DEPARTMENT OF HUMAN SERVICES
DIRECT CARE AND TREATMENT

Background Brief

DCT as a Separate Agency

DCT programs, services and facilities are NOT changing.

Employment conditions for staff are NOT changing.

DCT's footprint is NOT expanding.

The Direct Care and Treatment (DCT) administration is a highly specialized behavioral health care system currently within the Minnesota Department of Human Services (DHS). The state-operated system serves more than 12,000 patients and clients each year whose mental illnesses, behavior disorders and intellectual disabilities are so complex and challenging that other health care systems cannot or will not serve them.

During the 2023 legislative session, state lawmakers passed Chapter 61, which authorized the separation of DCT from DHS and established the Department of Direct Care and Treatment as a standalone agency.

Legislation requires that the new agency be governed by an Executive Board, with day-to-day operations and management delegated to a Chief Executive Officer.

The separation becomes effective on Jan. 1, 2025, unless lawmakers extend the deadline by six months to July 1, 2025.

Benefits of Separation

Separation allows DCT to operate more like other health care systems and to be governed by a board and managed by a CEO with deep health care background, experience, and expertise. Separation also:

- Draws a clear distinction between what DCT is responsible for (treatment) and what DHS is responsible for (policy, regulation, payment, etc.)
- Ensures that clinical judgment is the foremost factor considered in decisions about admissions, discharges, and appropriate levels of patient care
- Streamlines authority and allows DCT to be more agile, responsive, and self-determining in managerial decisions

DCT Programs and Services are NOT changing

DCT's core programs and services are NOT changing as part of the separation from DHS. The agency will continue to provide:

- Psychiatric care in hospitals and other residential mental health treatment facilities
- Residential substance use disorder treatment
- Mental health crisis services
- Outpatient mental health services and special care dentistry
- Residential and vocational services for people with disabilities
- Secure sex offender treatment

Marquee treatment facilities will remain in operation, including:

- Anoka-Metro Regional Treatment Center
- Six Community Behavioral Health Hospitals
- Three Intensive Residential Treatment Services (IRTS) facilities
- The Child and Adolescent Behavioral Health Hospital
- SUD treatment facilities
- Five special care dental clinics
- The Forensic Mental Health Program (formerly the Minnesota Security Hospital) in St. Peter
- The Forensic Nursing Home in St. Peter
- About 100 group homes and 15 vocational sites for people with disabilities
- Minnesota Sex Offender program facilities in Moose Lake and St. Peter.

Basically, DCT operations are staying the same.

Employment Conditions for Staff are NOT changing

Nearly all of DCT's more than 5,000 employees will notice no substantive changes as a result of the separation. They will have the:

- Same work locations, employment status and jobs
- Same job classifications
- Same union representation
- Same union agreements in full force
- Same salaries and benefits
- Same protections for staff working in temporary, unclassified positions
- Same human resources support
- Same focus on quality and safety in the workplace

About the Executive Board

The makeup of the DCT Executive Board and the frequency of meetings have not been finalized. Under the current structure, the Secretary of State's process will be followed for accepting applications for positions on the board, which will be appointed by the Governor.

The Executive Board will have broad financial oversight, approve the strategic direction of the agency, ensure high-quality care for patients and clients, and will be responsible for hiring and providing guidance to the CEO. The Executive Board will delegate day-to-day decision-making authority to the CEO, who will be responsible for the operation and administration of the behavioral health care system. It is likely that the board will meet frequently in the first year since there will be many organizational details to address. However, the number of meetings likely will decrease in subsequent years.

An Executive Board provides more transparency and accountability than exists under a more traditional commissioner-led model for a state agency. With limited exceptions, Executive Board meetings are open to the public, there are opportunities for public input, most issues are openly discussed, and records of actions taken by the Executive Board are available for public review.

Extending the Separation Date by Six Months

A proposal to extend the separation date by six months to July 1, 2025, would improve operational alignment. The change would put the new agency in sync with the start of the state fiscal year, a new biennial budgeting process, would coincide with the beginning of new union contracts. While DCT is prepared to keep the original Jan. 1, 2025, transition date, extending the changeover ensures that other key operational functions will be fully in place.

For More Information

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DEPARTMENT OF HUMAN SERVICES
DIRECT CARE AND TREATMENT

DCT Creation and Executive Board Proposed Legislation Changes

Summary of HF4692/SF4726 Proposed Changes by Section

Section 1 (10.65, subd. 2) adds DCT to this section of law. (Government-to-government consultation with tribes)

Section 2 (13.46, subd.1) adds DCT to this section of law. (Definition of welfare system within the government data practices act)

Section 3 (13.46, subd.2) adds DCT to this section of law. (Permits the disclosure of private data on individuals between DHS, DCT, DEED and DOE under specified purposes)

Section 4 (13.46, subd. 10) specifies that the responsible authority for DCT, for purposes of the government data practices act, is the chief executive officer of DCT.

Sections 5 and 6 (15.01, 15.06, subd. 1) strikes language added last session in chapter 61 that is not needed since Direct Care and Treatment will not be a state department with a commissioner, but an agency headed by a board.

Section 7 - Remove

Section 8 - Remove

Section 9 - Remove

Section 10 (43A.08, subd. 1) is a technical change clarifying that the chief executive officer in DCT is an unclassified position.

Section 11 (43A.08, subd. 1a) is a technical change adding DCT to this section, authorizing the executive board to designate unclassified positions.

Section 12 (145.61, subd.5) adds DCT to the definition of a "review organization" for purposes of providing certain protections to peer review participants gathering and reviewing information relating to the care and treatment of patients.

Section 13 (246.018, subd. 3) requires the medical director of DCT to consult with the DCT executive board and the chief executive officer regarding state operated programs.

Section 14 (246.13, subd. 2) technical change.

Section 15 (246C.01) technical change.

Section 16 (246C.015) establishes a definition section for chapter 246C.

Section 17 (246C.02) clarifies that DCT is an agency headed by an executive board.

Section 18 (246C.04) specifies that the commissioner of human services shall continue to exercise all statutory authorities and responsibilities for DCT until July 1, 2025, instead of January 1, 2025. (This language was enacted last session in chapter 61 and is currently contained in section 246C.03 which is being repealed.)

Section 19 (246C.05) makes conforming and technical changes.

Section 20 (246C.06) creates the executive board and specifies its membership and governance.

Subd. 1 establishes the executive board.

Subd. 2 expands the board membership to nine members, seven voting members, including the commissioner of human services, and two non-voting members. It also specifies that six of the voting members are appointed by the governor with advice and consent of the senate and the qualifications for membership of these six members. It also specifies that there will be two non-voting members, one member appointed by the association of counties, and one member appointed by joint representatives of the labor unions that represent staff at DCT facilities.

Subd. 3 specifies that section 15.0575 covers the terms, compensation, removal and filling of vacancies for the executive board, unless otherwise provided.

Subd. 4 states that the compensation of the board members is at a rate of $500 a day, plus expenses. This does not include the commissioner of human services.

Subd. 5 requires the governor to designate one of the members the governor appoints to be the acting chair and requires the board to elect a chair at the first meeting. Specifies that the board must elect a chair annually and that any elected officers serve for one year.

Subd. 6 specifies the term limits of the members and the terms of the initial members.

Subd. 7 requires members to reuse themselves from discussion or and voting on any official matter if the member has a conflict of interest.

Subd. 8 requires the board to meet at least four times per a fiscal year at a time and place specified by the board.

Subd. 9 specifies that a majority of voting members constitutes a quorum.

Subd. 10 provides immunity to the members of the board from civil liability for any act or omission occurring within the scope of performing their duties and states that for purposes of indemnity the members are employees of the state.

Subd. 11 gives the board rulemaking authority to implement chapter 246C and any responsibilities of DCT specified in law. Authorizes the board to use the expediated rulemaking process until July 1, 2030. Clarifies that any rule, order, delegation, permits, or other privileges issued by the commissioner of

human services with respect to DCT and in effect at the time of the establishment of DCT shall continue in effect.

Section 21 (246C.07) establishes the powers and duties of the executive board.

Subd.1 specifies that the executive board must operate according to chapter 246C and applicable state and federal law, and that the overall management and control of the agency is vested in the board. This subdivision also requires the board to appoint a chief executive officer and that the chief executive officer is responsible for the administrative and operational duties of the agency. It also authorizes the board to delegate any statutory duty or power as it deems appropriate to any employee other than the chief executive officer of DCT as long as the delegation is made by written order and the order is filed with the secretary of state.

Subd.2 specifies the overall principles that the executive board must follow in undertaking its duties and responsibilities of the agency.

Subd. 3 specifies that the executive board has the power to:

(1) Set the overall strategic direction for DCT;

(2) Establish the policies and procedures to govern DCT;

(3) Employ personnel and delegate duties and responsibilities as deemed appropriate;

(4) Review and approve the operating budget for DCT;

(5) Accept gifts, grants, or contributions from any nonstate sources or not accept if not in the best interest of the state;

(6) Deposit all money received and gifts, grants, or contributions as required under chapter 246C;

(7) Enter into information sharing agreements with federal and state agencies;

(8) Enter into interagency or service level agreements with a state department, state agency, or the Department of Information Technology Services;

(9) Enter into contractual agreements with federally recognized Indian tribes;

(10) Enter into contracts with public and private agencies, organizations, and individuals;

(11) Establish and maintain administrative units necessary for the performance of the administrative functions of DCT;

(12) Authorize the method of payment to and from DCT;

(13) Inform Tribal nations and county agencies of changes in statutes, rule, federal law, regulation, and policy necessary for counties to administer direct care and treatment programs and services;

(14)Report to the legislature on the performance of DCT;

(15)Recommend to the legislature appropriate changes in law necessary to carry out the principles and improve performance of DCT; and

(16)Exercise all powers reasonably necessary to implement and administer the requirements of chapter 246C and applicable state and federal laws.

Subd. 4 authorizes the board to establish bylaws.

Subd. 5 requires the executive board to implement policies and procedures to establish an open and competitive procurement process for DCT that conforms to the principles contained in chapter 16B and 16C.

Subd. 6 authorizes the board to enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of persons with a mental illness or a developmental disability. (Current law)

Subd. 7 authorizes the board to accept uncompensated and voluntary services and to enter into contracts or agreements for these services. (Current law)

Section 22 (246C.08) establishes the position of chief executive officer.

Subd. 1 requires the executive board to appoint the chief executive officer to DCT. It also specifies that the chief executive officer shall serve in the unclassified service with a compensation plan prepared by the board, submitted to the commissioner of management and budget for review and comment, and approved by the Legislative Coordinating Commission and the legislature.

Subd. 2 specifies that the primary duty of the chief executive officer is to assist the executive board and is responsible for the administrative and operational management of the agency. It also specifies that the chief executive officer has all the powers and duties of the board unless the board directs otherwise and has the authority to speak for the board within the agency and outside the agency. It also specifies that if a vacancy occurs within the chief executive officer position for any reason the chief medical officer of DCT shall immediately become the temporary chief executive officer until the board appoints a new chief executive officer. And that during that period the chief medical officer shall have all the powers and authority delegated to the chief executive officer.

Section 23 (246C.09) establishes the following Direct Care and Treatment accounts in the special revenue fund of the state treasury: gifts, grants, and contributions account; facilities management account; systems account; and cemetery maintenance account.

Sections 24 -28 (256.88 – 256.92) provides DCT access to the social welfare fund that is established for the purpose of holding funds in trust for persons who have a developmental disability, mental illness or substance use disorder, or other wards or beneficiaries.

Section 29 is technical, conforming the effective dates with the extension of the date that authority for DCT transfer from DHS to DCT.

Section 33 [INITIAL APPOINTMENTS OF THE DIRECT CARE AND TREATMENT EXCUTIVE BOARD AND CHIEF EXECUTIVE OFFICER]

Subd. 1 requires the initial appointment of the Direct Care and Treatment executive board to be made by January 1, 2025. This subdivision also exempts the board from the open meeting law until the authority and responsibilities for DCT are transferred to the board.

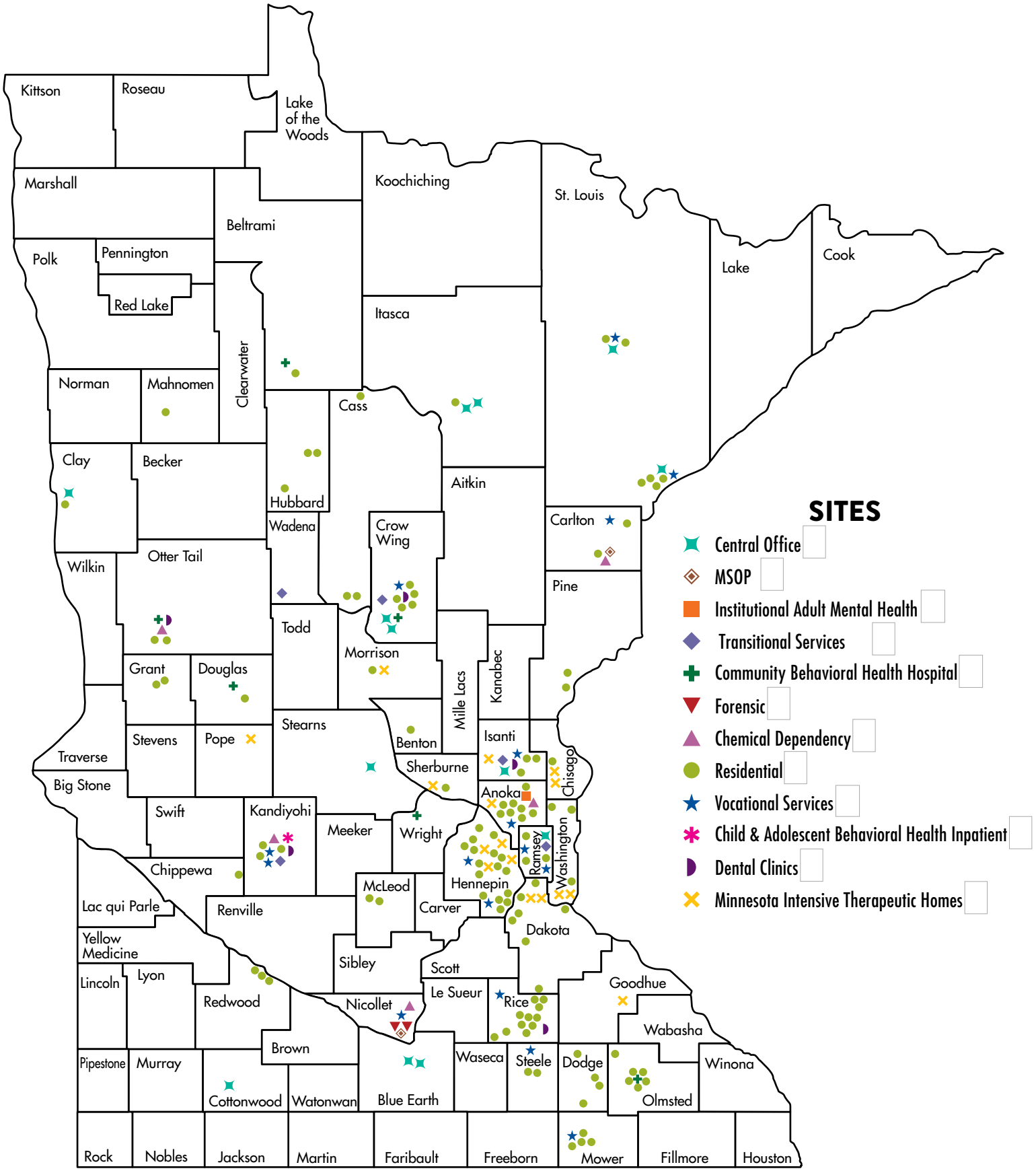
Subd. 2 specifies that the Direct Care and Treatment executive board must appoint for the initial chief executive officer position the chief executive officer of the direct care and treatment division of the Department of Human Services who holds that position at the time of the initial appointment. And that the initial appointment must be made by July 1, 2025. It also requires that the salary of the initial chief executive officer must not be less than the amount paid to the chief executive officer of the direct care and treatment division of the Department of Human Services as of the date of the initial appointment.

Subd. 3 requires the commissioner of human services to consult with the executive board when the commissioner to preparing the budget estimates for the next fiscal biennium or any proposed legislative changes that involve DCT. If the board has not been appointed, the commissioner is required to provide the board with a summary of any budget estimate or proposal submitted for DCT.

Section 34 repeals section 246C.03 since it is no longer needed and other sections where the language is incorporated into chapter 246C.

DEPARTMENT OF HUMAN SERVICES

Minnesota Department of Human Services Sites



SITES

- Central Office
- MSOP
- Institutional Adult Mental Health
- Transitional Services
- Community Behavioral Health Hospital
- Forensic
- Chemical Dependency
- Residential
- Vocational Services
- Child & Adolescent Behavioral Health Inpatient
- Dental Clinics
- Minnesota Intensive Therapeutic Homes

DEPARTMENT OF HUMAN SERVICES

Minnesota Department of Human Services Sites List

CENTRAL OFFICE

Blue Earth County
Mankato, 2

Clay County
Moorhead, 1

Cottonwood County
Windom, 1

Crow Wing County
Brainerd, 2

Isanti County
Cambridge, 1

Itasca County
Grand Rapids, 2

Ramsey County
St. Paul, 7

St. Louis County
Duluth, 1
Virginia, 1

Stearns County
St. Cloud, 1

COMMUNITY BEHAVIORAL HEALTH HOSPITAL

Beltrami County
Bemidji, 1

Crow Wing County
Baxter, 1

Douglas County
Alexandria, 1

Olmsted County
Rochester, 1

Otter Tail County
Fergus Falls, 1

Wright County
Annandale, 1

DENTAL CLINIC

Crow Wing County
Brainerd, 1

Isanti County
Cambridge, 1

Kandiyohi County
Willmar, 1

Otter Tail County
Fergus Falls, 1

Rice County
Faribault, 1

FORENSIC

Nicollet County
St. Peter, 2

RESIDENTIAL

Anoka County
Anoka, 1
Blaine, 1
Coon Rapids, 3
East Bethel, 1
Ham Lake, 1
Stacy, 1

Beltrami County
Bemidji, 1

Benton County
Sauk Rapids, 1

Carlton County
Cloquet, 1
Moose Lake, 1

Cass County
Cass Lake, 1
Pillager, 2

Chippewa County
Raymond, 1

Chisago County
North Branch, 1

Clay County
Moorhead, 1

Crow Wing County
Baxter, 2
Brainerd, 2
Deerwood, 1

Dakota County
Burnsville, 2
Farmington, 1
Hastings, 1
Lakeville, 1
Northfield, 1 West St. Paul, 1

Dodge County
Hayfield, 1 Kasson, 2
West Concord, 1

Douglas County
Alexandria, 1

Grant County
Elbow Lake, 2

Hennepin County
Bloomington, 3
Brooklyn Park, 5
Champlin, 1
Dayton, 1
Eden Prairie, 1
Golden Valley, 1
Minneapolis, 2
Richfield, 2

Hubbard County
Akeley, 2
Park Rapids, 1

Isanti County
Cambridge, 2
Isanti, 1

Itasca County
Grand Rapids, 1

Kandiyohi County
Willmar, 3

Mahnomen County
Mahnomen, 1

McLeod County
Hutchinson, 2

Morrison County
Randall, 1

Mower County
Austin, 4

Olmsted County
Pine Island, 1
Rochester, 5

Otter Tail County
Fergus Falls, 2

Pine County
Pine City, 2

Polk County

Ramsey County
Mounds View, 1
Roseville, 1
White Bear Lake, 1

Redwood County
Redwood Falls, 3

Rice County
Faribault, 7
Morristown, 1
Northfield, 2
Warsaw, 1

Sherburne County
Big Lake, 1

St. Louis County
Biwabik, 1
Duluth, 2
Hermantown, 2
Virginia, 1

Steele County
Owatonna, 2

Todd County

Washington County
Forest Lake, 1
Hastings, 1
Scandia, 1

VOCATIONAL SERVICES

Anoka County
Coon Rapids, 1

Carlton County
Cloquet, 1

Crow Wing County
Brainerd, 1

Hennepin County
Bloomington, 1
Eden Prairie, 1

Isanti County
Isanti, 1

Itasca County

Kandiyohi County
Willmar, 2

Mower County
Austin, 1

Nicollet County St. Peter, 1

Ramsey County
Vadnais Heights, 1
Roseville, 1

Rice County
Faribault, 1

St. Louis County
Duluth, 1 Virginia, 1

Steele County
Owatonna, 1

CHEMICAL DEPENDENCY

Anoka County
Anoka, 1

Carlton County
Carlton, 1

Crow Wing County
Brainerd, 1

Kandiyohi County
Willmar, 1

Nicollet County
St. Peter, 1

Otter Tail County
Fergus Falls, 1

CHILD & ADOLESCENT BEHAVIORAL HEALTH INPATIENT

Kandiyohi County
Willmar, 1

MINNESOTA INTENSIVE THERAPEUTIC HOMES

Anoka County
Blaine, 1

Chisago County
North Branch, 1
Wyoming, 1

Dakota County
Eagan, 2

Goodhue County
Welch, 1

Hennepin County
Brooklyn Center, 1
Brooklyn Park, 3

Isanti County
Cambridge, 1

Morrison County
Little Falls, 1

Pope County
Villard, 1

Sherburne County
Elk River, 1

Washington County
Woodbury, 2

TRANSITIONAL SERVICES

Crow Wing County
Brainerd, 1

Isanti County
Cambridge, 1

Kandiyohi County
Willmar, 1

Ramsey County St. Paul, 1

Wadena County
Wadena, 1

MSOP

Carlton County
Moose Lake, 1

Nicollet County
St. Peter, 1

INSTITUTIONAL ADULT MENTAL HEALTH

Anoka County
Anoka, 1

DEPARTMENT OF HUMAN SERVICES
DIRECT CARE AND TREATMENT

Summary of SF 4726/HF4692

Introduction

Last session the Legislature passed legislation establishing Direct Care and Treatment as a standalone state agency under the governance structure of an executive board. As required under last year's legislation, this bill builds on what was passed last session by adding more specificity to the executive board membership as well as defining the duties, responsibilities, powers and function of the executive board as the governance structure of Direct Care and Treatment. As part of working on drafting this legislation, DCT has met with several vested groups conducting listening sessions, reviewing drafts, answering questions and concerns, and seeking feedback. This bill is the result of that process and can be best described as accomplishing the following:

1. **Including DCT in current statutes.** Since DCT will be a standalone agency DCT must be added to several current statutes to ensure that DCT continues to comply with or be required to comply with these sections of law once it is a standalone agency.

   Sections 1 to 4; 10 to 14; 23; and 24 to 28 add DCT to the following relevant statutes:

   Government-to-government consultations with Minnesota tribal nations **(section 1)**

   The government data privacy act, chapter 13, ensuring that DCT is included in and complies with the date privacy act**. (sections 2-4)**

   State personnel management, ensuring that certain positions in DCT are within the unclassified service, under chapter 43A **(sections 10 -11)**

   Peer review for health care entities, ensuring that DCT is included and that peer review participants are given certain protections when participating in a peer review **(section 12)**

   Ensuring that the chief medical director consults with both the executive board and the chief executive officer. **(section 13)** (246.018)

   Participation in the social welfare fund with DHS and local social service agencies. The purpose of this fund is to hold funds in trust for the benefit of persons determined to have a developmental disability, mental illness, or substance use disorder. These sections would include DCT as a separate agency in this fund **(sections 24 -28)**

   Creating special revenue fund accounts for DCT operational activities similar to what other state agencies have, including DHS. These accounts are for facility maintenance; computer and security systems; gifts, grants, and contributions; and cemetery maintenance at DCT facilities. **(Section 23)**

2. Providing more substance to the executive board's membership, governance, powers and duties. (Sections 20, 21 and 22)

Last year's legislation established an executive board of up to five members. During the listening sessions with partners and stakeholders, concerns were raised regarding the size of the board and that the membership representation as passed last year did not adequately reflect all partner groups necessary to ensure that all voices are heard and represented within the board's structure. To address these concerns while balancing potential conflicts of interest and ensuring that focus remains on patient care and services, the membership of the board is expanded to nine members, with seven voting members and two non-voting members. Six of the voting members would be appointed by the governor with the advice and consent of the senate, and the seventh voting member would be the commissioner of human services or designee. The two non-voting members include one member to be appointed by the Association of Minnesota Counties and one member to be appointed by joint representatives of the public labor unions that represent the staff at DCT.

Of the six voting members appointed by the governor, one member must be a licensed physician who is either a psychiatrist or a physician with experience in serving behavioral health patients; two members must have experience serving on a hospital board or nonprofit board; and three members must have experience working as a public labor union representative; in the delivery of behavioral health services, care coordination or traditional healing practices; as a licensed healthcare professional; within health care administration; or with residential services. A voting member must not currently be or within one year of appointment an employee of DCT; an employee of a county; an active employee or representative of a labor union that represents staff at DCT; or a state legislator.

Membership on the board must include representation from outside the seven-county metropolitan area.

Compensation of the board members would be set at a rate of $500 per day spent on board activities, except for the commissioner of human services. The rate is being set at this amount in order for DCT to be competitive and to better reflect compensation paid to board members of other nonprofit health care systems.

Section 20 also includes language on terms, appointing a chair and officers, conflict of interest, meetings, quorum, and establishing immunity and indemnification for board members.

Section 20 also provides rulemaking authority to the executive board, including expedited rulemaking until July 1, 2030.

Section 21 specifies that the overall management and control of DCT is vested in the executive board. The executive board may delegate duties as deemed appropriate by the board. Any delegation of a specified duty or power to an employee of DCT other than the chief executive officer must be made by written order and filed with the secretary of state similar to what is required when a commissioner delegates authority to employees other than a deputy commissioner.

Section 21 also specifies the overall principles that the executive board must follow and defines the general duties and powers of the board such as the authority to set the overall strategic direction of the agency; enter into contracts, interagency agreements, and information sharing agreements; establish policy and procedures; approve an operating budget; employ personnel; accept and gifts, grants and contributions; establish and maintain administrative units; report to the legislature on the agency's performance; and other powers necessary to implement and administer the requirements of chapter 246C.

Section 22 requires the executive board to appoint a chief executive officer. The chief executive officer is responsible for the administrative and operational management of DCT. The chief executive officer has all the powers of the executive board unless the board directs otherwise. This section also specifies that in the event that a vacancy occurs within the chief executive position, the chief medical officer shall immediately serve as the chief executive officer with all the powers and authority delegated to the to the chief executive officer until the board appoints a new chief executive officer. This is similar to the role of a deputy commissioner if a commissioner's position becomes vacant.

3. **Date of transfer of all authority and responsibilities for Direct Care and Treatment from DHS to the executive board. (Sections 18 and 33)**

Section 18 changes the date of this transfer from January 1, 2025, to July 1, 2025, aligning the transfer with the start of a new fiscal year and biennium and providing a longer transitional period for both DCT and DHS to finalize separation activities and provide time for the executive board to be appointed and ready to assume authority once authority is transferred.

Section 33 requires that the executive board be appointed by January 1, 2025, giving the board the time to receive in-depth training and education before assuming its governing role. During this period of training the board would be exempt from section 13D.01 and the open meeting requirements. This exemption would end when the board assumes the responsibilities of the agency on July 1, 2025. This section would also require the commissioner of human services to consult with the executive board in preparing budget estimates for the upcoming biennial budget and legislative proposals involving direct care and treatment operations if the board has been appointed. If the board has not been appointed, then the commissioner is required to provide the board with a summary of any budget estimates or proposals that have been submitted.

4. **Other changes**.

Finally, the bill makes other technical changes to the legislation enacted last session to conform with DCT's agency structure as an agency headed by a board and not a department headed by a commissioner. (**sections 5,6,17,19 and 29)**

MID-MINNESOTA LEGAL AID
Minnesota Disability Law Center

March 14, 2024

The Honorable Peter Fischer
Chair, Human Services Policy Committee
Minnesota House of Representatives
551 State Office Building
St. Paul, MN 55155

The Honorable Debra Kiel
Republican Lead, Human Services Policy Committee
Minnesota House of Representatives
203 State Office Building
St. Paul, MN 55155

Re: Legal Aid letter regarding HF 4692

Dear Chair Fischer, Lead Kiel, and Members of the Committee:

Overall, we are optimistic that making DCT its own agency will ultimately improve services for Minnesotans with disabilities. However, we have two concerns we thank you for the opportunity to share with you.

Expedited rulemaking (lines 26.7-26.17)

The current proposed legislation permits DCT to adopt rules using the expedited rulemaking process in Minn. Stat. § 14.389 until July 1, 2030. Notice and comment rulemaking is essential to ensure that all voices are heard in the governance of DCT, and that the need for and reasonableness of the rules are established as required by Chapter 14. The formal rulemaking process gives members of the public an opportunity to submit comments and testimony about the governance of DCT and will likely improve how DCT functions. Given that existing rules will remain in effect while new rules are adopted, the provision allowing for expedited rulemaking is unnecessary and has the potential to exclude valuable voices from the governance of DCT.

Add an advisory committee or other way for more members of the public to add input

DCT should make other efforts to ensure that the public can influence DCT's practices and procedure, especially if the expedited rulemaking provision is not deleted. The proposed legislation should include language that requires DCT to establish advisory committees on various issues related to DCT governance. *See, e.g.*, Minn. Stat. § 62V.04, subd. 13 (requiring the MNsure Board to have advisory committees). Advisory committees are essential to ensure that the DCT board receives input from a variety of diverse perspectives.

Thank you for allowing us to submit input on HF 4692.

Sincerely,

Jennifer Purrington
Legal Director/Deputy Director
Minnesota Disability Law Center

Ellen Smart
Staff Attorney
Legal Aid

This document has been formatted for accessibility. Please call Ellen Smart at 612/746-3761 if you need this document in an alternative format.

MACSSA
Minnesota Association of County Social Service Administrators

March 19, 2024

Chair Peter Fischer
House Human Services Policy Committee
Minnesota House of Representatives

RE: HF 4692: Direct Care and Treatment agency establishment

Dear Chair Fischer,

The Minnesota Association of County Social Service Administrators (MACSSA) thanks you for your commitment to ensuring a successful transition to a new Department of Direct Care and Treatment (DCT), a goal that counties share. Counties also appreciate the opportunity we have had with the Department of Human Services (DHS) and DCT staff to share these concerns and offer suggestions. We offer this letter as an extension of our initial conversations on SF4726 and pledge our continued work with you, DHS and DCT as this bill moves through the legislative process.

As the entity that serves those with complex needs in situations where private providers cannot or will not serve, counties see DCT as an essential partner in our state's mental and behavioral health continuum of care. DCT is the safety net that our state relies on to provide the facilities and expertise needed for individuals with high acuity complex needs that cannot be served in the community. However, DCT is a *partner* in this work and must work collaboratively across the continuum of care to ensure that high-need individuals are properly placed, treated, and housed in the setting most appropriate. While the state considers how best to build up DCT, we must also acknowledge that this is not the only underdeveloped segment of our continuum or care – there are many service gaps throughout the state that deserve investment.

Counties respectfully ask to have a more robust seat at the table throughout the new infrastructure of DCT. Last session, as this restructuring was considered, we worked with you on adding qualifications to the future DCT board appointments that better reflect the experience necessary to contribute to conversations on our continuum, including "experience in delivery of behavioral health and care coordination." The legislature agreed that this, in addition to health care expertise, was an important voice. This is precisely the role that counties play – counties work with, manage cases of, and share in the cost of treating individuals before, during, and after DCT involvement.

Counties feel strongly that this unique perspective warrants full participation on the DCT board as a voting member of the executive board. We respectively request that the legislature examine Section 20, subdivision 2(b) (3), which includes five qualifications for three appointments and make the language explicit that counties' unique expertise will be reflected in voting membership. We have had positive conversations with DHS about other county concerns regarding the initial small number of members on the board, allowing for more participants in a way that mirrors that of hospital boards.

Counties believe getting the DCT executive board construction right is important to ensure transparency, accountability, and responsiveness back to affected communities. Counties believe that the executive board should take a leadership role in looking outside the DCT walls to solicit feedback and expertise to best address Minnesota's high acuity mental and behavioral health needs. This is imperative to developing long-term supports and solutions for individuals before and after they are committed to a state-operated facility and ensuring that the board's work does not exist in a vacuum.

Counties also have concerns with language in Section 20, subdivision 2 (e) that says an employee of a county, including a county commissioner, cannot serve on the board within one year of working at a county. Counties remain perplexed as to why this cooling off period would be necessary for counties, but that same language is not mirrored for other members serving on the board. Counties do not believe that a commissioner or county staff have an inherent conflict differing from any other stakeholder. We would appreciate additional explanation from DHS to identify this conflict and understand how it differs from other groups.

Additionally, MACSSA seeks to build out the Power and Duties (Section 21) of this legislation. MACSSA would like to see the executive board duties focused on providing oversight and transparency and would envision the board in engaging external partners, as mentioned above. We would like to see engagement obligations more specifically in this section, not merely a duty to inform. We also would like to see additional language added to clarify DCT's role as Minnesota's safety net and its unique role to meet the needs of our MN community.

As we discuss session priorities like the priority admissions task force recommendation with DHS, the executive board has been cited as the source for transparency and public engagement. For example, a DCT "quality committee" is called out in draft legislation to "review data and provide a routine report to the executive board on the effectiveness of the framework and priority admissions." If this type of infrastructure is to be put in place at DCT, counties ask this role and structure be called out in the legislation. Discussions around appropriate DCT capacity and priority admissions criteria are certain to continue into future years when DCT is its own agency. Counties are committed to working with the leadership at DHs and DCT, including the executive board, and other community partners and stakeholders determine how to invest in and meet capacity needs in community and in our state operated services.

Much work remains ahead of the legislature before DCT stands alone as its own agency. Counties seek to be a participant in the conversations around key issues still not yet determined and not included in this legislation, such as whether an individual is still committed by the court to the DHS Commissioner or to the Executive Board.

Sincerely,

Matt Freeman
Executive Director
Minnesota Association of County Social Service Administrators

Cc: Members of the Senate Human Services Committee