4172, subdivision 2;
  - (iv) the child's medications; and
  - (v) any other relevant health care information such as the child's eligibility for medical insurance or medical assistance;
- (11) an independent living plan for a child age 16 or older ~~who is in placement as a result of a permanency disposition~~. The plan should include, but not be limited to, the following objectives:
- (i) educational, vocational, or employment planning;
  - (ii) health care planning and medical coverage;
  - (iii) transportation including, where appropriate, assisting the child in obtaining a driver's license;
  - (iv) money management, including the responsibility of the agency to ensure that the youth annually receives, at no cost to the youth, a consumer report as defined under section 13C.001 and assistance in interpreting and resolving any inaccuracies in the report;
  - (v) planning for housing;
  - (vi) social and recreational skills; and
  - (vii) establishing and maintaining connections with the child's family and community; and

(12) for a child in voluntary foster care for treatment under chapter 260D, diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes.

(d) The parent or parents or guardian and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child. The child shall also have the right to a guardian ad litem. If unable to employ counsel from their own resources, the court shall appoint counsel upon the request of the parent or parents or the child or the child's legal guardian. The parent or parents may also receive assistance from any person or social services agency in preparation of the case plan.

After the plan has been agreed upon by the parties involved or approved or ordered by the court, the foster parents shall be fully informed of the provisions of the case plan and shall be provided a copy of the plan.

Upon discharge from foster care, the parent, adoptive parent, or permanent legal and physical custodian, as appropriate, and the child, if appropriate, must be provided with a current copy of the child's health and education record.

Sec. 17. Minnesota Statutes 2010, section 260C.212, subdivision 2, is amended to read:

Subd. 2. **Placement decisions based on best interest of the child.** (a) The policy of the state of Minnesota is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed. The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order:

- (1) with an individual who is related to the child by blood, marriage, or adoption; or
- (2) with an individual who is an important friend with whom the child has resided or had significant contact.
- (b) Among the factors the agency shall consider in determining the needs of the child are the following:
  - (1) the child's current functioning and behaviors;
  - (2) the medical; needs of the child;
  - (3) the educational, and needs of the child;
  - (4) the developmental needs of the child;
  - (~~3~~) (5) the child's history and past experience;
  - (~~4~~) (6) the child's religious and cultural needs;
  - (~~5~~) (7) the child's connection with a community, school, and faith community;
  - (~~6~~) (8) the child's interests and talents;
  - (~~7~~) (9) the child's relationship to current caretakers, parents, siblings, and relatives; and
  - (~~8~~) (10) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.



(c) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(d) Siblings should be placed together for foster care and adoption at the earliest possible time unless it is documented that a joint placement would be contrary to the safety or well-being of any of the siblings or unless it is not possible after reasonable efforts by the responsible social services agency. In cases where siblings cannot be placed together, the agency is required to provide frequent visitation or other ongoing interaction between siblings unless the agency documents that the interaction would be contrary to the safety or well-being of any of the siblings.

(e) Except for emergency placement as provided for in section 245A.035, a completed background study is required under section 245C.08 before the approval of a foster placement in a related or unrelated home.

Sec. 18. Minnesota Statutes 2010, section 260C.212, subdivision 5, is amended to read:

Subd. 5. **Relative search.** (a) The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent. The county agency shall consider placement with a relative under ~~subdivision 2~~ section 260C.221 without delay. The relative search required by this section shall be reasonable and comprehensive in scope and may last up to six months or until a fit and willing relative is identified. The relative search required by this section shall include both maternal relatives of the child and paternal relatives of the child, if paternity is adjudicated. The relatives must be notified:

(1) of the need for a foster home for the child, the option to become a placement resource for the child, and the possibility of the need for a permanent placement for the child;

(2) of their responsibility to keep the responsible social services agency and the court informed of their current address in order to receive notice in the event that a permanent placement is sought for the child and to receive notice of the permanency progress review hearing under section 260C.204. A relative who fails to provide a current address to the responsible social services agency and the court forfeits the right to receive notice of the possibility of permanent placement and of the permanency progress review hearing under section 260C.204. A decision by a relative not to be a placement resource at the beginning of the case shall not affect whether the relative is considered for placement of the child with that relative later;

(3) that the relative may participate in the care and planning for the child, including that the opportunity for such participation may be lost by failing to respond to the notice sent under this subdivision; and

(4) of the family foster care licensing requirements, including how to complete an application and how to request a variance from licensing standards that do not present a safety or health risk to the child in the home under section 245A.04 and supports that are available for relatives and children who reside in a family foster home.

(b) A responsible social services agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable placement. The agency shall disclose only data that is necessary to facilitate possible placement with relatives. If the child's parent refuses to give the responsible social services agency information sufficient to identify the maternal and paternal relatives of the child, the agency shall ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that ~~relatives or~~ a specific relative not be contacted or considered for placement due to safety reasons including past family or domestic violence, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact ~~relatives or a~~ the specific relative unless authorized to do so by when the juvenile court finds that contacting the specific relative would endanger the parent, guardian, child, sibling, or any family member.

(c) When the placing agency determines that a permanent placement hearing is necessary because there is a likelihood that the child will not return to a parent's care, the agency may send the notice provided in paragraph (d), may ask the court to modify the requirements of the agency under this paragraph, or may ask the court to completely relieve the agency of the requirements of this paragraph (d). ~~The relative notification requirements of this paragraph do not apply when the child is placed with an appropriate relative or a foster home that has committed to being the permanent legal placement for the child and the agency approves of that foster home for permanent placement of the child.~~ The actions ordered by the court under this section must be consistent with the best interests, safety, and welfare of the child.

(d) Unless required under the Indian Child Welfare Act or relieved of this duty by the court under paragraph (c), when the agency determines that it is necessary to prepare for the permanent placement determination hearing, or in anticipation of filing a termination of parental rights petition, the agency shall send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The notice must state that within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

(e) The Department of Human Services shall develop a best practices guide and specialized staff training to assist the responsible social services agency in performing and complying with the relative search requirements under this subdivision.

Sec. 19. Minnesota Statutes 2010, section 260C.212, subdivision 7, is amended to read:

Subd. 7. **Administrative or court review of placements.** (a) There shall be an administrative review of the out-of-home placement plan of each child placed in foster care no later than 180 days after the initial placement of the child in foster care and at least every six months thereafter if the child is not returned to the home of the parent or parents within that time. The out-of-home placement plan must be monitored and updated at each administrative review. The administrative review shall be conducted by the responsible social services agency using a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review. The administrative review shall be open to participation by the parent or guardian of the child and the child, as appropriate.

(b) As an alternative to the administrative review required in paragraph (a), the court may, as part of any hearing required under the Minnesota Rules of Juvenile Protection Procedure, conduct a hearing to monitor and update the out-of-home placement plan pursuant to the procedure and standard in section 260C.201, subdivision 6, paragraph (d). The party requesting review of the out-of-home placement plan shall give parties to the proceeding notice of the request to review and update the out-of-home placement plan. A court review conducted pursuant to section 260C.193; 260C.201, subdivision 1 or 11; 260C.141, subdivision 2; 260C.317; or 260D.06 shall satisfy the requirement for the review so long as the other requirements of this section are met.

(c) As appropriate to the stage of the proceedings and relevant court orders, the responsible social services agency or the court shall review:

- (1) the safety, permanency needs, and well-being of the child;
- (2) the continuing necessity for and appropriateness of the placement;
- (3) the extent of compliance with the out-of-home placement plan;

(4) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care;

(5) the projected date by which the child may be returned to and safely maintained in the home or placed permanently away from the care of the parent or parents or guardian; and

(6) the appropriateness of the services provided to the child.

(d) When a child is age 16 or older, in addition to any administrative review conducted by the agency, at the in-court review required under section 260C.201, subdivision 11, or 260C.317, subdivision 3, clause (3), the court shall review the independent living plan required under subdivision 1, paragraph (c), clause (11), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care.

(1) At the court review, the responsible social services agency shall establish that it has given the notice required under section 260C.456 or Minnesota Rules, part 9560.0660, regarding the right to continued access to services for certain children in foster care past age 18 and of the right to appeal a denial of social services under section 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall require the agency to give it.

(2) Consistent with the requirements of the independent living plan, the court shall review progress toward or accomplishment of the following goals:

(i) the child has obtained a high school diploma or its equivalent;

(ii) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;

(iii) the child is employed or enrolled in postsecondary education;

(iv) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;

(v) the child has health care coverage and health care providers to meet the child's physical and mental health needs;

(vi) the child has applied for and obtained disability income assistance for which the child is eligible;

(vii) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;

(viii) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;

(ix) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;

(x) the child, if male, has registered for the Selective Service; and

(xi) the child has a permanent connection to a caring adult.

(3) The court shall ensure that the responsible agency in conjunction with the placement provider assists the child in obtaining the following documents prior to the child's leaving foster care: a Social Security card; the child's birth certificate; a state identification card or driver's license, green card, or school visa; the child's school, medical, and dental records; a contact list of the child's medical, dental, and mental health providers; and contact information for the child's siblings, if the siblings are in foster care.

(e) When a child is age 17 or older, during the 90-day period immediately prior to the date the child is expected to be discharged from foster care, the responsible social services agency is required to provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The transition plan must be as detailed as the child may elect and include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services. The agency shall ensure that the youth receives, at no cost to the youth, a copy of the youth's consumer credit report as defined in section 13C.001 and assistance in interpreting and resolving any inaccuracies in the report. The county agency shall also provide the ~~individual youth~~ with appropriate contact information if the ~~individual youth~~ needs more information or needs help dealing with a crisis situation through age 21.

Sec. 20. Minnesota Statutes 2010, section 260C.317, subdivision 3, is amended to read:

Subd. 3. **Order; retention of jurisdiction.** (a) A certified copy of the findings and the order terminating parental rights, and a summary of the court's information concerning the child shall be furnished by the court to the commissioner or the agency to which guardianship is transferred.

~~(b)~~ The orders shall be on a document separate from the findings. The court shall furnish the ~~individual to whom guardianship is transferred~~ guardian a copy of the order terminating parental rights.

~~(b) (c)~~ When the court orders guardianship pursuant to this section, the court shall retain jurisdiction in a case where adoption is the intended permanent placement disposition until the child's adoption is finalized, the child is 18 years of age, or, for children in foster care beyond age 18 pursuant to section 260C.451, until the individual becomes 21 years of age according to the provisions set forth in sections 260C.193, subdivision 6, and 260C.451. The guardian ad litem and counsel for the child shall continue on the case until an adoption decree is entered. An in-court appearance hearing must be held every 90 days following termination of parental rights for the court to review progress toward an adoptive placement and the specific recruitment efforts the agency has taken to find an adoptive family or other placement living arrangement for the child and to finalize the adoption or other permanency plan. Review of the progress toward adoption of a child under guardianship of the commissioner of human services shall be conducted according to section 260C.607.

~~(c)~~ The responsible social services agency may make a determination of compelling reasons for a child to be in long term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least 24 months after the court has issued the order terminating parental rights. ~~A child of any age who is under the guardianship of the commissioner of the Department of Human Services and is legally available for adoption may not refuse or waive the commissioner's agent's exhaustive efforts to recruit, identify, and place the child in an adoptive home required under paragraph (b) or sign a document relieving county social services agencies of all recruitment efforts on the child's behalf. Upon approving the agency's determination of compelling reasons, the court may order the child placed in long term foster care. At least every 12 months thereafter as long as the child continues in out of home placement, the court shall conduct an in court permanency review hearing to determine the future status of the child using the review requirements of section 260C.201, subdivision 11, paragraph (g).~~

~~(d)~~ Upon terminating parental rights or upon a parent's consent to adoption under section 260C.201, subdivision 11, resulting in an order for guardianship to the commissioner of human services, the court shall retain jurisdiction;

(1) until the child is adopted;

(2) through the child's minority ~~in a case where long term;~~ or

(3) as long as the child continues in or reenters foster care is the permanent disposition whether under paragraph (c) or section 260C.201, subdivision 11, or, for children in foster care age 18 or older under section 260C.451, until the individual becomes 21 years of age according to the provisions in sections 260C.193, subdivision 6, and 260C.451.

Sec. 21. Minnesota Statutes 2010, section 260C.317, subdivision 4, is amended to read:

Subd. 4. **Rights of terminated parent.** (a) Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child as to whom the parental rights are terminated, the court shall cause written notice to be made to that person setting forth:

(1) the right of the person to file at any time with the state registrar of vital statistics a consent to disclosure, as defined in section 144.212, subdivision 11;

(2) the right of the person to file at any time with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in section 144.2252; and

(3) the effect of a failure to file either a consent to disclosure, as defined in section 144.212, subdivision 11, or an affidavit stating that the information on the original birth record shall not be disclosed.

(b) A parent whose rights are terminated under this section shall retain the ability to enter into a contact or communication agreement under section 260C.619 if an agreement is determined by the court to be in the best interests of the child. The agreement shall be filed with the court at or prior to the time the child is adopted. An order for termination of parental rights shall not be conditioned on an agreement under section 260C.619.

Sec. 22. Minnesota Statutes 2010, section 260C.325, subdivision 1, is amended to read:

Subdivision 1. ~~**Transfer of custody**~~ **Guardianship.** (a) ~~If~~ When the court terminates parental rights of both parents or of the only known living legal parent, the court shall order the guardianship ~~and the legal custody~~ of the child ~~transferred~~ to:

(1) the commissioner of human services;

(2) a licensed child-placing agency; or

(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) The court shall order ~~transfer of guardianship and legal custody~~ of a child to the commissioner of human services ~~only~~ when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship ~~and legal custody transferred~~ to the commissioner. The court shall not order guardianship to the commissioner under any other circumstances, except as provided in subdivision 3.

Sec. 23. Minnesota Statutes 2010, section 260C.325, subdivision 3, is amended to read:

Subd. 3. **Both parents deceased.** (a) If upon petition ~~to the juvenile court~~ for guardianship by a reputable person, including but not limited to ~~an~~ the responsible social services agency as agent of the commissioner of human services, and upon hearing in the manner provided in section 260C.163, the court finds that both parents or the only known legal parent are or is deceased and no appointment has been made or petition for appointment filed pursuant to sections 524.5-201 to 524.5-317, the court shall order the guardianship ~~and legal custody~~ of the child transferred to:

(1) the commissioner of human services; or

~~(2) a licensed child placing agency; or~~

~~(3)~~ (2) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) The court shall order ~~transfer of guardianship and legal custody~~ of a child to the commissioner of human services only if there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Sec. 24. Minnesota Statutes 2010, section 260C.325, subdivision 4, is amended to read:

Subd. 4. **Guardian's responsibilities.** (a) A guardian appointed under ~~the provisions of this section~~ has legal custody of a ward ~~unless the court which appoints the guardian gives legal custody to some other person. If the court awards custody to a person other than the guardian, the guardian nonetheless has the right and responsibility of reasonable visitation, except as limited by court order.~~ the child and the right to visit the child in foster care, the adoptive placement, or any other suitable setting at any time prior to finalization of the adoption of the child. When the child is under the guardianship of the commissioner, the responsible social services agency, as agent of the commissioner, has the right to visit the child.

(b) When the guardian is a licensed child-placing agency, the guardian may shall make all major decisions affecting the person of the ward child, including, but not limited to, giving consent, (when consent is legally required), to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment, or adoption of the ward child. When, pursuant to this section, the commissioner of human services is appointed guardian, the commissioner may delegate to the responsible social services agency of the county in which, after the appointment, the ward resides, the authority to act for the commissioner in decisions affecting the person of the ward, including but not limited to giving consent to the marriage, enlistment in the armed forces, medical, surgical, or psychiatric treatment of the ward.

(c) When the commissioner is appointed guardian, the duties of the commissioner of human services are established under sections 260C.601 to 260C.635.

~~(e)~~ (d) A guardianship created under ~~the provisions of this section~~ shall not ~~of itself~~ include the guardianship of the estate of the ward child.

(e) The commissioner of human services, through the responsible social services agency, or a licensed child-placing agency who is a guardian or who has authority and responsibility for planning for the adoption of the child under section 259.25 or 259.47, has the duty to make reasonable efforts to finalize the adoption of the child.

Sec. 25. Minnesota Statutes 2010, section 260C.328, is amended to read:

**260C.328 CHANGE OF GUARDIAN; TERMINATION OF GUARDIANSHIP.**

(a) Upon its own motion or upon petition of an interested party, the juvenile court having jurisdiction of the child may, after notice to the parties and a hearing, remove the guardian appointed by the juvenile court and appoint a new guardian in accordance with the provisions of section 260C.325, subdivision 1, clause (a), (b), or (c). Upon a showing that the child is emancipated, the court may discharge the guardianship. Any child 14 years of age or older who is not adopted but who is placed in a satisfactory foster home, may, with the consent of the foster parents, join with the guardian appointed by the juvenile court in a petition to the court having jurisdiction of the child to discharge the existing guardian and appoint the foster parents as guardians of the child.

(b) The authority of a guardian appointed by the juvenile court terminates when the individual under guardianship is no longer a minor or when guardianship is otherwise discharged. becomes age 18. However, an individual who has been under the guardianship of the commissioner and who has not been adopted may continue in foster care or reenter foster care pursuant to section 260C.451 and the responsible social services agency has continuing legal responsibility for the placement of the individual.

Sec. 26. **[260C.601] ADOPTION OF CHILDREN UNDER GUARDIANSHIP OF COMMISSIONER.**

Subdivision 1. **Review and finalization requirements; adoption procedures.** (a) Sections 260C.601 to 260C.635 establish:

(1) the requirements for court review of children under the guardianship of the commissioner; and

(2) procedures for timely finalizing adoptions in the best interests of children under the guardianship of the commissioner.

(b) Adoption proceedings for children not under the guardianship of the commissioner are governed by chapter 259.

Subd. 2. **Duty of responsible agency.** The responsible social services agency has the duty to act as the commissioner's agent in making reasonable efforts to finalize the adoption of all children under the guardianship of the commissioner pursuant to section 260C.325. In implementing these duties, the agency shall ensure that:

(1) the best interests of the child are met in the planning and granting of adoptions;

(2) a child under the guardianship of the commissioner is appropriately involved in planning for adoption;

(3) the diversity of Minnesota's population and diverse needs including culture, religion, and language of persons affected by adoption are recognized and respected; and

(4) the court has the timely information it needs to make a decision that is in the best interests of the child in reviewing the agency's planning for adoption and when ordering the adoption of the child.

Subd. 3. **Background study.** Consistent with section 245C.33 and United States Code, title 42, section 671, a completed background study is required before the adoptive placement of the child in a related or an unrelated home.

Sec. 27. **[260C.603] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 260C.601 to 260C.635, the terms defined in this section have the meanings given them.

Subd. 2. **Adopting parent.** "Adopting parent" means an adult who has signed an adoption placement agreement regarding the child and has the same meaning as preadoptive parent under section 259A.01, subdivision 23.

Subd. 3. **Adoption placement agreement.** "Adoption placement agreement" means the written agreement between the responsible social services agency, the commissioner, and the adopting parent which reflects the intent of all the signatories to the agreement that the adopting parent establish a parent and child relationship by adoption with the child who is under the guardianship of the commissioner. The adoptive placement agreement must be in the commissioner's designated format.

Subd. 4. **Adoptive parent.** "Adoptive parent" has the meaning given in section 259A.01, subdivision 3.

Subd. 5. **Adoptive placement.** "Adoptive placement" means a placement made by the responsible social services agency upon a fully executed adoption placement agreement including the signatures of the adopting parent, the responsible social services agency, and the commissioner of human services according to section 260C.613, subdivision 1.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of human services or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner's guardianship.

Subd. 7. **Guardianship.** "Guardianship" has the meaning given in section 259A.01, subdivision 17; 260C.325; or 260C.515, subdivision 3.

Subd. 8. **Prospective adoptive parent.** "Prospective adoptive parent" means an individual who may become an adopting parent regardless of whether the individual has an adoption study approving the individual for adoption, but who has not signed an adoption placement agreement.

Sec. 28. **[260C.605] REASONABLE EFFORTS TO FINALIZE AN ADOPTION.**

Subdivision 1. **Requirements.** (a) Reasonable efforts to finalize the adoption of a child under the guardianship of the commissioner shall be made by the responsible social services agency responsible for permanency planning for the child.

(b) Reasonable efforts to make a placement in a home according to the placement considerations under section 260C.212, subdivision 2, with a relative or foster parent who will commit to being the permanent resource for the child in the event the child cannot be reunified with a parent are required under section 260.012 and may be made concurrently with reasonable, or if the child is an Indian child, active efforts to reunify the child with the parent.

(c) Reasonable efforts under paragraph (b) must begin as soon as possible when the child is in foster care under this chapter, but not later than the hearing required under section 260C.204.

(d) Reasonable efforts to finalize the adoption of the child include:

(1) using age-appropriate engagement strategies to plan for adoption with the child;

(2) identifying an appropriate prospective adoptive parent for the child by updating the child's identified needs using the factors in section 260C.212, subdivision 2;

(3) making an adoptive placement that meets the child's needs by:

(i) completing or updating the relative search required under section 260C.221 and giving notice of the need for an adoptive home for the child to:

(A) relatives who have kept the agency or the court apprised of their whereabouts and who have indicated an interest in adopting the child; or

(B) relatives of the child who are located in an updated search;

(ii) an updated search is required whenever:



(A) there is no identified prospective adoptive placement for the child notwithstanding a finding by the court that the agency made diligent efforts under section 260C.221, in a hearing required under section 260C.202;

(B) the child is removed from the home of an adopting parent; or

(C) the court determines a relative search by the agency is in the best interests of the child;

(iii) engaging child's foster parent and the child's relatives identified as an adoptive resource during the search conducted under section 260C.221, to commit to being the prospective adoptive parent of the child; or

(iv) when there is no identified prospective adoptive parent:

(A) registering the child on the state adoption exchange as required in section 259.75 unless the agency documents to the court an exception to placing the child on the state adoption exchange reported to the commissioner;

(B) reviewing all families with approved adoption home studies associated with the responsible social services agency;

(C) presenting the child to adoption agencies and adoption personnel who may assist with finding an adoptive home for the child;

(D) using newspapers and other media to promote the particular child;

(E) using a private agency under grant contract with the commissioner to provide adoption services for intensive child-specific recruitment efforts; and

(F) making any other efforts or using any other resources reasonably calculated to identify a prospective adoption parent for the child;

(4) updating and completing the social and medical history required under sections 259.43 and 260C.609;

(5) making, and keeping updated, appropriate referrals required by section 260.851, the Interstate Compact on the Placement of Children;

(6) giving notice regarding the responsibilities of an adoptive parent to any prospective adoptive parent as required under section 259.35;

(7) offering the adopting parent the opportunity to apply for or decline adoption assistance under chapter 259A;

(8) certifying the child for adoption assistance, assessing the amount of adoption assistance, and ascertaining the status of the commissioner's decision on the level of payment if the adopting parent has applied for adoption assistance;

(9) placing the child with siblings. If the child is not placed with siblings, the agency must document reasonable efforts to place the siblings together, as well as the reason for separation. The agency may not cease reasonable efforts to place siblings together for final adoption until the court finds further reasonable efforts would be futile or that placement together for purposes of adoption is not in the best interests of one of the siblings; and

(10) working with the adopting parent to file a petition to adopt the child and with the court administrator to obtain a timely hearing to finalize the adoption.

Subd. 2. **No waiver.** (a) The responsible social services agency shall make reasonable efforts to recruit, assess, and match an adoptive home for any child under the guardianship of the commissioner and reasonable efforts shall continue until an adoptive placement is made and adoption finalized or until the child is no longer under the guardianship of the commissioner.

(b) A child of any age who is under the guardianship of the commissioner and is legally available for adoption may not refuse or waive the responsible social services agency's reasonable efforts to recruit, identify, and place the child in an adoptive home required under this section. The agency has an ongoing responsibility to work with the child to explore the child's opportunities for adoption, and what adoption means for the child, and may not accept a child's refusal to consider adoption as an option.

(c) The court may not relieve or otherwise order the responsible social services agency to cease fulfilling the responsible social services agency's duty regarding reasonable efforts to recruit, identify, and place the child in an adoptive home.

Sec. 29. **[260C.607] REVIEW OF PROGRESS TOWARD ADOPTION.**

Subdivision 1. **Review hearings.** (a) The court shall conduct a review of the responsible social services agency's reasonable efforts to finalize adoption for any child under the guardianship of the commissioner and of the progress of the case toward adoption at least every 90 days after the court issues an order that the commissioner is the guardian of the child.

(b) The review of progress toward adoption shall continue notwithstanding that an appeal is made of the order for guardianship.

(c) The agency's reasonable efforts to finalize the adoption must continue during the pendency of the appeal and all progress toward adoption shall continue except that the court may not finalize an adoption while the appeal is pending.

Subd. 2. **Notice.** Notice of review hearings shall be given by the court to:

(1) the responsible social services agency;

(2) the child, if the child is age ten and older;

(3) the child's guardian ad litem;

(4) relatives of the child who have kept the court informed of their whereabouts as required in section 260C.221 and who have responded to the agency's notice under section 260C.221, indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child;

(5) the current foster or adopting parent of the child;

(6) any foster or adopting parents of siblings of the child; and

(7) the Indian child's tribe.

Subd. 3. **Right to participate.** Any individual or entity listed in subdivision 2 may participate in the continuing reviews conducted under this section. No other individual or entity is required to be given notice or to participate in the reviews unless the court specifically orders that notice be given or participation in the reviews be required.

**Subd. 4. Content of review.** (a) The court shall review:

(1) the agency's reasonable efforts under section 260C.605 to finalize an adoption for the child as appropriate to the stage of the case; and

(2) the child's current out-of-home placement plan required under section 260C.212, subdivision 1, to ensure the child is receiving all services and supports required to meet the child's needs as they relate to the child's:

(i) placement;

(ii) visitation and contact with siblings;

(iii) visitation and contact with relatives;

(iv) medical, mental, and dental health; and

(v) education.

(b) When the child is age 16 and older, and as long as the child continues in foster care, the court shall also review the agency's planning for the child's independent living after leaving foster care including how the agency is meeting the requirements of section 260C.212, subdivision 1, paragraph (c), clause (11). The court shall use the review requirements of section 260C.203, in any review conducted under this paragraph.

**Subd. 5. Required placement by responsible social services agency.** (a) No petition for adoption shall be filed for a child under the guardianship of the commissioner unless the child sought to be adopted has been placed for adoption with the adopting parent by the responsible social services agency. The court may order the agency to make an adoptive placement using standards and procedures under subdivision 6.

(b) Any relative or the child's foster parent who believes the responsible agency has not reasonably considered their request to be considered for adoptive placement as required under section 260C.212, subdivision 2, and who wants to be considered for adoptive placement of the child shall bring their request for consideration to the attention of the court during a review required under this section. The child's guardian ad litem and the child may also bring a request for a relative or the child's foster parent to be considered for adoptive placement. After hearing from the agency, the court may order the agency to take appropriate action regarding the relative's or foster parent's request for consideration under section 260C.212, subdivision 2, paragraph (b).

**Subd. 6. Motion and hearing to order adoptive placement.** (a) At any time after the district court orders the child under the guardianship of the commissioner of human services, but not later than 30 days after receiving notice required under section 260C.613, subdivision 1, paragraph (c), that the agency has made an adoptive placement, a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner if the relative or the child's foster parent:

(1) has an adoption home study under section 259.41 approving the relative or foster parent for adoption and has been a resident of Minnesota for at least six months before filing the motion; the court may waive the residency requirement for the moving party if there is a reasonable basis to do so; or

(2) is not a resident of Minnesota, but has an approved adoption home study by an agency licensed or approved to complete an adoption home study in the state of the individual's residence and the study is filed with the motion for adoptive placement.

(b) The motion shall be filed with the court conducting reviews of the child's progress toward adoption under this section. The motion and supporting documents must make a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement. The motion must be served according to the requirements for motions under the Minnesota Rules of Juvenile Protection Procedure and shall be made on all individuals and entities listed in subdivision 2.

(c) If the motion and supporting documents do not make a prima facie showing for the court to determine whether the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion. If the court determines a prima facie basis is made, the court shall set the matter for evidentiary hearing.

(d) At the evidentiary hearing the responsible social services agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.

(e) At the conclusion of the evidentiary hearing, if the court finds that the agency has been unreasonable in failing to make the adoptive placement and that the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs using the factors in section 260C.212, subdivision 2, paragraph (b), the court may order the responsible social services agency to make an adoptive placement in the home of the relative or the child's foster parent.

(f) If, in order to ensure that a timely adoption may occur, the court orders the responsible social services agency to make an adoptive placement under this subdivision, the agency shall:

(1) make reasonable efforts to obtain a fully executed adoption placement agreement;

(2) work with the moving party regarding eligibility for adoption assistance as required under chapter 259A; and

(3) if the moving party is not a resident of Minnesota, timely refer the matter for approval of the adoptive placement through the Interstate Compact on the Placement of Children.

(g) Denial or granting of a motion for an order for adoptive placement after an evidentiary hearing is an order which may be appealed by the responsible social services agency, the moving party, the child, when age ten or over, the child's guardian ad litem, and any individual who had a fully executed adoption placement agreement regarding the child at the time the motion was filed if the court's order has the effect of terminating the adoption placement agreement. An appeal shall be conducted according to the requirements of the Rules of Juvenile Protection Procedure.

**Subd. 7. Changing adoptive plan when parent has consented to adoption.** When the child's parent has consented to adoption under section 260C.515, subdivision 3, only the person identified by the parent and agreed to by the agency as the prospective adoptive parent qualifies for adoptive placement of the child until the responsible social services agency has reported to the court and the court has found in a hearing under this section that it is not possible to finalize an adoption by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under section 260C.515, subdivision 3, unless the responsible social services agency certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent.

**Subd. 8. Timing modified.** (a) The court may review the responsible social services agency's reasonable efforts to finalize an adoption more frequently than every 90 days whenever a more frequent review would assist in finalizing the adoption.

(b) In appropriate cases, the court may review the responsible social services agency's reasonable efforts to finalize an adoption less frequently than every 90 days. The court shall not find it appropriate to review progress toward adoption less frequently than every 90 days except when:

(1) the court has approved the agency's reasonable efforts to recruit, identify, and place the child in an adoptive home on a continuing basis for at least 24 months after the court has issued the order for guardianship;

(2) the child is at least 16 years old; and

(3) the child's guardian ad litem agrees that review less frequently than every 90 days is in the child's best interests.

(c) In no event shall the court's review be less frequent than every six months.

Sec. 30. **[260C.609] SOCIAL AND MEDICAL HISTORY.**

(a) The responsible social services agency shall work with the birth family of the child, foster family, medical and treatment providers, and the child's school to ensure there is a detailed, thorough, and currently up-to-date social and medical history of the child as required under section 259.43 on the forms required by the commissioner.

(b) When the child continues in foster care, the agency's reasonable efforts to complete the history shall begin no later than the permanency progress review hearing required under section 260C.204 or six months after the child's placement in foster care.

(c) The agency shall thoroughly discuss the child's history with the adopting parent of the child and shall give a copy of the report of the child's social and medical history to the adopting parent. A copy of the child's social and medical history may also be given to the child as appropriate.

(d) The report shall not include information that identifies birth relatives. Redacted copies of all the child's relevant evaluations, assessments, and records must be attached to the social and medical history.

Sec. 31. **[260C.611] ADOPTION STUDY REQUIRED.**

An adoption study under section 259.41 approving placement of the child in the home of the prospective adoptive parent shall be completed before placing any child under the guardianship of the commissioner in a home for adoption. If a prospective adoptive parent has previously held a foster care license or adoptive home study, any update necessary to the foster care license, or updated or new adoptive home study, if not completed by the licensing authority responsible for the previous license or home study, shall include collateral information from the previous licensing or approving agency, if available.

Sec. 32. **[260C.613] SOCIAL SERVICES AGENCY AS COMMISSIONER'S AGENT.**

Subdivision 1. **Adoptive placement decisions.** (a) The responsible social services agency has exclusive authority to make an adoptive placement of a child under the guardianship of the commissioner. The child shall be considered placed for adoption when the adopting parent, the agency, and the commissioner have fully executed an adoption placement agreement on the form prescribed by the commissioner.

(b) The responsible social services agency shall use an individualized determination of the child's current needs pursuant to section 260C.212, subdivision 2, paragraph (b), to determine the most suitable adopting parent for the child in the child's best interests.

(c) The responsible social services agency shall notify the court and parties entitled to notice under section 260C.607, subdivision 2, when there is a fully executed adoption placement agreement for the child.

(d) In the event an adoption placement agreement terminates, the responsible social services agency shall notify the court, the parties entitled to notice under section 260C.607, subdivision 2, and the commissioner that the agreement and the adoptive placement have terminated.

**Subd. 2. Disclosure of data permitted to identify adoptive parent.** The responsible social services agency may disclose private data, as defined in section 13.02, to prospective adoptive parents for the purpose of identifying an adoptive parent willing and able to meet the child's needs as outlined in section 260C.212, subdivision 2, paragraph (b).

**Subd. 3. Siblings placed together.** The responsible social services agency shall place siblings together for adoption according to section 260.012, paragraph (e), clause (4), unless:

(1) the court makes findings required under section 260C.617; and

(2) the court orders that the adoption or progress toward adoption of the child under the court's jurisdiction may proceed notwithstanding that the adoption will result in siblings being separated.

**Subd. 4. Other considerations.** Placement of a child cannot be delayed or denied based on the race, color, or national origin of the prospective parent or the child.

**Subd. 5. Required record keeping.** The responsible social services agency shall document, in the records required to be kept under section 259.79, the reasons for the adoptive placement decision regarding the child, including the individualized determination of the child's needs based on the factors in section 260C.212, subdivision 2, paragraph (b), and the assessment of how the selected adoptive placement meets the identified needs of the child. The responsible social services agency shall retain in the records required to be kept under section 259.79, copies of all out-of-home placement plans made since the child was ordered under guardianship of the commissioner and all court orders from reviews conducted pursuant to section 260C.607.

**Subd. 6. Death notification.** (a) The agency shall inform the adoptive parents that the adoptive parents of an adopted child under age 19 or an adopted person age 19 or older may maintain a current address on file with the agency and indicate a desire to be notified if the agency receives information of the death of a birth parent. The agency shall notify birth parents of the child's death and the cause of death, if known, provided that the birth parents desire notice and maintain current addresses on file with the agency. The agency shall inform birth parents entitled to notice under section 259.27, that they may designate individuals to notify the agency if a birth parent dies and that the agency receiving information of the birth parent's death will share the information with adoptive parents, if the adopted person is under age 19, or an adopted person age 19 or older who has indicated a desire to be notified of the death of a birth parent and who maintains a current address on file with the agency.

(b) Notice to a birth parent that a child has died or to the adoptive parents or an adopted person age 19 or older that a birth parent has died shall be provided by an employee of the agency through personal and confidential contact, but not by mail.

**Subd. 7. Terminal illness notification.** If a birth parent or the child is terminally ill, the responsible social services agency shall inform the adoptive parents and birth parents of a child who is adopted that the birth parents, the adoptive parents of an adopted person under age 19, or an adopted person age 19 or older may request to be notified of the terminal illness. The agency shall notify the other parties if a request is received under this subdivision and upon a party's request the agency shall share information regarding a terminal illness with the adoptive or birth parents or an adopted person age 19 or older.

Subd. 8. **Postadoption search services.** The responsible social services agency shall respond to requests from adopted persons age 19 years and over, adoptive parents of a minor child, and birth parents for social and medical history and genetic health conditions of the adopted person's birth family and genetic sibling information according to section 259.83.

Sec. 33. **[260C.615] DUTIES OF COMMISSIONER.**

Subdivision 1. **Duties.** (a) For any child who is under the guardianship of the commissioner, the commissioner has the exclusive rights to consent to:

(1) the medical care plan for the treatment of a child who is at imminent risk of death or who has a chronic disease that, in a physician's judgment, will result in the child's death in the near future including a physician's order not to resuscitate or intubate the child; and

(2) the child donating a part of the child's body to another person while the child is living; the decision to donate a body part under this clause shall take into consideration the child's wishes and the child's culture.

(b) In addition to the exclusive rights under paragraph (a), the commissioner has a duty to:

(1) process any complete and accurate request for home study and placement through the Interstate Compact on the Placement of Children under section 260.851;

(2) process any complete and accurate application for adoption assistance forwarded by the responsible social services agency according to chapter 259A;

(3) complete the execution of an adoption placement agreement forwarded to the commissioner by the responsible social services agency and return it to the agency in a timely fashion; and

(4) maintain records as required in chapter 259.

Subd. 2. **Duties not reserved.** All duties, obligations, and consents not specifically reserved to the commissioner in this section are delegated to the responsible social services agency.

Sec. 34. **[260C.617] SIBLING PLACEMENT.**

(a) The responsible social services agency shall make every effort to place siblings together for adoption.

(b) The court shall review any proposal by the responsible social services agency to separate siblings for purposes of adoption.

(c) If there is venue in more than one county for matters regarding siblings who are under the guardianship of the commissioner, the judges conducting reviews regarding the siblings shall communicate with each other about the siblings' needs and, where appropriate, shall conduct review hearings in a manner that ensures coordinated planning by agencies involved in decision making for the siblings.

(d) After notice to the individuals and entities listed in section 260C.627, the foster or prospective adoptive parent of the child, and any foster, adopting, or adoptive parents of the child's siblings, or relatives with permanent legal and physical custody of the child's sibling, and upon hearing, the court may determine that a child under the court's jurisdiction may be separated from the child's sibling for adoption when:

(1) the responsible social services agency has made reasonable efforts to place the siblings together, and after finding reasonable efforts have been made, the court finds further efforts would significantly delay the adoption of one or more of the siblings and are therefore not in the best interests of one or more of the siblings; or

(2) the court determines it is not in the best interests of one or more of the siblings to be placed together after reasonable efforts by the responsible social services agency to place the siblings together.

Sec. 35. **[260C.619] COMMUNICATION AND CONTACT AGREEMENTS.**

(a) An adopting parent and a relative or foster parent of the child may enter into an agreement regarding communication with or contact between the adopted child, adopting parent, and the relative or foster parent. An agreement may be entered between:

(1) an adopting parent and a birth parent;

(2) an adopting parent and any relative or foster parent with whom the child resided before being adopted; and

(3) an adopting parent and the parent or legal custodian of a sibling of the child, if the sibling is a minor, or any adult sibling of the child.

(b) An agreement regarding communication with or contact between the child, adoptive parents, and a relative or foster parent, is enforceable when the terms of the agreement are contained in a written court order. The order must be issued before or at the time of the granting of the decree of adoption. The order granting the communication, contact, or visitation shall be filed in the adoption file.

(c) The court shall mail a certified copy of the order to the parties to the agreement or their representatives at the addresses provided by the parties to the agreement. Service shall be completed in a manner that maintains the confidentiality of confidential information.

(d) The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, the birth relative, the foster parent, or the birth parent or legal custodian of the child's sibling who desires to be a party to the agreement, and the responsible social services agency.

(e) An agreement under this section need not disclose the identity of the parties to be legally enforceable and when the identity of the parties to the agreement is not disclosed, data about the identities in the adoption file shall remain confidential.

(f) The court shall not enter a proposed order unless the court finds that the communication or contact between the minor adoptee, the adoptive parents, and the relative, foster parents, or siblings as agreed upon and contained in the proposed order, would be in the child's best interests.

(g) Failure to comply with the terms of an order regarding communication or contact that has been entered by the court under this section is not grounds for:

(1) setting aside an adoption decree; or

(2) revocation of a written consent to an adoption after that consent has become irrevocable.

(h) An order regarding communication or contact entered under this section may be enforced by filing a motion in the existing adoption file with the court that entered the contact agreement. Any party to the communication or contact order or the child who is the subject of the order has standing to file the motion to enforce the order. The prevailing party may be awarded reasonable attorney fees and costs.



(i) The court shall not modify an order under this section unless it finds that the modification is necessary to serve the best interests of the child, and:

(1) the modification is agreed to by the parties to the agreement; or

(2) exceptional circumstances have arisen since the order was entered that justified modification of the order.

Sec. 36. **[260C.621] JURISDICTION AND VENUE.**

Subdivision 1. **Jurisdiction.** (a) The juvenile court has original jurisdiction for all adoption proceedings involving the adoption of a child under the guardianship of the commissioner, including when the commissioner approves the placement of the child through the Interstate Compact on the Placement of Children under section 260.851 for adoption outside the state of Minnesota and an adoption petition is filed in Minnesota.

(b) The receiving state also has jurisdiction to conduct an adoption proceeding for a child under the guardianship of the commissioner when the adopting home was approved by the receiving state through the interstate compact.

Subd. 2. **Venue.** (a) Venue for the adoption of a child committed to the guardianship of the commissioner of human services shall be the court conducting reviews in the matter according to section 260C.607.

(b) Upon request of the responsible social services agency, the court conducting reviews under section 260C.607 may order that filing an adoption petition involving a child under the guardianship of the commissioner be permitted in the county where the adopting parent resides upon determining that:

(1) there is no motion for an order for adoptive placement of the child that has been filed or is reasonably anticipated by the responsible social services agency to be filed; and

(2) filing the petition in the adopting parent's county of residence will expedite the proceedings and serve the best interests of the child.

(c) When the court issues an order under paragraph (b), a copy of the court order shall be filed together with the adoption petition in the court of the adopting parent's county of residence.

(d) The court shall notify the court conducting reviews under section 260C.607 when the adoption is finalized so that the court conducting reviews under section 260C.607 may close its jurisdiction and the court record, including the court's electronic case record, in the county conducting the reviews, shall reflect that adoption of the child was finalized.

Sec. 37. **[260C.623] ADOPTION PETITION.**

Subdivision 1. **Who may petition.** (a) The responsible social services agency may petition for the adopting parent to adopt a child who is under the guardianship of the commissioner. The petition shall contain or have attached a statement certified by the adopting parent that the adopting parent desires that the relationship of parent and child be established between the adopting parent and the child and that adoption is in the best interests of the child.

(b) The adopting parent may petition the court for adoption of the child.

(c) An adopting parent must be at least 21 years of age at the time the adoption petition is filed unless the adopting parent is an individual related to the child, as defined by section 245A.02, subdivision 13.

(d) The petition may be filed in Minnesota by an adopting parent who resides within or outside the state.

Subd. 2. **Time for filing petition.** (a) An adoption petition shall be filed not later than nine months after the date of the fully executed adoption placement agreement unless the court finds that:

(1) the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, United States Code, title 42, section 672; or

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home.

(b) If an adoption petition is not filed within nine months of the execution of the adoption placement agreement as required under section 260C.613, subdivision 1, and after giving the adopting parent written notice of its request together with the date and time of the hearing set to consider its report, the responsible social services agency shall file a report requesting an order for one of the following:

(1) that the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, United States Code, title 42, section 673;

(2) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition can be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(3) that the child can be removed from the adopting home.

(c) At the conclusion of the review, the court shall issue findings, appropriate orders for the parties to take action or steps required to advance the case toward a finalized adoption, and set the date and time for the next review hearing.

Subd. 3. **Requirements of petition.** (a) The petition shall be captioned in the legal name of the child as that name is reflected on the child's birth record prior to adoption and shall be entitled "Petition to Adopt Child under the Guardianship of the Commissioner of Human Services." The actual name of the child shall be supplied to the court by the responsible social services agency if unknown to the individual with whom the agency has made the adoptive placement.

(b) The adoption petition shall be verified as required in section 260C.141, subdivision 4, and, if filed by the responsible social services agency, signed and approved by the county attorney.

(c) The petition shall state:

(1) the full name, age, and place of residence of the adopting parent;

(2) if the adopting parents are married, the date and place of marriage;

(3) the date the adopting parent acquired physical custody of the child;

(4) the date of the adoptive placement by the responsible social services agency;

(5) the date of the birth of the child, if known, and the county, state, and country where born;

(6) the name to be given the child, if a change of name is desired;

(7) the description and value of any real or personal property owned by the child;

(8) the relationship of the adopting parent to the child prior to adoptive placement, if any;

(9) whether the Indian Child Welfare Act does or does not apply; and

(10) the name and address of:

(i) the child's guardian ad litem;

(ii) the adoptee, if age ten or older;

(iii) the child's Indian tribe, if the child is an Indian child; and

(iv) the responsible social services agency.

(d) A petition may ask for the adoption of two or more children.

(e) If a petition is for adoption by a married person, both spouses must sign the petition indicating willingness to adopt the child and the petition must ask for adoption by both spouses unless the court approves adoption by only one spouse when spouses do not reside together or for other good cause shown.

(f) If the petition is for adoption by a person residing outside the state, the adoptive placement must have been approved by the state where the person is a resident through the Interstate Compact on the Placement of Children, sections 260.851 to 260.92.

**Subd. 4. Attachments to the petition.** The following must be filed with the petition:

(1) the adoption study report required under section 259.41;

(2) the social and medical history required under sections 259.43 and 260C.609; and

(3) a document prepared by the petitioner that establishes who must be given notice under section 260C.627, subdivision 1, that includes the names and mailing addresses of those to be served by the court administrator.

**Sec. 38. [260C.625] DOCUMENTS FILED BY SOCIAL SERVICES AGENCY.**

(a) The following shall be filed by the responsible social services agency prior to finalization of the adoption:

(1) a certified copy of the child's birth record;

(2) a certified copy of the findings and order terminating parental rights or order accepting the parent's consent to adoption under section 260C.515, subdivision 3, and for guardianship to the commissioner;

(3) a copy of any communication or contact agreement under section 260C.619;

(4) certification that the Minnesota Fathers' Adoption Registry has been searched which requirement may be met according to the requirements of the Minnesota Rules of Adoption Procedure, Rule 32.01, subdivision 2;

(5) the original of each consent to adoption required, if any, unless the original was filed in the permanency proceeding conducted under section 260C.515, subdivision 3, and the order filed under clause (2) has a copy of the consent attached; and

(6) the postplacement assessment report required under section 259.53, subdivision 2.

(b) The responsible social services agency shall provide any known aliases of the child to the court.

Sec. 39. **[260C.627] NOTICE OF ADOPTION PROCEEDINGS.**

Subdivision 1. **To whom given.** (a) Notice of the adoption proceedings shall not be given to any parent whose rights have been terminated or who has consented to the adoption of the child under this chapter.

(b) Notice of the adoption proceedings shall be given to the following:

(1) the child's tribe if the child is an Indian child;

(2) the responsible social services agency;

(3) the child's guardian ad litem;

(4) the child, if the child is age ten or over;

(5) the child's attorney; and

(6) the adopting parent.

(c) Notice of a hearing regarding the adoption petition shall have a copy of the petition attached unless service of the petition has already been accomplished.

Subd. 2. **Method of service.** Notice of adoption proceedings for a child under the guardianship of the commissioner may be served by United States mail or any other method approved by the Minnesota Rules of Adoption Procedure.

Sec. 40. **[260C.629] FINALIZATION HEARING.**

Subdivision 1. **Consent.** (a) A parent whose rights to the child have not been terminated must consent to the adoption of the child. A parent may consent to the adoption of the child under section 260C.515, subdivision 3, and that consent shall be irrevocable upon acceptance by the court except as otherwise provided in section 260C.515, subdivision 3, clause (2)(i). A parent of an Indian child may consent to the adoption of the child according to United States Code, title 25, section 1913, and that consent may be withdrawn for any reason at any time before the entry of a final decree of adoption.

(b) When the child to be adopted is age 14 years or older, the child's written consent to adoption by the adopting parent is required.

(c) Consent by the responsible social services agency or the commissioner is not required because the adoptive placement has been made by the responsible social services agency.

Subd. 2. **Required documents.** In order to issue a decree for adoption and enter judgment accordingly, the court must have the following documents in the record:

- (1) original birth record of the child;
- (2) adoption study report including a background study required under section 259.41;
- (3) a certified copy of the findings and order terminating parental rights or order accepting the parent's consent to adoption under section 260C.515, subdivision 3, and for guardianship to the commissioner;
- (4) any consents required under subdivision 1;
- (5) child's social and medical history under section 260C.609;
- (6) postplacement assessment report required under section 259.53, subdivision 2, unless waived by the court on the record at a hearing under section 260C.607; and
- (7) report from the child's guardian ad litem.

Sec. 41. **[260C.631] JUDGMENT AND DECREE.**

(a) After taking testimony from the responsible social services agency, which may be by telephone or affidavit if the court has transferred venue of the matter to a county not conducting the posttermination of parental rights reviews under section 260C.607, and the adopting parent, if the court finds that it is in the best interests of the child that the petition be granted, a decree of adoption shall be issued ordering that the child to be adopted shall be the child of the adopting parent. In the decree, the court may change the name of the adopted child, if a name change is requested.

(b) After the decree is granted, the court administrator shall mail a copy of the decree to the commissioner of human services.

Sec. 42. **[260C.633] ADOPTION DENIED.**

(a) If the court is not satisfied that the proposed adoption is in the best interests of the child to be adopted, the court shall deny the petition, and order the responsible social services agency to take appropriate action for the protection and safety of the child. If venue has been transferred under section 260C.621, subdivision 2, the court denying the petition shall notify the court originally conducting the guardianship reviews under section 260C.607.

(b) The court responsible for conducting reviews under section 260C.607 shall set a hearing within 30 days of receiving notice of denial of the petition.

(c) Any appeal of the denial of an adoption petition under this section shall be made according to the requirements of the Minnesota Rules of Adoption Procedure.

Sec. 43. **[260C.635] EFFECT OF ADOPTION.**

Subdivision 1. **Legal effect.** (a) Upon adoption, the adopted child becomes the legal child of the adopting parent and the adopting parent becomes the legal parent of the child with all the rights and duties between them of a birth parent and child.

(b) The child shall inherit from the adoptive parent and the adoptive parent's relatives the same as though the child were the birth child of the parent, and in case of the child's death intestate, the adoptive parent and the adoptive parent's relatives shall inherit the child's estate as if the child had been the adoptive parent's birth child.

(c) After a decree of adoption is entered, the birth parents or previous legal parents of the child shall be relieved of all parental responsibilities for the child except child support that has accrued to the date of the order for guardianship to the commissioner which continues to be due and owing. The child's birth or previous legal parent shall not exercise or have any rights over the adopted child or the adopted child's property, person, privacy, or reputation.

(d) The adopted child shall not owe the birth parents or the birth parent's relatives any legal duty nor shall the adopted child inherit from the birth parents or kindred unless otherwise provided for in a will of the birth parent or kindred.

(e) Upon adoption, the court shall complete a certificate of adoption form and mail the form to the Office of the State Registrar at the Minnesota Department of Health. Upon receiving the certificate of adoption, the state registrar shall register a replacement vital record in the new name of the adopted child as required under section 144.218.

Subd. 2. **Enrollment in American Indian tribe.** Notwithstanding the provisions of subdivision 1, the adoption of a child whose birth parent or parents are enrolled in an American Indian tribe shall not change the child's enrollment in that tribe.

Subd. 3. **Communication or contact agreements.** This section does not prohibit birth parents, relatives, birth or legal siblings, and adoptive parents from entering a communication or contact agreement under section 260C.619.

Sec. 44. **[260C.637] ACCESS TO ORIGINAL BIRTH RECORD INFORMATION.**

An adopted person may ask the commissioner of health to disclose the information on the adopted person's original birth record according to section 259.89.

Sec. 45. Minnesota Statutes 2010, section 541.04, is amended to read:

**541.04 JUDGMENTS, TEN ~~OR~~ 20 YEARS.**

No action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment ~~or, in the case of a judgment for child support, including a judgment by operation of law, unless begun within 20 years after entry of the judgment.~~

**EFFECTIVE DATE.** The amendments to this section are effective retroactively from April 15, 2010, the date the language stricken in this section was finally enacted.

Sec. 46. Minnesota Statutes 2010, section 548.09, subdivision 1, is amended to read:

Subdivision 1. **Entry and docketing; survival of judgment.** Except as provided in section 548.091, every judgment requiring the payment of money shall be entered by the court administrator when ordered by the court and will be docketed by the court administrator upon the filing of an affidavit as provided in subdivision 2. Upon a transcript of the docket being filed with the court administrator in any other county, the court administrator shall also docket it. From the time of docketing the judgment is a lien, in the amount unpaid, upon all real property in the county then or thereafter owned by the judgment debtor, but it is not a lien upon registered land unless it is also

recorded pursuant to sections 508.63 and 508A.63. The judgment survives, and the lien continues, for ten years after its entry ~~or, in the case of a judgment for child support, including a judgment by operation of law, for 20 years after its entry.~~ Child support judgments may be renewed pursuant to section 548.091.

**EFFECTIVE DATE.** The amendments to this section are effective retroactively from April 15, 2010, the date the language stricken in this section was finally enacted.

Sec. 47. Minnesota Statutes 2010, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, and in the case of sexual abuse includes a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- (5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- (7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
- (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- (9) criminal sexual conduct under sections 609.342 to 609.3451;
- (10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;



(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

(3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

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

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

A child is the subject of a report of threatened injury when the responsible social services agency receives birth match data under paragraph (o) from the Department of Human Services.

(o) Upon receiving data under section 144.225, subdivision 2b, contained in a birth record or recognition of parentage identifying a child who is subject to threatened injury under paragraph (n), the Department of Human Services shall send the data to the responsible social services agency. The data is known as "birth match" data. Unless the responsible social services agency has already begun an investigation or assessment of the report due to the birth of the child or execution of the recognition of parentage and the parent's previous history with child protection, the agency shall accept the birth match data as a report under this section. The agency may use either a

family assessment or investigation to determine whether the child is safe. All of the provisions of this section apply. If the child is determined to be safe, the agency shall consult with the county attorney to determine the appropriateness of filing a petition alleging the child is in need of protection or services under section 260C.007, subdivision 6, clause (16), in order to deliver needed services. If the child is determined not to be safe, the agency and the county attorney shall take appropriate action as required under section 260C.301, subdivision 3.

~~(p)~~ (p) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

~~(q)~~ (q) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

(1) is not likely to occur and could not have been prevented by exercise of due care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

~~(r)~~ (r) "Nonmaltreatment mistake" means:

(1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;

(2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;

(3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;

(4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

(5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

Sec. 48. Minnesota Statutes 2010, section 626.556, subdivision 10f, is amended to read:

Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for assessing or investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity

of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section ~~or section 256.022~~. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.

Sec. 49. Minnesota Statutes 2010, section 626.556, subdivision 10i, is amended to read:

Subd. 10i. **Administrative reconsideration; review panel.** (a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

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

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

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

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also not be conducted when:

(1) a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

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

Sec. 50. Minnesota Statutes 2010, section 626.556, subdivision 11, is amended to read:

Subd. 11. **Records.** (a) Except as provided in paragraph (b) ~~or (d)~~ and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

~~(d) The investigating agency shall exchange not public data with the Child Maltreatment Review Panel under section 256.022 if the data are pertinent and necessary for a review requested under section 256.022. Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.~~

Sec. 51. **REPEALER.**

Minnesota Statutes 2010, section 256.022, is repealed.

Sec. 52. **EFFECTIVE DATE.**

This article is effective August 2, 2012.

ARTICLE 2  
SAFE PLACE FOR NEWBORNS

Section 1. Minnesota Statutes 2010, section 145.902, is amended to read:

**145.902 GIVE LIFE A CHANCE; SAFE PLACE FOR NEWBORNS; HOSPITAL DUTIES; IMMUNITY.**

Subdivision 1. **General.** (a) For purposes of this section, a "safe place" means a hospital licensed under sections 144.50 to 144.56, a health care provider who provides 24-hour urgent care medical services, or an ambulance service licensed under chapter 144E dispatched in response to a 911 call from a mother or a person with the mother's permission to relinquish a newborn infant.

(b) ~~A hospital licensed under sections 144.50 to 144.56~~ safe place shall receive a newborn left with ~~a hospital~~ an employee on the hospital premises of the safe place during its hours of operation, provided that:

(1) ~~the newborn was born within 72 hours~~ seven days of being left at the ~~hospital~~ safe place, as determined within a reasonable degree of medical certainty; and

(2) the newborn is left in an unharmed condition.

~~(b)~~ (c) ~~The hospital safe place~~ must not inquire as to the identity of the mother or the person leaving the newborn or call the police, provided the newborn is unharmed when presented to the hospital. ~~The hospital safe place~~ may ask the mother or the person leaving the newborn about the medical history of the mother or newborn but the mother or the person leaving the newborn is not required to provide any information. ~~The hospital safe place~~ may provide the mother or the person leaving the newborn with information about how to contact relevant social service agencies.

(d) A safe place that is a health care provider who provides 24-hour urgent care medical services shall dial 911, advise the dispatcher that the call is being made from a safe place for newborns, and ask the dispatcher to send an ambulance or take other appropriate action to transport the newborn to a hospital. An ambulance with whom a newborn is left shall transport the newborn to a hospital for care. Hospitals must receive a newborn left with a safe place and make the report as required in subdivision 2.

Subd. 2. **Reporting.** Within 24 hours of receiving a newborn under this section, the hospital must inform the ~~local welfare agency~~ responsible social service agency that a newborn has been left at the hospital, but must not do so ~~before in the presence of the mother or the person leaving the newborn leaves the hospital.~~ The hospital must provide necessary care to the newborn pending assumption of legal responsibility by the responsible social services agency pursuant to section 260C.217, subdivision 4.

Subd. 3. **Immunity.** (a) A ~~hospital~~ safe place with responsibility for performing duties under this section, and any employee, doctor, ambulance personnel, or other medical professional working at the ~~hospital~~ safe place, are immune from any criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a newborn, and are immune from any civil liability that otherwise might result from merely receiving a newborn.

(b) A ~~hospital~~ safe place performing duties under this section, or an employee, doctor, ambulance personnel, or other medical professional working at the ~~hospital~~ safe place who is a mandated reporter under section 626.556, is immune from any criminal or civil liability that otherwise might result from the failure to make a report under that section if the person is acting in good faith in complying with this section.

Sec. 2. Minnesota Statutes 2010, section 260C.217, is amended to read:

**260C.217 GIVE LIFE A CHANCE; SAFE PLACE FOR NEWBORNS.**

Subdivision 1. **Duty to attempt reunification, duty to search for relatives, and preferences not applicable.** A ~~local~~ responsible social service agency ~~taking custody of~~ with responsibility for a child ~~after discharge from a hospital that received a child under section 145.902 pursuant to subdivision 4,~~ is not required to attempt to reunify the child with the child's parents. Additionally, the agency is not required to search for relatives of the child as a placement or permanency option under section 260C.212, subdivision 5, or to implement other placement requirements that give a preference to relatives if the agency does not have information as to the identity of the child, the child's mother, or the child's father.

Subd. 1a. **Definitions.** For purposes of this section, "safe place" has the meaning given in section 145.902.

Subd. 2. **Status of child.** For purposes of proceedings under this chapter and adoption proceedings, a newborn left at a ~~hospital under~~ safe place, pursuant to subdivision 3 and section 145.902, is considered an abandoned child under section 626.556, subdivision 2, paragraph (c), clause (3). The child is abandoned under sections 260C.007, subdivision 6, clause (1), and 260C.301, subdivision 1, paragraph (b), clause (1).

Subd. 3. **Relinquishment of a newborn.** A mother or any person, with the mother's permission, may bring a newborn infant to a safe place during its hours of operation and leave the infant in the care of an employee of the safe place. The mother or a person with the mother's permission may call 911 to request to have an ambulance dispatched to an agreed-upon location to relinquish a newborn infant into the custody of ambulance personnel.

Subd. 4. **Placement of the newborn.** The agency contacted by a safe place pursuant to section 145.902, subdivision 2, shall have legal responsibility for the placement of the newborn infant in foster care for 72 hours during which time the agency shall file a petition under section 260C.141 and ask the court to order continued placement of the child in foster care. The agency shall immediately begin planning for adoptive placement of the newborn.

Sec. 3. Minnesota Statutes 2010, section 609.3785, is amended to read:

**609.3785 UNHARMED NEWBORNS LEFT AT ~~HOSPITALS~~ A SAFE PLACE; AVOIDANCE OF PROSECUTION.**

A person may leave a newborn with a ~~hospital~~ an employee at a ~~hospital~~ safe place, as defined in section 145.902, in this state, pursuant to section 260C.217, subdivision 3, without being subjected to prosecution for that act, provided that:



(1) the newborn was born within ~~72 hours~~ seven days of being left at the ~~hospital~~ safe place, as determined within a reasonable degree of medical certainty;

(2) the newborn is left in an unharmed condition; and

(3) in cases where the person leaving the newborn is not the newborn's mother, the person has the mother's approval to do so.

### ARTICLE 3 ADOPTION ASSISTANCE

#### Section 1. **[259A.01] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given them except as otherwise indicated by the context.

Subd. 2. **Adoption assistance.** "Adoption assistance" means medical coverage and reimbursement of nonrecurring adoption expenses, and may also include financial support and reimbursement for specific nonmedical expenses provided under agreement with the parent of an adoptive child who would otherwise remain in foster care and whose special needs would otherwise make it difficult to place the child for adoption. Financial support may include a basic maintenance payment and a supplemental needs payment.

Subd. 3. **Adoptive parent.** "Adoptive parent" means the adult who has been made the legal parent of a child through a court-ordered adoption decree or a customary adoption through tribal court.

Subd. 4. **AFDC.** "AFDC" means the aid to families with dependent children program under sections 256.741, 256.82, and 256.87.

Subd. 5. **Assessment.** "Assessment" means the process by which the child-placing agency determines the benefits an eligible child may receive under this chapter.

Subd. 6. **At-risk child.** "At-risk child" means a child who does not have a documented disability but who is at risk of developing a physical, mental, emotional, or behavioral disability based on being related within the first or second degree to persons who have an inheritable physical, mental, emotional, or behavioral disabling condition, or from a background that has the potential to cause the child to develop a physical, mental, emotional, or behavioral disability that the child is at risk of developing. The disability must manifest during childhood.

Subd. 7. **Basic maintenance payment.** "Basic maintenance payment" means the maintenance payment made on behalf of a child to support the costs an adoptive parent incurs to meet a child's needs consistent with the care parents customarily provide, including: food, clothing, shelter, daily supervision, school supplies, and a child's personal incidentals. It also supports reasonable travel to participate in face-to-face visitation between child and birth relatives, including siblings.

Subd. 8. **Child.** "Child" means an individual under 18 years of age. For purposes of this chapter, child also includes individuals up to age 21 who have approved adoption assistance agreement extensions under section 259A.45, subdivision 1.

Subd. 9. **Child-placing agency.** "Child-placing agency" means a business, organization, or department of government, including the responsible social services agency or a federally recognized Minnesota tribe, designated or authorized by law to place children for adoption and assigned legal responsibility for placement, care, and supervision of the child through a court order, voluntary placement agreement, or voluntary relinquishment.

Subd. 10. **Child under guardianship of the commissioner of human services.** "Child under guardianship of the commissioner of human services" means a child the court has ordered under the guardianship of the commissioner of human services pursuant to section 260C.325.

Subd. 11. **Commissioner.** "Commissioner" means the commissioner of human services or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner's guardianship.

Subd. 12. **Consent of parent to adoption under chapter 260C.** "Consent of parent to adoption under chapter 260C" means the consent executed pursuant to section 260C.515, subdivision 3.

Subd. 13. **Department.** "Department" means the Minnesota Department of Human Services.

Subd. 14. **Disability.** "Disability" means a physical, mental, emotional, or behavioral impairment that substantially limits one or more major life activities. Major life activities include, but are not limited to: thinking, walking, hearing, breathing, working, seeing, speaking, communicating, learning, developing and maintaining healthy relationships, safely caring for oneself, and performing manual tasks. The nature, duration, and severity of the impairment shall be used in determining if the limitation is substantial.

Subd. 15. **Foster care.** "Foster care" has the meaning given in section 260C.007, subdivision 18.

Subd. 16. **Guardian.** "Guardian" means an adult who is appointed pursuant to section 260C.325. For a child under guardianship of the commissioner, the child's guardian is the commissioner of human services.

Subd. 17. **Guardianship.** "Guardianship" means the court-ordered rights and responsibilities of the guardian of a child and includes legal custody of the child.

Subd. 18. **Indian child.** "Indian child" has the meaning given in section 260.755, subdivision 8.

Subd. 19. **Legal custodian.** "Legal custodian" means a person to whom permanent legal and physical custody of a child has been transferred under chapter 260C, or for children under tribal court jurisdiction, a similar provision under tribal code which means that the individual responsible for the child has responsibility for the protection, education, care, and control of the child and decision making on behalf of the child.

Subd. 20. **Medical assistance.** "Medical assistance" means Minnesota's implementation of the federal Medicaid program.

Subd. 21. **Parent.** "Parent" has the meaning given in section 257.52. Parent does not mean a putative father of a child unless the putative father also meets the requirements of section 257.55 or unless the putative father is entitled to notice under section 259.49, subdivision 1. For matters governed by the Indian Child Welfare Act, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in section 260.755, subdivision 14, and does not include the unwed father where paternity has not been acknowledged or established.

Subd. 22. **Permanent legal and physical custody.** "Permanent legal and physical custody" means permanent legal and physical custody ordered by a Minnesota court under section 260C.515, subdivision 4, or for children under tribal court jurisdiction, a similar provision under tribal code which means that the individual with permanent legal and physical custody of the child has responsibility for the protection, education, care, and control of the child and decision making on behalf of the child.

Subd. 23. **Preadoptive parent.** "Preadoptive parent" means an adult who is caring for a child in an adoptive placement, but where the court has not yet ordered a final decree of adoption making the adult the legal parent of the child.

Subd. 24. **Reassessment.** "Reassessment" means an update of a previous assessment through the process under this chapter completed for a child who has been continuously eligible for this benefit.

Subd. 25. **Relative.** "Relative" means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by law or custom of the Indian child's tribe, or, in the absence of law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Subd. 26. **Relative search.** "Relative search" means the search that is required under section 260C.212, subdivision 5.

Subd. 27. **Sibling.** "Sibling" has the meaning given in section 260C.007, subdivision 32.

Subd. 28. **Social and medical history.** "Social and medical history" means the document, on a form or forms prescribed by the commissioner, that contains a child's genetic, medical, and family background as well as the history and current status of a child's physical and mental health, behavior, demeanor, foster care placements, education, and family relationships and has the same meaning as the history required under sections 259.43 and 260C.609.

Subd. 29. **Supplemental needs payment.** "Supplemental needs payment" means the payment which is negotiated with the adoptive parent for a child who has a documented physical, mental, emotional, or behavioral disability. The payment is made based on the requirements associated with parenting duties to nurture the child, preserve the child's connections, and support the child's functioning in the home.

Subd. 30. **Termination of parental rights.** "Termination of parental rights" means a court order that severs all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support, existing between a parent and child. For an Indian child who is a ward of tribal court, termination of parental rights means any action resulting in the termination or suspension of the parent-child relationship when the tribe has made a judicial determination that the child cannot or should not be returned to the home of the child's parent or parents.

## Sec. 2. **[259A.05] PROGRAM ADMINISTRATION.**

Subdivision 1. **Administration of title IV-E programs.** The title IV-E Adoption Assistance Program shall operate according to the requirements of United States Code, title 42, sections 671 and 673, and Code of Federal Regulations, parts 1355 and 1356.

Subd. 2. **Administration responsibilities.** (a) AFDC relatedness is one eligibility component of title IV-E adoption assistance. The AFDC relatedness determination shall be made by an agency according to policies and procedures prescribed by the commissioner.

(b) Subject to commissioner approval, the child-placing agency shall certify a child's eligibility for adoption assistance in writing on the forms prescribed by the commissioner according to section 259A.15.

(c) Children who meet all eligibility criteria except those specific to title IV-E, shall receive adoption assistance paid through state funds.

(d) The child-placing agency is responsible for assisting the commissioner with the administration of the adoption assistance program by conducting assessments, reassessments, negotiations, and other activities as specified by the requirements and procedures prescribed by the commissioner.

(e) The child-placing agency shall notify an adoptive parent of a child's eligibility for Medicaid in the state of residence. In Minnesota, the child-placing agency shall refer the adoptive parent to the appropriate social service agency in the parent's county of residence that administers medical assistance. The child-placing agency shall inform the adoptive parent of the requirement to comply with the rules of the applicable Medicaid program.

Subd. 3. **Procedures, requirements, and deadlines.** The commissioner shall specify procedures, requirements, and deadlines for the administration of adoption assistance in accordance with this section.

Subd. 4. **Promotion of programs.** (a) Parents who adopt children with special needs must be informed of the adoption tax credit.

(b) The commissioner shall actively seek ways to promote the adoption assistance program, including informing prospective adoptive parents of eligible children under guardianship of the commissioner and the availability of adoption assistance.

**Sec. 3. [259A.10] ELIGIBILITY REQUIREMENTS.**

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

(1) be determined to be a child with special needs, according to subdivision 2;

(2) meet the applicable citizenship and immigration requirements in subdivision 3; and

(3)(i) meet the criteria outlined in section 473 of the Social Security Act; or

(ii) have had foster care payments paid on the child's behalf while in out-of-home placement through the county or tribal social service agency and be a child under the guardianship of the commissioner or a ward of tribal court.

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

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

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

(1) court-ordered termination of parental rights;

(2) petition to terminate parental rights;

(3) consent of parent to adoption accepted by the court under chapter 260C;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) conduct a relative search as required by section 260C.212, subdivision 5, and give consideration to placement with a relative as required by section 260C.212, subdivision 2;

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

(3) locate prospective adoptive families by registering the child on the State Adoption Exchange, as required under section 259.75; and

(4) if registration with the State Adoption Exchange does not result in the identification of an appropriate adoptive placement, the agency must employ additional recruitment methods, as outlined in requirements and procedures prescribed by the commissioner.

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

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

(b) A child must be a citizen of the United States or meet the qualified alien requirements as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, in order to be eligible for state-funded adoption assistance.

**Subd. 4. Background study.** (a) A background study under section 259.41 must be completed on each prospective adoptive parent. An adoptive parent is prohibited from receiving adoption assistance on behalf of an otherwise eligible child if the background study reveals:

(1) a felony conviction at any time for:

(i) child abuse or neglect;

(ii) spousal abuse;

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

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

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

(i) physical assault;

(ii) battery; or

(iii) a drug-related offense.

**Subd. 5. Responsibility for determining adoption assistance eligibility.** The state will determine eligibility for:

(1) a Minnesota child under the guardianship of the commissioner who would otherwise remain in foster care;

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

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

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

**Subd. 6. Exclusions.** The commissioner shall not enter into an adoption assistance agreement with:

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

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

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

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

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

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

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

**Sec. 4. [259A.15] ESTABLISHMENT OF ADOPTION ASSISTANCE ELIGIBILITY.**

**Subdivision 1. Adoption assistance certification.** (a) The child-placing agency shall certify a child as eligible for adoption assistance according to requirements and procedures, and on forms prescribed by the commissioner. Documentation from a qualified expert must be provided to verify that a child meets the special needs criteria in section 259A.10, subdivision 2.

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

(c) Documentation that the child is an at-risk child must be submitted according to requirements and procedures prescribed by the commissioner.

Subd. 2. **Adoption assistance agreement.** (a) An adoption assistance agreement is a binding contract between the adopting parent, the child-placing agency, and the commissioner. The agreement outlines the benefits to be provided on behalf of an eligible child.

(b) In order to receive adoption assistance benefits, a written agreement on a form prescribed by the commissioner must be signed by the parent, an approved representative from the child-placing agency, and the commissioner prior to the effective date of the adoption decree. No later than 30 days after the parent is approved for the adoptive placement, the agreement must be negotiated with the parent as required in section 259A.25, subdivision 1. Adoption assistance must be approved or denied by the commissioner no later than 15 business days after the receipt of a complete adoption assistance application prescribed by the commissioner. A fully executed copy of the signed agreement must be given to each party. Termination or disruption of the adoptive placement preceding adoption finalization makes the agreement with that parent void.

(c) The agreement must specify the following:

(1) duration of the agreement;

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

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

(4) the terms of the payment;

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

(6) that the agreement will remain in effect regardless of the state in which the adoptive parent resides at any given time;

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

(8) the effective date of the agreement.

(d) The agreement is effective on the date of the adoption decree.

Subd. 3. **Assessment tool.** An assessment tool prescribed by the commissioner must be completed for any child who has a documented disability that necessitates care, supervision, and structure beyond that ordinarily provided in a family setting to children of the same age. This assessment tool must be submitted with the adoption assistance certification and establishes eligibility for the amount of assistance requested.

#### Sec. 5. **[259A.20] BENEFITS AND PAYMENTS.**

Subdivision 1. **General information.** (a) Payments to parents under adoption assistance must be made monthly.

(b) Payments must commence when the commissioner receives the adoption decree from the court, the child-placing agency, or the parent. Payments must be made according to requirements and procedures prescribed by the commissioner.



(c) Payments shall only be made to the adoptive parent specified on the agreement. If there is more than one adoptive parent, both parties must be listed as the payee unless otherwise specified in writing according to requirements and procedures prescribed by the commissioner.

(d) Payment must be considered income and resource attributable to the child. Payment must not be assigned or transferred to another party. Payment is exempt from garnishment, except as permissible under the laws of the state where the child resides.

Subd. 2. **Medical assistance eligibility.** Eligibility for medical assistance for children receiving adoption assistance is as specified in section 256B.055.

Subd. 3. **Payments.** (a) The basic maintenance payments must be made according to the following schedule for all children except those eligible for adoption assistance based on being an at-risk child:

<u>Birth through age five</u>	<u>up to \$247 per month</u>
<u>Age six through age 11</u>	<u>up to \$277 per month</u>
<u>Age 12 through age 14</u>	<u>up to \$307 per month</u>
<u>Age 15 and older</u>	<u>up to \$337 per month</u>

A child must receive the maximum payment amount for the child's age, unless a lesser amount is negotiated with and agreed to by the prospective adoptive parent.

(b) Supplemental needs payments, in addition to basic maintenance payments, are available based on the severity of a child's disability and the level of parenting required to care for the child, and must be made according to the following amounts:

<u>Level I</u>	<u>up to \$150 per month</u>
<u>Level II</u>	<u>up to \$275 per month</u>
<u>Level III</u>	<u>up to \$400 per month</u>
<u>Level IV</u>	<u>up to \$500 per month</u>

A child's level shall be assessed on an assessment tool prescribed by the commissioner. A child must receive the maximum payment for the child's assessed level, unless a lesser amount is negotiated with and agreed to by the prospective adoptive parent.

Subd. 4. **Reimbursement for special nonmedical expenses.** (a) Reimbursement for special nonmedical expenses is available to children, except those eligible for adoption assistance based on being an at-risk child.

(b) Reimbursements under this paragraph shall be made only after the adoptive parent documents that the requested service was denied by the local social service agency, community agencies, local school district, local public health department, the parent's insurance provider, or the child's program. The denial must be for an eligible service or qualified item under the program requirements of the applicable agency or organization.

(c) Reimbursements must be previously authorized, adhere to the requirements and procedures prescribed by the commissioner, and be limited to:

(1) child care for a child age 12 and younger, or for a child age 13 or 14 who has a documented disability that requires special instruction for and services by the child care provider. Child care reimbursements may be made if all available adult caregivers are employed or attending educational or vocational training programs. If a parent is

attending an educational or vocational training program, child care reimbursement is limited to no more than the time necessary to complete the credit requirements for an associate or baccalaureate degree as determined by the educational institution. Child care reimbursement is not limited for an adoptive parent completing basic or remedial education programs needed to prepare for postsecondary education or employment;

(2) respite care provided for the relief of the child's parent up to 504 hours of respite care annually;

(3) camping up to 14 days per state fiscal year for a child to attend a special needs camp. The camp must be accredited by the American Camp Association as a special needs camp in order to be eligible for camp reimbursement;

(4) postadoption counseling to promote the child's integration into the adoptive family that is provided by the placing agency during the first year following the date of the adoption decree. Reimbursement is limited to 12 sessions of postadoption counseling;

(5) family counseling that is required to meet the child's special needs. Reimbursement is limited to the prorated portion of the counseling fees allotted to the family when the adoptive parent's health insurance or Medicaid pays for the child's counseling but does not cover counseling for the rest of the family members;

(6) home modifications to accommodate the child's special needs upon which eligibility for adoption assistance was approved. Reimbursement is limited to once every five years per child;

(7) vehicle modifications to accommodate the child's special needs upon which eligibility for adoption assistance was approved. Reimbursement is limited to once every five years per family; and

(8) burial expenses up to \$1,000, if the special needs, upon which eligibility for adoption assistance was approved, resulted in the death of the child.

(d) The adoptive parent shall submit statements for expenses incurred between July 1 and June 30 of a given fiscal year to the state adoption assistance unit within 60 days after the end of the fiscal year in order for reimbursement to occur.

Sec. 6. **[259A.25] DETERMINATION OF ADOPTION ASSISTANCE BENEFITS AND PAYMENT.**

Subdivision 1. **Negotiation of adoption assistance agreement.** (a) A monthly payment is provided as part of the adoption assistance agreement to support the care of a child who has manifested special needs. The amount of the payment made on behalf of a child eligible for adoption assistance is determined through negotiation between the adoptive parent and the child-placing agency on behalf of the commissioner. The negotiation shall take into consideration the circumstances of the adopting parent and the needs of the child being adopted. The income of the adoptive parent must not be taken into consideration when determining eligibility for adoption assistance or the amount of the payments under section 259A.20. At the written request of the adoptive parent, the amount of the payment in the agreement may be renegotiated when there is a change in the child's needs or the family's circumstances.

(b) The adoption assistance agreement of a child who is identified as an at-risk child must not include a monthly payment unless and until the potential disability upon which the eligibility for the agreement was based has manifested during childhood.

**Subd. 2. Renegotiation of adoption assistance agreement.** (a) An adoptive parent of a child with an adoption assistance agreement may request renegotiation of the agreement when there is a change in the needs of the child or in the family's circumstances. When an adoptive parent requests renegotiation of the agreement, a reassessment of the child must be completed by: (1) the responsible social services agency in the child's county of residence; or (2) the child-placing agency that facilitated the adoption when the child's residence is out of state. If the reassessment indicates that the child's needs have changed, the child-placing agency, on behalf of the commissioner and the parent, shall renegotiate the agreement to include a payment of the level determined appropriate through the reassessment process using the assessment tool prescribed by the commissioner according to section 259A.15, subdivision 3. The agreement must not be renegotiated unless the commissioner and the parent mutually agree to the changes. The effective date of any renegotiated agreement must be determined according to requirements and procedures prescribed by the commissioner.

(b) An adoptive parent of a child with an adoption assistance agreement based on the child being an at-risk child may request renegotiation of the agreement to include a monthly payment. The parent must have written documentation from a qualified expert that the potential disability upon which eligibility for adoption assistance was approved has manifested. Documentation of the disability must be limited to evidence deemed appropriate by the commissioner. Prior to renegotiating the agreement, a reassessment of the child must be conducted using an assessment tool prescribed by the commissioner according to section 259A.15, subdivision 3. The reassessment must be used to renegotiate the agreement to include an appropriate monthly payment. The agreement must not be renegotiated unless the commissioner and the adoptive parent mutually agree to the changes. The effective date of any renegotiated agreement must be determined according to requirements and procedures prescribed by the commissioner.

**Subd. 3. Child income or income attributable to the child.** No income received by a child will be considered in determining a child's adoption assistance payment amount. If a child for whom a parent is receiving adoption assistance is also receiving Supplemental Security Income (SSI) or Retirement, Survivors, Disability Insurance (RSDI), the certifying agency shall inform the adoptive parent that the child's adoption assistance must be reported to the Social Security Administration.

**Sec. 7. [259A.30] REPORTING RESPONSIBILITIES.**

**Subdivision 1. Notification of change.** (a) An adoptive parent who has an adoption assistance agreement shall keep the agency administering the program informed of changes in status or circumstances that would make the child ineligible for the payments or eligible for payments in a different amount.

(b) As long as the agreement is in effect, the adoptive parent agrees to notify the agency administering the program in writing within 30 days of any of the following changes:

(1) the child's or adoptive parent's legal name;

(2) the family's address;

(3) the child's legal custody status;

(4) the child's completion of high school, if this occurs after the child attains age 18;

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

(6) the end of an adoptive parent's financial support of the child;

(7) the death of the child;

(8) the death of the adoptive parent;

(9) the child enlists in the military;

(10) the child gets married;

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

(12) the adoptive parents separate or divorce;

(13) the child is residing outside the adoptive home for a period of more than 30 consecutive days; and

(14) the child's status upon which eligibility for extension under section 259A.45, subdivision 2 or 3, was based.

Subd. 2. **Correct and true information.** If the adoptive parent reports information the adoptive parent knows is untrue, the adoptive parent fails to notify the commissioner of changes that may affect eligibility, or the agency administering the program receives information the adoptive parent did not report, the adoptive parent may be investigated for theft and, if charged and convicted, shall be sentenced under section 609.52, subdivision 3, clauses (1) to (5).

Sec. 8. **[259A.35] TERMINATION OF AGREEMENT.**

Subdivision 1. **Reasons for termination.** (a) An adoption assistance agreement shall terminate in any of the following circumstances:

(1) the child has attained the age of 18, or up to age 21, when the child meets a condition for extension as outlined in section 259A.45, subdivision 1;

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

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

(4) the death of the child; or

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

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

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

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

(3) death of adoptive parent;

(4) child enlists in the military;

(5) child gets married; or

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

Subd. 2. **Death of adoptive parent or adoption dissolution.** The adoption assistance agreement ends upon death or termination of parental rights of both adoptive parents in the case of a two-parent adoption, or the sole adoptive parent in the case of a single-parent adoption. The child's adoption assistance eligibility may be continued according to section 259A.40.

Subd. 3. **Termination notice for parent.** The commissioner shall provide the child's parent written notice of termination of payment. Termination notices must be sent according to the requirements and procedures prescribed by the commissioner.

**Sec. 9. [259A.40] ASSIGNMENT OF ADOPTION ASSISTANCE AGREEMENT.**

Subdivision 1. **Continuing child's eligibility for title IV-E adoption assistance in a subsequent adoption.** (a) The child maintains eligibility for title IV-E adoption assistance in a subsequent adoption if the following criteria are met:

(1) the child is determined to be a child with special needs as outlined in section 259A.10, subdivision 2; and

(2) the subsequent adoptive parent resides in Minnesota.

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

Subd. 2. **Assigning a child's adoption assistance to a court-appointed guardian.** (a) State-funded adoption assistance may be continued with the written consent of the commissioner to an individual who is a guardian appointed by a court for the child upon the death of both the adoptive parents in the case of a two-parent adoption, or the sole adoptive parent in the case of a single-parent adoption, unless the child is under the custody of a child-placing agency.

(b) Temporary assignment of adoption assistance may be approved by the commissioner for a maximum of six consecutive months from the death of the parent or parents and must adhere to the requirements and procedures prescribed by the commissioner. If, within six months, the child has not been adopted by a person agreed upon by the commissioner, or if a court has not appointed a legal guardian under either section 260C.325 or 524.5-313, or similar law of another jurisdiction, the adoption assistance shall terminate. Upon assignment of payments pursuant to this subdivision, funding shall be from state funds only.

**Sec. 10. [259A.45] EXTENSION OF ADOPTION ASSISTANCE AGREEMENT.**

Subdivision 1. **General requirements.** (a) Under certain limited circumstances a child may qualify for extension of the adoption assistance agreement beyond the date the child attains age 18, up to the date the child attains the age of 21.

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

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

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

Subd. 2. **Extension past age 18 for child adopted after 16th birthday.** A child who has attained the age of 16 prior to finalization of the child's adoption is eligible for extension of the adoption assistance agreement up to the date the child attains age 21 if the child is:

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

(2)(i) completing a secondary education program or a program leading to an equivalent credential;

(ii) enrolled in an institution that provides postsecondary or vocational education;

(iii) participating in a program or activity designed to promote or remove barriers to employment;

(iv) employed for at least 80 hours per month; or

(v) incapable of doing any of the activities described in clauses (i) to (iv) due to a medical condition where incapability is supported by documentation from an expert according to the requirements and procedures prescribed by the commissioner.

Subd. 3. **Extension past age 18 for child adopted prior to 16th birthday.** A child who has not attained the age of 16 prior to finalization of the child's adoption is eligible for extension of the adoption assistance agreement up to the date the child attains the age of 21 if the child is:

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

(2)(i) enrolled in a secondary education program or a program leading to the equivalent; or

(ii) incapable of sustaining employment because of the continuation of a physical or mental disability, upon which eligibility for adoption assistance was approved.

#### Sec. 11. **[259A.50] OVERPAYMENTS OF ADOPTION ASSISTANCE.**

An amount of adoption assistance paid to an adoptive parent in excess of the payment that was actually due is recoverable by the commissioner, even when the overpayment was caused by agency error or circumstances outside the responsibility and control of the parent or provider. Adoption assistance amounts covered by this section include basic maintenance needs payments, monthly supplemental maintenance needs payments, reimbursement of nonrecurring adoption expenses, reimbursement of special nonmedical costs, and reimbursement of medical costs.

Sec. 12. **[259A.55] APPEALS AND FAIR HEARINGS.**

**Subdivision 1. Appeals for denials, modifications, or terminations.** An adoptive parent or a prospective adoptive parent has the right to appeal to the commissioner under section 256.045, for reasons including, but not limited to: when eligibility for adoption assistance is denied, when a specific payment or reimbursement is modified or denied, and when the agreement for an eligible child is terminated. A prospective adoptive parent who disagrees with a decision by the commissioner prior to finalization of the adoption may request review of the decision by the commissioner, or may appeal the decision under section 256.045.

**Subd. 2. Extenuating circumstances.** (a) An adoption assistance agreement must be signed and fully executed prior to the court order that finalizes the adoption. An adoptive parent who believes that extenuating circumstances exist, as to why the adoption was finalized prior to fully executing an adoption assistance agreement, may request a fair hearing. The parent has the responsibility to prove the existence of extenuating circumstances, such as:

(1) relevant facts regarding the child were known by the child-placing agency and not presented to the parent prior to finalization of the adoption; or

(2) the child-placing agency failed to advise a potential parent about the availability of adoption assistance for a child in the county-paid foster care system.

(b) If an appeals judge finds through the fair hearing process that extenuating circumstances existed and that the child met all eligibility criteria at the time the adoption was finalized, the effective date and any associated federal financial participation shall be retroactive to the date of the request for a fair hearing.

Sec. 13. **[259A.65] INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE.**

**Subdivision 1. Purpose.** It is the purpose and policy of the state of Minnesota to:

(1) enter into interstate agreements with agencies of other states to safeguard and protect the interests of children covered by an adoption assistance agreement when they are adopted across state lines or move to another state after adoption finalization; and

(2) provide a framework for uniformity and consistency in administrative procedures when a child with special needs is adopted by a family in another state and for children adopted in Minnesota who move to another state.

**Subd. 2. Definitions.** For the purposes of this section, the terms defined in this subdivision have the meanings given them, unless the context clearly indicates otherwise.

(a) "Adoption assistance state" means the state that certifies eligibility for Medicaid in an adoption assistance agreement.

(b) "Resident state" means the state where the adopted child is a resident.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

**Subd. 3. Compacts authorized.** The commissioner is authorized to develop, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement Medicaid for children with adoption assistance agreements.

**Subd. 4. Contents of compacts.** (a) A compact must include:

(1) a provision allowing all states to join the compact;

(2) a provision for withdrawal from the compact upon written notice to the parties, effective one year after the notice is provided;

(3) a requirement that the protections afforded under the compact continue in force for the duration of the adoption assistance from a party state other than the one in which the adopted child is a resident;

(4) a requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parent and the state child welfare agency of the state that provides the adoption assistance, and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parent and the state agency providing the adoption assistance; and

(5) other provisions necessary and appropriate for the proper administration of the compact.

(b) A compact may contain provisions establishing requirements and entitlements to medical, developmental, child care, or other social services for the child under state law, even though the child and the adoptive parent are in a state other than the one responsible for or providing the services or funds to pay part or all of the costs.

**Subd. 5. Duties of commissioner of human services regarding medical assistance.** (a) The commissioner of human services shall:

(1) provide Minnesota medical assistance for an adopted child who is title IV-E eligible;

(2) provide Minnesota medical assistance for an adopted child who is not title IV-E eligible who:

(i) was determined to have a special need for medical or rehabilitative care;

(ii) is living in another state; and

(iii) is covered by an adoption assistance agreement made by the commissioner for medical coverage or benefits when the child is not eligible for Medicaid in the child's residence state;

(3) consider the holder of a medical assistance identification card under this subdivision as any other recipient of medical assistance under chapter 256B; and

(4) process and make payments on claims for the recipient in the same manner as for other recipients of medical assistance.

(b) Coverage must be limited to providers authorized by Minnesota's medical assistance program, and according to Minnesota's program requirements.

**Subd. 6. Cooperation with Medicaid.** The adoptive parent shall cooperate with and abide by the Medicaid program requirements and procedures of the state which provides medical coverage.

**Subd. 7. Federal participation.** The commissioner shall apply for and administer all relevant aid in accordance with state and federal law.



Sec. 14. **[259A.70] REIMBURSEMENT OF NONRECURRING ADOPTION EXPENSES.**

(a) The commissioner of human services shall provide reimbursement to an adoptive parent for costs incurred in an adoption of a child with special needs according to section 259A.10, subdivision 2. Reimbursement shall be made for expenses that are reasonable and necessary for the adoption to occur, subject to a maximum of \$2,000. The expenses must directly relate to the legal adoption of the child, not be incurred in violation of state or federal law, and must not have been reimbursed from other sources or funds.

(b) Children who have special needs but are not citizens or residents of the United States and were either adopted in another country or brought to this country for the purposes of adoption are categorically ineligible for this reimbursement program, except if the child meets the eligibility criteria after the dissolution of the international adoption.

(c) An adoptive parent, in consultation with the responsible child-placing agency, may request reimbursement of nonrecurring adoption expenses by submitting a complete application, according to the requirements and procedures and on forms prescribed by the commissioner.

(d) The commissioner shall determine the child's eligibility for adoption expense reimbursement under title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 676. If determined eligible, the commissioner of human services shall sign the agreement for nonrecurring adoption expense reimbursement, making this a fully executed agreement. To be eligible, the agreement must be fully executed prior to the child's adoption finalization.

(e) An adoptive parent who has an adoption assistance agreement under section 259A.15, subdivision 2, is not required to make a separate application for reimbursement of nonrecurring adoption expenses for the child who is the subject of that agreement.

(f) If determined eligible, the adoptive parent shall submit reimbursement requests within 21 months of the date of the child's adoption decree, and according to requirements and procedures prescribed by the commissioner.

Sec. 15. **[259A.75] REIMBURSEMENT OF CERTAIN AGENCY COSTS; PURCHASE OF SERVICE CONTRACTS.**

Subdivision 1. **General information.** (a) Subject to the procedures required by the commissioner and the provisions of this section, a Minnesota county or tribal social services agency shall receive a reimbursement from the commissioner equal to 100 percent of the reasonable and appropriate cost for contracted adoption placement services identified for a specific child that are not reimbursed under other federal or state funding sources.

(b) The commissioner may spend up to \$16,000 for each purchase of service contract. Only one contract per child per adoptive placement is permitted. Funds encumbered and obligated under the contract for the child remain available until the terms of the contract are fulfilled or the contract is terminated.

(c) The commissioner shall set aside an amount not to exceed five percent of the total amount of the fiscal year appropriation from the state for the adoption assistance program to reimburse placing agencies for child-specific adoption placement services. When adoption assistance payments for children's needs exceed 95 percent of the total amount of the fiscal year appropriation from the state for the adoption assistance program, the amount of reimbursement available to placing agencies for adoption services is reduced correspondingly.

Subd. 2. **Child eligibility criteria.** (a) A child who is the subject of a purchase of service contract must:

(1) have the goal of adoption, which may include an adoption in accordance with tribal law;

(2) be under the guardianship of the commissioner of human services or be a ward of tribal court pursuant to section 260.755, subdivision 20; and

(3) meet all of the special needs criteria according to section 259A.10, subdivision 2.

(b) A child under the guardianship of the commissioner must have an identified adoptive parent and a fully executed adoption placement agreement according to section 260C.613, subdivision 1, paragraph (a).

Subd. 3. **Agency eligibility criteria.** (a) A Minnesota county or tribal social services agency shall receive reimbursement for child-specific adoption placement services for an eligible child that it purchases from a private adoption agency licensed in Minnesota or any other state or tribal social services agency.

(b) Reimbursement for adoption services is available only for services provided prior to the date of the adoption decree.

Subd. 4. **Application and eligibility determination.** (a) A county or tribal social services agency may request reimbursement of costs for adoption placement services by submitting a complete purchase of service application, according to the requirements and procedures and on forms prescribed by the commissioner.

(b) The commissioner shall determine eligibility for reimbursement of adoption placement services. If determined eligible, the commissioner of human services shall sign the purchase of service agreement, making this a fully executed contract. No reimbursement under this section shall be made to an agency for services provided prior to the fully executed contract.

(c) Separate purchase of service agreements shall be made, and separate records maintained, on each child. Only one agreement per child per adoptive placement is permitted. For siblings who are placed together, services shall be planned and provided to best maximize efficiency of the contracted hours.

Subd. 5. **Reimbursement process.** (a) The agency providing adoption services is responsible to track and record all service activity, including billable hours, on a form prescribed by the commissioner. The agency shall submit this form to the state for reimbursement after services have been completed.

(b) The commissioner shall make the final determination whether or not the requested reimbursement costs are reasonable and appropriate and if the services have been completed according to the terms of the purchase of service agreement.

Subd. 6. **Retention of purchase of service records.** Agencies entering into purchase of service contracts shall keep a copy of the agreements, service records, and all applicable billing and invoicing according to the department's record retention schedule. Agency records shall be provided upon request by the commissioner.

#### Sec. 16. **EFFECTIVE DATE.**

This article is effective August 1, 2012.

### ARTICLE 4 CHILD PROTECTION

Section 1. Minnesota Statutes 2010, section 260.012, is amended to read:

#### **260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS.**

(a) Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest

possible time, and the court must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child as provided in paragraph (e). In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern. Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that:

(1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

(2) the parental rights of the parent to another child have been terminated involuntarily;

(3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);

(4) the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction; ~~or~~

(5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;

(6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b); or

~~(5)~~ (7) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.

(b) When the court makes one of the prima facie determinations under paragraph (a), either permanency pleadings under section 260C.201, subdivision 11, or a termination of parental rights petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under section 260C.201, subdivision 11, must be held within 30 days of this determination.

(c) In the case of an Indian child, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 the juvenile court must make findings and conclusions consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, the responsible social services agency must provide active efforts as required under United States Code, title 25, section 1911(d).

(d) "Reasonable efforts to prevent placement" means:

(1) the agency has made reasonable efforts to prevent the placement of the child in foster care by working with the family to develop and implement a safety plan; or

(2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.

(e) "Reasonable efforts to finalize a permanent plan for the child" means due diligence by the responsible social services agency to:

(1) reunify the child with the parent or guardian from whom the child was removed;

(2) assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by section 260C.212, subdivision 4;

(3) conduct a relative search to identify and provide notice to adult relatives as required under section 260C.212, subdivision 5;

(4) place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with section 260C.212, subdivision 2; and

(5) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and considers permanent alternative homes for the child inside or outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

(f) Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family. Services may include those provided by the responsible social services agency and other culturally appropriate services available in the community. At each stage of the proceedings where the court is required to review the appropriateness of the responsible social services agency's reasonable efforts as described in paragraphs (a), (d), and (e), the social services agency has the burden of demonstrating that:

(1) it has made reasonable efforts to prevent placement of the child in foster care;

(2) it has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify the child with the child's family at the earliest possible time;

(3) it has made reasonable efforts to finalize an alternative permanent home for the child, and considers permanent alternative homes for the child inside or outside of the state; or

(4) reasonable efforts to prevent placement and to reunify the child with the parent or guardian are not required. The agency may meet this burden by stating facts in a sworn petition filed under section 260C.141, by filing an affidavit summarizing the agency's reasonable efforts or facts the agency believes demonstrate there is no need for reasonable efforts to reunify the parent and child, or through testimony or a certified report required under juvenile court rules.

(g) Once the court determines that reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a), the court may only require reasonable efforts for reunification after a hearing according to section 260C.163, where the court finds there is not clear and convincing evidence of the facts upon which the court based its prima facie determination. In this case when there is clear and convincing evidence that the child is in need of protection or services, the court may find the child in need of protection or services and order any of the dispositions available under section 260C.201, subdivision 1. Reunification of a ~~surviving~~ child with a parent is not required if the parent has been convicted of:

(1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

(2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the ~~surviving~~ child; or

(3) a violation of, or an attempt or conspiracy to commit a violation of, United States Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent;

(4) committing sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent; or

(5) an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b).

(h) The juvenile court, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

- (1) relevant to the safety and protection of the child;
- (2) adequate to meet the needs of the child and family;
- (3) culturally appropriate;
- (4) available and accessible;
- (5) consistent and timely; and
- (6) realistic under the circumstances.

In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances or that reasonable efforts are not required as provided in paragraph (a).

(i) This section does not prevent out-of-home placement for treatment of a child with a mental disability when it is determined to be medically necessary as a result of the child's diagnostic assessment or individual treatment plan indicates that appropriate and necessary treatment cannot be effectively provided outside of a residential or inpatient treatment program and the level or intensity of supervision and treatment cannot be effectively and safely provided in the child's home or community and it is determined that a residential treatment setting is the least restrictive setting that is appropriate to the needs of the child.

(j) If continuation of reasonable efforts to prevent placement or reunify the child with the parent or guardian from whom the child was removed is determined by the court to be inconsistent with the permanent plan for the child or upon the court making one of the prima facie determinations under paragraph (a), reasonable efforts must be made to place the child in a timely manner in a safe and permanent home and to complete whatever steps are necessary to legally finalize the permanent placement of the child.

(k) Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts to prevent placement or to reunify the child with the parent or guardian from whom the child was removed. When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent under paragraph (a), the agency shall disclose its decision and both plans for concurrent reasonable efforts to all parties and the court. When the agency discloses its decision to proceed on both plans for reunification and permanent placement away from the parent, the court's review of the agency's reasonable efforts shall include the agency's efforts under both plans.

Sec. 2. Minnesota Statutes 2010, section 260C.001, is amended to read:

**260C.001 TITLE, INTENT, AND CONSTRUCTION.**

Subdivision 1. **Citation; scope.** (a) Sections 260C.001 to ~~260C.454~~ 260C.521 may be cited as the ~~child~~ juvenile protection provisions of the Juvenile Court Act.

(b) Juvenile protection proceedings include:

(1) a child in need of protection or services matters;

(2) permanency matters, including termination of parental rights;

(3) postpermanency reviews under sections 260C.317 and 260C.521; and

(4) adoption matters including posttermination of parental rights proceedings that review the responsible social services agency's reasonable efforts to finalize adoption.

Subd. 2. ~~Child in need of Juvenile protection services proceedings.~~ (a) The paramount consideration in all juvenile protection proceedings ~~concerning a child alleged or found to be in need of protection or services~~ is the health, safety, and best interests of the child. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923.

(b) The purpose of the laws relating to juvenile ~~courts~~ protection proceedings is:

(1) to secure for each child ~~alleged or adjudicated in need of protection or services and~~ under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child;

(2) to provide judicial procedures ~~which~~ that protect the welfare of the child;

(3) to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal;

(4) to ensure that when removal from the child's own family is necessary and in the child's best interests, the responsible social services agency has legal responsibility for the child removal either:

(i) pursuant to a voluntary placement agreement between the child's parent or guardian or the child, when the child is over age 18, and the responsible social services agency; or

(ii) by court order pursuant to section 260C.151, subdivision 6; ~~206C.178; or~~ 260C.178; 260C.201; 260C.325; or 260C.515;

(5) to ensure that, when placement is pursuant to court order, the court order removing the child or continuing the child in foster care contains an individualized determination that placement is in the best interests of the child that coincides with the actual removal of the child; ~~and~~

(6) to ensure that when the child is removed, the child's care and discipline is, as nearly as possible, equivalent to that which should have been given by the parents and is either in:

(i) the home of a noncustodial parent pursuant to section 260C.178 or 260C.201, subdivision 1, paragraph (a), clause (1);

(ii) the home of a relative pursuant to emergency placement by the responsible social services agency under chapter 245A; or

(iii) a foster ~~home~~ care licensed under chapter 245A-; and

(7) to ensure appropriate permanency planning for children in foster care including:

(i) unless reunification is not required under section 260.012, developing a permanency plan for the child that includes a primary plan for reunification with the child's parent or guardian and a secondary plan for an alternative, legally permanent home for the child in the event reunification cannot be achieved in a timely manner;

(ii) identifying, locating, and assessing both parents of the child as soon as possible and offering reunification services to both parents of the child as required under section 260.012 and 260C.219;

(iii) identifying, locating, and notifying relatives of both parents of the child according to section 260C.221;

(iv) making a placement with a family that will commit to being the legally permanent home for the child in the event reunification cannot occur at the earliest possible time while at the same time actively supporting the reunification plan; and

(v) returning the child home with supports and services, as soon as return is safe for the child, or when safe return cannot be timely achieved, moving to finalize another legally permanent home for the child.

Subd. 3. **Permanency and, termination of parental rights, and adoption.** The purpose of the laws relating to permanency ~~and~~, termination of parental rights, and children who come under the guardianship of the commissioner of human services is to ensure that:

(1) when required and appropriate, reasonable efforts have been made by the social services agency to reunite the child with the child's parents in a home that is safe and permanent; and

(2) if placement with the parents is not reasonably foreseeable, to secure for the child a safe and permanent placement according to the requirements of section 260C.212, subdivision 2, preferably with adoptive parents or, if that is not possible or in the best interests of the child, a fit and willing relative through transfer of permanent legal and physical custody to that relative; and

(3) when a child is under the guardianship of the commissioner of human services, reasonable efforts are made to finalize an adoptive home for the child in a timely manner.

Nothing in this section requires reasonable efforts to prevent placement or to reunify the child with the parent or guardian to be made in circumstances where the court has determined that the child has been subjected to egregious harm, when the child is an abandoned infant, the parent has involuntarily lost custody of another child through a proceeding under section ~~260C.201, subdivision 11~~ 260C.515, subdivision 4, or similar law of another state, the parental rights of the parent to a sibling have been involuntarily terminated, or the court has determined that reasonable efforts or further reasonable efforts to reunify the child with the parent or guardian would be futile.

The paramount consideration in all proceedings for permanent placement of the child under ~~section 260C.201, subdivision 11~~ sections 260C.503 to 260C.521, or the termination of parental rights is the best interests of the child. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq.

Subd. 4. **Construction.** The laws relating to the ~~child protection provisions of the juvenile courts protection proceedings~~ shall be liberally construed to carry out these purposes.

Sec. 3. Minnesota Statutes 2010, section 260C.007, subdivision 4, is amended to read:

Subd. 4. **Child.** "Child" means an individual under 18 years of age. For purposes of this chapter and chapter 260D, child also includes individuals under age 21 who are in foster care pursuant to section 260C.451.

Sec. 4. Minnesota Statutes 2010, section 260C.007, is amended by adding a subdivision to read:

Subd. 26a. **Putative father.** "Putative father" has the meaning given in section 259.21, subdivision 12.

Sec. 5. Minnesota Statutes 2010, section 260C.007, is amended by adding a subdivision to read:

Subd. 27a. **Responsible social services agency.** "Responsible social services agency" means the county social services agency that has responsibility for public child welfare and child protection services and includes the provision of adoption services as an agent of the commissioner of human services.

Sec. 6. Minnesota Statutes 2010, section 260C.007, is amended by adding a subdivision to read:

Subd. 32. **Sibling.** "Sibling" means one of two or more individuals who have one or both parents in common through blood, marriage, or adoption, including siblings as defined by the child's tribal code or custom.

Sec. 7. Minnesota Statutes 2010, section 260C.101, subdivision 2, is amended to read:

Subd. 2. **Other matters relating to children.** ~~Except as provided in clause (4),~~ The juvenile court has original and exclusive jurisdiction in proceedings concerning:

(1) the termination of parental rights to a child in accordance with the provisions of sections 260C.301 to 260C.328;

(2) permanency matters under sections 260C.503 to 260C.521;

(3) the appointment and removal of a juvenile court guardian for a child, where parental rights have been terminated under the provisions of sections 260C.301 to 260C.328;

~~(3)~~ (4) judicial consent to the marriage of a child when required by law;

~~(4) the juvenile court in those counties in which the judge of the probate juvenile court has been admitted to the practice of law in this state shall proceed under the laws relating to adoptions in all adoption matters. In those counties in which the judge of the probate juvenile court has not been admitted to the practice of law in this state the district court shall proceed under the laws relating to adoptions in~~

(5) all adoption matters and review of the efforts to finalize the adoption of the child under section 260C.317;

~~(5)~~ (6) the review of the placement of a child who is in foster care pursuant to a voluntary placement agreement between the child's parent or parents and the responsible social services agency under section ~~260C.212, subdivision 8~~ 260C.227; or between the child, when the child is over age 18, and the agency under section 260C.229; and

~~(6)~~ (7) the review of voluntary foster care placement of a child for treatment under chapter 260D according to the review requirements of that chapter.



Sec. 8. Minnesota Statutes 2010, section 260C.157, subdivision 1, is amended to read:

Subdivision 1. **Investigation.** Upon request of the court the responsible social services agency or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under section 260C.101 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court.

Adoption investigations shall be conducted in accordance with the laws relating to adoptions in chapter 259. ~~Any funds received under the provisions of this subdivision shall not cancel until the end of the fiscal year immediately following the fiscal year in which the funds were received. The funds are available for use by the commissioner of corrections during that period and are hereby appropriated annually to the commissioner of corrections as reimbursement of the costs of providing these services to the juvenile courts.~~

Sec. 9. Minnesota Statutes 2010, section 260C.163, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) Except for hearings arising under section 260C.425, hearings on any matter shall be without a jury and may be conducted in an informal manner. In all adjudicatory proceedings ~~involving a child alleged to be in need of protection or services~~ regarding juvenile protection matters under this chapter, the court shall admit only evidence that would be admissible in a civil trial. To be proved at trial, allegations of a petition alleging a child to be in need of protection or services must be proved by clear and convincing evidence.

(b) Except for proceedings involving a child alleged to be in need of protection or services and petitions for the termination of parental rights, hearings may be continued or adjourned from time to time. In proceedings involving a child alleged to be in need of protection or services and ~~petitions~~ for the termination of parental rights, hearings may not be continued or adjourned for more than one week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. If a hearing is held on a petition involving physical or sexual abuse of a child who is alleged to be in need of protection or services or neglected and in foster care, the court shall file the decision with the court administrator as soon as possible but no later than 15 days after the matter is submitted to the court. When a continuance or adjournment is ordered in any proceeding, the court may make any interim orders as it deems in the best interests of the minor in accordance with ~~the provisions of sections 260C.001 to 260C.421~~ this chapter.

(c) Absent exceptional circumstances, hearings under this chapter, except hearings in adoption proceedings, are presumed to be accessible to the public, however the court may close any hearing and the records related to any matter as provided in the Minnesota Rules of Juvenile Protection Procedure.

(d) Adoption hearings ~~shall be conducted in accordance with the provisions of laws relating to adoptions~~ are closed to the public and all records related to an adoption are inaccessible except as provided in the Minnesota Rules of Adoption Procedure.

(e) In any permanency hearing, including the transition of a child from foster care to independent living, the court shall ensure that its consult with the child during the hearing is in an age-appropriate manner.

Sec. 10. Minnesota Statutes 2010, section 260C.163, subdivision 4, is amended to read:

Subd. 4. **County attorney.** ~~Except in adoption proceedings, the county attorney shall present the evidence upon request of the court.~~ In representing the responsible social services agency, the county attorney shall also have the responsibility for advancing the public interest in the welfare of the child.

Sec. 11. Minnesota Statutes 2010, section 260C.178, subdivision 1, is amended to read:

Subdivision 1. **Hearing and release requirements.** (a) If a child was taken into custody under section 260C.175, subdivision 1, clause (1) or (2), item (ii), the court shall hold a hearing within 72 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, to determine whether the child should continue in custody.

(b) Unless there is reason to believe that the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260C.157, subdivision 1.

(c) If the court determines there is reason to believe that the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered if returned to the care of the parent or guardian who has custody and from whom the child was removed, the court shall order the child into foster care under the legal responsibility of the responsible social services agency or responsible probation or corrections agency for the purposes of protective care as that term is used in the juvenile court rules or into the home of a noncustodial parent and order the noncustodial parent to comply with any conditions the court determines to be appropriate to the safety and care of the child, including cooperating with paternity establishment proceedings in the case of a man who has not been adjudicated the child's father. The court shall not give the responsible social services legal custody and order a trial home visit at any time prior to adjudication and disposition under section 260C.201, subdivision 1, paragraph (a), clause (3), but may order the child returned to the care of the parent or guardian who has custody and from whom the child was removed and order the parent or guardian to comply with any conditions the court determines to be appropriate to meet the safety, health, and welfare of the child.

(d) In determining whether the child's health or welfare would be immediately endangered, the court shall consider whether the child would reside with a perpetrator of domestic child abuse.

(e) The court, before determining whether a child should be placed in or continue in foster care under the protective care of the responsible agency, shall also make a determination, consistent with section 260.012 as to whether reasonable efforts were made to prevent placement or whether reasonable efforts to prevent placement are not required. In the case of an Indian child, the court shall determine whether active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:

(1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

(2) that there are no services or other efforts that could be made at the time of the hearing that could safely permit the child to remain home or to return home. When reasonable efforts to prevent placement are required and there are services or other efforts that could be ordered which would permit the child to safely return home, the court shall order the child returned to the care of the parent or guardian and the services or efforts put in place to ensure the child's safety. When the court makes a prima facie determination that one of the circumstances under paragraph (g) exists, the court shall determine that reasonable efforts to prevent placement and to return the child to the care of the parent or guardian are not required.

If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

(f) The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or guardian would be contrary to the welfare of the child and that placement is in the best interest of the child.

(g) At the emergency removal hearing, or at any time during the course of the proceeding, and upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a prima facie case that:

(1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

(2) the parental rights of the parent to another child have been involuntarily terminated;

(3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);

(4) the parents' custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (e), clause (1); section 260C.515, subdivision 4, or a similar law of another jurisdiction; ~~or~~

(5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;

(6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b); or

(7) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable.

(h) When a petition to terminate parental rights is required under section 260C.301, subdivision 3 or 4, but the county attorney has determined not to proceed with a termination of parental rights petition, and has instead filed a petition to transfer permanent legal and physical custody to a relative under section ~~260C.201, subdivision 11~~ 260C.507, the court shall schedule a permanency hearing within 30 days of the filing of the petition.

(i) If the county attorney has filed a petition under section 260C.307, the court shall schedule a trial under section 260C.163 within 90 days of the filing of the petition except when the county attorney determines that the criminal case shall proceed to trial first under section ~~260C.201, subdivision 3~~ 260C.503, subdivision 2, paragraph (c).

(j) If the court determines the child should be ordered into foster care and the child's parent refuses to give information to the responsible social services agency regarding the child's father or relatives of the child, the court may order the parent to disclose the names, addresses, telephone numbers, and other identifying information to the responsible social services agency for the purpose of complying with ~~the requirements of~~ sections 260C.151, 260C.212, and 260C.215.

(k) If a child ordered into foster care has siblings, whether full, half, or step, who are also ordered into foster care, the court shall inquire of the responsible social services agency of the efforts to place the children together as required by section 260C.212, subdivision 2, paragraph (d), if placement together is in each child's best interests, unless a child is in placement for treatment or a child is placed with a previously noncustodial parent who is not a parent to all siblings. If the children are not placed together at the time of the hearing, the court shall inquire at each subsequent hearing of the agency's reasonable efforts to place the siblings together, as required under section 260.012. If any sibling is not placed with another sibling or siblings, the agency must develop a plan to facilitate visitation or ongoing contact among the siblings as required under section 260C.212, subdivision 1, unless it is contrary to the safety or well-being of any of the siblings to do so.

(l) When the court has ordered the child into foster care or into the home of a noncustodial parent, the court may order a chemical dependency evaluation, mental health evaluation, medical examination, and parenting assessment for the parent as necessary to support the development of a plan for reunification required under subdivision 7 and section 260C.212, subdivision 1, or the child protective services plan under section 626.556, subdivision 10, and Minnesota Rules, part 9560.0228.

Sec. 12. Minnesota Statutes 2010, section 260C.178, subdivision 7, is amended to read:

Subd. 7. **Out-of-home placement plan.** (a) An out-of-home placement plan required under section 260C.212 shall be filed with the court within 30 days of the filing of a juvenile protection petition alleging the child to be in need of protection or services under section 260C.141, subdivision 1, when the court orders emergency removal of the child under this section, or filed with the petition if the petition is a review of a voluntary placement under section 260C.141, subdivision 2.

(b) Upon the filing of the out-of-home placement plan which has been developed jointly with the parent and in consultation with others as required under section 260C.212, subdivision 1, the court may approve implementation of the plan by the responsible social services agency based on the allegations contained in the petition and any evaluations, examinations, or assessments conducted under subdivision 1, paragraph (l). The court shall send written notice of the approval of the out-of-home placement plan to all parties and the county attorney or may state such approval on the record at a hearing. A parent may agree to comply with the terms of the plan filed with the court.

(c) The responsible social services agency shall make reasonable ~~attempts~~ efforts to engage ~~a parent~~ both parents of the child in case planning. ~~If the parent refuses to cooperate in the development of the out of home placement plan or disagrees with the services recommended by~~ The responsible social service agency, ~~the agency shall note such refusal or disagreement for the court~~ report the results of its efforts to engage the child's parents in the out-of-home placement plan filed with the court. The agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. The parent may ask the court to modify the plan to require different or additional services requested by the parent, but which the agency refused to provide. The court may approve the plan as presented by the agency or may modify the plan to require services requested by the parent. The court's approval shall be based on the content of the petition.

(d) Unless the parent agrees to comply with the terms of the out-of-home placement plan, the court may not order a parent to comply with the provisions of the plan until the court finds the child is in need of protection or services and orders disposition under section 260C.201, subdivision 1. However, the court may find that the responsible social services agency has made reasonable efforts for reunification if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this section.

Sec. 13. Minnesota Statutes 2010, section 260C.193, subdivision 3, is amended to read:

Subd. 3. **Best interest of the child in foster care or residential care.** (a) The policy of the state is to ensure that the best interests of children in foster ~~or residential~~ care, who experience transfer of permanent legal and physical custody to a relative under section 260C.515, subdivision 4, or adoption under chapter 259 are met by requiring individualized determinations under section 260C.212, subdivision 2, paragraph (b), of the needs of the child and of how the selected ~~placement~~ home will serve the needs of the child ~~in foster care placements.~~

(b) No later than three months after a child is ordered removed from the care of a parent in the hearing required under section 260C.202, the court shall review and enter findings regarding whether the responsible social services agency made:

(1) diligent efforts to identify and search for relatives as required under section ~~260C.212, subdivision 5, 260C.221~~; and ~~made~~

(2) an individualized determination as required under section 260C.212, subdivision 2, to select a home that meets the needs of the child.

(c) If the court finds the agency has not made efforts as required under section ~~260C.212, subdivision 5 260C.221~~, and there is a relative who qualifies to be licensed to provide family foster care under chapter 245A, the court may order the child placed with the relative consistent with the child's best interests.

(d) If the agency's efforts under section 260C.221 are found to be sufficient, the court shall order the agency to continue to appropriately engage relatives who responded to the notice under section 260C.221 in placement and case planning decisions and to appropriately engage relatives who subsequently come to the agency's attention.

(e) (e) If the child's birth parent or parents explicitly request that a relative or important friend not be considered, the court shall honor that request if it is consistent with the best interests of the child. If the child's birth parent or parents express a preference for placing the child in a foster or adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall order placement of the child with an individual who meets the birth parent's religious preference.

(f) (f) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(g) (g) Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a ~~sibling~~ siblings. If siblings ~~are~~ were not placed together according to section 260C.212, subdivision 2, paragraph (d), the responsible social services agency shall report to the court the efforts made to place the siblings together and why the efforts were not successful. If the court is not satisfied ~~with that the agency's~~ agency has made reasonable efforts to place siblings together, the court ~~may~~ must order the agency to make further reasonable efforts. If siblings are not placed together the court shall ~~review~~ order the responsible social services ~~agency's~~ agency to implement the plan for visitation among siblings required as part of the out-of-home placement plan under section 260C.212.

(h) (h) This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.

Sec. 14. Minnesota Statutes 2010, section 260C.193, subdivision 6, is amended to read:

Subd. 6. **Jurisdiction to review foster care to age 21, termination of jurisdiction, jurisdiction to age 18.** (a) Jurisdiction over a child in foster care pursuant to section 260C.451 ~~may~~ shall continue to age 21 for the purpose of conducting the reviews required under section ~~260C.201, subdivision 11, paragraph (d), 260C.212, subdivision 7, or 260C.317, subdivision 3, 260C.203, or 260C.515, subdivision 5 or 6.~~ Jurisdiction over a child in foster care pursuant to section 260C.451 shall not be terminated without giving the child notice of any motion or proposed order to dismiss jurisdiction and an opportunity to be heard on the appropriateness of the dismissal. When a child in foster care pursuant to section 260C.451 asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.

(b) ~~Except when a court order is necessary for a child to be in foster care or when continued review under (1) section 260C.212, subdivision 7, paragraph (d), or 260C.201, subdivision 11, paragraph (d), and (2) section 260C.317, subdivision 3, is required for a child in foster care under section 260C.451, The court may terminate jurisdiction on its own motion or the motion of any interested party upon a determination that jurisdiction is no longer necessary to protect the child's best interests~~ except when:

(1) a court order is necessary for a child to be in foster care; or

(2) continued review under section 260C.203, 260C.515, subdivision 5 or 6, or 260C.317, subdivision 3, is required for a child in foster care under section 260C.451.

(c) Unless terminated by the court, and except as otherwise provided in this subdivision, the jurisdiction of the court shall continue until the child becomes 18 years of age. The court may continue jurisdiction over an individual and all other parties to the proceeding to the individual's 19th birthday when continuing jurisdiction is in the individual's best interest in order to:

(1) protect the safety or health of the individual;

(2) accomplish additional planning for independent living or for the transition out of foster care; or

(3) support the individual's completion of high school or a high school equivalency program.

Sec. 15. Minnesota Statutes 2010, section 260C.201, subdivision 2, is amended to read:

Subd. 2. **Written findings.** (a) Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition and case plan ordered and shall also set forth in writing the following information:

(1) why the best interests and safety of the child are served by the disposition and case plan ordered;

(2) what alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;

(3) when legal custody of the child is transferred, the appropriateness of the particular placement made or to be made by the placing agency using the factors in section 260C.212, subdivision 2, paragraph (b);

(4) whether reasonable efforts to finalize the permanent plan for the child consistent with section 260.012 were made including reasonable efforts:

(i) to prevent or eliminate the necessity of the child's removal placement and to reunify the family after removal child with the parent or guardian from whom the child was removed at the earliest time consistent with the child's safety. The court's findings must include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under section 260.012 or 260C.178, subdivision 1;

(ii) to identify and locate any noncustodial or nonresident parent of the child and to assess such parent's ability to provide day-to-day care of the child, and, where appropriate, provide services necessary to enable the noncustodial or nonresident parent to safely provide day-to-day care of the child as required under section 260C.219, unless such services are not required under section 260.012 or 260C.178, subdivision 1;

(iii) to make the diligent search for relatives and provide the notices required under section 260C.221; a finding made pursuant to a hearing under section 260C.202 that the agency has made diligent efforts to conduct a relative search and has appropriately engaged relatives who responded to the notice under section 260C.221 and other relatives, who came to the attention of the agency after notice under section 260C.221 was sent, in placement and case planning decisions fulfills the requirement of this item;

(iv) to identify and make a foster care placement in the home of an unlicensed relative, according to the requirements of section 245A.035, a licensed relative, or other licensed foster care provider who will commit to being the permanent legal parent or custodian for the child in the event reunification cannot occur, but who will actively support the reunification plan for the child; and

(v) to place siblings together in the same home or to ensure visitation is occurring when siblings are separated in foster care placement and visitation is in the siblings' best interests under section 260C.212, subdivision 2, paragraph (d); and

(5) if the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a mental disability or emotional disturbance as defined in section 245.4871, subdivision 15, the written findings shall also set forth:

(i) whether the child has mental health needs that must be addressed by the case plan;

(ii) what consideration was given to the diagnostic and functional assessments performed by the child's mental health professional and to health and mental health care professionals' treatment recommendations;

(iii) what consideration was given to the requests or preferences of the child's parent or guardian with regard to the child's interventions, services, or treatment; and

(iv) what consideration was given to the cultural appropriateness of the child's treatment or services.

(b) If the court finds that the social services agency's preventive or reunification efforts have not been reasonable but that further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

(c) If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review the reasonable efforts of the agency to ~~recruit, identify, and make a placement in a home where the foster parent or relative that has committed to being the legally permanent home for the child in the event reunification efforts are not successful~~ develop a permanency plan for the child that includes a primary plan which is for reunification with the child's parent or guardian and a secondary plan which is for an alternative, legally permanent home for the child in the event reunification cannot be achieved in a timely manner.

Sec. 16. Minnesota Statutes 2010, section 260C.201, subdivision 10, is amended to read:

Subd. 10. **Court review of foster care.** (a) If the court orders a child placed in foster care, the court shall review the out-of-home placement plan and the child's placement at least every 90 days as required in juvenile court rules to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. This review is not required if the court has returned the child home, ordered the child permanently placed away from the parent under subdivision 11, or terminated rights under section 260C.301. Court review for a child permanently placed away from a parent, including where the child is under guardianship ~~and legal custody~~ of the commissioner, shall be governed by ~~subdivision 11 or section 260C.317, subdivision 3, whichever is applicable~~ 260C.607.

(b) No later than ~~six~~ three months after the child's placement in foster care, the court shall review agency efforts pursuant to section ~~260C.212, subdivision 2~~ 260C.221, and order that the efforts continue if the agency has failed to perform the duties under that section. The court must order the agency to continue to appropriately engage relatives who responded to the notice under section 260C.221 in placement and case planning decisions and to engage other relatives who came to the agency's attention after notice under section 260C.221 was sent.

(c) The court shall review the out-of-home placement plan and may modify the plan as provided under subdivisions 6 and 7.

(d) When the court orders transfer of custody to a responsible social services agency resulting in foster care or protective supervision with a noncustodial parent under subdivision 1, the court shall notify the parents of the provisions of ~~subdivisions 11 and subdivision 11a~~ and sections 260C.503 to 260C.521, as required under juvenile court rules.

(e) When a child remains in or returns to foster care pursuant to section 260C.451 and the court has jurisdiction pursuant to section 260C.193, subdivision 6, paragraph (c), the court shall at least annually conduct the review required under ~~subdivision 11, paragraph (d), or sections 260C.212, subdivision 7, and 260C.317, subdivision 3~~ section 260C.203.

Sec. 17. Minnesota Statutes 2010, section 260C.212, subdivision 5, is amended to read:

Subd. 5. **Relative search.** (a) The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent. The county agency shall consider placement with a relative under subdivision 2 without delay and whenever the child must move from or be returned to foster care. The relative search required by this section shall be ~~reasonable and comprehensive in scope and may last up to six months or until a fit and willing relative is identified~~. After a finding that the agency has made reasonable efforts to conduct the relative search under this paragraph, the agency has the continuing responsibility to appropriately involve relatives, who have responded to the notice required under this paragraph, in planning for the child and to continue to consider relatives according to the requirements of section 260C.212, subdivision 2. At any time during the course of juvenile protection proceedings, the court may order the agency to reopen its search for relatives when it is in the child's best interest to do so. The relative search required by this section shall include both maternal relatives ~~of the child~~ and paternal relatives of the child, ~~if paternity is adjudicated~~. The search shall also include getting information from the child in an age-appropriate manner about who the child considers to be family members and important friends with whom the child has resided or had significant contact. The relative search required under this section must fulfill the agency's duties under the Indian Child Welfare Act regarding active efforts to prevent the breakup of the Indian family under United States Code, title 25, section 1912(d), and to meet placement preferences under United States Code, title 25, section 1915. The relatives must be notified:

(1) of the need for a foster home for the child, the option to become a placement resource for the child, and the possibility of the need for a permanent placement for the child;

(2) of their responsibility to keep the responsible social services agency informed of their current address in order to receive notice in the event that a permanent placement is sought for the child. A relative who fails to provide a current address to the responsible social services agency forfeits the right to notice of the possibility of permanent placement. A decision by a relative not to be identified as a potential permanent placement resource or participate in planning for the child at the beginning of the case shall not affect whether the relative is considered for placement of the child with that relative later;

(3) that the relative may participate in the care and planning for the child, including that the opportunity for such participation may be lost by failing to respond to the notice. "Participate in the care and planning" includes, but is not limited to, participation in case planning for the parent and child, identifying the strengths and needs of the parent and child, supervising visits, providing respite and vacation visits for the child, providing transportation to appointments, suggesting other relatives who might be able to help support the case plan, and to the extent possible, helping to maintain the child's familiar and regular activities and contact with friends and relatives; and



(4) of the family foster care licensing requirements, including how to complete an application and how to request a variance from licensing standards that do not present a safety or health risk to the child in the home under section 245A.04 and supports that are available for relatives and children who reside in a family foster home; and

(5) of the relatives' right to ask to be notified of any court proceedings regarding the child, to attend the hearings, and of a relative's right or opportunity to be heard by the court as required under section 260C.152, subdivision 5.

(b) A responsible social services agency may disclose private ~~or confidential~~ data, as defined in ~~section~~ sections 13.02 and 626.556, to relatives of the child for the purpose of locating and assessing a suitable placement and may use any reasonable means of identifying and locating relatives including the Internet or other electronic means of conducting a search. The agency shall disclose ~~only~~ data that is necessary to facilitate possible placement with relatives and to ensure that the relative is informed of the needs of the child so the relative can participate in planning for the child and be supportive of services to the child and family. If the child's parent refuses to give the responsible social services agency information sufficient to identify the maternal and paternal relatives of the child, the agency shall ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that relatives or a specific relative not be contacted or considered for placement, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives or a specific relative unless authorized to do so by the juvenile court.

(c) At a regularly scheduled hearing not later than three months after the child's placement in foster care and as required in section 260C.202, the agency shall report to the court:

(1) its efforts to identify maternal and paternal relatives of the child, to engage the relatives in providing support for the child and family, and document that the relatives have been provided the notice required under paragraph (a); and

(2) its decision regarding placing the child with a relative as required under section 260C.212, subdivision 2, and to ask relatives to visit or maintain contact with the child in order to support family connections for the child, when placement with a relative is not possible or appropriate.

(d) Notwithstanding chapter 13, the agency shall disclose data about particular relatives identified, searched for, and contacted for the purposes of the court's review of the agency's due diligence.

(e) When the court is satisfied that the agency has exercised due diligence to identify relatives and provide the notice required in paragraph (a), the court may find that reasonable efforts have been made to conduct a relative search to identify and provide notice to adult relatives as required under section 260.012, paragraph (e), clause (3). If the court is not satisfied that the agency has exercised due diligence to identify relatives and provide the notice required in paragraph (a), the court may order the agency to continue its search and notice efforts and to report back to the court.

(f) When the placing agency determines that a permanent placement ~~hearing is~~ proceedings are necessary because there is a likelihood that the child will not return to a parent's care, the agency ~~may~~ must send the notice provided in paragraph ~~(d)~~ (g), may ask the court to modify the ~~requirements~~ duty of the agency ~~under this paragraph~~ to send the notice required in paragraph (g), or may ask the court to completely relieve the agency of the requirements of ~~this~~ paragraph (g). The relative notification requirements of ~~this~~ paragraph (g) do not apply when the child is placed with an appropriate relative or a foster home that has committed to ~~being the~~ adopting the child or taking permanent legal placement for and physical custody of the child and the agency approves of that foster home for permanent placement of the child. The actions ordered by the court under this section must be consistent with the best interests, safety, permanency, and welfare of the child.

~~(d)~~ (g) Unless required under the Indian Child Welfare Act or relieved of this duty by the court under paragraph ~~(e)~~ (e), when the agency determines that it is necessary to prepare for ~~the~~ permanent placement determination ~~hearing proceedings~~, or in anticipation of filing a termination of parental rights petition, the agency shall send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The notice must state that within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

~~(e) The Department of Human Services shall develop a best practices guide and specialized staff training to assist the responsible social services agency in performing and complying with the relative search requirements under this subdivision.~~

Sec. 18. Minnesota Statutes 2010, section 260C.212, subdivision 7, is amended to read:

Subd. 7. **Administrative or court review of placements.** (a) Unless the court is conducting the reviews required under section 260C.202, there shall be an administrative review of the out-of-home placement plan of each child placed in foster care no later than 180 days after the initial placement of the child in foster care and at least every six months thereafter if the child is not returned to the home of the parent or parents within that time. The out-of-home placement plan must be monitored and updated at each administrative review. The administrative review shall be conducted by the responsible social services agency using a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review. The administrative review shall be open to participation by the parent or guardian of the child and the child, as appropriate.

(b) As an alternative to the administrative review required in paragraph (a), the court may, as part of any hearing required under the Minnesota Rules of Juvenile Protection Procedure, conduct a hearing to monitor and update the out-of-home placement plan pursuant to the procedure and standard in section 260C.201, subdivision 6, paragraph (d). The party requesting review of the out-of-home placement plan shall give parties to the proceeding notice of the request to review and update the out-of-home placement plan. A court review conducted pursuant to section ~~260C.141, subdivision 2; 260C.193; 260C.201, subdivision 1 or 11; 260C.141, subdivision 2; 260C.317~~ 260C.202; 260C.204; 260C.317; or 260D.06 shall satisfy the requirement for the review so long as the other requirements of this section are met.

(c) As appropriate to the stage of the proceedings and relevant court orders, the responsible social services agency or the court shall review:

- (1) the safety, permanency needs, and well-being of the child;
- (2) the continuing necessity for and appropriateness of the placement;
- (3) the extent of compliance with the out-of-home placement plan;
- (4) the extent of progress ~~which~~ that has been made toward alleviating or mitigating the causes necessitating placement in foster care;
- (5) the projected date by which the child may be returned to and safely maintained in the home or placed permanently away from the care of the parent or parents or guardian; and

(6) the appropriateness of the services provided to the child.

(d) When a child is age 16 or older, in addition to any administrative review conducted by the agency, at the in-court review required under section ~~260C.201, subdivision 11, or~~ 260C.317, subdivision 3, clause (3), ~~or 260C.515, subdivision 5 or 6,~~ the court shall review the independent living plan required under section 260C.201, subdivision 1, paragraph (c), clause (11), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care.

~~(4)~~ (e) At the court review required under paragraph (d) for a child age 16 or older the following procedures apply:

(1) six months before the child is expected to be discharged from foster care, the responsible social services agency shall establish that it has given give the written notice required under section 260C.456 or Minnesota Rules, part 9560.0660 260C.451, subdivision 1, regarding the right to continued access to services for certain children in foster care past age 18 and of the right to appeal a denial of social services under section 256.045. If The agency is unable to establish that shall file a copy of the notice, including the right to appeal a denial of social services, has been given, with the court. If the agency does not file the notice by the time the child is age 17-1/2, the court shall require the agency to give it-;

(2) consistent with the requirements of the independent living plan, the court shall review progress toward or accomplishment of the following goals:

(i) the child has obtained a high school diploma or its equivalent;

(ii) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;

(iii) the child is employed or enrolled in postsecondary education;

(iv) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;

(v) the child has health care coverage and health care providers to meet the child's physical and mental health needs;

(vi) the child has applied for and obtained disability income assistance for which the child is eligible;

(vii) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;

(viii) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;

(ix) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;

(x) the child, if male, has registered for the Selective Service; and

(xi) the child has a permanent connection to a caring adult-; and

(3) the court shall ensure that the responsible agency in conjunction with the placement provider assists the child in obtaining the following documents prior to the child's leaving foster care: a Social Security card; the child's birth certificate; a state identification card or driver's license, green card, or school visa; the child's school, medical, and dental records; a contact list of the child's medical, dental, and mental health providers; and contact information for the child's siblings, if the siblings are in foster care.

~~(e) When a child is age 17 or older, during the 90-day period immediately prior to the date the child is expected to be discharged from foster care, the responsible social services agency is required to provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. (f) For a child who will be discharged from foster care at age 18 or older, the responsible social services agency is required to develop a personalized transition plan as directed by the youth. The transition plan must be developed during the 90-day period immediately prior to the expected date of discharge. The transition plan must be as detailed as the child may elect and include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services. The plan must include information on the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in these decisions and the child does not have, or does not want, a relative who would otherwise be authorized to make these decisions. The plan must provide the child with the option to execute a health care directive as provided under chapter 145C. The county shall also provide the individual with appropriate contact information if the individual needs more information or needs help dealing with a crisis situation through age 21.~~

Sec. 19. Minnesota Statutes 2010, section 260C.215, subdivision 4, is amended to read:

Subd. 4. ~~Consultation with representatives~~ **Duties of commissioner.** The commissioner of human services, ~~after seeking and considering advice from representatives reflecting diverse populations from the councils established under sections 3.922, 3.9223, 3.9225, and 3.9226, and other state, local, and community organizations shall:~~

~~(1) review and, where necessary, revise the Department of Human Services Social Service Manual and Practice Guide provide practice guidance to responsible social services agencies and child-placing agencies that reflect federal and state laws and policy direction on placement of children;~~

~~(2) develop criteria for determining whether a prospective adoptive or foster family has the ability to understand and validate the child's cultural background;~~

~~(3) develop provide a standardized training curriculum for adoption and foster care workers, family-based providers, and administrators who work with children. Training must address the following objectives:~~

~~(a) (i) developing and maintaining sensitivity to all cultures;~~

~~(b) (ii) assessing values and their cultural implications; and~~

~~(c) (iii) making individualized placement decisions that advance the best interests of a particular child under section 260C.212, subdivision 2; and~~

~~(iv) issues related to cross-cultural placement;~~

~~(4) develop provide a training curriculum for family and extended family members all prospective adoptive and foster families that prepares them to care for the needs of adoptive and foster children. The curriculum must address issues relating to cross-cultural placements as well as issues that arise after a foster or adoptive placement is made taking into consideration the needs of children outlined in section 260C.212, subdivision 2, paragraph (b); and~~

~~(5) develop and provide to agencies an assessment tool to be used in combination with group interviews and other preplacement activities a home study format to evaluate assess the capacities and needs of prospective adoptive and foster families. The tool format must assess address problem-solving skills; identify parenting skills; and evaluate the degree to which the prospective family has the ability to understand and validate the child's cultural background, and other issues needed to provide sufficient information for agencies to make an individualized placement decision consistent with section 260C.212, subdivision 2. If a prospective adoptive parent has also been a~~

foster parent, any update necessary to a home study for the purpose of adoption may be completed by the licensing authority responsible for the foster parent's license. If a prospective adoptive parent with an approved adoptive home study also applies for a foster care license, the license application may be made with the same agency which provided the adoptive home study; and

(6) shall consult with representatives reflecting diverse populations from the councils established under sections 3.922, 3.9223, 3.9225, and 3.9226, and other state, local, and community organizations.

Sec. 20. Minnesota Statutes 2010, section 260C.215, subdivision 6, is amended to read:

Subd. 6. **Duties of child-placing agencies.** (a) Each authorized child-placing agency must:

(1) develop and follow procedures for implementing the requirements of section ~~260C.193, subdivision 3~~ 260C.212, subdivision 2, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923;

(2) have a written plan for recruiting adoptive and foster families that reflect the ethnic and racial diversity of children who are in need of foster and adoptive homes. The plan must include:

(i) strategies for using existing resources in diverse communities;

(ii) use of diverse outreach staff wherever possible;

(iii) use of diverse foster homes for placements after birth and before adoption; and

(iv) other techniques as appropriate;

(3) have a written plan for training adoptive and foster families;

(4) have a written plan for employing staff in adoption and foster care who have the capacity to assess the foster and adoptive parents' ability to understand and validate a child's cultural and meet the child's individual needs, and to advance the best interests of the child, as required in section 260C.212, subdivision 2. The plan must include staffing goals and objectives;

(5) ensure that adoption and foster care workers attend training offered or approved by the Department of Human Services regarding cultural diversity and the needs of special needs children; and

(6) develop and implement procedures for implementing the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

(b) In determining the suitability of a proposed placement of an Indian child, the standards to be applied must be the prevailing social and cultural standards of the Indian child's community, and the agency shall defer to tribal judgment as to suitability of a particular home when the tribe has intervened pursuant to the Indian Child Welfare Act.

Sec. 21. **[260C.229] VOLUNTARY FOSTER CARE FOR CHILDREN OVER AGE 18; REQUIRED COURT REVIEW.**

(a) When a child asks to continue or to reenter foster care after age 18 under section 260C.451, the child and the responsible social services agency may enter into a voluntary agreement for the child to be in foster care under the terms of section 260C.451. The voluntary agreement must be in writing and on a form prescribed by the commissioner.

(b) When the child is in foster care pursuant to a voluntary foster care agreement between the agency and child and the child is not already under court jurisdiction pursuant to section 260C.193, subdivision 6, the agency responsible for the child's placement in foster care shall:

(1) file a motion to reopen the juvenile protection matter where the court previously had jurisdiction over the child within 30 days of the child and the agency executing the voluntary placement agreement under paragraph (a) and ask the court to review the child's placement in foster care and find that the placement is in the best interests of the child; and

(2) file the out-of-home placement plan required under subdivision 1 with the motion to reopen jurisdiction.

(c) The court shall conduct a hearing on the matter within 30 days of the agency's motion to reopen the matter and, if the court finds that placement is in the best interest of the child, shall conduct the review for the purpose and with the content required under section 260C.203, at least every 12 months as long as the child continues in foster care.

Sec. 22. Minnesota Statutes 2010, section 260C.301, subdivision 8, is amended to read:

Subd. 8. **Findings regarding reasonable efforts.** In any proceeding under this section, the court shall make specific findings:

(1) that reasonable efforts to ~~prevent the placement and~~ finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or

(2) that reasonable efforts ~~at~~ for reunification are not required as provided under section 260.012.

Sec. 23. Minnesota Statutes 2010, section 260C.328, is amended to read:

**260C.328 CHANGE OF GUARDIAN; TERMINATION OF GUARDIANSHIP.**

(a) Upon its own motion or upon petition of an interested party, the juvenile court having jurisdiction of the child may, after notice to the parties and a hearing, remove the guardian appointed by the juvenile court and appoint a new guardian in accordance with the provisions of section 260C.325, subdivision 1, clause (a), (b), or (c). Upon a showing that the child is emancipated, the court may discharge the guardianship. Any child 14 years of age or older who is not adopted but who is placed in a satisfactory foster home, may, with the consent of the foster parents, join with the guardian appointed by the juvenile court in a petition to the court having jurisdiction of the child to discharge the existing guardian and appoint the foster parents as guardians of the child.

(b) The authority of a guardian appointed by the juvenile court terminates when the individual under guardianship is no longer a minor or when guardianship is otherwise discharged becomes age 18. However, an individual who has been under the guardianship of the commissioner and who has not been adopted may continue in foster care or reenter foster care pursuant to section 260C.451 and the responsible social services agency has continuing legal responsibility for the placement of the individual.

Sec. 24. Minnesota Statutes 2010, section 260C.451, is amended to read:

**260C.451 FOSTER CARE BENEFITS ~~TO AGE 21~~ PAST AGE 18.**

Subdivision 1. **Notification of benefits.** ~~Within the~~ Six months prior to the child's 18th birthday, the ~~local~~ responsible social services agency shall ~~advise~~ provide written notice on a form prescribed by the commissioner of human services to any child in foster care under this chapter who cannot reasonably be expected to return home or

have another legally permanent family by the age of 18, the child's parents or legal guardian, if any, and the child's guardian ad litem, and the child's foster parents of the availability of benefits of the foster care program up to age 21, when the child is eligible under subdivisions 3 and 3a.

Subd. 2. **Independent living plan.** Upon the request of any child ~~receiving in~~ foster care ~~benefits~~ immediately prior to the child's 18th birthday and who is in foster care at the time of the request, the ~~local~~ responsible social services agency shall, in conjunction with the child and other appropriate parties, update the independent living plan required under section 260C.212, subdivision 1, paragraph (c), clause (11), related to the child's employment, vocational, educational, social, or maturational needs. The agency shall provide continued services and foster care for the child including those services that are necessary to implement the independent living plan.

Subd. 3. **Eligibility to continue in foster care.** A child ~~already~~ in foster care immediately prior to the child's 18th birthday may continue in foster care past age 18 unless:

(1) the child can safely return home;

(2) the child is in placement pursuant to the agency's duties under section 256B.092 and Minnesota Rules, parts 9525.0004 to 9525.0016, to meet the child's needs due to developmental disability or related condition, and the child will be served as an adult under section 256B.092 and Minnesota Rules, parts 9525.0004 to 9525.0016; or

(3) the child can be adopted or have permanent legal and physical custody transferred to a relative prior to the child's 18th birthday.

Subd. 3a. **Eligibility criteria.** The child must meet at least one of the following conditions to be considered eligible to continue in or return to foster care and remain there to age 21. The child must be:

(1) completing secondary education or a program leading to an equivalent credential;

(2) enrolled in an institution ~~which~~ that provides postsecondary or vocational education;

(3) participating in a program or activity designed to promote or remove barriers to employment;

(4) employed for at least 80 hours per month; or

(5) incapable of doing any of the activities described in clauses (1) to (4) due to a medical condition.

Subd. 4. **Foster care benefits.** For children between the ages of 18 and 21, "foster care benefits" means payment for those foster care settings defined in section 260C.007, subdivision 18. Additionally, foster care benefits means payment for a supervised setting, approved by the responsible social services agency, in which a child may live independently.

Subd. 5. ~~Permanent decision~~ **Foster care setting.** The particular foster care setting, including supervised settings, shall be selected by the agency and the child based on the best interest of the child consistent with section 260C.212, subdivision 2. Supervision in approved settings must be determined by an individual determination of the child's needs by the responsible social services agency and consistent with section 260C.212, subdivision 4a.

Subd. 6. ~~Individual plan to age 21~~ **Reentering foster care and accessing services after age 18.** (a) Upon request of an individual between the ages of 18 and 21 who, ~~within six months of the individual's 18th birthday,~~ had been under the guardianship of the commissioner and who has left foster care without being adopted, the responsible social services agency which had been the commissioner's agent for purposes of the guardianship shall develop with the individual a plan ~~related to the individual's vocational, educational, social, or maturational needs~~ to increase the

individual's ability to live safely and independently using the plan requirements of section 260C.212, subdivision 1, paragraph (b), clause (11), and to assist the individual to meet one or more of the eligibility criteria in subdivision 4 if the individual wants to reenter foster care. The agency shall provide foster care with maintenance and counseling benefits as required to implement the plan. The agency shall enter into a voluntary placement agreement under section 260C.229 with the individual if the plan includes foster care.

(b) Individuals who had not been under the guardianship of the commissioner of human services prior to age 18 and are between the ages of 18 and 21 may ask to reenter foster care after age 18 and, to the extent funds are available, the responsible social services agency that had responsibility for planning for the individual before discharge from foster care may provide foster care or other services to the individual for the purpose of increasing the individual's ability to live safely and independently and to meet the eligibility criteria in subdivision 3a, if the individual:

(1) was in foster care for the six consecutive months prior to the person's 18th birthday and was not discharged home, adopted, or received into a relative's home under a transfer of permanent legal and physical custody under section 260C.515, subdivision 4; or

(2) was discharged from foster care while on runaway status after age 15.

(c) In conjunction with a qualifying and eligible individual under paragraph (b) and other appropriate persons, the responsible social services agency shall develop a specific plan related to that individual's vocational, educational, social, or maturational needs and, to the extent funds are available, provide foster care as required to implement the plan. The agency shall enter into a voluntary placement agreement with the individual if the plan includes foster care.

(d) Youth who left foster care while under guardianship of the commissioner of human services retain eligibility for foster care for placement at any time between the ages of 18 and 21.

Subd. 7. **Jurisdiction.** Notwithstanding that the court retains jurisdiction pursuant to this section, Individuals in foster care pursuant to this section are adults for all purposes except the continued provision of foster care. Any order establishing guardianship under section 260C.325, any legal custody order under section 260C.201, subdivision 1, and any order for legal custody associated with an order for ~~long term foster care~~ permanent custody under section ~~260C.201, subdivision 4~~ 260C.515, subdivision 5, terminates on the child's 18th birthday. The responsible social services agency has legal responsibility for the individual's placement and care when the matter continues under court jurisdiction pursuant to section 260C.193 or when the individual and the responsible agency execute a voluntary placement agreement pursuant to section 260C.229.

Subd. 8. **Notice of termination of foster care.** When a child in foster care between the ages of 18 and 21 ceases to meet one of the eligibility criteria of subdivision 3a, the responsible social services agency shall give the child written notice that foster care will terminate 30 days from the date the notice is sent. The child or the child's guardian ad litem may file a motion asking the court to review the agency's determination within 15 days of receiving the notice. The child shall not be discharged from foster care until the motion is heard. The agency shall work with the child to transition out of foster care as required under section 260C.203, paragraph (e). The written notice of termination of benefits shall be on a form prescribed by the commissioner and shall also give notice of the right to have the agency's determination reviewed by the court in the proceeding where the court conducts the reviews required under section 260C.203, 260C.317, or 260C.515, subdivision 5 or 6. A copy of the termination notice shall be sent to the child and the child's attorney, if any, the foster care provider, the child's guardian ad litem, and the court. The agency is not responsible for paying foster care benefits for any period of time after the child actually leaves foster care.



Sec. 25. **[260C.503] PERMANENCY PROCEEDINGS.**

Subdivision 1. Required permanency proceedings. Except for children in foster care pursuant to chapter 260D, where the child is in foster care or in the care of a noncustodial or nonresident parent, the court shall commence proceedings to determine the permanent status of a child by holding the admit-deny hearing required under section 260C.507 not later than 12 months after the child is placed in foster care or in the care of a noncustodial or nonresident parent. Permanency proceedings for children in foster care pursuant to chapter 260D shall be according to section 260D.07.

Subd. 2. Termination of parental rights. (a) The responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition when:

(1) the child has been subjected to egregious harm as defined in section 260C.007, subdivision 14;

(2) the child is determined to be the sibling of a child who was subjected to egregious harm;

(3) the child is an abandoned infant as defined in section 260C.301, subdivision 3, paragraph (b), clause (2);

(4) the child's parent has lost parental rights to another child through an order involuntarily terminating the parent's rights;

(5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;

(6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b); or

(7) another child of the parent is the subject of an order involuntarily transferring permanent legal and physical custody of the child to a relative under this chapter or a similar law of another jurisdiction;

The county attorney shall file a termination of parental rights petition unless the conditions of paragraph (d) are met.

(b) When the termination of parental rights petition is filed under this subdivision, the responsible social services agency shall identify, recruit, and approve an adoptive family for the child. If a termination of parental rights petition has been filed by another party, the responsible social services agency shall be joined as a party to the petition.

(c) If criminal charges have been filed against a parent arising out of the conduct alleged to constitute egregious harm, the county attorney shall determine which matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(d) The requirement of paragraph (a) does not apply if the responsible social services agency and the county attorney determine and file with the court:

(1) a petition for transfer of permanent legal and physical custody to a relative under sections 260C.505 and 260C.515, subdivision 3, including a determination that adoption is not in the child's best interests and that transfer of permanent legal and physical custody is in the child's best interests; or

(2) a petition under section 260C.141 alleging the child, and where appropriate, the child's siblings, to be in need of protection or services accompanied by a case plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition would not be in the best interests of the child.

Subd. 3. **Calculating time to required permanency proceedings.** (a) For purposes of this section, the date of the child's placement in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed in foster care by the child's parent or guardian. For purposes of this section, time spent by a child in the home of the noncustodial parent pursuant to court order under section 260C.178 or under the protective supervision of the responsible social services agency in the home of the noncustodial parent pursuant to an order under section 260C.201, subdivision 1, counts towards the requirement of a permanency hearing under this section. Time spent on a trial home visit counts towards the requirement of a permanency hearing under this section and the permanency progress review required under section 260C.204.

(b) For the purposes of this section, 12 months is calculated as follows:

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

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

(c) If the child is on a trial home visit 12 months after the child was placed in foster care or in the care of a noncustodial parent, the responsible social services agency may file a report with the court regarding the child's and parent's progress on the trial home visit and the agency's reasonable efforts to finalize the child's safe and permanent return to the care of the parent in lieu of filing the petition required under section 260C.505. The court shall make findings regarding the reasonable efforts of the agency to finalize the child's return home as the permanency disposition order in the best interests of the child. The court may continue the trial home visit to a total time not to exceed six months as provided in section 260C.201, subdivision 1, paragraph (a), clause (3). If the court finds the agency has not made reasonable efforts to finalize the child's return home as the permanency disposition order in the child's best interests, the court may order other or additional efforts to support the child remaining in the care of the parent. If a trial home visit ordered or continued at permanency proceedings under sections 260C.503 to 260C.521 terminates, the court shall commence or recommence permanency proceedings under this chapter no later than 30 days after the child is returned to foster care or to the care of a noncustodial parent.

**Sec. 26. [260C.505] PETITION.**

(a) A permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months or in the expedited manner required in section 260C.503, subdivision 2, paragraph (a). The court administrator shall serve the petition as required in the Minnesota Rules of Juvenile Protection Procedure and section 260C.152 for the admit-deny hearing on the petition required in section 260C.507.

(b) A petition under this section is not required if the responsible social services agency intends to recommend that the child return to the care of the parent from whom the child was removed at or prior to the time the court is required to hold the admit-deny hearing required under section 260C.507.

**Sec. 27. [260C.507] ADMIT-DENY HEARING.**

(a) An admit-deny hearing on the permanency or termination of parental rights petition shall be held not later than 12 months from the child's placement in foster care or an order for the child to be in the care of a noncustodial or nonresident parent.

(b) An admit-deny hearing on the termination of parental rights or transfer of permanent legal and physical custody petition required to be immediately filed under section 260C.503, subdivision 2, paragraph (a), shall be within ten days of the filing of the petition.

(c) At the admit-deny hearing, the court shall determine whether there is a prima facie basis for finding that the agency made reasonable efforts, or in the case of an Indian child active efforts, for reunification as required or that reasonable efforts for reunification are not required under section 260.012 and proceed according to the Minnesota Rules of Juvenile Protection Procedure.

Sec. 28. **[260C.509] TRIAL.**

The permanency proceedings shall be conducted in a timely fashion including that any trial required under section 260C.163 shall be commenced within 60 days of the admit-deny hearing required under section 260C.507. At the conclusion of the permanency proceedings, the court shall:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) order a permanency disposition under section 260C.515 or termination of parental rights under sections 260C.301 to 260C.328 if a permanency disposition order or termination of parental rights is in the child's best interests.

Sec. 29. **[260C.511] BEST INTERESTS OF THE CHILD.**

(a) The "best interests of the child" means all relevant factors to be considered and evaluated.

(b) In making a permanency disposition order or termination of parental rights, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.

Sec. 30. **[260C.513] PERMANENCY DISPOSITIONS WHEN CHILD CANNOT RETURN HOME.**

(a) Termination of parental rights and adoption, or guardianship to the commissioner of human services through a consent to adopt are preferred permanency options for a child who cannot return home. If the court finds that termination of parental rights and guardianship to the commissioner is not in the child's best interests, the court may transfer permanent legal and physical custody of the child to a relative when that order is in the child's best interests.

(b) When the court has determined that permanent placement of the child away from the parent is necessary, the court shall consider permanent alternative homes that are available both inside and outside the state.

Sec. 31. **[260C.515] PERMANENCY DISPOSITION ORDERS.**

Subdivision 1. **Court order required.** If the child is not returned to the home at or before the conclusion of permanency proceedings under sections 260C.503 to 260C.521, the court must order one of the permanency dispositions in this section.

Subd. 2. **Termination of parental rights.** The court may order:

(1) termination of parental rights when the requirements of sections 260C.301 to 260C.328 are met; or

(2) the responsible social services agency to file a petition for termination of parental rights in which case all the requirements of sections 260C.301 to 260C.328 remain applicable.

**Subd. 3. Guardianship; commissioner.** The court may order guardianship to the commissioner of human services under the following procedures and conditions:

(1) there is an identified prospective adoptive parent agreed to by the responsible social services agency having legal custody of the child pursuant to court order under this chapter and that prospective adoptive parent has agreed to adopt the child;

(2) the court accepts the parent's voluntary consent to adopt in writing on a form prescribed by the commissioner, executed before two competent witnesses and confirmed by the consenting parent before the court or executed before court. The consent shall contain notice that consent given under this chapter;

(i) is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation as stated in clause (9) unless the matter is governed by the Indian Child Welfare Act, United States Code, title 25, section 1913(c); and

(ii) will result in an order that the child is under the guardianship of the commissioner of human services;

(3) a consent executed and acknowledged outside of this state, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid;

(4) the court must review the matter at least every 90 days under section 260C.317;

(5) a consent to adopt under this subdivision vests guardianship of the child with the commissioner of human services and makes the child a ward of the commissioner of human services under section 260C.325;

(6) the court must forward to the commissioner a copy of the consent to adopt, together with a certified copy of the order transferring guardianship to the commissioner;

(7) if an adoption is not finalized by the identified prospective adoptive parent within six months of the execution of the consent to adopt under this clause, the responsible social services agency shall pursue adoptive placement in another home unless the court finds in a hearing under section 260C.317 that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent;

(8) notwithstanding clause (7), the responsible social services agency must pursue adoptive placement in another home as soon as the agency determines that finalization of the adoption with the identified prospective adoptive parent is not possible, that the identified prospective adoptive parent is not willing to adopt the child, or that the identified prospective adoptive parent is not cooperative in completing the steps necessary to finalize the adoption;

(9) unless otherwise required by the Indian Child Welfare Act, United States Code, title 25, section 1913(c), a consent to adopt executed under this section shall be irrevocable upon acceptance by the court except upon order permitting revocation issued by the same court after written findings that consent was obtained by fraud.

**Subd. 4. Custody to relative.** The court may order permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

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

(2) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260, and the procedures in the Minnesota Rules of Juvenile Protection Procedure;

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

(4) a permanent legal and physical custodian may not return a child to the permanent care of a parent from whom the court removed custody without the court's approval and without notice to the responsible social services agency;

(5) the social services agency may file a petition naming a fit and willing relative as a proposed permanent legal and physical custodian;

(6) another party to the permanency proceeding regarding the child may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date for the required admit/deny hearing under section 260C.507; or if the agency's petition is filed under section 260C.503, subdivision 2, the petition must be filed not later than 30 days prior to the trial required under section 260C.509; and

(7) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met.

Subd. 5. **Permanent custody to agency.** The court may order permanent custody to the responsible social services agency for continued placement of the child in foster care but only if it approves the responsible social services agency's compelling reasons that no other permanency disposition order is in the child's best interests, and:

(1) the child has reached age 12;

(2) the child is a sibling of a child described in clause (1) and the siblings have a significant positive relationship and are ordered into the same foster home;

(3) the responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or a fit and willing relative who would either agree to adopt the child or to a transfer of permanent legal and physical custody of the child, but these efforts have not proven successful; and

(4) the parent will continue to have visitation or contact with the child and will remain involved in planning for the child.

Subd. 6. **Temporary legal custody to agency.** The court may order temporary legal custody to the responsible social services agency for continued placement of the child in foster care for a specified period of time according to the following conditions:

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

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

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

(4) the order specifies that the child continue in foster care no longer than one year.

Sec. 32. **[260C.517] FINDINGS AND CONTENT OF ORDER FOR PERMANENCY DISPOSITION.**

(a) Except for an order terminating parental rights, an order permanently placing a child out of the home of the parent or guardian must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social services agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

(b) The court shall issue an order required under section 260C.515 and this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

Sec. 33. **[260C.519] FURTHER COURT HEARINGS.**

Once a permanency disposition order has been made, further court hearings are necessary if:

(1) the child is ordered on a trial home visit or under the protective supervision of the responsible social services agency;

(2) the child continues in foster care;

(3) the court orders further hearings in a transfer of permanent legal and physical custody matter including if a party seeks to modify an order under section 260C.521, subdivision 2;

(4) an adoption has not yet been finalized; or

(5) the child returns to foster care after the court has entered an order for a permanency disposition under this section.

Sec. 34. **[260C.521] COURT REVIEWS AFTER PERMANENCY DISPOSITION ORDER.**

Subdivision 1. **Child in permanent custody of responsible social services agency.** (a) Court reviews of an order for permanent custody to the responsible social services agency for placement of the child in foster care must be conducted at least yearly at an in-court appearance hearing.

(b) The purpose of the review hearing is to ensure:

(1) the order for permanent custody to the responsible social services agency for placement of the child in foster care continues to be in the best interests of the child and that no other permanency disposition order is in the best interests of the child;

(2) that the agency is assisting the child to build connections to the child's family and community; and

(3) that the agency is appropriately planning with the child for development of independent living skills for the child, and as appropriate, for the orderly and successful transition to independent living that may occur if the child continues in foster care without another permanency disposition order.

(c) The court must review the child's out-of-home placement plan and the reasonable efforts of the agency to finalize an alternative permanent plan for the child including the agency's efforts to:

(1) ensure that permanent custody to the agency with placement of the child in foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanency disposition order under this chapter that would better serve the child's needs and best interests;

(2) identify a specific foster home for the child, if one has not already been identified;

(3) support continued placement of the child in the identified home, if one has been identified;

(4) ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and

(5) plan for the child's independence upon the child's leaving foster care living as required under section 260C.212, subdivision 1.

(d) The court may find that the agency has made reasonable efforts to finalize the permanent plan for the child when:

(1) the agency has made reasonable efforts to identify a more legally permanent home for the child than is provided by an order for permanent custody to the agency for placement in foster care; and

(2) the agency's engagement of the child in planning for independent living is reasonable and appropriate.

**Subd. 2. Modifying an order for permanent legal and physical custody to a relative.** An order for a relative to have permanent legal and physical custody of a child may be modified using standards under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice.

**Subd. 3. Modifying order for permanent custody to agency for placement in foster care.** (a) A parent may seek modification of an order for permanent custody of the child to the responsible social services agency for placement in foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the permanent custody of the agency and the return to the parent's care would be in the best interests of the child.

(b) The responsible social services agency may ask the court to vacate an order for permanent custody to the agency upon a petition and hearing pursuant to section 260C.163 establishing the basis for the court to order another permanency disposition under this chapter, including termination of parental rights based on abandonment if the parent has not visited the child, maintained contact with the child, or participated in planning for the child as required under section 260C.515, subdivision 5. The responsible social services agency must establish that the proposed permanency disposition order is in the child's best interests. Upon a hearing where the court determines the petition is proved, the court may vacate the order for permanent custody and enter a different order for a

permanent disposition that is in the child's best interests. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for permanent custody to the agency and ordering a different permanency disposition in the child's best interests. The county attorney must file the petition and give notice as required under the Minnesota Rules of Juvenile Protection Procedure in order to modify an order for permanent custody under this subdivision.

Sec. 35. **EFFECTIVE DATE.**

This article is effective August 1, 2012.

ARTICLE 5  
CHILD SUPPORT

Section 1. Minnesota Statutes 2011 Supplement, section 256.01, subdivision 14b, is amended to read:

Subd. 14b. **American Indian child welfare projects.** (a) The commissioner of human services may authorize projects to test tribal delivery of child welfare services to American Indian children and their parents and custodians living on the reservation. The commissioner has authority to solicit and determine which tribes may participate in a project. Grants may be issued to Minnesota Indian tribes to support the projects. The commissioner may waive existing state rules as needed to accomplish the projects. Notwithstanding section 626.556, the commissioner may authorize projects to use alternative methods of investigating and assessing reports of child maltreatment, provided that the projects comply with the provisions of section 626.556 dealing with the rights of individuals who are subjects of reports or investigations, including notice and appeal rights and data practices requirements. The commissioner may seek any federal approvals necessary to carry out the projects as well as seek and use any funds available to the commissioner, including use of federal funds, foundation funds, existing grant funds, and other funds. The commissioner is authorized to advance state funds as necessary to operate the projects. Federal reimbursement applicable to the projects is appropriated to the commissioner for the purposes of the projects. The projects must be required to address responsibility for safety, permanency, and well-being of children.

(b) For the purposes of this section, "American Indian child" means a person under ~~18 years of age~~ 21 years old and who is a tribal member or eligible for membership in one of the tribes chosen for a project under this subdivision and who is residing on the reservation of that tribe.

(c) In order to qualify for an American Indian child welfare project, a tribe must:

- (1) be one of the existing tribes with reservation land in Minnesota;
- (2) have a tribal court with jurisdiction over child custody proceedings;
- (3) have a substantial number of children for whom determinations of maltreatment have occurred;
- (4) have capacity to respond to reports of abuse and neglect under section 626.556;
- (5) provide a wide range of services to families in need of child welfare services; and
- (6) have a tribal-state title IV-E agreement in effect.

(d) Grants awarded under this section may be used for the nonfederal costs of providing child welfare services to American Indian children on the tribe's reservation, including costs associated with:

- (1) assessment and prevention of child abuse and neglect;



(2) family preservation;

(3) facilitative, supportive, and reunification services;

(4) out-of-home placement for children removed from the home for child protective purposes; and

(5) other activities and services approved by the commissioner that further the goals of providing safety, permanency, and well-being of American Indian children.

(e) When a tribe has initiated a project and has been approved by the commissioner to assume child welfare responsibilities for American Indian children of that tribe under this section, the affected county social service agency is relieved of responsibility for responding to reports of abuse and neglect under section 626.556 for those children during the time within which the tribal project is in effect and funded. The commissioner shall work with tribes and affected counties to develop procedures for data collection, evaluation, and clarification of ongoing role and financial responsibilities of the county and tribe for child welfare services prior to initiation of the project. Children who have not been identified by the tribe as participating in the project shall remain the responsibility of the county. Nothing in this section shall alter responsibilities of the county for law enforcement or court services.

(f) Participating tribes may conduct children's mental health screenings under section 245.4874, subdivision 1, paragraph (a), clause (14), for children who are eligible for the initiative and living on the reservation and who meet one of the following criteria:

(1) the child must be receiving child protective services;

(2) the child must be in foster care; or

(3) the child's parents must have had parental rights suspended or terminated.

Tribes may access reimbursement from available state funds for conducting the screenings. Nothing in this section shall alter responsibilities of the county for providing services under section 245.487.

(g) Participating tribes may establish a local child mortality review panel. In establishing a local child mortality review panel, the tribe agrees to conduct local child mortality reviews for child deaths or near-fatalities occurring on the reservation under subdivision 12. Tribes with established child mortality review panels shall have access to nonpublic data and shall protect nonpublic data under subdivision 12, paragraphs (c) to (e). The tribe shall provide written notice to the commissioner and affected counties when a local child mortality review panel has been established and shall provide data upon request of the commissioner for purposes of sharing nonpublic data with members of the state child mortality review panel in connection to an individual case.

(h) The commissioner shall collect information on outcomes relating to child safety, permanency, and well-being of American Indian children who are served in the projects. Participating tribes must provide information to the state in a format and completeness deemed acceptable by the state to meet state and federal reporting requirements.

(i) In consultation with the White Earth Band, the commissioner shall develop and submit to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services a plan to transfer legal responsibility for providing child protective services to White Earth Band member children residing in Hennepin County to the White Earth Band. The plan shall include a financing proposal, definitions of key terms, statutory amendments required, and other provisions required to implement the plan. The commissioner shall submit the plan by January 15, 2012.

Sec. 2. Minnesota Statutes 2010, section 257.75, subdivision 7, is amended to read:

Subd. 7. **Hospital and Department of Health ~~distribution of educational materials; recognition form.~~** Hospitals that provide obstetric services and the state registrar of vital statistics shall distribute the educational materials and recognition of parentage forms prepared by the commissioner of human services to new parents; ~~and~~ shall assist parents in understanding the recognition of parentage form, including following the provisions for notice under subdivision 5; shall aid new parents in properly completing the recognition of parentage form, including providing notary services; and shall timely file the completed recognition of parentage form with the Office of the State Registrar of Vital Statistics. On and after January 1, 1994, hospitals may not distribute the declaration of parentage forms.

Sec. 3. Minnesota Statutes 2010, section 518A.40, subdivision 4, is amended to read:

Subd. 4. **Change in child care.** (a) When a court order provides for child care expenses, and child care support is not assigned under section 256.741, the public authority, if the public authority provides child support enforcement services, ~~must~~ may suspend collecting the amount allocated for child care expenses when:

~~(4)~~ either party informs the public authority that no child care costs are being incurred; and:

~~(2)~~ (1) the public authority verifies the accuracy of the information with the obligee; or

(2) the obligee fails to respond within 30 days of the date of a written request from the public authority for information regarding child care costs. A written or oral response from the obligee that child care costs are being incurred is sufficient for the public authority to continue collecting child care expenses.

The suspension is effective as of the first day of the month following the date that the public authority ~~received the verification~~ either verified the information with the obligee or the obligee failed to respond. The public authority will resume collecting child care expenses when either party provides information that child care costs ~~have resumed~~ are incurred, or when a child care support assignment takes effect under section 256.741, subdivision 4. The resumption is effective as of the first day of the month after the date that the public authority received the information.

(b) If the parties provide conflicting information to the public authority regarding whether child care expenses are being incurred, ~~or if the public authority is unable to verify with the obligee that no child care costs are being incurred,~~ the public authority will continue or resume collecting child care expenses. Either party, by motion to the court, may challenge the suspension, continuation, or resumption of the collection of child care expenses under this subdivision. If the public authority suspends collection activities for the amount allocated for child care expenses, all other provisions of the court order remain in effect.

(c) In cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518A.39.

Sec. 4. Minnesota Statutes 2010, section 518C.205, is amended to read:

**518C.205 CONTINUING, EXCLUSIVE JURISDICTION.**

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order unless:

(1) ~~as long as~~ this state ~~remains~~ is no longer the residence of the obligor, the individual obligee, ~~or~~ and the child for whose benefit the support order is issued; or

(2) ~~until~~ all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Sec. 5. **RECIPROCAL AGREEMENT; CHILD SUPPORT ENFORCEMENT.**

The commissioner of human services shall initiate procedures no later than October 1, 2012, to enter into a reciprocal agreement with Bermuda for the establishment and enforcement of child support obligations pursuant to United States Code, title 42, section 659a(d).

**EFFECTIVE DATE.** This section is effective upon Bermuda's written acceptance and agreement to enforce Minnesota child support orders. If Bermuda does not accept and declines to enforce Minnesota orders, this section expires October 1, 2013.

Sec. 6. **EFFECTIVE DATE.**

This article is effective August 1, 2012.

ARTICLE 6  
TECHNICAL AND CONFORMING AMENDMENTS

Section 1. Minnesota Statutes 2010, section 257.01, is amended to read:

**257.01 RECORDS REQUIRED.**

Each person or authorized child-placing agency permitted by law to receive children, secure homes for children, or care for children, shall keep a record containing the name, age, former residence, legal status, health records, sex, race, and accumulated length of time in foster care, if applicable, of each child received; the name, former residence,

occupation, health history, and character, of each birth parent; the date of reception, placing out, and adoption of each child, and the name, race, occupation, and residence of the person with whom a child is placed; the date of the removal of any child to another home and the reason for removal; the date of termination of the guardianship; the history of each child until the child reaches the age of ~~48~~ 21 years, is legally adopted, or is discharged according to law; and further demographic and other information as is required by the commissioner of human services.

Sec. 2. Minnesota Statutes 2010, section 259.69, is amended to read:

**259.69 TRANSFER OF FUNDS.**

The commissioner of human services may transfer funds into the ~~subsidized~~ adoption assistance account when a deficit in the ~~subsidized~~ adoption assistance program occurs.

Sec. 3. Minnesota Statutes 2010, section 259.73, is amended to read:

**259.73 REIMBURSEMENT OF NONRECURRING ADOPTION EXPENSES.**

~~The commissioner of human services shall provide reimbursement of up to \$2,000 to the adoptive parent or parents for costs incurred in adopting a child with special needs. The commissioner shall determine the child's eligibility for adoption expense reimbursement under title IV E of the Social Security Act, United States Code, title 42, sections 670 to 676. To be reimbursed, costs must be reasonable, necessary, and directly related to the legal adoption of the child. An individual may apply for reimbursement for costs incurred in an adoption of a child with special needs under section 259A.70.~~

Sec. 4. Minnesota Statutes 2010, section 260C.301, subdivision 1, is amended to read:

Subdivision 1. **Voluntary and involuntary.** The juvenile court may upon petition, terminate all rights of a parent to a child:

(a) with the written consent of a parent who for good cause desires to terminate parental rights; or

(b) if it finds that one or more of the following conditions exist:

(1) that the parent has abandoned the child;

(2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable;

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth;

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the

child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated or that the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction;

(5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year, or in the case of a child under age eight, prior to six months after a child has been placed out of the home.

It is also presumed that reasonable efforts have failed under this clause upon a showing that:

(A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;

(B) the parent has been required by a case plan to participate in a chemical dependency treatment program;

(C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;

(D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and

(E) the parent continues to abuse chemicals.

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52;

(8) that the child is neglected and in foster care; or

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (g) , clauses (1) to ~~(3)~~ (5).

In an action involving an American Indian child, sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

Sec. 5. Minnesota Statutes 2010, section 260D.08, is amended to read:

**260D.08 ANNUAL REVIEW.**

(a) After the court conducts a permanency review hearing under section 260D.07, the matter must be returned to the court for further review of the responsible social services reasonable efforts to finalize the permanent plan for the child and the child's foster care placement at least every 12 months while the child is in foster care. The court shall give notice to the parent and child, age 12 or older, and the foster parents of the continued review requirements under this section at the permanency review hearing.

(b) Every 12 months, the court shall determine whether the agency made reasonable efforts to finalize the permanency plan for the child, which means the exercise of due diligence by the agency to:

(1) ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests and to conduct a genuine examination of whether there is another permanency disposition order under chapter 260C, including returning the child home, that would better serve the child's need for a stable and permanent home;

(2) engage and support the parent in continued involvement in planning and decision making for the needs of the child;

(3) strengthen the child's ties to the parent, relatives, and community;

(4) implement the out-of-home placement plan required under section 260C.212, subdivision 1, and ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child; and

(5) ensure appropriate planning for the child's safe, permanent, and independent living arrangement after the child's 18th birthday.

Sec. 6. **[611.012] DISPOSITION OF CHILD OF PARENT ARRESTED.**

A peace officer who arrests a person accompanied by a child of the person may release the child to any person designated by the parent unless it is necessary to remove the child under section 260C.175 because the child is found in surroundings or conditions which endanger the child's health or welfare or which the peace officer reasonably believes will endanger the child's health or welfare. An officer releasing a child under this section to a person designated by the parent has no civil or criminal liability for the child's release.

Sec. 7. Minnesota Statutes 2010, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, and in the case of sexual abuse includes a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- (5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- (7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
- (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- (9) criminal sexual conduct under sections 609.342 to 609.3451;
- (10) solicitation of children to engage in sexual conduct under section 609.352;
- (11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;
- (12) use of a minor in sexual performance under section 617.246; or
- (13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, ~~or~~ medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.



(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

(3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

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

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

(p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

(1) is not likely to occur and could not have been prevented by exercise of due care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

(q) "Nonmaltreatment mistake" means:

(1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;

(2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;

(3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;

(4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

(5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

Sec. 8. Minnesota Statutes 2010, section 626.556, subdivision 10, is amended to read:

**Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of report.** (a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment. The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation.

If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, or sexual abuse by a person with a significant relationship to the child when that person resides in the child's household or by a sibling, the local welfare agency shall immediately conduct a family assessment or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform

the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 32 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

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

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

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

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

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

(h) The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for ~~assessing or~~ investigating the report may make a determination of no maltreatment early in an ~~assessment~~ investigation, and close the case and retain immunity, if the collected information shows no basis for a full ~~assessment or~~ investigation.

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

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

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

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

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

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding sections 13.384 or 144.291 to 144.298, the local welfare agency

has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

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

(i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. For investigations only, the following interviewing methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (i) and (k), and subdivision 3d.

Sec. 9. Minnesota Statutes 2010, section 626.556, subdivision 10e, is amended to read:

Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and, second, whether child protective services are needed. No determination of maltreatment shall be made when the alleged perpetrator is a child under the age of ten.

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

- (1) physical abuse as defined in subdivision 2, paragraph (g);
- (2) neglect as defined in subdivision 2, paragraph (f);
- (3) sexual abuse as defined in subdivision 2, paragraph (d);
- (4) mental injury as defined in subdivision 2, paragraph (m); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

The evaluation of the facility's responsibility under clause (2) must not be based on the completeness of the risk assessment or risk reduction plan required under section 245A.66, but must be based on the facility's compliance with the regulatory standards for policies and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota Rules.

(j) Notwithstanding paragraph (i), when maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under sections 245A.06 or 245A.07 apply.

(k) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Sec. 10. Minnesota Statutes 2010, section 626.556, subdivision 10f, is amended to read:

Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for ~~assessing or~~ investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for ~~assessing or~~ investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.



Sec. 11. Minnesota Statutes 2010, section 626.556, subdivision 10i, is amended to read:

Subd. 10i. **Administrative reconsideration; review panel.** (a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. ~~For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination.~~ The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. ~~The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied. The hearings specified under this section are the only administrative appeal of a decision issued under paragraph (a). Determinations under this section are not subject to accuracy and completeness challenges under section 13.04.~~

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

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

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to

245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also not be conducted when:

(1) a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

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

Sec. 12. Minnesota Statutes 2010, section 626.556, subdivision 10k, is amended to read:

Subd. 10k. **Release of certain assessment or investigative records to other counties.** Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an assessment or investigation under this section of the subject of the records.

Sec. 13. **REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall renumber each section of Minnesota Statutes listed in column A with the number listed in column B.

<u>Column A</u>	<u>Column B</u>
<u>259.69</u>	<u>259A.05, subd. 5</u>
<u>260C.217</u>	<u>260C.139</u>
<u>260C.501</u>	<u>260C.177</u>
<u>260C.201, subd. 10</u>	<u>260C.202</u>
<u>260C.212, subd. 7</u>	<u>260C.203</u>
<u>260C.201, subd. 11a</u>	<u>260C.204</u>
<u>260C.212, subd. 4</u>	<u>260C.219</u>
<u>260C.212, subd. 5</u>	<u>260C.221</u>
<u>260C.213</u>	<u>260C.223</u>
<u>260C.206</u>	<u>260C.225</u>
<u>260C.212, subd. 8</u>	<u>260C.227</u>
<u>260C.212, subd. 6</u>	<u>260C.521, subd. 4</u>
<u>260C.205</u>	<u>260D.11</u>

(b) The revisor of statutes shall make necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the numbering in articles 1 and 2 and the renumbering in paragraph (a).

Sec. 14. **REPEALER.**

(a) Minnesota Statutes 2010, sections 256.022; 259.67; 259.71; 260C.201, subdivision 11; 260C.215, subdivision 2; and 260C.456, are repealed.

(b) Minnesota Rules, parts 9560.0071; 9560.0082; 9560.0083; 9560.0091; 9560.0093, subparts 1, 3, and 4; 9560.0101; and 9560.0102, are repealed.

Sec. 15. **EFFECTIVE DATE.**

This article is effective August 1, 2012.

ARTICLE 7  
CHILD CARE

Section 1. Minnesota Statutes 2010, section 119B.09, subdivision 7, is amended to read:

Subd. 7. **Date of eligibility for assistance.** (a) The date of eligibility for child care assistance under this chapter is the later of the date the application was ~~signed~~ received by the county; the beginning date of employment, education, or training; the date the infant is born for applicants to the at-home infant care program; or the date a determination has been made that the applicant is a participant in employment and training services under Minnesota Rules, part 3400.0080, or chapter 256J.

(b) Payment ceases for a family under the at-home infant child care program when a family has used a total of 12 months of assistance as specified under section 119B.035. Payment of child care assistance for employed persons on MFIP is effective the date of employment or the date of MFIP eligibility, whichever is later. Payment of child care assistance for MFIP or DWP participants in employment and training services is effective the date of commencement of the services or the date of MFIP or DWP eligibility, whichever is later. Payment of child care assistance for transition year child care must be made retroactive to the date of eligibility for transition year child care.

(c) Notwithstanding paragraph (b), payment of child care assistance for participants eligible under section 119B.05 may only be made retroactive for a maximum of six months from the date of application for child care assistance.

Sec. 2. Minnesota Statutes 2010, section 119B.12, subdivision 1, is amended to read:

Subdivision 1. **Fee schedule.** All changes to parent fees must be implemented on the first Monday of the service period following the effective date of the change.

PARENT FEE SCHEDULE. The parent fee schedule is as follows, except as noted in subdivision 2:

Income Range (as a percent of the state median income, except at the start of the first tier)      Co-payment (as a percentage of adjusted gross income)

0-74.99% of federal poverty guidelines	\$0/ <del>month</del> <u>biweekly</u>
75.00-99.99% of federal poverty guidelines	<del>\$4/month</del> <u>\$2/biweekly</u>
100.00% of federal poverty guidelines-27.72%	2.61%
27.73-29.04%	2.61%
29.05-30.36%	2.61%
30.37-31.68%	2.61%
31.69-33.00%	2.91%
33.01-34.32%	2.91%
34.33-35.65%	2.91%
35.66-36.96%	2.91%
36.97-38.29%	3.21%
38.30-39.61%	3.21%
39.62-40.93%	3.21%
40.94-42.25%	3.84%
42.26-43.57%	3.84%
43.58-44.89%	4.46%
44.90-46.21%	4.76%
46.22-47.53%	5.05%
47.54-48.85%	5.65%
48.86-50.17%	5.95%
50.18-51.49%	6.24%
51.50-52.81%	6.84%
52.82-54.13%	7.58%
54.14-55.45%	8.33%
55.46-56.77%	9.20%
56.78-58.09%	10.07%
58.10-59.41%	10.94%
59.42-60.73%	11.55%
60.74-62.06%	12.16%
62.07-63.38%	12.77%
63.39-64.70%	13.38%
64.71- <del>66.99</del> 67.00%	14.00%
<u>Greater than</u> 67.00%	ineligible

A family's ~~monthly~~ biweekly co-payment fee is the fixed percentage established for the income range multiplied by the highest possible income within that income range.

Sec. 3. Minnesota Statutes 2010, section 119B.12, subdivision 2, is amended to read:

Subd. 2. **Parent fee.** A family must be assessed a parent fee for each service period. A family's parent fee must be a fixed percentage of its annual gross income. Parent fees must apply to families eligible for child care assistance under sections 119B.03 and 119B.05. Income must be as defined in section 119B.011, subdivision 15. The fixed percent is based on the relationship of the family's annual gross income to 100 percent of the annual state median income. Parent fees must begin at 75 percent of the poverty level. The minimum parent fees for families between 75 percent and 100 percent of poverty level must be ~~\$5 per month~~ \$2 per biweekly period. Parent fees must provide for graduated movement to full payment. Payment of part or all of a family's parent fee directly to the family's child care provider on behalf of the family by a source other than the family shall not affect the family's eligibility for child care assistance, and the amount paid shall be excluded from the family's income. Child care providers who accept third-party payments must maintain family specific documentation of payment source, amount, and time period covered by the payment.

Sec. 4. Minnesota Statutes 2010, section 119B.125, subdivision 1a, is amended to read:

Subd. 1a. **Background study required.** This subdivision only applies to legal, nonlicensed family child care providers. Prior to authorization, and as part of each reauthorization required in subdivision 1, the county shall perform a background study on every member of the provider's household who is age 13 and older. ~~The background study shall be conducted according to the procedures under subdivision 2.~~ The county shall also perform a background study on an individual who has reached age ten but is not yet age 13 and is living in the household where the nonlicensed child care will be provided when the county has reasonable cause as defined under section 245C.02, subdivision 15.

Sec. 5. Minnesota Statutes 2010, section 119B.125, subdivision 2, is amended to read:

Subd. 2. **Persons who cannot be authorized.** (a) ~~When any member of the legal, nonlicensed family child care provider's household meets any of the conditions under paragraphs (b) to (n), the provider must not be authorized as a legal nonlicensed family child care provider. To determine whether any of the listed conditions exist, the county must request information about the provider and other household members for whom a background study is required under subdivision 1a from the Bureau of Criminal Apprehension, the juvenile courts, and social service agencies. When one of the listed entities does not maintain information on a statewide basis, the county must contact the entity in the county where the provider resides and any other county in which the provider or any household member previously resided in the past year. For purposes of this subdivision, a finding that a delinquency petition is proven in juvenile court must be considered a conviction in state district court. The provider seeking authorization under this section shall collect the information required under section 245C.05, subdivision 1, and forward the information to the county agency. The background study must include a review of the information required under section 245C.08, subdivisions 2, 3, and 4, paragraph (b). A nonlicensed family child care provider is not authorized under this section if any household member who is the subject of a background study is determined to have a disqualifying characteristic under paragraphs (b) to (e) or under section 245C.14 or 245C.15. If a county has determined that a provider is able to be authorized in that county, and a family in another county later selects that provider, the provider is able to be authorized in the second county without undergoing a new background investigation unless one of the following conditions exists:~~

- (1) two years have passed since the first authorization;
- (2) another person age 13 or older has joined the provider's household since the last authorization;
- (3) a current household member has turned 13 since the last authorization; or
- (4) there is reason to believe that a household member has a factor that prevents authorization.

~~(b) The person has been convicted of one of the following offenses or has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of one of the following offenses: sections 609.185 to 609.195, murder in the first, second, or third degree; 609.2661 to 609.2663, murder of an unborn child in the first, second, or third degree; 609.322, solicitation, inducement, promotion of prostitution, or receiving profit from prostitution; 609.342 to 609.345, criminal sexual conduct in the first, second, third, or fourth degree; 609.352, solicitation of children to engage in sexual conduct; 609.365, incest; 609.377, felony malicious punishment of a child; 617.246, use of minors in sexual performance; 617.247, possession of pictorial representation of a minor; 609.2242 to 609.2243, felony domestic assault; a felony offense of spousal abuse; a felony offense of child abuse or neglect; a felony offense of a crime against children; or an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.~~

~~(c) Less than 15 years have passed since the discharge of the sentence imposed for the offense and the person has received a felony conviction for one of the following offenses, or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a felony conviction for one of the following offenses: sections 609.20 to 609.205, manslaughter in the first or second degree; 609.21, criminal vehicular homicide; 609.215, aiding suicide or aiding attempted suicide; 609.221 to 609.2231, assault in the first, second, third, or fourth degree; 609.224, repeat offenses of fifth degree assault; 609.228, great bodily harm caused by distribution of drugs; 609.2325, criminal abuse of a vulnerable adult; 609.2335, financial exploitation of a vulnerable adult; 609.235, use of drugs to injure or facilitate a crime; 609.24, simple robbery; 617.241, repeat offenses of obscene materials and performances; 609.245, aggravated robbery; 609.25, kidnapping; 609.255, false imprisonment; 609.2664 to 609.2665, manslaughter of an unborn child in the first or second degree; 609.267 to 609.2672, assault of an unborn child in the first, second, or third degree; 609.268, injury or death of an unborn child in the commission of a crime; 609.27, coercion; 609.275, attempt to coerce; 609.324, subdivision 1, other prohibited acts, minor engaged in prostitution; 609.3451, repeat offenses of criminal sexual conduct in the fifth degree; 609.378, neglect or endangerment of a child; 609.52, theft; 609.521, possession of shoplifting gear; 609.561 to 609.563, arson in the first, second, or third degree; 609.582, burglary in the first, second, third, or fourth degree; 609.625, aggravated forgery; 609.63, forgery; 609.631, check forgery, offering a forged check; 609.635, obtaining signature by false pretenses; 609.66, dangerous weapon; 609.665, setting a spring gun; 609.67, unlawfully owning, possessing, or operating a machine gun; 609.687, adulteration; 609.71, riot; 609.713, terrorist threats; 609.749, stalking; 260C.301, termination of parental rights; 152.021 to 152.022 and 152.0262, controlled substance crime in the first or second degree; 152.023, subdivision 1, clause (3) or (4), or 152.023, subdivision 2, clause (4), controlled substance crime in third degree; 152.024, subdivision 1, clause (2), (3), or (4), controlled substance crime in fourth degree; 617.23, repeat offenses of indecent exposure; an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.~~

~~(d) Less than ten years have passed since the discharge of the sentence imposed for the offense and the person has received a gross misdemeanor conviction for one of the following offenses or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a gross misdemeanor conviction for one of the following offenses: sections 609.224, fifth degree assault; 609.2242 to 609.2243, domestic assault; 518B.01, subdivision 14, violation of an order for protection; 609.3451, fifth degree criminal sexual conduct; 609.746, repeat offenses of interference with privacy; 617.23, repeat offenses of indecent exposure; 617.241, obscene materials and performances; 617.243, indecent literature, distribution; 617.293, disseminating or displaying harmful material to minors; 609.71, riot; 609.66, dangerous weapons; 609.749, stalking; 609.224, subdivision 2, paragraph (c), fifth degree assault against a vulnerable adult by a caregiver; 609.23, mistreatment of persons confined; 609.231, mistreatment of residents or patients; 609.2325, criminal abuse of a vulnerable adult; 609.2335, financial exploitation of a vulnerable adult; 609.233, criminal neglect of a vulnerable adult; 609.234, failure to report maltreatment of a vulnerable adult; 609.72, subdivision 3, disorderly conduct against a vulnerable adult; 609.265, abduction; 609.378, neglect or endangerment of a child; 609.377, malicious punishment of a child; 609.324, subdivision 1a, other prohibited acts, minor engaged in~~

prostitution; 609.33, disorderly house; 609.52, theft; 609.582, burglary in the first, second, third, or fourth degree; 609.631, check forgery, offering a forged check; 609.275, attempt to coerce; an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

~~(e) Less than seven years have passed since the discharge of the sentence imposed for the offense and the person has received a misdemeanor conviction for one of the following offenses or the person has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of a misdemeanor conviction for one of the following offenses: sections 609.224, fifth degree assault; 609.2242, domestic assault; 518B.01, violation of an order for protection; 609.3232, violation of an order for protection; 609.746, interference with privacy; 609.79, obscene or harassing telephone calls; 609.795, letter, telegram, or package opening, harassment; 617.23, indecent exposure; 609.2672, assault of an unborn child, third degree; 617.293, dissemination and display of harmful materials to minors; 609.66, dangerous weapons; 609.665, spring guns; an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.~~

~~(f) The person has been identified by the child protection agency in the county where the provider resides or a county where the provider has resided or by the statewide child protection database as a person found by a preponderance of evidence under section 626.556 to be responsible for physical or sexual abuse of a child within the last seven years.~~

~~(g) The person has been identified by the adult protection agency in the county where the provider resides or a county where the provider has resided or by the statewide adult protection database as the person responsible for abuse or neglect of a vulnerable adult within the last seven years.~~

~~(h) (b) The person has refused to give written consent for disclosure of criminal history records.~~

~~(i) (c) The person has been denied a family child care license or has received a fine or a sanction as a licensed child care provider that has not been reversed on appeal.~~

~~(j) (d) The person has a family child care licensing disqualification that has not been set aside.~~

~~(k) (e) The person has admitted or a county has found that there is a preponderance of evidence that fraudulent information was given to the county for child care assistance application purposes or was used in submitting child care assistance bills for payment.~~

~~(l) The person has been convicted of the crime of theft by wrongfully obtaining public assistance or has been found guilty of wrongfully obtaining public assistance by a federal court, state court, or an administrative hearing determination or waiver, through a disqualification consent agreement, as part of an approved diversion plan under section 401.065, or a court ordered stay with probationary or other conditions.~~

~~(m) The person has a household member age 13 or older who has access to children during the hours that care is provided and who meets one of the conditions listed in paragraphs (b) to (l).~~

~~(n) The person has a household member ages ten to 12 who has access to children during the hours that care is provided; information or circumstances exist which provide the county with articulable suspicion that further pertinent information may exist showing the household member meets one of the conditions listed in paragraphs (b) to (l); and the household member actually meets one of the conditions listed in paragraphs (b) to (l).~~

Sec. 6. Minnesota Statutes 2010, section 119B.125, subdivision 6, is amended to read:

Subd. 6. **Record-keeping requirement.** All providers receiving child care assistance payments must keep daily attendance records for children receiving child care assistance and must make those records available immediately to the county upon request. The attendance records must be completed daily and include the date, the first and last name of each child in attendance, and the times when each child is dropped off and picked up. To the extent possible, the times that the child was dropped off to and picked up from the child care provider must be entered by the person dropping off or picking up the child. The daily attendance records must be retained for six years after the date of service. A county may deny authorization as a child care provider to any applicant or rescind authorization of any provider when the county knows or has reason to believe that the provider has not complied with the record-keeping requirement in this subdivision.

Sec. 7. Minnesota Statutes 2011 Supplement, section 119B.13, subdivision 1, is amended to read:

Subdivision 1. **Subsidy restrictions.** (a) Beginning October 31, 2011, the maximum rate paid for child care assistance in any county or multicounty region under the child care fund shall be the rate for like-care arrangements in the county effective July 1, 2006, decreased by 2.5 percent.

(b) ~~Every year~~ Biennially beginning in 2012, the commissioner shall survey rates charged by child care providers in Minnesota to determine the 75th percentile for like-care arrangements in counties. When the commissioner determines that, using the commissioner's established protocol, the number of providers responding to the survey is too small to determine the 75th percentile rate for like-care arrangements in a county or multicounty region, the commissioner may establish the 75th percentile maximum rate based on like-care arrangements in a county, region, or category that the commissioner deems to be similar.

(c) A rate which includes a special needs rate paid under subdivision 3 or under a school readiness service agreement paid under section 119B.231, may be in excess of the maximum rate allowed under this subdivision.

(d) The department shall monitor the effect of this paragraph on provider rates. The county shall pay the provider's full charges for every child in care up to the maximum established. The commissioner shall determine the maximum rate for each type of care on an hourly, full-day, and weekly basis, including special needs and disability care. The maximum payment to a provider for one day of care must not exceed the daily rate. The maximum payment to a provider for one week of care must not exceed the weekly rate.

(e) Child care providers receiving reimbursement under this chapter must not be paid activity fees or an additional amount above the maximum rates for care provided during nonstandard hours for families receiving assistance.

(f) When the provider charge is greater than the maximum provider rate allowed, the parent is responsible for payment of the difference in the rates in addition to any family co-payment fee.

(g) All maximum provider rates changes shall be implemented on the Monday following the effective date of the maximum provider rate.

Sec. 8. Minnesota Statutes 2010, section 119B.13, subdivision 6, is amended to read:

Subd. 6. **Provider payments.** (a) The provider shall bill for services provided within ten days of the end of the service period. If bills are submitted within ten days of the end of the service period, payments under the child care fund shall be made within 30 days of receiving a bill from the provider. Counties or the state may establish policies that make payments on a more frequent basis.



(b) If a provider has received an authorization of care and been issued a billing form for an eligible family, the bill must be submitted within 60 days of the last date of service on the bill. A bill submitted more than 60 days after the last date of service must be paid if the county determines that the provider has shown good cause why the bill was not submitted within 60 days. Good cause must be defined in the county's child care fund plan under section 119B.08, subdivision 3, and the definition of good cause must include county error. Any bill submitted more than a year after the last date of service on the bill must not be paid.

(c) If a provider provided care for a time period without receiving an authorization of care and a billing form for an eligible family, payment of child care assistance may only be made retroactively for a maximum of six months from the date the provider is issued an authorization of care and billing form.

(d) A county may refuse to issue a child care authorization to a licensed or legal nonlicensed provider, revoke an existing child care authorization to a licensed or legal nonlicensed provider, stop payment issued to a licensed or legal nonlicensed provider, or may refuse to pay a bill submitted by a licensed or legal nonlicensed provider if:

(1) the provider admits to intentionally giving the county materially false information on the provider's billing forms; ~~or~~

(2) a county finds by a preponderance of the evidence that the provider intentionally gave the county materially false information on the provider's billing forms;

(3) the provider is in violation of licensing or child care assistance program rules and the provider has not corrected the violation;

(4) the provider submits false attendance reports or refuses to provide documentation of the child's attendance upon request; or

(5) the provider gives false child care price information.

(e) A county's payment policies must be included in the county's child care plan under section 119B.08, subdivision 3. If payments are made by the state, in addition to being in compliance with this subdivision, the payments must be made in compliance with section 16A.124.

#### Sec. 9. CHILD CARE ASSISTANCE PROGRAM RULE CHANGE.

The commissioner shall amend Minnesota Rules, part 3400.0035, subpart 2, to remove the requirement that applications must be submitted by mail or delivered to the agency within 15 calendar days after the date of signature. The commissioner shall comply with Minnesota Statutes, section 14.389, in adopting the amendment.

### ARTICLE 8 SIMPLIFICATION OF MFIP AND DWP

Section 1. Minnesota Statutes 2010, section 256J.08, subdivision 11, is amended to read:

Subd. 11. **Caregiver.** "Caregiver" means a minor child's ~~natural~~ birth or adoptive parent or parents and stepparent who live in the home with the minor child. For purposes of determining eligibility for this program, caregiver also means any of the following individuals, if adults, who live with and provide care and support to a minor child when the minor child's ~~natural~~ birth or adoptive parent or parents or stepparents do not reside in the same home: legal custodian or guardian, grandfather, grandmother, brother, sister, half brother, half sister, stepbrother, stepsister, uncle, aunt, first cousin or first cousin once removed, nephew, niece, person of preceding generation as denoted by prefixes of "great," "great-great," or "great-great-great," or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

Sec. 2. Minnesota Statutes 2010, section 256J.24, subdivision 2, is amended to read:

Subd. 2. **Mandatory assistance unit composition.** Except for minor caregivers and their children who must be in a separate assistance unit from the other persons in the household, when the following individuals live together, they must be included in the assistance unit:

- (1) a minor child, including a pregnant minor;
- (2) the minor child's minor siblings, minor half siblings, and minor stepsiblings;
- (3) the minor child's ~~natural~~ birth parents, adoptive parents, and stepparents; and
- (4) the spouse of a pregnant woman.

A minor child must have a caregiver for the child to be included in the assistance unit.

Sec. 3. Minnesota Statutes 2010, section 256J.32, subdivision 6, is amended to read:

Subd. 6. **Recertification.** (a) The county agency shall recertify eligibility in an annual face-to-face interview with the participant and. The county agency may waive the face-to-face interview and conduct a phone interview for participants who qualify under paragraph (b). During the interview the county agency shall verify the following:

- (1) presence of the minor child in the home, if questionable;
- (2) income, unless excluded, including self-employment expenses used as a deduction or deposits or withdrawals from business accounts;
- (3) assets when the value is within \$200 of the asset limit;
- (4) information to establish an exception under section 256J.24, subdivision 9, if questionable;
- (5) inconsistent information, if related to eligibility; and
- (6) whether a single caregiver household meets requirements in section 256J.575, subdivision 3.

(b) A participant who is employed any number of hours must be given the option of conducting a face-to-face or phone interview to recertify eligibility. The participant must be employed at the time the interview is scheduled. If the participant loses the participant's job between the time the interview is scheduled and when it is to be conducted, the phone interview may still be conducted.

**EFFECTIVE DATE.** This section is effective October 1, 2012.

Sec. 4. Minnesota Statutes 2010, section 256J.575, subdivision 1, is amended to read:

Subdivision 1. **Purpose.** ~~(a) The~~ Family stabilization services serve families who are not making significant progress within the regular employment and training services track of the Minnesota family investment program (MFIP) due to a variety of barriers to employment.

~~(b) The goal of the services is to stabilize and improve the lives of families at risk of long-term welfare dependency or family instability due to employment barriers such as physical disability, mental disability, age, or providing care for a disabled household member. These services promote and support families to achieve the greatest possible degree of self sufficiency.~~

Sec. 5. Minnesota Statutes 2010, section 256J.575, subdivision 2, is amended to read:

Subd. 2. **Definitions.** The terms used in this section have the meanings given them in paragraphs (a) ~~to (d)~~ and (b).

(a) ~~"Case manager" means the county designated staff person or employment services counselor.~~

~~(b) "Case management" "Family stabilization services" means the services programs, activities, and services provided by or through the county agency or through the employment services agency to participating families, including. Services include, but are not limited to, assessment as defined in section 256J.521, subdivision 1, information, referrals, and assistance in the preparation and implementation of a family stabilization plan under subdivision 5.~~

~~(c) (b) "Family stabilization plan" means a plan developed by a case manager and with the participant, which identifies the participant's most appropriate path to unsubsidized employment, family stability, and barrier reduction, taking into account the family's circumstances.~~

~~(d) "Family stabilization services" means programs, activities, and services in this section that provide participants and their family members with assistance regarding, but not limited to:~~

~~(1) obtaining and retaining unsubsidized employment;~~

~~(2) family stability;~~

~~(3) economic stability; and~~

~~(4) barrier reduction.~~

~~The goal of the services is to achieve the greatest degree of economic self-sufficiency and family well-being possible for the family under the circumstances.~~

Sec. 6. Minnesota Statutes 2010, section 256J.575, subdivision 5, is amended to read:

Subd. 5. **Case management; Family stabilization plans; coordinated services.** (a) The county agency or employment services provider shall provide ~~family stabilization services to families through a case management model. A case manager shall be assigned to each participating family within 30 days after the family is determined to be eligible for family stabilization services. The case manager, with the full involvement of the participant, shall recommend, and the county agency shall establish and modify as necessary, a family stabilization plan for each participating family. Once a participant has been determined eligible for family stabilization services, the county agency or employment services provider must attempt to meet with the participant to develop a plan within 30 days.~~

(b) If a participant is already assigned to a county case manager or a county-designated case manager in social services, disability services, or housing services that case manager already assigned may be the case manager for purposes of these services.

~~(b) The family stabilization plan must include:~~

~~(1) each participant's plan for long term self-sufficiency, including an employment goal where applicable;~~

~~(2) an assessment of each participant's strengths and barriers, and any special circumstances of the participant's family that impact, or are likely to impact, the participant's progress towards the goals in the plan; and~~

~~(3) an identification of the services, supports, education, training, and accommodations needed to reduce or overcome any barriers to enable the family to achieve self sufficiency and to fulfill each caregiver's personal and family responsibilities.~~

~~(c) The case manager and the participant shall meet within 30 days of the family's referral to the case manager. The initial family stabilization plan must be completed within 30 days of the first meeting with the case manager. The case manager shall establish a schedule for periodic review of the family stabilization plan that includes personal contact with the participant at least once per month. In addition, the case manager shall review and, if necessary, modify the plan under the following circumstances:~~

~~(1) there is a lack of satisfactory progress in achieving the goals of the plan;~~

~~(2) the participant has lost unsubsidized or subsidized employment;~~

~~(3) a family member has failed or is unable to comply with a family stabilization plan requirement;~~

~~(4) services, supports, or other activities required by the plan are unavailable;~~

~~(5) changes to the plan are needed to promote the well being of the children; or~~

~~(6) the participant and case manager determine that the plan is no longer appropriate for any other reason. Participants determined eligible for family stabilization services must have access to employment and training services under sections 256J.515 to 256J.575, to the extent these services are available to other MFIP participants.~~

Sec. 7. Minnesota Statutes 2010, section 256J.575, subdivision 6, is amended to read:

Subd. 6. **Cooperation with services requirements.** ~~(a) A participant who is eligible for family stabilization services under this section shall comply with paragraphs (b) to (d).~~

~~(b) Participants shall engage in family stabilization plan services for the appropriate number of hours per week that the activities are scheduled and available, based on the needs of the participant and the participant's family, unless good cause exists for not doing so, as defined in section 256J.57, subdivision 1. The appropriate number of hours must be based on the participant's plan.~~

~~(c) The case manager county agency or employment services agency shall review the participant's progress toward the goals in the family stabilization plan every six months to determine whether conditions have changed, including whether revisions to the plan are needed.~~

~~(d) A participant's requirement to comply with any or all family stabilization plan requirements under this subdivision is excused when the case management services, training and educational services, or family support services identified in the participant's family stabilization plan are unavailable for reasons beyond the control of the participant, including when money appropriated is not sufficient to provide the services.~~

Sec. 8. Minnesota Statutes 2010, section 256J.575, subdivision 8, is amended to read:

Subd. 8. **Funding.** (a) The commissioner of human services shall treat MFIP expenditures made to or on behalf of any minor child under this section, who is part of a household that meets criteria in subdivision 3, as expenditures under a separately funded state program. These expenditures shall not count toward the state's maintenance of effort requirements under the federal TANF program.

(b) A family is no longer part of a separately funded program under this section if the caregiver no longer meets the criteria for family stabilization services in subdivision 3, ~~or if it is determined at recertification that a caregiver with a child under the age of six is working at least 87 hours per month in paid or unpaid employment, or a caregiver without a child under the age of six is working at least 130 hours per month in paid or unpaid employment, whichever occurs sooner.~~

Sec. 9. Minnesota Statutes 2010, section 256J.621, is amended to read:

**256J.621 WORK PARTICIPATION CASH BENEFITS.**

(a) Effective October 1, 2009, upon exiting the diversionary work program (DWP) or upon terminating the Minnesota family investment program with earnings, a participant who is employed may be eligible for work participation cash benefits of \$25 per month to assist in meeting the family's basic needs as the participant continues to move toward self-sufficiency.

(b) To be eligible for work participation cash benefits, the participant shall not receive MFIP or diversionary work program assistance during the month and the participant or participants must meet the following work requirements:

(1) if the participant is a single caregiver and has a child under six years of age, the participant must be employed at least 87 hours per month;

(2) if the participant is a single caregiver and does not have a child under six years of age, the participant must be employed at least 130 hours per month; or

(3) if the household is a two-parent family, at least one of the parents must be employed ~~an average of at least~~ 130 hours per month.

Whenever a participant exits the diversionary work program or is terminated from MFIP and meets the other criteria in this section, work participation cash benefits are available for up to 24 consecutive months.

(c) Expenditures on the program are maintenance of effort state funds under a separate state program for participants under paragraph (b), clauses (1) and (2). Expenditures for participants under paragraph (b), clause (3), are nonmaintenance of effort funds. Months in which a participant receives work participation cash benefits under this section do not count toward the participant's MFIP 60-month time limit.

Sec. 10. Minnesota Statutes 2010, section 256J.68, subdivision 7, is amended to read:

Subd. 7. **Exclusive procedure.** The procedure established by this section is exclusive of all other legal, equitable, and statutory remedies against the state, its political subdivisions, or employees of the state or its political subdivisions. The claimant shall not be entitled to seek damages from any state, county, tribal, or reservation insurance policy or self-insurance program. A provider who accepts or agrees to accept an injury protection program payment for services provided to an individual must not require any payment from the individual.

Sec. 11. Minnesota Statutes 2010, section 256J.95, subdivision 3, is amended to read:

Subd. 3. **Eligibility for diversionary work program.** (a) Except for the categories of family units listed ~~below~~ in clauses (1) to (8), all family units who apply for cash benefits and who meet MFIP eligibility as required in sections 256J.11 to 256J.15 are eligible and must participate in the diversionary work program. Family units or individuals that are not eligible for the diversionary work program include:

(1) child only cases;

(2) ~~a~~ single-parent family ~~unit units~~ that ~~includes~~ include a child under 12 months of age. A parent is eligible for this exception once in a parent's lifetime;

(3) family units with a minor parent without a high school diploma or its equivalent;

(4) family units with an 18- or 19-year-old caregiver without a high school diploma or its equivalent who chooses to have an employment plan with an education option;

~~(5) a caregiver age 60 or over;~~

~~(6)~~ (5) family units with a caregiver who received DWP benefits ~~in~~ within the 12 months prior to the month the family applied for DWP, except as provided in paragraph (c);

~~(7)~~ (6) family units with a caregiver who received MFIP within the 12 months prior to the month the family ~~unit~~ applied for DWP;

~~(8) a~~ (7) family ~~unit units~~ with a caregiver who received 60 or more months of TANF assistance; and

~~(9)~~ (8) family units with a caregiver who is disqualified from the work participation cash benefit program, DWP, or MFIP due to fraud; and.

~~(10) refugees and asylees as defined in Code of Federal Regulations, title 45, part 400, subpart d, section 400.43, who arrived in the United States in the 12 months prior to the date of application for family cash assistance.~~

(b) A two-parent family must participate in DWP unless both caregivers meet the criteria for an exception under paragraph (a), clauses (1) through (5), or the family unit includes a parent who meets the criteria in paragraph (a), clause (6), (7), (8), (9), or (10).

(c) Once DWP eligibility is determined, the four months run consecutively. If a participant leaves the program for any reason and reapplies during the four-month period, the county must redetermine eligibility for DWP.

## ARTICLE 9 CONTINUING CARE

Section 1. Minnesota Statutes 2011 Supplement, section 144A.071, subdivision 3, is amended to read:

Subd. 3. **Exceptions authorizing increase in beds; hardship areas.** (a) The commissioner of health, in coordination with the commissioner of human services, may approve the addition of new licensed and Medicare and Medicaid certified nursing home beds, using the criteria and process set forth in this subdivision.

(b) The commissioner, in cooperation with the commissioner of human services, shall consider the following criteria when determining that an area of the state is a hardship area with regard to access to nursing facility services:

(1) a low number of beds per thousand in a specified area using as a standard the beds per thousand people age 65 and older, in five year age groups, using data from the most recent census and population projections, weighted by each group's most recent nursing home utilization, of the county at the 20th percentile, as determined by the commissioner of human services;

(2) a high level of out-migration for nursing facility services associated with a described area from the county or counties of residence to other Minnesota counties, as determined by the commissioner of human services, using as a standard an amount greater than the out-migration of the county ranked at the 50th percentile;

(3) an adequate level of availability of noninstitutional long-term care services measured as public spending for home and community-based long-term care services per individual age 65 and older, in five year age groups, using data from the most recent census and population projections, weighted by each group's most recent nursing home utilization, as determined by the commissioner of human services using as a standard an amount greater than the 50th percentile of counties;

(4) there must be a declaration of hardship resulting from insufficient access to nursing home beds by local county agencies and area agencies on aging; and

(5) other factors that may demonstrate the need to add new nursing facility beds.

(c) On August 15 of odd-numbered years, the commissioner, in cooperation with the commissioner of human services, may publish in the State Register a request for information in which interested parties, using the data provided under section 144A.351, along with any other relevant data, demonstrate that a specified area is a hardship area with regard to access to nursing facility services. For a response to be considered, the commissioner must receive it by November 15. The commissioner shall make responses to the request for information available to the public and shall allow 30 days for comment. The commissioner shall review responses and comments and determine if any areas of the state are to be declared hardship areas.

(d) For each designated hardship area determined in paragraph (c), the commissioner shall publish a request for proposals in accordance with section 144A.073 and Minnesota Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the State Register by March 15 following receipt of responses to the request for information. The request for proposals must specify the number of new beds which may be added in the designated hardship area, which must not exceed the number which, if added to the existing number of beds in the area, including beds in layaway status, would have prevented it from being determined to be a hardship area under paragraph (b), clause (1). Beginning July 1, 2011, the number of new beds approved must not exceed 200 beds statewide per biennium. After June 30, 2019, the number of new beds that may be approved in a biennium must not exceed 300 statewide. For a proposal to be considered, the commissioner must receive it within six months of the publication of the request for proposals. The commissioner shall review responses to the request for proposals and shall approve or disapprove each proposal by the following July 15, in accordance with section 144A.073 and Minnesota Rules, parts 4655.1070 to 4655.1098. The commissioner shall base approvals or disapprovals on a comparison and ranking of proposals using only the criteria in subdivision 4a. Approval of a proposal expires after 18 months unless the facility has added the new beds using existing space, subject to approval by the commissioner, or has commenced construction as defined in section 144A.071, subdivision 1a, paragraph (d). Operating If, after the approved beds have been added, fewer than 50 percent of the beds in a facility are newly licensed, the operating payment rates previously in effect shall remain. If, after the approved beds have been added, 50 percent or more of the beds in a facility are newly licensed, operating payment rates shall be determined according to Minnesota Rules, part 9549.0057, using the limits under section 256B.441. External fixed payment rates must be determined according to section 256B.441, subdivision 53. Property payment rates for facilities with beds added under this subdivision must be determined in the same manner as rate determinations resulting from projects approved and completed under section 144A.073.

(e) The commissioner may:

(1) certify or license new beds in a new facility that is to be operated by the commissioner of veterans affairs or when the costs of constructing and operating the new beds are to be reimbursed by the commissioner of veterans affairs or the United States Veterans Administration; and

(2) license or certify beds in a facility that has been involuntarily delicensed or decertified for participation in the medical assistance program, provided that an application for relicensure or recertification is submitted to the commissioner by an organization that is not a related organization as defined in section 256B.441, subdivision 34, to the prior licensee within 120 days after delicensure or decertification.

Sec. 2. Minnesota Statutes 2011 Supplement, section 144A.071, subdivision 4a, is amended to read:

Subd. 4a. **Exceptions for replacement beds.** It is in the best interest of the state to ensure that nursing homes and boarding care homes continue to meet the physical plant licensing and certification requirements by permitting certain construction projects. Facilities should be maintained in condition to satisfy the physical and emotional needs of residents while allowing the state to maintain control over nursing home expenditure growth.

The commissioner of health in coordination with the commissioner of human services, may approve the renovation, replacement, upgrading, or relocation of a nursing home or boarding care home, under the following conditions:

(a) to license or certify beds in a new facility constructed to replace a facility or to make repairs in an existing facility that was destroyed or damaged after June 30, 1987, by fire, lightning, or other hazard provided:

(i) destruction was not caused by the intentional act of or at the direction of a controlling person of the facility;

(ii) at the time the facility was destroyed or damaged the controlling persons of the facility maintained insurance coverage for the type of hazard that occurred in an amount that a reasonable person would conclude was adequate;

(iii) the net proceeds from an insurance settlement for the damages caused by the hazard are applied to the cost of the new facility or repairs;

(iv) the number of licensed and certified beds in the new facility does not exceed the number of licensed and certified beds in the destroyed facility; and

(v) the commissioner determines that the replacement beds are needed to prevent an inadequate supply of beds.

Project construction costs incurred for repairs authorized under this clause shall not be considered in the dollar threshold amount defined in subdivision 2;

(b) to license or certify beds that are moved from one location to another within a nursing home facility, provided the total costs of remodeling performed in conjunction with the relocation of beds does not exceed \$1,000,000;

(c) to license or certify beds in a project recommended for approval under section 144A.073;

(d) to license or certify beds that are moved from an existing state nursing home to a different state facility, provided there is no net increase in the number of state nursing home beds;

(e) to certify and license as nursing home beds boarding care beds in a certified boarding care facility if the beds meet the standards for nursing home licensure, or in a facility that was granted an exception to the moratorium under section 144A.073, and if the cost of any remodeling of the facility does not exceed \$1,000,000. If boarding care beds are licensed as nursing home beds, the number of boarding care beds in the facility must not increase beyond the number remaining at the time of the upgrade in licensure. The provisions contained in section 144A.073 regarding the upgrading of the facilities do not apply to facilities that satisfy these requirements;



(f) to license and certify up to 40 beds transferred from an existing facility owned and operated by the Amherst H. Wilder Foundation in the city of St. Paul to a new unit at the same location as the existing facility that will serve persons with Alzheimer's disease and other related disorders. The transfer of beds may occur gradually or in stages, provided the total number of beds transferred does not exceed 40. At the time of licensure and certification of a bed or beds in the new unit, the commissioner of health shall delicense and decertify the same number of beds in the existing facility. As a condition of receiving a license or certification under this clause, the facility must make a written commitment to the commissioner of human services that it will not seek to receive an increase in its property-related payment rate as a result of the transfers allowed under this paragraph;

(g) to license and certify nursing home beds to replace currently licensed and certified boarding care beds which may be located either in a remodeled or renovated boarding care or nursing home facility or in a remodeled, renovated, newly constructed, or replacement nursing home facility within the identifiable complex of health care facilities in which the currently licensed boarding care beds are presently located, provided that the number of boarding care beds in the facility or complex are decreased by the number to be licensed as nursing home beds and further provided that, if the total costs of new construction, replacement, remodeling, or renovation exceed ten percent of the appraised value of the facility or \$200,000, whichever is less, the facility makes a written commitment to the commissioner of human services that it will not seek to receive an increase in its property-related payment rate by reason of the new construction, replacement, remodeling, or renovation. The provisions contained in section 144A.073 regarding the upgrading of facilities do not apply to facilities that satisfy these requirements;

(h) to license as a nursing home and certify as a nursing facility a facility that is licensed as a boarding care facility but not certified under the medical assistance program, but only if the commissioner of human services certifies to the commissioner of health that licensing the facility as a nursing home and certifying the facility as a nursing facility will result in a net annual savings to the state general fund of \$200,000 or more;

(i) to certify, after September 30, 1992, and prior to July 1, 1993, existing nursing home beds in a facility that was licensed and in operation prior to January 1, 1992;

(j) to license and certify new nursing home beds to replace beds in a facility acquired by the Minneapolis Community Development Agency as part of redevelopment activities in a city of the first class, provided the new facility is located within three miles of the site of the old facility. Operating and property costs for the new facility must be determined and allowed under section 256B.431 or 256B.434;

(k) to license and certify up to 20 new nursing home beds in a community-operated hospital and attached convalescent and nursing care facility with 40 beds on April 21, 1991, that suspended operation of the hospital in April 1986. The commissioner of human services shall provide the facility with the same per diem property-related payment rate for each additional licensed and certified bed as it will receive for its existing 40 beds;

(l) to license or certify beds in renovation, replacement, or upgrading projects as defined in section 144A.073, subdivision 1, so long as the cumulative total costs of the facility's remodeling projects do not exceed \$1,000,000;

(m) to license and certify beds that are moved from one location to another for the purposes of converting up to five four-bed wards to single or double occupancy rooms in a nursing home that, as of January 1, 1993, was county-owned and had a licensed capacity of 115 beds;

(n) to allow a facility that on April 16, 1993, was a 106-bed licensed and certified nursing facility located in Minneapolis to layaway all of its licensed and certified nursing home beds. These beds may be relicensed and recertified in a newly constructed teaching nursing home facility affiliated with a teaching hospital upon approval by the legislature. The proposal must be developed in consultation with the interagency committee on long-term care planning. The beds on layaway status shall have the same status as voluntarily delicensed and decertified beds, except that beds on layaway status remain subject to the surcharge in section 256.9657. This layaway provision expires July 1, 1998;

(o) to allow a project which will be completed in conjunction with an approved moratorium exception project for a nursing home in southern Cass County and which is directly related to that portion of the facility that must be repaired, renovated, or replaced, to correct an emergency plumbing problem for which a state correction order has been issued and which must be corrected by August 31, 1993;

(p) to allow a facility that on April 16, 1993, was a 368-bed licensed and certified nursing facility located in Minneapolis to layaway, upon 30 days prior written notice to the commissioner, up to 30 of the facility's licensed and certified beds by converting three-bed wards to single or double occupancy. Beds on layaway status shall have the same status as voluntarily delicensed and decertified beds except that beds on layaway status remain subject to the surcharge in section 256.9657, remain subject to the license application and renewal fees under section 144A.07 and shall be subject to a \$100 per bed reactivation fee. In addition, at any time within three years of the effective date of the layaway, the beds on layaway status may be:

(1) relicensed and recertified upon relocation and reactivation of some or all of the beds to an existing licensed and certified facility or facilities located in Pine River, Brainerd, or International Falls; provided that the total project construction costs related to the relocation of beds from layaway status for any facility receiving relocated beds may not exceed the dollar threshold provided in subdivision 2 unless the construction project has been approved through the moratorium exception process under section 144A.073;

(2) relicensed and recertified, upon reactivation of some or all of the beds within the facility which placed the beds in layaway status, if the commissioner has determined a need for the reactivation of the beds on layaway status.

The property-related payment rate of a facility placing beds on layaway status must be adjusted by the incremental change in its rental per diem after recalculating the rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related payment rate for a facility relicensing and recertifying beds from layaway status must be adjusted by the incremental change in its rental per diem after recalculating its rental per diem using the number of beds after the relicensing to establish the facility's capacity day divisor, which shall be effective the first day of the month following the month in which the relicensing and recertification became effective. Any beds remaining on layaway status more than three years after the date the layaway status became effective must be removed from layaway status and immediately delicensed and decertified;

(q) to license and certify beds in a renovation and remodeling project to convert 12 four-bed wards into 24 two-bed rooms, expand space, and add improvements in a nursing home that, as of January 1, 1994, met the following conditions: the nursing home was located in Ramsey County; had a licensed capacity of 154 beds; and had been ranked among the top 15 applicants by the 1993 moratorium exceptions advisory review panel. The total project construction cost estimate for this project must not exceed the cost estimate submitted in connection with the 1993 moratorium exception process;

(r) to license and certify up to 117 beds that are relocated from a licensed and certified 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds located in South St. Paul, provided that the nursing facility and hospital are owned by the same or a related organization and that prior to the date the relocation is completed the hospital ceases operation of its inpatient hospital services at that hospital. After relocation, the nursing facility's status ~~under section 256B.431, subdivision 2j,~~ shall be the same as it was prior to relocation. The nursing facility's property-related payment rate resulting from the project authorized in this paragraph shall become effective no earlier than April 1, 1996. For purposes of calculating the incremental change in the facility's rental per diem resulting from this project, the allowable appraised value of the nursing facility portion of the existing health care facility physical plant prior to the renovation and relocation may not exceed \$2,490,000;

(s) to license and certify two beds in a facility to replace beds that were voluntarily delicensed and decertified on June 28, 1991;

(t) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed nursing home and 21-bed boarding care home facility in Minneapolis, notwithstanding the licensure and certification after July 1, 1995, of the Minneapolis facility as a 147-bed nursing home facility after completion of a construction project approved in 1993 under section 144A.073, to be laid away upon 30 days' prior written notice to the commissioner. Beds on layaway status shall have the same status as voluntarily delicensed or decertified beds except that they shall remain subject to the surcharge in section 256.9657. The 16 beds on layaway status may be relicensed as nursing home beds and recertified at any time within five years of the effective date of the layaway upon relocation of some or all of the beds to a licensed and certified facility located in Watertown, provided that the total project construction costs related to the relocation of beds from layaway status for the Watertown facility may not exceed the dollar threshold provided in subdivision 2 unless the construction project has been approved through the moratorium exception process under section 144A.073.

The property-related payment rate of the facility placing beds on layaway status must be adjusted by the incremental change in its rental per diem after recalculating the rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related payment rate for the facility relicensing and recertifying beds from layaway status must be adjusted by the incremental change in its rental per diem after recalculating its rental per diem using the number of beds after the relicensing to establish the facility's capacity day divisor, which shall be effective the first day of the month following the month in which the relicensing and recertification became effective. Any beds remaining on layaway status more than five years after the date the layaway status became effective must be removed from layaway status and immediately delicensed and decertified;

(u) to license and certify beds that are moved within an existing area of a facility or to a newly constructed addition which is built for the purpose of eliminating three- and four-bed rooms and adding space for dining, lounge areas, bathing rooms, and ancillary service areas in a nursing home that, as of January 1, 1995, was located in Fridley and had a licensed capacity of 129 beds;

(v) to relocate 36 beds in Crow Wing County and four beds from Hennepin County to a 160-bed facility in Crow Wing County, provided all the affected beds are under common ownership;

(w) to license and certify a total replacement project of up to 49 beds located in Norman County that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes. The operating cost payment rates for the new nursing facility shall be determined based on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, ~~except that subdivision 26, paragraphs (a) and (b), shall not apply until the second rate year after the settle-up cost report is filed.~~ Property-related reimbursement rates shall be determined under section 256B.431, taking into account any federal or state flood-related loans or grants provided to the facility;

(x) to license and certify a total replacement project of up to 129 beds located in Polk County that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes. The operating cost payment rates for the new nursing facility shall be determined based on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, except that subdivision 26, paragraphs (a) and (b), shall not apply until the second rate year after the settle-up cost report is filed. Property-related reimbursement rates shall be determined under section 256B.431, taking into account any federal or state flood-related loans or grants provided to the facility;

(y) to license and certify beds in a renovation and remodeling project to convert 13 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and add improvements in a nursing home that, as of January 1, 1994, met the following conditions: the nursing home was located in Ramsey County, was not owned by a hospital corporation, had a licensed capacity of 64 beds, and had been ranked among the top 15 applicants by the 1993 moratorium exceptions advisory review panel. The total project construction cost estimate for this project must not exceed the cost estimate submitted in connection with the 1993 moratorium exception process;

(z) to license and certify up to 150 nursing home beds to replace an existing 285 bed nursing facility located in St. Paul. The replacement project shall include both the renovation of existing buildings and the construction of new facilities at the existing site. The reduction in the licensed capacity of the existing facility shall occur during the construction project as beds are taken out of service due to the construction process. Prior to the start of the construction process, the facility shall provide written information to the commissioner of health describing the process for bed reduction, plans for the relocation of residents, and the estimated construction schedule. The relocation of residents shall be in accordance with the provisions of law and rule;

(aa) to allow the commissioner of human services to license an additional 36 beds to provide residential services for the physically disabled under Minnesota Rules, parts 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that the total number of licensed and certified beds at the facility does not increase;

(bb) to license and certify a new facility in St. Louis County with 44 beds constructed to replace an existing facility in St. Louis County with 31 beds, which has resident rooms on two separate floors and an antiquated elevator that creates safety concerns for residents and prevents nonambulatory residents from residing on the second floor. The project shall include the elimination of three- and four-bed rooms;

(cc) to license and certify four beds in a 16-bed certified boarding care home in Minneapolis to replace beds that were voluntarily delicensed and decertified on or before March 31, 1992. The licensure and certification is conditional upon the facility periodically assessing and adjusting its resident mix and other factors which may contribute to a potential institution for mental disease declaration. The commissioner of human services shall retain the authority to audit the facility at any time and shall require the facility to comply with any requirements necessary to prevent an institution for mental disease declaration, including delicensure and decertification of beds, if necessary;

(dd) to license and certify 72 beds in an existing facility in Mille Lacs County with 80 beds as part of a renovation project. The renovation must include construction of an addition to accommodate ten residents with beginning and midstage dementia in a self-contained living unit; creation of three resident households where dining, activities, and support spaces are located near resident living quarters; designation of four beds for rehabilitation in a self-contained area; designation of 30 private rooms; and other improvements;

(ee) to license and certify beds in a facility that has undergone replacement or remodeling as part of a planned closure under section 256B.437;

(ff) to license and certify a total replacement project of up to 124 beds located in Wilkin County that are in need of relocation from a nursing home significantly damaged by flood. The operating cost payment rates for the new nursing facility shall be determined based on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, ~~except that section 256B.431, subdivision 26, paragraphs (a) and (b), shall not apply until the second rate year after the settle up cost report is filed.~~ Property-related reimbursement rates shall be determined under section 256B.431, taking into account any federal or state flood-related loans or grants provided to the facility;

(gg) to allow the commissioner of human services to license an additional nine beds to provide residential services for the physically disabled under Minnesota Rules, parts 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the total number of licensed and certified beds at the facility does not increase;

(hh) to license and certify up to 120 new nursing facility beds to replace beds in a facility in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the new facility is located within four miles of the existing facility and is in Anoka County. Operating and property rates shall be determined and allowed under section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, or section 256B.434 or ~~256B.435.~~ ~~The provisions of section 256B.431, subdivision 26, paragraphs (a) and (b), do not apply until the second rate year following settle up~~ 256B.441; or

(ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County that, as of March 25, 2001, is in the active process of closing, to a 122-licensed bed nonprofit nursing facility located in the city of Columbia Heights or its affiliate. The transfer is effective when the receiving facility notifies the commissioner in writing of the number of beds accepted. The commissioner shall place all transferred beds on layaway status held in the name of the receiving facility. The layaway adjustment provisions of section 256B.431, subdivision 30, do not apply to this layaway. The receiving facility may only remove the beds from layaway for recertification and relicensure at the receiving facility's current site, or at a newly constructed facility located in Anoka County. The receiving facility must receive statutory authorization before removing these beds from layaway status, or may remove these beds from layaway status if removal from layaway status is part of a moratorium exception project approved by the commissioner under section 144A.073.

Sec. 3. Minnesota Statutes 2011 Supplement, section 245A.03, subdivision 7, is amended to read:

Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter for a physical location that will not be the primary residence of the license holder for the entire period of licensure. If a license is issued during this moratorium, and the license holder changes the license holder's primary residence away from the physical location of the foster care license, the commissioner shall revoke the license according to section 245A.07. Exceptions to the moratorium include:

- (1) foster care settings that are required to be registered under chapter 144D;
- (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, and determined to be needed by the commissioner under paragraph (b);
- (3) new foster care licenses determined to be needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center, or restructuring of state-operated services that limits the capacity of state-operated facilities;
- (4) new foster care licenses determined to be needed by the commissioner under paragraph (b) for persons requiring hospital level care; or
- (5) new foster care licenses determined to be needed by the commissioner for the transition of people from personal care assistance to the home and community-based services.

(b) The commissioner shall determine the need for newly licensed foster care homes as defined under this subdivision. As part of the determination, the commissioner shall consider the availability of foster care capacity in the area in which the licensee seeks to operate, and the recommendation of the local county board. The determination by the commissioner must be final. A determination of need is not required for a change in ownership at the same address.

~~(c) Residential settings that would otherwise be subject to the moratorium established in paragraph (a), that are in the process of receiving an adult or child foster care license as of July 1, 2009, shall be allowed to continue to complete the process of receiving an adult or child foster care license. For this paragraph, all of the following conditions must be met to be considered in the process of receiving an adult or child foster care license:~~

- ~~(1) participants have made decisions to move into the residential setting, including documentation in each participant's care plan;~~
- ~~(2) the provider has purchased housing or has made a financial investment in the property;~~

~~(3) the lead agency has approved the plans, including costs for the residential setting for each individual;~~

~~(4) the completion of the licensing process, including all necessary inspections, is the only remaining component prior to being able to provide services; and~~

~~(5) the needs of the individuals cannot be met within the existing capacity in that county.~~

~~To qualify for the process under this paragraph, the lead agency must submit documentation to the commissioner by August 1, 2009, that all of the above criteria are met.~~

~~(d)~~ (c) The commissioner shall study the effects of the license moratorium under this subdivision and shall report back to the legislature by January 15, 2011. This study shall include, but is not limited to the following:

(1) the overall capacity and utilization of foster care beds where the physical location is not the primary residence of the license holder prior to and after implementation of the moratorium;

(2) the overall capacity and utilization of foster care beds where the physical location is the primary residence of the license holder prior to and after implementation of the moratorium; and

(3) the number of licensed and occupied ICF/MR beds prior to and after implementation of the moratorium.

~~(e)~~ (d) When a foster care recipient moves out of a foster home that is not the primary residence of the license holder according to section 256B.49, subdivision 15, paragraph (f), the county shall immediately inform the Department of Human Services Licensing Division, and the department shall immediately decrease the licensed capacity for the home. A decreased licensed capacity according to this paragraph is not subject to appeal under this chapter.

(e) At the time of application and reapplication for licensure, the applicant and the license holder that are subject to the moratorium or an exclusion established in paragraph (a) are required to inform the commissioner whether the physical location where the foster care will be provided is or will be the primary residence of the license holder for the entire period of licensure. If the primary residence of the applicant or license holder changes, the applicant or license holder must notify the commissioner immediately. The commissioner shall print on the foster care license certificate whether or not the physical location is the primary residence of the license holder.

(f) License holders of foster care homes identified under paragraph (e) that are not the primary residence of the license holder and that also provide services in the foster care home that are covered by a federally approved home and community-based services waiver, as authorized under section 256B.0915, 256B.092, or 256B.49 must inform the human services licensing division that the license holder provides or intends to provide these waiver-funded services. These license holders must be considered registered under section 256B.092, subdivision 11, paragraph (c), and this registration status must be identified on their license certificates.

Sec. 4. Minnesota Statutes 2010, section 245A.11, subdivision 2a, is amended to read:

Subd. 2a. **Adult foster care license capacity.** (a) The commissioner shall issue adult foster care licenses with a maximum licensed capacity of four beds, including nonstaff roomers and boarders, except that the commissioner may issue a license with a capacity of five beds, including roomers and boarders, according to paragraphs (b) to (f).

(b) An adult foster care license holder may have a maximum license capacity of five if all persons in care are age 55 or over and do not have a serious and persistent mental illness or a developmental disability.

(c) The commissioner may grant variances to paragraph (b) to allow a foster care provider with a licensed capacity of five persons to admit an individual under the age of 55 if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(d) The commissioner may grant variances to paragraph (b) to allow the use of a fifth bed for emergency crisis services for a person with serious and persistent mental illness or a developmental disability, regardless of age, if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(e) If the 2009 legislature adopts a rate reduction that impacts providers of adult foster care services, the commissioner may issue an adult foster care license with a capacity of five adults if the fifth bed does not increase the overall statewide capacity of licensed adult foster care beds in homes that are not the primary residence of the license holder, over the licensed capacity in such homes on July 1, 2009, as identified in a plan submitted to the commissioner by the county, when the capacity is recommended by the county licensing agency of the county in which the facility is located and if the recommendation verifies that:

(1) the facility meets the physical environment requirements in the adult foster care licensing rule;

(2) the five-bed living arrangement is specified for each resident in the resident's:

(i) individualized plan of care;

(ii) individual service plan under section 256B.092, subdivision 1b, if required; or

(iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required;

(3) the license holder obtains written and signed informed consent from each resident or resident's legal representative documenting the resident's informed choice to living in the home and that the resident's refusal to consent would not have resulted in service termination; and

(4) the facility was licensed for adult foster care before March 1, 2009.

(f) The commissioner shall not issue a new adult foster care license under paragraph (e) after June 30, ~~2014~~ 2014. The commissioner shall allow a facility with an adult foster care license issued under paragraph (e) before June 30, ~~2014~~ 2016, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (e).

Sec. 5. Minnesota Statutes 2010, section 245A.11, subdivision 8, is amended to read:

Subd. 8. **Community residential setting license.** (a) The commissioner shall establish provider standards for residential support services that integrate service standards and the residential setting under one license. The commissioner shall propose statutory language and an implementation plan for licensing requirements for residential support services to the legislature by January 15, ~~2011~~ 2012, as a component of the quality outcome standards recommendations required by Laws 2010, chapter 352, article 1, section 24.

(b) Providers licensed under chapter 245B, and providing, contracting, or arranging for services in settings licensed as adult foster care under Minnesota Rules, parts 9555.5105 to 9555.6265, or child foster care under Minnesota Rules, parts 2960.3000 to 2960.3340; and meeting the provisions of section 256B.092, subdivision 11, paragraph (b), must be required to obtain a community residential setting license.

Sec. 6. Minnesota Statutes 2010, section 252.32, subdivision 1a, is amended to read:

Subd. 1a. **Support grants.** (a) Provision of support grants must be limited to families who require support and whose dependents are under the age of 21 and who have been certified disabled under section 256B.055, subdivision 12, paragraphs (a), (b), (c), (d), and (e). Families who are receiving: home and community-based waived services for persons with developmental disabilities authorized under section 256B.092 or 256B.49; personal care assistance under section 256B.0652; or a consumer support grant under section 256.476 are not eligible for support grants.

Families whose annual adjusted gross income is \$60,000 or more are not eligible for support grants except in cases where extreme hardship is demonstrated. Beginning in state fiscal year 1994, the commissioner shall adjust the income ceiling annually to reflect the projected change in the average value in the United States Department of Labor Bureau of Labor Statistics Consumer Price Index (all urban) for that year.

(b) Support grants may be made available as monthly subsidy grants and lump-sum grants.

(c) Support grants may be issued in the form of cash, voucher, and direct county payment to a vendor.

(d) Applications for the support grant shall be made by the legal guardian to the county social service agency. The application shall specify the needs of the families, the form of the grant requested by the families, and the items and services to be reimbursed.

Sec. 7. **[252.34] REPORT BY COMMISSIONER OF HUMAN SERVICES.**

Beginning January 1, 2013, the commissioner of human services shall provide a biennial report to the chairs of the legislative committees with jurisdiction over health and human services policy and funding. The report must provide a summary of overarching goals and priorities for persons with disabilities, including the status of how each of the following programs administered by the commissioner is supporting the overarching goals and priorities:

(1) home and community-based services waivers for persons with disabilities under sections 256B.092 and 256B.49;

(2) home care services under section 256B.0652; and

(3) other relevant programs and services as determined by the commissioner.

Sec. 8. Minnesota Statutes 2010, section 252A.21, subdivision 2, is amended to read:

Subd. 2. **Rules.** The commissioner shall adopt rules to implement this chapter. The rules must include standards for performance of guardianship or conservatorship duties including, but not limited to: twice a year visits with the ward; ~~quarterly reviews of records from day, residential, and support services;~~ a requirement that the duties of guardianship or conservatorship and case management not be performed by the same person; specific standards for action on "do not resuscitate" orders, sterilization requests, and the use of psychotropic medication and aversive procedures.

Sec. 9. Minnesota Statutes 2010, section 256.476, subdivision 11, is amended to read:

Subd. 11. **Consumer support grant program after July 1, 2001.** Effective July 1, 2001, the commissioner shall allocate consumer support grant resources to serve additional individuals based on a review of Medicaid authorization and payment information of persons eligible for a consumer support grant from the most recent fiscal year. The commissioner shall use the following methodology to calculate maximum allowable monthly consumer support grant levels:



(1) For individuals whose program of origination is medical assistance home care under sections 256B.0651 and 256B.0653 to 256B.0656, the maximum allowable monthly grant levels are calculated by:

(i) ~~determining 50 percent of the average~~ the service authorization for each individual based on the individual's home care rating assessment;

(ii) calculating the overall ratio of actual payments to service authorizations by program;

(iii) applying the overall ratio to ~~the average~~ 50 percent of the service authorization level of each home care rating; and

(iv) adjusting the result for any authorized rate ~~increases~~ changes provided by the legislature; ~~and,~~

~~(v) adjusting the result for the average monthly utilization per recipient.~~

(2) The commissioner ~~may review and evaluate~~ shall ensure the methodology ~~to reflect changes in~~ is consistent with the home care programs.

Sec. 10. Minnesota Statutes 2010, section 256.9657, subdivision 1, is amended to read:

Subdivision 1. **Nursing home license surcharge.** (a) Effective July 1, 1993, each non-state-operated nursing home licensed under chapter 144A shall pay to the commissioner an annual surcharge according to the schedule in subdivision 4. The surcharge shall be calculated as \$620 per licensed bed. If the number of licensed beds is reduced, the surcharge shall be based on the number of remaining licensed beds the second month following the receipt of timely notice by the commissioner of human services that beds have been delicensed. The nursing home must notify the commissioner of health in writing when beds are delicensed. The commissioner of health must notify the commissioner of human services within ten working days after receiving written notification. If the notification is received by the commissioner of human services by the 15th of the month, the invoice for the second following month must be reduced to recognize the delicensing of beds. Beds on layaway status continue to be subject to the surcharge. The commissioner of human services must acknowledge a medical care surcharge appeal within 30 days of receipt of the written appeal from the provider.

(b) Effective July 1, 1994, the surcharge in paragraph (a) shall be increased to \$625.

(c) Effective August 15, 2002, the surcharge under paragraph (b) shall be increased to \$990.

(d) Effective July 15, 2003, the surcharge under paragraph (c) shall be increased to \$2,815.

(e) The commissioner may reduce, and may subsequently restore, the surcharge under paragraph (d) based on the commissioner's determination of a permissible surcharge.

(f) Between April 1, 2002, and August 15, 2004, a facility governed by this subdivision may elect to assume full participation in the medical assistance program by agreeing to comply with all of the requirements of the medical assistance program, including the rate equalization law in section 256B.48, subdivision 1, paragraph (a), and all other requirements established in law or rule, and to begin intake of new medical assistance recipients. Rates will be determined under Minnesota Rules, parts 9549.0010 to 9549.0080. ~~Notwithstanding section 256B.431, subdivision 27, paragraph (i),~~ Rate calculations will be subject to limits as prescribed in rule and law. Other than the adjustments in sections 256B.431, subdivisions 30 and 32; 256B.437, subdivision 3, paragraph (b), Minnesota Rules, part 9549.0057, and any other applicable legislation enacted prior to the finalization of rates, facilities assuming full participation in medical assistance under this paragraph are not eligible for any rate adjustments until the July 1 following their settle-up period.

Sec. 11. Minnesota Statutes 2010, section 256B.0625, subdivision 19c, is amended to read:

Subd. 19c. **Personal care.** Medical assistance covers personal care assistance services provided by an individual who is qualified to provide the services according to subdivision 19a and sections 256B.0651 to 256B.0656, provided in accordance with a plan, and supervised by a qualified professional.

"Qualified professional" means a mental health professional as defined in section 245.462, subdivision 18, clauses (1) to (6), or 245.4871, subdivision 27, clauses (1) to (6); or a registered nurse as defined in sections 148.171 to 148.285, a licensed social worker as defined in sections 148D.010 and 148D.055, or a qualified developmental disabilities specialist under section 245B.07, subdivision 4. The qualified professional shall perform the duties required in section 256B.0659.

Sec. 12. Minnesota Statutes 2010, section 256B.0659, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in paragraphs (b) to (r) have the meanings given unless otherwise provided in text.

(b) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility, positioning, eating, and toileting.

(c) "Behavior," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section. "Level I behavior" means physical aggression towards self, others, or destruction of property that requires the immediate response of another person.

(d) "Complex health-related needs," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section.

(e) "Critical activities of daily living," effective January 1, 2010, means transferring, mobility, eating, and toileting.

(f) "Dependency in activities of daily living" means a person requires assistance to begin and complete one or more of the activities of daily living.

(g) "Extended personal care assistance service" means personal care assistance services included in a service plan under one of the home and community-based services waivers authorized under sections 256B.0915, 256B.092, subdivision 5, and 256B.49, which exceed the amount, duration, and frequency of the state plan personal care assistance services for participants who:

(1) need assistance provided periodically during a week, but less than daily will not be able to remain in their homes without the assistance, and other replacement services are more expensive or are not available when personal care assistance services are to be ~~terminated~~ reduced; or

(2) need additional personal care assistance services beyond the amount authorized by the state plan personal care assistance assessment in order to ensure that their safety, health, and welfare are provided for in their homes.

(h) "Health-related procedures and tasks" means procedures and tasks that can be delegated or assigned by a licensed health care professional under state law to be performed by a personal care assistant.

(i) "Instrumental activities of daily living" means activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.

(j) "Managing employee" has the same definition as Code of Federal Regulations, title 42, section 455.

(k) "Qualified professional" means a professional providing supervision of personal care assistance services and staff as defined in section 256B.0625, subdivision 19c.

(l) "Personal care assistance provider agency" means a medical assistance enrolled provider that provides or assists with providing personal care assistance services and includes a personal care assistance provider organization, personal care assistance choice agency, class A licensed nursing agency, and Medicare-certified home health agency.

(m) "Personal care assistant" or "PCA" means an individual employed by a personal care assistance agency who provides personal care assistance services.

(n) "Personal care assistance care plan" means a written description of personal care assistance services developed by the personal care assistance provider according to the service plan.

(o) "Responsible party" means an individual who is capable of providing the support necessary to assist the recipient to live in the community.

(p) "Self-administered medication" means medication taken orally, by injection or insertion, or applied topically without the need for assistance.

(q) "Service plan" means a written summary of the assessment and description of the services needed by the recipient.

(r) "Wages and benefits" means wages and salaries, the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation, mileage reimbursement, health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and contributions to employee retirement accounts.

Sec. 13. Minnesota Statutes 2010, section 256B.0659, subdivision 3, is amended to read:

Subd. 3. **Noncovered personal care assistance services.** (a) Personal care assistance services are not eligible for medical assistance payment under this section when provided:

(1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal guardian, licensed foster provider, except as allowed under section 256B.0652, subdivision 10, or responsible party;

(2) ~~in lieu of other staffing options~~ order to meet staffing or license requirements in a residential or child care setting;

(3) solely as a child care or babysitting service; or

(4) without authorization by the commissioner or the commissioner's designee.

(b) The following personal care services are not eligible for medical assistance payment under this section when provided in residential settings:

(1) ~~effective January 1, 2010,~~ when the provider of home care services who is not related by blood, marriage, or adoption owns or otherwise controls the living arrangement, including licensed or unlicensed services; or

(2) when personal care assistance services are the responsibility of a residential or program license holder under the terms of a service agreement and administrative rules.

(c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible for medical assistance reimbursement for personal care assistance services under this section include:

- (1) sterile procedures;
- (2) injections of fluids and medications into veins, muscles, or skin;
- (3) home maintenance or chore services;
- (4) homemaker services not an integral part of assessed personal care assistance services needed by a recipient;
- (5) application of restraints or implementation of procedures under section 245.825;

(6) instrumental activities of daily living for children under the age of 18, except when immediate attention is needed for health or hygiene reasons integral to the personal care services and the need is listed in the service plan by the assessor; and

(7) assessments for personal care assistance services by personal care assistance provider agencies or by independently enrolled registered nurses.

Sec. 14. Minnesota Statutes 2010, section 256B.0659, subdivision 9, is amended to read:

Subd. 9. **Responsible party; generally.** (a) "Responsible party" means an individual who is capable of providing the support necessary to assist the recipient to live in the community.

(b) A responsible party must be 18 years of age, actively participate in planning and directing of personal care assistance services, and attend all assessments for the recipient.

(c) A responsible party must not be the:

- (1) personal care assistant;
- (2) qualified professional;
- (3) home care provider agency owner or ~~staff manager~~; or

(4) home care provider agency staff unless staff who are not listed in clauses (1) to (3) are related to the recipient by blood, marriage, or adoption; or

~~(3)~~ (5) county staff acting as part of employment.

(d) A licensed family foster parent who lives with the recipient may be the responsible party as long as the family foster parent meets the other responsible party requirements.

(e) A responsible party is required when:

- (1) the person is a minor according to section 524.5-102, subdivision 10;

(2) the person is an incapacitated adult according to section 524.5-102, subdivision 6, resulting in a court-appointed guardian; or

(3) the assessment according to subdivision 3a determines that the recipient is in need of a responsible party to direct the recipient's care.

(f) There may be two persons designated as the responsible party for reasons such as divided households and court-ordered custodies. Each person named as responsible party must meet the program criteria and responsibilities.

(g) The recipient or the recipient's legal representative shall appoint a responsible party if necessary to direct and supervise the care provided to the recipient. The responsible party must be identified at the time of assessment and listed on the recipient's service agreement and personal care assistance care plan.

Sec. 15. Minnesota Statutes 2011 Supplement, section 256B.0659, subdivision 11, is amended to read:

Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant must meet the following requirements:

(1) be at least 18 years of age with the exception of persons who are 16 or 17 years of age with these additional requirements:

(i) supervision by a qualified professional every 60 days; and

(ii) employment by only one personal care assistance provider agency responsible for compliance with current labor laws;

(2) be employed by a personal care assistance provider agency;

(3) enroll with the department as a personal care assistant after clearing a background study. Except as provided in subdivision 11a, before a personal care assistant provides services, the personal care assistance provider agency must initiate a background study on the personal care assistant under chapter 245C, and the personal care assistance provider agency must have received a notice from the commissioner that the personal care assistant is:

(i) not disqualified under section 245C.14; or

(ii) is disqualified, but the personal care assistant has received a set aside of the disqualification under section 245C.22;

(4) be able to effectively communicate with the recipient and personal care assistance provider agency;

(5) be able to provide covered personal care assistance services according to the recipient's personal care assistance care plan, respond appropriately to recipient needs, and report changes in the recipient's condition to the supervising qualified professional or physician;

(6) not be a consumer of personal care assistance services;

(7) maintain daily written records including, but not limited to, time sheets under subdivision 12;

(8) effective January 1, 2010, complete standardized training as determined by the commissioner before completing enrollment. The training must be available in languages other than English and to those who need accommodations due to disabilities. Personal care assistant training must include successful completion of the

following training components: basic first aid, vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of personal care assistants including information about assistance with lifting and transfers for recipients, emergency preparedness, orientation to positive behavioral practices, fraud issues, and completion of time sheets. Upon completion of the training components, the personal care assistant must demonstrate the competency to provide assistance to recipients;

(9) complete training and orientation on the needs of the recipient ~~within the first seven days after the services begin;~~ and

(10) be limited to providing and being paid for up to 275 hours per month, ~~except that this limit shall be 275 hours per month for the period July 1, 2009, through June 30, 2011,~~ of personal care assistance services regardless of the number of recipients being served or the number of personal care assistance provider agencies enrolled with. The number of hours worked per day shall not be disallowed by the department unless in violation of the law.

(b) A legal guardian may be a personal care assistant if the guardian is not being paid for the guardian services and meets the criteria for personal care assistants in paragraph (a).

(c) Persons who do not qualify as a personal care assistant include parents ~~and~~ stepparents, and legal guardians of minors; spouses; paid legal guardians; of adults; family foster care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, ~~or~~; and staff of a residential setting. When the personal care assistant is a relative of the recipient, the commissioner shall pay 80 percent of the provider rate. For purposes of this section, relative means the parent or adoptive parent of an adult child, a sibling aged 16 years or older, an adult child, a grandparent, or a grandchild.

Sec. 16. Minnesota Statutes 2010, section 256B.0659, subdivision 13, is amended to read:

Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional must work for a personal care assistance provider agency and meet the definition under section 256B.0625, subdivision 19c. Before a qualified professional provides services, the personal care assistance provider agency must initiate a background study on the qualified professional under chapter 245C, and the personal care assistance provider agency must have received a notice from the commissioner that the qualified professional:

(1) is not disqualified under section 245C.14; or

(2) is disqualified, but the qualified professional has received a set aside of the disqualification under section 245C.22.

(b) The qualified professional shall perform the duties of training, supervision, and evaluation of the personal care assistance staff and evaluation of the effectiveness of personal care assistance services. The qualified professional shall:

(1) develop and monitor with the recipient a personal care assistance care plan based on the service plan and individualized needs of the recipient;

(2) develop and monitor with the recipient a monthly plan for the use of personal care assistance services;

(3) review documentation of personal care assistance services provided;

(4) provide training and ensure competency for the personal care assistant in the individual needs of the recipient; and

(5) document all training, communication, evaluations, and needed actions to improve performance of the personal care assistants.

(c) Effective July 1, ~~2010~~ 2011, the qualified professional shall complete the provider training with basic information about the personal care assistance program approved by the commissioner. Newly hired qualified professionals must complete the training within six months of the date hired by a personal care assistance provider agency. Qualified professionals who have completed the required training as a worker from a personal care assistance provider agency do not need to repeat the required training if they are hired by another agency, if they have completed the training within the last three years. The required training ~~shall~~ must be available ~~in languages other than English and to those who need accommodations due to disabilities,~~ with meaningful access according to title VI of the Civil Rights Act and federal regulations adopted under that law or any guidance from the United States Health and Human Services Department. The required training must be available online, or by electronic remote connection, ~~and~~ The required training must provide for competency testing to demonstrate an understanding of the content without attending in-person training. A qualified professional is allowed to be employed and is not subject to the training requirement until the training is offered online or through remote electronic connection. A qualified professional employed by a personal care assistance provider agency certified for participation in Medicare as a home health agency is exempt from the training required in this subdivision. When available, the qualified professional working for a Medicare-certified home health agency must successfully complete the competency test. The commissioner shall ensure there is a mechanism in place to verify the identity of persons completing the competency testing electronically.

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2011.

Sec. 17. Minnesota Statutes 2010, section 256B.0659, subdivision 14, is amended to read:

Subd. 14. **Qualified professional; duties.** (a) Effective January 1, 2010, all personal care assistants must be supervised by a qualified professional.

(b) Through direct training, observation, return demonstrations, and consultation with the staff and the recipient, the qualified professional must ensure and document that the personal care assistant is:

- (1) capable of providing the required personal care assistance services;
- (2) knowledgeable about the plan of personal care assistance services before services are performed; and
- (3) able to identify conditions that should be immediately brought to the attention of the qualified professional.

(c) The qualified professional shall evaluate the personal care assistant within the first 14 days of starting to provide regularly scheduled services for a recipient, or sooner as determined by the qualified professional, except for the personal care assistance choice option under subdivision 19, paragraph (a), clause (4). For the initial evaluation, the qualified professional shall evaluate the personal care assistance services for a recipient through direct observation of a personal care assistant's work. The qualified professional may conduct additional training and evaluation visits, based upon the needs of the recipient and the personal care assistant's ability to meet those needs. Subsequent visits to evaluate the personal care assistance services provided to a recipient do not require direct observation of each personal care assistant's work and shall occur:

- (1) at least every 90 days thereafter for the first year of a recipient's services;
- (2) every 120 days after the first year of a recipient's service or whenever needed for response to a recipient's request for increased supervision of the personal care assistance staff; and

(3) after the first 180 days of a recipient's service, supervisory visits may alternate between unscheduled phone or Internet technology and in-person visits, unless the in-person visits are needed according to the care plan.

(d) Communication with the recipient is a part of the evaluation process of the personal care assistance staff.

(e) At each supervisory visit, the qualified professional shall evaluate personal care assistance services including the following information:

(1) satisfaction level of the recipient with personal care assistance services;

(2) review of the month-to-month plan for use of personal care assistance services;

(3) review of documentation of personal care assistance services provided;

(4) whether the personal care assistance services are meeting the goals of the service as stated in the personal care assistance care plan and service plan;

(5) a written record of the results of the evaluation and actions taken to correct any deficiencies in the work of a personal care assistant; and

(6) revision of the personal care assistance care plan as necessary in consultation with the recipient or responsible party, to meet the needs of the recipient.

(f) The qualified professional shall complete the required documentation in the agency recipient and employee files and the recipient's home, including the following documentation:

(1) the personal care assistance care plan based on the service plan and individualized needs of the recipient;

(2) a month-to-month plan for use of personal care assistance services;

(3) changes in need of the recipient requiring a change to the level of service and the personal care assistance care plan;

(4) evaluation results of supervision visits and identified issues with personal care assistance staff with actions taken;

(5) all communication with the recipient and personal care assistance staff; and

(6) hands-on training or individualized training for the care of the recipient.

(g) The documentation in paragraph (f) must be done on agency ~~forms~~ templates.

(h) The services that are not eligible for payment as qualified professional services include:

(1) direct professional nursing tasks that could be assessed and authorized as skilled nursing tasks;

~~(2) supervision of personal care assistance completed by telephone;~~

~~(3) (2)~~ agency administrative activities;

~~(4) (3)~~ training other than the individualized training required to provide care for a recipient; and



(5) (4) any other activity that is not described in this section.

Sec. 18. Minnesota Statutes 2010, section 256B.0659, subdivision 19, is amended to read:

Subd. 19. **Personal care assistance choice option; qualifications; duties.** (a) Under personal care assistance choice, the recipient or responsible party shall:

(1) recruit, hire, schedule, and terminate personal care assistants according to the terms of the written agreement required under subdivision 20, paragraph (a);

(2) develop a personal care assistance care plan based on the assessed needs and addressing the health and safety of the recipient with the assistance of a qualified professional as needed;

(3) orient and train the personal care assistant with assistance as needed from the qualified professional;

(4) effective January 1, 2010, supervise and evaluate the personal care assistant with the qualified professional, who is required to visit the recipient at least every 180 days;

(5) monitor and verify in writing and report to the personal care assistance choice agency the number of hours worked by the personal care assistant and the qualified professional;

(6) engage in an annual face-to-face reassessment to determine continuing eligibility and service authorization; and

(7) use the same personal care assistance choice provider agency if shared personal assistance care is being used.

(b) The personal care assistance choice provider agency shall:

(1) meet all personal care assistance provider agency standards;

(2) enter into a written agreement with the recipient, responsible party, and personal care assistants;

(3) not be related as a parent, child, sibling, or spouse to the recipient, ~~qualified professional~~, or the personal care assistant; and

(4) ensure arm's-length transactions without undue influence or coercion with the recipient and personal care assistant.

(c) The duties of the personal care assistance choice provider agency are to:

(1) be the employer of the personal care assistant and the qualified professional for employment law and related regulations including, but not limited to, purchasing and maintaining workers' compensation, unemployment insurance, surety and fidelity bonds, and liability insurance, and submit any or all necessary documentation including, but not limited to, workers' compensation and unemployment insurance;

(2) bill the medical assistance program for personal care assistance services and qualified professional services;

(3) request and complete background studies that comply with the requirements for personal care assistants and qualified professionals;

(4) pay the personal care assistant and qualified professional based on actual hours of services provided;

- (5) withhold and pay all applicable federal and state taxes;
- (6) verify and keep records of hours worked by the personal care assistant and qualified professional;
- (7) make the arrangements and pay taxes and other benefits, if any, and comply with any legal requirements for a Minnesota employer;
- (8) enroll in the medical assistance program as a personal care assistance choice agency; and
- (9) enter into a written agreement as specified in subdivision 20 before services are provided.

Sec. 19. Minnesota Statutes 2010, section 256B.0659, subdivision 21, is amended to read:

Subd. 21. **Requirements for initial enrollment of personal care assistance provider agencies.** (a) All personal care assistance provider agencies must provide, at the time of enrollment as a personal care assistance provider agency in a format determined by the commissioner, information and documentation that includes, but is not limited to, the following:

- (1) the personal care assistance provider agency's current contact information including address, telephone number, and e-mail address;
- (2) proof of surety bond coverage in the amount of \$50,000 or ten percent of the provider's payments from Medicaid in the previous year, whichever is less;
- (3) proof of fidelity bond coverage in the amount of \$20,000;
- (4) proof of workers' compensation insurance coverage;
- (5) proof of liability insurance;
- (6) a description of the personal care assistance provider agency's organization identifying the names of all owners, managing employees, staff, board of directors, and the affiliations of the directors, owners, or staff to other service providers;
- (7) a copy of the personal care assistance provider agency's written policies and procedures including: hiring of employees; training requirements; service delivery; and employee and consumer safety including process for notification and resolution of consumer grievances, identification and prevention of communicable diseases, and employee misconduct;
- (8) copies of all other forms the personal care assistance provider agency uses in the course of daily business including, but not limited to:
  - (i) a copy of the personal care assistance provider agency's time sheet if the time sheet varies from the standard time sheet for personal care assistance services approved by the commissioner, and a letter requesting approval of the personal care assistance provider agency's nonstandard time sheet;
  - (ii) the personal care assistance provider agency's template for the personal care assistance care plan; and
  - (iii) the personal care assistance provider agency's template for the written agreement in subdivision 20 for recipients using the personal care assistance choice option, if applicable;

(9) a list of all training and classes that the personal care assistance provider agency requires of its staff providing personal care assistance services;

(10) documentation that the personal care assistance provider agency and staff have successfully completed all the training required by this section;

(11) documentation of the agency's marketing practices;

(12) disclosure of ownership, leasing, or management of all residential properties that is used or could be used for providing home care services;

(13) documentation that the agency will use the following percentages of revenue generated from the medical assistance rate paid for personal care assistance services for employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal care assistance choice option and 72.5 percent of revenue from other personal care assistance providers; and

(14) effective May 15, 2010, documentation that the agency does not burden recipients' free exercise of their right to choose service providers by requiring personal care assistants to sign an agreement not to work with any particular personal care assistance recipient or for another personal care assistance provider agency after leaving the agency and that the agency is not taking action on any such agreements or requirements regardless of the date signed.

(b) Personal care assistance provider agencies shall provide the information specified in paragraph (a) to the commissioner at the time the personal care assistance provider agency enrolls as a vendor or upon request from the commissioner. The commissioner shall collect the information specified in paragraph (a) from all personal care assistance providers beginning July 1, 2009.

(c) All personal care assistance provider agencies shall require all employees in management and supervisory positions and owners of the agency who are active in the day-to-day management and operations of the agency to complete mandatory training as determined by the commissioner before enrollment of the agency as a provider. Employees in management and supervisory positions and owners who are active in the day-to-day operations of an agency who have completed the required training as an employee with a personal care assistance provider agency do not need to repeat the required training if they are hired by another agency, if they have completed the training within the past three years. By September 1, 2010, the required training must be available ~~in languages other than English and to those who need accommodations due to disabilities,~~ with meaningful access according to title VI of the Civil Rights Act and federal regulations adopted under that law or any guidance from the United States Health and Human Services Department. The required training must be available online, or by electronic remote connection, ~~and. The required training must~~ provide for competency testing. Personal care assistance provider agency billing staff shall complete training about personal care assistance program financial management. This training is effective July 1, 2009. Any personal care assistance provider agency enrolled before that date shall, if it has not already, complete the provider training within 18 months of July 1, 2009. Any new owners or employees in management and supervisory positions involved in the day-to-day operations are required to complete mandatory training as a requisite of working for the agency. Personal care assistance provider agencies certified for participation in Medicare as home health agencies are exempt from the training required in this subdivision. When available, Medicare-certified home health agency owners, supervisors, or managers must successfully complete the competency test.

Sec. 20. Minnesota Statutes 2010, section 256B.0659, subdivision 30, is amended to read:

Subd. 30. **Notice of service changes to recipients.** The commissioner must provide:

(1) by October 31, 2009, information to recipients likely to be affected that (i) describes the changes to the personal care assistance program that may result in the loss of access to personal care assistance services, and (ii) includes resources to obtain further information; and

~~(2) notice of changes in medical assistance personal care assistance services to each affected recipient at least 30 days before the effective date of the change.~~

~~The notice shall include how to get further information on the changes, how to get help to obtain other services, a list of community resources, and appeal rights. Notwithstanding section 256.045, a recipient may request continued services pending appeal within the time period allowed to request an appeal; and~~

~~(3) (2)~~ a service agreement authorizing personal care assistance hours of service at the previously authorized level, throughout the appeal process period, when a recipient requests services pending an appeal.

**EFFECTIVE DATE.** This section is effective July 1, 2012.

Sec. 21. Minnesota Statutes 2010, section 256B.0916, subdivision 7, is amended to read:

Subd. 7. **Annual report by commissioner.** (a) Beginning November 1, 2001, and each November 1 thereafter, the commissioner shall issue an annual report on county and state use of available resources for the home and community-based waiver for persons with developmental disabilities. For each county or county partnership, the report shall include:

- (1) the amount of funds allocated but not used;
- (2) the county specific allowed reserve amount approved and used;
- (3) the number, ages, and living situations of individuals screened and waiting for services;
- (4) the urgency of need for services to begin within one, two, or more than two years for each individual;
- (5) the services needed;
- (6) the number of additional persons served by approval of increased capacity within existing allocations;
- (7) results of action by the commissioner to streamline administrative requirements and improve county resource management; and
- (8) additional action that would decrease the number of those eligible and waiting for waived services.

The commissioner shall specify intended outcomes for the program and the degree to which these specified outcomes are attained.

(b) This subdivision expires January 1, 2013.

Sec. 22. Minnesota Statutes 2010, section 256B.092, subdivision 11, is amended to read:

Subd. 11. **Residential support services.** (a) Upon federal approval, there is established a new service called residential support that is available on the community alternative care, community alternatives for disabled individuals, developmental disabilities, and traumatic brain injury waivers. Existing waiver service descriptions must be modified to the extent necessary to ensure there is no duplication between other services. Residential support services must be provided by vendors licensed as a community residential setting as defined in section 245A.11, subdivision 8.

(b) Residential support services must meet the following criteria:

- (1) providers of residential support services must own or control the residential site;
- (2) the residential site must not be the primary residence of the license holder;
- (3) the residential site must have a designated program supervisor responsible for program oversight, development, and implementation of policies and procedures;
- (4) the provider of residential support services must provide supervision, training, and assistance as described in the person's community support plan; and
- (5) the provider of residential support services must meet the requirements of licensure and additional requirements of the person's community support plan.

(c) Providers of residential support services that meet the definition in paragraph (a) must be registered using a process determined by the commissioner beginning July 1, 2009. Providers licensed to provide child foster care under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, and that meet the requirements in section 245A.03, subdivision 7, paragraph (e), are considered registered under this section.

Sec. 23. Minnesota Statutes 2010, section 256B.096, subdivision 5, is amended to read:

Subd. 5. **Biennial report.** (a) The commissioner shall provide a biennial report to the chairs of the legislative committees with jurisdiction over health and human services policy and funding beginning January 15, 2009, on the development and activities of the quality management, assurance, and improvement system designed to meet the federal requirements under the home and community-based services waiver programs for persons with disabilities. By January 15, 2008, the commissioner shall provide a preliminary report on priorities for meeting the federal requirements, progress on development and field testing of the annual survey, appropriations necessary to implement an annual survey of service recipients once field testing is completed, recommendations for improvements in the incident reporting system, and a plan for incorporating quality assurance efforts under section 256B.095 and other regional efforts into the statewide system.

(b) This subdivision expires January 1, 2013.

Sec. 24. Minnesota Statutes 2010, section 256B.441, subdivision 13, is amended to read:

Subd. 13. **External fixed costs.** "External fixed costs" means costs related to the nursing home surcharge under section 256.9657, subdivision 1; licensure fees under section 144.122; long-term care consultation fees under section 256B.0911, subdivision 6; family advisory council fee under section 144A.33; scholarships under section 256B.431, subdivision 36; planned closure rate adjustments under section ~~256B.436~~ or 256B.437; or single bed room incentives under section 256B.431, subdivision 42; property taxes and property insurance; and PERA.

Sec. 25. Minnesota Statutes 2010, section 256B.441, subdivision 31, is amended to read:

Subd. 31. **Prior system operating cost payment rate.** "Prior system operating cost payment rate" means the operating cost payment rate in effect on September 30, 2008, under Minnesota Rules and Minnesota Statutes, not including planned closure rate adjustments under section ~~256B.436~~ or 256B.437, or single bed room incentives under section 256B.431, subdivision 42.

Sec. 26. Minnesota Statutes 2010, section 256B.441, subdivision 53, is amended to read:

Subd. 53. **Calculation of payment rate for external fixed costs.** The commissioner shall calculate a payment rate for external fixed costs.

(a) For a facility licensed as a nursing home, the portion related to section 256.9657 shall be equal to \$8.86. For a facility licensed as both a nursing home and a boarding care home, the portion related to section 256.9657 shall be equal to \$8.86 multiplied by the result of its number of nursing home beds divided by its total number of licensed beds.

(b) The portion related to the licensure fee under section 144.122, paragraph (d), shall be the amount of the fee divided by actual resident days.

(c) The portion related to scholarships shall be determined under section 256B.431, subdivision 36.

(d) The portion related to long-term care consultation shall be determined according to section 256B.0911, subdivision 6.

(e) The portion related to development and education of resident and family advisory councils under section 144A.33 shall be \$5 divided by 365.

(f) The portion related to planned closure rate adjustments shall be as determined under ~~sections 256B.436 and section 256B.437, subdivision 6, and Minnesota Statutes 2010, section 256B.436.~~ Planned closure rate adjustments that take effect before October 1, 2014, shall no longer be included in the payment rate for external fixed costs beginning October 1, 2016. Planned closure rate adjustments that take effect on or after October 1, 2014, shall no longer be included in the payment rate for external fixed costs beginning on October 1 of the first year not less than two years after their effective date.

(g) The portions related to property insurance, real estate taxes, special assessments, and payments made in lieu of real estate taxes directly identified or allocated to the nursing facility shall be the actual amounts divided by actual resident days.

(h) The portion related to the Public Employees Retirement Association shall be actual costs divided by resident days.

(i) The single bed room incentives shall be as determined under section 256B.431, subdivision 42. Single bed room incentives that take effect before October 1, 2014, shall no longer be included in the payment rate for external fixed costs beginning October 1, 2016. Single bed room incentives that take effect on or after October 1, 2014, shall no longer be included in the payment rate for external fixed costs beginning on October 1 of the first year not less than two years after their effective date.

(j) The payment rate for external fixed costs shall be the sum of the amounts in paragraphs (a) to (i).

Sec. 27. Minnesota Statutes 2010, section 256B.49, subdivision 21, is amended to read:

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

- (1) receiving those services;
- (2) screened and waiting for waiver services; and

(3) residing in nursing facilities and are under age 65.

(b) This subdivision expires January 1, 2013.

Sec. 28. Minnesota Statutes 2011 Supplement, section 626.557, subdivision 9, is amended to read:

Subd. 9. **Common entry point designation.** (a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment. The common entry point shall use a standard intake form that includes:

- (1) the time and date of the report;
- (2) the name, address, and telephone number of the person reporting;
- (3) the time, date, and location of the incident;
- (4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;
- (5) whether there was a risk of imminent danger to the alleged victim;
- (6) a description of the suspected maltreatment;
- (7) the disability, if any, of the alleged victim;
- (8) the relationship of the alleged perpetrator to the alleged victim;
- (9) whether a facility was involved and, if so, which agency licenses the facility;
- (10) any action taken by the common entry point;
- (11) whether law enforcement has been notified;
- (12) whether the reporter wishes to receive notification of the initial and final reports; and
- (13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The common entry point is not required to complete each item on the form prior to dispatching the report to the appropriate lead investigative agency.

(d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead investigative agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

(f) The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

~~(g) When a centralized database is available, the common entry point has access to the centralized database and must log the reports into the database. The commissioner of human services shall maintain a centralized database for the collection of common entry point data, lead investigative agency data including maltreatment report disposition, and appeals data.~~

Sec. 29. Minnesota Statutes 2011 Supplement, section 626.5572, subdivision 13, is amended to read:

Subd. 13. **Lead investigative agency.** "Lead investigative agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead investigative agency for facilities or services licensed or required to be licensed as hospitals, home care providers, nursing homes, boarding care homes, hospice providers, residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Health for the care of vulnerable adults. "Home care provider" has the meaning provided in section 144A.43, subdivision 4, and applies when care or services are delivered in the vulnerable adult's home, whether a private home or a housing with services establishment registered under chapter 144D, including those that offer assisted living services under chapter 144G.

(b) Except as provided under paragraph (c), for services licensed according to chapter 245D, the Department of Human Services is the lead investigative agency for facilities or services licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, family adult day services, mental health programs, mental health clinics, chemical dependency programs, the Minnesota sex offender program, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Human Services.

(c) The county social service agency or its designee is the lead investigative agency for all other reports, including, but not limited to, reports involving vulnerable adults receiving services from a personal care provider organization under section 256B.0659, or receiving home and community-based services licensed by the Department of Human Services and subject to chapter 245D.

Sec. 30. Laws 2009, chapter 79, article 8, section 81, as amended by Laws 2010, chapter 352, article 1, section 24, is amended to read:

Sec. 81. **ESTABLISHING A SINGLE SET OF STANDARDS.**

(a) The commissioner of human services shall consult with disability service providers, advocates, counties, and consumer families to develop a single set of standards, to be referred to as "quality outcome standards," governing services for people with disabilities receiving services under the home and community-based waiver services program, with the exception of customized living services because the service license is under the jurisdiction of the Department of Health, to replace all or portions of existing laws and rules including, but not limited to, data practices, licensure of facilities and providers, background studies, reporting of maltreatment of minors, reporting of maltreatment of vulnerable adults, and the psychotropic medication checklist. The standards must:

- (1) enable optimum consumer choice;
- (2) be consumer driven;



(3) link services to individual needs and life goals;

(4) be based on quality assurance and individual outcomes;

(5) utilize the people closest to the recipient, who may include family, friends, and health and service providers, in conjunction with the recipient's risk management plan to assist the recipient or the recipient's guardian in making decisions that meet the recipient's needs in a cost-effective manner and assure the recipient's health and safety;

(6) utilize person-centered planning; and

(7) maximize federal financial participation.

(b) The commissioner may consult with existing stakeholder groups convened under the commissioner's authority, including the home and community-based expert services panel established by the commissioner in 2008, to meet all or some of the requirements of this section.

(c) The commissioner shall provide the reports and plans required by this section to the legislative committees and budget divisions with jurisdiction over health and human services policy and finance by January 15, 2012.

Sec. 31. **DISABILITY HOME AND COMMUNITY-BASED WAIVER REQUEST.**

By December 1, 2012, the commissioner shall request all federal approvals and waiver amendments to the disability home and community-based waivers to allow properly licensed adult foster care homes to provide residential services for up to five individuals.

**EFFECTIVE DATE.** This section is effective July 1, 2012.

Sec. 32. **HOURLY NURSING DETERMINATION MATRIX.**

A service provider applying for medical assistance payments for private duty nursing services under Minnesota Statutes, section 256B.0654, must complete and submit to the commissioner of human services an hourly nursing determination matrix for each recipient of private duty nursing services. The commissioner of human services will collect and analyze data from the hourly nursing determination matrix.

Sec. 33. **REPEALER.**

(a) Minnesota Statutes 2010, sections 256B.431, subdivisions 2c, 2g, 2i, 2j, 2k, 2l, 2o, 3c, 11, 14, 17b, 17f, 19, 20, 25, 27, and 29; 256B.434, subdivisions 4a, 4b, 4c, 4d, 4e, 4g, 4h, 7, and 8; 256B.435; and 256B.436, are repealed.

(b) Minnesota Statutes 2011 Supplement, section 256B.431, subdivision 26, is repealed.

(c) Minnesota Rules, part 9555.7700, is repealed.

ARTICLE 10  
TELEPHONE EQUIPMENT PROGRAM

Section 1. Minnesota Statutes 2010, section 237.50, is amended to read:

**237.50 DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in sections 237.50 to 237.56 have the meanings given them in this section.

Subd. 3. **Communication impaired disability.** "~~Communication impaired disability~~" means certified as ~~deaf, severely hearing impaired, hard of hearing~~ having a hearing loss, ~~speech impaired, deaf and blind disability, or mobility impaired if the mobility impairment significantly impedes the ability~~ physical disability that makes it difficult or impossible to use standard customer premises telecommunications services and equipment.

Subd. 4. ~~Communication device.~~ "Communication device" means a device that when connected to a telephone enables a communication impaired person to communicate with another person utilizing the telephone system. A "communication device" includes a ring signaler, an amplification device, a telephone device for the deaf, a Braille device for use with a telephone, and any other device the Department of Human Services deems necessary.

Subd. 4a. **Deaf.** "Deaf" means a hearing ~~impairment~~ loss of such severity that the individual must depend primarily upon visual communication such as writing, lip reading, ~~manual communication~~ sign language, and gestures.

Subd. 4b. **Deafblind.** "Deafblind" means any combination of vision and hearing loss which interferes with acquiring information from the environment to the extent that compensatory strategies and skills are necessary to access that or other information.

Subd. 5. ~~Exchange.~~ "Exchange" means a unit area established and described by the tariff of a telephone company for the administration of telephone service in a specified geographical area, usually embracing a city, town, or village and its environs, and served by one or more central offices, together with associated facilities used in providing service within that area.

Subd. 6. **Fund.** "Fund" means the telecommunications access Minnesota fund established in section 237.52.

Subd. 6a. **Hard-of-hearing.** "Hard-of-hearing" means a hearing ~~impairment~~ loss resulting in a functional ~~loss~~ limitation, but not to the extent that the individual must depend primarily upon visual communication.

Subd. 7. ~~Interexchange service.~~ "Interexchange service" means telephone service between points in two or more exchanges.

Subd. 8. ~~Inter-LATA interexchange service.~~ "Inter LATA interexchange service" means interexchange service originating and terminating in different LATAs.

Subd. 9. ~~Local access and transport area.~~ "Local access and transport area (LATA)" means a geographical area designated by the Modification of Final Judgment in U.S. v. Western Electric Co., Inc., 552 F. Supp. 131 (D. D. C. 1982), including modifications in effect on the effective date of sections 237.51 to 237.54.

Subd. 10. ~~Local exchange service.~~ "Local exchange service" means telephone service between points within an exchange.

Subd. 10a. **Telecommunications device.** "Telecommunications device" means a device that (1) allows a person with a communication disability to have access to telecommunications services as defined in subdivision 13, and (2) is specifically selected by the Department of Human Services for its capacity to allow persons with communication disabilities to use telecommunications services in a manner that is functionally equivalent to the ability of an individual who does not have a communication disability. A telecommunications device may include a ring signaler, an amplified telephone, a hands-free telephone, a text telephone, a captioned telephone, a wireless device, a device that produces Braille output for use with a telephone, and any other device the Department of Human Services deems appropriate.

Subd. 11. ~~Telecommunication~~ **Telecommunications Relay service Services.** "Telecommunication Telecommunications Relay service Services" or "TRS" means a central statewide service through which a communication impaired person, using a communication device, may send and receive messages to and from a non-communication impaired person whose telephone is not equipped with a communication device and through which a non-communication impaired person may, by using voice communication, send and receive messages to and from a communication impaired person the telecommunications transmission services required under Federal Communications Commission (FCC) regulations at Code of Federal Regulations, title 47, sections 64.604 to 64.606. TRS allows an individual who has a communication disability to use telecommunications services in a manner that is functionally equivalent to the ability of an individual who does not have a communication disability.

Subd. 12. **Telecommunications.** "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Subd. 13. **Telecommunications services.** "Telecommunications services" means the offering of telecommunications for fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

Sec. 2. Minnesota Statutes 2010, section 237.51, is amended to read:

**237.51 TELECOMMUNICATIONS ACCESS MINNESOTA PROGRAM ADMINISTRATION.**

Subdivision 1. **Creation.** The commissioner of commerce shall:

(1) administer through interagency agreement with the commissioner of human services a program to distribute ~~communication~~ telecommunications devices to eligible ~~communication impaired~~ persons who have communication disabilities; and

(2) contract with a one or more qualified ~~vendor~~ vendors that ~~serves communication impaired~~ serve persons who have communication disabilities to ~~create and maintain a telecommunication~~ provide telecommunications relay service services.

For purposes of sections 237.51 to 237.56, the Department of Commerce and any organization with which it contracts pursuant to this section or section 237.54, subdivision 2, are not telephone companies or telecommunications carriers as defined in section 237.01.

Subd. 5. **Commissioner of commerce duties.** In addition to any duties specified elsewhere in sections 237.51 to 237.56, the commissioner of commerce shall:

(1) prepare the reports required by section 237.55;

(2) administer the fund created in section 237.52; and

(3) adopt rules under chapter 14 to implement the provisions of sections 237.50 to 237.56.

Subd. 5a. ~~Department~~ **Commissioner of human services duties.** (a) In addition to any duties specified elsewhere in sections 237.51 to 237.56, the commissioner of human services shall:

(1) define economic hardship, special needs, and household criteria so as to determine the priority of eligible applicants for initial distribution of devices and to determine circumstances necessitating provision of more than one ~~communication~~ telecommunications device per household;

(2) establish a method to verify eligibility requirements;

(3) establish specifications for ~~communication~~ telecommunications devices to be ~~purchased~~ provided under section 237.53, subdivision 3; ~~and~~

(4) inform the public and specifically ~~the community of communication-impaired~~ persons who have communication disabilities of the program; ~~and~~

(5) provide devices based on the assessed need of eligible applicants.

(b) The commissioner may establish an advisory board to advise the department in carrying out the duties specified in this section and to advise the commissioner of commerce in carrying out duties under section 237.54. If so established, the advisory board must include, at a minimum, the following ~~communication-impaired~~ persons:

(1) at least one member who is deaf;

(2) at least one member who ~~is~~ has a speech impaired disability;

(3) at least one member who ~~is mobility-impaired~~ has a physical disability that makes it difficult or impossible for the person to access telecommunications services; and

(4) at least one member who is hard-of-hearing.

The membership terms, compensation, and removal of members and the filling of membership vacancies are governed by section 15.059. Advisory board meetings shall be held at the discretion of the commissioner.

Sec. 3. Minnesota Statutes 2010, section 237.52, is amended to read:

**237.52 TELECOMMUNICATIONS ACCESS MINNESOTA FUND.**

Subdivision 1. **Fund established.** A telecommunications access Minnesota fund is established as an account in the state treasury. Earnings, such as interest, dividends, and any other earnings arising from fund assets, must be credited to the fund.

Subd. 2. **Assessment.** (a) The commissioner of commerce, the commissioner of employment and economic development, and the commissioner of human services shall annually recommend to the Public Utilities Commission (PUC) an adequate and appropriate surcharge and budget to implement sections 237.50 to 237.56, 248.062, and 256C.30, respectively. The maximum annual budget for section 248.062 must not exceed \$100,000 and for section 256C.30 must not exceed \$300,000. The Public Utilities Commission shall review the budgets for reasonableness and may modify the budget to the extent it is unreasonable. The commission shall annually determine the funding mechanism to be used within 60 days of receipt of the recommendation of the departments and shall order the imposition of surcharges effective on the earliest practicable date. The commission shall establish a monthly charge no greater than 20 cents for each customer access line, including trunk equivalents as designated by the commission pursuant to section 403.11, subdivision 1.

(b) If the fund balance falls below a level capable of fully supporting all programs eligible under subdivision 5 and sections 248.062 and 256C.30, expenditures under sections 248.062 and 256C.30 shall be reduced on a pro rata basis and expenditures under sections 237.53 and 237.54 shall be fully funded. Expenditures under sections 248.062 and 256C.30 shall resume at fully funded levels when the commissioner of commerce determines there is a sufficient fund balance to fully fund those expenditures.

Subd. 3. **Collection.** Every ~~telephone company or communications carrier that provides service~~ provider of services capable of originating a ~~telecommunications relay~~ TRS call, including cellular communications and other nonwire access services, in this state shall collect the charges established by the commission under subdivision 2 and transfer amounts collected to the commissioner of public safety in the same manner as provided in section 403.11, subdivision 1, paragraph (d). The commissioner of public safety must deposit the receipts in the fund established in subdivision 1.

Subd. 4. **Appropriation.** Money in the fund is appropriated to the commissioner of commerce to implement sections 237.51 to 237.56, to the commissioner of employment and economic development to implement section 248.062, and to the commissioner of human services to implement section 256C.30.

Subd. 5. **Expenditures.** (a) Money in the fund may only be used for:

(1) expenses of the Department of Commerce, including personnel cost, public relations, advisory board members' expenses, preparation of reports, and other reasonable expenses not to exceed ten percent of total program expenditures;

(2) reimbursing the commissioner of human services for purchases made or services provided pursuant to section 237.53;

(3) reimbursing telephone companies for purchases made or services provided under section 237.53, subdivision 5; and

(4) contracting for ~~establishment and operation of the telecommunication relay service~~ the provision of TRS required by section 237.54.

(b) All costs directly associated with the establishment of the program, the purchase and distribution of ~~communication~~ telecommunications devices, and the ~~establishment and operation of the telecommunication relay service~~ provision of TRS are either reimbursable or directly payable from the fund after authorization by the commissioner of commerce. The commissioner of commerce shall contract with ~~the message relay service operator~~ one or more TRS providers to indemnify the ~~local exchange carriers of the relay telecommunications service providers~~ for any fines imposed by the Federal Communications Commission related to the failure of the relay service to comply with federal service standards. Notwithstanding section 16A.41, the commissioner may advance money to the ~~contractor of the telecommunication relay service~~ TRS providers if the ~~contractor~~ providers ~~establish~~ establish to the commissioner's satisfaction that the advance payment is necessary for the ~~operation~~ provision of the service. The advance payment may be used only for working capital reserve for the operation of the service. The advance payment must be offset or repaid by the end of the contract fiscal year together with interest accrued from the date of payment.

Sec. 4. Minnesota Statutes 2010, section 237.53, is amended to read:

**237.53 COMMUNICATION TELECOMMUNICATIONS DEVICE.**

Subdivision 1. **Application.** A person applying for a ~~communication~~ telecommunications device under this section must apply to the program administrator on a form prescribed by the Department of Human Services.

Subd. 2. **Eligibility.** To be eligible to obtain a ~~communication~~ telecommunications device under this section, a person must ~~be~~:

(1) be able to benefit from and use the equipment for its intended purpose;

(2) have a communication impaired disability;

(3) be a resident of the state;

(4) be a resident in a household that has a median income at or below the applicable median household income in the state, except a deaf and blind person who is deafblind applying for a telebraille unit Braille device may reside in a household that has a median income no more than 150 percent of the applicable median household income in the state; and

(5) be a resident in a household that has telephone telecommunications service or that has made application for service and has been assigned a telephone number; or a resident in a residential care facility, such as a nursing home or group home where telephone telecommunications service is not included as part of overall service provision.

Subd. 3. **Distribution.** The commissioner of human services shall purchase and distribute a sufficient number of ~~communication~~ telecommunications devices so that each eligible household receives ~~an appropriate device~~ devices as determined under section 237.51, subdivision 5a. The commissioner of human services shall distribute the devices to eligible households ~~in each service area free of charge as determined under section 237.51, subdivision 5a.~~

Subd. 4. **Training; maintenance.** The commissioner of human services shall maintain the ~~communication~~ telecommunications devices until the warranty period expires, and provide training, without charge, to first-time users of the devices.

~~Subd. 5. **Wiring installation.** If a communication impaired person is not served by telephone service and is subject to economic hardship as determined by the Department of Human Services, the telephone company providing local service shall at the direction of the administrator of the program install necessary outside wiring without charge to the household.~~

Subd. 6. **Ownership.** ~~All communication~~ Telecommunications devices purchased pursuant to subdivision 3 ~~will become~~ are the property of the state of Minnesota. Policies and procedures for the return of devices from individuals who withdraw from the program or whose eligibility status changes shall be determined by the commissioner of human services.

Subd. 7. **Standards.** The ~~communication~~ telecommunications devices distributed under this section must comply with the electronic industries ~~association~~ alliance standards and be approved by the Federal Communications Commission. The commissioner of human services must provide each eligible person a choice of several models of devices, the retail value of which may not exceed \$600 for a ~~communication device for the deaf text telephone,~~ and a retail value of \$7,000 for a ~~telebraille~~ Braille device, or an amount authorized by the Department of Human Services for ~~a telephone device for the deaf with auxiliary equipment~~ all other telecommunications devices and auxiliary equipment it deems cost-effective and appropriate to distribute according to sections 237.51 to 237.56.

Sec. 5. Minnesota Statutes 2010, section 237.54, is amended to read:

**237.54 TELECOMMUNICATION TELECOMMUNICATIONS RELAY SERVICE SERVICES (TRS).**

Subd. 2. **Operation.** (a) The commissioner of commerce shall contract with ~~a one or more~~ one or more qualified ~~vendor~~ vendors for the ~~operation and maintenance of the telecommunication relay system~~ provision of Telecommunications Relay Services (TRS).

(b) ~~The telecommunication relay service provider~~ TRS providers shall operate the relay service within the state of Minnesota. ~~The operator of the system~~ TRS providers shall ~~keep all messages confidential, shall train personnel in the unique needs of communication impaired people, and shall inform communication impaired persons and the public of the availability and use of the system.~~ Except in the case of a speech or mobility impaired person, the operator shall not relay a message unless it originates or terminates through a communication device for the deaf or a Braille device for use with a telephone comply with all current and subsequent FCC regulations at Code of Federal Regulations, title 47, sections 64.601 to 64.606, and shall inform persons who have communication disabilities and the public of the availability and use of TRS.

Sec. 6. Minnesota Statutes 2010, section 237.55, is amended to read:

#### **237.55 ANNUAL REPORT ON COMMUNICATION TELECOMMUNICATIONS ACCESS.**

The commissioner of commerce must prepare a report for presentation to the Public Utilities Commission by January 31 of each year. Each report must review the accessibility of ~~the telephone system to communication impaired persons, review the ability of non communication impaired persons to communicate with communication impaired persons via the telephone system~~ telecommunications services to persons who have communication disabilities, describe services provided, account for ~~money received and disbursed annually~~ annual revenues and expenditures for each aspect of the program fund to date, and include predicted program future operation.

Sec. 7. Minnesota Statutes 2010, section 237.56, is amended to read:

#### **237.56 ADEQUATE SERVICE ENFORCEMENT.**

The services required to be provided under sections 237.50 to 237.55 may be enforced under section 237.081 upon a complaint of at least two ~~communication impaired~~ persons within the service area of any one ~~telephone company~~ telecommunications service provider, provided that if only one person within the service area of a company is receiving service under sections 237.50 to 237.55, the ~~commission~~ Public Utilities Commission may proceed upon a complaint from that person.

### ARTICLE 11 COMPREHENSIVE ASSESSMENT AND CASE MANAGEMENT REFORM

Section 1. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 56, is amended to read:

Subd. 56. **Medical service coordination.** (a) Medical assistance covers in-reach community-based service coordination that is performed ~~in~~ through a hospital emergency department as an eligible procedure under a state healthcare program ~~or private insurance~~ for a frequent user. A frequent user is defined as an individual who has frequented the hospital emergency department for services three or more times in the previous four consecutive months. In-reach community-based service coordination includes navigating services to address a client's mental health, chemical health, social, economic, and housing needs, or any other activity targeted at reducing the incidence of emergency room and other nonmedically necessary health care utilization.

(b) Reimbursement must be made in 15-minute increments ~~under current Medicaid mental health social work reimbursement methodology~~ and allowed for up to 60 days posthospital discharge based upon the specific identified emergency department visit or inpatient admitting event. ~~A frequent user who is participating in care coordination within a health care home framework is ineligible for reimbursement under this subdivision.~~ In-reach community-based service coordination shall seek to connect frequent users with existing covered services available to them, including, but not limited to, targeted case management, waiver case management, or care coordination in a health care home. Eligible in-reach service coordinators must hold a minimum of a bachelor's degree in social work, public health, corrections, or a related field. The commissioner shall submit any necessary application for waivers to the Centers for Medicare and Medicaid Services to implement this subdivision.

(c) For the purposes of this subdivision, "in-reach community-based service coordination" means the practice of a community-based worker with training, knowledge, skills, and ability to access a continuum of services, including housing, transportation, chemical and mental health treatment, employment, and peer support services, by working with an organization's staff to transition an individual back into the individual's living environment. In-reach community-based service coordination includes working with the individual during their discharge and for up to a defined amount of time in the individual's living environment, reducing the individual's need for readmittance.

Sec. 2. Minnesota Statutes 2010, section 256B.0659, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in paragraphs (b) to (r) have the meanings given unless otherwise provided in text.

(b) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility, positioning, eating, and toileting.

(c) "Behavior," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section. "Level I behavior" means physical aggression towards self, others, or destruction of property that requires the immediate response of another person.

(d) "Complex health-related needs," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section.

(e) "Critical activities of daily living," effective January 1, 2010, means transferring, mobility, eating, and toileting.

(f) "Dependency in activities of daily living" means a person requires assistance to begin and complete one or more of the activities of daily living.

(g) "Extended personal care assistance service" means personal care assistance services included in a service plan under one of the home and community-based services waivers authorized under sections 256B.0915, 256B.092, subdivision 5, and 256B.49, which exceed the amount, duration, and frequency of the state plan personal care assistance services for participants who:

(1) need assistance provided periodically during a week, but less than daily will not be able to remain in their homes without the assistance, and other replacement services are more expensive or are not available when personal care assistance services are to be terminated; or

(2) need additional personal care assistance services beyond the amount authorized by the state plan personal care assistance assessment in order to ensure that their safety, health, and welfare are provided for in their homes.

(h) "Health-related procedures and tasks" means procedures and tasks that can be delegated or assigned by a licensed health care professional under state law to be performed by a personal care assistant.

(i) "Instrumental activities of daily living" means activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.

(j) "Managing employee" has the same definition as Code of Federal Regulations, title 42, section 455.



(k) "Qualified professional" means a professional providing supervision of personal care assistance services and staff as defined in section 256B.0625, subdivision 19c.

(l) "Personal care assistance provider agency" means a medical assistance enrolled provider that provides or assists with providing personal care assistance services and includes a personal care assistance provider organization, personal care assistance choice agency, class A licensed nursing agency, and Medicare-certified home health agency.

(m) "Personal care assistant" or "PCA" means an individual employed by a personal care assistance agency who provides personal care assistance services.

(n) "Personal care assistance care plan" means a written description of personal care assistance services developed by the personal care assistance provider according to the service plan.

(o) "Responsible party" means an individual who is capable of providing the support necessary to assist the recipient to live in the community.

(p) "Self-administered medication" means medication taken orally, by injection, nebulizer, or insertion, or applied topically without the need for assistance.

(q) "Service plan" means a written summary of the assessment and description of the services needed by the recipient.

(r) "Wages and benefits" means wages and salaries, the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation, mileage reimbursement, health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and contributions to employee retirement accounts.

Sec. 3. Minnesota Statutes 2010, section 256B.0659, subdivision 2, is amended to read:

Subd. 2. **Personal care assistance services; covered services.** (a) The personal care assistance services eligible for payment include services and supports furnished to an individual, as needed, to assist in:

- (1) activities of daily living;
- (2) health-related procedures and tasks;
- (3) observation and redirection of behaviors; and
- (4) instrumental activities of daily living.

(b) Activities of daily living include the following covered services:

(1) dressing, including assistance with choosing, application, and changing of clothing and application of special appliances, wraps, or clothing;

(2) grooming, including assistance with basic hair care, oral care, shaving, applying cosmetics and deodorant, and care of eyeglasses and hearing aids. Nail care is included, except for recipients who are diabetic or have poor circulation;

(3) bathing, including assistance with basic personal hygiene and skin care;

(4) eating, including assistance with hand washing and application of orthotics required for eating, transfers, and feeding;

(5) transfers, including assistance with transferring the recipient from one seating or reclining area to another;

(6) mobility, including assistance with ambulation, including use of a wheelchair. Mobility does not include providing transportation for a recipient;

(7) positioning, including assistance with positioning or turning a recipient for necessary care and comfort; and

(8) toileting, including assistance with helping recipient with bowel or bladder elimination and care including transfers, mobility, positioning, feminine hygiene, use of toileting equipment or supplies, cleansing the perineal area, inspection of the skin, and adjusting clothing.

(c) Health-related procedures and tasks include the following covered services:

(1) range of motion and passive exercise to maintain a recipient's strength and muscle functioning;

(2) assistance with self-administered medication as defined by this section, including reminders to take medication, bringing medication to the recipient, and assistance with opening medication under the direction of the recipient or responsible party, including medications given through a nebulizer;

(3) interventions for seizure disorders, including monitoring and observation; and

(4) other activities considered within the scope of the personal care service and meeting the definition of health-related procedures and tasks under this section.

(d) A personal care assistant may provide health-related procedures and tasks associated with the complex health-related needs of a recipient if the procedures and tasks meet the definition of health-related procedures and tasks under this section and the personal care assistant is trained by a qualified professional and demonstrates competency to safely complete the procedures and tasks. Delegation of health-related procedures and tasks and all training must be documented in the personal care assistance care plan and the recipient's and personal care assistant's files. A personal care assistant must not determine the medication dose or time for medication.

(e) Effective January 1, 2010, for a personal care assistant to provide the health-related procedures and tasks of tracheostomy suctioning and services to recipients on ventilator support there must be:

(1) delegation and training by a registered nurse, certified or licensed respiratory therapist, or a physician;

(2) utilization of clean rather than sterile procedure;

(3) specialized training about the health-related procedures and tasks and equipment, including ventilator operation and maintenance;

(4) individualized training regarding the needs of the recipient; and

(5) supervision by a qualified professional who is a registered nurse.

(f) Effective January 1, 2010, a personal care assistant may observe and redirect the recipient for episodes where there is a need for redirection due to behaviors. Training of the personal care assistant must occur based on the needs of the recipient, the personal care assistance care plan, and any other support services provided.

(g) Instrumental activities of daily living under subdivision 1, paragraph (i).

Sec. 4. Minnesota Statutes 2010, section 256B.0659, subdivision 3a, is amended to read:

Subd. 3a. **Assessment; defined.** (a) "Assessment" means a review and evaluation of a recipient's need for ~~home~~ personal care assistance services conducted in person. Assessments for personal care assistance services shall be conducted by the county public health nurse or a certified public health nurse under contract with the county except when a long-term care consultation assessment is being conducted for the purposes of determining a person's eligibility for home and community-based waiver services including personal care assistance services according to section 256B.0911. An in-person assessment must include: documentation of health status, determination of need, evaluation of service effectiveness, identification of appropriate services, service plan development or modification, coordination of services, referrals and follow-up to appropriate payers and community resources, completion of required reports, recommendation of service authorization, and consumer education. Once the need for personal care assistance services is determined under this section ~~or sections 256B.0651, 256B.0653, 256B.0654, and 256B.0656,~~ the county public health nurse or certified public health nurse under contract with the county is responsible for communicating this recommendation to the commissioner and the recipient. An in-person assessment must occur at least annually or when there is a significant change in the recipient's condition or when there is a change in the need for personal care assistance services. A service update may substitute for the annual face-to-face assessment when there is not a significant change in recipient condition or a change in the need for personal care assistance service. A service update may be completed by telephone, used when there is no need for an increase in personal care assistance services, and used for two consecutive assessments if followed by a face-to-face assessment. A service update must be completed on a form approved by the commissioner. A service update or review for temporary increase includes a review of initial baseline data, evaluation of service effectiveness, redetermination of service need, modification of service plan and appropriate referrals, update of initial forms, obtaining service authorization, and on going consumer education. Assessments or reassessments must be completed on forms provided by the commissioner within 30 days of a request for home care services by a recipient or responsible party ~~or personal care provider agency.~~

(b) This subdivision expires when notification is given by the commissioner as described in section 256B.0911, subdivision 3a.

Sec. 5. Minnesota Statutes 2010, section 256B.0659, subdivision 4, is amended to read:

Subd. 4. **Assessment for personal care assistance services; limitations.** (a) An assessment as defined in subdivision 3a must be completed for personal care assistance services.

(b) The following limitations apply to the assessment:

(1) a person must be assessed as dependent in an activity of daily living based on the person's daily need or need on the days during the week the activity is completed for:

(i) cuing and constant supervision to complete the task; or

(ii) hands-on assistance to complete the task; and

(2) a child may not be found to be dependent in an activity of daily living if because of the child's age an adult would either perform the activity for the child or assist the child with the activity. Assistance needed is the assistance appropriate for a typical child of the same age.

(c) Assessment for complex health-related needs must meet the criteria in this paragraph. ~~During the assessment process,~~ A recipient qualifies as having complex health-related needs if the recipient has one or more of the interventions that are ordered by a physician, specified in a personal care assistance care plan or community support plan developed under section 256B.0911, and found in the following:

- (1) tube feedings requiring:
  - (i) a gastrojejunostomy tube; or
  - (ii) continuous tube feeding lasting longer than 12 hours per day;
- (2) wounds described as:
  - (i) stage III or stage IV;
  - (ii) multiple wounds;
  - (iii) requiring sterile or clean dressing changes or a wound vac; or
  - (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require specialized care;
- (3) parenteral therapy described as:
  - (i) IV therapy more than two times per week lasting longer than four hours for each treatment; or
  - (ii) total parenteral nutrition (TPN) daily;
- (4) respiratory interventions, including:
  - (i) oxygen required more than eight hours per day;
  - (ii) respiratory vest more than one time per day;
  - (iii) bronchial drainage treatments more than two times per day;
  - (iv) sterile or clean suctioning more than six times per day;
  - (v) dependence on another to apply respiratory ventilation augmentation devices such as BiPAP and CPAP; and
  - (vi) ventilator dependence under section 256B.0652;
- (5) insertion and maintenance of catheter, including:
  - (i) sterile catheter changes more than one time per month;
  - (ii) clean intermittent catheterization, and including self-catheterization more than six times per day; or
  - (iii) bladder irrigations;
- (6) bowel program more than two times per week requiring more than 30 minutes to perform each time;
- (7) neurological intervention, including:
  - (i) seizures more than two times per week and requiring significant physical assistance to maintain safety; or

(ii) swallowing disorders diagnosed by a physician and requiring specialized assistance from another on a daily basis; and

(8) other congenital or acquired diseases creating a need for significantly increased direct hands-on assistance and interventions in six to eight activities of daily living.

(d) An assessment of behaviors must meet the criteria in this paragraph. A recipient qualifies as having a need for assistance due to behaviors if the recipient's behavior requires assistance at least four times per week and shows one or more of the following behaviors:

(1) physical aggression towards self or others, or destruction of property that requires the immediate response of another person;

(2) increased vulnerability due to cognitive deficits or socially inappropriate behavior; or

(3) increased need for assistance for recipients who are verbally aggressive and or resistive to care so that the time needed to perform activities of daily living is increased.

Sec. 6. Minnesota Statutes 2010, section 256B.0911, subdivision 1, is amended to read:

Subdivision 1. **Purpose and goal.** (a) The purpose of long-term care consultation services is to assist persons with long-term or chronic care needs in making ~~long-term~~ care decisions and selecting support and service options that meet their needs and reflect their preferences. The availability of, and access to, information and other types of assistance, including assessment and support planning, is also intended to prevent or delay ~~certified nursing facility institutional~~ placements and to provide access to transition assistance after admission. Further, the goal of these services is to contain costs associated with unnecessary ~~certified nursing facility institutional~~ admissions. Long-term consultation services must be available to any person regardless of public program eligibility. The commissioner of human services shall seek to maximize use of available federal and state funds and establish the broadest program possible within the funding available.

(b) These services must be coordinated with long-term care options counseling provided under section 256.975, subdivision 7, and section 256.01, subdivision 24, ~~for telephone assistance and follow up and to offer a variety of cost effective alternatives to persons with disabilities and elderly persons.~~ The county or tribal lead agency or managed care plan providing long-term care consultation services shall encourage the use of volunteers from families, religious organizations, social clubs, and similar civic and service organizations to provide community-based services.

Sec. 7. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 1a, is amended to read:

Subd. 1a. **Definitions.** For purposes of this section, the following definitions apply:

(a) Until additional requirements apply under paragraph (b). "long-term care consultation services" means:

(1) intake for and access to assistance in identifying services needed to maintain an individual in the most inclusive environment;

(2) providing recommendations ~~on~~ for and referrals to cost-effective community services that are available to the individual;

(3) development of an individual's person-centered community support plan;

(4) providing information regarding eligibility for Minnesota health care programs;

(5) face-to-face long-term care consultation assessments, which may be completed in a hospital, nursing facility, intermediate care facility for persons with developmental disabilities (ICF/DDs), regional treatment centers, or the person's current or planned residence;

(6) federally mandated preadmission screening to determine the need for an institutional level of care under subdivision 4a activities described under subdivisions 4a and 4b;

(7) determination of home and community-based waiver and other service eligibility as required under sections 256B.0913, 256B.0915, and 256B.49, including level of care determination for individuals who need an institutional level of care as determined under section 256B.0911, subdivision 4a, paragraph (d), or 256B.092, service eligibility including state plan home care services identified in sections 256B.0625, subdivisions 6, 7, and 19, paragraphs (a) and (c), and 256B.0657, based on assessment and community support plan development with appropriate referrals to obtain necessary diagnostic information, and including the option an eligibility determination for consumer-directed community supports;

(8) providing recommendations for ~~nursing facility~~ institutional placement when there are no cost-effective community services available; ~~and~~

(9) providing access to assistance to transition people back to community settings after ~~facility~~ institutional admission; ~~and~~

(10) providing information about competitive employment, with or without supports, for school-age youth and working-age adults and referrals to the Disability Linkage Line and Disability Benefits 101 to ensure that an informed choice about competitive employment can be made. For the purposes of this subdivision, "competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(b) Upon statewide implementation of lead agency requirements in subdivisions 2b, 2c, and 3a, "long-term care consultation services" also means:

(1) service eligibility determination for state plan home care services identified in:

(i) section 256B.0625, subdivisions 7, 19a, and 19c;

(ii) section 256B.0657; or

(iii) consumer support grants under section 256.476;

(2) notwithstanding provisions in Minnesota Rules, parts 9525.0004 to 9525.0024, determination of eligibility for case management services available under sections 256B.0621, subdivision 2, paragraph (4), and 256B.0924 and Minnesota Rules, part 9525.0016;

(3) determination of institutional level of care, home and community-based service waiver, and other service eligibility as required under section 256B.092, determination of eligibility for family support grants under section 252.32, semi-independent living services under section 252.275, and day training and habilitation services under section 256B.092; and

(4) obtaining necessary diagnostic information to determine eligibility under clauses (2) and (3).

~~(b)~~ (c) "Long-term care options counseling" means the services provided by the linkage lines as mandated by sections 256.01 and 256.975, subdivision 7, and also includes telephone assistance and follow up once a long-term care consultation assessment has been completed.

~~(e)~~ (d) "Minnesota health care programs" means the medical assistance program under chapter 256B and the alternative care program under section 256B.0913.

~~(d)~~ (e) "Lead agencies" means counties administering or a collaboration of counties, tribes, and health plans administering under contract with the commissioner to administer long-term care consultation assessment and support planning services.

Sec. 8. Minnesota Statutes 2010, section 256B.0911, subdivision 2b, is amended to read:

Subd. 2b. **Certified assessors.** ~~(a) Beginning January 1, 2011,~~ Each lead agency shall use certified assessors who have completed training and the certification processes determined by the commissioner in subdivision 2c. Certified assessors shall demonstrate best practices in assessment and support planning including person-centered planning principals and have a common set of skills that must ensure consistency and equitable access to services statewide. ~~Assessors must be part of a multidisciplinary team of professionals that includes public health nurses, social workers, and other professionals as defined in paragraph (b). For persons with complex health care needs, a public health nurse or registered nurse from a multidisciplinary team must be consulted.~~ A lead agency may choose, according to departmental policies, to contract with a qualified, certified assessor to conduct assessments and reassessments on behalf of the lead agency.

(b) Certified assessors are persons with a minimum of a bachelor's degree in social work, nursing with a public health nursing certificate, or other closely related field with at least one year of home and community-based experience, or a ~~two-year~~ registered ~~nursing degree~~ nurse without public health certification with at least ~~three~~ two years of home and community-based experience that ~~have~~ has received training and certification specific to assessment and consultation for long-term care services in the state.

Sec. 9. Minnesota Statutes 2010, section 256B.0911, subdivision 2c, is amended to read:

Subd. 2c. **Assessor training and certification.** The commissioner shall develop and implement a curriculum and an assessor certification process ~~to begin no later than January 1, 2010.~~ All existing lead agency staff designated to provide the services defined in subdivision 1a must be certified ~~by December 30, 2010.~~ within timelines specified by the commissioner, but no sooner than six months after statewide availability of the training and certification process. The commissioner must establish the timelines for training and certification in a manner that allows lead agencies to most efficiently adopt the automated process established in subdivision 5. Each lead agency is required to ensure that they have sufficient numbers of certified assessors to provide long-term consultation assessment and support planning within the timelines and parameters of the service ~~by January 1, 2011.~~ Certified assessors are required to be recertified every three years.

Sec. 10. Minnesota Statutes 2010, section 256B.0911, subdivision 3, is amended to read:

Subd. 3. **Long-term care consultation team.** ~~(a) Until January 1, 2011,~~ A long-term care consultation team shall be established by the county board of commissioners. ~~Each local consultation team shall consist of at least one social worker and at least one public health nurse from their respective county agencies. The board may designate public health or social services as the lead agency for long-term care consultation services. If a county does not have a public health nurse available, it may request approval from the commissioner to assign a county registered nurse with at least one year experience in home care to participate on the team.~~ Two or more counties may collaborate to establish a joint local consultation team or teams.

(b) Certified assessors must be part of a multidisciplinary long-term care consultation team of professionals that includes public health nurses, social workers, and other professionals as defined in subdivision 2b, paragraph (b). The team is responsible for providing long-term care consultation services to all persons located in the county who request the services, regardless of eligibility for Minnesota health care programs.

(c) The commissioner shall allow arrangements and make recommendations that encourage counties and tribes to collaborate to establish joint local long-term care consultation teams to ensure that long-term care consultations are done within the timelines and parameters of the service. This includes integrated service models as required in subdivision 1, paragraph (b).

(d) Tribes and health plans under contract with the commissioner must provide long-term care consultation services as specified in the contract.

(e) The lead agency must provide the commissioner with an administrative contact for communication purposes.

Sec. 11. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 3a, is amended to read:

Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment, services planning, or other assistance intended to support community-based living, including persons who need assessment in order to determine waiver or alternative care program eligibility, must be visited by a long-term care consultation team within ~~15~~ 20 calendar days after the date on which an assessment was requested or recommended. ~~After January 1, 2011, these requirements also apply to~~ Upon statewide implementation of subdivisions 2b, 2c, and 5, this requirement also applies to an assessment of a person requesting personal care assistance services, and private duty nursing, and home health agency services, on timelines established in subdivision 5. The commissioner shall provide at least a 90-day notice to lead agencies prior to the effective date of this requirement. Face-to-face assessments must be conducted according to paragraphs (b) to (i).

(b) The ~~county~~ lead agency may utilize a team of either the social worker or public health nurse, or both. ~~After January 1, 2011~~ Upon implementation of subdivisions 2b, 2c, and 5, lead agencies shall use certified assessors to conduct the ~~assessment in a face to face interview assessment.~~ The consultation team members must confer regarding the most appropriate care for each individual screened or assessed. For a person with complex health care needs, a public health or registered nurse from the team must be consulted.

(c) The assessment must be comprehensive and include a person-centered assessment of the health, psychological, functional, environmental, and social needs of referred individuals and provide information necessary to develop a community support plan that meets the consumers needs, using an assessment form provided by the commissioner.

(d) The assessment must be conducted in a face-to-face interview with the person being assessed and the person's legal representative, ~~as required by legally executed documents,~~ and other individuals as requested by the person, who can provide information on the needs, strengths, and preferences of the person necessary to develop a community support plan that ensures the person's health and safety, but who is not a provider of service or has any financial interest in the provision of services.

(e) ~~The person, or the person's legal representative, must be provided with written recommendations for community based services, including consumer directed options, or institutional care that include documentation that the most cost effective alternatives available were offered to the individual, and alternatives to residential settings, including, but not limited to, foster care settings that are not the primary residence of the license holder. For purposes of this requirement, "cost effective alternatives" means community services and living arrangements that cost the same as or less than institutional care.~~



(f) (e) If the person chooses to use community-based services, the person or the person's legal representative must be provided with a written community support plan within 40 calendar days of the assessment visit, regardless of whether the individual is eligible for Minnesota health care programs. The written community support plan must include:

(1) a summary of assessed needs as defined in paragraphs (c) and (d);

(2) the individual's options and choices to meet identified needs, including all available options for case management services and providers;

(3) identification of health and safety risks and how those risks will be addressed, including personal risk management strategies;

(4) referral information; and

(5) informal caregiver supports, if applicable.

For a person determined eligible for state plan home care under subdivision 1a, paragraph (b), clause (1), the person or person's representative must also receive a copy of the home care service plan developed by the certified assessor.

(f) A person may request assistance in identifying community supports without participating in a complete assessment. Upon a request for assistance identifying community support, the person must be transferred or referred to ~~the~~ long-term care options counseling services available under sections 256.975, subdivision 7, and 256.01, subdivision 24, for telephone assistance and follow up.

(g) The person has the right to make the final decision between institutional placement and community placement after the recommendations have been provided, except as provided in subdivision 4a, paragraph (c).

(h) The ~~team~~ lead agency must give the person receiving assessment or support planning, or the person's legal representative, materials, and forms supplied by the commissioner containing the following information:

(1) written recommendations for community-based services and consumer-directed options;

(2) documentation that the most cost-effective alternatives available were offered to the individual. For purposes of this clause, "cost-effective" means community services and living arrangements that cost the same as or less than institutional care. For an individual found to meet eligibility criteria for home and community-based service programs under section 256B.0915 or 256B.49, "cost effectiveness" has the meaning found in the federally approved waiver plan for each program;

(3) the need for and purpose of preadmission screening if the person selects nursing facility placement;

~~(2)~~ (4) the role of the long-term care consultation assessment and support planning in ~~waiver and alternative care program~~ eligibility determination for waiver and alternative care programs, and state plan home care, case management, and other services as defined in subdivision 1a, paragraphs (a), clause (7), and (b);

~~(3)~~ (5) information about Minnesota health care programs;

~~(4)~~ (6) the person's freedom to accept or reject the recommendations of the team;

~~(5)~~ (7) the person's right to confidentiality under the Minnesota Government Data Practices Act, chapter 13;

~~(6)~~ (8) ~~the long-term care consultant's certified assessor's decision regarding the person's need for institutional level of care as determined under criteria established in section 144.0724, subdivision 11, or 256B.092~~ 256B.0911, subdivision 4a, paragraph (d), and the certified assessor's decision regarding eligibility for all services and programs as defined in subdivision 1a, paragraphs (a), clause (7), and (b); and

~~(7)~~ (9) ~~the person's right to appeal the certified assessor's decision regarding eligibility for all services and programs as defined in subdivision 1a, paragraphs (a), clause (7), and (b), and incorporating the decision regarding the need for nursing facility institutional level of care or the county's lead agency's final decisions regarding public programs eligibility according to section 256.045, subdivision 3.~~

(i) Face-to-face assessment completed as part of eligibility determination for the alternative care, elderly waiver, community alternatives for disabled individuals, community alternative care, and ~~traumatic~~ brain injury waiver programs under sections 256B.0913, 256B.0915, 256B.0917, and 256B.49 is valid to establish service eligibility for no more than 60 calendar days after the date of assessment.

(j) The effective eligibility start date for ~~these~~ programs in paragraph (i) can never be prior to the date of assessment. If an assessment was completed more than 60 days before the effective waiver or alternative care program eligibility start date, assessment and support plan information must be updated in a face-to-face visit and documented in the department's Medicaid Management Information System (MMIS). Notwithstanding retroactive medical assistance coverage of state plan services, the effective date of ~~program~~ eligibility in this case for programs included in paragraph (i) cannot be prior to the date the most recent updated assessment is completed.

Sec. 12. Minnesota Statutes 2010, section 256B.0911, subdivision 3b, is amended to read:

Subd. 3b. **Transition assistance.** (a) ~~A long-term care consultation team~~ Lead agency certified assessors shall provide assistance to persons residing in a nursing facility, hospital, regional treatment center, or intermediate care facility for persons with developmental disabilities who request or are referred for assistance. Transition assistance must include assessment, community support plan development, referrals to long-term care options counseling under section ~~256B.975~~ 256.975, subdivision ~~40~~ 7, for community support plan implementation and to Minnesota health care programs, including home and community-based waiver services and consumer-directed options through the waivers, and referrals to programs that provide assistance with housing. Transition assistance must also include information about the Centers for Independent Living ~~and the Senior LinkAge Line, Disability Linkage Line,~~ and about other organizations that can provide assistance with relocation efforts, and information about contacting these organizations to obtain their assistance and support.

(b) The county lead agency shall ~~develop transition processes with institutional social workers and discharge planners to~~ ensure that:

(1) referrals for in-person assessments are taken from long-term care options counselors as provided for in section 256.975, subdivision 7, paragraph (b), clause (11);

(2) persons ~~admitted to facilities~~ assessed in institutions receive information about transition assistance that is available;

~~(2)~~ (3) the assessment is completed for persons within ~~ten working~~ 20 calendar days of the date of request or recommendation for assessment; ~~and~~

~~(3)~~ (4) there is a plan for transition and follow-up for the individual's return to the community. ~~The plan must require, including notification of other local agencies when a person who may require assistance is screened by one county for admission to a facility~~ from agencies located in another county; and

(5) relocation targeted case management as defined in section 256B.0621, subdivision 2, clause (4), is authorized for an eligible medical assistance recipient.

~~(c) If a person who is eligible for a Minnesota health care program is admitted to a nursing facility, the nursing facility must include a consultation team member or the case manager in the discharge planning process.~~

Sec. 13. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 4a, is amended to read:

Subd. 4a. **Preadmission screening activities related to nursing facility admissions.** (a) All applicants to Medicaid certified nursing facilities, including certified boarding care facilities, must be screened prior to admission regardless of income, assets, or funding sources for nursing facility care, except as described in subdivision 4b. The purpose of the screening is to determine the need for nursing facility level of care as described in paragraph (d) and to complete activities required under federal law related to mental illness and developmental disability as outlined in paragraph (b).

(b) A person who has a diagnosis or possible diagnosis of mental illness or developmental disability must receive a preadmission screening before admission regardless of the exemptions outlined in subdivision 4b, paragraph (b), to identify the need for further evaluation and specialized services, unless the admission prior to screening is authorized by the local mental health authority or the local developmental disabilities case manager, or unless authorized by the county agency according to Public Law 101-508.

The following criteria apply to the preadmission screening:

(1) the ~~county~~ lead agency must use forms and criteria developed by the commissioner to identify persons who require referral for further evaluation and determination of the need for specialized services; and

(2) the evaluation and determination of the need for specialized services must be done by:

(i) a qualified independent mental health professional, for persons with a primary or secondary diagnosis of a serious mental illness; or

(ii) a qualified developmental disability professional, for persons with a primary or secondary diagnosis of developmental disability. For purposes of this requirement, a qualified developmental disability professional must meet the standards for a qualified developmental disability professional under Code of Federal Regulations, title 42, section 483.430.

(c) The local county mental health authority or the state developmental disability authority under Public Law Numbers 100-203 and 101-508 may prohibit admission to a nursing facility if the individual does not meet the nursing facility level of care criteria or needs specialized services as defined in Public Law Numbers 100-203 and 101-508. For purposes of this section, "specialized services" for a person with developmental disability means active treatment as that term is defined under Code of Federal Regulations, title 42, section 483.440 (a)(1).

(d) The determination of the need for nursing facility level of care must be made according to criteria developed by the commissioner, and in section 256B.092, using forms developed by the commissioner. Effective no sooner than on or after July 1, 2012, for individuals age 21 and older, and on or after October 1, 2019, for individuals under age 21, the determination of need for nursing facility level of care shall be based on criteria in section 144.0724, subdivision 11. In assessing a person's needs, consultation team members shall have a physician available for consultation and shall consider the assessment of the individual's attending physician, if any. The individual's physician must be included if the physician chooses to participate. Other personnel may be included on the team as deemed appropriate by the ~~county~~ lead agency.

Sec. 14. Minnesota Statutes 2010, section 256B.0911, subdivision 4c, is amended to read:

Subd. 4c. **Screening requirements.** (a) A person may be screened for nursing facility admission by telephone or in a face-to-face screening interview. ~~Consultation team members~~ Certified assessors shall identify each individual's needs using the following categories:

(1) the person needs no face-to-face screening interview to determine the need for nursing facility level of care based on information obtained from other health care professionals;

(2) the person needs an immediate face-to-face screening interview to determine the need for nursing facility level of care and complete activities required under subdivision 4a; or

(3) the person may be exempt from screening requirements as outlined in subdivision 4b, but will need transitional assistance after admission or in-person follow-along after a return home.

(b) Persons admitted on a nonemergency basis to a Medicaid-certified nursing facility must be screened prior to admission.

(c) The ~~county~~ lead agency screening or intake activity must include processes to identify persons who may require transition assistance as described in subdivision 3b.

Sec. 15. Minnesota Statutes 2010, section 256B.0911, subdivision 6, is amended to read:

Subd. 6. **Payment for long-term care consultation services.** (a) The total payment for each county must be paid monthly by certified nursing facilities in the county. The monthly amount to be paid by each nursing facility for each fiscal year must be determined by dividing the county's annual allocation for long-term care consultation services by 12 to determine the monthly payment and allocating the monthly payment to each nursing facility based on the number of licensed beds in the nursing facility. Payments to counties in which there is no certified nursing facility must be made by increasing the payment rate of the two facilities located nearest to the county seat.

(b) The commissioner shall include the total annual payment determined under paragraph (a) for each nursing facility reimbursed under section 256B.431 ~~or~~ 256B.434 ~~according to section 256B.431, subdivision 2b, paragraph (g), or 256B.441.~~

(c) In the event of the layaway, delicensure and decertification, or removal from layaway of 25 percent or more of the beds in a facility, the commissioner may adjust the per diem payment amount in paragraph (b) and may adjust the monthly payment amount in paragraph (a). The effective date of an adjustment made under this paragraph shall be on or after the first day of the month following the effective date of the layaway, delicensure and decertification, or removal from layaway.

(d) Payments for long-term care consultation services are available to the county or counties to cover staff salaries and expenses to provide the services described in subdivision 1a. The county shall employ, or contract with other agencies to employ, within the limits of available funding, sufficient personnel to provide long-term care consultation services while meeting the state's long-term care outcomes and objectives as defined in ~~section 256B.0917,~~ subdivision 1. The county shall be accountable for meeting local objectives as approved by the commissioner in the biennial home and community-based services quality assurance plan on a form provided by the commissioner.

(e) Notwithstanding section 256B.0641, overpayments attributable to payment of the screening costs under the medical assistance program may not be recovered from a facility.

(f) The commissioner of human services shall amend the Minnesota medical assistance plan to include reimbursement for the local consultation teams.

(g) Until the alternative payment methodology in paragraph (h) is implemented, the county may bill, as case management services, assessments, support planning, and follow-along provided to persons determined to be eligible for case management under Minnesota health care programs. No individual or family member shall be charged for an initial assessment or initial support plan development provided under subdivision 3a or 3b.

(h) The commissioner shall develop an alternative payment methodology for long-term care consultation services that includes the funding available under this subdivision, and sections 256B.092 and 256B.0659. In developing the new payment methodology, the commissioner shall consider the maximization of other funding sources, including federal funding, for ~~this~~ all long-term care consultation and preadmission screening activity.

Sec. 16. Minnesota Statutes 2010, section 256B.0913, subdivision 7, is amended to read:

Subd. 7. **Case management.** (a) The provision of case management under the alternative care program is governed by requirements in section 256B.0915, subdivisions 1a and 1b.

(b) The case manager must not approve alternative care funding for a client in any setting in which the case manager cannot reasonably ensure the client's health and safety.

(c) The case manager is responsible for the cost-effectiveness of the alternative care individual ~~care~~ coordinated service and support plan and must not approve any ~~care~~ plan in which the cost of services funded by alternative care and client contributions exceeds the limit specified in section 256B.0915, subdivision ~~3~~ 3a, paragraph (b).

(d) Case manager responsibilities include those in section 256B.0915, subdivision 1a, paragraph (g).

Sec. 17. Minnesota Statutes 2010, section 256B.0913, subdivision 8, is amended to read:

Subd. 8. **Requirements for individual ~~care~~ coordinated service and support plan.** (a) The case manager shall implement the coordinated service and support plan ~~of care~~ for each alternative care client and ensure that a client's service needs and eligibility are reassessed at least every 12 months. The coordinated service and support plan must meet the requirements in section 256B.0915, subdivision 6. The plan shall include any services prescribed by the individual's attending physician as necessary to allow the individual to remain in a community setting. In developing the individual's care plan, the case manager should include the use of volunteers from families and neighbors, religious organizations, social clubs, and civic and service organizations to support the formal home care services. The lead agency shall be held harmless for damages or injuries sustained through the use of volunteers under this subdivision including workers' compensation liability. The case manager shall provide documentation in each individual's plan ~~of care~~ and, if requested, to the commissioner that the most cost-effective alternatives available have been offered to the individual and that the individual was free to choose among available qualified providers, both public and private, including qualified case management or service coordination providers other than those employed by any county; however, the county or tribe maintains responsibility for prior authorizing services in accordance with statutory and administrative requirements. The case manager must give the individual a ten-day written notice of any denial, termination, or reduction of alternative care services.

(b) The county of service or tribe must provide access to and arrange for case management services, including assuring implementation of the coordinated service and support plan. "County of service" has the meaning given it in Minnesota Rules, part 9505.0015, subpart 11. The county of service must notify the county of financial responsibility of the approved care plan and the amount of encumbered funds.

Sec. 18. Minnesota Statutes 2010, section 256B.0915, subdivision 1a, is amended to read:

Subd. 1a. **Elderly waiver case management services.** (a) ~~Elderly~~ Except as provided to individuals under prepaid medical assistance programs as described in paragraph (h), case management services under the home and community-based services waiver for elderly individuals are available from providers meeting qualification requirements and the standards specified in subdivision 1b. Eligible recipients may choose any qualified provider of ~~elderly~~ case management services.

(b) Case management services assist individuals who receive waiver services in gaining access to needed waiver and other state plan services; and assist individuals in appeals under section 256.045, as well as needed medical, social, educational, and other services regardless of the funding source for the services to which access is gained. Case managers shall collaborate with consumers, families, legal representatives, and relevant medical experts and service providers in the development and periodic review of the coordinated service and support plan.

(c) A case aide shall provide assistance to the case manager in carrying out administrative activities of the case management function. The case aide may not assume responsibilities that require professional judgment including assessments, reassessments, and care plan development. The case manager is responsible for providing oversight of the case aide.

(d) Case managers shall be responsible for ongoing monitoring of the provision of services included in the individual's plan of care. Case managers shall initiate ~~and oversee~~ the process of ~~assessment and~~ reassessment of the individual's ~~care~~ coordinated service and support plan and review the plan of care at intervals specified in the federally approved waiver plan.

(e) The county of service or tribe must provide access to and arrange for case management services. County of service has the meaning given it in Minnesota Rules, part 9505.0015, subpart 11.

(f) Except as described in paragraph (h), case management services must be provided by a public or private agency that is enrolled as a medical assistance provider determined by the commissioner to meet all of the requirements in subdivision 1b. Case management services must not be provided to a recipient by a private agency that has a financial interest in the provision of any other services included in the recipient's coordinated service and support plan. For purposes of this section, "private agency" means any agency that is not identified as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

(g) Case management service activities provided to or arranged for a person include:

(1) development of the coordinated service and support plan under subdivision 6;

(2) informing the individual or the individual's legal guardian or conservator of service options, and options for case management services and providers;

(3) consulting with relevant medical experts or service providers;

(4) assisting the person in the identification of potential providers;

(5) assisting the person to access services;

(6) coordination of services; and

(7) evaluation and monitoring of the services identified in the plan, which must incorporate at least one annual face-to-face visit by the case manager with each person.

(h) Notwithstanding any requirements in this section, for individuals enrolled in prepaid medical assistance programs under section 256B.69, subdivisions 6b and 23, the health plan shall provide or arrange to provide elderly waiver case management services in paragraph (g), in accordance with contract requirements established by the commissioner.

Sec. 19. Minnesota Statutes 2010, section 256B.0915, subdivision 1b, is amended to read:

Subd. 1b. **Provider qualifications and standards.** (a) The commissioner must enroll qualified providers of elderly case management services under the home and community-based waiver for the elderly under section 1915(c) of the Social Security Act. The enrollment process shall ensure the provider's ability to meet the qualification requirements and standards in this subdivision and other federal and state requirements of this service. ~~An elderly~~ A case management provider is an enrolled medical assistance provider who is determined by the commissioner to have all of the following characteristics:

(1) the demonstrated capacity and experience to provide the components of case management to coordinate and link community resources needed by the eligible population;

(2) administrative capacity and experience in serving the target population for whom it will provide services and in ensuring quality of services under state and federal requirements;

(3) a financial management system that provides accurate documentation of services and costs under state and federal requirements;

(4) the capacity to document and maintain individual case records under state and federal requirements; and

(5) the lead agency may allow a case manager employed by the lead agency to delegate certain aspects of the case management activity to another individual employed by the lead agency provided there is oversight of the individual by the case manager. The case manager may not delegate those aspects which require professional judgment including assessments, reassessments, and ~~care~~ coordinated service and support plan development. Lead agencies include counties, health plans, and federally recognized tribes who authorize services under this section.

(b) A health plan shall provide or arrange to provide elderly waiver case management services in subdivision 1a, paragraph (g), in accordance with contract requirements established by the commissioner related to provider standards and qualifications.

Sec. 20. Minnesota Statutes 2010, section 256B.0915, subdivision 3c, is amended to read:

Subd. 3c. **Service approval and contracting provisions.** (a) Medical assistance funding for skilled nursing services, private duty nursing, home health aide, and personal care services for waiver recipients must be approved by the case manager and included in the ~~individual care~~ coordinated service and support plan.

(b) A lead agency is not required to contract with a provider of supplies and equipment if the monthly cost of the supplies and equipment is less than \$250.

Sec. 21. Minnesota Statutes 2010, section 256B.0915, subdivision 6, is amended to read:

Subd. 6. **Implementation of ~~care~~ coordinated service and support plan.** (a) Each elderly waiver client shall be provided a copy of a written ~~care~~ coordinated service and support plan ~~that meets the requirements outlined in section 256B.0913, subdivision 8. The care plan must be implemented by the county of service when it is different than the county of financial responsibility. The county of service administering waived services must notify the county of financial responsibility of the approved care plan. which:~~

(1) is developed and signed by the recipient within ten working days after the case manager receives the assessment information and written community support plan as described in section 256B.0911, subdivision 3a, from the certified assessor;

(2) includes the person's need for service and identification of service needs that will be or that are met by the person's relatives, friends, and others, as well as community services used by the general public;

(3) reasonably ensures the health and safety of the recipient;

(4) identifies the person's preferences for services as stated by the person or the person's legal guardian or conservator;

(5) reflects the person's informed choice between institutional and community-based services, as well as choice of services, supports, and providers, including available case manager providers;

(6) identifies long and short-range goals for the person;

(7) identifies specific services and the amount, frequency, duration, and cost of the services to be provided to the person based on assessed needs, preferences, and available resources;

(8) includes information about the right to appeal decisions under section 256.045; and

(9) includes the authorized annual and estimated monthly amounts for the services.

(b) In developing the coordinated service and support plan, the case manager should also include the use of volunteers, religious organizations, social clubs, and civic and service organizations to support the individual in the community. The lead agency must be held harmless for damages or injuries sustained through the use of volunteers and agencies under this paragraph, including workers' compensation liability.

Sec. 22. Minnesota Statutes 2011 Supplement, section 256B.0915, subdivision 10, is amended to read:

Subd. 10. **Waiver payment rates; managed care organizations.** The commissioner shall adjust the elderly waiver capitation payment rates for managed care organizations paid under section 256B.69, subdivisions ~~6a~~ 6b and 23, to reflect the maximum service rate limits for customized living services and 24-hour customized living services under subdivisions 3e and 3h. Medical assistance rates paid to customized living providers by managed care organizations under this section shall not exceed the maximum service rate limits and component rates as determined by the commissioner under subdivisions 3e and 3h.

Sec. 23. Minnesota Statutes 2010, section 256B.092, subdivision 1, is amended to read:

Subdivision 1. **County of financial responsibility; duties.** Before any services shall be rendered to persons with developmental disabilities who are in need of social service and medical assistance, the county of financial responsibility shall conduct or arrange for a diagnostic evaluation in order to determine whether the person has or may have a developmental disability or has or may have a related condition. If the county of financial responsibility determines that the person has a developmental disability, the county shall inform the person of case management services available under this section. Except as provided in subdivision 1g or 4b, if a person is diagnosed as having a developmental disability, the county of financial responsibility shall conduct or arrange for a needs assessment by a certified assessor, and develop or arrange for an individual service a community support plan according to section 256B.0911, provide or arrange for ongoing case management services at the level identified in the individual service plan, provide or arrange for case management administration, and authorize services identified in the person's individual service coordinated service and support plan developed according to subdivision 1b. Diagnostic information, obtained by other providers or agencies, may be used by the county agency in determining eligibility



for case management. Nothing in this section shall be construed as requiring: (1) assessment in areas agreed to as unnecessary by ~~the case manager~~ a certified assessor and the person, or the person's legal guardian or conservator, or the parent if the person is a minor, or (2) assessments in areas where there has been a functional assessment completed in the previous 12 months for which the ~~case manager~~ certified assessor and the person or person's guardian or conservator, or the parent if the person is a minor, agree that further assessment is not necessary. For persons under state guardianship, the ~~case manager~~ certified assessor shall seek authorization from the public guardianship office for waiving any assessment requirements. Assessments related to health, safety, and protection of the person for the purpose of identifying service type, amount, and frequency or assessments required to authorize services may not be waived. To the extent possible, for wards of the commissioner the county shall consider the opinions of the parent of the person with a developmental disability when developing the person's ~~individual service community support plan~~ and coordinated service and support plan.

Sec. 24. Minnesota Statutes 2010, section 256B.092, subdivision 1a, is amended to read:

Subd. 1a. **Case management ~~administration and services~~.** (a) ~~The administrative functions of case management provided to or arranged for a person include:~~ Each recipient of a home and community-based waiver shall be provided case management services by qualified vendors as described in the federally approved waiver application.

~~(1) review of eligibility for services;~~

~~(2) screening;~~

~~(3) intake;~~

~~(4) diagnosis;~~

~~(5) the review and authorization of services based upon an individualized service plan; and~~

~~(6) responding to requests for conciliation conferences and appeals according to section 256.045 made by the person, the person's legal guardian or conservator, or the parent if the person is a minor.~~

(b) Case management service activities provided to or arranged for a person include:

(1) development of the ~~individual service~~ coordinated service and support plan under subdivision 1b;

(2) informing the individual or the individual's legal guardian or conservator, or parent if the person is a minor, of service options;

(3) consulting with relevant medical experts or service providers;

(4) assisting the person in the identification of potential providers;

(5) assisting the person to access services and assisting in appeals under section 256.045;

(6) coordination of services, if coordination is not provided by another service provider;

(7) evaluation and monitoring of the services identified in the coordinated service and support plan, which must incorporate at least one annual face-to-face visit by the case manager with each person; and

(8) ~~annual reviews of service plans and services provided~~ reviewing coordinated service and support plans and providing the lead agency with recommendations for service authorization based upon the individual's needs identified in the coordinated service and support plan.

(c) Case management ~~administration and~~ service activities that are provided to the person with a developmental disability shall be provided directly by county agencies or under contract. Case management services must be provided by a public or private agency that is enrolled as a medical assistance provider determined by the commissioner to meet all of the requirements in the approved federal waiver plans. Case management services must not be provided to a recipient by a private agency that has a financial interest in the provision of any other services included in the recipient's coordinated service and support plan. For purposes of this section, "private agency" means any agency that is not identified as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

(d) Case managers are responsible for ~~the administrative duties and~~ service provisions listed in paragraphs (a) and (b). Case managers shall collaborate with consumers, families, legal representatives, and relevant medical experts and service providers in the development and annual review of the ~~individualized service~~ coordinated service and support plan and habilitation ~~plans~~ plan.

(e) The Department of Human Services shall offer ongoing education in case management to case managers. Case managers shall receive no less than ten hours of case management education and disability-related training each year.

Sec. 25. Minnesota Statutes 2010, section 256B.092, subdivision 1b, is amended to read:

Subd. 1b. **Individual Coordinated service and support plan.** ~~The individual service plan must~~ (a) Each recipient of home and community-based waived services shall be provided a copy of the written coordinated service and support plan which:

(1) is developed and signed by the recipient within ten working days after the case manager receives the assessment information and written community support plan as described in section 256B.0911, subdivision 3a, from the certified assessor;

~~(1) include the results of the assessment information on~~ (2) includes the person's need for service, including identification of service needs that will be or that are met by the person's relatives, friends, and others, as well as community services used by the general public;

(3) reasonably ensures the health and safety of the recipient;

~~(2) identify~~ (4) identifies the person's preferences for services as stated by the person, the person's legal guardian or conservator, or the parent if the person is a minor, including the person's choices made on self-directed options and on services and supports to achieve employment goals;

(5) provides for an informed choice, as defined in section 256B.77, subdivision 2, paragraph (o), of service and support providers, and identifies all available options for case management services and providers;

~~(3) identify~~ (6) identifies long- and short-range goals for the person;

~~(4) identify~~ (7) identifies specific services and the amount and frequency of the services to be provided to the person based on assessed needs, preferences, and available resources. ~~The individual service~~ coordinated service and support plan shall also specify other services the person needs that are not available;

~~(5) identify~~ (8) identifies the need for an individual program plan to be developed by the provider according to the respective state and federal licensing and certification standards, and additional assessments to be completed or arranged by the provider after service initiation;

~~(6) identify~~ (9) identifies provider responsibilities to implement and make recommendations for modification to the ~~individual service~~ coordinated service and support plan;

~~(7) include~~ (10) includes notice of the right to request a conciliation conference or a hearing under section 256.045;

~~(8) be~~ (11) is agreed upon and signed by the person, the person's legal guardian or conservator, or the parent if the person is a minor, and the authorized county representative; ~~and~~

~~(9) be~~ (12) is reviewed by a health professional if the person has overriding medical needs that impact the delivery of services; ~~and~~

(13) includes the authorized annual and monthly amounts for the services.

~~Service planning formats developed for interagency planning such as transition, vocational, and individual family service plans may be substituted for service planning formats developed by county agencies.~~

(b) In developing the coordinated service and support plan, the case manager is encouraged to include the use of volunteers, religious organizations, social clubs, and civic and service organizations to support the individual in the community. The lead agency must be held harmless for damages or injuries sustained through the use of volunteers and agencies under this paragraph, including workers' compensation liability.

Sec. 26. Minnesota Statutes 2010, section 256B.092, subdivision 1e, is amended to read:

Subd. 1e. **Coordination, evaluation, and monitoring of services.** (a) If the ~~individual service~~ coordinated service and support plan identifies the need for individual program plans for authorized services, the case manager shall assure that individual program plans are developed by the providers according to clauses (2) to (5). The providers shall assure that the individual program plans:

(1) are developed according to the respective state and federal licensing and certification requirements;

(2) are designed to achieve the goals of the ~~individual service~~ coordinated service and support plan;

(3) are consistent with other aspects of the ~~individual service~~ coordinated service and support plan;

(4) assure the health and safety of the person; and

(5) are developed with consistent and coordinated approaches to services among the various service providers.

(b) The case manager shall monitor the provision of services:

(1) to assure that the ~~individual service~~ coordinated service and support plan is being followed according to paragraph (a);

(2) to identify any changes or modifications that might be needed in the ~~individual service~~ coordinated service and support plan, including changes resulting from recommendations of current service providers;

(3) to determine if the person's legal rights are protected, and if not, notify the person's legal guardian or conservator, or the parent if the person is a minor, protection services, or licensing agencies as appropriate; and

(4) to determine if the person, the person's legal guardian or conservator, or the parent if the person is a minor, is satisfied with the services provided.

(c) If the provider fails to develop or carry out the individual program plan according to paragraph (a), the case manager shall notify the person's legal guardian or conservator, or the parent if the person is a minor, the provider, the respective licensing and certification agencies, and the county board where the services are being provided. In addition, the case manager shall identify other steps needed to assure the person receives the services identified in the ~~individual service~~ coordinated service and support plan.

Sec. 27. Minnesota Statutes 2010, section 256B.092, subdivision 1g, is amended to read:

Subd. 1g. **Conditions not requiring development of ~~individual service~~ coordinated service and support plan.** Unless otherwise required by federal law, the county agency is not required to complete ~~an individual service~~ a coordinated service and support plan as defined in subdivision 1b for:

(1) persons whose families are requesting respite care for their family member who resides with them, or whose families are requesting a family support grant and are not requesting purchase or arrangement of habilitative services; and

(2) persons with developmental disabilities, living independently without authorized services or receiving funding for services at a rehabilitation facility as defined in section 268A.01, subdivision 6, and not in need of or requesting additional services.

Sec. 28. Minnesota Statutes 2010, section 256B.092, subdivision 2, is amended to read:

Subd. 2. **Medical assistance.** To assure quality case management to those persons who are eligible for medical assistance, the commissioner shall, upon request:

(1) provide consultation on the case management process;

(2) assist county agencies in the ~~screening and~~ annual reviews of clients review process to assure that appropriate levels of service are provided to persons;

(3) provide consultation on service planning and development of services with appropriate options;

(4) provide training and technical assistance to county case managers; and

(5) authorize payment for medical assistance services according to this chapter and rules implementing it.

Sec. 29. Minnesota Statutes 2010, section 256B.092, subdivision 3, is amended to read:

Subd. 3. **Authorization and termination of services.** County agency case managers, under rules of the commissioner, shall authorize and terminate services of community and regional treatment center providers according to ~~individual service~~ support plans. Services provided to persons with developmental disabilities may only be authorized and terminated by case managers or certified assessors according to (1) rules of the commissioner and (2) the ~~individual service~~ coordinated service and support plan as defined in subdivision 1b. Medical assistance services not needed shall not be authorized by county agencies or funded by the commissioner. When purchasing or arranging for unlicensed respite care services for persons with overriding health needs, the county agency shall seek the advice of a health care professional in assessing provider staff training needs and skills necessary to meet the medical needs of the person.

Sec. 30. Minnesota Statutes 2010, section 256B.092, subdivision 5, is amended to read:

Subd. 5. **Federal waivers.** (a) The commissioner shall apply for any federal waivers necessary to secure, to the extent allowed by law, federal financial participation under United States Code, title 42, sections 1396 et seq., as amended, for the provision of services to persons who, in the absence of the services, would need the level of care provided in a regional treatment center or a community intermediate care facility for persons with developmental disabilities. The commissioner may seek amendments to the waivers or apply for additional waivers under United States Code, title 42, sections 1396 et seq., as amended, to contain costs. The commissioner shall ensure that payment for the cost of providing home and community-based alternative services under the federal waiver plan shall not exceed the cost of intermediate care services including day training and habilitation services that would have been provided without the waived services.

The commissioner shall seek an amendment to the 1915c home and community-based waiver to allow properly licensed adult foster care homes to provide residential services to up to five individuals with developmental disabilities. If the amendment to the waiver is approved, adult foster care providers that can accommodate five individuals shall increase their capacity to five beds, provided the providers continue to meet all applicable licensing requirements.

(b) The commissioner, in administering home and community-based waivers for persons with developmental disabilities, shall ensure that day services for eligible persons are not provided by the person's residential service provider, unless the person or the person's legal representative is offered a choice of providers and agrees in writing to provision of day services by the residential service provider. The ~~individual service~~ coordinated service and support plan for individuals who choose to have their residential service provider provide their day services must describe how health, safety, protection, and habilitation needs will be met, including how frequent and regular contact with persons other than the residential service provider will occur. The ~~individualized service~~ coordinated service and support plan must address the provision of services during the day outside the residence on weekdays.

(c) When a ~~county~~ lead agency is evaluating denials, reductions, or terminations of home and community-based services under section 256B.0916 for an individual, the ~~case manager~~ lead agency shall offer to meet with the individual or the individual's guardian in order to discuss the prioritization of service needs within the ~~individualized service~~ coordinated service and support plan. The reduction in the authorized services for an individual due to changes in funding for waived services may not exceed the amount needed to ensure medically necessary services to meet the individual's health, safety, and welfare.

Sec. 31. Minnesota Statutes 2010, section 256B.092, subdivision 7, is amended to read:

Subd. 7. ~~Screening teams~~ **Assessments.** (a) Assessments and reassessments shall be conducted by certified assessors according to section 256B.0911, and must incorporate appropriate referrals to determine eligibility for case management under subdivision 1a.

(b) For persons with developmental disabilities, ~~screening teams shall be established which a certified assessor shall evaluate the need for the an institutional level of care, provided by residential based habilitation services, residential services, training and habilitation services, and nursing facility services.~~ The evaluation assessment shall address whether home and community-based services are appropriate for persons who are at risk of placement in an intermediate care facility for persons with developmental disabilities, or for whom there is reasonable indication that they might require this level of care. The ~~screening team~~ certified assessor shall make an evaluation of need ~~within 60 working days of a request for service by a person with a developmental disability, and~~ within five working days of an emergency admission of a person to an intermediate care facility for persons with developmental disabilities. ~~The screening team shall consist of the case manager for persons with developmental disabilities, the person, the person's legal guardian or conservator, or the parent if the person is a minor, and a qualified developmental disability professional, as defined in the Code of Federal Regulations, title 42, section 483.430, as amended through June 3, 1988. The case manager may also act as the qualified developmental disability professional if the case manager~~

~~meets the federal definition. County social service agencies may contract with a public or private agency or individual who is not a service provider for the person for the public guardianship representation required by the screening or individual service planning process. The contract shall be limited to public guardianship representation for the screening and individual service planning activities. The contract shall require compliance with the commissioner's instructions and may be for paid or voluntary services. For persons determined to have overriding health care needs and are seeking admission to a nursing facility or an ICF/MR, or seeking access to home and community based waived services, a registered nurse must be designated as either the case manager or the qualified developmental disability professional. For persons under the jurisdiction of a correctional agency, the case manager must consult with the corrections administrator regarding additional health, safety, and supervision needs. The case manager, with the concurrence of the person, the person's legal guardian or conservator, or the parent if the person is a minor, may invite other individuals to attend meetings of the screening team. No member of the screening team shall have any direct or indirect service provider interest in the case. Nothing in this section shall be construed as requiring the screening team meeting to be separate from the service planning meeting.~~

Sec. 32. Minnesota Statutes 2010, section 256B.092, subdivision 8, is amended to read:

Subd. 8. ~~Screening team~~ **Additional certified assessor duties.** In addition to the responsibilities of certified assessors described in section 256B.0911, for persons with developmental disabilities, the screening team certified assessor shall:

- ~~(1) review diagnostic data;~~
- ~~(2) review health, social, and developmental assessment data using a uniform screening tool specified by the commissioner;~~
- ~~(3) identify the level of services appropriate to maintain the person in the most normal and least restrictive setting that is consistent with the person's treatment needs;~~
- (4) (1) identify other noninstitutional public assistance or social service that may prevent or delay long-term residential placement;
- ~~(5)~~ (2) assess whether a person is in need of long-term residential care;
- ~~(6)~~ (3) make recommendations regarding placement and payment for:
  - (i) social service or public assistance support, or both, to maintain a person in the person's own home or other place of residence;
  - (ii) training and habilitation service, vocational rehabilitation, and employment training activities;
  - (iii) community residential service placement;
  - (iv) regional treatment center placement; or
  - (v) a home and community-based service alternative to community residential ~~placement~~ service or regional treatment center placement including self-directed service options;
- ~~(7)~~ (4) evaluate the availability, location, and quality of the services listed in clause ~~(6)~~ (3), including the impact of placement alternatives on the person's ability to maintain or improve existing patterns of contact and involvement with parents and other family members;
- ~~(8)~~ (5) identify the cost implications of recommendations in clause ~~(6)~~ (3); and

~~(9) (6) make recommendations to a court as may be needed to assist the court in making decisions regarding commitment of persons with developmental disabilities; and,~~

~~(10) inform the person and the person's legal guardian or conservator, or the parent if the person is a minor, that appeal may be made to the commissioner pursuant to section 256.045.~~

Sec. 33. Minnesota Statutes 2010, section 256B.092, subdivision 8a, is amended to read:

Subd. 8a. **County concurrence notification.** (a) If the county of financial responsibility wishes to place a person in another county for services, the county of financial responsibility shall ~~seek concurrence from~~ notify the proposed county of service and the placement shall be made cooperatively between the two counties. Arrangements shall be made between the two counties for ongoing social service, including annual reviews of the person's ~~individual service coordinated service and support~~ service coordinated service and support plan. The county where services are provided may not make changes in the person's ~~service coordinated service and support~~ service coordinated service and support plan without approval by the county of financial responsibility.

(b) ~~When a person has been screened and authorized for services in an intermediate care facility for persons with developmental disabilities or for home and community-based services for persons with developmental disabilities, the case manager shall assist that person in identifying a service provider who is able to meet the needs of the person according to the person's individual service plan. If the identified service is to be provided in a county other than the county of financial responsibility, the county of financial responsibility shall request concurrence of the county where the person is requesting to receive the identified services. The county of service may refuse to concur shall notify the county of financial responsibility if:~~

~~(1) it can demonstrate that the provider is unable to provide the services identified in the person's individual service plan as services that are needed and are to be provided; or~~

~~(2), in the case of an intermediate care facility for persons with developmental disabilities, there has been no authorization for admission by the admission review team as required in section 256B.0926.~~

(c) The county of service shall notify the county of financial responsibility of ~~concurrence or refusal to concur~~ any concerns about the chosen provider's capacity to meet the needs of the person seeking to move to residential services in another county no later than 20 working days following receipt of the written ~~request notification.~~ Unless other mutually acceptable arrangements are made by the involved county agencies, the county of financial responsibility is responsible for costs of social services and the costs associated with the development and maintenance of the placement. The county of service may request that the county of financial responsibility purchase case management services from the county of service or from a contracted provider of case management when the county of financial responsibility is not providing case management as defined in this section and rules adopted under this section, unless other mutually acceptable arrangements are made by the involved county agencies. Standards for payment limits under this section may be established by the commissioner. Financial disputes between counties shall be resolved as provided in section 256G.09. This subdivision also applies to home and community-based waiver services provided under section 256B.49.

Sec. 34. Minnesota Statutes 2010, section 256B.092, subdivision 9, is amended to read:

Subd. 9. **Reimbursement.** Payment for services shall not be provided to a service provider for any person placed in an intermediate care facility for persons with developmental disabilities prior to the person ~~being screened by the screening team~~ receiving an assessment by a certified assessor. The commissioner shall not deny reimbursement for: (1) a person admitted to an intermediate care facility for persons with developmental disabilities who is assessed to need long-term supportive services, if long-term supportive services other than intermediate care are not available in that community; (2) any person admitted to an intermediate care facility for persons with developmental disabilities under emergency circumstances; (3) any eligible person placed in the intermediate care

facility for persons with developmental disabilities pending an appeal of the ~~screening team's~~ certified assessor's decision; or (4) any medical assistance recipient when, after full discussion of all appropriate alternatives including those that are expected to be less costly than intermediate care for persons with developmental disabilities, the person or the person's legal guardian or conservator, or the parent if the person is a minor, insists on intermediate care placement. The ~~screening team~~ certified assessor shall provide documentation that the most cost-effective alternatives available were offered to this individual or the individual's legal guardian or conservator.

Sec. 35. Minnesota Statutes 2010, section 256B.092, subdivision 11, is amended to read:

Subd. 11. **Residential support services.** (a) Upon federal approval, there is established a new service called residential support that is available on the community alternative care, community alternatives for disabled individuals, developmental disabilities, and traumatic brain injury waivers. Existing waiver service descriptions must be modified to the extent necessary to ensure there is no duplication between other services. Residential support services must be provided by vendors licensed as a community residential setting as defined in section 245A.11, subdivision 8.

(b) Residential support services must meet the following criteria:

- (1) providers of residential support services must own or control the residential site;
- (2) the residential site must not be the primary residence of the license holder;
- (3) the residential site must have a designated program supervisor responsible for program oversight, development, and implementation of policies and procedures;
- (4) the provider of residential support services must provide supervision, training, and assistance as described in the person's ~~community~~ coordinated service and support plan; and
- (5) the provider of residential support services must meet the requirements of licensure and additional requirements of the person's ~~community~~ coordinated service and support plan.

(c) Providers of residential support services that meet the definition in paragraph (a) must be registered using a process determined by the commissioner beginning July 1, 2009.

Sec. 36. Minnesota Statutes 2010, section 256B.15, subdivision 1c, is amended to read:

Subd. 1c. **Notice of potential claim.** (a) A state agency with a claim or potential claim under this section may file a notice of potential claim under this subdivision anytime before or within one year after a medical assistance recipient dies. The claimant shall be the state agency. A notice filed prior to the recipient's death shall not take effect and shall not be effective as notice until the recipient dies. A notice filed after a recipient dies shall be effective from the time of filing.

(b) The notice of claim shall be filed or recorded in the real estate records in the office of the county recorder or registrar of titles for each county in which any part of the property is located. The recorder shall accept the notice for recording or filing. The registrar of titles shall accept the notice for filing if the recipient has a recorded interest in the property. The registrar of titles shall not carry forward to a new certificate of title any notice filed more than one year from the date of the recipient's death.

(c) The notice must be dated, state the name of the claimant, the medical assistance recipient's name and last four digits of the Social Security number if filed before their death and their date of death if filed after they die, the name and date of death of any predeceased spouse of the medical assistance recipient for whom a claim may exist, a



statement that the claimant may have a claim arising under this section, generally identify the recipient's interest in the property, contain a legal description for the property and whether it is abstract or registered property, a statement of when the notice becomes effective and the effect of the notice, be signed by an authorized representative of the state agency, and may include such other contents as the state agency may deem appropriate.

Sec. 37. Minnesota Statutes 2010, section 256B.15, subdivision 1f, is amended to read:

Subd. 1f. **Agency lien.** (a) The notice shall constitute a lien in favor of the Department of Human Services against the recipient's interests in the real estate it describes for a period of 20 years from the date of filing or the date of the recipient's death, whichever is later. Notwithstanding any law or rule to the contrary, a recipient's life estate and joint tenancy interests shall not end upon the recipient's death but shall continue according to subdivisions 1h, 1i, and 1j. The amount of the lien shall be equal to the total amount of the claims that could be presented in the recipient's estate under this section.

(b) If no estate has been opened for the deceased recipient, any holder of an interest in the property may apply to the lienholder for a statement of the amount of the lien or for a full or partial release of the lien. The application shall include the applicant's name, current mailing address, current home and work telephone numbers, and a description of their interest in the property, a legal description of the recipient's interest in the property, and the deceased recipient's name, date of birth, and last four digits of the Social Security number. The lienholder shall send the applicant by certified mail, return receipt requested, a written statement showing the amount of the lien, whether the lienholder is willing to release the lien and under what conditions, and inform them of the right to a hearing under section 256.045. The lienholder shall have the discretion to compromise and settle the lien upon any terms and conditions the lienholder deems appropriate.

(c) Any holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the validity, extent, or amount of the lien. The request must be in writing, and must include the names, current addresses, and home and business telephone numbers for all other parties holding an interest in the property. A request for a hearing by any holder of an interest in the property shall be deemed to be a request for a hearing by all parties owning interests in the property. Notice of the hearing shall be given to the lienholder, the party filing the appeal, and all of the other holders of interests in the property at the addresses listed in the appeal by certified mail, return receipt requested, or by ordinary mail. Any owner of an interest in the property to whom notice of the hearing is mailed shall be deemed to have waived any and all claims or defenses in respect to the lien unless they appear and assert any claims or defenses at the hearing.

(d) If the claim the lien secures could be filed under subdivision 1h, the lienholder may collect, compromise, settle, or release the lien upon any terms and conditions it deems appropriate. If the claim the lien secures could be filed under subdivision 1i or 1j, the lien may be adjusted or enforced to the same extent had it been filed under subdivisions 1i and 1j, and the provisions of subdivisions 1i, clause (f), and 1j, clause (d), shall apply to voluntary payment, settlement, or satisfaction of the lien.

(e) If no probate proceedings have been commenced for the recipient as of the date the lien holder executes a release of the lien on a recipient's life estate or joint tenancy interest, created for purposes of this section, the release shall terminate the life estate or joint tenancy interest created under this section as of the date it is recorded or filed to the extent of the release. If the claimant executes a release for purposes of extinguishing a life estate or a joint tenancy interest created under this section to remove a cloud on title to real property, the release shall have the effect of extinguishing any life estate or joint tenancy interests in the property it describes which may have been continued by reason of this section retroactive to the date of death of the deceased life tenant or joint tenant except as provided for in section 514.981, subdivision 6.

(f) If the deceased recipient's estate is probated, a claim shall be filed under this section. The amount of the lien shall be limited to the amount of the claim as finally allowed. If the claim the lien secures is filed under subdivision 1h, the lien may be released in full after any allowance of the claim becomes final or according to any agreement to

settle and satisfy the claim. The release shall release the lien but shall not extinguish or terminate the interest being released. If the claim the lien secures is filed under subdivision 1i or 1j, the lien shall be released after the lien under subdivision 1i or 1j is filed or recorded, or settled according to any agreement to settle and satisfy the claim. The release shall not extinguish or terminate the interest being released. If the claim is finally disallowed in full, the claimant shall release the claimant's lien at the claimant's expense.

Sec. 38. Minnesota Statutes 2010, section 256B.49, subdivision 13, is amended to read:

Subd. 13. **Case management.** (a) Each recipient of a home and community-based waiver shall be provided case management services by qualified vendors as described in the federally approved waiver application. The case management service activities provided ~~will~~ must include:

- ~~(1) assessing the needs of the individual within 20 working days of a recipient's request;~~
- ~~(2) developing~~ (1) finalizing the written ~~individual service~~ coordinated service and support plan within ten working days after the ~~assessment is completed~~ case manager receives the plan from the certified assessor;
- ~~(3)~~ (2) informing the recipient or the recipient's legal guardian or conservator of service options;
- ~~(4)~~ (3) assisting the recipient in the identification of potential service providers and available options for case management service and providers;
- ~~(5)~~ (4) assisting the recipient to access services and assisting with appeals under section 256.045; and
- ~~(6)~~ (5) coordinating, evaluating, and monitoring of the services identified in the service plan;
- ~~(7) completing the annual reviews of the service plan; and~~
- ~~(8) informing the recipient or legal representative of the right to have assessments completed and service plans developed within specified time periods, and to appeal county action or inaction under section 256.045, subdivision 3, including the determination of nursing facility level of care.~~

(b) The case manager may delegate certain aspects of the case management service activities to another individual provided there is oversight by the case manager. The case manager may not delegate those aspects which require professional judgment including ~~assessments, reassessments, and care plan development~~:

- (1) finalizing the coordinated service and support plan;
- (2) ongoing assessment and monitoring of the person's needs and adequacy of the approved coordinated service and support plan; and
- (3) adjustments to the coordinated service and support plan.

(c) Case management services must be provided by a public or private agency that is enrolled as a medical assistance provider determined by the commissioner to meet all of the requirements in the approved federal waiver plans. Case management services must not be provided to a recipient by a private agency that has any financial interest in the provision of any other services included in the recipient's coordinated service and support plan. For purposes of this section, "private agency" means any agency that is not identified as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

Sec. 39. Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 14, is amended to read:

Subd. 14. **Assessment and reassessment.** ~~(a) Assessments of each recipient's strengths, informal support systems, and need for services shall be completed within 20 working days of the recipient's request as provided in section 256B.0911. Reassessment of each recipient's strengths, support systems, and need for services shall be conducted at least every 12 months and at other times when there has been a significant change in the recipient's functioning and reassessments shall be conducted by certified assessors according to section 256B.0911, subdivision 2b.~~

(b) There must be a determination that the client requires a hospital level of care or a nursing facility level of care as defined in section 256B.0911, subdivision 4a, paragraph (d), at initial and subsequent assessments to initiate and maintain participation in the waiver program.

(c) Regardless of other assessments identified in section 144.0724, subdivision 4, as appropriate to determine nursing facility level of care for purposes of medical assistance payment for nursing facility services, only face-to-face assessments conducted according to section 256B.0911, subdivisions 3a, 3b, and 4d, that result in a hospital level of care determination or a nursing facility level of care determination must be accepted for purposes of initial and ongoing access to waiver services payment.

~~(d) Persons with developmental disabilities who apply for services under the nursing facility level waiver programs shall be screened for the appropriate level of care according to section 256B.092.~~

~~(e)~~ (d) Recipients who are found eligible for home and community-based services under this section before their 65th birthday may remain eligible for these services after their 65th birthday if they continue to meet all other eligibility factors.

~~(f)~~ (e) The commissioner shall develop criteria to identify recipients whose level of functioning is reasonably expected to improve and reassess these recipients to establish a baseline assessment. Recipients who meet these criteria must have a comprehensive transitional service plan developed under subdivision 15, paragraphs (b) and (c), and be reassessed every six months until there has been no significant change in the recipient's functioning for at least 12 months. After there has been no significant change in the recipient's functioning for at least 12 months, reassessments of the recipient's strengths, informal support systems, and need for services shall be conducted at least every 12 months and at other times when there has been a significant change in the recipient's functioning. Counties, case managers, and service providers are responsible for conducting these reassessments and shall complete the reassessments out of existing funds.

Sec. 40. Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 15, is amended to read:

Subd. 15. ~~Individualized service~~ **Coordinated service and support plan; comprehensive transitional service plan; maintenance service plan.** (a) Each recipient of home and community-based waived services shall be provided a copy of the written coordinated service and support plan which: meets the requirements in section 256B.092, subdivision 1b.

~~(1) is developed and signed by the recipient within ten working days of the completion of the assessment;~~

~~(2) meets the assessed needs of the recipient;~~

~~(3) reasonably ensures the health and safety of the recipient;~~

~~(4) promotes independence;~~

~~(5) allows for services to be provided in the most integrated settings; and~~

~~(6) provides for an informed choice, as defined in section 256B.77, subdivision 2, paragraph (p), of service and support providers.~~

(b) In developing the comprehensive transitional service plan, the individual receiving services, the case manager, and the guardian, if applicable, will identify the transitional service plan fundamental service outcome and anticipated timeline to achieve this outcome. Within the first 20 days following a recipient's request for an assessment or reassessment, the transitional service planning team must be identified. A team leader must be identified who will be responsible for assigning responsibility and communicating with team members to ensure implementation of the transition plan and ongoing assessment and communication process. The team leader should be an individual, such as the case manager or guardian, who has the opportunity to follow the recipient to the next level of service.

Within ten days following an assessment, a comprehensive transitional service plan must be developed incorporating elements of a comprehensive functional assessment and including short-term measurable outcomes and timelines for achievement of and reporting on these outcomes. Functional milestones must also be identified and reported according to the timelines agreed upon by the transitional service planning team. In addition, the comprehensive transitional service plan must identify additional supports that may assist in the achievement of the fundamental service outcome such as the development of greater natural community support, increased collaboration among agencies, and technological supports.

The timelines for reporting on functional milestones will prompt a reassessment of services provided, the units of services, rates, and appropriate service providers. It is the responsibility of the transitional service planning team leader to review functional milestone reporting to determine if the milestones are consistent with observable skills and that milestone achievement prompts any needed changes to the comprehensive transitional service plan.

For those whose fundamental transitional service outcome involves the need to procure housing, a plan for the recipient to seek the resources necessary to secure the least restrictive housing possible should be incorporated into the plan, including employment and public supports such as housing access and shelter needy funding.

(c) Counties and other agencies responsible for funding community placement and ongoing community supportive services are responsible for the implementation of the comprehensive transitional service plans. Oversight responsibilities include both ensuring effective transitional service delivery and efficient utilization of funding resources.

(d) Following one year of transitional services, the transitional services planning team will make a determination as to whether or not the individual receiving services requires the current level of continuous and consistent support in order to maintain the recipient's current level of functioning. Recipients who are determined to have not had a significant change in functioning for 12 months must move from a transitional to a maintenance service plan. Recipients on a maintenance service plan must be reassessed to determine if the recipient would benefit from a transitional service plan at least every 12 months and at other times when there has been a significant change in the recipient's functioning. This assessment should consider any changes to technological or natural community supports.

(e) When a county is evaluating denials, reductions, or terminations of home and community-based services under section 256B.49 for an individual, the case manager shall offer to meet with the individual or the individual's guardian in order to discuss the prioritization of service needs within the ~~individualized~~ coordinated service and support plan, comprehensive transitional service plan, or maintenance service plan. The reduction in the authorized services for an individual due to changes in funding for waived services may not exceed the amount needed to ensure medically necessary services to meet the individual's health, safety, and welfare.

(f) At the time of reassessment, local agency case managers shall assess each recipient of community alternatives for disabled individuals or traumatic brain injury waived services currently residing in a licensed adult foster home that is not the primary residence of the license holder, or in which the license holder is not the primary caregiver, to determine if that recipient could appropriately be served in a community-living setting. If appropriate for the

recipient, the case manager shall offer the recipient, through a person-centered planning process, the option to receive alternative housing and service options. In the event that the recipient chooses to transfer from the adult foster home, the vacated bed shall not be filled with another recipient of waiver services and group residential housing, unless provided under section 245A.03, subdivision 7, paragraph (a), clauses (3) and (4), and the licensed capacity shall be reduced accordingly. If the adult foster home becomes no longer viable due to these transfers, the county agency, with the assistance of the department, shall facilitate a consolidation of settings or closure. This reassessment process shall be completed by June 30, 2012.

Sec. 41. Minnesota Statutes 2010, section 256G.02, subdivision 6, is amended to read:

Subd. 6. **Excluded time.** "Excluded time" means:

(a) (1) any period an applicant spends in a hospital, sanitarium, nursing home, shelter other than an emergency shelter, halfway house, foster home, semi-independent living domicile or services program, residential facility offering care, board and lodging facility or other institution for the hospitalization or care of human beings, as defined in section 144.50, 144A.01, or 245A.02, subdivision 14; maternity home, battered women's shelter, or correctional facility; or any facility based on an emergency hold under sections 253B.05, subdivisions 1 and 2, and 253B.07, subdivision 6;

(b) (2) any period an applicant spends on a placement basis in a training and habilitation program, including: a rehabilitation facility or work or employment program as defined in section 268A.01; ~~or receiving personal care assistance services pursuant to section 256B.0659;~~ semi-independent living services provided under section 252.275, and Minnesota Rules, parts 9525.0500 to 9525.0660; ~~or~~ day training and habilitation programs and assisted living services; and

(c) (3) any placement for a person with an indeterminate commitment, including independent living.

Sec. 42. **RECOMMENDATIONS FOR FURTHER CASE MANAGEMENT REDESIGN AND STUDY OF COUNTY AND TRIBAL ADMINISTRATIVE FUNCTIONS.**

(a) By February 1, 2013, the commissioner of human services shall develop a legislative report with specific recommendations and language for proposed legislation for the following:

(1) definitions of service and consolidation of standards and rates to the extent appropriate for all types of medical assistance case management service services, including targeted case management under Minnesota Statutes, sections 256B.0621, 256B.0924, and 256B.094, and all types of home and community-based waiver case management and case management under Minnesota Rules, parts 9525.0004 to 9525.0036. This work must be completed in collaboration with efforts under Minnesota Statutes, section 256B.4912;

(2) recommendations on county of financial responsibility requirements and quality assurance measures for case management; and

(3) identification of county administrative functions that may remain entwined in case management service delivery models.

(b) The commissioner of human services shall evaluate county and tribal administrative functions, processes, and reimbursement methodologies for the purposes of administration of home and community-based services, and compliance and oversight functions. The commissioner shall work with county, tribal, and stakeholder representatives in the evaluation process and develop a plan for the delegation of commissioner duties to county and tribal entities after the elimination of county contracts under Minnesota Statutes, section 256B.4912, for waiver service provision and the creation of quality outcome standards under Laws 2009, chapter 79, article 8, section 81,

and residential support services under Minnesota Statutes, sections 256B.092, subdivision 11, and 245A.11, subdivision 8. The commissioner shall present findings and recommendations to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services finance and policy by February 1, 2013, with any specific recommendations and language for proposed legislation to be effective July 1, 2013.

ARTICLE 12  
CHEMICAL AND MENTAL HEALTH

Section 1. Minnesota Statutes 2010, section 245.461, is amended by adding a subdivision to read:

Subd. 6. **Diagnostic codes list.** By July 1, 2013, the commissioner of human services shall develop a list of diagnostic codes to define the range of child and adult mental illnesses for the statewide mental health system. The commissioner may use the International Classification of Diseases (ICD); the American Psychiatric Association's Diagnostic and Statistical Manual (DSM); or a combination of both to develop the list. The commissioner shall establish an advisory committee, comprising mental health professional associations, counties, tribes, managed care organizations, state agencies, and consumer organizations that shall advise the commissioner regarding development of the diagnostic codes list. The commissioner shall annually notify providers of changes to the list.

Sec. 2. Minnesota Statutes 2010, section 245.462, subdivision 20, is amended to read:

Subd. 20. **Mental illness.** (a) "Mental illness" means an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is ~~listed in the clinical manual of the International Classification of Diseases (ICD 9 CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0 or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM MD), current edition, Axes I, II, or III~~ detailed in a diagnostic codes list published by the commissioner, and that seriously limits a person's capacity to function in primary aspects of daily living such as personal relations, living arrangements, work, and recreation.

(b) An "adult with acute mental illness" means an adult who has a mental illness that is serious enough to require prompt intervention.

(c) For purposes of case management and community support services, a "person with serious and persistent mental illness" means an adult who has a mental illness and meets at least one of the following criteria:

- (1) the adult has undergone two or more episodes of inpatient care for a mental illness within the preceding 24 months;
- (2) the adult has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding 12 months;
- (3) the adult has been treated by a crisis team two or more times within the preceding 24 months;
- (4) the adult:
  - (i) has a diagnosis of schizophrenia, bipolar disorder, major depression, or borderline personality disorder;
  - (ii) indicates a significant impairment in functioning; and
  - (iii) has a written opinion from a mental health professional, in the last three years, stating that the adult is reasonably likely to have future episodes requiring inpatient or residential treatment, of a frequency described in clause (1) or (2), unless ongoing case management or community support services are provided;

(5) the adult has, in the last three years, been committed by a court as a person who is mentally ill under chapter 253B, or the adult's commitment has been stayed or continued; or

(6) the adult (i) was eligible under clauses (1) to (5), but the specified time period has expired or the adult was eligible as a child under section 245.4871, subdivision 6; and (ii) has a written opinion from a mental health professional, in the last three years, stating that the adult is reasonably likely to have future episodes requiring inpatient or residential treatment, of a frequency described in clause (1) or (2), unless ongoing case management or community support services are provided.

Sec. 3. Minnesota Statutes 2010, section 245.487, is amended by adding a subdivision to read:

Subd. 7. **Diagnostic codes list.** By July 1, 2013, the commissioner of human services shall develop a list of diagnostic codes to define the range of child and adult mental illnesses for the statewide mental health system. The commissioner may use the International Classification of Diseases (ICD); the American Psychiatric Association's Diagnostic and Statistical Manual (DSM); or a combination of both to develop the list. The commissioner shall establish an advisory committee, comprising mental health professional associations, counties, tribes, managed care organizations, state agencies, and consumer organizations that shall advise the commissioner regarding development of the diagnostic codes list. The commissioner shall annually notify providers of changes to the list.

Sec. 4. Minnesota Statutes 2010, section 245.4871, subdivision 15, is amended to read:

Subd. 15. **Emotional disturbance.** "Emotional disturbance" means an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that:

(1) ~~is listed in the clinical manual of the International Classification of Diseases (ICD-9-CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0 or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III detailed in a diagnostic codes list published by the commissioner; and~~

(2) seriously limits a child's capacity to function in primary aspects of daily living such as personal relations, living arrangements, work, school, and recreation.

"Emotional disturbance" is a generic term and is intended to reflect all categories of disorder described in ~~DSM-MD, current edition~~ the clinical code list published by the commissioner as "usually first evident in childhood or adolescence."

Sec. 5. Minnesota Statutes 2010, section 245.4932, subdivision 1, is amended to read:

Subdivision 1. **Collaborative responsibilities.** The children's mental health collaborative shall have the following authority and responsibilities regarding federal revenue enhancement:

(1) the collaborative must establish an integrated fund;

(2) the collaborative shall designate a lead county or other qualified entity as the fiscal agency for reporting, claiming, and receiving payments;

(3) the collaborative or lead county may enter into subcontracts with other counties, school districts, special education cooperatives, municipalities, and other public and nonprofit entities for purposes of identifying and claiming eligible expenditures to enhance federal reimbursement;

(4) the collaborative shall use any enhanced revenue attributable to the activities of the collaborative, including administrative and service revenue, solely to provide mental health services or to expand the operational target population. The lead county or other qualified entity may not use enhanced federal revenue for any other purpose;

~~(5) the members of the collaborative must continue the base level of expenditures, as defined in section 245.492, subdivision 2, for services for children with emotional or behavioral disturbances and their families from any state, county, federal, or other public or private funding source which, in the absence of the new federal reimbursement earned under sections 245.491 to 245.495, would have been available for those services. The base year for purposes of this subdivision shall be the accounting period closest to state fiscal year 1993;~~

~~(6) (5)~~ the collaborative or lead county must develop and maintain an accounting and financial management system adequate to support all claims for federal reimbursement, including a clear audit trail and any provisions specified in the contract with the commissioner of human services;

~~(7) (6)~~ the collaborative or its members may elect to pay the nonfederal share of the medical assistance costs for services designated by the collaborative; and

~~(8) (7)~~ the lead county or other qualified entity may not use federal funds or local funds designated as matching for other federal funds to provide the nonfederal share of medical assistance.

Sec. 6. Minnesota Statutes 2010, section 246.53, is amended by adding a subdivision to read:

**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.

Sec. 7. Minnesota Statutes 2011 Supplement, section 254B.04, subdivision 2a, is amended to read:

Subd. 2a. **Eligibility for treatment in residential settings.** Notwithstanding provisions of Minnesota Rules, part 9530.6622, subparts 5 and 6, related to an assessor's discretion in making placements to residential treatment settings, a person eligible for services under this section must score at level 4 on assessment dimensions related to relapse, continued use, ~~and~~ or recovery environment in order to be assigned to services with a room and board component reimbursed under this section.

Sec. 8. Minnesota Statutes 2010, section 256B.0625, subdivision 42, is amended to read:

Subd. 42. **Mental health professional.** Notwithstanding Minnesota Rules, part 9505.0175, subpart 28, the definition of a mental health professional shall include a person who is qualified as specified in section 245.462, subdivision 18, clauses ~~(5)~~ (1) to (6); or 245.4871, subdivision 27, clauses ~~(5)~~ (1) to (6), for the purpose of this section and Minnesota Rules, parts 9505.0170 to 9505.0475.

Sec. 9. Minnesota Statutes 2010, section 256F.13, subdivision 1, is amended to read:

Subdivision 1. **Federal revenue enhancement.** (a) The commissioner of human services may enter into an agreement with one or more family services collaboratives to enhance federal reimbursement under title IV-E of the Social Security Act and federal administrative reimbursement under title XIX of the Social Security Act. The commissioner may contract with the Department of Education for purposes of transferring the federal reimbursement to the commissioner of education to be distributed to the collaboratives according to clause (2). The commissioner shall have the following authority and responsibilities regarding family services collaboratives:

(1) the commissioner shall submit amendments to state plans and seek waivers as necessary to implement the provisions of this section;



(2) the commissioner shall pay the federal reimbursement earned under this subdivision to each collaborative based on their earnings. Payments to collaboratives for expenditures under this subdivision will only be made of federal earnings from services provided by the collaborative;

(3) the commissioner shall review expenditures of family services collaboratives using reports specified in the agreement with the collaborative to ensure ~~that the base level of expenditures is continued and~~ new federal reimbursement is used to expand education, social, health, or health-related services to young children and their families;

~~(4) the commissioner may reduce, suspend, or eliminate a family services collaborative's obligations to continue the base level of expenditures or expansion of services if the commissioner determines that one or more of the following conditions apply:~~

~~(i) imposition of levy limits that significantly reduce available funds for social, health, or health-related services to families and children;~~

~~(ii) reduction in the net tax capacity of the taxable property eligible to be taxed by the lead county or subcontractor that significantly reduces available funds for education, social, health, or health-related services to families and children;~~

~~(iii) reduction in the number of children under age 19 in the county, collaborative service delivery area, subcontractor's district, or catchment area when compared to the number in the base year using the most recent data provided by the State Demographer's Office; or~~

~~(iv) termination of the federal revenue earned under the family services collaborative agreement;~~

~~(5) (4)~~ the commissioner shall not use the federal reimbursement earned under this subdivision in determining the allocation or distribution of other funds to counties or collaboratives;

~~(6) (5)~~ the commissioner may suspend, reduce, or terminate the federal reimbursement to a provider that does not meet the reporting or other requirements of this subdivision;

~~(7) (6)~~ the commissioner shall recover from the family services collaborative any federal fiscal disallowances or sanctions for audit exceptions directly attributable to the family services collaborative's actions in the integrated fund, or the proportional share if federal fiscal disallowances or sanctions are based on a statewide random sample; and

~~(8) (7)~~ the commissioner shall establish criteria for the family services collaborative for the accounting and financial management system that will support claims for federal reimbursement.

(b) The family services collaborative shall have the following authority and responsibilities regarding federal revenue enhancement:

(1) the family services collaborative shall be the party with which the commissioner contracts. A lead county shall be designated as the fiscal agency for reporting, claiming, and receiving payments;

(2) the family services collaboratives may enter into subcontracts with other counties, school districts, special education cooperatives, municipalities, and other public and nonprofit entities for purposes of identifying and claiming eligible expenditures to enhance federal reimbursement, or to expand education, social, health, or health-related services to families and children;

(3) the family services collaborative must use all new federal reimbursement resulting from federal revenue enhancement to expand expenditures for education, social, health, or health-related services to families and children beyond the base level, ~~except as provided in paragraph (a), clause (4);~~

(4) the family services collaborative must ensure that expenditures submitted for federal reimbursement are not made from federal funds or funds used to match other federal funds. Notwithstanding section 256B.19, subdivision 1, for the purposes of family services collaborative expenditures under agreement with the department, the nonfederal share of costs shall be provided by the family services collaborative from sources other than federal funds or funds used to match other federal funds;

(5) the family services collaborative must develop and maintain an accounting and financial management system adequate to support all claims for federal reimbursement, including a clear audit trail and any provisions specified in the agreement; and

(6) the family services collaborative shall submit an annual report to the commissioner as specified in the agreement.

Sec. 10. **TERMINOLOGY AUDIT.**

The commissioner of human services shall collaborate with individuals with disabilities, families, advocates, and other governmental agencies to solicit feedback and identify inappropriate and insensitive terminology relating to individuals with disabilities, conduct a comprehensive audit of the placement of this terminology in Minnesota Statutes and Minnesota Rules, and make recommendations for changes to the 2013 legislature on the repeal and replacement of this terminology with more appropriate and sensitive terminology.

ARTICLE 13  
HEALTH CARE

Section 1. Minnesota Statutes 2011 Supplement, section 125A.21, subdivision 7, is amended to read:

Subd. 7. **District disclosure of information.** A school district may disclose information contained in a student's individualized education program, consistent with section 13.32, subdivision 3, paragraph (a), and Code of Federal Regulations, title 34, parts 99 and 300; including records of the student's diagnosis and treatment, to a health plan company only with the signed and dated consent of the student's parent, or other legally authorized individual, ~~including consent that the parent or legal representative gave as part of the application process for MinnesotaCare or medical assistance under section 256B.08, subdivision 1.~~ The school district shall disclose only that information necessary for the health plan company to decide matters of coverage and payment. A health plan company may use the information only for making decisions regarding coverage and payment, and for any other use permitted by law.

Sec. 2. Minnesota Statutes 2010, section 256B.04, subdivision 14, is amended to read:

Subd. 14. **Competitive bidding.** (a) When determined to be effective, economical, and feasible, the commissioner may utilize volume purchase through competitive bidding and negotiation under the provisions of chapter 16C, to provide items under the medical assistance program including but not limited to the following:

(1) eyeglasses;

(2) oxygen. The commissioner shall provide for oxygen needed in an emergency situation on a short-term basis, until the vendor can obtain the necessary supply from the contract dealer;

(3) hearing aids and supplies; and

(4) durable medical equipment, including but not limited to:

(i) hospital beds;

(ii) commodes;

(iii) glide-about chairs;

(iv) patient lift apparatus;

(v) wheelchairs and accessories;

(vi) oxygen administration equipment;

(vii) respiratory therapy equipment;

(viii) electronic diagnostic, therapeutic and life-support systems;

(5) nonemergency medical transportation level of need determinations, disbursement of public transportation passes and tokens, and volunteer and recipient mileage and parking reimbursements; and

(6) drugs.

(b) Rate changes and recipient cost-sharing under this chapter and chapters 256D and 256L do not affect contract payments under this subdivision unless specifically identified.

(c) The commissioner may not utilize volume purchase through competitive bidding and negotiation for special transportation services under the provisions of chapter 16C.

Sec. 3. Minnesota Statutes 2011 Supplement, section 256B.056, subdivision 3, is amended to read:

Subd. 3. **Asset limitations for individuals and families.** (a) To be eligible for medical assistance, a person must not individually own more than \$3,000 in assets, or if a member of a household with two family members, husband and wife, or parent and child, the household must not own more than \$6,000 in assets, plus \$200 for each additional legal dependent. In addition to these maximum amounts, an eligible individual or family may accrue interest on these amounts, but they must be reduced to the maximum at the time of an eligibility redetermination. The accumulation of the clothing and personal needs allowance according to section 256B.35 must also be reduced to the maximum at the time of the eligibility redetermination. The value of assets that are not considered in determining eligibility for medical assistance is the value of those assets excluded under the supplemental security income program for aged, blind, and disabled persons, with the following exceptions:

(1) household goods and personal effects are not considered;

(2) capital and operating assets of a trade or business that the local agency determines are necessary to the person's ability to earn an income are not considered;

(3) motor vehicles are excluded to the same extent excluded by the supplemental security income program;

(4) assets designated as burial expenses are excluded to the same extent excluded by the supplemental security income program. Burial expenses funded by annuity contracts or life insurance policies must irrevocably designate the individual's estate as contingent beneficiary to the extent proceeds are not used for payment of selected burial expenses; ~~and~~

(5) for a person who no longer qualifies as an employed person with a disability due to loss of earnings, assets allowed while eligible for medical assistance under section 256B.057, subdivision 9, are not considered for 12 months, beginning with the first month of ineligibility as an employed person with a disability, to the extent that the person's total assets remain within the allowed limits of section 256B.057, subdivision 9, paragraph (d); and

(6) effective July 1, 2009, certain assets owned by American Indians are excluded as required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. For purposes of this clause, an American Indian is any person who meets the definition of Indian according to Code of Federal Regulations, title 42, section 447.50.

(b) No asset limit shall apply to persons eligible under section 256B.055, subdivision 15.

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

Sec. 4. Minnesota Statutes 2010, section 256B.056, subdivision 3c, is amended to read:

Subd. 3c. **Asset limitations for families and children.** A household of two or more persons must not own more than \$20,000 in total net assets, and a household of one person must not own more than \$10,000 in total net assets. In addition to these maximum amounts, an eligible individual or family may accrue interest on these amounts, but they must be reduced to the maximum at the time of an eligibility redetermination. The value of assets that are not considered in determining eligibility for medical assistance for families and children is the value of those assets excluded under the AFDC state plan as of July 16, 1996, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, with the following exceptions:

(1) household goods and personal effects are not considered;

(2) capital and operating assets of a trade or business up to \$200,000 are not considered, except that a bank account that contains personal income or assets, or is used to pay personal expenses, is not considered a capital or operating asset of a trade or business;

(3) one motor vehicle is excluded for each person of legal driving age who is employed or seeking employment;

(4) assets designated as burial expenses are excluded to the same extent they are excluded by the Supplemental Security Income program;

(5) court-ordered settlements up to \$10,000 are not considered;

(6) individual retirement accounts and funds are not considered; ~~and~~

(7) assets owned by children are not considered; and

(8) effective July 1, 2009, certain assets owned by American Indians are excluded, as required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. For purposes of this clause, an American Indian is any person who meets the definition of Indian according to Code of Federal Regulations, title 42, section 447.50.

The assets specified in clause (2) must be disclosed to the local agency at the time of application and at the time of an eligibility redetermination, and must be verified upon request of the local agency.

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

Sec. 5. Minnesota Statutes 2011 Supplement, section 256B.057, subdivision 9, is amended to read:

Subd. 9. **Employed persons with disabilities.** (a) Medical assistance may be paid for a person who is employed and who:

- (1) but for excess earnings or assets, meets the definition of disabled under the Supplemental Security Income program;
- (2) is at least 16 but less than 65 years of age;
- (3) meets the asset limits in paragraph (d); and
- (4) pays a premium and other obligations under paragraph (e).

(b) For purposes of eligibility, there is a \$65 earned income disregard. To be eligible for medical assistance under this subdivision, a person must have more than \$65 of earned income. Earned income must have Medicare, Social Security, and applicable state and federal taxes withheld. The person must document earned income tax withholding. Any spousal income or assets shall be disregarded for purposes of eligibility and premium determinations.

(c) After the month of enrollment, a person enrolled in medical assistance under this subdivision who:

(1) is temporarily unable to work and without receipt of earned income due to a medical condition, as verified by a physician; or

(2) loses employment for reasons not attributable to the enrollee, and is without receipt of earned income may retain eligibility for up to four consecutive months after the month of job loss. To receive a four-month extension, enrollees must verify the medical condition or provide notification of job loss. All other eligibility requirements must be met and the enrollee must pay all calculated premium costs for continued eligibility.

(d) For purposes of determining eligibility under this subdivision, a person's assets must not exceed \$20,000, excluding:

- (1) all assets excluded under section 256B.056;
- (2) retirement accounts, including individual accounts, 401(k) plans, 403(b) plans, Keogh plans, and pension plans;
- (3) medical expense accounts set up through the person's employer; and
- (4) spousal assets, including spouse's share of jointly held assets.

(e) All enrollees must pay a premium to be eligible for medical assistance under this subdivision, except as provided under ~~section 256.01, subdivision 18b~~ clause (5).

(1) An enrollee must pay the greater of a \$65 premium or the premium calculated based on the person's gross earned and unearned income and the applicable family size using a sliding fee scale established by the commissioner, which begins at one percent of income at 100 percent of the federal poverty guidelines and increases to 7.5 percent of income for those with incomes at or above 300 percent of the federal poverty guidelines.

(2) Annual adjustments in the premium schedule based upon changes in the federal poverty guidelines shall be effective for premiums due in July of each year.

(3) All enrollees who receive unearned income must pay five percent of unearned income in addition to the premium amount, except as provided under ~~section 256.01, subdivision 18b~~ clause (5).

(4) Increases in benefits under title II of the Social Security Act shall not be counted as income for purposes of this subdivision until July 1 of each year.

(5) Effective July 1, 2009, American Indians are exempt from paying premiums as required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. For purposes of this clause, an American Indian is any person who meets the definition of Indian according to Code of Federal Regulations, title 42, section 447.50.

(f) A person's eligibility and premium shall be determined by the local county agency. Premiums must be paid to the commissioner. All premiums are dedicated to the commissioner.

(g) Any required premium shall be determined at application and redetermined at the enrollee's six-month income review or when a change in income or household size is reported. Enrollees must report any change in income or household size within ten days of when the change occurs. A decreased premium resulting from a reported change in income or household size shall be effective the first day of the next available billing month after the change is reported. Except for changes occurring from annual cost-of-living increases, a change resulting in an increased premium shall not affect the premium amount until the next six-month review.

(h) Premium payment is due upon notification from the commissioner of the premium amount required. Premiums may be paid in installments at the discretion of the commissioner.

(i) Nonpayment of the premium shall result in denial or termination of medical assistance unless the person demonstrates good cause for nonpayment. Good cause exists if the requirements specified in Minnesota Rules, part 9506.0040, subpart 7, items B to D, are met. Except when an installment agreement is accepted by the commissioner, all persons disenrolled for nonpayment of a premium must pay any past due premiums as well as current premiums due prior to being reenrolled. Nonpayment shall include payment with a returned, refused, or dishonored instrument. The commissioner may require a guaranteed form of payment as the only means to replace a returned, refused, or dishonored instrument.

(j) The commissioner shall notify enrollees annually beginning at least 24 months before the person's 65th birthday of the medical assistance eligibility rules affecting income, assets, and treatment of a spouse's income and assets that will be applied upon reaching age 65.

(k) For enrollees whose income does not exceed 200 percent of the federal poverty guidelines and who are also enrolled in Medicare, the commissioner shall reimburse the enrollee for Medicare part B premiums under section 256B.0625, subdivision 15, paragraph (a).

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

Sec. 6. Minnesota Statutes 2010, section 256B.0595, subdivision 2, is amended to read:

Subd. 2. **Period of ineligibility for long-term care services.** (a) For any uncompensated transfer occurring on or before August 10, 1993, the number of months of ineligibility for long-term care services shall be the lesser of 30 months, or the uncompensated transfer amount divided by the average medical assistance rate for nursing facility services in the state in effect on the date of application. The amount used to calculate the average medical assistance payment rate shall be adjusted each July 1 to reflect payment rates for the previous calendar year. The period of ineligibility begins with the month in which the assets were transferred. If the transfer was not reported to the local agency at the time of application, and the applicant received long-term care services during what would have been the period of ineligibility if the transfer had been reported, a cause of action exists against the transferee for the cost of long-term care services provided during the period of ineligibility, or for the uncompensated amount of the transfer, whichever is less. The uncompensated transfer amount is the fair market value of the asset at the time it was given away, sold, or disposed of, less the amount of compensation received.

(b) For uncompensated transfers made after August 10, 1993, the number of months of ineligibility for long-term care services shall be the total uncompensated value of the resources transferred divided by the average medical assistance rate for nursing facility services in the state in effect on the date of application. The amount used to calculate the average medical assistance payment rate shall be adjusted each July 1 to reflect payment rates for the previous calendar year. The period of ineligibility begins with the first day of the month after the month in which the assets were transferred except that if one or more uncompensated transfers are made during a period of ineligibility, the total assets transferred during the ineligibility period shall be combined and a penalty period calculated to begin on the first day of the month after the month in which the first uncompensated transfer was made. If the transfer was reported to the local agency after the date that advance notice of a period of ineligibility that affects the next month could be provided to the recipient and the recipient received medical assistance services or the transfer was not reported to the local agency, and the applicant or recipient received medical assistance services during what would have been the period of ineligibility if the transfer had been reported, a cause of action exists against the transferee for that portion of long-term care services provided during the period of ineligibility, or for the uncompensated amount of the transfer, whichever is less. The uncompensated transfer amount is the fair market value of the asset at the time it was given away, sold, or disposed of, less the amount of compensation received. Effective for transfers made on or after March 1, 1996, involving persons who apply for medical assistance on or after April 13, 1996, no cause of action exists for a transfer unless:

(1) the transferee knew or should have known that the transfer was being made by a person who was a resident of a long-term care facility or was receiving that level of care in the community at the time of the transfer;

(2) the transferee knew or should have known that the transfer was being made to assist the person to qualify for or retain medical assistance eligibility; or

(3) the transferee actively solicited the transfer with intent to assist the person to qualify for or retain eligibility for medical assistance.

(c) For uncompensated transfers made on or after February 8, 2006, the period of ineligibility:

(1) for uncompensated transfers by or on behalf of individuals receiving medical assistance payment of long-term care services, begins the first day of the month following advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or

(2) for uncompensated transfers by individuals requesting medical assistance payment of long-term care services, begins the date on which the individual is eligible for medical assistance under the Medicaid state plan and would otherwise be receiving long-term care services based on an approved application for such care but for the period of ineligibility resulting from the uncompensated transfer; and

(3) cannot begin during any other period of ineligibility.

(d) If a calculation of a period of ineligibility results in a partial month, payments for long-term care services shall be reduced in an amount equal to the fraction.

(e) In the case of multiple fractional transfers of assets in more than one month for less than fair market value on or after February 8, 2006, the period of ineligibility is calculated by treating the total, cumulative, uncompensated value of all assets transferred during all months on or after February 8, 2006, as one transfer.

(f) A period of ineligibility established under paragraph (c) may be eliminated if all of the assets transferred for less than fair market value used to calculate the period of ineligibility, or cash equal to the value of the assets at the time of the transfer, are returned ~~within 12 months after the date the period of ineligibility began~~. A period of ineligibility must not be adjusted if less than the full amount of the transferred assets or the full cash value of the transferred assets are returned.

Sec. 7. Minnesota Statutes 2010, section 256B.0625, subdivision 13, is amended to read:

Subd. 13. **Drugs.** (a) Medical assistance covers drugs, except for fertility drugs when specifically used to enhance fertility, if prescribed by a licensed practitioner and dispensed by a licensed pharmacist, by a physician enrolled in the medical assistance program as a dispensing physician, or by a physician, physician assistant, or a nurse practitioner employed by or under contract with a community health board as defined in section 145A.02, subdivision 5, for the purposes of communicable disease control.

(b) The dispensed quantity of a prescription drug must not exceed a 34-day supply, unless authorized by the commissioner.

(c) For the purpose of this subdivision and subdivision 13d, an "active pharmaceutical ingredient" is defined as a substance that is represented for use in a drug and when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient of the drug product. An "excipient" is defined as an inert substance used as a diluent or vehicle for a drug. The commissioner shall establish a list of active pharmaceutical ingredients and excipients which are included in the medical assistance formulary. Medical assistance covers selected active pharmaceutical ingredients and excipients used in compounded prescriptions when the compounded combination is specifically approved by the commissioner or when a commercially available product:

(1) is not a therapeutic option for the patient;

(2) does not exist in the same combination of active ingredients in the same strengths as the compounded prescription; and

(3) cannot be used in place of the active pharmaceutical ingredient in the compounded prescription.

~~(e)~~ (d) Medical assistance covers the following over-the-counter drugs when prescribed by a licensed practitioner or by a licensed pharmacist who meets standards established by the commissioner, in consultation with the board of pharmacy: antacids, acetaminophen, family planning products, aspirin, insulin, products for the treatment of lice, vitamins for adults with documented vitamin deficiencies, vitamins for children under the age of seven and pregnant or nursing women, and any other over-the-counter drug identified by the commissioner, in consultation with the formulary committee, as necessary, appropriate, and cost-effective for the treatment of certain specified chronic diseases, conditions, or disorders, and this determination shall not be subject to the requirements of chapter 14. A pharmacist may prescribe over-the-counter medications as provided under this paragraph for purposes of receiving reimbursement under Medicaid. When prescribing over-the-counter drugs under this paragraph, licensed pharmacists must consult with the recipient to determine necessity, provide drug counseling, review drug therapy for potential adverse interactions, and make referrals as needed to other health care professionals. Over-the-counter medications must be dispensed in a quantity that is the lower of: (1) the number of dosage units contained in the manufacturer's original package; and (2) the number of dosage units required to complete the patient's course of therapy.

~~(d)~~ (e) Effective January 1, 2006, medical assistance shall not cover drugs that are coverable under Medicare Part D as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, section 1860D-2(e), for individuals eligible for drug coverage as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, section 1860D-1(a)(3)(A). For these individuals, medical assistance may cover drugs from the drug classes listed in United States Code, title 42, section 1396r-8(d)(2), subject to this subdivision and subdivisions 13a to 13g, except that drugs listed in United States Code, title 42, section 1396r-8(d)(2)(E), shall not be covered.



Sec. 8. Minnesota Statutes 2010, section 256B.0625, subdivision 13d, is amended to read:

Subd. 13d. **Drug formulary.** (a) The commissioner shall establish a drug formulary. Its establishment and publication shall not be subject to the requirements of the Administrative Procedure Act, but the Formulary Committee shall review and comment on the formulary contents.

(b) The formulary shall not include:

- (1) drugs, active pharmaceutical ingredients, or products for which there is no federal funding;
- (2) over-the-counter drugs, except as provided in subdivision 13;
- (3) drugs or active pharmaceutical ingredients used for weight loss, except that medically necessary lipase inhibitors may be covered for a recipient with type II diabetes;
- (4) drugs or active pharmaceutical ingredients when used for the treatment of impotence or erectile dysfunction;
- (5) drugs or active pharmaceutical ingredients for which medical value has not been established; and
- (6) drugs from manufacturers who have not signed a rebate agreement with the Department of Health and Human Services pursuant to section 1927 of title XIX of the Social Security Act.

(c) If a single-source drug used by at least two percent of the fee-for-service medical assistance recipients is removed from the formulary due to the failure of the manufacturer to sign a rebate agreement with the Department of Health and Human Services, the commissioner shall notify prescribing practitioners within 30 days of receiving notification from the Centers for Medicare and Medicaid Services (CMS) that a rebate agreement was not signed.

Sec. 9. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 13e, is amended to read:

Subd. 13e. **Payment rates.** (a) The basis for determining the amount of payment shall be the lower of the actual acquisition costs of the drugs or the maximum allowable cost by the commissioner plus the fixed dispensing fee; or the usual and customary price charged to the public. The amount of payment basis must be reduced to reflect all discount amounts applied to the charge by any provider/insurer agreement or contract for submitted charges to medical assistance programs. The net submitted charge may not be greater than the patient liability for the service. The pharmacy dispensing fee shall be \$3.65, except that the dispensing fee for intravenous solutions which must be compounded by the pharmacist shall be \$8 per bag, \$14 per bag for cancer chemotherapy products, and \$30 per bag for total parenteral nutritional products dispensed in one liter quantities, or \$44 per bag for total parenteral nutritional products dispensed in quantities greater than one liter. Actual acquisition cost includes quantity and other special discounts except time and cash discounts. The actual acquisition cost of a drug shall be estimated by the commissioner at wholesale acquisition cost plus four percent for independently owned pharmacies located in a designated rural area within Minnesota, and at wholesale acquisition cost plus two percent for all other pharmacies. A pharmacy is "independently owned" if it is one of four or fewer pharmacies under the same ownership nationally. A "designated rural area" means an area defined as a small rural area or isolated rural area according to the four-category classification of the Rural Urban Commuting Area system developed for the United States Health Resources and Services Administration. Wholesale acquisition cost is defined as the manufacturer's list price for a drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates, or reductions in price, for the most recent month for which information is available, as reported in wholesale price guides or other publications of drug or biological pricing data. The maximum allowable cost of a multisource drug may be set by the commissioner and it shall be comparable to, but no higher than, the maximum amount paid by other third-party payors in this state who have maximum allowable cost programs. Establishment of the amount of payment for drugs shall not be subject to the requirements of the Administrative Procedure Act.

(b) An additional dispensing fee of \$.30 may be added to the dispensing fee paid to pharmacists for legend drug prescriptions dispensed to residents of long-term care facilities when a unit dose blister card system, approved by the department, is used. Under this type of dispensing system, the pharmacist must dispense a 30-day supply of drug. The National Drug Code (NDC) from the drug container used to fill the blister card must be identified on the claim to the department. The unit dose blister card containing the drug must meet the packaging standards set forth in Minnesota Rules, part 6800.2700, that govern the return of unused drugs to the pharmacy for reuse. The pharmacy provider will be required to credit the department for the actual acquisition cost of all unused drugs that are eligible for reuse. ~~Over-the-counter medications must be dispensed in the manufacturer's unopened package.~~ The commissioner may permit the drug clozapine to be dispensed in a quantity that is less than a 30-day supply.

(c) Whenever a maximum allowable cost has been set for a multisource drug, payment shall be the lower of the usual and customary price charged to the public or the maximum allowable cost established by the commissioner unless prior authorization for the brand name product has been granted according to the criteria established by the Drug Formulary Committee as required by subdivision 13f, paragraph (a), and the prescriber has indicated "dispense as written" on the prescription in a manner consistent with section 151.21, subdivision 2.

(d) The basis for determining the amount of payment for drugs administered in an outpatient setting shall be the lower of the usual and customary cost submitted by the provider or 106 percent of the average sales price as determined by the United States Department of Health and Human Services pursuant to title XVIII, section 1847a of the federal Social Security Act. If average sales price is unavailable, the amount of payment must be lower of the usual and customary cost submitted by the provider or the wholesale acquisition cost.

(e) The commissioner may negotiate lower reimbursement rates for specialty pharmacy products than the rates specified in paragraph (a). The commissioner may require individuals enrolled in the health care programs administered by the department to obtain specialty pharmacy products from providers with whom the commissioner has negotiated lower reimbursement rates. Specialty pharmacy products are defined as those used by a small number of recipients or recipients with complex and chronic diseases that require expensive and challenging drug regimens. Examples of these conditions include, but are not limited to: multiple sclerosis, HIV/AIDS, transplantation, hepatitis C, growth hormone deficiency, Crohn's Disease, rheumatoid arthritis, and certain forms of cancer. Specialty pharmaceutical products include injectable and infusion therapies, biotechnology drugs, antihemophilic factor products, high-cost therapies, and therapies that require complex care. The commissioner shall consult with the formulary committee to develop a list of specialty pharmacy products subject to this paragraph. In consulting with the formulary committee in developing this list, the commissioner shall take into consideration the population served by specialty pharmacy products, the current delivery system and standard of care in the state, and access to care issues. The commissioner shall have the discretion to adjust the reimbursement rate to prevent access to care issues.

(f) Home infusion therapy services provided by home infusion therapy pharmacies must be paid at rates according to subdivision 8d.

Sec. 10. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 13h, is amended to read:

Subd. 13h. **Medication therapy management services.** (a) Medical assistance and general assistance medical care cover medication therapy management services for a recipient taking three or more prescriptions to treat or prevent one or more chronic medical conditions; a recipient with a drug therapy problem that is identified by the commissioner or identified by a pharmacist and approved by the commissioner; or prior authorized by the commissioner that has resulted or is likely to result in significant nondrug program costs. The commissioner may cover medical therapy management services under MinnesotaCare if the commissioner determines this is cost-effective. For purposes of this subdivision, "medication therapy management" means the provision of the following pharmaceutical care services by a licensed pharmacist to optimize the therapeutic outcomes of the patient's medications:

- (1) performing or obtaining necessary assessments of the patient's health status;
- (2) formulating a medication treatment plan;
- (3) monitoring and evaluating the patient's response to therapy, including safety and effectiveness;
- (4) performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events;
- (5) documenting the care delivered and communicating essential information to the patient's other primary care providers;
- (6) providing verbal education and training designed to enhance patient understanding and appropriate use of the patient's medications;
- (7) providing information, support services, and resources designed to enhance patient adherence with the patient's therapeutic regimens; and
- (8) coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient.

Nothing in this subdivision shall be construed to expand or modify the scope of practice of the pharmacist as defined in section 151.01, subdivision 27.

(b) To be eligible for reimbursement for services under this subdivision, a pharmacist must meet the following requirements:

(1) have a valid license issued ~~under chapter 151~~ by the Board of Pharmacy of the state in which the medication therapy management service is being performed;

(2) have graduated from an accredited college of pharmacy on or after May 1996, or completed a structured and comprehensive education program approved by the Board of Pharmacy and the American Council of Pharmaceutical Education for the provision and documentation of pharmaceutical care management services that has both clinical and didactic elements;

(3) be practicing in an ambulatory care setting as part of a multidisciplinary team or have developed a structured patient care process that is offered in a private or semiprivate patient care area that is separate from the commercial business that also occurs in the setting, or in home settings, including long-term care settings, group homes, and facilities providing assisted living services, but excluding skilled nursing facilities; and

(4) make use of an electronic patient record system that meets state standards.

(c) For purposes of reimbursement for medication therapy management services, the commissioner may enroll individual pharmacists as medical assistance and general assistance medical care providers. The commissioner may also establish contact requirements between the pharmacist and recipient, including limiting the number of reimbursable consultations per recipient.

(d) If there are no pharmacists who meet the requirements of paragraph (b) practicing within a reasonable geographic distance of the patient, a pharmacist who meets the requirements may provide the services via two-way interactive video. Reimbursement shall be at the same rates and under the same conditions that would otherwise apply to the services provided. To qualify for reimbursement under this paragraph, the pharmacist providing the services must meet the requirements of paragraph (b), and must be located within an ambulatory care setting approved by the commissioner. The patient must also be located within an ambulatory care setting approved by the commissioner. Services provided under this paragraph may not be transmitted into the patient's residence.

(e) The commissioner shall establish a pilot project for an intensive medication therapy management program for patients identified by the commissioner with multiple chronic conditions and a high number of medications who are at high risk of preventable hospitalizations, emergency room use, medication complications, and suboptimal treatment outcomes due to medication-related problems. For purposes of the pilot project, medication therapy management services may be provided in a patient's home or community setting, in addition to other authorized settings. The commissioner may waive existing payment policies and establish special payment rates for the pilot project. The pilot project must be designed to produce a net savings to the state compared to the estimated costs that would otherwise be incurred for similar patients without the program. The pilot project must begin by January 1, 2010, and end June 30, 2012.

Sec. 11. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 14, is amended to read:

Subd. 14. **Diagnostic, screening, and preventive services.** (a) Medical assistance covers diagnostic, screening, and preventive services.

(b) "Preventive services" include services related to pregnancy, including:

(1) services for those conditions which may complicate a pregnancy and which may be available to a pregnant woman determined to be at risk of poor pregnancy outcome;

(2) prenatal HIV risk assessment, education, counseling, and testing; and

(3) alcohol abuse assessment, education, and counseling on the effects of alcohol usage while pregnant. Preventive services available to a woman at risk of poor pregnancy outcome may differ in an amount, duration, or scope from those available to other individuals eligible for medical assistance.

(c) "Screening services" include, but are not limited to, blood lead tests.

(d) The commissioner shall encourage, at the time of the child and teen checkup or at an episodic care visit, the primary care health care provider to perform primary caries preventive services. Primary caries preventive services include, at a minimum:

(1) a general visual examination of the child's mouth without using probes or other dental equipment or taking radiographs;

(2) a risk assessment using the factors established by the American Academies of Pediatrics and Pediatric Dentistry; and

(3) the application of a fluoride varnish beginning at age one to those children assessed by the provider as being high risk in accordance with best practices as defined by the Department of Human Services. The provider must obtain parental or legal guardian consent before a fluoride ~~treatment~~ varnish is applied to a minor child's teeth.

At each checkup, if primary caries preventive services are provided, the provider must provide to the child's parent or legal guardian: information on caries etiology and prevention; and information on the importance of finding a dental home for their child by the age of one. The provider must also advise the parent or legal guardian to contact the child's managed care plan or the Department of Human Services in order to secure a dental appointment with a dentist. The provider must indicate in the child's medical record that the parent or legal guardian was provided with this information and document any primary caries prevention services provided to the child.

Sec. 12. Minnesota Statutes 2011 Supplement, section 256B.0631, subdivision 1, is amended to read:

Subdivision 1. **Cost-sharing.** (a) Except as provided in subdivision 2, the medical assistance benefit plan shall include the following cost-sharing for all recipients, effective for services provided on or after September 1, 2011:

(1) \$3 per nonpreventive visit, except as provided in paragraph (b). For purposes of this subdivision, a visit means an episode of service which is required because of a recipient's symptoms, diagnosis, or established illness, and which is delivered in an ambulatory setting by a physician or physician ancillary, chiropractor, podiatrist, nurse midwife, advanced practice nurse, audiologist, optician, or optometrist;

~~(2) \$3 for eyeglasses;~~

~~(3) (2) \$3.50 for nonemergency visits to a hospital-based emergency room, except that this co-payment shall be increased to \$20 upon federal approval;~~

~~(4) (3) \$3 per brand-name drug prescription and \$1 per generic drug prescription, subject to a \$12 per month maximum for prescription drug co-payments. No co-payments shall apply to antipsychotic drugs when used for the treatment of mental illness;~~

~~(5) (4) effective January 1, 2012, a family deductible equal to the maximum amount allowed under Code of Federal Regulations, title 42, part 447.54; and~~

~~(6) (5) for individuals identified by the commissioner with income at or below 100 percent of the federal poverty guidelines, total monthly cost-sharing must not exceed five percent of family income. For purposes of this paragraph, family income is the total earned and unearned income of the individual and the individual's spouse, if the spouse is enrolled in medical assistance and also subject to the five percent limit on cost-sharing.~~

(b) Recipients of medical assistance are responsible for all co-payments and deductibles in this subdivision.

Sec. 13. Minnesota Statutes 2011 Supplement, section 256B.0631, subdivision 2, is amended to read:

Subd. 2. **Exceptions.** Co-payments and deductibles shall be subject to the following exceptions:

(1) children under the age of 21;

(2) pregnant women for services that relate to the pregnancy or any other medical condition that may complicate the pregnancy;

(3) recipients expected to reside for at least 30 days in a hospital, nursing home, or intermediate care facility for the developmentally disabled;

(4) recipients receiving hospice care;

(5) 100 percent federally funded services provided by an Indian health service;

(6) emergency services;

(7) family planning services;

(8) services that are paid by Medicare, resulting in the medical assistance program paying for the coinsurance and deductible; ~~and~~

(9) co-payments that exceed one per day per provider for nonpreventive visits, eyeglasses, and nonemergency visits to a hospital-based emergency room; and

(10) services, fee-for-service payments subject to volume purchase through competitive bidding.

Sec. 14. Minnesota Statutes 2010, section 256B.19, subdivision 1c, is amended to read:

Subd. 1c. **Additional portion of nonfederal share.** (a) Hennepin County shall be responsible for a monthly transfer payment of \$1,500,000, due before noon on the 15th of each month and the University of Minnesota shall be responsible for a monthly transfer payment of \$500,000 due before noon on the 15th of each month, beginning July 15, 1995. These sums shall be part of the designated governmental unit's portion of the nonfederal share of medical assistance costs.

(b) Beginning July 1, 2001, Hennepin County's payment under paragraph (a) shall be \$2,066,000 each month.

(c) Beginning July 1, 2001, the commissioner shall increase annual capitation payments to ~~the metropolitan health plan~~ a demonstration provider serving eligible individuals in Hennepin County under section 256B.69 for the prepaid medical assistance program by approximately \$6,800,000 to recognize higher than average medical education costs.

(d) Effective August 1, 2005, Hennepin County's payment under paragraphs (a) and (b) shall be reduced to \$566,000, and the University of Minnesota's payment under paragraph (a) shall be reduced to zero. Effective October 1, 2008, to December 31, 2010, Hennepin County's payment under paragraphs (a) and (b) shall be \$434,688. Effective January 1, 2011, Hennepin County's payment under paragraphs (a) and (b) shall be \$566,000.

(e) Notwithstanding paragraph (d), upon federal enactment of an extension to June 30, 2011, of the enhanced federal medical assistance percentage (FMAP) originally provided under Public Law 111-5, for the six-month period from January 1, 2011, to June 30, 2011, Hennepin County's payment under paragraphs (a) and (b) shall be \$434,688.

Sec. 15. Minnesota Statutes 2010, section 256B.69, subdivision 5, is amended to read:

Subd. 5. **Prospective per capita payment.** The commissioner shall establish the method and amount of payments for services. The commissioner shall annually contract with demonstration providers to provide services consistent with these established methods and amounts for payment.

If allowed by the commissioner, a demonstration provider may contract with an insurer, health care provider, nonprofit health service plan corporation, or the commissioner, to provide insurance or similar protection against the cost of care provided by the demonstration provider or to provide coverage against the risks incurred by demonstration providers under this section. The recipients enrolled with a demonstration provider are a permissible group under group insurance laws and chapter 62C, the Nonprofit Health Service Plan Corporations Act. Under this type of contract, the insurer or corporation may make benefit payments to a demonstration provider for services rendered or to be rendered to a recipient. Any insurer or nonprofit health service plan corporation licensed to do business in this state is authorized to provide this insurance or similar protection.

Payments to providers participating in the project are exempt from the requirements of sections 256.966 and 256B.03, subdivision 2. The commissioner shall complete development of capitation rates for payments before delivery of services under this section is begun. For payments made during calendar year 1990 and later years, the commissioner shall contract with an independent actuary to establish prepayment rates.

By January 15, 1996, the commissioner shall report to the legislature on the methodology used to allocate to participating counties available administrative reimbursement for advocacy and enrollment costs. The report shall reflect the commissioner's judgment as to the adequacy of the funds made available and of the methodology for equitable distribution of the funds. The commissioner must involve participating counties in the development of the report.

Beginning July 1, 2004, the commissioner may include payments for elderly waiver services and 180 days of nursing home care in capitation payments for the prepaid medical assistance program for recipients age 65 and older. ~~Payments for elderly waiver services shall be made no earlier than the month following the month in which services were received.~~

Sec. 16. Minnesota Statutes 2011 Supplement, section 256B.69, subdivision 5a, is amended to read:

Subd. 5a. **Managed care contracts.** (a) Managed care contracts under this section and section 256L.12 shall be entered into or renewed on a calendar year basis beginning January 1, 1996. Managed care contracts which were in effect on June 30, 1995, and set to renew on July 1, 1995, shall be renewed for the period July 1, 1995 through December 31, 1995 at the same terms that were in effect on June 30, 1995. The commissioner may issue separate contracts with requirements specific to services to medical assistance recipients age 65 and older.

(b) A prepaid health plan providing covered health services for eligible persons pursuant to chapters 256B and 256L is responsible for complying with the terms of its contract with the commissioner. Requirements applicable to managed care programs under chapters 256B and 256L established after the effective date of a contract with the commissioner take effect when the contract is next issued or renewed.

(c) Effective for services rendered on or after January 1, 2003, the commissioner shall withhold five percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program pending completion of performance targets. Each performance target must be quantifiable, objective, measurable, and reasonably attainable, except in the case of a performance target based on a federal or state law or rule. Criteria for assessment of each performance target must be outlined in writing prior to the contract effective date. Clinical or utilization performance targets and their related criteria must consider evidence-based research and reasonable interventions when available or applicable to the population served, and must be developed with input from external clinical experts and stakeholders, including managed care plans and providers. The managed care plan must demonstrate, to the commissioner's satisfaction, that the data submitted regarding attainment of the performance target is accurate. The commissioner shall periodically change the administrative measures used as performance targets in order to improve plan performance across a broader range of administrative services. The performance targets must include measurement of plan efforts to contain spending on health care services and administrative activities. The commissioner may adopt plan-specific performance targets that take into account factors affecting only one plan, including characteristics of the plan's enrollee population. The withheld funds must be returned no sooner than July of the following year if performance targets in the contract are achieved. The commissioner may exclude special demonstration projects under subdivision 23.

(d) Effective for services rendered on or after January 1, 2009, through December 31, 2009, the commissioner shall withhold three percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(e) Effective for services provided on or after January 1, 2010, the commissioner shall require that managed care plans use the assessment and authorization processes, forms, timelines, standards, documentation, and data reporting requirements, protocols, billing processes, and policies consistent with medical assistance fee-for-service or the Department of Human Services contract requirements consistent with medical assistance fee-for-service or the Department of Human Services contract requirements for all personal care assistance services under section 256B.0659.

(f) Effective for services rendered on or after January 1, 2010, through December 31, 2010, the commissioner shall withhold 4.5 percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(g) Effective for services rendered on or after January 1, 2011, through December 31, 2011, the commissioner shall include as part of the performance targets described in paragraph (c) a reduction in the health plan's emergency room utilization rate for state health care program enrollees by a measurable rate of five percent from the plan's utilization rate for state health care program enrollees for the previous calendar year. Effective for services rendered on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (c) a reduction in the health plan's emergency department utilization rate for medical assistance and MinnesotaCare enrollees, as determined by the commissioner. For 2012, the reduction shall be based on the health plan's utilization in 2009. To earn the return of the withhold each subsequent year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of no less than ten percent of the plan's emergency department utilization rate for medical assistance and MinnesotaCare enrollees, excluding ~~Medicare~~ enrollees in programs described in subdivisions 23 and 28, compared to the previous ~~calendar~~ measurement year, until the final performance target is reached. When measuring performance, the commissioner must consider the difference in health risk in a plan's membership in the baseline year compared to the measurement year and work with the managed care or county-based purchasing plan to account for differences that they agree are significant.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that a reduction in the utilization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph shall continue for each consecutive contract period until the plan's emergency room utilization rate for state health care program enrollees is reduced by 25 percent of the plan's emergency room utilization rate for medical assistance and MinnesotaCare enrollees for calendar year ~~2014~~ 2009. Hospitals shall cooperate with the health plans in meeting this performance target and shall accept payment withholds that may be returned to the hospitals if the performance target is achieved.

(h) Effective for services rendered on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (c) a reduction in the plan's hospitalization admission rate for medical assistance and MinnesotaCare enrollees, as determined by the commissioner. To earn the return of the withhold each year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of no less than five percent of the plan's hospital admission rate for medical assistance and MinnesotaCare enrollees, excluding ~~Medicare~~ enrollees in programs described in subdivisions 23 and 28, compared to the previous calendar year until the final performance target is reached. When measuring performance, the commissioner must consider the difference in health risk in a plan's membership in the baseline year compared to the measurement year, and work with the managed care or county-based purchasing plan to account for differences that they agree are significant.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that this reduction in the hospitalization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph shall continue until there is a 25 percent reduction in the hospital admission rate compared to the hospital admission rates in calendar year 2011, as determined by the commissioner. The hospital admissions in this performance target do not include the admissions applicable to the subsequent hospital admission performance target under paragraph (i). Hospitals shall cooperate with the plans in meeting this performance target and shall accept payment withholds that may be returned to the hospitals if the performance target is achieved.

(i) Effective for services rendered on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (c) a reduction in the plan's hospitalization admission rates for subsequent hospitalizations within 30 days of a previous hospitalization of a patient regardless of the reason, for



medical assistance and MinnesotaCare enrollees, as determined by the commissioner. To earn the return of the withhold each year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of the subsequent hospitalization rate for medical assistance and MinnesotaCare enrollees, excluding ~~Medicare~~ enrollees in programs described in subdivisions 23 and 28, of no less than five percent compared to the previous calendar year until the final performance target is reached.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that a qualifying reduction in the subsequent hospitalization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph must continue for each consecutive contract period until the plan's subsequent hospitalization rate for medical assistance and MinnesotaCare enrollees, excluding ~~Medicare~~ enrollees in programs described in subdivisions 23 and 28, is reduced by 25 percent of the plan's subsequent hospitalization rate for calendar year 2011. Hospitals shall cooperate with the plans in meeting this performance target and shall accept payment withholds that must be returned to the hospitals if the performance target is achieved.

(j) Effective for services rendered on or after January 1, 2011, through December 31, 2011, the commissioner shall withhold 4.5 percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(k) Effective for services rendered on or after January 1, 2012, through December 31, 2012, the commissioner shall withhold 4.5 percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(l) Effective for services rendered on or after January 1, 2013, through December 31, 2013, the commissioner shall withhold 4.5 percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(m) Effective for services rendered on or after January 1, 2014, the commissioner shall withhold three percent of managed care plan payments under this section and county-based purchasing plan payments under section 256B.692 for the prepaid medical assistance program. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following year. The commissioner may exclude special demonstration projects under subdivision 23.

(n) A managed care plan or a county-based purchasing plan under section 256B.692 may include as admitted assets under section 62D.044 any amount withheld under this section that is reasonably expected to be returned.

(o) Contracts between the commissioner and a prepaid health plan are exempt from the set-aside and preference provisions of section 16C.16, subdivisions 6, paragraph (a), and 7.

(p) The return of the withhold under paragraphs (d), (f), and (j) to (m) is not subject to the requirements of paragraph (c).

Sec. 17. Minnesota Statutes 2011 Supplement, section 256B.69, subdivision 28, is amended to read:

Subd. 28. **Medicare special needs plans; medical assistance basic health care.** (a) The commissioner may contract with demonstration providers and current or former sponsors of qualified Medicare-approved special needs plans, to provide medical assistance basic health care services to persons with disabilities, including those with developmental disabilities. Basic health care services include:

(1) those services covered by the medical assistance state plan except for ICF/MR services, home and community-based waiver services, case management for persons with developmental disabilities under section 256B.0625, subdivision 20a, and personal care and certain home care services defined by the commissioner in consultation with the stakeholder group established under paragraph (d); and

(2) basic health care services may also include risk for up to 100 days of nursing facility services for persons who reside in a noninstitutional setting and home health services related to rehabilitation as defined by the commissioner after consultation with the stakeholder group.

The commissioner may exclude other medical assistance services from the basic health care benefit set. Enrollees in these plans can access any excluded services on the same basis as other medical assistance recipients who have not enrolled.

(b) Beginning January 1, 2007, the commissioner may contract with demonstration providers and current and former sponsors of qualified Medicare special needs plans, to provide basic health care services under medical assistance to persons who are dually eligible for both Medicare and Medicaid and those Social Security beneficiaries eligible for Medicaid but in the waiting period for Medicare. The commissioner shall consult with the stakeholder group under paragraph (d) in developing program specifications for these services. The commissioner shall report to the chairs of the house of representatives and senate committees with jurisdiction over health and human services policy and finance by February 1, 2007, on implementation of these programs and the need for increased funding for the ombudsman for managed care and other consumer assistance and protections needed due to enrollment in managed care of persons with disabilities. Payment for Medicaid services provided under this subdivision for the months of May and June will be made no earlier than July 1 of the same calendar year.

(c) Notwithstanding subdivision 4, beginning January 1, 2012, the commissioner shall enroll persons with disabilities in managed care under this section, unless the individual chooses to opt out of enrollment. The commissioner shall establish enrollment and opt out procedures consistent with applicable enrollment procedures under this ~~subdivision~~ section.

(d) The commissioner shall establish a state-level stakeholder group to provide advice on managed care programs for persons with disabilities, including both MnDHO and contracts with special needs plans that provide basic health care services as described in paragraphs (a) and (b). The stakeholder group shall provide advice on program expansions under this subdivision and subdivision 23, including:

(1) implementation efforts;

(2) consumer protections; and

(3) program specifications such as quality assurance measures, data collection and reporting, and evaluation of costs, quality, and results.

(e) Each plan under contract to provide medical assistance basic health care services shall establish a local or regional stakeholder group, including representatives of the counties covered by the plan, members, consumer advocates, and providers, for advice on issues that arise in the local or regional area.

(f) The commissioner is prohibited from providing the names of potential enrollees to health plans for marketing purposes. The commissioner shall mail no more than two sets of marketing materials per contract year to potential enrollees on behalf of health plans, at the health plan's request. The marketing materials shall be mailed by the commissioner within 30 days of receipt of these materials from the health plan. The health plans shall cover any costs incurred by the commissioner for mailing marketing materials.

Sec. 18. Minnesota Statutes 2010, section 256L.05, subdivision 3, is amended to read:

Subd. 3. **Effective date of coverage.** (a) The effective date of coverage is the first day of the month following the month in which eligibility is approved and the first premium payment has been received. As provided in section 256B.057, coverage for newborns is automatic from the date of birth and must be coordinated with other health coverage. The effective date of coverage for eligible newly adoptive children added to a family receiving covered health services is the month of placement. The effective date of coverage for other new members added to the family is the first day of the month following the month in which the change is reported. All eligibility criteria must be met by the family at the time the new family member is added. The income of the new family member is included with the family's gross income and the adjusted premium begins in the month the new family member is added.

(b) The initial premium must be received by the last working day of the month for coverage to begin the first day of the following month.

(c) Benefits are not available until the day following discharge if an enrollee is hospitalized on the first day of coverage.

(d) Notwithstanding any other law to the contrary, benefits under sections 256L.01 to 256L.18 are secondary to a plan of insurance or benefit program under which an eligible person may have coverage and the commissioner shall use cost avoidance techniques to ensure coordination of any other health coverage for eligible persons. The commissioner shall identify eligible persons who may have coverage or benefits under other plans of insurance or who become eligible for medical assistance.

(e) The effective date of coverage for individuals or families who are exempt from paying premiums under section 256L.15, subdivision 1, paragraph (d), is the first day of the month following the month in which verification of American Indian status is received or eligibility is approved, whichever is later.

Sec. 19. Minnesota Statutes 2011 Supplement, section 256L.12, subdivision 9, is amended to read:

Subd. 9. **Rate setting; performance withholds.** (a) Rates will be prospective, per capita, where possible. The commissioner may allow health plans to arrange for inpatient hospital services on a risk or nonrisk basis. The commissioner shall consult with an independent actuary to determine appropriate rates.

(b) For services rendered on or after January 1, 2004, the commissioner shall withhold five percent of managed care plan payments and county-based purchasing plan payments under this section pending completion of performance targets. Each performance target must be quantifiable, objective, measurable, and reasonably attainable, except in the case of a performance target based on a federal or state law or rule. Criteria for assessment of each performance target must be outlined in writing prior to the contract effective date. Clinical or utilization performance targets and their related criteria must consider evidence-based research and reasonable interventions, when available or applicable to the populations served, and must be developed with input from external clinical experts and stakeholders, including managed care plans and providers. The managed care plan must demonstrate, to the commissioner's satisfaction, that the data submitted regarding attainment of the performance target is accurate. The commissioner shall periodically change the administrative measures used as performance targets in order to improve plan performance across a broader range of administrative services. The performance targets must include measurement of plan efforts to contain spending on health care services and administrative activities. The commissioner may adopt plan-specific performance targets that take into account factors affecting only one plan, such as characteristics of the plan's enrollee population. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if performance targets in the contract are achieved.

(c) For services rendered on or after January 1, 2011, the commissioner shall withhold an additional three percent of managed care plan or county-based purchasing plan payments under this section. The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year. The return of the withhold under this paragraph is not subject to the requirements of paragraph (b).

(d) Effective for services rendered on or after January 1, 2011, through December 31, 2011, the commissioner shall include as part of the performance targets described in paragraph (b) a reduction in the plan's emergency room utilization rate for state health care program enrollees by a measurable rate of five percent from the plan's utilization rate for the previous calendar year. Effective for services rendered on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (b) a reduction in the health plan's emergency department utilization rate for medical assistance and MinnesotaCare enrollees, as determined by the commissioner. For 2012, the reduction shall be based on the health plan's utilization in 2009. To earn the return of the withhold each subsequent year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of no less than ten percent of the plan's utilization rate for medical assistance and MinnesotaCare enrollees, excluding Medicare enrollees in programs described in section 256B.69, subdivisions 23 and 28, compared to the previous calendar measurement year, until the final performance target is reached. When measuring performance, the commissioner must consider the difference in health risk in a plan's membership in the baseline year compared to the measurement year, and work with the managed care or county-based purchasing plan to account for differences that they agree are significant.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that a reduction in the utilization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph shall continue for each consecutive contract period until the plan's emergency room utilization rate for state health care program enrollees is reduced by 25 percent of the plan's emergency room utilization rate for medical assistance and MinnesotaCare enrollees for calendar year ~~2011~~ 2009. Hospitals shall cooperate with the health plans in meeting this performance target and shall accept payment withholds that may be returned to the hospitals if the performance target is achieved.

(e) Effective for services rendered on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (b) a reduction in the plan's hospitalization admission rate for medical assistance and MinnesotaCare enrollees, as determined by the commissioner. To earn the return of the withhold each year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of no less than five percent of the plan's hospital admission rate for medical assistance and MinnesotaCare enrollees, excluding Medicare enrollees in programs described in section 256B.69, subdivisions 23 and 28, compared to the previous calendar year, until the final performance target is reached. When measuring performance, the commissioner must consider the difference in health risk in a plan's membership in the baseline year compared to the measurement year, and work with the managed care or county-based purchasing plan to account for differences that they agree are significant.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that this reduction in the hospitalization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph shall continue until there is a 25 percent reduction in the hospitals admission rate compared to the hospital admission rate for calendar year 2011 as determined by the commissioner. Hospitals shall cooperate with the plans in meeting this performance target and shall accept payment withholds that may be returned to the hospitals if the performance target is achieved. The hospital admissions in this performance target do not include the admissions applicable to the subsequent hospital admission performance target under paragraph (f).

(f) Effective for services provided on or after January 1, 2012, the commissioner shall include as part of the performance targets described in paragraph (b) a reduction in the plan's hospitalization rate for a subsequent hospitalization within 30 days of a previous hospitalization of a patient regardless of the reason, for medical assistance and MinnesotaCare enrollees, as determined by the commissioner. To earn the return of the withhold each year, the managed care plan or county-based purchasing plan must achieve a qualifying reduction of the subsequent hospital admissions rate for medical assistance and MinnesotaCare enrollees, excluding ~~Medicare~~ enrollees in programs described in section 256B.69, subdivisions 23 and 28, of no less than five percent compared to the previous calendar year until the final performance target is reached.

The withheld funds must be returned no sooner than July 1 and no later than July 31 of the following calendar year if the managed care plan or county-based purchasing plan demonstrates to the satisfaction of the commissioner that a reduction in the subsequent hospitalization rate was achieved. The commissioner shall structure the withhold so that the commissioner returns a portion of the withheld funds in amounts commensurate with achieved reductions in utilization less than the targeted amount.

The withhold described in this paragraph must continue for each consecutive contract period until the plan's subsequent hospitalization rate for medical assistance and MinnesotaCare enrollees is reduced by 25 percent of the plan's subsequent hospitalization rate for calendar year 2011. Hospitals shall cooperate with the plans in meeting this performance target and shall accept payment withholds that must be returned to the hospitals if the performance target is achieved.

(g) A managed care plan or a county-based purchasing plan under section 256B.692 may include as admitted assets under section 62D.044 any amount withheld under this section that is reasonably expected to be returned.

Sec. 20. Minnesota Statutes 2011 Supplement, section 256L.15, subdivision 1, is amended to read:

Subdivision 1. **Premium determination.** (a) Families with children and individuals shall pay a premium determined according to subdivision 2.

(b) Pregnant women and children under age two are exempt from the provisions of section 256L.06, subdivision 3, paragraph (b), clause (3), requiring disenrollment for failure to pay premiums. For pregnant women, this exemption continues until the first day of the month following the 60th day postpartum. Women who remain enrolled during pregnancy or the postpartum period, despite nonpayment of premiums, shall be disenrolled on the first of the month following the 60th day postpartum for the penalty period that otherwise applies under section 256L.06, unless they begin paying premiums.

(c) Members of the military and their families who meet the eligibility criteria for MinnesotaCare upon eligibility approval made within 24 months following the end of the member's tour of active duty shall have their premiums paid by the commissioner. The effective date of coverage for an individual or family who meets the criteria of this paragraph shall be the first day of the month following the month in which eligibility is approved. This exemption applies for 12 months.

(d) Beginning July 1, 2009, American Indians enrolled in MinnesotaCare and their families shall have their premiums waived by the commissioner in accordance with section 5006 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. An individual must document status as an American Indian, as defined under Code of Federal Regulations, title 42, section 447.50, to qualify for the waiver of premiums.

**EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

Sec. 21. Minnesota Statutes 2010, section 514.982, subdivision 1, is amended to read:

Subdivision 1. **Contents.** A medical assistance lien notice must be dated and must contain:

(1) the full name, last known address, and last four digits of the Social Security number of the medical assistance recipient;

(2) a statement that medical assistance payments have been made to or for the benefit of the medical assistance recipient named in the notice, specifying the first date of eligibility for benefits;

(3) a statement that all interests in real property owned by the persons named in the notice may be subject to or affected by the rights of the agency to be reimbursed for medical assistance benefits; and

(4) the legal description of the real property upon which the lien attaches, and whether the property is registered property.

Sec. 22. **HEALTH SERVICES ADVISORY COUNCIL.**

The Health Services Advisory Council shall review currently available literature regarding the efficacy of various treatments for autism spectrum disorder, including an evaluation of age-based variation in the appropriateness of existing medical and behavioral interventions. The council shall recommend to the commissioner of human services authorization criteria for services based on existing evidence. The council may recommend coverage with ongoing collection of outcomes evidence in circumstances where evidence is currently unavailable, or where the strength of the evidence is low. The council shall make this recommendation by December 31, 2012.

Sec. 23. **REPEALER.**

Minnesota Statutes 2010, section 256.01, subdivision 18b, is repealed.

#### ARTICLE 14 TECHNICAL

Section 1. Minnesota Statutes 2010, section 144A.071, subdivision 5a, is amended to read:

Subd. 5a. **Cost estimate of a moratorium exception project.** (a) For the purposes of this section and section 144A.073, the cost estimate of a moratorium exception project shall include the effects of the proposed project on the costs of the state subsidy for community-based services, nursing services, and housing in institutional and noninstitutional settings. The commissioner of health, in cooperation with the commissioner of human services, shall define the method for estimating these costs in the permanent rule implementing section 144A.073. The commissioner of human services shall prepare an estimate of the total state annual long-term costs of each moratorium exception proposal.

(b) The interest rate to be used for estimating the cost of each moratorium exception project proposal shall be the lesser of either the prime rate plus two percentage points, or the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation plus two percentage points as published in the Wall Street Journal and in effect 56 days prior to the application deadline. If the applicant's proposal uses this interest rate, the commissioner of human services, in determining the facility's actual property-related payment rate to be established upon completion of the project must use the actual interest rate obtained by the facility for the project's permanent financing up to the maximum permitted under ~~subdivision 6~~ Minnesota Rules, part 9549.0060, subpart 6.

The applicant may choose an alternate interest rate for estimating the project's cost. If the applicant makes this election, the commissioner of human services, in determining the facility's actual property-related payment rate to be established upon completion of the project, must use the lesser of the actual interest rate obtained for the project's permanent financing or the interest rate which was used to estimate the proposal's project cost. For succeeding rate years, the applicant is at risk for financing costs in excess of the interest rate selected.

Sec. 2. **REVISOR'S INSTRUCTION.**

(a) In Minnesota Statutes, sections 256B.038, 256B.0911, 256B.0918, 256B.092, 256B.097, 256B.49, and 256B.765, the revisor of statutes shall delete the word "traumatic" when it comes before the word "brain."

(b) In Minnesota Statutes, section 256B.093, subdivision 1, clauses (4) and (5), and subdivision 3, clause (2), the revisor of statutes shall delete the word "traumatic" when it comes before the word "brain."

(c) In Minnesota Statutes, sections 144.0724 and 144G.05, the revisor of statutes shall delete "TBI" and replace it with "BI."

ARTICLE 15  
DATA PRACTICES

Section 1. Minnesota Statutes 2010, section 13.46, subdivision 2, is amended to read:

Subd. 2. **General.** (a) Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used, or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(1) according to section 13.05;

(2) according to court order;

(3) according to a statute specifically authorizing access to the private data;

(4) to an agent of the welfare system and an investigator acting on behalf of a county, the state, or the federal government, including a law enforcement person, or attorney, or investigator acting for it in the investigation or prosecution of a criminal ~~or~~ civil, or administrative proceeding relating to the administration of a program;

(5) to personnel of the welfare system who require the data to verify an individual's identity; determine eligibility, amount of assistance, and the need to provide services to an individual or family across programs; evaluate the effectiveness of programs; assess parental contribution amounts; and investigate suspected fraud;

(6) to administer federal funds or programs;

(7) between personnel of the welfare system working in the same program;

(8) to the Department of Revenue to assess parental contribution amounts for purposes of section 252.27, subdivision 2a, administer and evaluate tax refund or tax credit programs and to identify individuals who may benefit from these programs. The following information may be disclosed under this paragraph: an individual's and their dependent's names, dates of birth, Social Security numbers, income, addresses, and other data as required, upon request by the Department of Revenue. Disclosures by the commissioner of revenue to the commissioner of human services for the purposes described in this clause are governed by section 270B.14, subdivision 1. Tax refund or tax credit programs include, but are not limited to, the dependent care credit under section 290.067, the Minnesota working family credit under section 290.0671, the property tax refund and rental credit under section 290A.04, and the Minnesota education credit under section 290.0674;

(9) between the Department of Human Services, the Department of Employment and Economic Development, and when applicable, the Department of Education, for the following purposes:

(i) to monitor the eligibility of the data subject for unemployment benefits, for any employment or training program administered, supervised, or certified by that agency;

(ii) to administer any rehabilitation program or child care assistance program, whether alone or in conjunction with the welfare system;

(iii) to monitor and evaluate the Minnesota family investment program or the child care assistance program by exchanging data on recipients and former recipients of food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L; and

(iv) to analyze public assistance employment services and program utilization, cost, effectiveness, and outcomes as implemented under the authority established in Title II, Sections 201-204 of the Ticket to Work and Work Incentives Improvement Act of 1999. Health records governed by sections 144.291 to 144.298 and "protected health information" as defined in Code of Federal Regulations, title 45, section 160.103, and governed by Code of Federal Regulations, title 45, parts 160-164, including health care claims utilization information, must not be exchanged under this clause;

(10) to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the individual or other individuals or persons;

(11) data maintained by residential programs as defined in section 245A.02 may be disclosed to the protection and advocacy system established in this state according to Part C of Public Law 98-527 to protect the legal and human rights of persons with developmental disabilities or other related conditions who live in residential facilities for these persons if the protection and advocacy system receives a complaint by or on behalf of that person and the person does not have a legal guardian or the state or a designee of the state is the legal guardian of the person;

(12) to the county medical examiner or the county coroner for identifying or locating relatives or friends of a deceased person;

(13) data on a child support obligor who makes payments to the public agency may be disclosed to the Minnesota Office of Higher Education to the extent necessary to determine eligibility under section 136A.121, subdivision 2, clause (5);

(14) participant Social Security numbers and names collected by the telephone assistance program may be disclosed to the Department of Revenue to conduct an electronic data match with the property tax refund database to determine eligibility under section 237.70, subdivision 4a;

(15) the current address of a Minnesota family investment program participant may be disclosed to law enforcement officers who provide the name of the participant and notify the agency that:

(i) the participant:

(A) is a fugitive felon fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony under the laws of the jurisdiction from which the individual is fleeing; or

(B) is violating a condition of probation or parole imposed under state or federal law;

(ii) the location or apprehension of the felon is within the law enforcement officer's official duties; and

(iii) the request is made in writing and in the proper exercise of those duties;



(16) the current address of a recipient of general assistance or general assistance medical care may be disclosed to probation officers and corrections agents who are supervising the recipient and to law enforcement officers who are investigating the recipient in connection with a felony level offense;

(17) information obtained from food support applicant or recipient households may be disclosed to local, state, or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act, according to Code of Federal Regulations, title 7, section 272.1 (c);

(18) the address, Social Security number, and, if available, photograph of any member of a household receiving food support shall be made available, on request, to a local, state, or federal law enforcement officer if the officer furnishes the agency with the name of the member and notifies the agency that:

(i) the member:

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony in the jurisdiction the member is fleeing;

(B) is violating a condition of probation or parole imposed under state or federal law; or

(C) has information that is necessary for the officer to conduct an official duty related to conduct described in subitem (A) or (B);

(ii) locating or apprehending the member is within the officer's official duties; and

(iii) the request is made in writing and in the proper exercise of the officer's official duty;

(19) the current address of a recipient of Minnesota family investment program, general assistance, general assistance medical care, or food support may be disclosed to law enforcement officers who, in writing, provide the name of the recipient and notify the agency that the recipient is a person required to register under section 243.166, but is not residing at the address at which the recipient is registered under section 243.166;

(20) certain information regarding child support obligors who are in arrears may be made public according to section 518A.74;

(21) data on child support payments made by a child support obligor and data on the distribution of those payments excluding identifying information on obligees may be disclosed to all obligees to whom the obligor owes support, and data on the enforcement actions undertaken by the public authority, the status of those actions, and data on the income of the obligor or obligee may be disclosed to the other party;

(22) data in the work reporting system may be disclosed under section 256.998, subdivision 7;

(23) to the Department of Education for the purpose of matching Department of Education student data with public assistance data to determine students eligible for free and reduced-price meals, meal supplements, and free milk according to United States Code, title 42, sections 1758, 1761, 1766, 1766a, 1772, and 1773; to allocate federal and state funds that are distributed based on income of the student's family; and to verify receipt of energy assistance for the telephone assistance plan;

(24) the current address and telephone number of program recipients and emergency contacts may be released to the commissioner of health or a local board of health as defined in section 145A.02, subdivision 2, when the commissioner or local board of health has reason to believe that a program recipient is a disease case, carrier, suspect case, or at risk of illness, and the data are necessary to locate the person;

(25) to other state agencies, statewide systems, and political subdivisions of this state, including the attorney general, and agencies of other states, interstate information networks, federal agencies, and other entities as required by federal regulation or law for the administration of the child support enforcement program;

(26) to personnel of public assistance programs as defined in section 256.741, for access to the child support system database for the purpose of administration, including monitoring and evaluation of those public assistance programs;

(27) to monitor and evaluate the Minnesota family investment program by exchanging data between the Departments of Human Services and Education, on recipients and former recipients of food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(28) to evaluate child support program performance and to identify and prevent fraud in the child support program by exchanging data between the Department of Human Services, Department of Revenue under section 270B.14, subdivision 1, paragraphs (a) and (b), without regard to the limitation of use in paragraph (c), Department of Health, Department of Employment and Economic Development, and other state agencies as is reasonably necessary to perform these functions;

(29) counties operating child care assistance programs under chapter 119B may disseminate data on program participants, applicants, and providers to the commissioner of education; or

(30) child support data on the parents and the child may be disclosed to agencies administering programs under titles IV-B and IV-E of the Social Security Act, as provided by federal law. Data may be disclosed only to the extent necessary for the purpose of establishing parentage or for determining who has or may have parental rights with respect to a child, which could be related to permanency planning.

(b) Information on persons who have been treated for drug or alcohol abuse may only be disclosed according to the requirements of Code of Federal Regulations, title 42, sections 2.1 to 2.67.

(c) Data provided to law enforcement agencies under paragraph (a), clause (15), (16), (17), or (18), or paragraph (b), are investigative data and are confidential or protected nonpublic while the investigation is active. The data are private after the investigation becomes inactive under section 13.82, subdivision 5, paragraph (a) or (b).

(d) Mental health data shall be treated as provided in subdivisions 7, 8, and 9, but is not subject to the access provisions of subdivision 10, paragraph (b).

For the purposes of this subdivision, a request will be deemed to be made in writing if made through a computer interface system.

Sec. 2. Minnesota Statutes 2010, section 13.46, subdivision 3, is amended to read:

Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of services, licensees, and applicants that is collected, maintained, used, or disseminated by the welfare system in an investigation, authorized by statute, and relating to the enforcement of rules or law is confidential data on individuals pursuant to section 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to statute or valid court order;

- (3) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense; or
- (4) to provide notices required or permitted by statute.

The data referred to in this subdivision shall be classified as public data upon its submission to an administrative law judge or court in an administrative or judicial proceeding. Inactive welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

(b) Notwithstanding any other provision in law, the commissioner of human services shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and developmental disabilities upon the request of the ombudsman.

(c) Notwithstanding paragraph (a) and section 13.39, the existence and status of an investigation by the commissioner of possible overpayments of public funds to a service provider are public data during an investigation.

Sec. 3. Minnesota Statutes 2010, section 13.46, subdivision 4, is amended to read:

Subd. 4. **Licensing data.** (a) As used in this subdivision:

(1) "licensing data" means all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" means Social Security numbers, identity of and letters of reference, insurance information, reports from the Bureau of Criminal Apprehension, health examination reports, and social/home studies.

(b)(1) (i) Except as provided in paragraph (c), the following data on applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician.

(ii) When a correction order, an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license has been issued, or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions. ~~If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that the license holder or applicant is responsible for maltreatment or is disqualified under chapter 245C, the identity of the license holder or applicant as the individual responsible for maltreatment or as the disqualified individual is public data at the time of the issuance of the licensing sanction or denial.~~

(iii) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is responsible for maltreatment under section 626.556 or 626.557, the identity of the applicant or license holder as the individual responsible for maltreatment is public data at the time of the issuance of the license denial or sanction.

(iv) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is disqualified under chapter 245C, the identity of the license holder or applicant as the disqualified individual and the reason for the disqualification are public data at the time of the issuance of the licensing sanction or denial. If the applicant or license holder requests reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data.

(2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b, when any person subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home is a substantiated perpetrator of maltreatment, and the substantiated maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator of maltreatment is public data. For purposes of this clause, a person is a substantiated perpetrator if the maltreatment determination has been upheld under section 256.045; 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or facility has not timely exercised appeal rights under these sections, except as provided under clause (1).

(3) For applicants who withdraw their application prior to licensure or denial of a license, the following data are public: the name of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, and the date of withdrawal of the application.

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that an individual subject to disqualification under chapter 245C is disqualified, the disqualification as a basis for the licensing sanction or denial is public data. As specified in clause (1), item (iv), if the disqualified individual is the license holder or applicant, the identity of the license holder or applicant ~~is~~ and the reason for the disqualification are public data; and, if the license holder or applicant requested reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data. If the disqualified individual is an individual other than the license holder or applicant, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

(7) Notwithstanding clause (1), for child foster care, only the name of the license holder and the status of the license are public if the county attorney has requested that data otherwise classified as public data under clause (1) be considered private data based on the best interests of a child in placement in a licensed program.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters of complaints or alleged violations of licensing standards under chapters 245A, 245B, 245C, and applicable rules and alleged maltreatment under sections 626.556 and 626.557, are confidential data and may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as part of a disciplinary proceeding in which there is a public hearing concerning a license which has been suspended, immediately suspended, revoked, or denied.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of law are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, or 626.5572, subdivision 18, are subject to the destruction provisions of sections 626.556, subdivision 11c, and 626.557, subdivision 12b.

(h) Upon request, not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report of substantiated maltreatment as defined in section 626.556 or 626.557 may be exchanged with the Department of Health for purposes of completing background studies pursuant to section 144.057 and with the Department of Corrections for purposes of completing background studies pursuant to section 241.021.

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, ~~and~~ data on individuals collected by the commissioner of human services according to ~~maltreatment~~ investigations under chapters 245A and 245C, and sections 626.556 and 626.557; may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the ombudsman for mental health and developmental disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated- or the information may otherwise be relevant to the board's regulatory jurisdiction. Background study data on an individual who is the subject of a background study under chapter 245C for a licensed service for which the commissioner of human services is the license holder may be shared with the commissioner and the commissioner's delegate by the licensing division. Unless otherwise specified in this chapter, the identity of a reporter of alleged maltreatment or licensing violations may not be disclosed.

(j) In addition to the notice of determinations required under section 626.556, subdivision 10f, if the commissioner or the local social services agency has determined that an individual is a substantiated perpetrator of maltreatment of a child based on sexual abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social services agency knows that the individual is a person responsible for a child's care in another facility, the commissioner or local social services agency shall notify the head of that facility of this determination. The notification must include an explanation of the individual's available appeal rights and the status of any appeal. If a notice is given under this paragraph, the government entity making the notification shall provide a copy of the notice to the individual who is the subject of the notice.

(k) All not public data collected, maintained, used, or disseminated under this subdivision and subdivision 3 may be exchanged between the Department of Human Services, Licensing Division, and the Department of Corrections for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority.

Sec. 4. Minnesota Statutes 2010, section 13.82, subdivision 1, is amended to read:

Subdivision 1. **Application.** This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, fire departments, the Bureau of Criminal Apprehension, the Minnesota State Patrol, the Board of Peace Officer Standards and Training, the Department of Commerce, ~~and the program integrity section of, and~~ county human service agency client and provider fraud investigation, prevention, and control units operated or supervised by the Department of Human Services.

#### ARTICLE 16 LICENSING

Section 1. Minnesota Statutes 2010, section 245A.03, is amended by adding a subdivision to read:

Subd. 2c. **School-age child care licensing moratorium.** A school-age program whose sole purpose is to provide only services to school-age children during out-of-school times is exempt from the human services licensing requirements in this chapter until July 1, 2014. Nothing in this section prohibits an already licensed school-age-only program from continuing its license or a school-age program from seeking licensure.

Sec. 2. Minnesota Statutes 2010, section 245A.04, subdivision 1, is amended to read:

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

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

When the commissioner receives an application for initial licensure that is incomplete because the applicant failed to submit required documents or that is substantially deficient because the documents submitted do not meet licensing requirements, the commissioner shall provide the applicant written notice that the application is incomplete or substantially deficient. In the written notice to the applicant the commissioner shall identify documents that are missing or deficient and give the applicant 45 days to resubmit a second application that is substantially complete. An applicant's failure to submit a substantially complete application after receiving notice from the commissioner is a basis for license denial under section 245A.05.

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

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

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

(e) The applicant must be able to demonstrate competent knowledge of the applicable requirements of this chapter and chapter 245C, and the requirements of other licensing statutes and rules applicable to the program or services for which the applicant is seeking to be licensed. Effective January 1, 2013, the commissioner may require the applicant, except for child foster care, to demonstrate competence in the applicable licensing requirements by successfully completing a written examination. The commissioner may develop a prescribed written examination format.

(f) When an applicant is an individual, the individual must provide the applicant's Social Security number and a photocopy of a Minnesota driver's license, Minnesota identification card, or valid United States passport.

(g) When an applicant is a nonindividual, the applicant must provide the applicant's Minnesota tax identification number, the name, and address, and the date that the background study was initiated by the applicant for each controlling individual, and:

(1) if the agent authorized to accept service on behalf of all the controlling individuals resides in Minnesota, the agent must provide a photocopy of the agent's Minnesota driver's license, Minnesota identification card, or United States passport; or

(2) if the agent authorized to accept service on behalf of all the controlling individuals resides outside Minnesota, the agent must provide a photocopy of the agent's driver's license or identification card from the state where the agent resides or a photocopy of the agent's United States passport.

Sec. 3. Minnesota Statutes 2010, section 245A.04, subdivision 7, is amended to read:

Subd. 7. **Grant of license; license extension.** (a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license. At minimum, the license shall state:

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

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

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

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

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

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

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

(e) Except as provided in paragraphs (g) and (h), the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has:

(1) been disqualified and the disqualification was not set aside and no variance has been granted;

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

(3) had a license revoked within the past five years; ~~or~~

(4) ~~has~~ an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent; ~~or~~

(5) failed to submit the information required of an applicant under section 245A.04, subdivision 1, paragraph (f) or (g), after being requested by the commissioner.

When a license is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A or 245B for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.

(f) The commissioner shall not issue or reissue a license if an individual living in the household where the licensed services will be provided as specified under section 245C.03, subdivision 1, has been disqualified and the disqualification has not been set aside and no variance has been granted.

(g) Pursuant to section 245A.07, subdivision 1, paragraph (b), when a license has been suspended or revoked and the suspension or revocation is under appeal, the program may continue to operate pending a final order from the commissioner. If the license under suspension or revocation will expire before a final order is issued, a temporary provisional license may be issued provided any applicable license fee is paid before the temporary provisional license is issued.

(h) Notwithstanding paragraph (g), when a revocation is based on the disqualification of a controlling individual or license holder, and the controlling individual or license holder is ordered under section 245C.17 to be immediately removed from direct contact with persons receiving services or is ordered to be under continuous, direct supervision when providing direct contact services, the program may continue to operate only if the program complies with the order and submits documentation demonstrating compliance with the order. If the disqualified individual fails to submit a timely request for reconsideration, or if the disqualification is not set aside and no variance is granted, the order to immediately remove the individual from direct contact or to be under continuous, direct supervision remains in effect pending the outcome of a hearing and final order from the commissioner.

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



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

(k) The commissioner shall not issue or reissue a license if it has been determined that a tribal licensing authority has established jurisdiction to license the program or service.

Sec. 4. Minnesota Statutes 2010, section 245A.04, subdivision 11, is amended to read:

**Subd. 11. Education program; permitted ages, additional requirement.** ~~(a) The education program offered in a residential or nonresidential program, except for child care, foster care, or services for adults, must be approved by the commissioner of education before the commissioner of human services may grant a license to the program. Except for foster care, the commissioner of human services may not grant a license to a residential facility for the placement of children before the commissioner has received documentation of approval of the educational program from the commissioner of education according to section 125A.515.~~

~~(b) A residential program licensed by the commissioner of human services under Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons through the age of 19 when:~~

~~(1) the admission or continued stay is necessary for a person to complete a secondary school program or its equivalent, or it is necessary to facilitate a transition period after completing the secondary school program or its equivalent for up to four months in order for the resident to obtain other living arrangements;~~

~~(2) the facility develops policies, procedures, and plans required under section 245A.65;~~

~~(3) the facility documents an assessment of the 18 or 19 year old person's risk of victimizing children residing in the facility, and develops necessary risk reduction measures, including sleeping arrangements, to minimize any risk of harm to children; and~~

~~(4) notwithstanding the license holder's target population age range, whenever persons age 18 or 19 years old are receiving residential services, the age difference among residents may not exceed five years.~~

~~(e) (b) A child foster care program licensed by the commissioner under Minnesota Rules, chapter 2960, may serve persons who are over the age of 18 but under the age of 21 when the person is:~~

~~(1) completing secondary education or a program leading to an equivalent credential;~~

~~(2) enrolled in an institution which provides postsecondary or vocational education;~~

~~(3) participating in a program or activity designed to promote, or remove barriers to, employment;~~

~~(4) employed for at least 80 hours per month; or~~

~~(5) incapable of doing any of the activities described in clauses (1) to (4) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the person.~~

(c) In addition to the requirements in paragraph (b), a residential program licensed by the commissioner of human services under Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons under the age of 21 provided the facility complies with the following requirements:

(1) for each person age 18 and older served at the program, the program must assess and document the person's risk of victimizing other residents residing in the facility, and based on the assessment, the facility must develop and implement necessary measures to minimize any risk of harm to other residents, including making arrangements for appropriate sleeping arrangements; and

(2) the program must assure that the services and living arrangements provided to all residents are suitable to the age and functioning of the residents, including separation of services, staff supervision, and other program operations as appropriate.

(d) Nothing in this ~~paragraph~~ subdivision precludes the license holder from seeking other variances under subdivision 9.

Sec. 5. Minnesota Statutes 2010, section 245A.04, is amended by adding a subdivision to read:

Subd. 16. **Program policy; reporting a death in the program.** Unless such reporting is otherwise already required under statute or rule, programs licensed under this chapter must have a written policy for reporting the death of an individual served by the program to the commissioner of human services. Within 24 hours of receiving knowledge of the death of an individual served by the program, the license holder shall notify the commissioner of the death. If the license holder has reason to know that the death has been reported to the commissioner, a subsequent report is not required.

Sec. 6. Minnesota Statutes 2010, section 245A.04, is amended by adding a subdivision to read:

Subd. 17. **Child care education plan.** Child care providers are not required to provide an education plan or curriculum that has been approved by the Department of Education as a condition for initial or renewed licensure under this chapter.

Sec. 7. Minnesota Statutes 2010, section 245A.05, is amended to read:

**245A.05 DENIAL OF APPLICATION.**

(a) The commissioner may deny a license if an applicant or controlling individual:

(1) fails to submit a substantially complete application after receiving notice from the commissioner under section 245A.04, subdivision 1;

~~(2)~~ (2) fails to comply with applicable laws or rules;

~~(3)~~ (3) knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation;

~~(4)~~ (4) has a disqualification that has not been set aside under section 245C.22 and no variance has been granted;

~~(5)~~ (5) has an individual living in the household who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted; ~~or~~

~~(6)~~ (6) is associated with an individual who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to children or vulnerable adults, and who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted; or

(7) fails to comply with section 245A.04, subdivision 1, paragraph (f) or (g).

(b) An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the commissioner in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within 20 calendar days after the applicant received the notice of denial. If an appeal request is made by personal service, it must be received by the commissioner within 20 calendar days after the applicant received the notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application.

Sec. 8. Minnesota Statutes 2010, section 245A.07, subdivision 3, is amended to read:

Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may suspend or revoke a license, or impose a fine if:

(1) a license holder fails to comply fully with applicable laws or rules; ~~if;~~

(2) a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22; ~~or if;~~

(3) a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules; ~~or~~

(4) after July 1, 2012, and upon request by the commissioner, a license holder fails to submit the information required of an applicant under section 245A.04, subdivision 1, paragraph (f) or (g).

A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

(b) If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking a license. The appeal of an order suspending or revoking a license must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits a timely appeal of an order suspending or revoking a license, the license holder may continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs (g) and (h), until the commissioner issues a final order on the suspension or revocation.

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

(2) The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

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

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557 for which the license holder is determined responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to comply with background study requirements under chapter 245C; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order. Fines assessed against a license holder that holds a license to provide the residential-based habilitation services, as defined under section 245B.02, subdivision 20, and a license to provide foster care, may be assessed against both licenses for the same occurrence, but the combined amount of the fines shall not exceed the amount specified in this clause for that occurrence.

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

(d) Except for background study violations involving the failure to comply with an order to immediately remove an individual or an order to provide continuous, direct supervision, the commissioner shall not issue a fine under paragraph (c) relating to a background study violation to a license holder who self-corrects a background study violation before the commissioner discovers the violation. A license holder who has previously exercised the provisions of this paragraph to avoid a fine for a background study violation may not avoid a fine for a subsequent background study violation unless at least 365 days have passed since the license holder self-corrected the earlier background study violation.

Sec. 9. Minnesota Statutes 2010, section 245A.14, subdivision 11, is amended to read:

Subd. 11. **Swimming pools; family day care and group family day care providers.** (a) This subdivision governs swimming pools located at family day care or group family day care homes licensed under Minnesota Rules, chapter 9502. This subdivision does not apply to portable wading pools or whirlpools located at family day care or group family day care homes licensed under Minnesota Rules, chapter 9502. For a provider to be eligible to allow a child cared for at the family day care or group family day care home to use the swimming pool located at the home, the provider must not have had a licensing sanction under section 245A.07 or a correction order or conditional license under section 245A.06 relating to the supervision or health and safety of children during the prior 24 months, and must satisfy the following requirements:

(1) notify the county agency before initial use of the swimming pool and annually, thereafter;

(2) obtain written consent from a child's parent or legal guardian allowing the child to use the swimming pool and renew the parent or legal guardian's written consent at least annually. The written consent must include a statement that the parent or legal guardian has received and read materials provided by the Department of Health to the Department of Human Services for distribution to all family day care or group family day care homes and the general public on the human services Internet Web site related to the risk of disease transmission as well as other health risks associated with swimming pools. The written consent must also include a statement that the Department of Health, Department of Human Services, and county agency will not monitor or inspect the provider's swimming pool to ensure compliance with the requirements in this subdivision;

(3) enter into a written contract with a child's parent or legal guardian and renew the written contract annually. The terms of the written contract must specify that the provider agrees to perform all of the requirements in this subdivision;

(4) attend and successfully complete a swimming pool operator training course once every five years. Acceptable training courses are:

(i) the National Swimming Pool Foundation Certified Pool Operator course;

(ii) the National Spa and Pool Institute Tech I and Tech II courses (both required); or

(iii) the National Recreation and Park Association Aquatic Facility Operator course;

(5) require a caregiver trained in first aid and adult and child cardiopulmonary resuscitation to supervise and be present at the swimming pool with any children in the pool;

(6) toilet all potty-trained children before they enter the swimming pool;

(7) require all children who are not potty-trained to wear swim diapers while in the swimming pool;

(8) if fecal material enters the swimming pool water, add three times the normal shock treatment to the pool water to raise the chlorine level to at least 20 parts per million, and close the pool to swimming for the 24 hours following the entrance of fecal material into the water or until the water pH and disinfectant concentration levels have returned to the standards specified in clause (10), whichever is later;

(9) prevent any person from entering the swimming pool who has an open wound or any person who has or is suspected of having a communicable disease;

(10) maintain the swimming pool water at a pH of not less than 7.2 and not more than 8.0, maintain the disinfectant concentration between two and five parts per million for chlorine or between 2.3 and 4.5 parts per million for bromine, and maintain a daily record of the swimming pool's operation with pH and disinfectant concentration readings on days when children cared for at the family day care or group family day care home are present;

(11) have a disinfectant feeder or feeders;

(12) have a recirculation system that will clarify and disinfect the swimming pool volume of water in ten hours or less;

(13) maintain the swimming pool's water clarity so that an object on the pool floor at the pool's deepest point is easily visible;

(14) ~~have two or more suction lines in the swimming pool~~ comply with the provisions of the Abigail Taylor Pool Safety Act in section 144.1222, subdivisions 1c and 1d;

(15) have in place and enforce written safety rules and swimming pool policies;

(16) have in place at all times a safety rope that divides the shallow and deep portions of the swimming pool;

(17) satisfy any existing local ordinances regarding swimming pool installation, decks, and fencing;

(18) maintain a water temperature of not more than 104 degrees Fahrenheit and not less than 70 degrees Fahrenheit; and

(19) for lifesaving equipment, have a United States Coast Guard-approved life ring attached to a rope, an exit ladder, and a shepherd's hook available at all times to the caregiver supervising the swimming pool.

The requirements of clauses (5), (16), and (18) only apply at times when children cared for at the family day care or group family day care home are present.

(b) A violation of paragraph (a), clauses (1) to (3), is grounds for a sanction under section 245A.07 or a correction order or conditional license under section 245A.06.

(c) If a provider under this subdivision receives a licensing sanction under section 245A.07 or a correction order or a conditional license under section 245A.06 relating to the supervision or health and safety of children, the provider is prohibited from allowing a child cared for at the family day care or group family day care home to continue to use the swimming pool located at the home.

Sec. 10. Minnesota Statutes 2010, section 245A.146, subdivision 2, is amended to read:

Subd. 2. **Documentation requirement for license holders.** (a) ~~Effective January 1, 2006,~~ All licensed child care providers, children's residential facilities, chemical dependency treatment programs with children in care, and residential habilitation programs serving children with developmental disabilities must maintain the following documentation for every crib used by or that is accessible to any child in care:

(1) the crib's brand name; and

(2) the crib's model number.

(b) Any crib for which the license holder does not have the documentation required under paragraph (a) must not be used by or be accessible to children in care.

(c) Effective December 28, 2012, the licensed program must maintain documentation that meets federal documentation requirements to show that every full-size and non-full-size crib that is used by or is accessible to any child in care is compliant with federal crib standards under Code of Federal Regulations, title 16, part 1219, for full-size baby cribs, or Code of Federal Regulations, title 16, part 1220, for non-full-size baby cribs.

Sec. 11. Minnesota Statutes 2010, section 245A.146, subdivision 3, is amended to read:

Subd. 3. **License holder documentation of cribs.** (a) Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs.

(b) The license holder shall maintain written documentation to be reviewed on site for each crib showing that the review required in paragraph (a) has been completed, and which of the following conditions applies:

- (1) the crib was not identified as unsafe on the United States Consumer Product Safety Commission Web site;
  - (2) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, but the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe; or
  - (3) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, and the license holder has removed the crib so that it is no longer used by or accessible to children in care.
- (c) Documentation of the review completed under this subdivision shall be maintained by the license holder on site and made available to parents or guardians of children in care and the commissioner.
- (d) Notwithstanding Minnesota Rules, part 9502.0425, a family child care provider that complies with this section may use a mesh-sided playpen or crib that has not been identified as unsafe on the United States Consumer Product Safety Commission Web site for the care or sleeping of infants.

Sec. 12. Minnesota Statutes 2010, section 245A.18, subdivision 1, is amended to read:

Subdivision 1. **Seat belt and child passenger restraint system use.** When a child is transported, a license holder must comply with all seat belt and child passenger restraint system requirements under ~~section~~ sections 169.685 and 169.686.

Sec. 13. **[245A.191] PROVIDER ELIGIBILITY FOR PAYMENTS FROM THE CHEMICAL DEPENDENCY CONSOLIDATED TREATMENT FUND.**

(a) When a chemical dependency treatment provider licensed under Minnesota Rules, parts 2960.0430 to 2960.0490 or 9530.6405 to 9530.6505, agrees to meet the applicable requirements under section 254B.05, subdivision 5, paragraphs (b), clauses (1) to (4) and (6), (c), and (d), to be eligible for enhanced funding from the chemical dependency consolidated treatment fund, the applicable requirements under section 254B.05 are also licensing requirements that may be monitored for compliance through licensing investigations and licensing inspections.

(b) Noncompliance with the requirements identified under paragraph (a) may result in:

(1) a correction order or a conditional license under section 245A.06, or sanctions under section 245A.07;

(2) nonpayment of claims submitted by the license holder for public program reimbursement;

(3) recovery of payments made for the service;

(4) disenrollment in the public payment program; or

(5) other administrative, civil, or criminal penalties as provided by law.

Sec. 14. Minnesota Statutes 2010, section 245A.22, subdivision 2, is amended to read:

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

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

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

(d) The commissioner may grant a variance under section 245A.04, subdivision 9, to requirements in this section.

Sec. 15. Minnesota Statutes 2010, section 245A.66, subdivision 2, is amended to read:

Subd. 2. **Child care centers; risk reduction plan.** (a) Child care centers licensed under this chapter and Minnesota Rules, chapter 9503, must develop a risk reduction plan that ~~assesses~~ identifies the general risks to children served by the child care center. The license holder must establish procedures to minimize identified risks, train staff on the procedures, and annually review the procedures.

(b) The risk reduction plan must include an assessment of risk to children the center serves or intends to serve and identify specific risks based on the outcome of the assessment. The assessment of risk must be based on the following:

~~(1) an assessment of the risk presented by the vulnerability of the children served, including an evaluation of the following factors: age, developmental functioning, and the physical and emotional health of children the program serves or intends to serve;~~

~~(2) an assessment of the risks presented by the physical plant where the licensed services are provided, including an evaluation of the following factors: the condition and design of the facility and its outdoor space, bathrooms, storage areas, and accessibility of medications and cleaning products that are harmful to children when children are not supervised; doors where finger pinching may occur; and the existence of areas that are difficult to supervise; and~~

~~(3) (2) an assessment of the risks presented by the (2) environment for each facility and for each site, including an evaluation of the following factors: the type of grounds and terrain surrounding the building and the proximity to hazards, busy roads, and publicly accessed businesses.~~

(c) The risk reduction plan must include a statement of measures that will be taken to minimize the risk of harm presented to children for each risk identified in the assessment required under paragraph (b) related to the physical plant and environment. At a minimum, the ~~risk reduction plan~~ stated measures must ~~address the following:~~ include

~~(1) a general description of supervision, programming, and the development and implementation of specific policies and procedures or reference to the existing policies and procedures developed and implemented to address that minimize the risks identified in the assessment required under paragraph (b) related to the general population served, the physical plant, and environment;~~

~~(2) (d) In addition to any program-specific risks identified in paragraph (b), the plan must include development and implementation of specific policies and procedures or refer to existing policies and procedures developed and implemented to that minimize the risk of harm or injury to children, including:~~

~~(i) (1) closing children's fingers in doors, including cabinet doors;~~

~~(ii) (2) leaving children in the community without supervision;~~

~~(iii) (3) children leaving the facility without supervision;~~



- ~~(iv)~~ (4) caregiver dislocation of children's elbows;
- ~~(v)~~ (5) burns from hot food or beverages, whether served to children or being consumed by caregivers, and the devices used to warm food and beverages;
- ~~(vi)~~ (6) injuries from equipment, such as scissors and glue guns;
- ~~(vii)~~ (7) sunburn;
- ~~(viii)~~ (8) feeding children foods to which they are allergic;
- ~~(ix)~~ (9) children falling from changing tables; and
- ~~(x)~~ (10) children accessing dangerous items or chemicals or coming into contact with residue from harmful cleaning products; ~~and.~~

~~(3)~~ (e) The plan shall prohibit the accessibility of hazardous items to children.

(f) The plan must include specific policies and procedures to ensure adequate supervision of children at all times as defined under section 245A.02, subdivision 18, with particular emphasis on:

(1) times when children are transitioned from one area within the facility to another;

(2) nap-time supervision, including infant crib rooms as specified under section 245A.02, subdivision 18, which requires that when an infant is placed in a crib to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision components;

(3) child drop-off and pick-up times;

(4) supervision during outdoor play and on community activities, including but not limited to field trips and neighborhood walks; and

(5) supervision of children in hallways.

Sec. 16. Minnesota Statutes 2010, section 245A.66, subdivision 3, is amended to read:

Subd. 3. **Orientation to risk reduction plan and annual review of plan.** (a) The license holder shall ensure that all mandated reporters, as defined in section 626.556, subdivision 3, who are under the control of the license holder, receive an orientation to the risk reduction plan prior to first providing unsupervised direct contact services, as defined in section 245C.02, subdivision 11, to children, not to exceed 14 days from the first supervised direct contact, and annually thereafter. The license holder must document the orientation to the risk reduction plan in the mandated reporter's personnel records.

(b) The license holder must review the risk reduction plan annually and document the annual review. When conducting the review, the license holder must consider incidents that have occurred in the center since the last review, including:

(1) the assessment factors in the plan;

(2) the internal reviews conducted under this section, if any;

- (3) substantiated maltreatment findings, if any; and
- (4) incidents that caused injury or harm to a child, if any, that occurred since the last review.

Following any change to the risk reduction plan, the license holder must inform mandated reporters, under the control of the license holder, of the changes in the risk reduction plan, and document that the mandated reporters were informed of the changes.

Sec. 17. Minnesota Statutes 2010, section 245C.03, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

- (1) the person or persons applying for a license;
  - (2) an individual age 13 and over living in the household where the licensed program will be provided who is not receiving licensed services from the program;
  - (3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;
  - (4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);
  - (5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause;
  - (6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause; and
  - (7) all managerial officials as defined under section 245A.02, subdivision 5a.
- (b) For family child foster care settings, a short-term substitute caregiver providing direct contact services for a child for less than 72 hours of continuous care is not required to receive a background study under this chapter.

Sec. 18. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at reapplication for a license for family child care.

(c) The commissioner is not required to conduct a study of an individual at the time of reapplication for a license if the individual's background study was completed by the commissioner of human services for an adult foster care license holder that is also:

- (1) registered under chapter 144D; or
- (2) licensed to provide home and community-based services to people with disabilities at the foster care location and the license holder does not reside in the foster care residence; and

(3) the following conditions are met:

(i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(iii) the last study of the individual was conducted on or after October 1, 1995.

(d) From July 1, 2007, to June 30, 2009, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03, at the time of reapplication for a child foster care license. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b), and 5, paragraphs (a) and (b). The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(e) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) From January 1, 2010, to December 31, 2012, unless otherwise specified in paragraph (c), the commissioner shall conduct a study of an individual required to be studied under section 245C.03 at the time of reapplication for an adult foster care or family adult day services license: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care or family adult day services residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

(g) The commissioner shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with an adult foster care or family adult day services license holder: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), and subdivisions 3 and 4.

(h) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(i) A license holder must ~~provide the commissioner notice~~ initiate a new background study through the commissioner's online background study system ~~or through a letter mailed to the commissioner~~ when:

(1) an individual returns to a position requiring a background study following an absence of ~~45~~ 180 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for ~~45~~ 180 or more consecutive days begins to provide direct contact licensed services again.

The license holder shall maintain a copy of the notification provided to the commissioner under this paragraph in the program's files. If the individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(j) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

(k) For purposes of family child care, a substitute caregiver must receive repeat background studies at the time of each license renewal.

Sec. 19. Minnesota Statutes 2010, section 245C.05, subdivision 2, is amended to read:

Subd. 2. **Applicant, license holder, or other entity.** The applicant, license holder, or other entities as provided in this chapter shall ~~provide~~ verify that the information collected under subdivision 1 about an individual who is the subject of the background study is correct and must provide the information on forms or in a format prescribed by the commissioner.

Sec. 20. Minnesota Statutes 2010, section 245C.05, is amended by adding a subdivision to read:

Subd. 2c. **Privacy notice to background study subject.** (a) For every background study, the commissioner's notice to the background study subject required under section 13.04, subdivision 2, that is provided through the commissioner's electronic NETStudy system or through the commissioner's background study forms shall include the information in paragraph (b).

(b) The background study subject shall be informed that any previous background studies that received a set-aside will be reviewed, and without further contact with the background study subject, the commissioner may notify the agency that initiated the subsequent background study:

(1) that the individual has a disqualification that has been set aside for the program or agency that initiated the study;

(2) the reason for the disqualification; and

(3) information about the decision to set aside the disqualification will be available to the license holder upon request without the consent of the background study subject.

Sec. 21. Minnesota Statutes 2010, section 245C.05, subdivision 4, is amended to read:

Subd. 4. **Electronic transmission.** (a) For background studies conducted by the Department of Human Services, the commissioner shall implement a system for the electronic transmission of:

(1) background study information to the commissioner;

(2) background study results to the license holder;

(3) background study results to county and private agencies for background studies conducted by the commissioner for child foster care; and

(4) background study results to county agencies for background studies conducted by the commissioner for adult foster care and family adult day services.

(b) Unless the commissioner has granted a hardship variance under paragraph (c), a license holder or an applicant must use the electronic transmission system known as NETStudy to submit all requests for background studies to the commissioner as required by this chapter.

(c) A license holder or applicant whose program is located in an area in which high-speed Internet is inaccessible may request the commissioner to grant a variance to the electronic transmission requirement.

Sec. 22. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or corrections agent shall notify the commissioner of an individual's conviction if the individual is:

(1) has been affiliated with a program or facility regulated by the Department of Human Services or Department of Health, a facility serving children or youth licensed by the Department of Corrections, or any type of home care agency or provider of personal care assistance services within the preceding year; and

(2) has been convicted of a crime constituting a disqualification under section 245C.14.

(b) For the purpose of this subdivision, "conviction" has the meaning given it in section 609.02, subdivision 5.

(c) The commissioner, in consultation with the commissioner of corrections, shall develop forms and information necessary to implement this subdivision and shall provide the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents.

(d) The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system.

(e) A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this subdivision.

(f) Upon receipt of disqualifying information, the commissioner shall provide the notice required under section 245C.17, as appropriate, to agencies on record as having initiated a background study or making a request for documentation of the background study status of the individual.

(g) This subdivision does not apply to family child care programs.

Sec. 23. Minnesota Statutes 2010, section 245C.07, is amended to read:

**245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

(a) ~~Except for child foster care and adoption agencies,~~ Subject to the conditions in paragraph (d), when a license holder, applicant, or other entity owns multiple programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed programs or services if:

(1) the license holder designates one individual with one address and telephone number as the person to receive sensitive background study information for the multiple licensed programs or services that depend on the same background study; and

(2) the individual designated to receive the sensitive background study information is capable of determining, upon request of the department, whether a background study subject is providing direct contact services in one or more of the license holder's programs or services and, if so, at which location or locations.

(b) When a license holder maintains background study compliance for multiple licensed programs according to paragraph (a), and one or more of the licensed programs closes, the license holder shall immediately notify the commissioner which staff must be transferred to an active license so that the background studies can be electronically paired with the license holder's active program.

(c) When a background study is being initiated by a licensed program or service or a foster care provider that is also registered under chapter 144D, a study subject affiliated with multiple licensed programs or services may attach to the background study form a cover letter indicating the additional names of the programs or services, addresses, and background study identification numbers.

When the commissioner receives a notice, the commissioner shall notify each program or service identified by the background study subject of the study results.

The background study notice the commissioner sends to the subsequent agencies shall satisfy those programs' or services' responsibilities for initiating a background study on that individual.

(d) If a background study was conducted on an individual related to child foster care and the requirements under paragraph (a) are met, the background study is transferable across all licensed programs. If a background study was conducted on an individual under a license other than child foster care and the requirements under paragraph (a) are met, the background study is transferable to all licensed programs except child foster care.

(e) The provisions of this section that allow a single background study in one or more licensed programs or services do not apply to background studies submitted by adoption agencies, supplemental nursing services agencies, personnel agencies, educational programs, professional services agencies, and unlicensed personal care provider organizations.

Sec. 24. Minnesota Statutes 2010, section 245C.08, subdivision 1, is amended to read:

Subdivision 1. **Background studies conducted by Department of Human Services.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review:

(1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (j);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

(4) information from the Bureau of Criminal Apprehension;

(5) except as provided in clause (6), information from the national crime information system when the commissioner has reasonable cause as defined under section 245C.05, subdivision 5; and

(6) for a background study related to a child foster care application for licensure or adoptions, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) information from national crime information databases, when the background study subject is 18 years of age or older.

(b) Notwithstanding expungement by a court, the commissioner may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner. When the commissioner has reasonable cause to believe that the identity of a background study subject is uncertain, the commissioner shall require the subject to provide a set of classifiable fingerprints and may review the subject's national criminal history record information.

Sec. 25. Minnesota Statutes 2010, section 245C.14, subdivision 2, is amended to read:

Subd. 2. **Disqualification from access.** (a) If an individual who is studied under section 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, is disqualified from direct contact under subdivision 1, the commissioner shall also disqualify the individual from access to a person receiving services from the license holder.

(b) No individual who is disqualified following a background study under section 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, or as provided elsewhere in statute who is disqualified as a result of this section, may be allowed access to persons served by the program unless the commissioner has provided written notice under section 245C.17 stating that:

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

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

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

Sec. 26. Minnesota Statutes 2010, section 245C.16, subdivision 1, is amended to read:

Subdivision 1. **Determining immediate risk of harm.** (a) If the commissioner determines that the individual studied has a disqualifying characteristic, the commissioner shall review the information immediately available and make a determination as to the subject's immediate risk of harm to persons served by the program where the individual studied will have direct contact with, or access to, people receiving services.

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

(1) the recency of the disqualifying characteristic;

(2) the recency of discharge from probation for the crimes;

- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;
- (6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact;
- (7) whether the individual has a disqualification from a previous background study that has not been set aside; and

(8) if the individual has a disqualification which may not be set aside because it is a permanent bar under section 245C.24, subdivision 1, the commissioner may order the immediate removal of the individual from any position allowing direct contact with, or access to, persons receiving services from the program.

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

(d) This section does not apply to a background study related to an initial application for a child foster care license.

(e) This section does not apply to a background study that is also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for a personal care assistant or a qualified professional as defined in section 256B.0659, subdivision 1.

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

Sec. 27. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

Subd. 2. **Disqualification notice sent to subject.** (a) If the information in the study indicates the individual is disqualified from direct contact with, or from access to, persons served by the program, the commissioner shall disclose to the individual studied:

- (1) the information causing disqualification;
- (2) instructions on how to request a reconsideration of the disqualification;
- (3) an explanation of any restrictions on the commissioner's discretion to set aside the disqualification under section 245C.24, when applicable to the individual;

(4) a statement that, if the individual's disqualification is set aside under section 245C.22, the applicant, license holder, or other entity that initiated the background study will be provided with the reason for the individual's disqualification and an explanation that the factors under section 245C.22, subdivision 4, which were the basis of the decision to set aside the disqualification shall be made available to the license holder upon request without the consent of the subject of the background study;

~~(4)~~ (5) a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section 245C.30, the individual's identity and the reason for the individual's disqualification will become public data under section 245C.22, subdivision 7, when applicable to the individual; ~~and~~



(6) a statement that when a subsequent background study is initiated on the individual following a set-aside of the individual's disqualification, and the commissioner makes a determination under section 245C.22, subdivision 5, paragraph (b), that the previous set-aside applies to the subsequent background study, the applicant, license holder, or other entity that initiated the background study will be informed in the notice under section 245C.22, subdivision 5, paragraph (c):

(i) of the reason for the individual's disqualification;

(ii) that the individual's disqualification is set aside for that program or agency; and

(iii) that information about the factors under section 245C.22, subdivision 4, that were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject; and

~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual poses an imminent risk of harm to persons served by the program where the individual will have direct contact with, or access to, people receiving services, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to have direct contact with, or access to, people receiving services, as provided under subdivision 3.

Sec. 28. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. Except as provided in paragraph (b), the commissioner's set-aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, unless otherwise specified in the notice. For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services. For new background studies required under section 245C.04, subdivision 1, paragraph (i), if an individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(b) If the commissioner has previously set aside an individual's disqualification for one or more programs or agencies, and the individual is the subject of a subsequent background study for a different program or agency, the commissioner shall determine whether the disqualification is set aside for the program or agency that initiated the subsequent background study. A notice of a set-aside under paragraph (c) shall be issued within 15 working days if all of the following criteria are met:

(1) the subsequent background study was initiated in connection with a program licensed or regulated under the same provisions of law and rule for at least one program for which the individual's disqualification was previously set aside by the commissioner;

(2) the individual is not disqualified for an offense specified in section 245C.15, subdivision 1 or 2;

(3) the commissioner has received no new information to indicate that the individual may pose a risk of harm to any person served by the program; and

(4) the previous set-aside was not limited to a specific person receiving services.

(c) When a disqualification is set aside under paragraph (b), the notice of background study results issued under section 245C.17, in addition to the requirements under section 245C.17, shall state that the disqualification is set aside for the program or agency that initiated the subsequent background study. The notice must inform the individual that the individual may request reconsideration of the disqualification under section 245C.21 on the basis that the information used to disqualify the individual is incorrect.

Sec. 29. Minnesota Statutes 2010, section 245C.23, subdivision 2, is amended to read:

Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:

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

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section 245C.22;

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

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

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

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

~~(e)~~ (d) For background studies related to child foster care, the commissioner shall also notify the county or private agency that initiated the study of the results of the reconsideration.

~~(d)~~ (e) For background studies related to adult foster care and family adult day services, the commissioner shall also notify the county that initiated the study of the results of the reconsideration.

Sec. 30. Minnesota Statutes 2010, section 471.709, is amended to read:

**471.709 LICENSE; PERMIT.**

Notwithstanding any law to the contrary, a municipality shall not require a massage therapist to obtain a license or permit when the therapist ~~is working for or an employee of~~ is hired or employed by, and exclusively provides treatment on the premises of, a medical professional licensed under chapter 147 or 148 or a dental professional licensed under chapter 150A. A massage therapist is not limited to providing treatment to patients of the medical or dental professional.

Sec. 31. **REVISOR'S INSTRUCTION.**

The revisor shall renumber Minnesota Statutes, section 245B.05, subdivision 4, as Minnesota Statutes, section 245A.04, subdivision 2a. The revisor shall make necessary cross-reference changes to effectuate this renumbering.

ARTICLE 17  
PROGRAM INTEGRITY

Section 1. Minnesota Statutes 2010, section 245A.04, subdivision 1, is amended to read:

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

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

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

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

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

(e) At the time of application for licensure or renewal of a license, the applicant or license holder must acknowledge on the form provided by the commissioner if the applicant or license holder elects to receive any public funding reimbursement from the commissioner for services provided under the license that:

(1) the applicant's or license holder's compliance with the provider enrollment agreement or registration requirements for receipt of public funding may be monitored by the commissioner as part of a licensing investigation or licensing inspection; and

(2) noncompliance with the provider enrollment agreement or registration requirements for receipt of public funding that is identified through a licensing investigation or licensing inspection, or noncompliance with a licensing requirement that is a basis of enrollment for reimbursement for a service, may result in:

(i) a correction order or a conditional license under section 245A.06, or sanctions under section 245A.07;

(ii) nonpayment of claims submitted by the license holder for public program reimbursement;

(iii) recovery of payments made for the service;

(iv) disenrollment in the public payment program; or

(v) other administrative, civil, or criminal penalties as provided by law.

Sec. 2. Minnesota Statutes 2010, section 245A.14, is amended by adding a subdivision to read:

Subd. 14. **Attendance records for publicly funded services.** (a) A child care center licensed under this chapter and according to Minnesota Rules, chapter 9503, must maintain documentation of actual attendance for each child receiving care for which the license holder is reimbursed by a governmental program. The records must be accessible to the commissioner during the program's hours of operation, they must be completed on the actual day of attendance, and they must include:

(1) the first and last name of the child;

(2) the time of day that the child was dropped off; and

(3) the time of day that the child was picked up.

(b) A family child care provider licensed under this chapter and according to Minnesota Rules, chapter 9502, must maintain documentation of actual attendance for each child receiving care for which the license holder is reimbursed by a governmental program. The records must be accessible to the commissioner during the program's hours of operation, they must be completed on the actual day of attendance, and they must include:

(1) the first and last name of the child;

(2) the time of day that the child was dropped off; and

(3) the time of day that the child was picked up.

(c) An adult day services program licensed under this chapter and according to Minnesota Rules, parts 9555.5105 to 9555.6265, must maintain documentation of actual attendance for each adult day service recipient for which the license holder is reimbursed by a governmental program. The records must be accessible to the commissioner during the program's hours of operation, they must be completed on the actual day of attendance, and they must include:

(1) the first, middle, and last name of the recipient;

(2) the time of day that the recipient was dropped off; and

(3) the time of day that the recipient was picked up.

(d) The commissioner shall not issue a correction for attendance record errors that occur before August 1, 2013.

Sec. 3. **[245A.167] PUBLIC FUNDS PROGRAM INTEGRITY MONITORING.**

(a) An applicant or a license holder that has enrolled to receive public funding reimbursement for services is required to comply with the registration or enrollment requirements as licensing standards.

(b) Compliance with the licensing standards established under paragraph (a) may be monitored during a licensing investigation or inspection. Noncompliance with these licensure standards may result in:

(i) a correction order or a conditional license under section 245A.06, or sanctions under section 245A.07;

(ii) nonpayment of claims submitted by the license holder for public program reimbursement according to the statute applicable to that program;

(iii) recovery of payments made for the service according to the statute applicable to that program;

(iv) disenrollment in the public payment program according to the statute applicable to that program; or

(v) a referral for other administrative, civil, or criminal penalties as provided by law.

Sec. 4. Minnesota Statutes 2011 Supplement, section 256B.04, subdivision 21, is amended to read:

Subd. 21. **Provider enrollment.** (a) If the commissioner or the Centers for Medicare and Medicaid Services determines that a provider is designated "high-risk," the commissioner may withhold payment from providers within that category upon initial enrollment for a 90-day period. The withholding for each provider must begin on the date of the first submission of a claim.

(b) An enrolled provider that is also licensed by the commissioner under chapter 245A must designate an individual as the entity's compliance officer. The compliance officer must:

(1) develop policies and procedures to assure adherence to medical assistance laws and regulations and to prevent inappropriate claims submissions;

(2) train the employees of the provider entity, and any agents or subcontractors of the provider entity including billers, on the policies and procedures under clause (1);

(3) respond to allegations of improper conduct related to the provision or billing of medical assistance services, and implement action to remediate any resulting problems;

(4) use evaluation techniques to monitor compliance with medical assistance laws and regulations;

(5) promptly report to the commissioner any identified violations of medical assistance laws or regulations; and

(6) within 60 days of discovery by the provider of a medical assistance reimbursement overpayment, report the overpayment to the commissioner and make arrangements with the commissioner for the commissioner's recovery of the overpayment.

The commissioner may require, as a condition of enrollment in medical assistance, that a provider within a particular industry sector or category establish a compliance program that contains the core elements established by the Centers for Medicare and Medicaid Services.

(c) The commissioner may revoke the enrollment of an ordering or rendering provider for a period of not more than one year, if the provider fails to maintain and, upon request from the commissioner, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by such provider, when the commissioner has identified a pattern of a lack of documentation. A pattern means a failure to maintain documentation or provide access to documentation on more than one occasion. Nothing in this paragraph limits the authority of the commissioner to sanction a provider under the provisions of section 256B.064.

(d) The commissioner shall terminate or deny the enrollment of any individual or entity if the individual or entity has been terminated from participation in Medicare or under the Medicaid program or Children's Health Insurance Program of any other state.

(e) As a condition of enrollment in medical assistance, the commissioner shall require that a provider designated "moderate" or "high-risk" by the Centers for Medicare and Medicaid Services or the Minnesota Department of Human Services permit the Centers for Medicare and Medicaid Services, its agents, or its designated contractors and the state agency, its agents, or its designated contractors to conduct unannounced on-site inspections of any provider location.

(f) As a condition of enrollment in medical assistance, the commissioner shall require that a high-risk provider, or a person with a direct or indirect ownership interest in the provider of five percent or higher, consent to criminal background checks, including fingerprinting, when required to do so under state law or by a determination by the commissioner or the Centers for Medicare and Medicaid Services that a provider is designated high-risk for fraud, waste, or abuse.

ARTICLE 18  
STATEWIDE PROVIDER ENROLLMENT, PERFORMANCE STANDARDS,  
AND PAYMENT METHODOLOGY DEVELOPMENT

Section 1. Minnesota Statutes 2010, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

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

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

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

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

(5) programs operated by a public school for children 33 months or older;

(6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

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

(8) board and lodge facilities licensed by the commissioner of health that do not provide children's residential services under Minnesota Rules, chapter 2960, mental health or chemical dependency treatment;

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

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;

(12) programs operated by a school as defined in section 120A.22, subdivision 4; YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as defined in section 315.51, whose primary purpose is to provide child care or services to school-age children;

(13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;

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

(15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals;

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

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

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

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

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

~~(22) respite care services provided as a home and community based service to a person with a developmental disability, in the person's primary residence;~~

~~(23)~~ (21) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

~~(24)~~ (22) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;

~~(25)~~ (23) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults;

~~(26)~~ (24) chemical dependency or substance abuse treatment activities of licensed professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart 15, when the treatment activities are not paid for by the consolidated chemical dependency treatment fund;

~~(27)~~ (25) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:

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

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

~~(28)~~ (26) a program serving only children who are age 33 months or older, that is operated by a nonpublic school, for no more than four hours per day per child, with no more than 20 children at any one time, and that is accredited by:

(i) an accrediting agency that is formally recognized by the commissioner of education as a nonpublic school accrediting organization; or

(ii) an accrediting agency that requires background studies and that receives and investigates complaints about the services provided.

A program that asserts its exemption from licensure under item (ii) shall, upon request from the commissioner, provide the commissioner with documentation from the accrediting agency that verifies: that the accreditation is current; that the accrediting agency investigates complaints about services; and that the accrediting agency's standards require background studies on all people providing direct contact services.

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

(c) Except for the home and community-based services identified in section 245D.03, subdivision 1, nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Sec. 2. Minnesota Statutes 2010, section 245A.041, is amended by adding a subdivision to read:

**Subd. 3. Record retention; license holder requirements.** (a) A license holder must maintain and store records in a manner that will allow for review by the commissioner as identified in section 245A.04, subdivision 5. The following records must be maintained as specified and in accordance with applicable state or federal law, regulation, or rule:

(1) service recipient records, including verification of service delivery, must be maintained for a minimum of five years following discharge or termination of service;

(2) personnel records must be maintained for a minimum of five years following termination of employment; and

(3) program administration and financial records must be maintained for a minimum of five years from the date the program closes.

(b) A license holder who ceases to provide services must maintain all records related to the licensed program for five years from the date the program closes. The license holder must notify the commissioner of the location where the licensing records will be stored and the name of the person responsible for maintaining the stored records.

(c) If the ownership of a licensed program or service changes, the transferor, unless otherwise provided by law or written agreement with the transferee, is responsible for maintaining, preserving, and making available to the commissioner on demand the license records generated before the date of the transfer.



(d) In the event of a contested case, the license holder must retain records as required in paragraph (a) or until the final agency decision is issued and the conclusion of any related appeal, whichever period is longer.

Sec. 3. Minnesota Statutes 2010, section 245A.041, is amended by adding a subdivision to read:

Subd. 4. **Electronic records; license holder use.** A license holder's use of electronic record keeping or electronic signatures must meet the following requirements:

(1) use of electronic record keeping or electronic signatures does not alter the license holder's obligations under state or federal law, regulation, or rule;

(2) the license holder must ensure that the use of electronic record keeping does not limit the commissioner's access to records as specified under section 245A.04, subdivision 5;

(3) upon request, the license holder must assist the commissioner in accessing and copying all records, including encrypted records and electronic signatures; and

(4) the license holder must establish a mechanism or procedure to ensure that:

(i) the act of creating the electronic record or signature is attributable to the license holder, according to section 325L.09;

(ii) the electronic records and signatures are maintained in a form capable of being retained and accurately reproduced;

(iii) the commissioner has access to information that establishes the date and time that data and signatures were entered into the electronic record; and

(iv) the license holder's use of electronic record keeping or electronic signatures does not compromise the security of the records.

Sec. 4. **[245A.042] HOME AND COMMUNITY-BASED SERVICES; ADDITIONAL STANDARDS AND PROCEDURES.**

Subdivision 1. **Standards governing the provision of home and community-based services.** Residential and nonresidential programs for persons with disabilities or age 65 and older must obtain a license according to this chapter to provide home and community-based services defined in the federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the state's alternative care program according to section 256B.0913, and identified in section 245D.03, subdivision 1. As a condition of licensure, an applicant or license holder must demonstrate and maintain verification of compliance with:

(1) licensing requirements under this chapter and chapter 245D;

(2) applicable health care program requirements under Minnesota Rules, parts 9505.0170 to 9505.0475 and 9505.2160 to 9505.2245; and

(3) provider standards and qualifications identified in the federal waiver plans or the alternative care program.

Subd. 2. **Modified application procedures.** (a) Applicants seeking chapter 245D licensure who meet the following criteria are subject to modified application procedures:

(1) the applicant holds a chapter 245B license issued on or before December 31, 2012, at the time of application;

(2) the applicant's chapter 245B license or licenses are in substantial compliance according to the licensing standards in this chapter and chapter 245B; and

(3) the commissioner has conducted at least one on-site inspection of the chapter 245B license or licenses within the two-year period before submitting the chapter 245D license application.

For purposes of this subdivision, substantial compliance means the commissioner has not issued a sanction according to section 245A.07 against any chapter 245B license held by the applicant or made the chapter 245B license or licenses conditional according to section 245A.06 within the 12-month period before submitting the application for chapter 245D licensure.

(b) The modified application procedures mean the commissioner must accept the applicant's attestation of compliance with certain requirements in lieu of providing information to the commissioner for evaluation that is otherwise required when seeking chapter 245D licensure.

Subd. 3. **Implementation.** (a) Licensure of home and community-based services according to this section will be implemented upon authorization for the commissioner to collect fees according to section 245A.10, subdivisions 3 and 4, necessary to support licensing functions. License applications will be received on a phased in schedule as determined by the commissioner. Licenses will be issued on or after January 1, 2013, according to section 245A.04.

(b) Implementation of compliance monitoring must be phased in after January 1, 2013.

(1) Applicants who do not currently hold a license issued under this chapter must receive an initial compliance monitoring visit within 12 months of the effective date of the initial license for the purpose of providing technical assistance on how to achieve and maintain compliance with the applicable law or rules governing the provision of home and community-based services under chapter 245D. If during the review the commissioner finds that the license holder has failed to achieve compliance with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a licensing review report with recommendations for achieving and maintaining compliance.

(2) Applicants who do currently hold a license issued under this chapter must receive a compliance monitoring visit after 24 months of the effective date of the initial license.

(c) Nothing in this subdivision shall be construed to limit the commissioner's authority to suspend or revoke a license or issue a fine at any time under section 245A.07, or make correction orders and make a license conditional for failure to comply with applicable laws or rules under section 245A.06, based on the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

Sec. 5. Minnesota Statutes 2010, section 245A.085, is amended to read:

**245A.085 CONSOLIDATION OF HEARINGS; RECONSIDERATION.**

Hearings authorized under this chapter, chapter 245C, and sections 256.045, 256B.04, 626.556, and 626.557, shall be consolidated if feasible and in accordance with other applicable statutes and rules. Reconsideration under sections 245C.28; 626.556, subdivision 10i; and 626.557, subdivision 9d, shall also be consolidated if feasible.

Sec. 6. Minnesota Statutes 2010, section 245B.02, is amended by adding a subdivision to read:

Subd. 8a. **Emergency.** "Emergency" means any fires, severe weather, natural disasters, power failures, or any event that affects the ordinary daily operation of the program, including, but not limited to, events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site.

Sec. 7. Minnesota Statutes 2010, section 245B.02, subdivision 10, is amended to read:

Subd. 10. **Incident.** "Incident" means an occurrence that affects the ordinary provision of services to a person and includes any of the following:

- (1) serious injury as determined by section 245.91, subdivision 6;
- (2) a consumer's death;
- (3) any medical ~~emergencies~~ emergency, unexpected serious ~~illnesses~~ illness, or ~~accidents~~ significant unexpected changes in an illness or medical condition, or the mental health status of a person that require requires calling 911 or a mental health mobile crisis intervention team, physician treatment, or hospitalization;
- (4) a consumer's unauthorized or unexplained absence;
- ~~(5) any fires or other events that require the relocation of services for more than 24 hours, or circumstances involving a law enforcement agency or fire department related to the health, safety, or supervision of a consumer;~~
- ~~(6)~~ (5) physical aggression by a consumer against another consumer that causes physical pain, injury, or persistent emotional distress, including, but not limited to, hitting, slapping, kicking, scratching, pinching, biting, pushing, and spitting;
- ~~(7)~~ (6) any sexual activity between consumers involving force or coercion as defined under section 609.341, subdivisions 3 and 14; or
- ~~(8)~~ (7) a report of child or vulnerable adult maltreatment under section 626.556 or 626.557.

Sec. 8. Minnesota Statutes 2010, section 245B.04, subdivision 1, is amended to read:

Subdivision 1. **License holder's responsibility for consumers' rights.** The license holder must:

- (1) provide the consumer or the consumer's legal representative a copy of the consumer's rights on the day that services are initiated and an explanation of the rights in subdivisions 2 and 3 within five working days of service initiation and annually thereafter. Reasonable accommodations shall be made by the license holder to provide this information in other formats as needed to facilitate understanding of the rights by the consumer and the consumer's legal representative, if any;
- (2) document the consumer's or the consumer's legal representative's receipt of a copy of the rights and an explanation of the rights; and
- (3) ensure the exercise and protection of the consumer's rights in the services provided by the license holder and authorized in the individual service plan.

Sec. 9. Minnesota Statutes 2010, section 245B.04, subdivision 2, is amended to read:

Subd. 2. **Service-related rights.** A consumer's service-related rights include the right to:

- (1) refuse or terminate services and be informed of the consequences of refusing or terminating services;
- (2) know, in advance, limits to the services available from the license holder;

(3) know conditions and terms governing the provision of services, including ~~those~~ the license holder's policies and procedures related to initiation and termination;

(4) know what the charges are for services, regardless of who will be paying for the services, and be notified upon request of changes in those charges;

(5) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the consumer or other private party may have to pay; and

(6) receive licensed services from individuals who are competent and trained, who have professional certification or licensure, as required, and who meet additional qualifications identified in the individual service plan.

Sec. 10. Minnesota Statutes 2010, section 245B.04, subdivision 3, is amended to read:

Subd. 3. **Protection-related rights.** (a) The consumer's protection-related rights include the right to:

(1) have personal, financial, services, and medical information kept private, and be advised of the license holder's policies and procedures regarding disclosure of such information;

(2) access records and recorded information about the person in accordance with applicable state and federal law, regulation, or rule;

(3) be free from maltreatment;

(4) be treated with courtesy and respect for the consumer's individuality, mode of communication, and culture, and receive respectful treatment of the consumer's property;

(5) reasonable observance of cultural and ethnic practice and religion;

(6) be free from bias and harassment regarding race, gender, age, disability, spirituality, and sexual orientation;

(7) be informed of and use the license holder's grievance policy and procedures, including knowing how to contact persons responsible for addressing problems and to appeal under section 256.045;

(8) know the name, telephone number, and the Web site, e-mail, and street addresses of protection and advocacy services, including the appropriate state-appointed ombudsman, and a brief description of how to file a complaint with these offices;

~~(9)~~ (9) voice grievances, know the contact persons responsible for addressing problems and how to contact those persons;

~~(6)~~ (10) any procedures for grievance or complaint resolution and the right to appeal under section 256.045;

~~(7)~~ (11) know the name and address of the state, county, or advocacy agency to contact for additional information or assistance;

~~(8)~~ (12) assert these rights personally, or have them asserted by the consumer's family or legal representative, without retaliation;

~~(9)~~ (13) give or withhold written informed consent to participate in any research or experimental treatment;

~~(10)~~ (14) have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the resident;

~~(11)~~ (15) receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication;

~~(12)~~ (16) marital privacy for visits with the consumer's spouse and, if both are residents of the site, the right to share a bedroom and bed;

~~(13)~~ (17) associate with other persons of the consumer's choice;

~~(14)~~ (18) personal privacy; and

~~(15)~~ (19) engage in chosen activities.

(b) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or this paragraph is allowed only if determined necessary to ensure the health, safety, and well-being of the person. Any restriction of these rights must be documented in the service plan for the person and must include the following information:

(1) the justification for the restriction based on an assessment of the person's vulnerability related to exercising the right without restriction;

(2) the objective measures set as conditions for ending the restriction;

(3) a schedule for reviewing the need for the restriction based on the conditions for ending the restriction to occur, at a minimum, every three months for persons who do not have a legal representative and annually for persons who do have a legal representative from the date of initial approval; and

(4) signed and dated approval for the restriction from the person, or the person's legal representative, if any. A restriction may be implemented only when the required approval has been obtained. Approval may be withdrawn at any time. If approval is withdrawn, the right must be immediately and fully restored.

Sec. 11. Minnesota Statutes 2010, section 245B.05, subdivision 1, is amended to read:

Subdivision 1. **Environment.** The license holder must:

(1) ensure that services are provided in a safe and hazard-free environment when the license holder is the owner, lessor, or tenant of the service site. All other license holders shall inform the consumer or the consumer's legal representative and case manager about any environmental safety concerns in writing;

~~(2) lock doors~~ ensure that doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers only to protect the safety of consumers and not as a substitute for staff supervision or interactions with consumers. If doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers, the license holder must justify and document how this determination was made in consultation with the person or the person's legal representative and how access will otherwise be provided to the person and all other affected persons receiving services;

(3) follow procedures that minimize the consumer's health risk from communicable diseases; and

(4) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition.

Sec. 12. Minnesota Statutes 2010, section 245B.07, subdivision 5, is amended to read:

Subd. 5. **Staff orientation.** (a) Within 60 days of hiring staff who provide direct service, the license holder must provide 30 hours of staff orientation. Direct care staff must complete 15 of the 30 hours orientation before providing any unsupervised direct service to a consumer. If the staff person has received orientation training from a license holder licensed under this chapter, or provides semi-independent living services only, the 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may be reduced to 15 hours if the staff person has previously received orientation training from a license holder licensed under this chapter.

(b) The 30 hours of orientation must combine supervised on-the-job training with ~~coverage~~ review of and instruction on the following material:

(1) review of the consumer's service plans and risk management plan to achieve an understanding of the consumer as a unique individual and staff responsibilities related to implementation of those plans;

(2) review and instruction on implementation of the license holder's policies and procedures, including their location and access;

(3) staff responsibilities related to emergency procedures;

(4) explanation of specific job functions, including implementing objectives from the consumer's individual service plan;

(5) explanation of responsibilities related to section 245A.65; sections 626.556 and 626.557, governing maltreatment reporting and service planning for children and vulnerable adults; and section 245.825, governing use of aversive and deprivation procedures;

(6) medication administration as it applies to the individual consumer, from a training curriculum developed by a health services professional described in section 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding health care needs, then medication administration taught by a health services professional. Staff may administer medications only after they demonstrate the ability, as defined in the license holder's medication administration policy and procedures. Once a consumer with overriding health care needs is admitted, staff will be provided with remedial training as deemed necessary by the license holder and the health professional to meet the needs of that consumer.

For purposes of this section, overriding health care needs means a health care condition that affects the service options available to the consumer because the condition requires:

(i) specialized or intensive medical or nursing supervision; and

(ii) nonmedical service providers to adapt their services to accommodate the health and safety needs of the consumer;

(7) consumer rights and staff responsibilities related to protecting and ensuring the exercise of the consumer rights; and

(8) other topics necessary as determined by the consumer's individual service plan or other areas identified by the license holder.

(c) The license holder must document each employee's orientation received.

Sec. 13. Minnesota Statutes 2010, section 245B.07, is amended by adding a subdivision to read:

Subd. 7a. **Subcontractors.** If the license holder uses a subcontractor to perform services licensed under this chapter on the license holder's behalf, the license holder must ensure that the subcontractor meets and maintains compliance with all requirements under this chapter that apply to the services to be provided.

Sec. 14. Minnesota Statutes 2010, section 245B.07, subdivision 9, is amended to read:

Subd. 9. **Availability of current written policies and procedures.** The license holder shall:

(1) review and update, as needed, the written policies and procedures in this chapter;

(2) inform consumers or the consumer's legal representatives of the written policies and procedures in this chapter upon service initiation. Copies of policies and procedures affecting a consumer's rights under section 245D.04 must be provided upon service initiation. Copies of all other policies and procedures must be available to consumers or the consumer's legal representatives, case managers, the county where services are located, and the commissioner upon request;

(3) provide all consumers or the consumers' legal representatives and case managers a copy of the revised policies and procedures and explanation of the revisions to policies and procedures that affect consumers' service-related or protection-related rights under section 245B.04 and maltreatment reporting policies and procedures. Unless there is reasonable cause, the license holder must provide this notice at least 30 days before implementing the revised policy and procedure. The license holder must document the reason for not providing the notice at least 30 days before implementing the revisions;

(4) annually notify all consumers or the consumers' legal representatives and case managers of any revised policies and procedures under this chapter, other than those in clause (3). Upon request, the license holder must provide the consumer or consumer's legal representative and case manager copies of the revised policies and procedures;

(5) before implementing revisions to policies and procedures under this chapter, inform all employees of the revisions and provide training on implementation of the revised policies and procedures; and

(6) document and maintain relevant information related to the policies and procedures in this chapter.

Sec. 15. Minnesota Statutes 2010, section 245B.07, subdivision 10, is amended to read:

Subd. 10. **Consumer funds.** (a) The license holder must ensure that consumers retain the use and availability of personal funds or property unless restrictions are justified in the consumer's individual service plan.

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

(c) Whenever the license holder assists a consumer with the safekeeping of funds or other property, the license holder must have written authorization to do so by the consumer or the consumer's legal representative, and the case manager. In addition, the license holder must:

(1) document receipt and disbursement of the consumer's funds or the property;

(2) annually survey, document, and implement the preferences of the consumer, consumer's legal representative, and the case manager for frequency of receiving a statement that itemizes receipts and disbursements of consumer funds or other property; and

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

(d) License holders and program staff must not:

(1) borrow money from a consumer;

(2) purchase personal items from a consumer;

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

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

(5) use consumer funds in a manner that would violate section 256B.04, or any rules promulgated under that section; or

(6) accept powers-of-attorney from a person receiving services from the license holder for any purpose, and may not accept an appointment as guardian or conservator of a person receiving services from the license holder. This does not apply to license holders that are Minnesota counties or other units of government.

Sec. 16. **[245D.01] CITATION.**

This chapter may be cited as the "Home and Community-Based Services Standards" or "HCBS Standards."

Sec. 17. **[245D.02] DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them in this section.

Subd. 2. **Annual and annually.** "Annual" and "annually" have the meaning given in section 245A.02, subdivision 2b.

Subd. 3. **Case manager.** "Case manager" means the individual designated to provide waiver case management services, care coordination, or long-term care consultation, as specified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49, or successor provisions.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subd. 5. **Department.** "Department" means the Department of Human Services.

Subd. 6. **Direct contact.** "Direct contact" has the meaning given in section 245C.02, subdivision 11, and is used interchangeably with the term "direct service."

Subd. 7. **Drug.** "Drug" has the meaning given in section 151.01, subdivision 5.

Subd. 8. **Emergency.** "Emergency" means any event that affects the ordinary daily operation of the program including, but not limited to, fires, severe weather, natural disasters, power failures, or other events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site.



Subd. 9. **Health services.** "Health services" means any service or treatment consistent with the physical and mental health needs of the person, such as medication administration and monitoring, medical, dental, nutritional, health monitoring, wellness education, and exercise.

Subd. 10. **Home and community-based services.** "Home and community-based services" means the services subject to the provisions of this chapter and defined in the federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the state's alternative care program according to section 256B.0913, including the brain injury (BI) waiver, the community alternative care (CAC) waiver, the community alternatives for disabled individuals (CADI) waiver, the developmental disability (DD) waiver, the elderly waiver (EW), and the alternative care (AC) program.

Subd. 11. **Incident.** "Incident" means an occurrence that affects the ordinary provision of services to a person and includes any of the following:

(1) serious injury as determined by section 245.91, subdivision 6;

(2) a person's death;

(3) any medical emergency, unexpected serious illness, or significant unexpected change in an illness or medical condition, or the mental health status of a person that requires calling 911 or a mental health crisis intervention team, physician treatment, or hospitalization;

(4) a person's unauthorized or unexplained absence from a program;

(5) physical aggression by a person receiving services against another person receiving services that causes physical pain, injury, or persistent emotional distress, including, but not limited to, hitting, slapping, kicking, scratching, pinching, biting, pushing, and spitting;

(6) any sexual activity between persons receiving services involving force or coercion as defined under section 609.341, subdivisions 3 and 14; or

(7) a report of alleged or suspected child or vulnerable adult maltreatment under section 626.556 or 626.557.

Subd. 12. **Legal representative.** "Legal representative" means the parent of a person who is under 18 years of age, a court-appointed guardian, or other representative with legal authority to make decisions about services for a person.

Subd. 13. **License.** "License" has the meaning given in section 245A.02, subdivision 8.

Subd. 14. **Licensed health professional.** "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 15. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 16. **Medication.** "Medication" means a prescription drug or over-the-counter drug. For purposes of this chapter, "medication" includes dietary supplements.

Subd. 17. **Medication administration.** "Medication administration" means performing the following set of tasks to ensure a person takes both prescription and over-the-counter medications and treatments according to orders issued by appropriately licensed professionals, and includes the following:

(1) checking the person's medication record;

(2) preparing the medication for administration;

(3) administering the medication to the person;

(4) documenting the administration of the medication or the reason for not administering the medication; and

(5) reporting to the prescriber or a nurse any concerns about the medication, including side effects, adverse reactions, effectiveness, or the person's refusal to take the medication or the person's self-administration of the medication.

**Subd. 18. Medication assistance.** "Medication assistance" means providing verbal or visual reminders to take regularly scheduled medication, which includes either of the following:

(1) bringing to the person and opening a container of previously set up medications and emptying the container into the person's hand or opening and giving the medications in the original container to the person, or bringing to the person liquids or food to accompany the medication; or

(2) providing verbal or visual reminders to perform regularly scheduled treatments and exercises.

**Subd. 19. Medication management.** "Medication management" means the provision of any of the following:

(1) medication-related services to a person;

(2) medication setup;

(3) medication administration;

(4) medication storage and security;

(5) medication documentation and charting;

(6) verification and monitoring of effectiveness of systems to ensure safe medication handling and administration;

(7) coordination of medication refills;

(8) handling changes to prescriptions and implementation of those changes;

(9) communicating with the pharmacy; or

(10) coordination and communication with prescriber.

For the purposes of this chapter, medication management does not mean "medication therapy management services" as identified in section 256B.0625, subdivision 13h.

**Subd. 20. Mental health crisis intervention team.** "Mental health crisis intervention team" means mental health crisis response providers as identified in section 256B.0624, subdivision 2, paragraph (d), for adults, and in section 256B.0944, subdivision 1, paragraph (d), for children.

**Subd. 21. Over-the-counter drug.** "Over-the-counter drug" means a drug that is not required by federal law to bear the statement "Caution: Federal law prohibits dispensing without prescription."

**Subd. 22. Person.** "Person" has the meaning given in section 245A.02, subdivision 11.

Subd. 23. **Person with a disability.** "Person with a disability" means a person determined to have a disability by the commissioner's state medical review team as identified in section 256B.055, subdivision 7, the Social Security Administration, or the person is determined to have a developmental disability as defined in Minnesota Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section 252.27, subdivision 1a.

Subd. 24. **Prescriber.** "Prescriber" means a licensed practitioner as defined in section 151.01, subdivision 23, who is authorized under section 151.37 to prescribe drugs. For the purposes of this chapter, the term "prescriber" is used interchangeably with "physician."

Subd. 25. **Prescription drug.** "Prescription drug" has the meaning given in section 151.01, subdivision 17.

Subd. 26. **Program.** "Program" means either the nonresidential or residential program as defined in section 245A.02, subdivisions 10 and 14.

Subd. 27. **Psychotropic medication.** "Psychotropic medication" means any medication prescribed to treat the symptoms of mental illness that affect thought processes, mood, sleep, or behavior. The major classes of psychotropic medication are antipsychotic (neuroleptic), antidepressant, antianxiety, mood stabilizers, anticonvulsants, and stimulants and nonstimulants for the treatment of attention deficit/hyperactivity disorder. Other miscellaneous medications are considered to be a psychotropic medication when they are specifically prescribed to treat a mental illness or to control or alter behavior.

Subd. 28. **Restraint.** "Restraint" means physical or mechanical limiting of the free and normal movement of body or limbs.

Subd. 29. **Seclusion.** "Seclusion" means separating a person from others in a way that prevents social contact and prevents the person from leaving the situation if he or she chooses.

Subd. 30. **Service.** "Service" means care, training, supervision, counseling, consultation, or medication assistance assigned to the license holder in the service plan.

Subd. 31. **Service plan.** "Service plan" means the individual service plan or individual care plan identified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49, or successor provisions, and includes any support plans or service needs identified as a result of long-term care consultation, or a support team meeting that includes the participation of the person, the person's legal representative, and case manager, or assigned to a license holder through an authorized service agreement.

Subd. 32. **Service site.** "Service site" means the location where the service is provided to the person, including but not limited to, a facility licensed according to chapter 245A; a location where the license holder is the owner, lessor, or tenant; a person's own home; or a community-based location.

Subd. 33. **Staff.** "Staff" means an employee who will have direct contact with a person served by the facility, agency, or program.

Subd. 34. **Support team.** "Support team" means the service planning team identified in section 256B.49, subdivision 15, or the interdisciplinary team identified in Minnesota Rules, part 9525.0004, subpart 14.

Subd. 35. **Unit of government.** "Unit of government" means every city, county, town, school district, other political subdivisions of the state, and any agency of the state or the United States, and includes any instrumentality of a unit of government.

Subd. 36. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides direct services without pay to a person served by the license holder.

Sec. 18. **[245D.03] APPLICABILITY AND EFFECT.**

Subdivision 1. **Applicability.** The commissioner shall regulate the provision of home and community-based services to persons with disabilities and persons age 65 and older pursuant to this chapter. The licensing standards in this chapter govern the provision of the following services:

- (1) housing access coordination as defined under the current BI, CADI, and DD waiver plans or successor plans;
- (2) respite services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans when the provider is an individual who is not an employee of a residential or nonresidential program licensed by the Department of Human Services or the Department of Health that is otherwise providing the respite service;
- (3) behavioral programming as defined under the current BI and CADI waiver plans or successor plans;
- (4) specialist services as defined under the current DD waiver plan or successor plans;
- (5) companion services as defined under the current BI, CADI, and EW waiver plans or successor plans, excluding companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;
- (6) personal support as defined under the current DD waiver plan or successor plans;
- (7) 24-hour emergency assistance, on-call and personal emergency response as defined under the current CADI and DD waiver plans or successor plans;
- (8) night supervision services as defined under the current BI waiver plan or successor plans;
- (9) homemaker services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only;
- (10) independent living skills training as defined under the current BI and CADI waiver plans or successor plans;
- (11) prevocational services as defined under the current BI and CADI waiver plans or successor plans;
- (12) structured day services as defined under the current BI waiver plan or successor plans; or
- (13) supported employment as defined under the current BI and CADI waiver plans or successor plans.

Subd. 2. **Relationship to other standards governing home and community-based services.** (a) A license holder governed by this chapter is also subject to the licensure requirements under chapter 245A.

(b) A license holder concurrently providing child foster care services licensed according to Minnesota Rules, chapter 2960, to the same person receiving a service licensed under this chapter is exempt from section 245D.04, as it applies to the person.

(c) A license holder concurrently providing home care services registered according to sections 144A.43 to 144A.49 to the same person receiving home management services licensed under this chapter is exempt from section 245D.04, as it applies to the person.

(d) A license holder identified in subdivision 1, clauses (1), (5), and (9), is exempt from compliance with sections 245A.65, subdivision 2, paragraph (a), and 626.557, subdivision 14, paragraph (b).

(e) Notwithstanding section 245D.06, subdivision 5, a license holder providing structured day, prevocational, or supported employment services under this chapter and day training and habilitation or supported employment services licensed under chapter 245B within the same program is exempt from compliance with this chapter, when the license holder notifies the commissioner in writing that the requirements under chapter 245B will be met for all persons receiving these services from the program. For the purposes of this paragraph, if the license holder has obtained approval from the commissioner for an alternative inspection status according to section 245B.031, that approval will apply to all persons receiving services in the program.

Subd. 3. **Variance.** If the conditions in section 245A.04, subdivision 9, are met, the commissioner may grant a variance to any of the requirements in this chapter, except sections 245D.04, and 245D.10, subdivision 4, paragraph (b), or provisions governing data practices and information rights of persons.

Subd. 4. **License holders with multiple 245D licenses.** (a) When a person changes service from one license to a different license held by the same license holder, the license holder is exempt from the requirements in section 245D.10, subdivision 4, paragraph (b).

(b) When a staff person begins providing direct service under one or more licenses held by the same license holder, other than the license for which staff orientation was initially provided according to section 245D.09, subdivision 4, the license holder is exempt from those staff orientation requirements; except the staff person must review each person's service plan and medication administration procedures in accordance with section 245D.09, subdivision 4, paragraph (c), if not previously reviewed by the staff person.

#### Sec. 19. **[245D.04] SERVICE RECIPIENT RIGHTS.**

Subdivision 1. **License holder responsibility for individual rights of persons served by the program.** The license holder must:

(1) provide each person or each person's legal representative with a written notice that identifies the service recipient rights in subdivisions 2 and 3, and an explanation of those rights within five working days of service initiation and annually thereafter;

(2) make reasonable accommodations to provide this information in other formats or languages as needed to facilitate understanding of the rights by the person and the person's legal representative, if any;

(3) maintain documentation of the person's or the person's legal representative's receipt of a copy and an explanation of the rights; and

(4) ensure the exercise and protection of the person's rights in the services provided by the license holder and as authorized in the service plan.

Subd. 2. **Service-related rights.** A person's service-related rights include the right to:

(1) participate in the development and evaluation of the services provided to the person;

(2) have services identified in the service plan provided in a manner that respects and takes into consideration the person's preferences;

(3) refuse or terminate services and be informed of the consequences of refusing or terminating services;

(4) know, in advance, limits to the services available from the license holder;

(5) know conditions and terms governing the provision of services, including the license holder's policies and procedures related to temporary service suspension and service termination;

(6) know what the charges are for services, regardless of who will be paying for the services, and be notified of changes in those charges;

(7) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the person or other private party may have to pay; and

(8) receive services from an individual who is competent and trained, who has professional certification or licensure, as required, and who meets additional qualifications identified in the person's service plan.

**Subd. 3. Protection-related rights.** (a) A person's protection-related rights include the right to:

(1) have personal, financial, service, health, and medical information kept private, and be advised of disclosure of this information by the license holder;

(2) access records and recorded information about the person in accordance with applicable state and federal law, regulation, or rule;

(3) be free from maltreatment;

(4) be free from restraint or seclusion used for a purpose other than to protect the person from imminent danger to self or others;

(5) receive services in a clean and safe environment when the license holder is the owner, lessor, or tenant of the service site;

(6) be treated with courtesy and respect and receive respectful treatment of the person's property;

(7) reasonable observance of cultural and ethnic practice and religion;

(8) be free from bias and harassment regarding race, gender, age, disability, spirituality, and sexual orientation;

(9) be informed of and use the license holder's grievance policy and procedures, including knowing how to contact persons responsible for addressing problems and to appeal under section 256.045;

(10) know the name, telephone number, and the Web site, e-mail, and street addresses of protection and advocacy services, including the appropriate state-appointed ombudsman, and a brief description of how to file a complaint with these offices;

(11) assert these rights personally, or have them asserted by the person's family, authorized representative, or legal representative, without retaliation;

(12) give or withhold written informed consent to participate in any research or experimental treatment;

(13) associate with other persons of the person's choice;

(14) personal privacy; and

(15) engage in chosen activities.

(b) For a person residing in a residential site licensed according to chapter 245A, or where the license holder is the owner, lessor, or tenant of the residential service site, protection-related rights also include the right to:

(1) have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the person;

(2) receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication; and

(3) privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor, or others, in accordance with section 363A.09 of the Human Rights Act, including privacy in the person's bedroom.

(c) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or paragraph (b) is allowed only if determined necessary to ensure the health, safety, and well-being of the person. Any restriction of those rights must be documented in the service plan for the person and must include the following information:

(1) the justification for the restriction based on an assessment of the person's vulnerability related to exercising the right without restriction;

(2) the objective measures set as conditions for ending the restriction;

(3) a schedule for reviewing the need for the restriction based on the conditions for ending the restriction to occur, at a minimum, every three months for persons who do not have a legal representative and annually for persons who do have a legal representative from the date of initial approval; and

(4) signed and dated approval for the restriction from the person, or the person's legal representative, if any. A restriction may be implemented only when the required approval has been obtained. Approval may be withdrawn at any time. If approval is withdrawn, the right must be immediately and fully restored.

Sec. 20. **[245D.05] HEALTH SERVICES.**

Subdivision 1. **Health needs.** (a) The license holder is responsible for providing health services assigned in the service plan and consistent with the person's health needs. The license holder is responsible for promptly notifying the person or the person's legal representative and the case manager of changes in a person's physical and mental health needs affecting assigned health services, when discovered by the license holder, unless the license holder has reason to know the change has already been reported. The license holder must document when the notice is provided.

(b) When assigned in the service plan, the license holder is required to maintain documentation on how the person's health needs will be met, including a description of the procedures the license holder will follow in order to:

(1) provide medication administration, medication assistance, or medication management according to this chapter;

(2) monitor health conditions according to written instructions from the person's physician or a licensed health professional;

(3) assist with or coordinate medical, dental, and other health service appointments; or

(4) use medical equipment, devices, or adaptive aides or technology safely and correctly according to written instructions from the person's physician or a licensed health professional.

Subd. 2. **Medication administration.** (a) The license holder must ensure that the following criteria have been met before staff that is not a licensed health professional administers medication or treatment:

(1) written authorization has been obtained from the person or the person's legal representative to administer medication or treatment orders;

(2) the staff person has completed medication administration training according to section 245D.09, subdivision 4, paragraph (c), clause (2); and

(3) the medication or treatment will be administered under administration procedures established for the person in consultation with a licensed health professional. Written instruction from the person's physician may constitute the medication administration procedures. A prescription label or the prescriber's order for the prescription is sufficient to constitute written instructions from the prescriber. A licensed health professional may delegate medication administration procedures.

(b) The license holder must ensure the following information is documented in the person's medication administration record:

(1) the information on the prescription label or the prescriber's order that includes directions for safely and correctly administering the medication to ensure effectiveness;

(2) information on any discomforts, risks, or other side effects that are reasonable to expect, and any contraindications to its use;

(3) the possible consequences if the medication or treatment is not taken or administered as directed;

(4) instruction from the prescriber on when and to whom to report the following:

(i) if the medication or treatment is not administered as prescribed, whether by error by the staff or the person or by refusal by the person; and

(ii) the occurrence of possible adverse reactions to the medication or treatment;

(5) notation of any occurrence of medication not being administered as prescribed or of adverse reactions, and when and to whom the report was made; and

(6) notation of when a medication or treatment is started, changed, or discontinued.

(c) The license holder must ensure that the information maintained in the medication administration record is current and is regularly reviewed with the person or the person's legal representative and the staff administering the medication to identify medication administration issues or errors. At a minimum, the review must be conducted every three months or more often if requested by the person or the person's legal representative. Based on the review, the license holder must develop and implement a plan to correct medication administration issues or errors. If issues or concerns are identified related to the medication itself, the license holder must report those as required under subdivision 4.



Subd. 3. **Medication assistance.** The license holder must ensure that the requirements of subdivision 2, paragraph (a), have been met when staff provides assistance to enable a person to self-administer medication when the person is capable of directing the person's own care, or when the person's legal representative is present and able to direct care for the person.

Subd. 4. **Reporting medication and treatment issues.** The following medication administration issues must be reported to the person or the person's legal representative and case manager as they occur or following timelines established in the person's service plan or as requested in writing by the person or the person's legal representative, or the case manager:

- (1) any reports made to the person's physician or prescriber required under subdivision 2, paragraph (b), clause (4);
- (2) a person's refusal or failure to take medication or treatment as prescribed; or
- (3) concerns about a person's self-administration of medication.

Subd. 5. **Injectable medications.** Injectable medications may be administered according to a prescriber's order and written instructions when one of the following conditions has been met:

- (1) a registered nurse or licensed practical nurse will administer the subcutaneous or intramuscular injection;
- (2) a supervising registered nurse with a physician's order has delegated the administration of subcutaneous injectable medication to an unlicensed staff member and has provided the necessary training; or
- (3) there is an agreement signed by the license holder, the prescriber, and the person or the person's legal representative, specifying what subcutaneous injections may be given, when, how, and that the prescriber must retain responsibility for the license holder's giving the injections. A copy of the agreement must be placed in the person's service recipient record.

Only licensed health professionals are allowed to administer psychotropic medications by injection.

#### Sec. 21. **[245D.06] PROTECTION STANDARDS.**

Subdivision 1. **Incident response and reporting.** (a) The license holder must respond to all incidents under section 245D.02, subdivision 11, that occur while providing services to protect the health and safety of and minimize risk of harm to the person.

(b) The license holder must maintain information about and report incidents to the person's legal representative or designated emergency contact and case manager within 24 hours of an incident occurring while services are being provided, or within 24 hours of discovery or receipt of information that an incident occurred, unless the license holder has reason to know that the incident has already been reported. An incident of suspected or alleged maltreatment must be reported as required under paragraph (d), and an incident of serious injury or death must be reported as required under paragraph (e).

(c) When the incident involves more than one person, the license holder must not disclose personally identifiable information about any other person when making the report to each person and case manager unless the license holder has the consent of the person.

(d) Within 24 hours of reporting maltreatment as required under section 626.556 or 626.557, the license holder must inform the case manager of the report unless there is reason to believe that the case manager is involved in the suspected maltreatment. The license holder must disclose the nature of the activity or occurrence reported and the agency that received the report.

(e) Within 24 hours of the occurrence, or within 24 hours of receipt of the information, the license holder must report the death or serious injury of the person to the legal representative, if any, and case manager, the Department of Human Services Licensing Division, and the Office of Ombudsman for Mental Health and Developmental Disabilities as required under section 245.94, subdivision 2a, within 24 hours of the death, discovery of the death, or receipt of information that the death occurred unless the license holder has reason to know that the death has already been reported.

(f) The license holder must conduct a review of incident reports, for identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences.

**Subd. 2. Environment and safety.** The license holder must:

(1) ensure the following when the license holder is the owner, lessor, or tenant of the service site:

(i) the service site is a safe and hazard-free environment;

(ii) doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers only to protect the safety of a person receiving services and not as a substitute for staff supervision or interactions with a person who is receiving services. If doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers, the license holder must justify and document how this determination was made in consultation with the person or person's legal representative, and how access will otherwise be provided to the person and all other affected persons receiving services; and

(iii) a staff person is available on site who is trained in basic first aid whenever persons are present and staff are required to be at the site to provide direct service;

(2) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition when used to provide services;

(3) follow procedures to ensure safe transportation, handling, and transfers of the person and any equipment used by the person, when the license holder is responsible for transportation of a person or a person's equipment;

(4) be prepared for emergencies and follow emergency response procedures to ensure the person's safety in an emergency; and

(5) follow sanitary practices for infection control and to prevent communicable diseases.

**Subd. 3. Compliance with fire and safety codes.** When services are provided at a service site licensed according to chapter 245A or where the license holder is the owner, lessor, or tenant of the service site, the license holder must document compliance with applicable building codes, fire and safety codes, health rules, and zoning ordinances, or document that an appropriate waiver has been granted.

**Subd. 4. Funds and property.** (a) Whenever the license holder assists a person with the safekeeping of funds or other property according to section 245A.04, subdivision 13, the license holder must have written authorization to do so from the person and the case manager.

(b) A license holder or staff person may not accept powers-of-attorney from a person receiving services from the license holder for any purpose, and may not accept an appointment as guardian or conservator of a person receiving services from the license holder. This does not apply to license holders that are Minnesota counties or other units of government or to staff persons employed by license holders who were acting as power-of-attorney, guardian, or conservator for specific individuals prior to enactment of this section. The license holder must maintain documentation of the power-of-attorney, guardianship, or conservatorship in the service recipient record.

Subd. 5. **Prohibitions.** The license holder is prohibited from using psychotropic medication as a substitute for adequate staffing, as punishment, for staff convenience, or for any reason other than as prescribed. The license holder is prohibited from using restraints or seclusion under any circumstance, unless the commissioner has approved a variance request from the license holder that allows for the emergency use of restraints and seclusion according to terms and conditions approved in the variance.

Sec. 22. **[245D.07] SERVICE NEEDS.**

Subdivision 1. **Provision of services.** The license holder must provide services as specified in the service plan and assigned to the license holder. The provision of services must comply with the requirements of this chapter and the federal waiver plans.

Subd. 2. **Service planning.** The license holder must participate in support team meetings related to the person following stated timelines established in the person's service plan or as requested by the support team, the person, or the person's legal representative.

Subd. 3. **Reports.** The license holder must provide written reports regarding the person's progress or status as requested by the person, the person's legal representative, the case manager, or the team.

Sec. 23. **[245D.08] RECORD REQUIREMENTS.**

Subdivision 1. **Record-keeping systems.** The license holder must ensure that the content and format of service recipient, personnel, and program records are uniform, legible, and in compliance with the requirements of this chapter.

Subd. 2. **Service recipient record.** (a) The license holder must:

(1) maintain a record of current services provided to each person on the premises where the services are provided or coordinated; and

(2) protect service recipient records against loss, tampering, or unauthorized disclosure in compliance with sections 13.01 to 13.10 and 13.46.

(b) The license holder must maintain the following information for each person:

(1) identifying information, including the person's name, date of birth, address, and telephone number;

(2) the name, address, and telephone number of the person's legal representative, if any, an emergency contact, the case manager, and family members or others as identified by the person or case manager;

(3) service information, including service initiation information, verification of the person's eligibility for services, and documentation verifying that services have been provided as identified in the service plan according to paragraph (a);

(4) health information, including medical history and allergies; and when the license holder is assigned responsibility for meeting the person's health needs according to section 245D.05:

(i) current orders for medication, treatments, or medical equipment;

(ii) medication administration procedures;

(iii) a medication administration record documenting the implementation of the medication administration procedures, including any agreements for administration of injectable medications by the license holder; and

(iv) a medical appointment schedule;

(5) the person's current service plan or that portion of the plan assigned to the license holder. When a person's case manager does not provide a current service plan, the license holder must make a written request to the case manager to provide a copy of the service plan and inform the person of the right to a current service plan and the right to appeal under section 256.045;

(6) a record of other service providers serving the person when the person's service plan identifies the need for coordination between the service providers, that includes a contact person and telephone numbers, services being provided, and names of staff responsible for coordination;

(7) documentation of orientation to the service recipient rights according to section 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to section 245A.65, subdivision 1, paragraph (c);

(8) copies of authorizations to handle a person's funds, according to section 245D.06, subdivision 4, paragraph (a);

(9) documentation of complaints received and grievance resolution;

(10) incident reports required under section 245D.06, subdivision 1;

(11) copies of written reports regarding the person's status when requested according to section 245D.07, subdivision 3; and

(12) discharge summary, including service termination notice and related documentation, when applicable.

**Subd. 3. Access to service recipient records.** The license holder must ensure that the following people have access to the information in subdivision 1 in accordance with applicable state and federal law, regulation, or rule:

(1) the person, the person's legal representative, and anyone properly authorized by the person;

(2) the person's case manager;

(3) staff providing services to the person unless the information is not relevant to carrying out the service plan; and

(4) the county adult foster care licensur, when services are also licensed as adult foster care.

**Subd. 4. Personnel records.** The license holder must maintain a personnel record of each employee, direct service volunteer, and subcontractor to document and verify staff qualifications, orientation, and training. For the purposes of this subdivision, the terms "staff" or "staff person" mean paid employee, direct service volunteer, or subcontractor. The personnel record must include:

(1) the staff person's date of hire, completed application, a position description signed by the staff person, documentation that the staff person meets the position requirements as determined by the license holder, the date of first supervised direct contact with a person served by the program, and the date of first unsupervised direct contact with a person served by the program;

(2) documentation of staff qualifications, orientation, training, and performance evaluations as required under section 245D.09, subdivisions 3, 4, and 5, including the date the training was completed, the number of hours per subject area, and the name and qualifications of the trainer or instructor; and

(3) a completed background study as required under chapter 245C.

Sec. 24. **[245D.09] STAFFING STANDARDS.**

Subdivision 1. **Staffing requirements.** The license holder must provide direct service staff sufficient to ensure the health, safety, and protection of rights of each person and to be able to implement the responsibilities assigned to the license holder in each person's service plan.

Subd. 2. **Supervision of staff having direct contact.** Except for a license holder who are the sole direct service staff, the license holder must provide adequate supervision of staff providing direct service to ensure the health, safety, and protection of rights of each person and implementation of the responsibilities assigned to the license holder in each person's service plan.

Subd. 3. **Staff qualifications.** (a) The license holder must ensure that staff is competent through training, experience, and education to meet the person's needs and additional requirements as written in the service plan, or when otherwise required by the case manager or the federal waiver plan. The license holder must verify and maintain evidence of staff competency, including documentation of:

(1) education and experience qualifications, including a valid degree and transcript, or a current license, registration, or certification, when a degree or licensure, registration, or certification is required;

(2) completion of required orientation and training, including completion of continuing education required to maintain professional licensure, registration, or certification requirements; and

(3) except for a license holder who is the sole direct service staff, performance evaluations completed by the license holder of the direct service staff person's ability to perform the job functions based on direct observation.

(b) Staff under 18 years of age may not perform overnight duties or administer medication.

Subd. 4. **Orientation.** (a) Except for a license holder who does not supervise any direct service staff, within 90 days of hiring direct service staff, the license holder must provide and ensure completion of orientation that combines supervised on-the-job training with review of and instruction on the following:

(1) the job description and how to complete specific job functions, including:

(i) responding to and reporting incidents as required under section 245D.06, subdivision 1; and

(ii) following safety practices established by the license holder and as required in section 245D.06, subdivision 2;

(2) the license holder's current policies and procedures required under this chapter, including their location and access, and staff responsibilities related to implementation of those policies and procedures;

(3) data privacy requirements according to sections 13.01 to 13.10 and 13.46, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and staff responsibilities related to complying with data privacy practices;

(4) the service recipient rights under section 245D.04, and staff responsibilities related to ensuring the exercise and protection of those rights;

(5) sections 245A.65; 245A.66, 626.556, and 626.557, governing maltreatment reporting and service planning for children and vulnerable adults, and staff responsibilities related to protecting persons from maltreatment and reporting maltreatment;

(6) what constitutes use of restraints, seclusion, and psychotropic medications, and staff responsibilities related to the prohibitions of their use; and

(7) other topics as determined necessary in the person's service plan by the case manager or other areas identified by the license holder.

(b) License holders who provide direct service themselves must complete the orientation required in paragraph (a), clauses (3) to (7).

(c) Before providing unsupervised direct service to a person served by the program, or for whom the staff person has not previously provided direct service, or any time the plans or procedures identified in clauses (1) and (2) are revised, the staff person must review and receive instruction on the following as it relates to the staff person's job functions for that person:

(1) the person's service plan as it relates to the responsibilities assigned to the license holder, and when applicable, the person's individual abuse prevention plan according to section 245A.65, to achieve an understanding of the person as a unique individual, and how to implement those plans; and

(2) medication administration procedures established for the person when assigned to the license holder according to section 245D.05, subdivision 1, paragraph (b). Unlicensed staff may administer medications only after successful completion of a medication administration training, from a training curriculum developed by a registered nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse practitioner, physician's assistant, or physician incorporating an observed skill assessment conducted by the trainer to ensure staff demonstrate the ability to safely and correctly follow medication procedures. Medication administration must be taught by a registered nurse, clinical nurse specialist, certified nurse practitioner, physician's assistant, or physician, if at the time of service initiation or any time thereafter, the person has or develops a health care condition that affects the service options available to the person because the condition requires:

(i) specialized or intensive medical or nursing supervision;

(ii) nonmedical service providers to adapt their services to accommodate the health and safety needs of the person; and

(iii) necessary training in order to meet the health service needs of the person as determined by the person's physician.

**Subd. 5. Training.** (a) A license holder must provide annual training to direct service staff on the topics identified in subdivision 4, paragraph (a), clauses (3) to (6).

(b) A license holder providing behavioral programming, specialist services, personal support, 24-hour emergency assistance, night supervision, independent living skills, structured day, prevocational, or supported employment services must provide a minimum of eight hours of annual training to direct service staff that addresses:

(1) topics related to the general health, safety, and service needs of the population served by the license holder; and

(2) other areas identified by the license holder or in the person's current service plan.

Training on relevant topics received from sources other than the license holder may count toward training requirements.

(c) When the license holder is the owner, lessor, or tenant of the service site and whenever a person receiving services is present at the site, the license holder must have a staff person available on site who is trained in basic first aid and, when required in a person's service plan, cardiopulmonary resuscitation.

Subd. 6. **Subcontractors.** If the license holder uses a subcontractor to perform services licensed under this chapter on their behalf, the license holder must ensure that the subcontractor meets and maintains compliance with all requirements under this chapter that apply to the services to be provided.

Subd. 7. **Volunteers.** The license holder must ensure that volunteers who provide direct services to persons served by the program receive the training, orientation, and supervision necessary to fulfill their responsibilities.

Sec. 25. **[245D.10] POLICIES AND PROCEDURES.**

Subdivision 1. **Policy and procedure requirements.** The license holder must establish, enforce, and maintain policies and procedures as required in this chapter.

Subd. 2. **Grievances.** The license holder must establish policies and procedures that provide a simple complaint process for persons served by the program and their authorized representatives to bring a grievance that:

(1) provides staff assistance with the complaint process when requested, and the addresses and telephone numbers of outside agencies to assist the person;

(2) allows the person to bring the complaint to the highest level of authority in the program if the grievance cannot be resolved by other staff members, and that provides the name, address, and telephone number of that person;

(3) requires the license holder to promptly respond to all complaints affecting a person's health and safety. For all other complaints the license holder must provide an initial response within 14 calendar days of receipt of the complaint. All complaints must be resolved within 30 calendar days of receipt or the license holder must document the reason for the delay and a plan for resolution;

(4) requires a complaint review that includes an evaluation of whether:

(i) related policies and procedures were followed and adequate;

(ii) there is a need for additional staff training;

(iii) the complaint is similar to past complaints with the persons, staff, or services involved; and

(iv) there is a need for corrective action by the license holder to protect the health and safety of persons receiving services;

(5) based on the review in clause (4), requires the license holder to develop, document, and implement a corrective action plan, designed to correct current lapses and prevent future lapses in performance by staff or the license holder, if any;

(6) provides a written summary of the complaint and a notice of the complaint resolution to the person and case manager, that:

- (i) identifies the nature of the complaint and the date it was received;
- (ii) includes the results of the complaint review;
- (iii) identifies the complaint resolution, including any corrective action; and
- (7) requires that the complaint summary and resolution notice be maintained in the service recipient record.

**Subd. 3. Service suspension and service termination.** (a) The license holder must establish policies and procedures for temporary service suspension and service termination that promote continuity of care and service coordination with the person and the case manager, and with other licensed caregivers, if any, who also provide support to the person.

(b) The policy must include the following requirements:

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

(2) notice of the proposed termination of services, including those situations that began with a temporary service suspension, must be given at least 60 days before the proposed termination is to become effective when a license holder is providing independent living skills training, structured day, prevocational or supported employment services to the person, and 30 days prior to termination for all other services licensed under this chapter;

(3) the license holder must provide information requested by the person or case manager when services are temporarily suspended or upon notice of termination;

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

(5) during the temporary service suspension or service termination notice period, the license holder will work with the appropriate county agency to develop reasonable alternatives to protect the person and others;

(6) the license holder must maintain information about the service suspension or termination, including the written termination notice, in the service recipient record; and

(7) the license holder must restrict temporary service suspension to situations in which the person's behavior causes immediate and serious danger to the health and safety of the person or others.

**Subd. 4. Availability of current written policies and procedures.** (a) The license holder must review and update, as needed, the written policies and procedures required under this chapter.

(b) The license holder must inform the person and case manager of the policies and procedures affecting a person's rights under section 245D.04, and provide copies of those policies and procedures, within five working days of service initiation.

(c) The license holder must provide a written notice at least 30 days before implementing any revised policies and procedures affecting a person's rights under section 245D.04. The notice must explain the revision that was made and include a copy of the revised policy and procedure. The license holder must document the reason for not providing the notice at least 30 days before implementing the revisions.



(d) Before implementing revisions to required policies and procedures the license holder must inform all employees of the revisions and provide training on implementation of the revised policies and procedures.

Sec. 26. Minnesota Statutes 2010, section 256B.4912, is amended to read:

**256B.4912 HOME AND COMMUNITY-BASED WAIVERS; PROVIDERS AND PAYMENT.**

Subdivision 1. **Provider qualifications.** For the home and community-based waivers providing services to seniors and individuals with disabilities, the commissioner shall establish:

(1) agreements with enrolled waiver service providers to ensure providers meet ~~qualifications defined in the waiver plans~~ Minnesota health care program requirements;

(2) regular reviews of provider qualifications, and including requests of proof of documentation; and

(3) processes to gather the necessary information to determine provider qualifications.

~~By July 2010, Beginning July 1, 2012,~~ staff that provide direct contact, as defined in section 245C.02, subdivision 11, ~~that are employees of waiver service providers for services specified in the federally approved waiver plans~~ must meet the requirements of chapter 245C prior to providing waiver services and as part of ongoing enrollment. Upon federal approval, this requirement must also apply to consumer-directed community supports.

Subd. 2. **Rate-setting Payment methodologies.** (a) The commissioner shall establish statewide ~~rate-setting payment~~ methodologies that meet federal waiver requirements for home and community-based waiver services for individuals with disabilities. The ~~rate-setting payment~~ methodologies must abide by the principles of transparency and equitability across the state. The methodologies must involve a uniform process of structuring rates for each service and must promote quality and participant choice.

(b) As of January 1, 2012, counties shall not implement changes to established processes for rate-setting methodologies for individuals using components of or data from research rates.

Subd. 3. **Payment requirements.** The payment methodologies established under this section shall accommodate:

(1) supervision costs;

(2) staffing patterns;

(3) program-related expenses;

(4) general and administrative expenses; and

(5) consideration of recipient intensity.

Subd. 4. **Payment rate criteria.** (a) The payment methodologies under this section shall reflect the payment rate criteria in paragraphs (b), (c), and (d).

(b) Payment rates shall reflect the reasonable, ordinary, and necessary costs of service delivery.

(c) Payment rates shall be sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act.

(d) The commissioner must not reimburse:

(1) unauthorized service delivery;

(2) services provided under a receipt of a special grant;

(3) services provided under contract to a local school district;

(4) extended employment services under Minnesota Rules, parts 3300.2005 to 3300.3100, or vocational rehabilitation services provided under the federal Rehabilitation Act, as amended, Title I, section 110, or Title VI-C, and not through use of medical assistance or county social service funds; or

(5) services provided to a client by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee-for-service basis.

Subd. 5. **County and tribal provider contract elimination.** County and tribal contracts with providers of home and community-based waiver services provided under sections 256B.0913, 256B.0915, 256B.092, and 256B.49 are eliminated effective January 1, 2014.

Subd. 6. **Program standards.** The commissioner of human services must establish uniform program standards for services identified in chapter 245D for persons with disabilities and people age 65 and older. The commissioner must grant licenses according to the provisions of chapter 245A.

Subd. 7. **Applicant and license holder training.** An applicant or license holder that is not enrolled as a Minnesota health care program home and community-based services waiver provider at the time of application must ensure that at least one controlling individual completes a onetime training on the requirements for providing home and community-based services from a qualified source as determined by the commissioner, before a provider is enrolled or license is issued.

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

Sec. 27. **[256B.4913] PAYMENT METHODOLOGY DEVELOPMENT.**

Subdivision 1. **Research period and rates.** (a) For the purposes of this section, "research rate" means a proposed payment rate for the provision of home and community-based waived services to meet federal requirements and assess the implications of changing resources on the provision of services and "research period" means the time period during which the research rate is being assessed by the commissioner.

(b) The commissioner shall determine and publish initial frameworks and values to generate research rates for individuals receiving home and community-based services.

(c) The initial values issued by the commissioner shall ensure projected spending for home and community-based services for each service area is equivalent to projected spending under current law in the most recent expenditure forecast.

(d) The initial values issued shall be based on the most updated information and cost data available on supervision, employee-related costs, client programming and supports, programming planning supports, transportation, administrative overhead, and utilization costs. These service areas are:

(1) residential services, defined as corporate foster care, family foster care, residential care, supported living services, customized living, and 24-hour customized living;

(2) day program services, defined as adult day care, day training and habilitation, prevocational services, structured day services, and transportation;

(3) unit-based services with programming, defined as in-home family support, independent living services, supported living services, supported employment, behavior programming, and housing access coordination; and

(4) unit-based services without programming, defined as respite, personal support, and night supervision.

(e) The commissioner shall make available the underlying assessment information, without any identifying information, and the statistical modeling used to generate the initial research rate and calculate budget neutrality.

Subd. 2. **Framework values.** (a) The commissioner shall propose legislation with the specific payment methodology frameworks, process for calculation, and specific values to populate the frameworks by February 15, 2013.

(b) The commissioner shall provide underlying data and information used to formulate the final frameworks and values to the existing stakeholder workgroup by January 15, 2013.

(c) The commissioner shall provide recommendations for the final frameworks and values, and the basis for the recommendations to the legislative committees with jurisdiction over health and human services finance by February 15, 2013.

(d) The commissioner shall review the following topics during the research period and propose, as necessary, recommendations to address the following research questions:

(1) underlying differences in the cost to provide services throughout the state;

(2) a data-driven process for determining labor costs and customizations for staffing classifications included in each rate framework based on the services performed;

(3) the allocation of resources previously established under section 256B.501, subdivision 4b;

(4) further definition and development of unit-based services;

(5) the impact of splitting the allocation of resources for unit-based services for those with programming aspects and those without;

(6) linking assessment criteria to future assessment processes for determination of customizations;

(7) recognition of cost differences in the use of monitoring technology where it is appropriate to substitute for supervision;

(8) implications for day services of reimbursement based on a unit rate and a daily rate;

(9) a definition of shared and individual staffing for unit-based services;

(10) the underlying costs of providing transportation associated with day services; and

(11) an exception process for individuals with exceptional needs that cannot be met under the initial research rate, and an alternative payment structure for those individuals.

(e) The commissioner shall develop a comprehensive plan based on information gathered during the research period that uses statistically reliable and valid assessment data to refine payment methodologies.

(f) The commissioner shall make recommendations and provide underlying data and information used to formulate these research recommendations to the existing stakeholder workgroup by January 15, 2013.

Subd. 3. **Data collection.** (a) The commissioner shall conduct any necessary research and gather additional data for the further development and refinement of payment methodology components. These include but are not limited to:

(1) levels of service utilization and patterns of use;

(2) staffing patterns for each service;

(3) profile of individual service needs; and

(4) cost factors involved in providing transportation services.

(b) The commissioner shall provide this information to the existing stakeholder workgroup by January 15, 2013.

Subd. 4. **Rate stabilization adjustment.** Beginning January 1, 2014, the commissioner shall adjust individual rates determined by the new payment methodology so that the new rate varies no more than one percent per year from the rate effective on December 31 of the prior calendar year. This adjustment is made annually and is effective for three calendar years from the date of implementation. This subdivision expires January 1, 2017.

Subd. 5. **Stakeholder consultation.** The commissioner shall continue consultation on regular intervals with the existing stakeholder group established as part of the rate-setting methodology process to gather input, concerns, data, and exchange ideas for the legislative proposals for the new rate payment system and make pertinent information available to the public through the department's Web site.

Subd. 6. **Implementation.** The commissioner may implement changes no sooner than January 1, 2014, to payment rates for individuals receiving home and community-based waived services after the enactment of legislation that establishes specific payment methodology frameworks, processes for rate calculations, and specific values to populate the payment methodology frameworks.

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

Delete the title and insert:

"A bill for an act relating to state government; making changes to health and human services policy provisions; modifying provisions related to children and family services, child support, child care, continuing care, disability services, the telephone equipment program, chemical and mental health, health care, human services licensing, licensing data, and the Office of Inspector General; providing for child safety and permanency reform including adoptions under guardianship of the commissioner; reforming comprehensive assessment and case management services; amending the Human Services Background Study Act; establishing home and community-based services standards; developing payment methodologies; modifying municipal license provisions; requiring data sharing with the Department of Human Services; requiring eligibility determinations; modifying fees; providing criminal penalties; making technical changes; requiring reports; amending Minnesota Statutes 2010, sections 13.46, subdivisions 2, 3, 4; 13.461, subdivision 17; 13.465, by adding a subdivision; 13.82, subdivision 1; 119B.09, subdivision 7; 119B.12, subdivisions 1, 2; 119B.125, subdivisions 1a, 2, 6; 119B.13, subdivision 6; 144A.071, subdivision 5a; 145.902; 237.50; 237.51; 237.52; 237.53; 237.54; 237.55; 237.56; 245.461, by adding a subdivision; 245.462, subdivision 20; 245.487, by adding a subdivision; 245.4871, subdivision 15; 245.4932, subdivision 1;

245A.03, subdivision 2, by adding a subdivision; 245A.04, subdivisions 1, 7, 11, by adding subdivisions; 245A.041, by adding subdivisions; 245A.05; 245A.07, subdivision 3; 245A.085; 245A.11, subdivisions 2a, 8; 245A.14, subdivision 11, by adding a subdivision; 245A.146, subdivisions 2, 3; 245A.18, subdivision 1; 245A.22, subdivision 2; 245A.66, subdivisions 2, 3; 245B.02, subdivision 10, by adding a subdivision; 245B.04, subdivisions 1, 2, 3; 245B.05, subdivision 1; 245B.07, subdivisions 5, 9, 10, by adding a subdivision; 245C.03, subdivision 1; 245C.04, subdivision 1; 245C.05, subdivisions 2, 4, 7, by adding a subdivision; 245C.07; 245C.08, subdivision 1; 245C.14, subdivision 2; 245C.16, subdivision 1; 245C.17, subdivision 2; 245C.22, subdivision 5; 245C.23, subdivision 2; 246.53, by adding a subdivision; 252.32, subdivision 1a; 252A.21, subdivision 2; 256.476, subdivision 11; 256.9657, subdivision 1; 256.998, subdivisions 1, 5; 256B.04, subdivision 14; 256B.056, subdivision 3c; 256B.0595, subdivision 2; 256B.0625, subdivisions 13, 13d, 19c, 42; 256B.0659, subdivisions 1, 2, 3, 3a, 4, 9, 13, 14, 19, 21, 30; 256B.0911, subdivisions 1, 2b, 2c, 3, 3b, 4c, 6; 256B.0913, subdivisions 7, 8; 256B.0915, subdivisions 1a, 1b, 3c, 6; 256B.0916, subdivision 7; 256B.092, subdivisions 1, 1a, 1b, 1e, 1g, 2, 3, 5, 7, 8, 8a, 9, 11; 256B.096, subdivision 5; 256B.15, subdivisions 1c, 1f; 256B.19, subdivision 1c; 256B.441, subdivisions 13, 31, 53; 256B.49, subdivisions 13, 21; 256B.4912; 256B.69, subdivision 5; 256F.13, subdivision 1; 256G.02, subdivision 6; 256J.08, subdivision 11; 256J.24, subdivisions 2, 5; 256J.32, subdivision 6; 256J.575, subdivisions 1, 2, 5, 6, 8; 256J.621; 256J.68, subdivision 7; 256J.95, subdivision 3; 256L.05, subdivision 3; 257.01; 257.75, subdivision 7; 259.22, subdivision 2; 259.23, subdivision 1; 259.24, subdivisions 1, 3, 5, 6a, 7; 259.29, subdivision 2; 259.69; 259.73; 260.012; 260C.001; 260C.007, subdivision 4, by adding subdivisions; 260C.101, subdivision 2; 260C.157, subdivision 1; 260C.163, subdivisions 1, 4; 260C.178, subdivisions 1, 7; 260C.193, subdivisions 3, 6; 260C.201, subdivisions 2, 10, 11a; 260C.212, subdivisions 1, 2, 5, 7; 260C.215, subdivisions 4, 6; 260C.217; 260C.301, subdivisions 1, 8; 260C.317, subdivisions 3, 4; 260C.325, subdivisions 1, 3, 4; 260C.328; 260C.451; 260D.08; 471.709; 514.982, subdivision 1; 518A.40, subdivision 4; 518C.205; 541.04; 548.09, subdivision 1; 609.3785; 626.556, subdivisions 2, 10, 10e, 10f, 10i, 10k, 11; Minnesota Statutes 2011 Supplement, sections 119B.13, subdivision 1; 125A.21, subdivision 7; 144A.071, subdivisions 3, 4a; 245A.03, subdivision 7; 254B.04, subdivision 2a; 256.01, subdivision 14b; 256B.04, subdivision 21; 256B.056, subdivision 3; 256B.057, subdivision 9; 256B.0625, subdivisions 13e, 13h, 14, 56; 256B.0631, subdivisions 1, 2; 256B.0659, subdivision 11; 256B.0911, subdivisions 1a, 3a, 4a; 256B.0915, subdivision 10; 256B.49, subdivisions 14, 15; 256B.69, subdivisions 5a, 28; 256L.12, subdivision 9; 256L.15, subdivision 1; 626.557, subdivision 9; 626.5572, subdivision 13; Laws 2009, chapter 79, article 8, section 81, as amended; proposing coding for new law in Minnesota Statutes, chapters 245A; 252; 256B; 260C; 611; proposing coding for new law as Minnesota Statutes, chapters 245D; 259A; repealing Minnesota Statutes 2010, sections 256.01, subdivision 18b; 256.022; 256B.431, subdivisions 2c, 2g, 2i, 2j, 2k, 2l, 2o, 3c, 11, 14, 17b, 17f, 19, 20, 25, 27, 29; 256B.434, subdivisions 4a, 4b, 4c, 4d, 4e, 4g, 4h, 7, 8; 256B.435; 256B.436; 259.67; 259.71; 260C.201, subdivision 11; 260C.215, subdivision 2; 260C.456; Minnesota Statutes 2011 Supplement, section 256B.431, subdivision 26; Minnesota Rules, parts 9555.7700; 9560.0071; 9560.0082; 9560.0083; 9560.0091; 9560.0093, subparts 1, 3, 4; 9560.0101; 9560.0102."

With the recommendation that when so amended the bill pass.

The report was adopted.

## **SECOND READING OF HOUSE BILLS**

H. F. Nos. 1191, 2456 and 2690 were read for the second time.

## **SECOND READING OF SENATE BILLS**

S. F. Nos. 1689 and 1675 were read for the second time.

**INTRODUCTION AND FIRST READING OF HOUSE BILLS**

The following House Files were introduced:

Hackbarth introduced:

H. F. No. 2988, A bill for an act relating to local government; limiting fees and charges related to housing and vacant buildings; preempting municipal ordinances on hazardous buildings; creating a Citizen Housing Review Board; amending Minnesota Statutes 2010, sections 429.101, subdivision 1; 462.3612, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 463; 471; repealing Minnesota Statutes 2010, section 463.26.

The bill was read for the first time and referred to the Committee on Government Operations and Elections.

Dettmer introduced:

H. F. No. 2989, A bill for an act relating to taxation; city of Forest Lake and the Forest Lake Economic Development Authority; authorizing use of tax increment financing; extending authority.

The bill was read for the first time and referred to the Committee on Taxes.

Hilty introduced:

H. F. No. 2990, A bill for an act relating to taxation; property; modifying property classifications; amending Minnesota Statutes 2011 Supplement, section 273.13, subdivision 23.

The bill was read for the first time and referred to the Committee on Taxes.

Dauids introduced:

H. F. No. 2991, A bill for an act relating to education; appropriating money for the Rushford-Peterson school district for a new school to replace an aged school extensively damaged by flood water.

The bill was read for the first time and referred to the Committee on Education Finance.

**MESSAGES FROM THE SENATE**

The following messages were received from the Senate:

Mr. Speaker:

I hereby announce the passage by the Senate of the following House File, herewith returned:

H. F. No. 2676, A bill for an act relating to health; modifying eligibility for grants; amending Minnesota Statutes 2010, section 145.4235, subdivision 2.

CAL R. LUDEMAN, Secretary of the Senate

Mr. Speaker:

I hereby announce that the Senate accedes to the request of the House for the appointment of a Conference Committee on the amendments adopted by the Senate to the following House File:

H. F. No. 1923, A bill for an act relating to waters; requiring water supply demand reduction measures; amending Minnesota Statutes 2010, section 103G.291, subdivisions 3, 4.

The Senate has appointed as such committee:

Senators Pederson, Carlson and Tomassoni.

Said House File is herewith returned to the House.

COLLEEN J. PACHECO, First Assistant Secretary of the Senate

Mr. Speaker:

I have the honor to inform the House of Representatives that the Senate is ready to meet with the House in a Joint Convention at 6:00 p.m., Wednesday, April 4, 2012, for the purpose of electing members to the Board of Regents of the University of Minnesota.

CAL R. LUDEMAN, Secretary of the Senate

Mr. Speaker:

I hereby announce the adoption by the Senate of the following House Concurrent Resolution, herewith returned:

House Concurrent Resolution No. 6, A House concurrent resolution relating to adjournment for more than three days.

CAL R. LUDEMAN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following House File, herewith returned, as amended by the Senate, in which amendments the concurrence of the House is respectfully requested:

H. F. No. 2337, A bill for an act relating to financing of state and local government; making changes to individual income, corporate franchise, property, sales and use, mineral, liquor, aggregate materials, local, and other taxes and tax-related provisions; changing and providing income and franchise tax credits, exemptions, and deductions; providing for taxation of foreign operating companies; providing a corporate tax benefit transfer

program; changing certain mining tax rates and allocation of tax proceeds; changing property tax interest, credits, and exemptions, and providing for use of a local levy; phasing out the state general levy; modifying the renter property tax refund and providing a supplemental targeting refund; modifying city aid payments; modifying tax increment financing district requirements; authorizing, changing, and extending tax increment financing districts in certain local governments; changing sales and use tax payment requirements and changing and providing exemptions; modifying use of revenues and authorizing extension of certain sales and lodging taxes for certain cities; changing liquor tax reporting and credits; allocating funds to border city enterprise zones; authorizing certain local governments to issue public debt; establishing a truth in taxation task force; establishing a tax reform action committee; establishing a greater Minnesota internship program; requiring reports; requiring a funds transfer appropriating money; amending Minnesota Statutes 2010, sections 116J.8737, subdivisions 5, 8, by adding a subdivision; 273.113; 275.025, subdivisions 1, 2, 4; 279.03, subdivisions 1a, 2; 289A.08, subdivision 3; 289A.20, subdivision 4; 290.01, subdivisions 19d, 29; 290.06, by adding subdivisions; 290.068, subdivision 1; 290.17, subdivision 4; 290.21, subdivision 4; 290A.04, subdivision 2a, by adding a subdivision; 290A.23, subdivision 1; 290B.07; 290B.08, subdivision 2; 297A.68, subdivision 5; 297A.70, subdivision 4, by adding a subdivision; 297A.8155; 297G.04, subdivision 2; 298.018, subdivision 1; 298.28, subdivision 4; 298.75, by adding a subdivision; 469.169, by adding a subdivision; 477A.011, subdivision 36; 477A.013, by adding a subdivision; Minnesota Statutes 2011 Supplement, sections 116J.8737, subdivisions 1, 2; 290.01, subdivision 19c; 290A.03, subdivisions 11, 13; 290A.04, subdivision 4; 298.01, subdivision 3; 298.015, subdivision 1; 298.28, subdivision 2; 469.176, subdivisions 4c, 4m; 469.1763, subdivision 2; 477A.013, subdivision 9; Laws 1971, chapter 773, section 1, subdivision 2, as amended; Laws 1988, chapter 645, section 3, as amended; Laws 1998, chapter 389, article 8, section 43, subdivision 3, as amended; Laws 2002, chapter 377, article 3, section 25, as amended; Laws 2003, chapter 127, article 12, section 28; Laws 2005, First Special Session chapter 3, article 5, section 37, subdivisions 2, 4; Laws 2008, chapter 366, article 5, section 34, as amended; article 7, section 19, subdivision 3, as amended; Laws 2010, chapter 389, article 1, section 12; proposing coding for new law in Minnesota Statutes, chapters 116J; 136A; repealing Minnesota Statutes 2010, section 290.0921, subdivision 7; Minnesota Statutes 2011 Supplement, section 289A.60, subdivision 31; Laws 2009, chapter 88, article 4, section 23, as amended.

COLLEEN J. PACHECO, First Assistant Secretary of the Senate

Dauids moved that the House refuse to concur in the Senate amendments to H. F. No. 2337, that the Speaker appoint a Conference Committee of 5 members of the House, and that the House requests that a like committee be appointed by the Senate to confer on the disagreeing votes of the two houses. The motion prevailed.

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate File, herewith transmitted:

S. F. No. 1957.

CAL R. LUDEMAN, Secretary of the Senate

### **FIRST READING OF SENATE BILLS**

S. F. No. 1957, A bill for an act relating to job creation; providing for permit management and coordination; requiring centralized electronic accessibility to permit applications and documentation; proposing coding for new law in Minnesota Statutes, chapter 116J.

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance.



**REPORT FROM THE COMMITTEE ON RULES  
AND LEGISLATIVE ADMINISTRATION**

Dean from the Committee on Rules and Legislative Administration, pursuant to rule 1.21, designated the following bills to be placed on the Supplemental Calendar for the Day for April 2, 2012:

H. F. No. 1774; S. F. Nos. 2184, 2342 and 1934; H. F. No. 1595; S. F. No. 1993; H. F. No. 2335; S. F. Nos. 1793, 248, 1815 and 1809; H. F. Nos. 2861 and 1670; S. F. Nos. 2137 and 1860; and H. F. Nos. 2476 and 2705.

**CALENDAR FOR THE DAY**

S. F. No. 2297, A bill for an act relating to crime victims; establishing Jacob's law; requiring notification by law enforcement to social services if a child is neglected or abused outside the home; amending parental rights under custody orders to include police reports on minor children; amending Minnesota Statutes 2010, sections 518.17, subdivision 3; 626.556, subdivision 10a.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 122 yeas and 0 nays as follows:

Those who voted in the affirmative were:

Abeler	Davnie	Hansen	Leidiger	Murdock	Shimanski
Allen	Dean	Hausman	LeMieur	Murphy, E.	Simon
Anderson, B.	Dettmer	Hilty	Lenczewski	Murray	Slawik
Anderson, D.	Dill	Holberg	Lesch	Myhra	Slocum
Anderson, P.	Dittrich	Hoppe	Liebling	Nelson	Smith
Anderson, S.	Doepke	Hornstein	Lillie	Nornes	Stensrud
Anzelc	Downey	Hortman	Loeffler	Norton	Swedzinski
Atkins	Drazkowski	Hosch	Lohmer	O'Driscoll	Thissen
Banaian	Erickson	Howes	Loon	Paymar	Tillberry
Beard	Fabian	Huntley	Mahoney	Pelowski	Torkelson
Benson, J.	Falk	Johnson	Mariani	Peppin	Vogel
Benson, M.	Franson	Kahn	Marquart	Persell	Wagenius
Bills	Fritz	Kath	Mazorol	Petersen, B.	Ward
Brynaert	Garofalo	Kelly	McDonald	Poppe	Wardlow
Buesgens	Gauthier	Kieffer	McElpatrick	Quam	Winkler
Carlson	Gottwalt	Kiel	McFarlane	Rukavina	Woodard
Champion	Gruenhagen	Kiffmeyer	McNamara	Runbeck	Spk. Zellers
Cornish	Gunther	Knuth	Melin	Sanders	
Crawford	Hackbarth	Kriesel	Moran	Scalze	
Daudt	Hamilton	Laine	Morrow	Schomacker	
Davids	Hancock	Lanning	Mullery	Scott	

The bill was passed and its title agreed to.

The following Conference Committee Report was received:

## CONFERENCE COMMITTEE REPORT ON H. F. NO. 2083

A bill for an act relating to education; providing funding and modifying certain early, adult, and kindergarten through grade 12 education provisions, including general education, education excellence, special programs, facilities and technology, nutrition and accounting, libraries, and prevention; providing education forecast adjustments; appropriating money; amending Minnesota Statutes 2010, sections 122A.40, subdivisions 10, 11, 13, 19; 122A.41, subdivisions 14, 15; 123A.75, subdivision 1; 123B.41, by adding a subdivision; 123B.42; 123B.43; 124D.111, subdivision 3; 124D.518, subdivision 3, by adding a subdivision; 124D.531, by adding a subdivision; 126C.10, subdivision 28; Minnesota Statutes 2011 Supplement, sections 122A.245, subdivision 1; 122A.41, subdivision 6; 123B.41, subdivision 2; 124D.11, subdivision 9; 127A.33; 127A.45, subdivision 2; Laws 2011, First Special Session chapter 11, article 1, section 36, subdivisions 2, 3, 4, 5, 6, 7, 10; article 2, section 50, subdivisions 2, 3, 4, 5, 6, 7, 9; article 3, section 11, subdivisions 2, 3, 4, 5, 6; article 4, section 10, subdivisions 2, 3, 4, 6; article 5, section 12, subdivisions 2, 3, 4; article 6, section 2, subdivisions 2, 3, 5; article 7, section 2, subdivisions 2, 3, 4; article 8, section 2, subdivisions 2, 3; article 9, section 3, subdivision 2; repealing Minnesota Statutes 2010, sections 124D.135, subdivisions 8, 9; 124D.16, subdivisions 6, 7; 124D.20, subdivisions 11, 12.

March 28, 2012

The Honorable Kurt Zellers  
Speaker of the House of Representatives

The Honorable Michelle L. Fischbach  
President of the Senate

We, the undersigned conferees for H. F. No. 2083 report that we have agreed upon the items in dispute and recommend as follows:

That the Senate recede from its amendments and that H. F. No. 2083 be further amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2011 Supplement, section 123B.54, is amended to read:

**123B.54 DEBT SERVICE APPROPRIATION.**

(a) ~~\$11,022,000 in fiscal year 2012, \$19,484,000 in fiscal year 2013, \$23,588,000~~ \$22,103,000 in fiscal year 2014, and ~~\$23,967,000~~ \$24,219,000 in fiscal year 2015 and later are appropriated from the general fund to the commissioner of education for payment of debt service equalization aid under section 123B.53.

(b) The appropriations in paragraph (a) must be reduced by the amount of any money specifically appropriated for the same purpose in any year from any state fund.

Sec. 2. Minnesota Statutes 2011 Supplement, section 127A.45, subdivision 2, is amended to read:

Subd. 2. **Definitions.** (a) "Other district receipts" means payments by county treasurers pursuant to section 276.10, apportionments from the school endowment fund pursuant to section 127A.33, apportionments by the county auditor pursuant to section 127A.34, subdivision 2, and payments to school districts by the commissioner of revenue pursuant to chapter 298.

(b) "Cumulative amount guaranteed" means the product of

(1) the cumulative disbursement percentage shown in subdivision 3; times

(2) the sum of

(i) the current year aid payment percentage of the estimated aid and credit entitlements paid according to subdivision 13; plus

(ii) 100 percent of the entitlements paid according to subdivisions 11 and 12; plus

(iii) the other district receipts.

(c) "Payment date" means the date on which state payments to districts are made by the electronic funds transfer method. If a payment date falls on a Saturday, a Sunday, or a weekday which is a legal holiday, the payment shall be made on the immediately preceding business day. The commissioner may make payments on dates other than those listed in subdivision 3, but only for portions of payments from any preceding payment dates which could not be processed by the electronic funds transfer method due to documented extenuating circumstances.

(d) The current year aid payment percentage equals 73 in fiscal year 2010 and 70 in fiscal year 2011, and ~~60~~ 70.2 in fiscal ~~years~~ year 2012 and later.

Sec. 3. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 2, is amended to read:

Subd. 2. **General education aid.** For general education aid under Minnesota Statutes, section 126C.13, subdivision 4:

\$ <del>5,112,037,000</del> <u>5,720,705,000</u>	.....	2012
\$ <del>5,850,065,000</del> <u>5,854,564,000</u>	.....	2013

The 2012 appropriation includes ~~\$1,678,539,000~~ \$1,660,922,000 for 2011 and ~~\$3,433,498,000~~ \$4,059,783,000 for 2012.

The 2013 appropriation includes ~~\$2,297,765,000~~ \$1,696,931,000 for 2012 and ~~\$3,552,300,000~~ \$4,157,633,000 for 2013.

Sec. 4. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 3, is amended to read:

Subd. 3. **Enrollment options transportation.** For transportation of pupils attending postsecondary institutions under Minnesota Statutes, section 124D.09, or for transportation of pupils attending nonresident districts under Minnesota Statutes, section 124D.03:

\$ <del>31,000</del> <u>42,000</u>	.....	2012
\$ <del>32,000</del> <u>46,000</u>	.....	2013

Sec. 5. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 4, is amended to read:

Subd. 4. **Abatement revenue.** For abatement aid under Minnesota Statutes, section 127A.49:

\$ <del>1,294,000</del> <u>1,503,000</u>	.....	2012
\$ <del>1,627,000</del> <u>2,111,000</u>	.....	2013

The 2012 appropriation includes \$346,000 for 2011 and ~~\$948,000~~ \$1,157,000 for 2012.

The 2013 appropriation includes ~~\$631,000~~ \$491,000 for 2012 and ~~\$996,000~~ \$1,620,000 for 2013.

Sec. 6. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 5, is amended to read:

Subd. 5. **Consolidation transition.** For districts consolidating under Minnesota Statutes, section 123A.485:

\$ 145,000	.....	2012
\$ <del>180,000</del> <u>211,000</u>	.....	2013

The 2012 appropriation includes \$145,000 for 2011 and \$0 for 2012.

The 2013 appropriation includes \$0 for 2012 and ~~\$180,000~~ \$211,000 for 2013.

Sec. 7. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 6, is amended to read:

Subd. 6. **Nonpublic pupil education aid.** For nonpublic pupil education aid under Minnesota Statutes, sections 123B.40 to 123B.43 and 123B.87:

\$ <del>14,598,000</del> <u>15,232,000</u>	.....	2012
\$ <del>16,198,000</del> <u>15,578,000</u>	.....	2013

The 2012 appropriation includes ~~\$5,078,000~~ \$4,161,000 for 2011 and ~~\$9,520,000~~ \$11,071,000 for 2012.

The 2013 appropriation includes ~~\$6,346,000~~ \$4,699,000 for 2012 and ~~\$9,852,000~~ \$10,879,000 for 2013.

Sec. 8. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 7, is amended to read:

Subd. 7. **Nonpublic pupil transportation.** For nonpublic pupil transportation aid under Minnesota Statutes, section 123B.92, subdivision 9:

\$ <del>17,178,000</del> <u>18,864,000</u>	.....	2012
\$ <del>19,056,000</del> <u>19,061,000</u>	.....	2013

The 2012 appropriation includes ~~\$5,895,000~~ \$5,700,000 for 2011 and ~~\$11,283,000~~ \$13,164,000 for 2012.

The 2013 appropriation includes ~~\$7,521,000~~ \$5,587,000 for 2012 and ~~\$11,535,000~~ \$13,474,000 for 2013.

Sec. 9. Laws 2011, First Special Session chapter 11, article 1, section 36, subdivision 10, is amended to read:

Subd. 10. **Compensatory pilot project formula aid.** For grants for compensatory pilot project formula aid as calculated under this subdivision:

\$ <del>9,776,000</del> <u>10,228,000</u>	.....	2013
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For fiscal year 2013 only, a district which has a pupil unit count that is in the top 20 largest pupil unit counts is eligible for the greater of zero or \$1,400 times the number of compensatory pupil units, minus the amount of compensatory education revenue received by the district under Minnesota Statutes, section 126C.10, subdivision 3.

The 2013 appropriation includes \$0 for 2012 and ~~\$9,776,000~~ \$10,228,000 for 2013.

This is a onetime appropriation.

Sec. 10. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 2, is amended to read:

Subd. 2. **Charter school building lease aid.** For building lease aid under Minnesota Statutes, section 124D.11, subdivision 4:

\$ <del>43,203,000</del> <u>45,573,000</u>	.....	2012
\$ <del>52,359,000</del> <u>49,168,000</u>	.....	2013

The 2012 appropriation includes ~~\$13,336,000~~ \$12,642,000 for 2011 and ~~\$29,867,000~~ \$32,931,000 for 2012.

The 2013 appropriation includes ~~\$19,910,000~~ \$13,979,000 for 2012 and ~~\$32,449,000~~ \$35,189,000 for 2013.

Sec. 11. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 3, is amended to read:

Subd. 3. **Charter school start-up aid.** For charter school start-up cost aid under Minnesota Statutes, section 124D.11, subdivision 8:

\$ <del>171,000</del> <u>164,000</u>	.....	2012
\$ <del>34,000</del> <u>19,000</u>	.....	2013

The 2012 appropriation includes \$119,000 for 2011 and ~~\$52,000~~ \$45,000 for 2012.

The 2013 appropriation includes ~~\$34,000~~ \$19,000 for 2012 and \$0 for 2013.

Sec. 12. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 4, is amended to read:

Subd. 4. **Integration aid.** For integration aid under Minnesota Statutes, section 124D.86:

\$ <del>59,599,000</del> <u>65,027,000</u>	.....	2012
\$ <del>67,432,000</del> <u>65,526,000</u>	.....	2013

The 2012 appropriation includes \$19,272,000 for 2011 and ~~\$40,327,000~~ \$45,755,000 for 2012.

The 2013 appropriation includes ~~\$26,884,000~~ \$19,422,000 for 2012 and ~~\$40,548,000~~ \$46,104,000 for 2013.

The base for the final payment in fiscal year 2014 for fiscal year 2013 is ~~\$34,828,000~~ \$27,794,000.

Sec. 13. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 5, is amended to read:

Subd. 5. **Literacy incentive aid.** For literacy incentive aid under Minnesota Statutes, section 124D.98:

\$ <del>29,151,000</del> <u>34,107,000</u>	.....	2013
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The 2013 appropriation includes \$0 for 2012 and ~~\$29,151,000~~ \$34,107,000 for 2013.

Sec. 14. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 6, is amended to read:

Subd. 6. **Interdistrict desegregation or integration transportation grants.** For interdistrict desegregation or integration transportation grants under Minnesota Statutes, section 124D.87:

\$ <del>14,917,000</del> <u>13,262,000</u>	.....	2012
\$ <del>16,612,000</del> <u>13,966,000</u>	.....	2013

Sec. 15. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 7, is amended to read:

Subd. 7. **Success for the future.** For American Indian success for the future grants under Minnesota Statutes, section 124D.81:

\$ <del>1,924,000</del> <u>2,139,000</u>	.....	2012
\$2,137,000	.....	2013

The 2012 appropriation includes ~~\$641,000~~ \$638,000 for 2011 and ~~\$1,283,000~~ \$1,501,000 for 2012.

The 2013 appropriation includes ~~\$854,000~~ \$636,000 for 2012 and ~~\$1,283,000~~ \$1,501,000 for 2013.

Sec. 16. Laws 2011, First Special Session chapter 11, article 2, section 50, subdivision 9, is amended to read:

Subd. 9. **Tribal contract schools.** For tribal contract school aid under Minnesota Statutes, section 124D.83:

\$ <del>1,883,000</del> <u>1,900,000</u>	.....	2012
\$ <del>2,206,000</del> <u>1,980,000</u>	.....	2013

The 2012 appropriation includes \$600,000 for 2011 and ~~\$1,283,000~~ \$1,300,000 for 2012.

The 2013 appropriation includes ~~\$855,000~~ \$551,000 for 2012 and ~~\$1,351,000~~ \$1,429,000 for 2013.

Sec. 17. Laws 2011, First Special Session chapter 11, article 3, section 11, subdivision 2, is amended to read:

Subd. 2. **Special education; regular.** For special education aid under Minnesota Statutes, section 125A.75:

\$ <del>732,658,000</del> <u>816,648,000</u>	.....	2012
\$ <del>855,605,000</del> <u>859,067,000</u>	.....	2013

The 2012 appropriation includes \$235,975,000 for 2011 and ~~\$496,683,000~~ \$580,673,000 for 2012.

The 2013 appropriation includes ~~\$331,121,000~~ \$246,496,000 for 2012 and ~~\$524,484,000~~ \$612,571,000 for 2013.

Sec. 18. Laws 2011, First Special Session chapter 11, article 3, section 11, subdivision 3, is amended to read:

Subd. 3. **Aid for children with disabilities.** For aid under Minnesota Statutes, section 125A.75, subdivision 3, for children with disabilities placed in residential facilities within the district boundaries for whom no district of residence can be determined:

\$ <del>1,648,000</del> <u>1,508,000</u>	.....	2012
\$ <del>1,745,000</del> <u>1,593,000</u>	.....	2013

If the appropriation for either year is insufficient, the appropriation for the other year is available.

Sec. 19. Laws 2011, First Special Session chapter 11, article 3, section 11, subdivision 4, is amended to read:

Subd. 4. **Travel for home-based services.** For aid for teacher travel for home-based services under Minnesota Statutes, section 125A.75, subdivision 1:

\$ <del>322,000</del> <u>333,000</u>	.....	2012
\$ <del>358,000</del> <u>321,000</u>	.....	2013

The 2012 appropriation includes \$107,000 for 2011 and ~~\$215,000~~ \$226,000 for 2012.

The 2013 appropriation includes ~~\$142,000~~ \$95,000 for 2012 and ~~\$216,000~~ \$226,000 for 2013.

Sec. 20. Laws 2011, First Special Session chapter 11, article 3, section 11, subdivision 5, is amended to read:

Subd. 5. **Special education; excess costs.** For excess cost aid under Minnesota Statutes, section 125A.79, subdivision 7:

\$ <del>103,978,000</del> <u>112,522,000</u>	.....	2012
\$ <del>115,304,000</del> <u>115,411,000</u>	.....	2013

The 2012 appropriation includes \$53,449,000 for 2011 and ~~\$50,529,000~~ \$59,073,000 for 2012.

The 2013 appropriation includes ~~\$63,273,000~~ \$54,642,000 for 2012 and ~~\$52,031,000~~ \$60,769,000 for 2013.

Sec. 21. Laws 2011, First Special Session chapter 11, article 3, section 11, subdivision 6, is amended to read:

Subd. 6. **Court-placed special education revenue.** For reimbursing serving school districts for unreimbursed eligible expenditures attributable to children placed in the serving school district by court action under Minnesota Statutes, section 125A.79, subdivision 4:

\$ <del>80,000</del> <u>52,000</u>	.....	2012
\$ <del>82,000</del> <u>53,000</u>	.....	2013

Sec. 22. Laws 2011, First Special Session chapter 11, article 4, section 10, subdivision 2, is amended to read:

Subd. 2. **Health and safety revenue.** For health and safety aid according to Minnesota Statutes, section 123B.57, subdivision 5:

\$ <del>111,000</del> <u>103,000</u>	.....	2012
\$ <del>114,000</del> <u>164,000</u>	.....	2013

The 2012 appropriation includes \$39,000 for 2011 and ~~\$72,000~~ \$64,000 for 2012.

The 2013 appropriation includes ~~\$48,000~~ \$27,000 for 2012 and ~~\$66,000~~ \$137,000 for 2013.

Sec. 23. Laws 2011, First Special Session chapter 11, article 4, section 10, subdivision 3, is amended to read:

Subd. 3. **Debt service equalization.** For debt service aid according to Minnesota Statutes, section 123B.53, subdivision 6:

\$ <del>11,022,000</del> <u>12,453,000</u>	.....	2012
\$ <del>19,484,000</del> <u>16,554,000</u>	.....	2013

The 2012 appropriation includes \$2,604,000 for 2011 and ~~\$8,418,000~~ \$9,849,000 for 2012.

The 2013 appropriation includes ~~\$5,611,000~~ \$4,180,000 for 2012 and ~~\$13,873,000~~ \$12,374,000 for 2013.

Sec. 24. Laws 2011, First Special Session chapter 11, article 4, section 10, subdivision 4, is amended to read:

Subd. 4. **Alternative facilities bonding aid.** For alternative facilities bonding aid, according to Minnesota Statutes, section 123B.59, subdivision 1:

\$ <del>17,359,000</del> <u>19,325,000</u>	.....	2012
\$19,287,000	.....	2013

The 2012 appropriation includes ~~\$5,786,000~~ \$5,785,000 for 2011 and ~~\$11,573,000~~ \$13,540,000 for 2012.

The 2013 appropriation includes ~~\$7,714,000~~ \$5,747,000 for 2012 and ~~\$11,573,000~~ \$13,540,000 for 2013.

Sec. 25. Laws 2011, First Special Session chapter 11, article 4, section 10, subdivision 6, is amended to read:

Subd. 6. **Deferred maintenance aid.** For deferred maintenance aid, according to Minnesota Statutes, section 123B.591, subdivision 4:

\$ <del>2,234,000</del> <u>2,483,000</u>	.....	2012
\$ <del>2,972,000</del> <u>3,193,000</u>	.....	2013

The 2012 appropriation includes \$676,000 for 2011 and ~~\$1,558,000~~ \$1,807,000 for 2012.

The 2013 appropriation includes ~~\$1,038,000~~ \$766,000 for 2012 and ~~\$1,934,000~~ \$2,427,000 for 2013.

Sec. 26. Laws 2011, First Special Session chapter 11, article 5, section 12, subdivision 2, is amended to read:

Subd. 2. **School lunch.** For school lunch aid according to Minnesota Statutes, section 124D.111, and Code of Federal Regulations, title 7, section 210.17:

\$ <del>12,626,000</del> <u>12,285,000</u>	.....	2012
\$ <del>12,878,000</del> <u>12,524,000</u>	.....	2013

Sec. 27. Laws 2011, First Special Session chapter 11, article 5, section 12, subdivision 3, is amended to read:

Subd. 3. **School breakfast.** For traditional school breakfast aid under Minnesota Statutes, section 124D.1158:

\$ <del>4,759,000</del> <u>5,247,000</u>	.....	2012
\$ <del>4,875,000</del> <u>5,560,000</u>	.....	2013

Sec. 28. Laws 2011, First Special Session chapter 11, article 5, section 12, subdivision 4, is amended to read:

Subd. 4. **Kindergarten milk.** For kindergarten milk aid under Minnesota Statutes, section 124D.118:

\$ <del>1,084,000</del> <u>1,025,000</u>	.....	2012
\$ <del>1,105,000</del> <u>1,035,000</u>	.....	2013

Sec. 29. Laws 2011, First Special Session chapter 11, article 6, section 2, subdivision 2, is amended to read:

Subd. 2. **Basic system support.** For basic system support grants under Minnesota Statutes, section 134.355:

\$ <del>12,213,000</del> <u>13,598,000</u>	.....	2012
\$13,570,000	.....	2013

The 2012 appropriation includes \$4,071,000 for 2011 and ~~\$8,142,000~~ \$9,527,000 for 2012.

The 2013 appropriation includes ~~\$5,428,000~~ \$4,043,000 for 2012 and ~~\$8,142,000~~ \$9,527,000 for 2013.



Sec. 30. Laws 2011, First Special Session chapter 11, article 6, section 2, subdivision 3, is amended to read:

Subd. 3. **Multicounty, multitype library systems.** For grants under Minnesota Statutes, sections 134.353 and 134.354, to multicounty, multitype library systems:

\$ <del>4,170,000</del> <u>1,303,000</u>	.....	2012
\$1,300,000	.....	2013

The 2012 appropriation includes \$390,000 for 2011 and ~~\$780,000~~ \$913,000 for 2012.

The 2013 appropriation includes ~~\$520,000~~ \$387,000 for 2012 and ~~\$780,000~~ \$913,000 for 2013.

Sec. 31. Laws 2011, First Special Session chapter 11, article 6, section 2, subdivision 5, is amended to read:

Subd. 5. **Regional library telecommunications aid.** For regional library telecommunications aid under Minnesota Statutes, section 134.355:

\$ <del>2,070,000</del> <u>2,305,000</u>	.....	2012
\$2,300,000	.....	2013

The 2012 appropriation includes \$690,000 for 2011 and ~~\$1,380,000~~ \$1,615,000 for 2012.

The 2013 appropriation includes ~~\$920,000~~ \$685,000 for 2012 and ~~\$1,380,000~~ \$1,615,000 for 2013.

Sec. 32. Laws 2011, First Special Session chapter 11, article 7, section 2, subdivision 2, is amended to read:

Subd. 2. **School readiness.** For revenue for school readiness programs under Minnesota Statutes, sections 124D.15 and 124D.16:

\$ <del>9,085,000</del> <u>10,039,000</u>	.....	2012
\$10,095,000	.....	2013

The 2012 appropriation includes ~~\$3,028,000~~ \$2,952,000 for 2011 and ~~\$6,057,000~~ \$7,087,000 for 2012.

The 2013 appropriation includes ~~\$4,038,000~~ \$3,008,000 for 2012 and ~~\$6,057,000~~ \$7,087,000 for 2013.

Sec. 33. Laws 2011, First Special Session chapter 11, article 7, section 2, subdivision 3, is amended to read:

Subd. 3. **Early childhood family education aid.** For early childhood family education aid under Minnesota Statutes, section 124D.135:

\$ <del>20,191,000</del> <u>22,435,000</u>	.....	2012
\$ <del>22,977,000</del> <u>22,332,000</u>	.....	2013

The 2012 appropriation includes \$6,542,000 for 2011 and ~~\$13,649,000~~ \$15,893,000 for 2012.

The 2013 appropriation includes ~~\$9,099,000~~ \$6,746,000 for 2012 and ~~\$13,878,000~~ \$15,586,000 for 2013.

Sec. 34. Laws 2011, First Special Session chapter 11, article 7, section 2, subdivision 4, is amended to read:

Subd. 4. **Health and developmental screening aid.** For health and developmental screening aid under Minnesota Statutes, sections 121A.17 and 121A.19:

\$ <del>3,211,000</del> <u>3,570,000</u>	.....	2012
\$ <del>3,550,000</del> <u>3,541,000</u>	.....	2013

The 2012 appropriation includes \$1,066,000 for 2011 and ~~\$2,145,000~~ \$2,504,000 for 2012.

The 2013 appropriation includes ~~\$1,429,000~~ \$1,062,000 for 2012 and ~~\$2,121,000~~ \$2,479,000 for 2013.

Sec. 35. Laws 2011, First Special Session chapter 11, article 8, section 2, subdivision 2, is amended to read:

Subd. 2. **Community education aid.** For community education aid under Minnesota Statutes, section 124D.20:

\$ <del>429,000</del> <u>470,000</u>	.....	2012
\$ <del>665,000</del> <u>771,000</u>	.....	2013

The 2012 appropriation includes \$134,000 for 2011 and ~~\$295,000~~ \$336,000 for 2012.

The 2013 appropriation includes ~~\$196,000~~ \$142,000 for 2012 and ~~\$469,000~~ \$629,000 for 2013.

Sec. 36. Laws 2011, First Special Session chapter 11, article 8, section 2, subdivision 3, is amended to read:

Subd. 3. **Adults with disabilities program aid.** For adults with disabilities programs under Minnesota Statutes, section 124D.56:

\$ <del>639,000</del> <u>696,000</u>	.....	2012
\$710,000	.....	2013

The 2012 appropriation includes ~~\$213,000~~ \$197,000 for 2011 and ~~\$426,000~~ \$499,000 for 2012.

The 2013 appropriation includes ~~\$284,000~~ \$211,000 for 2012 and ~~\$426,000~~ \$499,000 for 2013.

Sec. 37. Laws 2011, First Special Session chapter 11, article 9, section 3, subdivision 2, is amended to read:

Subd. 2. **Adult basic education aid.** For adult basic education aid under Minnesota Statutes, section 124D.531:

\$ <del>40,545,000</del> <u>45,202,000</u>	.....	2012
\$ <del>45,842,000</del> <u>45,951,000</u>	.....	2013

The 2012 appropriation includes ~~\$13,365,000~~ \$13,364,000 for 2011 and ~~\$27,180,000~~ \$31,838,000 for 2012.

The 2013 appropriation includes ~~\$18,119,000~~ \$13,514,000 for 2012 and ~~\$27,723,000~~ \$32,437,000 for 2013.

Sec. 38. **BALANCES CANCELED TO GENERAL FUND.**

\$430,088,000 of the unobligated balance in the budget reserve account created in Minnesota Statutes, section 16A.152, subdivision 1a, is canceled to the general fund in fiscal year 2012.

Sec. 39. **EFFECTIVE DATE.**

Unless otherwise specified, this act is effective the day following final enactment."

Delete the title and insert:

"A bill for an act relating to education; modifying education shift; providing education forecast adjustments; appropriating money; amending Minnesota Statutes 2011 Supplement, sections 123B.54; 127A.45, subdivision 2; Laws 2011, First Special Session chapter 11, article 1, section 36, subdivisions 2, 3, 4, 5, 6, 7, 10; article 2, section 50, subdivisions 2, 3, 4, 5, 6, 7, 9; article 3, section 11, subdivisions 2, 3, 4, 5, 6; article 4, section 10, subdivisions 2, 3, 4, 6; article 5, section 12, subdivisions 2, 3, 4; article 6, section 2, subdivisions 2, 3, 5; article 7, section 2, subdivisions 2, 3, 4; article 8, section 2, subdivisions 2, 3; article 9, section 3, subdivision 2."

We request the adoption of this report and repassage of the bill.

House Conferees: PAT GAROFALO, TIM KELLY, JENIFER LOON, KELBY WOODARD and MINDY GREILING.

Senate Conferees: GEN OLSON, THEODORE J. "TED" DALEY, BENJAMIN A. KRUSE, JOHN C. PEDERSON and TED H. LILLIE.

Garofalo moved that the report of the Conference Committee on H. F. No. 2083 be adopted and that the bill be repassed as amended by the Conference Committee.

Garofalo moved that the House refuse to adopt the Conference Committee report on H. F. No. 2083, and that the bill be returned to the Conference Committee.

A roll call was requested and properly seconded.

The question was taken on the Garofalo motion that the House refuse to adopt the Conference Committee report on H. F. No. 2083 and that the bill be returned to the Conference Committee and the roll was called. There were 55 yeas and 72 nays as follows:

Those who voted in the affirmative were:

Allen	Falk	Huntley	Loeffler	Norton	Thissen
Anzelc	Fritz	Johnson	Mahoney	Paymar	Tillberry
Atkins	Gauthier	Kahn	Mariani	Pelowski	Wagenius
Benson, J.	Greene	Kath	Marquart	Persell	Ward
Brynaert	Hansen	Knuth	Melin	Peterson, S.	Winkler
Buesgens	Hausman	Laine	Moran	Poppe	
Carlson	Hilty	Lenczewski	Morrow	Rukavina	
Champion	Hornstein	Lesch	Mullery	Simon	
Davnie	Hortman	Liebling	Murphy, E.	Slawik	
Dill	Hosch	Lillie	Nelson	Slocum	

Those who voted in the negative were:

Abeler	Anderson, P.	Barrett	Bills	Daudt	Dettmer
Anderson, B.	Anderson, S.	Beard	Cornish	Davids	Dittrich
Anderson, D.	Banaian	Benson, M.	Crawford	Dean	Doepke

Downey	Gunther	Kiel	McDonald	Peppin	Smith
Drazkowski	Hackbarth	Kiffmeyer	McElfatrick	Petersen, B.	Stensrud
Eken	Hamilton	Kriesel	McFarlane	Quam	Swedzinski
Erickson	Hancock	Lanning	McNamara	Runbeck	Torkelson
Fabian	Holberg	Leidiger	Murdock	Sanders	Urdahl
Franson	Hoppe	LeMieur	Murray	Scalze	Vogel
Garofalo	Howes	Lohmer	Myhra	Schomacker	Wardlow
Gottwalt	Kelly	Loon	Nornes	Scott	Woodard
Gruenhagen	Kieffer	Mazorol	O'Driscoll	Shimanski	Spk. Zellers

The motion did not prevail.

The question recurred on the Garofalo motion that the report of the Conference Committee on H. F. No. 2083 be adopted and that the bill be repassed as amended by the Conference Committee. The motion prevailed.

H. F. No. 2083, A bill for an act relating to education; providing funding and modifying certain early, adult, and kindergarten through grade 12 education provisions, including general education, education excellence, special programs, facilities and technology, nutrition and accounting, libraries, and prevention; providing education forecast adjustments; appropriating money; amending Minnesota Statutes 2010, sections 122A.40, subdivisions 10, 11, 13, 19; 122A.41, subdivisions 14, 15; 123A.75, subdivision 1; 123B.41, by adding a subdivision; 123B.42; 123B.43; 124D.111, subdivision 3; 124D.518, subdivision 3, by adding a subdivision; 124D.531, by adding a subdivision; 126C.10, subdivision 28; Minnesota Statutes 2011 Supplement, sections 122A.245, subdivision 1; 122A.41, subdivision 6; 123B.41, subdivision 2; 124D.11, subdivision 9; 127A.33; 127A.45, subdivision 2; Laws 2011, First Special Session chapter 11, article 1, section 36, subdivisions 2, 3, 4, 5, 6, 7, 10; article 2, section 50, subdivisions 2, 3, 4, 5, 6, 7, 9; article 3, section 11, subdivisions 2, 3, 4, 5, 6; article 4, section 10, subdivisions 2, 3, 4, 6; article 5, section 12, subdivisions 2, 3, 4; article 6, section 2, subdivisions 2, 3, 5; article 7, section 2, subdivisions 2, 3, 4; article 8, section 2, subdivisions 2, 3; article 9, section 3, subdivision 2; repealing Minnesota Statutes 2010, sections 124D.135, subdivisions 8, 9; 124D.16, subdivisions 6, 7; 124D.20, subdivisions 11, 12.

The bill was read for the third time, as amended by Conference, and placed upon its repassage.

The question was taken on the repassage of the bill and the roll was called. There were 75 yeas and 56 nays as follows:

Those who voted in the affirmative were:

Abeler	Dauids	Gruenhagen	Lanning	Myhra	Smith
Anderson, B.	Dean	Gunther	Leidiger	Nornes	Stensrud
Anderson, D.	Dettmer	Hackbarth	LeMieur	O'Driscoll	Swedzinski
Anderson, P.	Dittrich	Hamilton	Lohmer	Peppin	Torkelson
Anderson, S.	Doepke	Hancock	Loon	Petersen, B.	Urdahl
Banaian	Downey	Holberg	Mack	Peterson, S.	Vogel
Barrett	Drazkowski	Hoppe	Mazorol	Quam	Wardlow
Beard	Eken	Howes	McDonald	Runbeck	Westrom
Benson, M.	Erickson	Kelly	McElfatrick	Sanders	Woodard
Bills	Fabian	Kieffer	McFarlane	Scalze	Spk. Zellers
Cornish	Franson	Kiel	McNamara	Schomacker	
Crawford	Garofalo	Kiffmeyer	Murdock	Scott	
Daudt	Gottwalt	Kriesel	Murray	Shimanski	

Those who voted in the negative were:

Allen	Benson, J.	Carlson	Dill	Gauthier	Hausman
Anzelc	Brynaert	Champion	Falk	Greene	Hilty
Atkins	Buesgens	Davnie	Fritz	Hansen	Hornstein

Hortman	Koenen	Mahoney	Murphy, E.	Poppe	Wagenius
Hosch	Laine	Mariani	Murphy, M.	Rukavina	Ward
Huntley	Lenczewski	Marquart	Nelson	Simon	Winkler
Johnson	Lesch	Melin	Norton	Slawik	
Kahn	Liebling	Moran	Paymar	Slocum	
Kath	Lillie	Morrow	Pelowski	Thissen	
Knuth	Loeffler	Mullery	Persell	Tillberry	

The bill was repassed, as amended by Conference, and its title agreed to.

#### ANNOUNCEMENT BY THE SPEAKER

The Speaker announced the appointment of the following members of the House to a Conference Committee on H. F. No. 2337:

Dauids; Anderson, S.; Loon; Mack and Runbeck.

#### FISCAL CALENDAR

Pursuant to rule 1.22, Holberg requested immediate consideration of H. F. No. 2949.

H. F. No. 2949 was reported to the House.

Garofalo and Brynaert moved to amend H. F. No. 2949, the first engrossment, as follows:

Page 5, line 20, delete "a"

Page 5, line 21, delete "growth-based performance index" and insert "value-added growth data"

Page 5, delete section 6

Page 6, delete section 7

Page 17, line 15, delete "and"

Page 17, line 16, after "waiver" insert ", and all revenue savings resulting from implementing the 2012 federal waiver instead of the No Child Left Behind Act as it would apply to Minnesota without the waiver"

Page 18, delete line 7

Page 18, line 8, delete "(b)"

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

The motion prevailed and the amendment was adopted.

Westrom moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 4, line 33, after the period, insert "For purposes of accurately reporting performance data under this section, the commissioner and district and school personnel must ensure that each administration of a statewide assessment provide eligible students with disabilities with all accommodations required by law, including auxiliary aids to ensure effective communication, so that these students have equal access to and benefit from the assessment."

The motion prevailed and the amendment was adopted.

Loon, Stensrud, Erickson and Doepke moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 16, after line 6, insert:

"Sec. 19. **ONE-YEAR LICENSES.**

Notwithstanding Minnesota Statutes 2010, section 122A.18, subdivision 2, as amended by Laws 2012, chapter 122, section 2, a person who has:

(1) obtained a one-year license to teach; and

(2) taught in a language immersion program during the 2011-2012 school year;

may be approved by the Board of Teaching to continue to teach through the end of the 2013-2014 school year.

**EFFECTIVE DATE.** This section is effective retroactively from February 22, 2012."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

The motion prevailed and the amendment was adopted.

Pelowski and Dettmer moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 12, delete section 16 and insert:

"Sec. 16. Minnesota Statutes 2010, section 471.975, is amended to read:

**471.975 MAY PAY DIFFERENTIAL OF RESERVE ON ACTIVE DUTY.**

(a) Except as provided in paragraph (b), a statutory or home rule charter city, county, town, or other political subdivision may pay to each eligible member of the National Guard or other reserve component of the armed forces of the United States an amount equal to the difference between the member's base active duty military salary and the salary the member would be paid as an active political subdivision employee, including any adjustments the member would have received if not on leave of absence. This payment may be made only to a person whose base active duty military salary is less than the salary the person would be paid as an active political subdivision employee. Back pay

authorized by this section may be paid in a lump sum. Payment under this section must not extend beyond four years from the date the employee reported for active service, plus any additional time the employee may be legally required to serve.

(b) ~~Subject to the limits under paragraph (g),~~ Each school district shall pay to each eligible member of the National Guard or other reserve component of the armed forces of the United States an amount equal to the difference between the member's base active duty military salary and the salary the member would be paid as an active school district employee, including any adjustments the member would have received if not on leave of absence. The pay differential must be based on a comparison between the member's daily base rate of active duty pay, calculated by dividing the member's base military monthly salary by the number of paid days in the month, and the member's daily rate of pay for the member's school district salary, calculated by dividing the member's total school district salary by the number of contract days. The member's salary as a school district employee must include the member's basic salary and any additional salary the member earns from the school district for cocurricular and extracurricular activities. The differential payment under this paragraph must be the difference between the daily base rates of military pay times the number of school district contract days the member misses because of military active duty. This payment may be made only to a person whose daily base rate of active duty pay is less than the person's daily rate of pay as an active school district employee. Payments may be made at the intervals at which the member received pay as a school district employee. Payment under this section must not extend beyond four years from the date the employee reported for active service, plus any additional time the employee may be legally required to serve.

(c) An eligible member of the reserve components of the armed forces of the United States is a reservist or National Guard member who was an employee of a political subdivision at the time the member reported for active service on or after May 29, 2003, or who is on active service on May 29, 2003.

(d) Except as provided in paragraph (e) and elsewhere in Minnesota Statutes, a statutory or home rule charter city, county, town, or other political subdivision has total discretion regarding employee benefit continuation for a member who reports for active service and the terms and conditions of any benefit.

(e) A school district must continue the employee's enrollment in health and dental coverage, and the employer contribution toward that coverage, until the employee is covered by health and dental coverage provided by the armed forces. If the employee had elected dependent coverage for health or dental coverage as of the time that the employee reported for active service, a school district must offer the employee the option to continue the dependent coverage at the employee's own expense. A school district must permit the employee to continue participating in any pretax account in which the employee participated when the employee reported for active service, to the extent of employee pay available for that purpose.

(f) For purposes of this section, "active service" has the meaning given in section 190.05, subdivision 5, but excludes service performed exclusively for purposes of:

- (1) basic combat training, advanced individual training, annual training, and periodic inactive duty training;
- (2) special training periodically made available to reserve members; and
- (3) service performed in accordance with section 190.08, subdivision 3.

~~(g) A school district making payments under paragraph (b) shall place a sum equal to any difference between the amount of salary that would have been paid to the employee who is receiving the payments and the amount of salary being paid to substitutes for that employee into a special fund that must be used to pay or partially pay the deployed employee's payments under paragraph (b). A school district is required to pay only this amount to the deployed school district employee. When an employee of a school district who as a member of the National Guard or any~~

other reserve unit of the United States armed forces, reports for active service as defined in section 190.05, subdivision 5, the district must place into a special service members' aggregate salary savings account the amount of salary the district would have paid to the employee during the employee's leave for military service. The district must use the combined proceeds in the account only to fully pay the salary differentials of all eligible deployed employees in the district, as determined under paragraph (b). Funds remaining in the account at the end of the fiscal year after all obligations to employees under this statute have been satisfied may be used to pay for substitutes for the deployed employees, and then for any other purpose.

**EFFECTIVE DATE.** This section is effective July 1, 2012, for school district employees serving in active military duty on or after that date."

The motion prevailed and the amendment was adopted.

Tillberry moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 16, line 29, after the second semicolon, insert "the Minnesota School Counselors Association:"

The motion prevailed and the amendment was adopted.

Tillberry moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 7, after line 28, insert:

"Sec. 9. Minnesota Statutes 2010, section 124D.09, subdivision 6, is amended to read:

Subd. 6. **Counseling.** ~~To the extent possible,~~ (a) The school or school district must provide counseling services to pupils and their parents or guardian before the pupils enroll in courses under this section to ensure that the pupils and their parents or guardian are fully aware of the risks and possible consequences of enrolling in postsecondary courses. The school or school district must provide information on the program including who may enroll, what institutions and courses are eligible for participation, the decision-making process for granting academic credits, financial arrangements for tuition, books and materials, eligibility criteria for transportation aid, available support services, the need to arrange an appropriate schedule, consequences of failing or not completing a course in which the pupil enrolls, the effect of enrolling in this program on the pupil's ability to complete the required high school graduation requirements, and the academic and social responsibilities that must be assumed by the pupils and their parents or guardian. The person providing counseling shall encourage pupils and their parents or guardian to also use available counseling services at the postsecondary institutions before the quarter or semester of enrollment to ensure that anticipated plans are appropriate. A licensed school counselor must work with pupils enrolling in courses under this section to create a graduation plan that includes the courses the pupil expects to complete under this section as part of that plan.

(b) Prior to enrolling in a course, the pupil and the pupil's parents or guardian must sign a form that must be provided by the school or school district and may be obtained from a postsecondary institution stating that they have received the information specified in this subdivision, created a graduation plan under paragraph (a) that includes courses provided under this section, and ~~that they~~ understand the responsibilities that must be assumed in enrolling in this program. The department must, upon request, provide technical assistance to a school or school district in developing appropriate forms and counseling guidelines.



**EFFECTIVE DATE.** This section is effective for the 2012-2013 school year and later."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

A roll call was requested and properly seconded.

The question was taken on the Tillberry amendment and the roll was called. There were 59 yeas and 71 nays as follows:

Those who voted in the affirmative were:

Allen	Eken	Hortman	Lesch	Mullery	Scalze
Anzelc	Falk	Hosch	Liebling	Murphy, E.	Simon
Atkins	Fritz	Huntley	Lillie	Murphy, M.	Slawik
Benson, J.	Gauthier	Johnson	Loeffler	Nelson	Slocum
Brynaert	Greene	Kahn	Mahoney	Paymar	Thissen
Carlson	Hackbarth	Kath	Mariani	Pelowski	Tillberry
Champion	Hansen	Knuth	Marquart	Persell	Wagenius
Davnie	Hausman	Koenen	Melin	Peterson, S.	Ward
Dill	Hilty	Laine	Moran	Poppe	Winkler
Dittrich	Hornstein	Lenczewski	Morrow	Rukavina	

Those who voted in the negative were:

Abeler	Crawford	Gottwalt	Kriesel	Murdock	Shimanski
Anderson, B.	Daudt	Gruenhagen	Lanning	Murray	Smith
Anderson, D.	Davids	Gunther	Leidiger	Myhra	Stensrud
Anderson, P.	Dean	Hamilton	LeMieur	Nornes	Swedzinski
Anderson, S.	Dettmer	Hancock	Lohmer	O'Driscoll	Torkelson
Banaian	Doepke	Holberg	Loon	Peppin	Urdahl
Barrett	Downey	Hoppe	Mack	Petersen, B.	Vogel
Beard	Drazkowski	Howes	Mazorol	Quam	Wardlow
Benson, M.	Erickson	Kelly	McDonald	Runbeck	Westrom
Bills	Fabian	Kieffer	McElfratrick	Sanders	Woodard
Buesgens	Franson	Kiel	McFarlane	Schomacker	Spk. Zellers
Cornish	Garofalo	Kiffmeyer	McNamara	Scott	

The motion did not prevail and the amendment was not adopted.

Tillberry moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 7, after line 28, insert:

"Sec. 9. Minnesota Statutes 2010, section 124D.09, subdivision 6, is amended to read:

Subd. 6. **Counseling.** (a) To the extent possible, the school or school district must provide counseling services to pupils and their parents or guardian before the pupils enroll in courses under this section to ensure that the pupils and their parents or guardian are fully aware of the risks and possible consequences of enrolling in postsecondary

courses. The school or school district must provide information on the program including who may enroll, what institutions and courses are eligible for participation, the decision-making process for granting academic credits, financial arrangements for tuition, books and materials, eligibility criteria for transportation aid, available support services, the need to arrange an appropriate schedule, consequences of failing or not completing a course in which the pupil enrolls, the effect of enrolling in this program on the pupil's ability to complete the required high school graduation requirements, and the academic and social responsibilities that must be assumed by the pupils and their parents or guardian. The person providing counseling shall encourage pupils and their parents or guardian to also use available counseling services at the postsecondary institutions before the quarter or semester of enrollment to ensure that anticipated plans are appropriate.

(b) Prior to enrolling in a course, the pupil and the pupil's parents or guardian must sign a form that must be provided by the school or school district and may be obtained from a postsecondary institution stating that they have received the information specified in this subdivision and that they understand the responsibilities that must be assumed in enrolling in this program. The department must, upon request, provide technical assistance to a school or school district in developing appropriate forms and counseling guidelines.

(c) In complying with the counseling requirements in this subdivision, if a district does not provide its pupils with a licensed school counselor, the district must notify pupils and their parents or guardians of that fact. A district may satisfy the counseling requirements in this subdivision by providing the counseling services of a candidate for school counseling licensure who is enrolled in a state-approved school counselor preparation program and is supervised by a licensed school counselor.

(d) A district must not assign a licensed school counselor to a position that prevents the school counselor from performing duties consistent with that school counselor's license.

(e) Districts must identify school personnel who spend more than ten percent of their time providing disciplinary or administrative services as administrators for purposes of district staffing reports.

**EFFECTIVE DATE.** This section is effective for the 2012-2013 school year and later."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

A roll call was requested and properly seconded.

The question was taken on the Tillberry amendment and the roll was called. There were 55 yeas and 76 nays as follows:

Those who voted in the affirmative were:

Allen	Falk	Johnson	Mahoney	Paymar	Thissen
Anzelc	Fritz	Kahn	Mariani	Pelowski	Tillberry
Atkins	Gauthier	Kath	Marquart	Persell	Wagenius
Benson, J.	Greene	Knuth	Melin	Peterson, S.	Ward
Brynaert	Hansen	Koenen	Moran	Poppe	Winkler
Carlson	Hausman	Laine	Morrow	Rukavina	
Champion	Hilty	Lenczewski	Mullery	Scalze	
Davnie	Hornstein	Lesch	Murphy, E.	Simon	
Dill	Hosch	Liebling	Murphy, M.	Slawik	
Eken	Huntley	Lillie	Nelson	Slocum	

Those who voted in the negative were:

Abeler	Daudt	Gruenhagen	Kriesel	Murdock	Shimanski
Anderson, B.	Dauids	Gunther	Lanning	Murray	Smith
Anderson, D.	Dean	Hackbarth	Leidiger	Myhra	Stensrud
Anderson, P.	Dettmer	Hamilton	LeMieur	Nornes	Swedzinski
Anderson, S.	Dittrich	Hancock	Loeffler	Norton	Torkelson
Banaian	Doepke	Holberg	Lohmer	O'Driscoll	Urdahl
Barrett	Downey	Hoppe	Loon	Peppin	Vogel
Beard	Drazkowski	Hortman	Mack	Petersen, B.	Wardlow
Benson, M.	Erickson	Howes	Mazorol	Quam	Westrom
Bills	Fabian	Kelly	McDonald	Runbeck	Woodard
Buesgens	Franson	Kieffer	McElpatrick	Sanders	Spk. Zellers
Cornish	Garofalo	Kiel	McFarlane	Schomacker	
Crawford	Gottwalt	Kiffmeyer	McNamara	Scott	

The motion did not prevail and the amendment was not adopted.

Slawik moved to amend H. F. No. 2949, the first engrossment, as amended, as follows:

Page 15, delete section 18

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

A roll call was requested and properly seconded.

The question was taken on the Slawik amendment and the roll was called. There were 46 yeas and 85 nays as follows:

Those who voted in the affirmative were:

Allen	Dittrich	Huntley	Liebling	Murphy, E.	Slocum
Atkins	Gauthier	Johnson	Lillie	Murphy, M.	Thissen
Benson, J.	Greene	Kahn	Loeffler	Nelson	Tillberry
Brynaert	Hansen	Knuth	Mahoney	Norton	Wagenius
Carlson	Hausman	Koenen	Mariani	Paymar	Ward
Champion	Hilty	Laine	Marquart	Peterson, S.	Winkler
Davnie	Hornstein	Lenczewski	Moran	Scalze	
Dill	Hortman	Lesch	Mullery	Slawik	

Those who voted in the negative were:

Abeler	Beard	Dean	Falk	Hamilton	Kieffer
Anderson, B.	Benson, M.	Dettmer	Franson	Hancock	Kiel
Anderson, D.	Bills	Doepke	Fritz	Holberg	Kiffmeyer
Anderson, P.	Buesgens	Downey	Garofalo	Hoppe	Kriesel
Anderson, S.	Cornish	Drazkowski	Gottwalt	Hosch	Lanning
Anzelc	Crawford	Eken	Gruenhagen	Howes	Leidiger
Banaian	Daudt	Erickson	Gunther	Kath	LeMieur
Barrett	Dauids	Fabian	Hackbarth	Kelly	Lohmer

Loon	Melin	Pelowski	Runbeck	Stensrud	Woodard
Mack	Morrow	Peppin	Sanders	Swedzinski	Spk. Zellers
Mazorol	Murdock	Persell	Schomacker	Torkelson	
McDonald	Murray	Petersen, B.	Scott	Urdahl	
McElfatrick	Myhra	Poppe	Shimanski	Vogel	
McFarlane	Nornes	Quam	Simon	Wardlow	
McNamara	O'Driscoll	Rukavina	Smith	Westrom	

The motion did not prevail and the amendment was not adopted.

The Speaker called Davids to the Chair.

H. F. No. 2949, A bill for an act relating to education; modifying certain early childhood and kindergarten through grade 12 policy and finance provisions; requiring reports; appropriating money; amending Minnesota Statutes 2010, sections 120B.13, subdivision 4; 124D.09, subdivisions 9, 10, 12, 24; 135A.101, subdivision 1; 471.975; Minnesota Statutes 2011 Supplement, sections 120B.07; 120B.08; 120B.09; 120B.36, subdivision 1; 124D.09, subdivision 5; 126C.126; 126C.40, subdivision 1; Laws 2011, First Special Session chapter 11, article 5, section 11; article 7, section 2, subdivision 8; repealing Minnesota Statutes 2010, section 124D.09, subdivision 23.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 78 yeas and 54 nays as follows:

Those who voted in the affirmative were:

Abeler	Daudt	Gottwalt	Kiel	McNamara	Scott
Anderson, B.	Davids	Gruenhagen	Kiffmeyer	Murdock	Shimanski
Anderson, D.	Dean	Gunther	Kriesel	Murray	Smith
Anderson, P.	Dettmer	Hackbarth	Lanning	Myhra	Stensrud
Anderson, S.	Dittrich	Hamilton	Leidiger	Nornes	Swedzinski
Banaian	Doepke	Hancock	LeMieur	O'Driscoll	Torkelson
Barrett	Downey	Holberg	Lohmer	Peppin	Urdahl
Beard	Drazkowski	Hoppe	Loon	Petersen, B.	Vogel
Benson, M.	Erickson	Hortman	Mack	Quam	Ward
Bills	Fabian	Howes	Mazorol	Runbeck	Wardlow
Buesgens	Franson	Kath	McDonald	Sanders	Westrom
Cornish	Fritz	Kelly	McElfatrick	Scalze	Woodard
Crawford	Garofalo	Kieffer	McFarlane	Schomacker	Spk. Zellers

Those who voted in the negative were:

Allen	Dill	Hosch	Liebling	Mullery	Poppe
Anzelc	Eken	Huntley	Lillie	Murphy, E.	Rukavina
Atkins	Falk	Johnson	Loeffler	Murphy, M.	Simon
Benson, J.	Gauthier	Kahn	Mahoney	Nelson	Slawik
Brynaert	Greene	Knuth	Mariani	Norton	Slocum
Carlson	Hansen	Koenen	Marquart	Paymar	Thissen
Champion	Hausman	Laine	Melin	Pelowski	Tillberry
Clark	Hilty	Lenczewski	Moran	Persell	Wagenius
Davnie	Hornstein	Lesch	Morrow	Peterson, S.	Winkler

The bill was passed, as amended, and its title agreed to.

### CALENDAR FOR THE DAY, Continued

S. F. No. 2084, A bill for an act relating to public safety; eliminating a Department of Corrections report on performance measures and targets; authorizing the fugitive apprehension unit to apply for search warrants; establishing a gardening program for inmates at each correctional facility; restoring the commissioner of corrections' discretion in selecting inmates to participate in the challenge incarceration program and requiring the commissioner to report to the legislature on how close to capacity the program is being operated; permitting victim notification regarding offenders by Department of Corrections to include electronic notification in addition to written notification; amending Minnesota Statutes 2010, sections 241.016, subdivision 1; 241.025, subdivision 2; 244.17, subdivisions 1, 2; 253B.18, subdivision 5a; 253B.185, subdivision 10; 611A.06, subdivisions 1, 2; 626.05, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 241.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 131 yeas and 0 nays as follows:

Those who voted in the affirmative were:

Abeler	Davids	Hamilton	Lanning	Mullery	Schomacker
Allen	Davnie	Hancock	Leidiger	Murdock	Scott
Anderson, B.	Dean	Hansen	LeMieur	Murphy, E.	Shimanski
Anderson, D.	Dettmer	Hausman	Lenczewski	Murphy, M.	Simon
Anderson, P.	Dill	Hilty	Lesch	Murray	Slawik
Anderson, S.	Dittrich	Holberg	Liebling	Myhra	Slocum
Anzelc	Doepke	Hoppe	Lillie	Nelson	Smith
Atkins	Downey	Hornstein	Loeffler	Nornes	Stensrud
Banaian	Drazkowski	Hortman	Lohmer	Norton	Swedzinski
Barrett	Eken	Hosch	Loon	O'Driscoll	Thissen
Beard	Erickson	Howes	Mack	Paymar	Tillberry
Benson, J.	Fabian	Huntley	Mahoney	Pelowski	Torkelson
Benson, M.	Falk	Johnson	Mariani	Peppin	Urdahl
Bills	Franson	Kath	Marquart	Persell	Vogel
Brynaert	Fritz	Kelly	Mazorol	Petersen, B.	Wagenius
Buesgens	Garofalo	Kieffer	McDonald	Peterson, S.	Ward
Carlson	Gauthier	Kiel	McElfatrick	Poppe	Wardlow
Champion	Gottwalt	Kiffmeyer	McFarlane	Quam	Westrom
Clark	Greene	Knuth	McNamara	Rukavina	Winkler
Cornish	Gruenhagen	Koenen	Melin	Runbeck	Woodard
Crawford	Gunther	Kriesel	Moran	Sanders	Spk. Zellers
Daudt	Hackbarth	Laine	Morrow	Scalze	

The bill was passed and its title agreed to.

H. F. No. 2216 was reported to the House.

Hoppe, Gruenhagen and Davids moved to amend H. F. No. 2216 as follows:

Page 5, delete section 4

The motion prevailed and the amendment was adopted.

Atkins offered an amendment to H. F. No. 2216, as amended.

#### POINT OF ORDER

Dean raised a point of order pursuant to rule 3.21 that the Atkins amendment was not in order. Speaker pro tempore Davids ruled the point of order well taken and the Atkins amendment out of order.

Atkins appealed the decision of Speaker pro tempore Davids.

A roll call was requested and properly seconded.

The vote was taken on the question "Shall the decision of Speaker pro tempore Davids stand as the judgment of the House?" and the roll was called. There were 71 yeas and 61 nays as follows:

Those who voted in the affirmative were:

Abeler	Daudt	Gruenhagen	Kriesel	Murdock	Shimanski
Anderson, B.	Davids	Gunther	Lanning	Murray	Smith
Anderson, D.	Dean	Hackbarth	Leidiger	Myhra	Stensrud
Anderson, P.	Dettmer	Hamilton	LeMieur	Nornes	Swedzinski
Anderson, S.	Doepke	Hancock	Lohmer	O'Driscoll	Torkelson
Banaian	Downey	Holberg	Loon	Peppin	Urdahl
Barrett	Drazkowski	Hoppe	Mack	Petersen, B.	Vogel
Beard	Erickson	Howes	Mazorol	Quam	Wardlow
Benson, M.	Fabian	Kelly	McDonald	Runbeck	Westrom
Buesgens	Franson	Kieffer	McElfrick	Sanders	Woodard
Cornish	Garofalo	Kiel	McFarlane	Schomacker	Spk. Zellers
Crawford	Gottwalt	Kiffmeyer	McNamara	Scott	

Those who voted in the negative were:

Allen	Dittrich	Hosch	Lillie	Nelson	Slocum
Anzelc	Eken	Huntley	Loeffler	Norton	Thissen
Atkins	Falk	Johnson	Mahoney	Paymar	Tillberry
Benson, J.	Fritz	Kahn	Mariani	Pelowski	Wagenius
Bills	Gauthier	Kath	Marquart	Persell	Ward
Brynaert	Greene	Knuth	Melin	Peterson, S.	Winkler
Carlson	Hansen	Koenen	Moran	Poppe	
Champion	Hausman	Laine	Morrow	Rukavina	
Clark	Hilty	Lenczewski	Mullery	Scalze	
Davnie	Hornstein	Lesch	Murphy, E.	Simon	
Dill	Hortman	Liebling	Murphy, M.	Slawik	

So it was the judgment of the House that the decision of Speaker pro tempore Davids should stand.

H. F. No. 2216, A bill for an act relating to insurance; the Minnesota Comprehensive Health Association; permitting flexibility in premium rate-setting process; amending Minnesota Statutes 2010, sections 62E.08, subdivisions 1, 3; 62E.091.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 131 yeas and 0 nays as follows:

Those who voted in the affirmative were:

Abeler	Davids	Hamilton	Laine	Morrow	Scalze
Allen	Davnie	Hancock	Lanning	Mullery	Schomacker
Anderson, B.	Dean	Hansen	Leidiger	Murdock	Scott
Anderson, D.	Dettmer	Hausman	LeMieur	Murphy, E.	Shimanski
Anderson, P.	Dill	Hilty	Lenczewski	Murphy, M.	Simon
Anderson, S.	Dittrich	Holberg	Lesch	Murray	Slawik
Anzelc	Doepke	Hoppe	Liebling	Myhra	Slocum
Atkins	Downey	Hornstein	Lillie	Nelson	Smith
Banaian	Drazkowski	Hortman	Loeffler	Nornes	Stensrud
Barrett	Eken	Hosch	Lohmer	Norton	Swedzinski
Beard	Erickson	Howes	Loon	O'Driscoll	Thissen
Benson, J.	Fabian	Huntley	Mack	Paymar	Tillberry
Benson, M.	Falk	Johnson	Mahoney	Pelowski	Torkelson
Bills	Franson	Kahn	Mariani	Peppin	Urdahl
Brynaert	Fritz	Kath	Marquart	Persell	Vogel
Buesgens	Garofalo	Kelly	Mazorol	Petersen, B.	Wagenius
Carlson	Gauthier	Kieffer	McDonald	Peterson, S.	Wardlow
Champion	Gottwalt	Kiel	McElfrick	Poppe	Westrom
Clark	Greene	Kiffmeyer	McFarlane	Quam	Winkler
Cornish	Gruenhagen	Knuth	McNamara	Rukavina	Woodard
Crawford	Gunther	Koenen	Melin	Runbeck	Spk. Zellers
Daudt	Hackbarth	Kriesel	Moran	Sanders	

The bill was passed, as amended, and its title agreed to.

S. F. No. 1981, A bill for an act relating to police officers; providing for uniform procedures for police civilian review authorities; amending Minnesota Statutes 2010, section 626.89, subdivision 2, by adding a subdivision.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 107 yeas and 25 nays as follows:

Those who voted in the affirmative were:

Abeler	Buesgens	Erickson	Hoppe	Kriesel	McFarlane
Anderson, B.	Carlson	Fabian	Hortman	Lanning	McNamara
Anderson, D.	Cornish	Franson	Hosch	Leidiger	Melin
Anderson, P.	Crawford	Fritz	Howes	LeMieur	Morrow
Anderson, S.	Daudt	Garofalo	Huntley	Lillie	Murdock
Anzelc	Davids	Gottwalt	Johnson	Lohmer	Murray
Atkins	Dean	Gruenhagen	Kath	Loon	Myhra
Banaian	Dettmer	Gunther	Kelly	Mack	Nelson
Barrett	Dill	Hackbarth	Kieffer	Mahoney	Nornes
Beard	Doepke	Hamilton	Kiel	Marquart	Norton
Benson, J.	Downey	Hancock	Kiffmeyer	Mazorol	O'Driscoll
Benson, M.	Drazkowski	Hansen	Knuth	McDonald	Pelowski
Bills	Eken	Holberg	Koenen	McElfrick	Peppin

Persell	Rukavina	Scott	Smith	Torkelson	Westrom
Petersen, B.	Runbeck	Shimanski	Stensrud	Urdahl	Winkler
Peterson, S.	Sanders	Simon	Swedzinski	Vogel	Woodard
Poppe	Scalze	Slawik	Thissen	Ward	Spk. Zellers
Quam	Schomacker	Slocum	Tillberry	Wardlow	

Those who voted in the negative were:

Allen	Dittrich	Hilty	Lesch	Mullery
Brynaert	Falk	Hornstein	Liebling	Murphy, E.
Champion	Gauthier	Kahn	Loeffler	Murphy, M.
Clark	Greene	Laine	Mariani	Paymar
Davnie	Hausman	Lenczewski	Moran	Wagenius

The bill was passed and its title agreed to.

S. F. No. 2069, A bill for an act relating to insurance; regulating the offer and dissemination of travel insurance; amending Minnesota Statutes 2010, sections 60K.36, subdivision 2; 60K.38, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 60K.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 132 yeas and 0 nays as follows:

Those who voted in the affirmative were:

Abeler	Davids	Hamilton	Laine	Morrow	Scalze
Allen	Davnie	Hancock	Lanning	Mullery	Schomacker
Anderson, B.	Dean	Hansen	Leidiger	Murdock	Scott
Anderson, D.	Dettmer	Hausman	LeMieur	Murphy, E.	Shimanski
Anderson, P.	Dill	Hilty	Lenczewski	Murphy, M.	Simon
Anderson, S.	Dittrich	Holberg	Lesch	Murray	Slawik
Anzelc	Doepke	Hoppe	Liebling	Myhra	Slocum
Atkins	Downey	Hornstein	Lillie	Nelson	Smith
Banaian	Drazkowski	Hortman	Loeffler	Nornes	Stensrud
Barrett	Eken	Hosch	Lohmer	Norton	Swedzinski
Beard	Erickson	Howes	Loon	O'Driscoll	Thissen
Benson, J.	Fabian	Huntley	Mack	Paymar	Tillberry
Benson, M.	Falk	Johnson	Mahoney	Pelowski	Torkelson
Bills	Franson	Kahn	Mariani	Peppin	Urdahl
Brynaert	Fritz	Kath	Marquart	Persell	Vogel
Buesgens	Garofalo	Kelly	Mazorol	Petersen, B.	Wagenius
Carlson	Gauthier	Kieffer	McDonald	Peterson, S.	Ward
Champion	Gottwalt	Kiel	McElfrick	Poppe	Wardlow
Clark	Greene	Kiffmeyer	McFarlane	Quam	Westrom
Cornish	Gruenhagen	Knuth	McNamara	Rukavina	Winkler
Crawford	Gunther	Koenen	Melin	Runbeck	Woodard
Daudt	Hackbarth	Kriesel	Moran	Sanders	Spk. Zellers

The bill was passed and its title agreed to.



The Speaker resumed the Chair.

H. F. No. 1134 was reported to the House.

Atkins, Winkler, Simon, Hoppe and Knuth moved to amend H. F. No. 1134, the first engrossment, as follows:

Page 1, delete section 1

Page 2, line 29, delete "and"

Page 2, line 30, after "fund" insert "group plans under"

Page 3, line 7, after the semicolon, insert "or"

Page 3, line 9, after the semicolon, insert "and"

Page 3, after line 9, insert:

"(3) contracts used to fund, unless there is a recommendation to a consumer regarding an annuity in which case sections 72A.203 to 72A.2036 do apply with respect to the consumer annuity transaction:"

Page 3, line 10, delete "(v)" and insert "(i)"

Page 3, line 12, delete "(vi)" and insert "(ii)"

Page 3, line 31, after "advice" insert "or guidance" and after "provided" insert "or made"

Page 3, line 34, after "advice" insert "or guidance"

Page 4, line 1, delete everything after "Replacement" and insert "means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or the proposing insurer, whether or not there is an insurance producer, that by reason of the transaction, an existing policy or contract has been or is to be any of the following:

(1) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(2) converted to reduced paid-up insurance; continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) reissued with any reduction in cash value; or

(5) used in a financed purchase."

Page 4, delete line 2

Page 4, line 5, before "the" insert "but not limited to"

Page 4, line 7, after "income" insert "and anticipated material changes in annual income"

Page 4, line 9, after "annuity" insert ", and including anticipated material changes in financial situation and needs"

Page 4, line 14, after "holdings" insert "and anticipated material changes in existing assets"

Page 4, line 15, after "needs" insert "and anticipated material changes in liquidity needs"

Page 4, line 16, after "worth" insert "and anticipated material changes in liquid net worth"

Page 4, line 17, delete "and"

Page 4, line 18, delete the period and insert "; and"

Page 4, after line 18, insert:

"(13) whether or not the consumer has a reverse mortgage."

Page 4, line 23, after "believing" insert ", after a reasonable inquiry,"

Page 4, line 24, delete "on the basis of" and insert ", under the totality of the circumstances based on"

Page 4, line 30, before "or" insert "redeems,"

Page 4, line 33, delete everything after "would" and insert "receive a tangible net benefit from the transaction;"

Page 4, delete line 34

Page 5, line 4, before the semicolon, insert "taking into account, among other things, the age of the consumer"

Page 5, line 7, delete "whether" and insert "all of the following"

Page 5, line 12, delete "benefit from product enhancements and improvements" and insert "receive a tangible net benefit from the transaction, and in the case of a person 65 years of age or older, neither a producer nor an insurer shall recommend a replacement or exchange of an annuity that requires the insured to pay a surrender charge for the annuity being replaced or exchanged if the replacement or exchange does not confer a substantial financial benefit over the life of the annuity to the consumer so that a reasonable person would believe the purchase is unnecessary"

Page 5, line 14, delete "36" and insert "60"

Page 5, line 18, before the period, insert ", and record this information on a form, inventory, or similar record"

Page 5, line 28, after the semicolon, insert "or"

Page 5, line 30, delete "; or" and insert a period

Page 5, delete lines 31 and 32

Page 5, line 34, after "known" insert ", or which after reasonable inquiry should be known" and after "insurer" insert "or the insurance producer."

Page 6, line 9, before "the" insert "all of"

Page 6, line 13, before "manuals" insert "programs and"

Page 6, line 21, before the period, insert "taking into account among other things the age of the consumer"

Page 6, line 24, delete "may" and insert "shall"

Page 6, line 26, before the semicolon, insert ", taking into account, among other things the age of the consumer"

Page 7, line 6, before the semicolon, insert ", and an insurer is responsible for the compliance of an insurance producer with the provisions of sections 72A.203 to 72A.2036 regardless of whether the insurer contracts for performance of a function required under this paragraph"

Page 7, line 18, after "producer" insert "or insurer"

Page 7, line 20, before "truthfully" insert "providing suitability information to the insurance producer or insurer and"

Page 7, line 24, delete "Alternative" and insert "FINRA" and delete "Sales" and insert "Certain sales" and after "made" insert "by a broker-dealer"

Page 7, line 28, delete "is similar" and insert "is no less stringent than" and before the period, insert "under FINRA requirements"

Page 7, line 30, before the period, insert "with respect to sales made in compliance with FINRA requirements and federal law or limits the responsibilities of the insurer to monitor the broker-dealer as provided in this subdivision"

Page 8, line 7, delete "engages" and insert "is otherwise entitled to engage"

Page 8, line 8, delete "four-credit" and insert "eight-credit"

Page 8, line 10, before the period, insert "prior to commencing the transaction of annuities"

Page 8, line 13, delete "2012" and insert "2013"

Page 8, line 14, delete "2012" and insert "2013"

Page 8, line 16, delete "2012" and insert "2013"

Page 8, line 17, delete "2012" and insert "2013"

Page 8, line 18, delete everything after "(b)" and insert "In addition to the requirement set for in paragraph (a), every producer who engages in this state in the sale of annuities shall satisfactorily complete four continuing education credits prior to license renewal every two years."

Page 8, delete line 19

Page 8, line 26, delete "and"

Page 8, line 27, after "appropriate" insert "and lawful" and delete the period and insert ", and suitability information and whether an annuity is suitable for a consumer; and"

Page 8, before line 28, insert:

"(7) the recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product."

Page 9, after line 20, insert:

"Sec. 8. **[72A.2034] PENALTIES.**

Subdivision 1. **Imposition.** (a) An insurer is responsible for compliance with sections 72A.203 to 72A.2036. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may, in addition to any available penalties, remedies, or administrative actions order:

(1) an insurer to take reasonably appropriate corrective, including but not limited to canceling a transaction action for any consumer harmed by the insurer's, or by its insurance producer's, violation of sections 72A.203 to 72A.2036;

(2) a general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of sections 72A.203 to 72A.2036; and

(3) appropriate penalties and sanctions.

(b) Nothing in sections 72A.203 to 72A.2036 shall affect any obligation of an insurer for the acts of its insurance producers, or any consumer remedy or any cause of action that is otherwise provided for under applicable federal or state law, including without limitation chapter 60K.

Subd. 2. **Aggravation or mitigation.** Any applicable penalty for a violation of sections 72A.203 to 72A.2036 may be increased or decreased upon consideration of any aggravating or mitigating circumstances."

Page 9, after line 30, insert:

"Sec. 10. **[72A.2036] RELATIONSHIP TO OTHER LAWS; ENFORCEMENT.**

(a) Nothing in sections 72A.203 to 72A.2036 shall be interpreted to:

(1) change, alter, or modify any of the obligations, duties, or responsibilities of insurers or insurance producers, pursuant to any orders of the commissioner or consent decrees in effect as of January 1, 2013; or

(2) limit the commissioner's authority to make any investigation or take any action under chapter 45 or other applicable state law with respect to any insurer, insurance producer, broker-dealer, third-party contractor, or other entity engaged in any activity involving the sale of an annuity that is subject to sections 72A.203 to 72A.2036.

(b) In addition to any other penalties provided by the laws of this state, a violation of sections 72A.203 to 72A.2036 shall be considered a violation of section 72A.20."

Page 9, line 32, delete "2012" and insert "2013"

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

Dauids moved to amend the Atkins et al amendment to H. F. No. 1134, the first engrossment, as follows:

Page 3, delete line 30

Page 4, delete lines 1 to 5

The motion prevailed and the amendment to the amendment was adopted.

The question recurred on the Atkins et al amendment, as amended, to H. F. No. 1134, the first engrossment. The motion prevailed and the amendment, as amended, was adopted.

H. F. No. 1134, A bill for an act relating to insurance; regulating annuity products; enacting and modifying a model regulation adopted by the National Association of Insurance Commissioners relating to suitability in annuity transactions; amending Minnesota Statutes 2010, sections 60K.46, subdivision 4; 72A.20, subdivision 34; proposing coding for new law in Minnesota Statutes, chapter 72A.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 126 yeas and 6 nays as follows:

Those who voted in the affirmative were:

Abeler	Dauids	Hackbarth	Koenen	McNamara	Runbeck
Allen	Davnie	Hamilton	Kriesel	Melin	Sanders
Anderson, B.	Dean	Hancock	Laine	Moran	Scalze
Anderson, D.	Dettmer	Hansen	Lanning	Morrow	Schomacker
Anderson, P.	Dill	Hausman	Leidiger	Mullery	Scott
Anderson, S.	Dittrich	Hilty	LeMieur	Murdock	Shimanski
Anzelc	Doepke	Holberg	Lenczewski	Murphy, E.	Simon
Atkins	Downey	Hoppe	Lesch	Murphy, M.	Slawik
Banaian	Drazkowski	Hornstein	Liebling	Murray	Slocum
Barrett	Eken	Hortman	Lillie	Myhra	Smith
Beard	Erickson	Hosch	Loeffler	Nelson	Stensrud
Benson, J.	Fabian	Howes	Lohmer	Nornes	Swedzinski
Benson, M.	Falk	Huntley	Loon	Norton	Tillberry
Bills	Franson	Johnson	Mack	O'Driscoll	Torkelson
Brynaert	Fritz	Kahn	Mahoney	Paymar	Urdahl
Carlson	Garofalo	Kath	Mariani	Pelowski	Wagenius
Champion	Gauthier	Kelly	Marquart	Persell	Ward
Clark	Gottwalt	Kieffer	Mazorol	Peterson, S.	Westrom
Cornish	Greene	Kiel	McDonald	Poppe	Winkler
Crawford	Gruenhagen	Kiffmeyer	McElpatrick	Quam	Woodard
Daudt	Gunther	Knuth	McFarlane	Rukavina	Spk. Zellers

Those who voted in the negative were:

Buesgens	Peppin	Petersen, B.	Thissen	Vogel	Wardlow
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The bill was passed, as amended, and its title agreed to.

S. F. No. 1934, A bill for an act relating to insurance; regulating township mutual fire insurance company combination policies; amending Minnesota Statutes 2010, section 67A.191.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 88 yeas and 42 nays as follows:

Those who voted in the affirmative were:

Abeler	Davids	Gruenhagen	Leidiger	Myhra	Scott
Anderson, B.	Dean	Gunther	LeMieur	Nornes	Shimanski
Anderson, D.	Dettmer	Hackbarth	Lohmer	Norton	Slawik
Anderson, P.	Dittrich	Hamilton	Loon	O'Driscoll	Smith
Anderson, S.	Doepke	Hancock	Mack	Pelowski	Stensrud
Atkins	Downey	Hoppe	Marquart	Peppin	Swedzinski
Banaian	Drazkowski	Howes	Mazorol	Persell	Torkelson
Barrett	Eken	Kath	McDonald	Petersen, B.	Urdahl
Beard	Erickson	Kelly	McElfatrick	Peterson, S.	Vogel
Benson, J.	Fabian	Kieffer	McFarlane	Poppe	Ward
Benson, M.	Falk	Kiel	McNamara	Quam	Wardlow
Bills	Franson	Kiffmeyer	Morrow	Runbeck	Westrom
Cornish	Fritz	Koenen	Murdock	Sanders	Woodard
Crawford	Garofalo	Kriesel	Murphy, M.	Scalze	
Daudt	Gottwalt	Lanning	Murray	Schomacker	

Those who voted in the negative were:

Allen	Davnie	Holberg	Laine	Mariani	Rukavina
Anzelc	Dill	Hornstein	Lenczewski	Melin	Simon
Brynaert	Gauthier	Hortman	Lesch	Moran	Slocum
Buesgens	Greene	Huntley	Liebling	Mullery	Thissen
Carlson	Hansen	Johnson	Lillie	Murphy, E.	Tillberry
Champion	Hausman	Kahn	Loeffler	Nelson	Wagenius
Clark	Hilty	Knuth	Mahoney	Paymar	Winkler

The bill was passed and its title agreed to.

#### MOTIONS FOR RECONSIDERATION

Atkins moved that the vote whereby S. F. No. 1934, was passed on the Calendar for the Day, be now reconsidered. The motion prevailed.

Davids moved that the action whereby S. F. No. 1934 was given its third reading be now reconsidered. The motion prevailed.

S. F. No. 1934 was again reported to the House.

Hilty moved to amend S. F. No. 1934, the unofficial engrossment, as follows:

Page 1, line 20, after "enactment" insert ", and does not apply to losses incurred before that date"

The motion prevailed and the amendment was adopted.

S. F. No. 1934, A bill for an act relating to insurance; regulating township mutual fire insurance company combination policies; amending Minnesota Statutes 2010, section 67A.191.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 90 yeas and 42 nays as follows:

Those who voted in the affirmative were:

Abeler	Dauids	Gunther	Lanning	Murray	Schomacker
Anderson, B.	Dean	Hackbarth	Leidiger	Myhra	Scott
Anderson, D.	Dettmer	Hamilton	LeMieur	Nornes	Shimanski
Anderson, P.	Doepke	Hancock	Lohmer	Norton	Smith
Anderson, S.	Downey	Hilty	Loon	O'Driscoll	Stensrud
Anzelc	Drazkowski	Hoppe	Mack	Pelowski	Swedzinski
Banaian	Eken	Hosch	Marquart	Peppin	Tillberry
Barrett	Erickson	Howes	Mazorol	Persell	Torkelson
Beard	Fabian	Kath	McDonald	Petersen, B.	Urdahl
Benson, J.	Falk	Kelly	McElfatrick	Peterson, S.	Vogel
Benson, M.	Franson	Kieffer	McFarlane	Poppe	Ward
Bills	Fritz	Kiel	McNamara	Quam	Wardlow
Cornish	Garofalo	Kiffmeyer	Morrow	Runbeck	Westrom
Crawford	Gottwalt	Koenen	Murdock	Sanders	Woodard
Daudt	Gruenhagen	Kriesel	Murphy, M.	Scalze	Spk. Zellers

Those who voted in the negative were:

Allen	Davnie	Holberg	Laine	Mariani	Rukavina
Atkins	Dill	Hornstein	Lenczewski	Melin	Simon
Brynaert	Dittrich	Hortman	Lesch	Moran	Slawik
Buesgens	Gauthier	Huntley	Liebling	Mullery	Slocum
Carlson	Greene	Johnson	Lillie	Murphy, E.	Thissen
Champion	Hansen	Kahn	Loeffler	Nelson	Wagenius
Clark	Hausman	Knuth	Mahoney	Paymar	Winkler

The bill was passed, as amended, and its title agreed to.

H. F. No. 1976, A bill for an act relating to state government; requiring state appointing authorities to use the federal E-Verify program; proposing coding for new law in Minnesota Statutes, chapter 43A.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 77 yeas and 53 nays as follows:

Those who voted in the affirmative were:

Abeler	Daudt	Gruenhagen	Kiffmeyer	McNamara	Scott
Anderson, B.	Davids	Gunther	Kriesel	Murdock	Shimanski
Anderson, D.	Dean	Hackbarth	Lanning	Murray	Smith
Anderson, P.	Dettmer	Hamilton	Leidiger	Myhra	Stensrud
Anderson, S.	Dittrich	Hancock	LeMieur	Nornes	Swedzinski
Banaian	Doepke	Holberg	Lenczewski	Norton	Torkelson
Barrett	Downey	Hoppe	Lohmer	O'Driscoll	Urdahl
Beard	Drazkowski	Hortman	Loon	Peppin	Vogel
Benson, M.	Eken	Howes	Mack	Quam	Wardlow
Bills	Erickson	Kath	Mazorol	Runbeck	Westrom
Buesgens	Fabian	Kelly	McDonald	Sanders	Woodard
Cornish	Franson	Kieffer	McElfratrik	Scalze	Spk. Zellers
Crawford	Gottwalt	Kiel	McFarlane	Schomacker	

Those who voted in the negative were:

Allen	Dill	Hosch	Lillie	Murphy, E.	Simon
Anzelc	Falk	Huntley	Loeffler	Murphy, M.	Slawik
Atkins	Fritz	Johnson	Mahoney	Nelson	Slocum
Benson, J.	Gauthier	Kahn	Mariani	Paymar	Thissen
Brynaert	Greene	Knuth	Marquart	Pelowski	Tillberry
Carlson	Hansen	Koenen	Melin	Persell	Wagenius
Champion	Hausman	Laine	Moran	Peterson, S.	Ward
Clark	Hilty	Lesch	Morrow	Poppe	Winkler
Davnie	Hornstein	Liebling	Mullery	Rukavina	

The bill was passed and its title agreed to.

S. F. No. 2014, A bill for an act relating to metropolitan government; providing for staggered, four-year terms for members of the Metropolitan Council; providing for removal of members under certain conditions; amending Minnesota Statutes 2010, section 473.123, subdivision 2a.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 81 yeas and 48 nays as follows:

Those who voted in the affirmative were:

Abeler	Benson, M.	Downey	Gunther	Kieffer	Lohmer
Anderson, B.	Cornish	Drazkowski	Hackbarth	Kiel	Loon
Anderson, D.	Crawford	Eken	Hamilton	Kiffmeyer	Mack
Anderson, P.	Daudt	Erickson	Hancock	Koenen	Mariani
Anderson, S.	Davids	Fabian	Hansen	Kriesel	Marquart
Banaian	Dean	Franson	Hoppe	Lanning	Mazorol
Barrett	Dettmer	Fritz	Hortman	Leidiger	McElfratrik
Beard	Dittrich	Gottwalt	Howes	LeMieur	McFarlane
Benson, J.	Doepke	Gruenhagen	Kelly	Lenczewski	McNamara



Murdock	Pelowski	Quam	Scott	Torkelson	Woodard
Murray	Peppin	Runbeck	Shimanski	Urdahl	Spk. Zellers
Myhra	Petersen, B.	Sanders	Smith	Vogel	
Nornes	Peterson, S.	Scalze	Stensrud	Ward	
O'Driscoll	Poppe	Schomacker	Swedzinski	Westrom	

Those who voted in the negative were:

Allen	Clark	Holberg	Laine	Morrow	Simon
Anzelc	Davnie	Hornstein	Lesch	Murphy, E.	Slawik
Atkins	Dill	Hosch	Liebling	Murphy, M.	Slocum
Bills	Falk	Huntley	Lillie	Nelson	Thissen
Brynaert	Garofalo	Johnson	Loeffler	Norton	Tillberry
Buesgens	Gauthier	Kahn	Mahoney	Paymar	Wagenius
Carlson	Greene	Kath	Melin	Persell	Wardlow
Champion	Hilty	Knuth	Moran	Rukavina	Winkler

The bill was passed and its title agreed to.

S. F. No. 1993, A bill for an act relating to building codes; modifying licensing exemptions relating to installation of certain sump pumps; amending Minnesota Statutes 2011 Supplement, section 326B.46, subdivision 1a.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 131 yeas and 1 nay as follows:

Those who voted in the affirmative were:

Abeler	Davids	Hamilton	Kriesel	Morrow	Schomacker
Allen	Davnie	Hancock	Laine	Mullery	Scott
Anderson, B.	Dean	Hansen	Lanning	Murdock	Shimanski
Anderson, D.	Dettmer	Hausman	Leidiger	Murphy, E.	Simon
Anderson, P.	Dill	Hilstrom	LeMieur	Murray	Slawik
Anderson, S.	Dittrich	Hilty	Lenczewski	Myhra	Slocum
Anzelc	Doepke	Holberg	Lesch	Nelson	Smith
Atkins	Downey	Hoppe	Liebling	Nornes	Stensrud
Banaian	Drazkowski	Hornstein	Lillie	Norton	Swedzinski
Barrett	Eken	Hortman	Loeffler	O'Driscoll	Thissen
Beard	Erickson	Hosch	Lohmer	Paymar	Tillberry
Benson, J.	Fabian	Howes	Loon	Pelowski	Torkelson
Benson, M.	Falk	Huntley	Mack	Peppin	Urdahl
Bills	Franson	Johnson	Mahoney	Persell	Vogel
Brynaert	Fritz	Kahn	Mariani	Petersen, B.	Wagenius
Buesgens	Garofalo	Kath	Marquart	Peterson, S.	Ward
Carlson	Gauthier	Kelly	Mazorol	Poppe	Wardlow
Champion	Gottwalt	Kieffer	McElfrick	Quam	Westrom
Clark	Greene	Kiel	McFarlane	Rukavina	Winkler
Cornish	Gruenhagen	Kiffmeyer	McNamara	Runbeck	Woodard
Crawford	Gunther	Knuth	Melin	Sanders	Spk. Zellers
Daudt	Hackbarth	Koenen	Moran	Scalze	

Those who voted in the negative were:

Murphy, M.

The bill was passed and its title agreed to.

H. F. No. 2335 was reported to the House.

Sanders moved to amend H. F. No. 2335, the first engrossment, as follows:

Page 1, line 10, delete "or name at annual"

Page 1, line 11, delete "registration renewal" and insert ", name, or assumed name no later than 30 days after the change occurs"

Page 1, delete section 2 and insert:

"Sec. 2. Minnesota Statutes 2010, section 332.33, subdivision 8, is amended to read:

Subd. 8. **Screening process requirement.** (a) Each licensed collection agency must establish procedures to follow when screening an individual collector applicant prior to submitting an applicant to the commissioner for initial registration and at renewal.

(b) The screening process for initial registration must be done at the time of hiring. The process must include a national criminal history record search, an attorney licensing search, and a county criminal history search for all counties where the applicant has resided within the five years immediately preceding the initial registration, to determine whether the applicant is eligible to be registered under section 332.35. Each licensed collection agency shall use a vendor that is a member of the National Association of Professional Background Screeners, or an equivalent vendor, to conduct this background screening process.

(c) Screening for renewal of individual collector registration must include a national criminal history record search and a county criminal history search for all counties where the individual has resided during the immediate preceding year. Screening for renewal of individual collector registrations must take place no more than 60 days before the license expiration or renewal date. A renewal screening is not required if an individual collector has been subjected to an initial background screening within 12 months of the first registration renewal date. A renewal screening is required for all subsequent annual registration renewals.

(d) The commissioner may review the procedures to ensure the integrity of the screening process. Failure by a licensed collection agency to establish these procedures is subject to action under section 332.40.

Page 2, line 15, after "involving" insert "identity theft or"

Page 2, line 22, delete "suspended for cause" and insert "involuntarily suspended"

Page 2, delete section 4

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

H. F. No. 2335 was read for the third time.

#### MOTION FOR RECONSIDERATION

Sanders moved that the action whereby H. F. No. 2335 was given its third reading be now reconsidered. The motion prevailed.

The question recurred on the Sanders amendment to H. F. No. 2335. The motion prevailed and the amendment was adopted.

H. F. No. 2335, A bill for an act relating to debt collectors; amending procedures for licensure of debt collection agencies and registration of individual debt collectors; amending Minnesota Statutes 2010, sections 332.33, subdivisions 7, 8; 332.35.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 118 yeas and 15 nays as follows:

Those who voted in the affirmative were:

Abeler	Davnie	Hackbarth	Leidiger	Murphy, E.	Shimanski
Anderson, B.	Dean	Hamilton	LeMieur	Murphy, M.	Simon
Anderson, D.	Dettmer	Hancock	Lenczewski	Murray	Slawik
Anderson, P.	Dill	Hilty	Lesch	Myhra	Slocum
Anderson, S.	Dittrich	Holberg	Lillie	Nelson	Smith
Anzelc	Doepke	Hoppe	Loeffler	Nornes	Stensrud
Atkins	Downey	Hortman	Lohmer	Norton	Swedzinski
Banaian	Drazkowski	Hosch	Loon	O'Driscoll	Thissen
Barrett	Eken	Howes	Mack	Pelowski	Tillberry
Beard	Erickson	Huntley	Mahoney	Peppin	Torkelson
Benson, J.	Fabian	Kath	Marquart	Persell	Urdahl
Benson, M.	Falk	Kelly	Mazorol	Peterson, S.	Vogel
Bills	Franson	Kieffer	McDonald	Poppe	Ward
Brynaert	Fritz	Kiel	McElfrick	Quam	Wardlow
Carlson	Garofalo	Kiffmeyer	McFarlane	Rukavina	Westrom
Clark	Gauthier	Knuth	McNamara	Runbeck	Winkler
Cornish	Gottwalt	Koenen	Melin	Sanders	Woodard
Crawford	Greene	Kriesel	Moran	Scalze	Spk. Zellers
Daudt	Gruenhagen	Laine	Morrow	Schomacker	
Davids	Gunther	Lanning	Murdock	Scott	

Those who voted in the negative were:

Allen	Hansen	Hornstein	Liebling	Paymar
Buesgens	Hausman	Johnson	Mariani	Petersen, B.
Champion	Hilstrom	Kahn	Mullery	Wagenius

The bill was passed, as amended, and its title agreed to.

S. F. No. 1793, A bill for an act relating to insurance; modifying the definition of a health plan company; proposing coding for new law in Minnesota Statutes, chapter 645.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 115 yeas and 18 nays as follows:

Those who voted in the affirmative were:

Abeler	Davids	Hancock	Lenczewski	Nelson	Slocum
Anderson, B.	Davnie	Hansen	Lillie	Nornes	Smith
Anderson, D.	Dean	Holberg	Lohmer	Norton	Stensrud
Anderson, P.	Dettmer	Hoppe	Loon	O'Driscoll	Swedzinski
Anderson, S.	Dill	Hortman	Mack	Paymar	Thissen
Anzelc	Dittrich	Hosch	Mahoney	Pelowski	Tillberry
Atkins	Doepke	Howes	Mariani	Peppin	Torkelson
Banaian	Downey	Huntley	Marquart	Persell	Urdahl
Barrett	Drazkowski	Johnson	Mazorol	Petersen, B.	Vogel
Beard	Eken	Kath	McDonald	Poppe	Ward
Benson, J.	Erickson	Kelly	McElfrick	Quam	Wardlow
Benson, M.	Fabian	Kieffer	McFarlane	Rukavina	Westrom
Bills	Franson	Kiel	McNamara	Runbeck	Winkler
Brynaert	Fritz	Kiffmeyer	Melin	Sanders	Woodard
Buesgens	Garofalo	Knuth	Morrow	Scalze	Spk. Zellers
Carlson	Gottwalt	Koenen	Mullery	Schomacker	
Champion	Gruenhagen	Kriesel	Murdock	Scott	
Cornish	Gunther	Lanning	Murphy, M.	Shimanski	
Crawford	Hackbarth	Leidiger	Murray	Simon	
Daudt	Hamilton	LeMieur	Myhra	Slawik	

Those who voted in the negative were:

Allen	Gauthier	Hilstrom	Kahn	Liebling	Murphy, E.
Clark	Greene	Hilty	Laine	Loeffler	Peterson, S.
Falk	Hausman	Hornstein	Lesch	Moran	Wagenius

The bill was passed and its title agreed to.

S. F. No. 1860, A bill for an act relating to environment; modifying the definition of solid waste to exempt certain highway construction, improvement, or repair activities; amending Minnesota Statutes 2010, section 116.06, subdivision 22.

The bill was read for the third time and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called. There were 120 yeas and 12 nays as follows:

Those who voted in the affirmative were:

Abeler	Anderson, P.	Atkins	Beard	Bills	Carlson
Anderson, B.	Anderson, S.	Banaian	Benson, J.	Brynaert	Champion
Anderson, D.	Anzelc	Barrett	Benson, M.	Buesgens	Clark

Cornish	Garofalo	Kahn	Lohmer	Nelson	Shimanski
Crawford	Gottwalt	Kath	Loon	Nornes	Simon
Daudt	Greene	Kelly	Mack	Norton	Slawik
Davids	Gruenhagen	Kieffer	Mahoney	O'Driscoll	Smith
Davnie	Gunther	Kiel	Marquart	Paymar	Stensrud
Dean	Hackbarth	Kiffmeyer	Mazorol	Pelowski	Swedzinski
Dettmer	Hamilton	Knuth	McDonald	Peppin	Tillberry
Dill	Hancock	Koenen	McElpatrick	Persell	Torkelson
Dittrich	Hansen	Kriesel	McFarlane	Petersen, B.	Urdahl
Doepke	Hilty	Laine	McNamara	Peterson, S.	Vogel
Downey	Holberg	Lanning	Melin	Poppe	Wagenius
Drazkowski	Hoppe	Leidiger	Morrow	Quam	Ward
Eken	Hornstein	LeMieur	Mullery	Runbeck	Wardlow
Erickson	Hortman	Lenczewski	Murdock	Sanders	Westrom
Fabian	Hosch	Liebling	Murphy, M.	Scalze	Winkler
Franson	Huntley	Lillie	Murray	Schomacker	Woodard
Fritz	Johnson	Loeffler	Myhra	Scott	Spk. Zellers

Those who voted in the negative were:

Allen	Gauthier	Hilstrom	Lesch	Moran	Slocum
Falk	Hausman	Howes	Mariani	Rukavina	Thissen

The bill was passed and its title agreed to.

S. F. No. 2273 was reported to the House.

Swedzinski moved to amend S. F. No. 2273, the first engrossment, as follows:

Page 3, delete section 5

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

The motion prevailed and the amendment was adopted.

S. F. No. 2273, A bill for an act relating to public safety; motor vehicles; motor vehicle dealer regulations; expanding the class of eligible buyers for junked vehicles; amending Minnesota Statutes 2010, sections 168.27, subdivisions 2, 3, 3c; 168A.151, subdivision 6.

The bill was read for the third time, as amended, and placed upon its final passage.

The question was taken on the passage of the bill and the roll was called.

Pursuant to rule 2.05, Hortman was excused from voting on the final passage of S. F. No. 2273, as amended.

There were 132 yeas and 0 nays as follows:

Those who voted in the affirmative were:

Abeler	Anderson, D.	Anzelc	Barrett	Benson, M.	Buesgens
Allen	Anderson, P.	Atkins	Beard	Bills	Carlson
Anderson, B.	Anderson, S.	Banaian	Benson, J.	Brynaert	Champion

Clark	Garofalo	Johnson	Lohmer	Myhra	Shimanski
Cornish	Gauthier	Kahn	Loon	Nelson	Simon
Crawford	Gottwalt	Kath	Mack	Nornes	Slawik
Daudt	Greene	Kelly	Mahoney	Norton	Slocum
Davids	Gruenhagen	Kieffer	Mariani	O'Driscoll	Smith
Davnie	Gunther	Kiel	Marquart	Paymar	Stensrud
Dean	Hackbarth	Kiffmeyer	Mazorol	Pelowski	Swedzinski
Dettmer	Hamilton	Knuth	McDonald	Peppin	Thissen
Dill	Hancock	Koenen	McElfatrick	Persell	Tillberry
Dittrich	Hansen	Kriesel	McFarlane	Petersen, B.	Torkelson
Doepke	Hausman	Laine	McNamara	Peterson, S.	Urdahl
Downey	Hilstrom	Lanning	Melin	Poppe	Vogel
Drazkowski	Hilty	Leidiger	Moran	Quam	Wagenius
Eken	Holberg	LeMieur	Morrow	Rukavina	Ward
Erickson	Hoppe	Lenczewski	Mullery	Runbeck	Wardlow
Fabian	Hornstein	Lesch	Murdock	Sanders	Westrom
Falk	Hosch	Liebling	Murphy, E.	Scalze	Winkler
Franson	Howes	Lillie	Murphy, M.	Schomacker	Woodard
Fritz	Huntley	Loeffler	Murray	Scott	Spk. Zellers

The bill was passed, as amended, and its title agreed to.

Dean moved that the remaining bills on the Calendar for the Day be continued. The motion prevailed.

#### FISCAL CALENDAR ANNOUNCEMENT

Pursuant to rule 1.22, Holberg announced her intention to place H. F. No. 2171; S. F. No. 2493; and H. F. Nos. 2580, 2729 and 2164 on the Fiscal Calendar for Tuesday, April 3, 2012.

#### MOTIONS AND RESOLUTIONS

Slocum moved that her name be stricken as an author on H. F. No. 669. The motion prevailed.

Kiel moved that the name of Morrow be added as an author on H. F. No. 682. The motion prevailed.

Slocum moved that her name be stricken as an author on H. F. No. 803. The motion prevailed.

Daudt moved that the name of Runbeck be added as an author on H. F. No. 2249. The motion prevailed.

Slocum moved that her name be stricken as an author on H. F. No. 2506. The motion prevailed.

Loon moved that the name of Runbeck be added as an author on H. F. No. 2651. The motion prevailed.

Hancock moved that the name of Anzelc be added as an author on H. F. No. 2862. The motion prevailed.

Simon moved that the name of Greene be added as an author on H. F. No. 2983. The motion prevailed.

Kriesel moved that H. F. No. 1485 be recalled from the Committee on Ways and Means and be re-referred to the Committee on Commerce and Regulatory Reform. The motion prevailed.

Woodard moved that H. F. No. 1607, now on the Calendar for the Day, be re-referred to the Committee on Ways and Means. The motion prevailed.

#### ADJOURNMENT

Dean moved that when the House adjourns today it adjourn until 10:00 a.m., Tuesday, April 3, 2012. The motion prevailed.

Dean moved that the House adjourn. The motion prevailed, and the Speaker declared the House stands adjourned until 10:00 a.m., Tuesday, April 3, 2012.

ALBIN A. MATHIOWETZ, Chief Clerk, House of Representatives

