Minnesota Department of Human Services – Policy Bill
LEGISLATIVE BACKGROUND INFORMATION 2015

S.F. 1356 (Sheran) **H.F. 1535 (Mack)** **Revisor#: 15-0041**

Background on the Human Services Policy Bill:

The Minnesota Department of Human Services (DHS) is the state's largest agency, serving well over 1 million people with an annual budget of $11 billion and more than 6,500 employees throughout the state. The department administers a broad range of services, including health care, economic assistance, mental health and substance abuse prevention and treatment, child welfare services, and services for the elderly and people with disabilities. DHS also provides direct care and treatment to more than 10,000 clients every year. This bill contains the policy only (non-budget related provisions) from the across the Department policy divisions.

While the changes here are advanced by DHS there are various stakeholders that have requested clarification on any number of provisions within the bill and the department has concurred with their assessment. Other policy changes recommended may be department driven due to challenges in implementing previous laws passed or known areas of confusion or ambiguity that need the legislature's clarity and approval.

ARTICLE 1 – CHILDREN AND FAMILIES

Child Care Assistance Program Revisions (Sections 1-3) ***(§119B.011, subd. 16; 119B.025, subd. 1; 119B.09, subd. 9)***

PROBLEM: In-home providers are not currently recognized in statute as CCAP providers. In addition, the restrictions around a parent being a family child care provider do not apply to in-home care under the statute as currently written (Secs. 1 and 3). Also, redetermination documents received on the following business day when the 30th day falls on a weekend or holiday are considered late (Sec. 2).

PROPOSAL: Sections 1 and 3 make policy changes to the Child Care Assistance Program to amend the definition of "legal nonlicensed provider" and Section 2 makes changes to allow redetermination documents to be submitted on the next business day if the 30th day falls on a weekend or holiday.

These changes will ensure payments may be made to all intended providers and that receipt of redetermination documents aligns with administrative law decisions.

Indian Child Welfare Provisions (Sections 4-6, 8-30, 32) ***(See subtopics below for specific statutory citations)***

PROBLEM: Lack of consistency and compliance across counties with the federal Indian Child Welfare Act and Minnesota Indian Family Preservation Act. Non-compliance negatively impacts disparities for Indian children, who have the highest out of home placement disparities of any other group of children in Minnesota.

PROPOSAL: These sections make changes to the Minnesota Indian Family Preservation Act (MIFPA) and the child protection chapter (260C) related to Indian child welfare. Changes include establishment of definitions; amendments to definitions; establishment of a MIFPA purpose statement; clarification of requirements; mandated compliance with MIFPA throughout child protection proceedings; conforming changes; and cross-references.

These changes will provide clarifying language that will improve compliance with the federal Indian Child Welfare Act and the Minnesota Indian Family Preservation Act consistently across counties. Compliance will help address the significant out of home placement disparities for Indian children in Minnesota.

Definitions of "relative" and "relative of an Indian child" (Sections 4-6, 8-12, 22-24, 27, 28)
(§245A.035, subdivisions 1; 245A.035, subdivisions 5; 245C.22, subd. 7; 256N.02, subd. 18; 256N.23, subd. 6; 257.85, subd. 3; 259A.01, subd. 25; 259A.10, subd. 6; 260B.007, subd. 12;260C.007, subd. 26b;260C.007, subd. 27;260C.201, subd. 5; 260C.212, subd. 1)

PROBLEM: Current definition of "relative" includes "important friend with whom the child has had significant contact." This language has been used in some cases to avoid the proper application of placement preferences for foster care and permanent placement in the federal Indian Child Welfare Act, and instead, to substitute non-relative, non-Indian placements with foster parents.

PROPOSAL: These sections make changes to the definition of "relative" in child protection statute, and creates a new, separate definition for "relative of an Indian child." Conforming changes for both are made throughout Minnesota Statutes. This change is included in the codification of the Tribal State Agreement components. This change excludes "important friend with whom the child has resided or had significant contact" from the definition of "relative of an Indian child."

These changes will clarify to the court and to the parties that placement preferences under the Indian Child Welfare Act are to be followed and non-relative foster parents may not be considered relatives for purposes of an Indian child.

Minnesota Indian Family Preservation Act Purpose Statement (Section 13) ***(§260.753)***

PROBLEM: The federal Indian Child Welfare Act and the Minnesota Indian Family Preservation Act are complementary. The federal ICWA contains a compelling public policy statement at the beginning to underscore the need for the Act when it was passed in 1978. In light of the stark disparities that persist for American Indian children, coupled with the inconsistent application of the laws, a purpose statement in the state law will clarify the continued need for these laws and the importance of compliance.

PROPOSAL: This section creates a purpose statement for the Minnesota Indian Family Preservation Act (MIFPA).

This change provides context for the MIFPA and reiterates the importance of and need for MIFPA, similar to the introduction to the related federal Indian Child Welfare Act.

Active Efforts Definition and Requirements (Sections 14, 20, 26) ***(§260.755, subd. 1a; 260.762; 260C.178, subd. 1)***

PROBLEM: Active efforts are required by the federal ICWA, and the court is required to make findings that active efforts have been provided to a family, but the federal law provides no definition.

PROPOSAL: These sections define the term "active efforts," as required by the federal Indian Child Welfare Act to prevent removal of an Indian child from their family and to reunify a child with their family if an out of home placement has occurred. It also outlines requirements for active efforts so that courts may make a finding that they have occurred.

These changes clarify for the courts and parties what "active efforts" means and the expectations around them.

Best Interests of an Indian Child Definition (Sections 15, 29, 30) ***(§260.755, subd. 2a; 260C.212, subd. 2; 260C.51)***

PROBLEM: The importance of tribal and cultural ties for a child is the thread throughout federal ICWA and MIFPA; a distinct definition that underscores the importance of these ties is important so that the court and parties are considering it distinctly.

PROPOSAL: These sections define "best interests of an Indian child" and make conforming changes.

This change clarifies that the best interests of an Indian child are unique and are served by compliance with the Indian Child Welfare Act and Minnesota Indian Family Preservation Act.

Indian Child Definition (Section 16) ***(§260.755, subd. 8)***

PROBLEM: Some courts or county agencies attempt to challenge a statement by a tribe that a child is a member of that tribe or eligible for membership, which makes that child an "Indian child" for purposes of the federal ICWA.

PROPOSAL: This section amends the definition of "Indian child" to include that a determination of membership or eligibility of membership by a tribe is conclusive, and makes conforming changes to include those who may be in foster care past age 18.

This change recognizes the sovereignty of tribes, in that they are the only entities that may make determinations about their tribal membership or eligibility.

Parent Definition (Section 17) ***(§260.755, subd. 14)***

PROBLEM: Fathers are not always considered a "parent" despite being accepted as such under tribal law or custom.

PROPOSAL: This section amends the definition of "parent" to include a father as defined by tribal law or custom. Also provides clarity around how paternity can be acknowledged.

This change reflects the definition of parent in the federal Indian Child Welfare Act, and provides clarity about how paternity may be acknowledged.

Tribal Lineage Inquiry (Section 18) ***(§260.761, subd. 1)***

PROBLEM: Current language is ambiguous as to who determines whether a child is an "Indian child."

PROPOSAL: This section changes the headnote and instructs the county agency how to inquire about possible tribal lineage of a child in the child protection system.

This change clarifies that the role of the local social service agency is to make the inquiry, not the determination, of tribal membership of a child. It also underscores the responsibility of the local social service agency to engage with the family and the tribe at the earliest possible point in the case.

Notice Requirements (Sections 19, 32) ***(§260.761, subd. 2; 626.556, subd. 10)***

PROBLEM: Tribes are receiving notice inconsistently from counties – notice may be sent to a tribe only one time, at the first proceeding or the last. Notice should be sent to tribes at each stage in a child protection proceeding.

PROPOSAL: These sections outline notice timing and procedure at various stages of a child protection matter.

This clarifies that the local social service agency must make active attempts to notify tribes of proceedings at various stages throughout a child protection matter, not only at the first or last proceeding.

Transfer to Tribal Court for Culturally-Appropriate Permanency (Section 21) ***(§260.771, subd. 3)***

PROBLEM: Current language does not explicitly allow transfers of child protection cases to tribal court for purposes of culturally appropriate permanency, and sometimes permanency options available in state court are not feasible.

PROPOSAL: This section requires a state court to transfer an Indian Child Welfare Act (ICWA) case to tribal court for the purpose of customary adoption or other culturally appropriate permanency placement, absent good cause.

This change will allow children in placement who are unable to reunify with their families to have more options to find a permanent home, including culturally-appropriate placements.

Compliance with Minnesota Indian Family Preservation Act in Child Protection Proceedings (Section 25) ***(§260C.168)***

PROBLEM: Current law only mandates compliance with the federal ICWA throughout child protection proceedings. The state MIFPA complements the federal ICWA, and should also be mandated.

PROPOSAL: This section changes the headnote and language to require compliance with the Minnesota Indian Family Preservation Act (MIFPA) throughout child protection proceedings.

This change will improve compliance with requirements of MIFPA.

Child Maltreatment Appeals for American Indian Child Welfare Initiative Tribes (Section 7) ***(§256.01, subd. 14b)***

PROBLEM: Under current law, it is unclear who may hear appeals of child maltreatment determinations when a tribe participating in the American Indian Child Welfare Initiative (AICWI) has made the maltreatment determination – state or tribe.

PROPOSAL: This section authorizes the commissioner to establish an alternative process for child maltreatment appeals for tribes participating in the AICWI.

This change will clarify that tribes participating in AICWI may establish procedures for hearing appeals of child maltreatment determinations made by the tribes.

Limited Use of Screened Out Child Maltreatment Reports Stricken (Section 31) ***(§626.556, subd. 7)***

PROBLEM: Language recently passed limits the use of screened out reports of child maltreatment.

PROPOSAL: This section strikes language passed in 2014 that limited the use of screened out child maltreatment reports to an offer of services to the family.

This change will allow screened out child maltreatment reports to be used more broadly, including decision-making when new reports are made.

Disclosure of Information for Child Fatalities and Near Fatalities (Section 33) ***(§626.556, subd. 11d)***

PROBLEM: Current law is out of compliance with the federal disclosure requirements for fatalities and near fatalities of children in the Child Abuse Prevention and Treatment Act.

PROPOSAL: This section makes changes to comply with federal disclosure requirements for child fatalities and near fatalities under the Child Abuse Prevention and Treatment Act (CAPTA). It adds a new threshold for disclosure of information and adds more specificity for necessary information to be disclosed.

This change brings Minnesota into compliance with the federal requirements and provides clarity about what information is disclosed to the public.

Child Support Income Withholding Language Revival (Section 34) ***(§Laws 2014, ch.262, art. 1, sec. 12)***

PROBLEM: Language was inadvertently repealed in 2014 that is needed to establish income withholding administratively.

PROPOSAL: This section revives language that was repealed in 2014 related to child support income withholding. It is revived and reenacted retroactively from August 1, 2014.

This change will maintain the ability for the state child support authority to implement income withholding procedures when the court order does not contain income withholding language or has specifically waived it.

***Department Contact for article*:** Nikki Farago, 651-431-2201.

ARTICLE 2 – Chemical and Mental Health Services

***Department Contact for article*:** Matt Burdick, 651-431-4858.

Tobacco Inspection Cars (Section 1) ***(§168.012)***

PROBLEM: This section allows for the use of unmarked vehicles when conducting unannounced tobacco compliance checks.

PROPOSAL: Allow tobacco inspection vehicles to use standard Minnesota license plates. This change would help ensure that tobacco checks are random, unannounced, and valid. The goal of the tobacco inspection program is to ensure that tobacco is not getting in the hands of Minnesota minors and this would enhance the integrity of that program.

Certified Peer Specialists (Sections 2 & 15) ***(§245.462)***

PROBLEM: There is a significant shortage of persons qualified to work in the mental health workforce. Persons who have a lived experience of mental illness and are in recovery can provide valuable insight and connect with others who have similar experiences. Certified Peer Specialists are mental health workers who have this lived experience but unfortunately, there are limited settings in which peers can work.

PROPOSAL: Allow certified as peer specialists to qualify as case manager associates which assist case managers in day-to-day duties. Require DHS to study the use of Certified Peer Specialists and recommend how peer specialists can be utilized in hospital settings and Intensive Residential Treatment Service (IRTS) programs.

Telehealth Substance Use Disorder Treatment Services (Sections 4) ***(§254B.05)***

PROBLEM: Substance use disorder treatment services covered by Medical Assistance must be provided face-to-face and cannot take advantage of telehealth, when appropriate, as is allowed in mental health.

PROPOSAL: Allow the use of telehealth to deliver substance use disorder treatment services as an alternative to face to face treatment, subject to Federal approval. The adoption of telehealth as a substance abuse treatment tool is expected to improve treatment success among individuals seeking treatment.

Cross-Reference Correction (Sections 4) ***(§254B.05)***

PROBLEM: The statue has an incorrect cross-reference to the definition of a culturally specific substance use disorder treatment service.

PROPOSAL: Correct the cross-reference.

Child Care CD (Section 4) ***(§254B.05)***

PROBLEM: Requirements for chemical dependency treatment providers who offer on-site child care sites need to be clarified.

PROPOSAL: Clarify that chemical dependency treatment providers who offer on-site child care to their clients must meet both the requirements under Minnesota Rule for chemical dependency programs that offer child care services (9530.6490) and the requirements in Minnesota statute for child care programs to be exempt from licensure (245A.03, subd. 2). This change will help ensure the safety of children who are provided on-site child care at substance use disorder programs by ensuring programs meet necessary standards.

Children's Therapeutic Services and Supports (CTSS) (Sections 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14) ***(§256B.0943, 256B.0946 & 256B.0947)***

PROBLEM: Standards for Children's Therapeutic Services and Supports (CTSS) are out of date and need to be strengthened to be more enforceable and provide clarity for providers.

PROPOSAL: These changes would update and clarify standards for Children's Therapeutic Services and Supports (CTSS). As a result, CTSS standards will become clearer and more enforceable and will be aligned with current best practices for this service. As a result, it is expected mental health rehabilitation services for children will improve.

Repeal Outdated Mental Health Residential Services Rule (Section 16) ***(Minn. Rules 9535.2000-9535.3000)***

PROBLEM: Rules 9535.2000 to 9535.3000 (aka Rule 12) govern the granting and use of funds to pay for residential services for adults with mental illnesses. However, the processes and requirements in these rules are no longer in use.

PROPOSAL: This change will eliminate an obsolete section of Minnesota Rules.

***Department Contact for article*:** Matt Burdick, 651-431-4858.

ARTICLE 3 – DIRECT CARE & TREATMENT

Civil Commitment and Tribal Courts (Sections 1,2) ***(§Minnesota Statute 253B.212)***

PROBLEM: Although all tribes have the ability to enter into an agreement with the department so that civil committemnt orders from tribal courts can be recognized by the state, only two tribes are cited in the current statute.

PROPOSED CHANGE: This change expands existing language by inserting language that recognizes the ability of all tribes to contract with the Department of Human Services (DHS) for services related to civil commitment proceedings.

***Department Contact for article*:** Shelia Brandt, 651-431-5877

ARTICLE 4 – OPERATIONS

Establish direct authority of Central Office investigations to suspend payments under 245E (Sec. 1, 39-40) ***(§119B.125, Subd. 1; §245E.06, Subd. 2 & 3)***

PROBLEM: When one county suspends or terminates Child Care Assistance Program (CCAP) payments to a provider based on evidence of wrongdoing, that provider may serve children in multiple counties. The other counties may choose not to suspend or terminate the CCAP payments.

PROPOSED CHANGE: By making this change, DHS would now have the authority to suspend or terminate all CCAP payments to the provider investigated by central Office that is committing fraud.

Record-keeping requirement (Sections 2 & 3) ***(§119B.125, Subd. 6 & 7)***

PROBLEM: Child Care providers receiving CCAP funds are required to keep attendance records. State and county investigators have found situations whereby a child care provider cannot provide the attendance records when requested. Counties have the authority to sanction these child care providers, but DHS does not.

PROPOSED CHANGE: DHS OIG will be able to impose a sanction for child care providers who do not keep attendance records. Child care providers will also be required to keep their attendance records on the site where the service is provided.

Monitoring Attendance Patterns (Sec. 4) ***(§119B.125, Subd. 8)***

PROBLEM: Child Care Provider investigations have discovered that in some child care centers, the children only attend the facility for a few minutes to a couple hours, and the center will bill DHS for a full day of child care for these children.

PROPOSED CHANGE: When children on the Child Care Assistance Program (CCAP) are not in attendance at the child care center for at least half of the authorized hours of care, the providers are required to report the lack of attendance to the county. DHS will investigate whether there is a family or provider operations issue.

Authority to block a new provider application while under a sanction (Section 5) ***(§245.095)***

PROBLEM: The Office of Inspector General (OIG) is aware of instances where a person has been excluded by the agency and that person will change roles so that they are able to continue accessing public funds. For example, a Medicaid provider who has been excluded may switch to being a licensed child care provider.

PROPOSED CHANGE: This change will prohibit a person who has been excluded from moving to another position in order to access public funds. The prohibition will be for the same length of time as the original exclusion.

Updating Licensing Terminology (Section 6) ***(§245A. 02, Subd. 13)***

Technical change regarding reference to birth or adopted children.

Time frame definitions (Sections 7-9) ***(§245A. 02, Subd. 20, 21, & 22)***

Technical change to clarify the meaning of the licensing terms "Weekly," "Monthly," and "Quarterly."

Client Record Transfer Upon Closure (Section 10) ***(§245A. 04, subd 15a)***

Technical change to clarify that when a program closes, the records of the clients must be transferred.

Burden of Proof for Issuing Temporary Immediate Suspensions (Sections 11 and 12) ***(§245A. 07, subd. 2 and subd. 2a)***

CHANGE PROPOSED: Clarifies the burden of proof for the commissioner issuing a temporary immediate suspension for programs operating under a revoked licensed. Clarifies that by a preponderance of evidence that, since the time of the license revocation, the license holder violated rules or law that may adversely affect the health or safety of program clients.

Location of residential programs (Section 13) ***(§245A. 11, subd 4)***

Technical change to clarify that as a result of the Chapter 245D licensing changes, a "community residential setting," which is the same as a "foster care" setting, is treated the same relative to locations of programs.

Receivership Appointment (Sections 14 and 15) ***(§245A. 12, subd 1, §245A. 13, subd 1)***

CHANGE PROPOSED: Expands current voluntary and involuntary receivership requirements to non-residential programs and programs certified by the commissioner. Currently, these sections only apply to residential licensed programs.

Child Safety in Substance Abuse Treatment Programs (Section 16) ***(§245A. 1443)***

PROBLEM: In recent years, there have been a couple of child deaths in substance abuse treatment programs that serve parents with children.

PROPOSED CHANGE: This change requires these types of programs to assess parents' capacity to provide for

the health and safety of the child, provide education to the parent regarding child safe sleep practices and bathing practices, and develop a procedure for when they will allow one client to supervise another client's child.

County Licensing Variance Authority (Section 17) ***(§245A. 16, subd. 1)***
PROBLEM: A private agency granted a licensing variance relating to chemical use problems to a private foster care provider, and technical error removed some county authority to issue variances.

PROPOSED CHANGE: This change would limit certain variances to DHS approval, and permit others to be issued by counties.

Mental Health Training Requirement Modified (Section 18) ***(§245A. 175)***
Requires all child foster care caregivers and staff, in addition to the license holder, complete mental health training.

Methadone Physicians Enrolled (Section 19) ***(§245A. 192, subd 3)***
PROBLEM: DHS discovered that a physician prescriber of methadone had passed away and orders for methadone were not stopped or replaced by a new provider. DHS also discovered that a prescriber of Methadone doesn't even live in Minnesota and had never set foot in MN.

PROPOSED CHANGE: Requires physicians with authority to administer or dispense methadone in clinics to be enrolled with DHS as a provider.

Drug Diversion Reporting (Section 20) ***(§245A. 192, subd. 15)***
PROBLEM: Some patients receiving take-home doses of methadone sell their doses in the parking lot of the methadone treatment center.

PROPOSED CHANGE: Requires opioid treatment programs (methadone providers) to report to law enforcement when an individual in the program diverts a controlled substance on the program's premises.

Child Care Center Training Requirements Clarified (Sections 21 and 22) ***(§245A.40, subd 3 and 4)***
PROBLEM: We discovered that at a new child care center, none of the staff had been trained in First Aid and CPR, through a technical glitch in the regulation that gives new employees 90 days to receive the training.

PROPOSED CHANGE: Clarifies that at least one staff person in a child care center who knows First Aid and CPR be present during the hours of operation, including on field trips and when transporting children in care.

Sudden unexpected infant death and abusive head trauma training (Section 23) ***(§245A.40, subd 5)***
Technical change to the training requirement for child care center license holders relating to Sudden Unexpected Infant Death.

Limiting disqualified individuals' access to persons served by a program and their private information (Section 24) ***(§245C.02, subd 2)***
PROBLEM: A person who was disqualified from having any direct contact with persons served by a particular program due to an identity theft conviction was moved to a new position in the billing office of the same company. That person continued to have access to private data on the individuals served by the provider.

PROPOSED CHANGE: This change makes it clear that a disqualification should extend to accessing any personal information on individuals served by the program.

Background Study clarifications (Sections 25-33) ***(§245C. 04, subd. 4, 5, and 6; 245C. 05, subd. 1, 245C. 071, 245C. 09, subd. 1, 245C. 10, subd. 1a, and 245C. 20, subd. 2 and 2a)***

Technical & clarifying changes are made to the background study program initiated during the 2014 session. Changes relate to the decreased need to repeat background studies, timelines for individuals to get fingerprinted, and clarification of who may pay for a background study.

Prohibition and a penalty for recruiting CCAP recipients with the intent to commit fraud (Sections 34-38, & 51) ***(§245E.01, Subd. 8 & 13a; §245E.02, Subd. 1, 3a, & 4; §609.816)***

PROBLEM: The Office of Inspector General (OIG) is aware of some child care providers that are actively recruiting employees with the condition that are either already on the Child Care Assistance Program (CCAP) or may be eligible to get on the program. The parent is then "hired" at the program under the condition that they are CCAP eligible and preferably will bring a high number of children to the program. The provider may issue false paystubs, and direct the parents to stay home with their children. Public monies for these situations can run into the millions of dollars for some centers.

PROPOSED CHANGE: A child care provider, center owner, director, manager, license holder, or other controlling individual or agent, will be prohibited from recruiting employees on the condition that they (the employees) have children that are either on the CCAP or eligible for the program. Those found to be engaging in this practice may be sanctioned with a disqualification or charged with a criminal offense.

Subpoena requirements (Sec. 41) ***(§256.01)***

PROBLEM: DHS investigators have tried to serve an administrative subpoena to banks for records on an individual that is being investigated. The bank notifies the subject of the subpoena request, thus significantly hindering the investigation.

PROPOSED CHANGE: To prohibit those institutions/companies that are served an administrative subpoena from the Office of Inspector General (OIG) from notifying the subject of the subpoena of the subpoena.

Cultural and Ethnic Communities Leadership Council Extension (Section 42) ***(§256.041)***

CHANGE PROPOSED: Codifies Cultural and Ethnic Communities Leadership Council (Laws of Minnesota 2013, chapter 107, article 2), provides clarification about membership of the council, and extends the council to 2020)

Recipients who commit fraud in the use of emergency assistance funds will fall under the same statute as the cash assistance benefits (Sec. 43) ***(§256.046)***

Technical provision that clarifies that DHS emergency assistance benefits fall under the same statute as the cash assistance benefits: Emergency Assistance (EA) and Emergency General Assistance (EGA).

Nonemergency Medical Transportation Documentation Requirements (Section 44) ***(§256.0625, subd. 17b)***

PROBLEM: DHS is aware of some fraudulent activity happening among Non-emergency Medical Transportation (NEMT) providers.

PROPOSED CHANGE: Strengthens the documentation requirements for the rides that they provide, as a condition of payment. These requirements include, among others, the name of recipient, dates and times of rides, and starting and ending addresses for trips.

Personal Care Assistance Services; Mandated Service Verification (Section 45) ***(§256B.0705)***

PROBLEM: DHS is aware of some fraudulent activity being conducted by some individuals that provide Personal Care Assistance (PCA) services. There are cases where an individual claims that they provided service to a client, yet they never showed up. Some clients are being asked to sign the documentation listing the number of hours served when the document has falsified information. There have been numerous news articles in recent years regarding the extent of some of this activity.

PROPOSED CHANGE: This program integrity measure will ensure that PCA services are verified through random, unscheduled telephone calls at the location where PCA services are being provided and during the time when services are being provided. For each service recipient, the agency must conduct at least one service verification every 90 days.

Performance Management System Terminology Change (Sections 46, 47, 48, 49) ***(§402A.12, 402A.16, subd 2 and 4, 402A.18)***

Clarifies the intent of the program by changing the term, "standard," to "threshold" throughout the Human Services Performance Management System

Correct license plate statute to cover county contractors (Sec. 50) ***(§471.346)***

Technical correction to a provision that was passed in the 2014 session regarding the use of unmarked vehicles when conducting investigations. This provision adds county contracted fraud prevention investigators to the list of those who may use unmarked vehicles.

Trafficking prohibition and criminal penalties for EBT cards (Sec. 52) ***(§609.821)***

PROBLEM: The Office of Inspector General (OIG) has been made aware of cases of people selling their or someone else's Electronic Benefit Cards (EBT) through the hotlines or law enforcement calls to DHS OIG. This activity, called "trafficking," is when people sell the SNAP portion of their Electronic Benefits Transfer (EBT) cards, rather than use them to buy the products for which they are intended. Trafficking is on the rise and is getting a lot of federal attention.

PROPOSED CHANGE: This provision will add "trafficking" to the list of violations related to the fraudulent use of financial transaction cards. It will ensure that those individuals who are trafficking EBT cards will be subject to penalties.

Repeal language that blocks the county incentive share of CCAP provider recoveries (Sec. 53) ***(Repeals 245E.07, Subd. 3)***

Technical change which reinstates the county incentive for overpayment recoveries from child care provider investigations conducted by the agency's Office of Inspector General (OIG).

***Department Contact for article*:** Karen Mickelson, 651-431-2200; or Patrick Carter, 651-431-3630.

ARTICLE 5 – Health Care

Clarifying Electronic Tablet Coverage Policy (Section 1) ***(§256B.0625, subd. 31)***

PROBLEM: This change would ensure that Medical Assistance clients who are served by HCBS waivers and receive a tablet as an augmentative communication device do not recieve two tablets.

PROPOSAL: Current law requires electronic tablets be locked when being used as augmentative communication devices in the Medical Assistance program. However, some clients require the use of additional tablet applications through the Home and Community Based Services (HCBS) Waiver. This change would allow the tablet being used as an augmentative communication device to be unlocked when the client has received approval from the HCBS waiver to use additional applications.

Repeal Obsolete Rule (Section 2) ***(MN Rule 9505.0310 and 9505.0365)***

PROBLEM: There are obsolete language in Minnesota Rule.

PROPOSAL: This section grants the Commissioner the authority to use the good cause exemptions for rule

making in order to amend Minnesota Rules 9505.0310, subpart 3 and 9505.0365, subpart 3. DHS no longer enters into special performance agreements with durable medical equipment providers. Therefore, the language referencing the use of these agreements is obsolete.

Repeal Obsolete Rule (Repealer)

PROBLEM: There obsolete language in Minnesota Rule.

PROPOSAL: DHS no longer enters into special performance agreements with durable medical equipment providers. Therefore, the language in Minnesota Rule 9505.0175 subpart 32 and 9505.0365 subpart 2 referencing the use of these agreements is obsolete.

Minnesota Rules 9505.1709 and 9505.1696 subpart 10 refer to a required form for providers to use related to the Child and Teen Checkup program. The form that is refrenced is a pink, non-carbon paper form with triplicate pages which was discontinued around 1997. Today this infoarmtion is billed electronically.

***Department Contact for article*:** Diogo Reis, 651-431-2106

ARTICLE 6 – CONTINUING CARE

Sections 1, 3, 4 and 5. Demissions ((§144.0724, subd. 12; §245D.10, subd. 3; §256.045, subd. 3; and §256.045, subd. 6)

PROBLEM: Currently, a person receiving services from a 245D-licensed provider can have their services involuntarily terminated at the discretion of the provider with no recourse.

PROPOSAL: Allows persons receiving services to appeal a notice of involuntary demission. They may receive an agency hearing. The commissioner may also delay a demission while an appeal is pending. The provider must document all attempts to continue to provide services to the person up to demission.

Sections 2 and 6. Return to Community Initiative Program (§148E.065, subd. 4a and 256.975, subd. 7)

PROBLEM: Some seniors are discharged from nursing homes without receiving assistance from the Senior LinkAge Line (SLL) (usually because they were discharged too quickly) as part of the Return to Community Initiative, making sure they have all the services they need.

PROPOSAL: Requires nursing facilities to provide contact information of residents who have been discharged (presently, they give contact info of current residents). Nursing facilities will have specific authorization and clarity about what constitutes contact information for the purpose of providing options counseling. This initiative supports the goal to help consumers remain in the community. It is in line with the state's Olmstead Plan by helping people live in the least restrictive environment for as long as possible.

Sections 7 to 11. MnCHOICES Clarifications (§256B.0911)

PROBLEM: Counties and lead agencies had many questions regarding the statute involving MnCHOICES.

PROPOSAL: This proposal provides clarification in 256B.0911 in to address questions by clearly stating that lead agencies must complete a MnCHOICES assessment and clarifying that the community support plan is provided to every person who receives a MnCHOICES assessment, regardless of what service options the person chooses. The MnCHOICES assessment process is intended to provide consistency across lead agencies in assessing a person's need for long term services and supports.

Sections 12 to 18 . Alternative Care (§256B.0913)

PROBLEM: CMS approved DHS's 1115 waiver, which allows for federal financial participation (FFP) in our (previously only state-funded) Alternative Care (AC) program. This requires language changes in statute to align the program with FFP.

PROPOSAL: It clairifies existing terminology by aligning AC with Elderly Waiver (EW) terminology and the waiver provider standards project. It adds the federal requirements that the recipient be a US citizen or a US National, adds sign-language and spoken language interpreter services as covered services under the waiver, and the commissioner has the authority to recover AC overpayments.

Section 19. Community First Services and Supports (CFSS) (§256B.85)

PROBLEM: DHS is replacing the Personal Care Assistance (PCA) program with a more comprehensive program encompassing other self-directed services called Community First Services and Supports (CFFS). This program is already in law, but we have yet to receive federal approval on the proposal.

PROPOSAL: These changes will help DHS get federal approval for the program. This new program has the goal of allowing participants more choice, responsibility and control over their services. There is more support worker training and quality control measures. This aligns with DHS's goals of helping persons with disabilities and older adults live in the least restrictive community setting.

Sections 20 to 25. Common Entry Point (§626.557 and §626.5572)

PROBLEM: There was sometimes confusion about which agency/county is responsible for investigating suspected vulnerable adult maltreatment reported through the common entry point (CEP).

PROPOSAL: These sections align investigation and protective service referrals. These sections clarifiy which agency is responsible for protective services and being the lead investigative agencies (LIA's). It establishes processes and timelines. Finally, these sections modify the definitions of facility and vulnerable adult to provide equal protections for people regardless of services or setting, confirming consistency with CMS's health and safety assurances for waiver participants receiving home and community-based services (HCBS).

Section 26. Nursing Facility Level of Care (Laws 2013, Chapter 108, Article 7, Section 58)

PROBLEM: In early 2013, the Minnesota Legislature passed legislation requiring the commissioner of human services to report to the Legislature about the impact of the modified NFLOC to be implemented on January 1, 2014. In December 2013, Governor Dayton delayed the implementation of these changes by one year until January 1, 2015.

PROPOSAL: In 2009, the Minnesota Legislature passed legislation that changed NFLOC criteria for public payment of long-term care. This section amends the implementation date and the report deadlines to reflect this one year implementation delay in accordance with the Governor's delay.

Section 27. Home and Community-Based Settings (HCBS) Transitions Plan.

PROBLEM: CMS came out with their final rule on HCBS. We must change our statutes to comply with the final rule and seek approval of our state HCBS transition plan.

PROPOSAL: Upon federal approval, the commissioner must take initial steps to eventually come into compliance with the HCBS transition plan in statute. The rule 1) defines, describes, and aligns home and community-based setting requirements across HCBS programs, and 2) defines person-centered planning requirements for person in HCBS settings. In Minnesota, the rule applies to: All HCBS waivers: BI, CAC, CADI, DD, and EW; and Community First Services and Supports (CFSS). Between 1/2016 and 3/2019, the commissioner must make annual reports to the legislature.

Section 28. Revisor's Instructions

PROBLEM: The Community Alternatives for Disabled Individuals puts the "disability" before the person.

PROPOSAL: It changes the name of the Community Alternatives for Disabled Individuals waiver to the "Community Access for Disability Inclusion" waiver. Retains the "CADI" acronym.

Section 29. Repealer

PROBLEM: Technical glitches. Two duplicative sections are in statute.

PROPOSAL:
Repeal a section of chapter 245D which duplicative of another section. Repeal MN Rules related to vulnerable adult reporting, which is also duplicative of what is in statute. .

Department Contacts: Lucy Morgan, 651-431-6648; Stacy Twite, 651-431-4859