Minnesota Department of Human Services – Policy Bill
LEGISLATIVE BACKGROUND INFORMATION 2017

S.F. 1292 (Utke) as amended **H.F. 1207 (Scott)** **Revisor#: 17-0002**

Background on the Human Services Bill, Civil Law and Judiciary related provisions:

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 oversees 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 12,000 clients every year. This bill contains 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 many of the clarifications. Other policy changes recommended are Department driven due to challenges with implementing previous laws passed or known areas of confusion or ambiguity that need the legislature's clarity and approval.

Article 1 CHILDREN AND FAMILY SERVICES

Data Sharing between Child Care Assistance Program and Scholarships (Section 1) *(13.46, subd. 2)*

PROBLEM: The Department of Human Services is not able to share data with the Minnesota Department of Education that would support families eligible for early learning scholarships. This can increase paperwork for families, make it more difficult to ensure appropriate use of public funds, and limit how data can inform policy decisions.

PROPOSAL: The proposal allows the Department of Human Services to share data with the Minnesota Department of Education for purposes of administering scholarships. Data about children receiving services through the Child Care Assistance Program (CCAP), the Minnesota Family Investment Program (MFIP) and the Supplemental Nutrition Assistance Program (SNAP) is included.

The data for children receiving MFIP and SNAP could be used to help determine income eligibility for scholarships and is the same data currently shared for purposes of determining eligibility for the Free and Reduced Lunch program.

The data for children receiving CCAP could be used to determine income eligibility for scholarships, help ensure appropriate use of public funds if concerns are raised about a provider receiving both CCAP and scholarships, and may help inform future policy decisions. This proposal enables the departments to use existing resources to share data about individual cases, but does not include funding to develop a more comprehensive data sharing process.

Make Some Provide Child Care Assistance Program Data Public (Section 2 and 3) *(13.461, subdivision 28; 119B.02, subdivision 6)*

PROBLEM: The Department of Human Services is not able to share data about Child Care Assistance Program payments made to child care centers that violate program rules. This limits transparency about the use of public funds and limits the department's ability to share information about the potential financial impact of negative actions against centers.

PROPOSAL: The proposal allows the Department of Human Services to publicly share information about Child Care Assistance Program payments made to some licensed child care centers and license-exempt child care centers. Payment information could be shared about child care centers that have experienced the following negative actions: been disqualified due to wrongfully obtaining child care assistance, had child care assistance payments stopped due to violating program rules, or has a finding of financial misconduct.

The following information could be shared: that payment was made to the child care center and the total amount of payment made to the child care center over a specified period of time. The information could also include the number of families and number of children for whom payment was made. Information about individual families or children would not be shared. To protect the identity of families and children, this proposal allows the department to not share payment data when a center cares for a limited number of children.

These sections are removed in the author amendment.

~~**Procedural changes to SNAP Employment and Training (Sections 4-12)** *(amends § 256D.051)*~~

~~**PROBLEM:** The current process used to engage people in employment and training services for the Supplemental Nutrition Assistance Program benefits (formerly called Food Stamps) is not working. The current process creates significant administrative burden for county human services offices, competing for time with the core work of determining eligibility and ensuring that the counties issue accurate benefit amounts.~~

~~Adults receiving food benefits through the Supplemental Nutrition Assistance Program who have no disabilities and no children must meet work requirements. If they fail to do so, they lose benefits after three months and are not eligible again for three years (unless they meet some specific work requirements in the meantime).~~

~~Federal law allows states two options: one is to require all of those individuals to participate in employment services and the other option is to let them choose whether they want the services to help meet the work requirements. In 2016 more than 32,000 adults were referred to SNAP employment services. Only 6,300 enrolled and received services.~~

~~Counties have estimated that they spend more than 14,000 frontline hours in the notices, tracking of responses and no shows and case actions in the current process.~~

~~**PROPOSAL:** Keep the work requirements in place, as mandated by federal law. Give participants the option to engage in employment services. This would eliminate much of the administrative work for notices and tracking that counties must currently do. It would allow the publicly funded employment services providers to spend their time on individuals interested in and motivated to receive help in getting and keeping a job.~~

~~**MFIP Innovation Fund Demonstration Project Evaluation (Section 13)** *(amends §§ 256J.626, subd. 5)*~~

~~**PROBLEM:** The MFIP Innovations Fund exists to allow the Commissioner to fund local demonstrations and pilot projects in order to establish promising practices and improve program outcomes. There are times the~~

Department does not have the resources to fully evaluate those projects and therefore cannot determine whether the practices tested should be moved to larger scale.

PROPOSAL: This would allow the Department to use a portion of the Innovation Funds to evaluate the projects being demonstrated.

Reporting on TANF Work Participation Rates and the Self-Support Index (Sections 14-17) *(amends §§ 256J.751, subd. 2, and subd. 5; adds new subd. 2a and subd. 4a)*

PROBLEM:
Current law requires DHS to report to counties data monthly on 10 specific measures and quarterly on 7 other or overlapping measures. The legislature identified most of those measures shortly after the Minnesota Family Investment Program was launched in 1998. The data is to help with county performance management.
Using the existing statute to keep up with data needs has proved cumbersome. For instance, current law:

- Fails to require any data on the Diversionary Work Program (DWP) launched in 2004
- Fails to require any data for the Family Stabilization Services track launched in 2008 that serves about 40% of the families subject to work requirements.
- Requires monthly reports on data that changes very little such as the number of child only cases or average monthly gross earnings.

By holding the department accountable to provide data on a regular basis and by engaging counties, tribes and employment services agencies, the Department will provide information that will more effectively support integrating relevant data into real time performance management.

PROPOSAL:
The changes the Governor proposes still hold DHS accountable to provide monthly and quarterly data – but to have DHS work with counties, tribes and the employment services agencies to identify the data that will best support performance management. It requires quarterly reporting on racial and geographic data measuring disparities within MFIP. It also requires monthly and quarterly reporting on the self-support index, which measures the percentage of MFIP and DWP cases off cash assistance or working 30 hours or more per week at one, two, and three-year follow-up points.

Clarifying Treatment of Lump Sum Payments and ABLE Accounts for Asset Determination (Sections 18 and 19) (*amends § 256P.02, subd. 1 and subd. 1a*)

PROBLEM:
Minnesota Statute § 256P was enacted in 2014, and implemented on October 1, 2016, to create as much consistency in eligibility for public assistance programs as possible. During the implementation process it was found that the statute required clarification of how lump sum payments are treated when determining a client's assets.

Minnesota Statute § 256Q became effective on July 1, 2015. This section created Achieving a Better Life Experience (ABLE) accounts. The ABLE accounts are intended to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life, and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the Supplemental Security Income program under title XVI of the Social Security Act, the beneficiary's employment, and other sources. During the implementation process it was found that there was no guidance in § 256P regarding how those accounts would be treated.

~~**PROPOSAL**:~~

~~This section proposes that lump sum payments shall be counted as income for two months. If the lump sum remains available to the client in the third month, it shall be counted as an asset in the asset limit. The proposed statutory change is codification of existing policy governing lump sum payments. To fulfill the intent of the legislation establishing ABLE accounts, this section proposes that ABLE accounts be exempt from inclusion in the asset limit.~~

Eliminating Errors in Cross-References and Program Names (Sections 20, 30, 32, 33, 36, 37) *(amends statutes §§ 260C.605, subd. 1 (d)(7); 260C.607, subd. 6 (f)(2); 260C.503, subd. 2 (d)(1); 259.35, subd. 1; 260C.613, subd. 6 (a); and 260C.615, subd. 1 (b)(2))*

PROBLEM: There are numerous errors and inaccuracies in foster care and permanency sections of Minnesota Statutes, including cross-reference errors, outdated references to programs that have been phased out or no longer exist, incorrect program names, and grammatical errors.

PROPOSAL: This proposal cleans up statutory errors.

Separating Public and Private Adoption Statutes and Clarifying Legal Requirements (Sections 21, 32, 33, 35, 38, 40) *(amends §§ 260C.605, subd. 1; 260C.611 (b); 260C.607, subd. 6; 259.53, subd. 4; 260C.623, subd. 4; and 260C.629, subd. 2])*

PROBLEM: In 2012, there was a redesign of adoption-related sections of Minnesota Statutes. Public (foster care) adoption requirements were moved out of Chapter 259 and into Chapter 260C, as there are different requirements and considerations for public and private adoptions. However, many references to Chapter 259 remain in the Chapter 260C adoption sections, causing some confusion over what is and what is not required for Chapter 260C adoptions. For example, a court rule still requires a child under state guardianship to reside in a preadoptive home for at least 3 months before finalizing an adoption, despite Chapter 260C not listing this as a requirement for public adoption.

PROPOSAL: This proposal further separates public adoption sections of Minnesota Statutes from private adoption sections by changing references to Chapter 259 within Chapter 260C, to references within Chapter 260C itself. In some instances, there are new sections created within Chapter 260C to accommodate this change. Additionally, this proposal clarifies agency requirements for making reasonable efforts to finalize an adoption by removing unnecessary words and list items.

Clarifying Process Related to Children's Social and Medical Histories (Sections 22, 26, 28, 29, 34, 38) *(amends §§ 260C.212, subd. 15 (proposed); 260C.609; 260C.623, subd. 4 (2); 260C.212, subd. 1; 260C.219 (e); and 259.83, subd. 1a)*

PROBLEM: When a child is to be adopted from foster care, the adoptive parents, the court, the department of human services, and the child, if appropriate, are to be given a copy of the child's social and medical history. This document serves multiple purposes:

- For agencies, to meet their statutory requirement to provide full disclosure to prospective adoptive parents about an individual child's health and background history
- For prospective adoptive parents, to make an informed decision about whether they are able and willing to care for and establish a legal parent-child relationship with an individual child

- For children, to better understand their own history and life experiences
- For the department of human services, to maintain a complete, permanent record of children who are state wards and who are adopted.

Agencies are required to begin writing this document at six months into placement, or the permanency progress review hearing, for all children who continue in foster care. However, many agencies do not begin this work until after a child has been ordered under guardianship of the commissioner. This document is required as part of executing an Adoption Placement Agreement (APA); if it is not complete by the time an adoptive placement is being sought, it can delay permanency for a child waiting to be adopted.

When children exit foster care due to reaching the age of majority, they must receive a copy of their social and medical history, as well as their education report, whether they are under guardianship of the commissioner or not. Additionally, when children are discharged from foster care through reunification, adoption, or transfer of permanent legal and physical custody, agencies are required to give their parents, adoptive parents, or relative custodians copies of the children's health and education report. Agencies may give the children themselves copies of their report, but are not required to.

PROPOSAL: To reduce delays in permanency, this proposal moves the requirement for writing a child's social and medical history from the adoption section of Minnesota Statutes, where it currently is located, to the out-of-home placement section, where the requirement actually lies. Moving this requirement to where it should be will provide more clarity regarding the timeline to write a child's social and medical history.

This proposal also clarifies who should be receiving copies of a child's social and medical history, based on existing law, best practice, and department policy. Provided a child has continued in foster care after 6 months of placement, the following individuals would be entitled to receive a copy of a child's social and medical history and health and education record

- Any child, age 14 or older, upon discharge from foster care for any reason
- Any child under the age of 14, upon discharge from foster care for any reason, if appropriate
- All parents, adoptive parents, and relative custodians, upon a child's discharge from foster care for any reason

<u>Use of Delegation of Parental Authority, Voluntary Child Protective Services, and Safety Planning</u>
(Sections 23, 51) *(Minnesota Statute sections 260C.101, subd. 6; 626.556, subd. 10m(a))*

PROPOSAL: This proposal adds a subdivision that requires when a court orders a child under the protective care of legal custody of the responsible social services agency, any temporary custody of that child arranged through either (1) a delegation of power by parent or guardian or (2) a standby custodian will be considered terminated

This proposal also adds provisions that clarify when child protective services are no longer voluntary.

This proposal also adds provisions that clarify that when a child must be removed from a parent or custodian as part of a safety plan and before a CHIPS petition is filed, the removal cannot be under a delegation of power of a parent or guardian or standby custodian

Confidentiality of Children's Educational, Physical and Mental Health (Section 24) *(Minnesota Statute section 260C.171, subd. 2(a))*

PROBLEM: Minnesota's juvenile court rules do not adequately protect children's education, physical health, and mental health records from public access as required under federal law and in the best interests of children involved in child protection proceedings.

PROPOSAL: This proposal adds a provision that protects children's education, physical health, and mental health records and information from public access, except information included in a petition alleging a child to be habitually truant.

This proposal also adds a provision that protects all records related to a child's voluntary placement in foster care for treatment under Chapter 260D from public access.

Providing Consistency in Definitions (Sections 25, 27) *(amends §§ 260C.212, subd. 2 (a); and 260C.178, subd. 1 (k))*

PROBLEM: Shared terminology among the foster care and permanency sections of Minnesota Statutes have varying definitions, which has led to confusion when attempting to determine which definition is applicable. For example, the legal definition of relative in Chapter 260C is not always consistent across other sections of Chapter 260C, which has caused confusion when agencies are considering relatives for placement.

PROPOSAL: This proposal makes shared terminology consistent across foster care and permanency sections of Minnesota Statutes.

Clarifying Court Processes for Adoption and Transfer of Permanent Legal and Physical Custody (Sections 31, 39, 40) *(amends §§ 260C.625 (a); 260C.629, subd. (2); and 260C.515, subd. 4)*

PROBLEM: New court rules require the use of e-filing documents, rather than paper filing. Minnesota Statutes require filing of certified copies of specific documents in adoption proceedings, which is not possible through e-filing. Once a certified copy is scanned into a computer, it is no longer certified.

This proposal also seeks to clarify court process related to transfers of permanent legal and physical custody to relatives and to make them more in line with adoption-related court processes and best practice. Minnesota recognizes the importance of the sibling relationship in a child's life, and thus statute requires courts to address sibling separation issues in all adoption and transfer of permanent legal and physical custody proceedings. For adoption, the court is required to issue a separate court order with specific findings to allow siblings to be separated. For transfers of custody, the court does not issue a separate court order, but must state that there are reasons to separate siblings in a final custody transfer order. The same level of scrutiny is not available for custody transfers. Additionally, court administration is not required to send final custody transfer orders to the Minnesota Department of Human Services, though they are required to send final adoption decrees. This has led to delays in benefit receipt for relative custodians.

Due to the heavy emphasis at both the state and federal level on maintaining sibling connections and relationships, this proposal also requires courts to find specific reasons for separating siblings prior to ordering a transfer of permanent legal and physical custody of a child to a relative.

PROPOSAL: This proposal allows agencies to file scanned copies of certified documents for adoption finalization hearings, rather than requiring agencies to file paper copies of certified documents, in accordance with new court rules. It also requires courts to address whether it is in the best interests of children to be separated from their siblings for transfers of permanent legal and physical custody to relatives, rather than simply stating there are reasons to separate siblings. Finally, this proposal requires court administration to send final custody transfer orders to the Minnesota Department of Human Services.

Clarifying the Role of the Commissioner with Adoption Placement Agreements (Section 37) *(amends § 260C.615, subdivision 1 (b)(3))*

PROBLEM: This proposal seeks to clarify the role of the commissioner in executing Adoption Placement Agreements for children under guardianship of the commissioner. There is confusion at the local and state levels regarding the commissioner's role, which has led to delays in permanency for children under guardianship of the commissioner. Some counties and judges have interpreted the commissioner's role to be collecting documentation and signing the Adoption Placement Agreement without reviewing the placement itself. The department and other counties and judges have interpreted the commissioner's role to be not only collecting documentation and executing the Adoption Placement Agreement, but also to review the placement in accordance with applicable laws and statutes to ensure the selected placement is safe and in a child's best interests.

PROPOSAL: This proposal modifies the duties of the commissioner in statute related to executing Adoption Placement Agreements to clarify that the role of the commissioner is to both review and process Adoption Placement Agreements.

Motion to Transfer to Tribal Court (Section 41) *(amends § 518.181)*

PROBLEM: Four tribes in Minnesota run federally approved IV-D child support agencies. When the tribe provides services to establish child support, those cases are brought in tribal court. However, in some cases child support was established by a county child support agency in state district court prior to the involvement of the tribal agency. In these cases, the tribal agency manages the case and utilizes the tribal courts for enforcement actions. When parties require a change in the order, the tribal agency must collect relevant information and refer the case back to the county agency for a modification in state court. After the court issues a new order, it is again sent back to the tribe for enforcement.

The involvement of two child support agencies and two courts creates undue delays and confusion for parties. Transferring these cases to tribal courts would align the court order with the child support services and reduce inefficiencies. Currently, there is no clear authority for courts to transfer these cases to the tribal courts.

PROPOSAL: This proposal would require a transfer to tribal courts when the following requirements are met:

- the district court and tribal court have concurrent jurisdiction,
- a party is receiving services from the tribal IV-D child support agency, and
- no party or tribal IV-D agency files and serves a timely objection to the transfer.

In the event of an objection, the proposal allows for judicial discretion to transfer following a hearing. The proposal requires findings on a number of factors.

Because Red Lake Nation is not subject to the provisions of Public Law 280 which grants the State jurisdiction over civil matters on tribal lands, there is an additional provision addressing Red Lake. In addition to transfer

based on concurrent jurisdiction, those cases may also be transferred based on the parties' residency on the Reservation.

Obligors Receiving Public Medical Coverage (Section 42) *(amends § 518A.41, subd. 4(f)(3))*

PROBLEM: 518A.41(f)(3) exempts noncustodial parents from paying a contribution towards their child's medical assistance when either the parent meets the eligibility requirements for public coverage, or they are receiving "public assistance." Though the provision was intended to relieve a parent for having to pay a benefit for a child when the parent is themselves receiving a benefit, the language which encompasses all "public assistance" is overly broad. The result has been unnecessary confusion for county child support workers who are unable to verify the noncustodial parent's status as a public assistance recipient.

PROPOSAL: The proposal would retain the provision which exempts the noncustodial parent from contributing to public medical coverage of the child if the noncustodial parent is eligible for public coverage. However, the second qualifying criteria would be changed from receipt of "public assistance" to "public coverage." This will align more closely with the goal of the original legislationand limit the factual information needed for a child support officer attempting to set orders.

Consumer Reporting Agency; Reporting Arrears (Section 43) *(amends § 518A.685(d))*

PROBLEM: 518A.685 was enacted in 2015 to comply with federal regulations requiring that states report child support arrears to consumer reporting agencies. Recognizing that credit reporting can have an adverse effect on obligors and their ability to obtain work and access resources, paragraph (d) was added to mitigate these effects for those obligors making regular payments. The paragraph requires that the public authority (DHS) report to the consumer reporting agency when the obligor who is in arrears is "currently paying child support as ordered by the court."

Despite rigorous efforts to work with the consumer reporting agencies to implement this provision, DHS has been unable to do so. The credit reporting industry standards do not allow debts like child support to be reported as a monthly obligation which can be paid in increments.

PROPOSAL: This proposal recommends the deletion of paragraph (d) which is impossible to implement. However, DHS will continue efforts to make consumer reporting as fair as possible to obligors who are making payments on their debt.

Definition of Facility (Section 44) *(Minnesota Statute section 626.556, subd. 2(c))*

PROBLEM: Local social service agencies are required to investigate reports involving individual providers, including, but not limited to, family day care providers and foster care providers. The current definition of facility does not clearly state provider, referring to facility only.

PROPOSAL: This proposal adds individual "provider" to definition of facility when referring to licensed or unlicensed child care.

Birth Match (Section 44) *(Minnesota Statute section 626.556, subd. 2(q)*

PROBLEM: Reports involving birth match involve serious concerns of past maltreatment, or involuntary termination of parental rights or involuntary transfer of permanent legal and physical custody. Due to the nature of past concerns, when a new child is born to a parent who has had this history, a family investigation is the most appropriate track assignment in these situations.

PROPOSAL: This proposal amends the birth match statute to require a family investigation by removing the family assessment option.

Abandonment (Section 44) *(Minnesota Statute sections 626.556, subd. 2(g); 626.556, subd. 2(o))*

PROBLEM: Abandonment is currently only addressed under substantial child endangerment. There is not a clear definition in neglect that clearly outlines a child's absent of care. Further, for children over age 2 current statute requires the child to be absent of parent for six months and for the local social service agency to make reasonable efforts to facilitate contact before the agency can accept for child protection. This creates delays in the local social services agency response.

PROPOSAL: This proposal adds a provision for abandonment in the definition of neglect (for children over age 2). It also clarifies that abandonment is substantial child endangerment for a child under age 2 when a parent has deserted the child with no intent to return.

Definition of Sexual Abuse (Section 44, 47) *(Minnesota Statutes sections 626.556, subd. 2(n); 626.556, subd. 3e; 626.556, subd. 2(p)*
PROBLEM: In the existing definition of sexual abuse, children who reside with one another, regularly or intermittently who are not siblings or are not related, do not require a child protection investigation completed by local social services agencies. These cases are currently investigated by law enforcement, with local social services agencies offering voluntary child welfare services if child is a victim of a crime.

A second issue in the definition of sexual abuse is the inclusion of predatory offenders in the definition. An act of sexual abuse does not have to exist to accept a report of sexual abuse, requiring an investigation and subsequent 24 hour face-to-face contact with the alleged victim and primary caregiver, regardless of current safety threat to the child. This can lead to direction of resources in a situation that may not warrant an immediate response. Further, not all predatory offenders have committed a sexual offense.

PROPOSAL: This proposal adds "other child… who jointly resides intermittently or regularly in the same dwelling as the child" as a person who has a significant relationship to the child. This change would mean assignment to the local social service agency for child protection investigation and include allegations between foster children, children of unmarried co-habitating parents, and children who visit homes on a regular basis when homes are split.

This proposal seeks to remove the predatory offender provision from definition of sexual abuse and move it to definition of threatened injury. Other items in threatened injury include the status or condition that poses a threat to a child's safety. Movement of this provision aligns better with the predatory offender status. This would still require a child protection assessment or investigation.

Mandated Reporters (Section 45) *(Minnesota Statute sections 626.556, subd.3(a))*

PROBLEM: There is a lack of clarity when and in which situations a mandated reporter must make a child maltreatment report under Minnesota Statute section 626.556.

PROPOSAL: This proposal adds that a mandated reporter is required to report child maltreatment while engaged in his or her professional duties.

Sharing Screened-Out Reports (Section 48) *(Minnesota Statute section 626.556, subd. 7(f))*

PROBLEM: There is duplicative wording in section 626.556, subdivision 7(b).

Under current statute there is lack of clarity as to whether information contained in screened out reports involving foster children may be cross-reported to the placing local child welfare agency or tribe, regardless of whether the allegations directly involve the foster child. There are instances in which screened out child maltreatment report data may be pertinent to ongoing safety, well-being, and/or placement stability. It is important that this information be shared when it is in the child's best interests.

PROPOSAL: This proposal removes a duplicative statute. (See 626.556, subdivision 7 (b) which is more appropriate place, contextually.)

This proposal also adds a provision that allows for local welfare agencies to share information regarding screened out reports with other child placing or child foster care licensing agencies when the report alleged child maltreatment of any child living in the home of a child placed in foster care. This provides permission, but is not a requirement, as some information would not be pertinent or necessary to share.

Communication with Reporters (Sections 48, 49) *(Minnesota Statute sections 626.556, subd. 7(a); 626.556, subd. 7(b); 626.556, subd. 7(c); 626.556, subd. 7(d), 626.556, subd. 10(j))*

PROBLEM: Mandated reporters are required to report alleged child maltreatment within 24 hours and follow-up with a written report in 72 hours. The follow-up written report mirrors the information previously reported in the oral report and is provided after the local social service agency has screened, or make a decision as to whether to accept the report for child maltreatment assessment or investigation, the report. The written report is redundant and unnecessary.

Local social services agencies are allowed to make collateral contacts while screening a child maltreatment report. There is lack of clarity in statute as to whether collaterals contacted by local social services agencies have the same protections as a mandated reporter.

Law enforcement and local social services are currently required to cross-report child maltreatment reports both orally and in writing. This is unnecessary and wasteful of agency time duplicating efforts to share information.

There is currently a requirement to inform all reporters of child maltreatment of the initial screening decision or initial disposition only when it is screened out. When a report is screened in, a reporter must request initial disposition. It is important for mandated reporters, particularly those actively involved in the provision of services or supports, be provided the initial disposition.

Language around the final disposition, or outcome of an accepted and fully assessed or investigated, is unclear. It

is important that mandated reporters receive information as to the outcome of an assessment or investigation, except when it would be detrimental to the child.

There is discrepancy as to when a report is received and later when an agency must respond under subdivision 10.

PROPOSAL: This proposal removes the requirement for a written report to follow an oral report of child maltreatment within 72 hours. This removes unnecessary, duplicative, and time consuming reports involving alleged child maltreatment.

This proposal adds a cross reference to subdivision 4 and subdivision 7(b) to expand immunity and to protect the rights of professionals providing collateral information to the local social service agency regarding child maltreatment reports.

This proposal removes the requirement that reports between law enforcement and the local social services agency be made both orally and in writing, only one method of cross-reporting is necessary.

This proposal adds requirement that agency screening a report share its decision with a mandated reporter, unless detrimental to the child. It further clarifies final disposition to ensure mandated reporters receive a summary of the outcomes of the assessment or investigation.

This proposal removes a problematic sentence that indicates a report may not be a report at the discretion of the local agency.

Cross-Reporting and Jurisdiction (Section 49) *(Minnesota Statute sections 626.556, subd. 10(a); 626.556, subd. 10(b); 626.556, subd. 10(c)*

PROBLEM: Law enforcement and local social services are currently required to cross-report child maltreatment reports both orally and in writing. This is unnecessary and wasteful of agency time duplicating efforts to share information.

There are jurisdictional issues when maltreatment occurred in another state but parent and child resides in Minnesota causing confusion and lack of clarity of who is to investigate and provide safety and services. Child safety is jeopardized if this is not clarified.

Minnesota Statute section 626.556 subdivision 10 outlines the local social services response for accepted reports of child maltreatment. There is lack of clarity and connection to other areas of 626.556 that defines which cases local social services are responsible for investigating.

PROPOSAL: This proposal removes the requirement that reports between law enforcement and the local social services agency be made both orally and in writing, only one method of cross-reporting is necessary.

This proposal clarifies local social services agency's responsibility when alleged maltreatment occurs outside of Minnesota but the child lives in Minnesota. Except for cases of imminent danger, residents of Minnesota are best served by Minnesota local social services agencies to assure ongoing safety and service provision.

This proposal adds a cross-reference to subdivision 3e and removes confusing language to clarify which reports involving sexual abuse or substantial child endangerment require an investigation by the local social service agency.

Data Sharing with Tribes (Sections 49, 52) *(Minnesota Statute sections 626.556, subd. 10(i); 626.556, subd. 11(a))*

PROBLEM: There is a lack of clarity as to whether local social service agencies may share not public information with tribal agencies, including the name of the reporter of child maltreatment. It is important that data sharing between tribes and local social services agencies are clear and support coordinated response. It is also important that data being shared is protected.

PROPOSAL: This proposal clarifies that local welfare agencies are required to share not public information, including the name of the reporter of child maltreatment, with an Indian's tribal social services agency.

This proposal adds a provision that clarifies that information shared with an Indian's tribal social service agency are private data on individuals.

This proposal also adds a provision that clarifies that a person who has received not public information under subdivision 10(i) shall not disclose the name of a reporter prior to the completion of the investigation or assessment.

Personal Care Organization (Section 50) *(Minnesota Statute section 626.556, subd. 10f)*

PROBLEM: Notification of maltreatment determinations involving Personal Care Attendants. Revise statutory language as to Personal Care Attendants so that when there is a maltreatment determination made against the Personal Care Attendant, whether as to their bio/adopted child or while in the role as a Personal Care Attendant, the local agency must notify the Personal Care Attendant's licensing agency.

PROPOSAL: This proposal adds a provision that clarifies when notification is required to personal care provider organizations when a maltreatment determination is made against a personal care attendant employed by the organization.

Multidisciplinary Teams (Section 54) *(Minnesota Statute section 626.558, subd. 2)*

PROBLEM: There is a lack of clarity in whether multi-disciplinary case consultation includes screening, a function that occurs when a report of alleged child maltreatment is received.

PROPOSAL: This proposal adds screening as a permissible activity under case consultation.

Child Care Assistance Program: Repeal duplicative language (Section 55) *(119B.125, subdivision 8)*

PROBLEM: Minnesota Statutes 119B.125, subdivision 7 and Minnesota Statutes 119B.125, subdivision 8 have very similar, but not identical language. This creates confusion for local agencies and child care providers.

PROPOSAL: The proposal repeals Minnesota Statutes 119B.125, subdivision 8.

The proposal repeals subdivision 8, rather than subdivision 7 for the following reasons: subdivision 8 does not reference recoupment and therefore does not fully reflect how overpayments are collected; subdivision 7 includes

a provision to audit child care providers which may be useful for monitoring compliance; and subdivision 7 better reflects policy about collecting overpayments due to fraud by stating that recovery "must" be sought.

Article 2 MENTAL HEALTH SERVICES

This section is removed by author amendment.

~~**Entry Level Mental Health Provider Training and Standards (Section 1)** *(256B.0943)*~~

~~**PROBLEM:** Mental Health Behavioral Aides are an entry level position in the children's mental health workforce. Currently, Mental Health Behavioral Aides are required to undergo preservice training as well as continuing education. However, the statute is unclear about what topics must be covered prior to providing services and what can be covered in continuing education. In addition, the training topics do not necessarily reflect the skills and knowledge needed for individuals to fulfill this role.~~

~~**PROPOSAL:** This proposal would update the training requirements to better align with the role of behavioral aides in delivering services as well as provide clarity on which topics must be covered before providing services and what training may be conducted as part of continuing education. These changes are intended to provide clarity for individuals seeking to become behavioral aides as well as provider seeking to hire new behavioral aides.~~

Article 3 OPERATIONS

Enhanced Program Integrity for Medicaid Services (Sections 1, 40–45) *(amends statutes §§13.46, Subd. 3; 256.9685, Subd. 1a; 256B.064, [Subd 3]; 256B.064, [Subd 4]; 256B.064, Subd 2; [256B.0646])*

PROBLEM: There are and continue to be opportunities to improve program integrity in Minnesota's Medicaid program. Providers convicted of crimes related to the provision, management, or administration of health services are receiving MHCP payments due to loop holes in statute and court procedures and sanctions/fines for repeated violations are not impactful enough to discourage violation. There is no requirement that MCHP providers check the MHCP Excluded Provider List on a regular basis in statute. The proposals in this legislation address these and other deficiencies in current law that hinder DHS/OIG's efforts to improve program integrity in Minnesota Medicaid.

PROPOSAL: The proposal strengthens oversight functions and investigative capacity within SIRS by, strengthening sanction authority and recipient support, and increases enforcement of state and federal exclusion requirements. The sections in this bill:

- Forfeit any Medicaid payments, to DHS, being held by DHS (up to the amount of any overpayment identified by the department or MCO) if the provider is convicted of a crime related to the provision, management, or administration of health services under medical assistance regardless of the amount charged in the criminal complaint or any criminal restitution order.
- Authorize the Commissioner to fine a provider $5,000 or 20% of the value of the claim for repeatedly violating chapter 256B or Minnesota rules, chapter 9505 (chapters governing Medical Assistance) related to the provision of services to program recipients and the submission of claims for payment.
- Clarify OIG authority to share information from open investigations with Law Enforcement.
- Require all providers who receive funding from MHCP to check the MHCP Excluded Provider List monthly and to immediately remove any individual or entity on the exclusion list who is employed or under contract with the provider in any capacity, even if the employee or entity is not responsible for direct patient care or direct submission of claims.

- Authorize the placement of a recipient in the Minnesota Restricted Recipient Program (MRRP) for the use of personal care assistance and home and community-based personal care services and supports as a result of repeated abuse or fraudulent billing, regardless of error, fault, or intent. The placement in MRRP is appealable.
- Allow DHS to use a new, CMS approved, review tool that is the current community standard to complete required inpatient hospital reviews.
- Allow DHS to send SIRS notice to recipients who will be placed in MRRP and vendors by U.S. mail, documented by affidavit of service, instead of by certified mail which is consistent with notice services under the Rules of Civil Procedure.

Out of State Nursing Home, Home Care Agency and Boarding Care Home Background Study Process Streamlining (Section 2) *(amends statute §144.057, Subd. 1)*

PROBLEM: The background study law was amended in 2015 in an attempt to streamline the background study process for out of state residents by requiring a national criminal check through the FBI rather than the previously required criminal record check through the state of residence. This change has dramatically reduced the time needed to conduct criminal history record checks. However, while the processing time for completing the criminal check portion of the background study has been greatly reduced, there remains a significant delay in the process associated with completing the subject's state of residency maltreatment check.

Providers indicate that hiring delays often have a significant impact on their ability to fully staff their programs, which in turn impacts their ability to provide services to DHS and MDH service recipients. These delays are especially difficult for providers located in rural cities and towns bordering other states.

PROPOSAL: This proposal would streamline the process for background studies on subjects who reside outside Minnesota and work in a licensed nursing home, home care agency, or boarding care home. It allows for the issuance of a clearance notice when no disqualifying criminal information is received from the subjects fingerprint-based FBI check, pending the result of a check for substantiated maltreatment in the other state. Receipt of information regarding substantiated maltreatment from another state is very rare. However, in the unlikely event that disqualifying information is received, the individual would be disqualified.

Ownership Clarification for Licensed Entities (Sections 3–8) *(amends statutes §§245A.02, Subd. 3; 245A.02 subd. 9; 245A.02 subd. 10c; 245A.04 subd. 1; 245A.07, Subd. 1; 245A.07, Subd. 3)*

PROBLEM: Current law (245A) prohibits transfer of a license, requiring a new license application for every change in ownership. Changes in ownership often do not alter the staff, policies, or services of the program – diminishing the need of the Department to monitor these transactions. The current definition of "controlling individual" is confusing to stakeholders and leaves the Department and service recipients vulnerable to misrepresentation. Some bad actors have taken advantage of this confusion by intentionally obscuring the information they provide to the Department, making it difficult to identify who should be disqualified from participating in other licensed programs if a controlling individual is associated with a license revocation.

PROPOSAL: This proposal modifies the Human Services Licensing Act (245A) to address several issues related to the ownership of licensed programs. This proposal will allow the Department to more accurately identify who should be held responsible for actions associated with a specific licensed program or service and will require license holders to notify the Department when there are changes in the people who are responsible with operating the program. The proposal will also streamline licensing applications where appropriate following changes in ownership and establish clear notification requirements following a change in ownership. Increased clarity will benefit the Department and providers by making expectations clear to license holders engaging in common

business transactions.

Provisional Licensing for Directly-Licensed Programs (Section 9) *(amends statute §245A.08, Subd. 3)*

PROBLEM: During the application and pre-licensure process, it is often clear to licensors that a program may have difficulty complying with licensing regulations. Existing statute, however, does not give the Division an option between granting or denying a license, resulting in some providers receiving a license and struggling significantly within their first two years of licensure. Newly licensed child care centers, for example, are particularly prone to receiving a fine, conditional license, or license revocation within their first 24 months of operation.

PROPOSAL: This proposal will create authority in 245A for the Department to issue a provisional license to license applicants across all service and facilities directly licensed by the Department, including child care centers, home and community based service providers, chemical dependency treatment and detoxification programs, specifically in instances where a license applicant has demonstrated substantial compliance with applicable licensing requirements and demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term. This proposal will improve the health and safety of children and vulnerable adults receiving care through DHS-licensed services and facilities by strengthening the Department's ability to hold newly licensed providers accountable for licensing violations and provide clarity to license applicants on what standards they must meet in order to receive a full license by the end of the provisional license term.

Clarifying Authority to Access FBI Criminal History (Sections 10–23) *(amends statutes §§245C.02, Subd 5; 245C.02, [Subd 5a]; 245C.02, [Subd 5b]; 245C.02, Subd 13b; 245C.05, Subd 1; 245C.05, Subd 5; 245C.08, Subd 1; 245C.08, Subd 3; 245C.12; 245C.32, Subd 1a; 245C.32, Subd. 2; 245C.32, Subd. 3; 245C.33, Subd. 4; 245C.34, Subd. 4)*

PROBLEM: In March of 2016, following a review of chapter 245C by the FBI's Criminal Justice Information Law Unit (CJILU), the Minnesota Bureau of Criminal Apprehension notified DHS that the CJILU determined that chapter 245C lacked the required criteria to allow access to FBI criminal history record information (CHRI). If DHS does not amend chapter 245C in the grace period granted by the FBI, the FBI has indicated it will discontinue conducting FBI record checks submitted by DHS.

PROPOSAL: This proposal clarifies the Department of Human Services' legislative authority to submit fingerprints to the Federal Bureau of Investigation (FBI) when completing a national background check as required for certain background studies conducted under Minnesota Statute chapter 245C for people working in health and human services. It amends chapter 245C with recommended language from the FBI's Criminal Justice Information Law Unit (CJILU) deemed necessary to allow DHS continued access to FBI records. The CJILU has granted DHS a grace period in order to amend chapter 245C during this legislative session so as not to interrupt our current background study processes.

Fair Hearing Appeals Process Improvement Updates and Clarifications (Section 24, 27–39) *(amends statutes §§245D.10, Subd. 3a; 256.045, Subd. 3; 256.045, Subd. 4; 256.0451, Subd. 1; 256.0451, Subd. 3; 256.0451, Subd. 5; 256.0451, Subd. 6; 256.0451, Subd. 7; 256.0451, Subd. 9; 256.0451, Subd. 10; 256.0451, Subd. 11; 256.0451, Subd. 12; 256.0451, Subd. 21; 256.046, Subd. 1)*

PROBLEM: There are opportunities to increase compliance, increase efficiencies, better allocate resources, reduced frustration by public assistance recipients, and reduce state fair hearing delays. For example, by allowing flexibility in who takes certain actions regarding appeals, the department can better distribute administrative tasks among available resources and speed up the processing of appeals. Additionally, by clarifying the county financial

dispute language, counties will be better informed of the process, which will allow for counties to resolve more cases without the need for an appeal, faster resolution for those that are appealed, and faster payment of claims.

PROPOSAL: This proposal will 1) correct citations in statute, 2) make various improvement, updates, and clarifications to the fair hearing appeals process, and 3) clarify administrative process for counties. The purpose of these corrections, updates, and clarifications are to ensure that recipients, advocates, providers, agencies and counties participating in appeals and administrative reviews understand roles and that process steps are clear. Additionally, this proposal will make the appeals process more user friendly and efficient for both the participants and the agency.

- Updates the fair hearing process and makes it consistent with the hearing process in Minnesota Rules 7700.0105 by adding three additional grounds for granting a request for continuance, rescheduling, or adjournment of a fair hearing appeal, adding three exceptions to the prohibition to submitting evidence after a fair hearing appeal, and provide the agency with flexibility in how it informs parties of the outcomes of fair hearings for emergency assistance and urgent matters that is more efficient for recipients.
- Clarifies that the review of appeals for termination of residential supports includes the review of proper notice.
- Adds program closure to the service termination reasons exempt from the requirement that a request for intervention services be made to the case manager prior to a license holder giving notice of service termination and lack of payment to the service termination reasons exempted from sending a notice that includes a summary of actions taken to minimize or eliminate the need for service termination or temporary service suspension.
- Creates flexibility so that the Appeals Division staff attorney or paralegals may hold prehearing conference on preliminary administrative matters.
- Clarifies that the appeals summary must be delivered three days before the hearing.
- Clarifies that a recipient can be represented in a fair hearing appeal by either an "authorized representative" or another advocate whom they have chosen to act on their behalf.
- Clarifies that in residential service terminations the term "agency" refers to provider who issued the notice of service termination.
- Clarifies and makes consistent with previous legislative changes requirements regarding face to face and in person hearings.
- Clarifies that the administrative hearing can occur if an adjudication has been made and the only open processes in district court are the CHIPS reviews.
- Codifies the evidentiary standard for state fair hearing decisions in administrative disqualification actions.

<u>Enhanced Program Integrity in Recipient Investigations</u> (Sections 25, 26, 46) *(amends statutes §§256.01, Subd. 18d; 256.01, Subd. 18e; 393.07, Subd. 10)*

PROBLEM: There are and continue to be opportunities to improve the operational integrity of the programs DHS implements and oversees with its partners. A lack of data has hindered the department's ability to accurately and reliably identify fraudulent behavior among public program recipients. Additionally, peace offices and welfare fraud investigators have been provided an authority that they cannot fulfill due to an inability to access relevant information, DHS has received requests from law enforcement to repeal this authority.

PROPOSAL: This proposal provides DHS with additional tools and authority to accurately and effectively enforce eligibility requirements. It also ensures that providers who have been excluded from one DHS program may not participate, enroll, become licensed, register, or receive grant funds in or from any other program administered by DHS. These sections:

- Modifies statute authorizing data sharing between the DPS' Driver and Vehicle Services and OIG to identify potential fraudulent activities by current or former public recipients who may be using false identities or expired legal status in MN by including Social Security or taxpayer identification number in the data shared with the commissioner of human services, and
- Repeals statute allowing peace offices or welfare fraud investigators to confiscate food stamps, authorization to purchase cards, or other assistance transaction devices found in the possession of any person who is neither a recipient of the food stamp program nor otherwise authorized to possess and use such material as these agents do not have access to eligibility data.

Agency Contact: Amy Dellwo, Legislative Director, Amy.Dellwo@state.mn.us, 651-431-2585

Description of author amendments:

Extend Length of Stay for Fully Discharged MSOP Clients *(253D.28, subd. 3)*

PROBLEM: The current length of stay for people who are committed as a Sexually Dangerous Person and/or Sexual Psychopathic Personality is 15 days. For those who have been institutionalized for many years, and may need additional time to arrange post-discharge housing, employment, public assistance, etc., this may not be a sufficient amount of time. The current length of stay is also a very short period of time for the commissioner of DHS to consider an appeal of the decision, as well as for local law enforcement and stakeholders to do notification activities when desired, as these activities cannot practically happen simulataneously.

PROPOSAL: This proposal changes the length of the automatic stay for clients that are fully discharged from MSOP from 15 days to 30 days. The Judicial Appeal Panel decides when a person committed as a Sexually Dangerous Person and/or Sexual Psychopathic Personality will be transferred out of a secure facility, provisionally discharged, or fully discharged. The Judicial Appeal Panel communicates this decision by issuing an order. Under current law, any such order is stayed (does not go into effect) for 15 days. An appeal of the order automatically stays it until the final resolution of the appeal. This proposal does not change the length of the stay for transfer or provisional discharge orders.

Adding 15 days to the length of stay would be beneficial in three ways. First, it would allow fully discharged individuals more time to make arrangements in the community while they remain in a familiar and supportive setting, which may increase their chances of a successful return to the community. Second, it would provide the commissioner of DHS more time to consider an appeal of the decision. Third, it would allow more time for local law enforcement and stakeholders to provide community notificiation, if and when desired.

Clarifying the Appeal Process for Northstar Adoption and Kinship Assistance *(amends § 256N.28, subd. 6 (b))*

PROBLEM: The appeals section of Northstar Care for Children contains many redundancies and has left human services judges uncertain of what actually constitutes extenuating circumstances in a benefit denial case. Each human services judge may interpret this section differently, and in some instances, the department has been asked to provide clarification of what extenuating circumstances might entail.

PROPOSAL: This proposal removes redundancy and unclear examples of extenuating circumstances for the Northstar Care for Children appeals process, simplifying the appeals process and allowing human services judges the ability to determine, based on existing statute, what may constitute extenuating circumstances.

Enhanced Program Integrity in Recipient & Provider Investigations *(amends statutes § 270B.14, Subd. 1)*

PROBLEM: There are, and continue to be, opportunities to improve the operational integrity of the programs DHS implements and oversees with its partners. Eligibility determinations for MA investigations could be more accurate and reliable with additional data to verify income.

PROPOSAL: This proposal allows DHS to receive the same type of income data from the DOR it receives on MinnesotaCare recipients, to verify the incomes of applicants and recipients of Medical Assistance.

Clarifying the Appeal Process for Northstar Adoption and Kinship Assistance *(amends § 256N.28, subd. 6 (b))*

PROBLEM: The appeals section of Northstar Care for Children contains many redundancies and has left human services judges uncertain of what actually constitutes extenuating circumstances in a benefit denial case. Each human services judge may interpret this section differently, and in some instances, the department has been asked to provide clarification of what extenuating circumstances might entail.

PROPOSAL: This proposal removes redundancy and unclear examples of extenuating circumstances for the Northstar Care for Children appeals process, simplifying the appeals process and allowing human services judges the ability to determine, based on existing statute, what may constitute extenuating circumstances.