

House Research Act Summary

CHAPTER: 326

SESSION: 2008 Regular Session

TOPIC: DHS Health Policy

Date: May 19, 2008

Analyst: Lynn Aves, 651-296-8079

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Article 1: Health Care

Overview

This is the Department of Human Services health policy article which deals with annuities and transfers of assets, long-term care insurance policies, a statewide health information exchange, and miscellaneous health policy provisions.

- 1 **Child with a disability.** Amends §125A.02, subd. 1. Lists professionals who are qualified to diagnosis attention deficit disorder or attention deficit hyperactivity disorder for purposes of identifying a child with a disability. Provides an immediate effective date.
- 2 **Rules.** Amends §144A.45, subd. 1. Reduces the required nursing supervision of persons who perform home care aide tasks for a class B licensee to once every 180 days, compared to once every 62 days under current law.
- 3 **Home care aide tasks.** Amends §144A.45, by adding subd. 1a. Expands the list of approved health care aide tasks to include assisting toileting, transfers, and ambulation under specified conditions.
- 4 **Policy for notification of disposition options.** Creates §145.1622. Requires hospitals, clinics, and medical facilities to have a policy in place by January 15, 2009, to inform a woman who experiences a miscarriage or is expected to miscarry of her available options for fetal disposition.
- 5 **Graduates of nonaccredited dental programs.** Amends §150A.06, by adding subd. 9. Permits a graduate of a nonaccredited dental program who passes a clinical licensure examination and who meets all applicant requirements to be licensed to practice dentistry and issued a limited general dentist license. Requires the licensee to practice under the supervision of a Minnesota licensed dentist for three consecutive years. Requires a written

supervision agreement. Authorizes the board to issue an unlimited license if all dentists who provided supervision recommend unlimited licensure, and if no corrective action or disciplinary action has been taken by the board against the licensee.

6 **Fee adjustment.** Amends §214.40, by adding subd. 8. Authorizes the administrative services unit to apportion the amount spent on medical professional liability insurance for volunteer health care providers between the boards of medical practice, dentistry, and nursing.

7 **Statewide health information exchange.** Amends §256.01, by adding subd. 27. Authorizes the commissioner of human services to participate in a statewide health information exchange.

8 **Persons detained by law.** Amends §256B.055, subd. 14. Corrects a cross-reference to federal law.

9 **Homestead exclusion for individuals residing in a long-term care facility.** Amends §256B.056, subd. 2. Makes technical changes. Strikes language on the home equity limit (which shall not exceed \$500,000) from this subdivision and places it in subdivision 2a, paragraph (a).

10 **Home equity limit for medical assistance payment of long-term care services.** Amends §256B.056, by creating subdivision 2a. Paragraph (a). Stricken language from subdivision 2 is now placed in this paragraph with some changes. Specifies that “disabled” is defined by the Supplemental Security Income program.

Paragraph (b). Provides that “home” means any real or personal property interest including an agricultural homestead owned by the individual requesting medical assistance payments for long-term care and used as the primary dwelling for the individual.

Paragraph (c). Permits an individual to seek a hardship waiver if the person is deemed ineligible for medical assistance because home equity exceeds \$500,000. Hardship is defined as an imminent threat to the individual’s health and well-being demonstrated by documentation of no alternatives for payment of long-term care services. Requires the county agency to make a decision within 30 days.

11 **Asset verification.** Amends §256B.056, subd. 4. Clarifies that under this subdivision a good faith effort to sell a non-homestead life estate is not required for the purpose of establishing medical assistance eligibility. Provides that this subdivision does not exempt life estates from being counted when calculating community spouse allowance.

12 **Treatment of annuities.** Amends §256B.056, subd. 11. Makes technical changes and reorganizes this subdivision to more clearly define the roles of the person requesting medical assistance for payment of long-term care services, the department, and the issuer of annuities or similar financial instrument. Defines terms.

Paragraph (a). Adds that the person requesting medical assistance must complete a form designated by the commissioner disclosing the person’s and spouse’s interest in annuities and acknowledging that the state becomes a preferred remainder beneficiary of the annuities.

Paragraph (b). Clarifies the department’s responsibilities in providing notice to the issuer of the annuity.

Paragraph (c). Clarifies the issuer’s responsibilities.

Paragraph (d). Defines the terms “preferred remainder beneficiary,” “institutionalized person,” “long-term care services,” and “medical institution.”

- 13 **Infants and pregnant women.** Amends §256B.057, subd. 1. Restores the medical assistance income standard of 275 percent of federal poverty guidelines for pregnant women and the medical assistance special work expense deduction for infants and pregnant women. This correction to state law is a federal compliance requirement.
- 14 **Partnership policy.** Amends §256B.0571, subd.6. Provides that long-term care insurance policies that have riders or endorsements added after the effective date of the state plan qualify as partnership policies.
- 15 **Program established.** Amends §256B.0571, subd. 8. Expands the Long-Term Care Partnership Program to include policies that qualify under Minnesota law or under a reciprocal agreement between DHS and another state.
- 16 **Medical assistance eligibility.** Amends §256B.0571, subd. 9. Provides that an individual must make the required designation to protect assets within 10 days from the date the designation is requested by the county.
- 17 **Limitation on liens.** Amends §256B.0571, subd. 15. Permits the state to place a lien on real property that is protected from estate recovery under the long term care partnership program to the extent that the value of the property exceeds the amount the individual can protect.
- 18 **Reciprocal agreements.** Amends §256B.0571, by adding subdivision 17. Authorizes the commissioner of human services to enter into reciprocal agreements with other states for recognition of each state’s qualified long-term care insurance policies. Instructs the commissioner to notify the federal government if the commissioner declines to enter into a national reciprocal agreement.
- 19 **Treatment of income of institutionalized spouse.** Amends §256B.058. Makes clarifying changes to the language regulating the treatment of an institutionalized person’s income. Provides definition of minor or dependent child.
- 20 **Definitions.** Amends §256B.059, subd. 1. Defines “continuous period of institutionalization” to provide clarification of the federal requirement that establishes when spousal impoverishment rules begin for married couples when one spouse becomes an institutionalized individual. Adds a cross-reference to programs for persons with developmental disabilities. Deletes an incorrect cross-reference.
- 21 **Institutionalized spouse.** Amends §256B.059, subd. 1a. Provides that this section applies when a spouse begins the first continuous period of institutionalization.
- 22 **Payment of benefits from an annuity.** Amends §256B.0594. Clarifies the process of paying benefits from an annuity when the department is named.
- 23 **Prohibited transfers.** Amends §256B.0595, subd. 1. Provides that the department is to be named as the preferred remainder beneficiary of an annuity purchased by or on behalf of an institutionalized person who has applied for or is receiving long-term care services.

Adds that if there has been an improper distribution of benefits, a cause of action exists against the individual receiving the improper distribution for the cost of medical assistance services provided or the amount of the distribution, whichever is less.

- 24 **Period of ineligibility.** Amends §256B.0595, subd. 2. Modifies the start date of the penalty period for uncompensated transfers to require that the period start on the first day of the month following advance notice of the penalty period, but no later than three calendar months from the date the transfer is reported or discovered.
- 25 **Homestead exception to transfer prohibition.** Amends §256B.0595, subd. 3. Requires that a child live in the household and provide care for the parent for at least two years before the parent moved into an institution or began receiving services through a waiver program.

Current law requires that a child live in the household and provide care for two years prior to the parent moving into an institution. This change makes state law consistent with federal law.

- 26 **Other exceptions to transfer prohibition.** Amends §256B.0595, subd. 4. Requires the local agency to make a determination on a person’s request for a hardship waiver within 30 days of the receipt of all information needed to make such a determination.
- 27 **Cause of action; transfer prior to death.** Amends §256B.0595, by adding subdivision 8. Creates a cause of action for death bed transfers. Permits recovery of the uncompensated amount of the transfer or the amount of medical assistance paid, whichever is less.
- 28 **Filing cause of action; limitation.** Amends §256B.0595, by adding subdivision 9. Authorizes the county of financial responsibility to bring a cause of action, on behalf of DHS, under a variety of statutes. Requires any cause of action to be filed within six years.
- 29 **Health services policy committee.** Amends §256B.0625, subd. 3c. Requires the committee to recommend criteria for verifying centers of excellence for specific aspects of medical care.
- 30 **Preferred drug list.** Amends §256B.0625, subd. 13g. Strikes language that requires the department to contract for the preferred drug list and supplement rebate program with vendors that have a multi-state business model.
- 31 **Medication therapy management services.** Amends §256B.0625, subd. 13h. Allows reimbursement of medical assistance medication therapy management services in home settings under specified conditions.
- 32 **Community health worker.** Amends §256B.0625, subd. 49. Paragraph (a) adds that the required supervised work experience may be with a dentist or with a certified public health nurse operating under the direct authority of an enrolled unit of government.

Paragraph (b) adds that the community health worker may work under supervision of a medical assistant, enrolled dentist, or under the supervision of a certified public health nurse operating under the direct authority of an enrolled unit of government.

Paragraph (c) adds that care coordination and patient education services include, but are not limited to, services related to oral health and dental care.

- 33 **Fee-for-service.** Amends §256B.075, subd. 2. Permits the commissioner to move funding for intensive care management program for medical assistance children with complex and chronic medical conditions into a competitive RFP.
- 34 **Other survivors.** Amends §256B.15, subd. 4. Adds for purposes of this subdivision “institutionalization” means receiving care in a nursing facility or swing bed, intermediate care facility for persons with developmental disabilities, or through home and community based services.
- 35 **County authority.** Amends §256B.69, subd. 3a. Modifies DHS dispute resolution.

Paragraph (a) strikes obsolete language.

There are no changes to paragraphs (b) and (c).

Paragraph (d) requires in specified dispute situations that the commissioner must take the dispute before a three person mediation panel. Adds that one person is to be selected jointly by the designee of the commissioner of human services and the designee of the Association of Minnesota Counties. Requires that the panelists be provided with all documents and relevant information within a reasonable time prior to the mediation. Requires 30 days

notice of a hearing before the panel.

Paragraph (e) remains unchanged.

Paragraph (f) prohibits the commissioner from requiring contractual disputes between county based purchasing entities and the commissioner be mediated by a panel that includes a member of the Minnesota Council of Health Plans.

Paragraph (g) requires the commissioner to adopt a contract reprocurement or renewal schedule under which all counties included in the entity's service area are reprocured or renewed at the same time, if requested by a county based purchasing entity.

Paragraph (h) requires the commissioner to submit a written report detailing compliance with this section to the senate and house committee chairs with jurisdiction over human services. Requires the report to be submitted at least 30 days before the effective date of a new or renewed managed care contract in a county.

- 36 **Service delivery.** Amends §256B.69, subd. 6. Adds that demonstration providers that provide nursing home and community-based services will provide relocation service coordination to enrolled persons who are age 65 and over.
- 37 **Information for persons with limited English-language proficiency.** Amends §256B.69, subd. 27. Requires managed care organizations provide language assistance that ensures meaningful access for enrollees in PMAP, PGAMC, and MinnesotaCare. Assistance must be provided according to Title VI of the Civil Rights Act, including federal regulations or guidance issued under that law.
- 38 **Medicare special needs plans; medical assistance basic health care.** Amends §256B.69, subd. 28. Prohibits the commissioner from releasing names of potential enrollees to health plans for marketing purposes. Permits the commissioner to mail marketing materials to potential enrollees at the expense of the health plan companies.
- 39 **Dispute resolution.** Amends §256B.692, subd. 7. Modifies DHS dispute resolution procedures to make this section consistent with §256B.69, subd. 3a.
- 40 **General assistance medical care; eligibility.** Amends §256D.03, subd. 3. Exempts residents of the Minnesota sex offender program from transitional MinnesotaCare requirements.
- 41 **Limitations on presentation of claims.** Amends §524.3-803. Allows a state or county claim against an estate of a deceased individual who was a client at a state facility under chapter 246, received general assistance under chapter 256, or as authorized by section 256B.15.
- 42 **Nursing facility pension costs.** Requires the commissioner of human services to conduct a study of nursing facility pension costs.
- 43 **Nursing facility rate disparity report.** Requires the commissioner of human services to study and recommend ways to reduce nursing facility rate disparities.
- 44 **Home modifications.** Provides that, upon federal approval, costs for home modifications that require adding square footage to the home in order to configure a wheelchair accessible bathroom may be allowed expenses for home and community-based waiver services under specific circumstances.
- 45 **Waiver amendment.** Instructs the commissioner to submit a waiver request consistent with section 44 by October 1, 2008. Provides an immediate effective date.
- 46 **Appropriation.** Appropriates funds from the state government special revenue fund to the administrative services unit to pay for medical professional liability insurance coverage required for volunteer medical professionals. Makes the appropriation part of the base.

47 **Repealer.** Paragraph (a) repeals §256B.0571, subd. 8a (exchange for long-term care partnership policy; additional of policy rider).

Paragraph (b) repeals Laws 2003, First Special Session, chapter 5, section 11 (expiration date for the exemption from the dental examination for foreign-trained graduates).

Article 2: Sex Offender Program

Overview

This article establishes Minnesota state industries at sex offender program facilities; amends statutes related to appeals of commitment decisions and petitions for reduction in custody; permits sex offenders to be held in a DOC facility or county detention facility under specified circumstances; and establishes a working group to develop standards and guidelines for sex offender programs.

1 **Civil commitment of sexual offenders.** Amends §13.851, by adding subd. 9. Amends the Data Practices Act to state that data relating to the preparation of a petition to commit an individual as a sexually dangerous person or a sexual psychopathic personality is governed by 253B.185, subd. 1b.

2 **Establishment of Minnesota sex offender program.** Amends §246B.02. Prevents the commissioner from transferring individuals to the MSOP unless the individual is on a court-hold order or committed by the courts as a sexual psychopathic personality or sexually dangerous person.

3 **Establishment of Minnesota state industries.** Adds §246B.06.

Subd. 1. Establishment; purpose. Requires the commissioner to establish Minnesota state industries at sex offender program facilities. The industrial and commercial activities must be for the primary purpose of sustaining the program's self-sufficiency, and providing training, employment, and the opportunity to learn proper work habits to patients at the sex offender program.

Subd. 2. Revolving fund. Establishes a revolving fund under the control of the commissioner for necessary expenses to operate the program.

Subd. 3. Disbursement from fund. Requires the revolving fund to be deposited in the state treasury and paid out only on proper vouchers.

Subd. 4. Revolving fund; borrowing. Permits the commissioner to borrow necessary sums to meet the demands of the revolving fund; the commissioner must certify the need to the commissioner of finance. The sums borrowed cannot exceed, in any calendar year, six months of net operating cash.

Subd. 5. Federal grant fund transfers. Provides the procedure for crediting federal grant funds to the commissioner of human services.

Subd. 6. Wages. Permits the commissioner discretion in setting wages paid to the patients working in this program.

4 **Restriction.** Amends §253B.045, subd. 1. Inserts a cross-reference to the new language created in section 5 (253B.045, subd. 1a).

- 5 **Exception.** Creates §253B.045, subd. 1a. Permits sex offenders who are being held pending resolution of a civil commitment petition to elect to stay in a DOC facility or a county correctional facility instead of in a MSOP facility. To be eligible to stay in a DOC facility, an offender must currently be housed in such a facility. Establishes procedures for revocation of the person’s election to be housed in a DOC facility. Unless revoked before, the person may only stay in a DOC facility until their sentence or conditional release term, whichever is longer, expires. In no case may an offender stay in a DOC facility more than 210 days past their sentence. To stay in a county jail, the committing county must first offer the option to the person. Provides an immediate effective date.
- 6 **Facilities.** Amends §253B.045, subd. 2. Authorizes the commissioner of corrections to charge counties for housing offenders under the authority granted in section 5 (253B.045, subd. 1a). Obligates DHS to fund all non-confinement costs.
- 7 **Special review board.** Amends §253B.18, subd. 4c. Clarifies the process for an individual who is committed as mentally ill and dangerous, and for individuals who are committed as a sexual psychopathic personality or sexually dangerous person to petition for a reduction in custody or to appeal a revocation of provisional discharge. Defines “reduction in custody.”
- 8 **Petition; notice of hearing; attendance; order.** Amends §253B.18, subd. 5. Removes the requirement that orders must be sent by certified mail and permits delivery by regular mail.
- 9 **Victim notification of petition and release; right to submit statement.** Amends §253B.18, subd. 5a. Instructs the commissioner of human services to provide the judicial appeal panel with victim information in order to comply with this section. Requires that this information must retain its classification as private data.
- 10 **County attorney access to data.** Amends §253B.185, subd. 1b. Authorizes county attorneys, without either a court order or prior notice to the subject, to acquire data held by the DOC or parole or probation authority for the purposes of determining whether good cause exists to petition for the civil commitment of a sex offender. The county attorney must provide notice of the request to the subject at the time the request is made.
- 11 **Financial responsibility.** Amends §253B.185, subd. 5. Allows for state reimbursement of the cost of holding persons in a DOC facility pending resolution of a civil commitment petition. Provides an immediate effective date.
- 12 **Petition for reduction in custody.** Amends §253B.185, by creating subd. 9. Sets out the procedure for filing a petition for a reduction in custody or an appeal of a revocation of provisional discharge for individuals who are committed under this section or are committed under this section and as mentally ill and dangerous. Provides that the findings of fact and recommendations of the special review board must be reviewed by the judicial appeal panel.
- 13 **Petition; hearing.** Amends §253B.19, subd. 2. Sets out the process for an appeal of the decision of the commissioner for individuals who have been committed as mentally ill and dangerous, a sexual psychopathic personality, or a sexually dangerous person.
- 14 **Decision.** Amends §253B.19, subd. 3. Provides that the judicial appeal panel shall conduct a de novo review of the petition, and that an order of the judicial appeal panel shall supersede an order of the commissioner.
- 15 **Vulnerable adult.** Amends §626.5572, subd. 21. Clarifies that a person who is served in the sex offender program or is on a court order for commitment is not a “vulnerable adult” until it is determined that the individual possesses a physical or mental infirmity, or other physical, mental, or emotional dysfunction.
- 16 **Minnesota sex offender program; operating standards.** Requires the commissioner of human services to convene a working group to develop standards and guidelines for the operations of the Minnesota sex offender program by February 1, 2009, and report the proposed standards and guidelines to the legislature.

Article 3: MFIP

Overview

This article modifies the definition of work activity.

- 1 Work activity.** Amends Minnesota Statutes 2007 Supplement, §256J.49, subd. 13. Modifies the definition of work activity by requiring the county, prior to placing a participant in unpaid work, to inform the participant that he or she will be notified if a paid work experience or supported work position becomes available. Requires the participant to consent to unpaid work in writing. Removes obsolete language.

Article 4: Managed Care Contract.

Overview

This article allows the commissioner to continue a specified managed care contract.

- 1 Sole-source or single-plan managed care contract.** Amends Laws 2005, First Special Session, chapter 4, article 8, section 84, as amended by Laws 2006, chapter 264, section 15. Permits the commissioner to continue the county-based purchasing arrangements for medical assistance and general assistance medical care until 2010 for specified counties.