MINNESOTA STATUTES PERTAINING TO RECOVERIES

INTRODUCTORY

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MN STATUTES PERTAINING TO RECOVERIES

MN ADMINISTRATIVE RULES

13.10 DATA ON DECEDENTS.

Subdivision 1.Definitions.

As used in this chapter:

(a) "Confidential data on decedents" are data which, prior to the death of the data subject, were classified by statute, federal law, or temporary classification as confidential data.

(b) "Private data on decedents" are data which, prior to the death of the data subject, were classified by statute, federal law, or temporary classification as private data.

(c) "Representative of the decedent" is the personal representative of the estate of the decedent during the period of administration, or if no personal representative has been appointed or after discharge of the personal representative, the surviving spouse, any child of the decedent, or, if there is no surviving spouse or children, the parents of the decedent.

Subd. 2.Classification of data on decedents.

Upon the death of the data subject, private data and confidential data shall become, respectively, private data on decedents and confidential data on decedents. Private data on decedents and confidential data on decedents shall become public when ten years have elapsed from the actual or presumed death of the individual and 30 years have elapsed from the creation of the data. For purposes of this subdivision, an individual is presumed to be dead if either 90 years elapsed since the creation of the data or 90 years have elapsed since the individual's birth, whichever is earlier, except that an individual is not presumed to be dead if readily available data indicate that the individual is still living.

Subd. 3.Rights.

Rights conferred by this chapter on individuals who are the subjects of private or confidential data shall, in the case of private data on decedents or confidential data on decedents, be exercised by the representative of the decedent. Nonpublic data concerning a decedent, created or collected after death, are accessible by the representative of the decedent. Nothing in this section may be construed to prevent access to appropriate data by a trustee appointed in a wrongful death action.

Subd. 4.Court review.

Any person may bring an action in the district court located in the county where the data is being maintained or, in the case of data maintained by a state agency, in any county, to authorize release of private data on decedents or confidential data on decedents. Individuals clearly identified in the data or the representative of the decedent may be given notice if doing so does not cause an undue delay in hearing the matter and, in any event, shall have standing in the court action. The responsible authority for the data being sought or any interested person may provide information regarding the possible harm or benefit from granting the request. The data in dispute shall be examined by the court in camera. The court may order all or part of the data to be released to the public or to the person bringing the action. In deciding whether or not to release the data, the court shall consider whether the harm to the surviving spouse, children, or next of kin of the decedent, the harm to any other individual identified in the data, or the

harm to the public outweighs the benefit to the person bringing the action or the benefit of the public. The court shall make a written statement of findings in support of its decision.

Subd. 5.Adoption records.

Notwithstanding any provision of this chapter, adoption records shall be treated as provided in sections 259.53, 259.61, 259.79, and 259.83 to 259.89.

Subd. 6.Retention of data.

Nothing in this section may be construed to require retention of government data, including private data on decedents or confidential data on decedents, for periods of time other than those established by the procedures provided in section 138.17, or any other statute.

History:

1985 c 298 s 8; 1986 c 444; 1989 c 351 s 3; 1990 c 573 s 2; 1994 c 631 s 31; 1995 c 259 art 1 s 4; 2012 c 290 s 14

13.46 WELFARE DATA.

Subdivision 1.Definitions.

As used in this section:

(a) "Individual" means an individual according to section 13.02, subdivision 8, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system according to statute or federal law, including, but not limited to, the aid to families with dependent children program formerly codified in sections 256.72 to 256.87, Minnesota family investment program, temporary assistance for needy families program, medical assistance, general assistance, general assistance medical care, child care assistance program, and child support collections.

(c) "Welfare system" includes the Department of Human Services, local social services agencies, county welfare agencies, private licensing agencies, the public authority responsible for child support enforcement, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and developmental disabilities, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract.

(d) "Mental health data" means data on individual clients and patients of community mental health centers, established under section 245.62, mental health divisions of counties and other providers under contract to deliver mental health services, or the ombudsman for mental health and developmental disabilities.

(e) "Fugitive felon" means a person who has been convicted of a felony and who has escaped from confinement or violated the terms of probation or parole for that offense.

(f) "Private licensing agency" means an agency licensed by the commissioner of human services under chapter 245A to perform the duties under section 245A.16.

Subd. 2.General.

(a) Data on individuals collected, maintained, used, or disseminated by the welfare system are private data on individuals, and shall not be disclosed except:

(1) according to section 13.05;

(2) according to court order;

(3) according to a statute specifically authorizing access to the private data;

(4) to an agent of the welfare system and an investigator acting on behalf of a county, the state, or the federal government, including a law enforcement person or attorney in the investigation or prosecution of a criminal, civil, or administrative proceeding relating to the administration of a program;

(5) to personnel of the welfare system who require the data to verify an individual's identity; determine eligibility, amount of assistance, and the need to provide services to an individual or family across programs; evaluate the effectiveness of programs; assess parental contribution amounts; and investigate suspected fraud;

(6) to administer federal funds or programs;

(7) between personnel of the welfare system working in the same program;

(8) to the Department of Revenue to assess parental contribution amounts for purposes of section 252.27, subdivision 2a, administer and evaluate tax refund or tax credit programs and to identify individuals who may benefit from these programs. The following information may be disclosed under this paragraph: an individual's and their dependent's names, dates of birth, Social Security numbers, income, addresses, and other data as required, upon request by the Department of Revenue. Disclosures by the commissioner of revenue to the commissioner of human services for the purposes described in this clause are governed by section 270B.14, subdivision 1. Tax refund or tax credit programs include, but are not limited to, the dependent care credit under section 290.067, the Minnesota working family credit under section 290.0671, the property tax refund and rental credit under section 290A.04, and the Minnesota education credit under section 290.0674;

(9) between the Department of Human Services, the Department of Employment and Economic Development, and when applicable, the Department of Education, for the following purposes:

(i) to monitor the eligibility of the data subject for unemployment benefits, for any employment or training program administered, supervised, or certified by that agency;

(ii) to administer any rehabilitation program or child care assistance program, whether alone or in conjunction with the welfare system;

(iii) to monitor and evaluate the Minnesota family investment program or the child care assistance program by exchanging data on recipients and former recipients of food support, cash

assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L; and

(iv) to analyze public assistance employment services and program utilization, cost, effectiveness, and outcomes as implemented under the authority established in Title II, Sections 201-204 of the Ticket to Work and Work Incentives Improvement Act of 1999. Health records governed by sections 144.291 to 144.298 and "protected health information" as defined in Code of Federal Regulations, title 45, section 160.103, and governed by Code of Federal Regulations, title 45, parts 160-164, including health care claims utilization information, must not be exchanged under this clause;

(10) to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the individual or other individuals or persons;

(11) data maintained by residential programs as defined in section 245A.02 may be disclosed to the protection and advocacy system established in this state according to Part C of Public Law 98-527 to protect the legal and human rights of persons with developmental disabilities or other related conditions who live in residential facilities for these persons if the protection and advocacy system receives a complaint by or on behalf of that person and the person does not have a legal guardian or the state or a designee of the state is the legal guardian of the person;

(12) to the county medical examiner or the county coroner for identifying or locating relatives or friends of a deceased person;

(13) data on a child support obligor who makes payments to the public agency may be disclosed to the Minnesota Office of Higher Education to the extent necessary to determine eligibility under section 136A.121, subdivision 2, clause (5);

(14) participant Social Security numbers and names collected by the telephone assistance program may be disclosed to the Department of Revenue to conduct an electronic data match with the property tax refund database to determine eligibility under section 237.70, subdivision 4a;

(15) the current address of a Minnesota family investment program participant may be disclosed to law enforcement officers who provide the name of the participant and notify the agency that:

(i) the participant:

(A) is a fugitive felon fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony under the laws of the jurisdiction from which the individual is fleeing; or

(B) is violating a condition of probation or parole imposed under state or federal law;

(ii) the location or apprehension of the felon is within the law enforcement officer's official duties; and

(iii) the request is made in writing and in the proper exercise of those duties;

(16) the current address of a recipient of general assistance or general assistance medical care may be disclosed to probation officers and corrections agents who are supervising the recipient and to law enforcement officers who are investigating the recipient in connection with a felony level offense;

(17) information obtained from food support applicant or recipient households may be disclosed to local, state, or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act, according to Code of Federal Regulations, title 7, section 272.1 (c);

(18) the address, Social Security number, and, if available, photograph of any member of a household receiving food support shall be made available, on request, to a local, state, or federal law enforcement officer if the officer furnishes the agency with the name of the member and notifies the agency that:

(i) the member:

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony in the jurisdiction the member is fleeing;

(B) is violating a condition of probation or parole imposed under state or federal law; or

(C) has information that is necessary for the officer to conduct an official duty related to conduct described in subitem (A) or (B);

(ii) locating or apprehending the member is within the officer's official duties; and

(iii) the request is made in writing and in the proper exercise of the officer's official duty;

(19) the current address of a recipient of Minnesota family investment program, general assistance, general assistance medical care, or food support may be disclosed to law enforcement officers who, in writing, provide the name of the recipient and notify the agency that the recipient is a person required to register under section 243.166, but is not residing at the address at which the recipient is registered under section 243.166;

(20) certain information regarding child support obligors who are in arrears may be made public according to section 518A.74;

(21) data on child support payments made by a child support obligor and data on the distribution of those payments excluding identifying information on obligees may be disclosed to all obligees to whom the obligor owes support, and data on the enforcement actions undertaken by the public authority, the status of those actions, and data on the income of the obligor or obligee may be disclosed to the other party;

(22) data in the work reporting system may be disclosed under section 256.998, subdivision 7;

(23) to the Department of Education for the purpose of matching Department of Education student data with public assistance data to determine students eligible for free and reduced-price

meals, meal supplements, and free milk according to United States Code, title 42, sections 1758, 1761, 1766, 1766a, 1772, and 1773; to allocate federal and state funds that are distributed based on income of the student's family; and to verify receipt of energy assistance for the telephone assistance plan;

(24) the current address and telephone number of program recipients and emergency contacts may be released to the commissioner of health or a local board of health as defined in section 145A.02, subdivision 2, when the commissioner or local board of health has reason to believe that a program recipient is a disease case, carrier, suspect case, or at risk of illness, and the data are necessary to locate the person;

(25) to other state agencies, statewide systems, and political subdivisions of this state, including the attorney general, and agencies of other states, interstate information networks, federal agencies, and other entities as required by federal regulation or law for the administration of the child support enforcement program;

(26) to personnel of public assistance programs as defined in section 256.741, for access to the child support system database for the purpose of administration, including monitoring and evaluation of those public assistance programs;

(27) to monitor and evaluate the Minnesota family investment program by exchanging data between the Departments of Human Services and Education, on recipients and former recipients of food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(28) to evaluate child support program performance and to identify and prevent fraud in the child support program by exchanging data between the Department of Human Services, Department of Revenue under section 270B.14, subdivision 1, paragraphs (a) and (b), without regard to the limitation of use in paragraph (c), Department of Health, Department of Employment and Economic Development, and other state agencies as is reasonably necessary to perform these functions;

(29) counties operating child care assistance programs under chapter 119B may disseminate data on program participants, applicants, and providers to the commissioner of education; or

(30) child support data on the parents and the child may be disclosed to agencies administering programs under titles IV-B and IV-E of the Social Security Act, as provided by federal law. Data may be disclosed only to the extent necessary for the purpose of establishing parentage or for determining who has or may have parental rights with respect to a child, which could be related to permanency planning.

(b) Information on persons who have been treated for drug or alcohol abuse may only be disclosed according to the requirements of Code of Federal Regulations, title 42, sections 2.1 to 2.67.

(c) Data provided to law enforcement agencies under paragraph (a), clause (15), (16), (17), or (18), or paragraph (b), are investigative data and are confidential or protected nonpublic

while the investigation is active. The data are private after the investigation becomes inactive under section 13.82, subdivision 5, paragraph (a) or (b).

(d) Mental health data shall be treated as provided in subdivisions 7, 8, and 9, but are not subject to the access provisions of subdivision 10, paragraph (b).

For the purposes of this subdivision, a request will be deemed to be made in writing if made through a computer interface system.

Subd. 3.Investigative data.

(a) Data on persons, including data on vendors of services, licensees, and applicants that is collected, maintained, used, or disseminated by the welfare system in an investigation, authorized by statute, and relating to the enforcement of rules or law are confidential data on individuals pursuant to section 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to statute or valid court order;

(3) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense; or

(4) to provide notices required or permitted by statute.

The data referred to in this subdivision shall be classified as public data upon submission to an administrative law judge or court in an administrative or judicial proceeding. Inactive welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

(b) Notwithstanding any other provision in law, the commissioner of human services shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and developmental disabilities upon the request of the ombudsman.

(c) Notwithstanding paragraph (a) and section 13.39, the existence of an investigation by the commissioner of possible overpayments of public funds to a service provider is public data during an investigation.

Subd. 4.Licensing data.

(a) As used in this subdivision:

(1) "licensing data" are all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" are Social Security numbers, identity of and letters of reference, insurance information, reports from the Bureau of Criminal Apprehension, health examination reports, and social/home studies.

(b)(1)(i) Except as provided in paragraph (c), the following data on applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician.

(ii) When a correction order, an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license has been issued, or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions.

(iii) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is responsible for maltreatment under section 626.556 or 626.557, the identity of the applicant or license holder as the individual responsible for maltreatment is public data at the time of the issuance of the license denial or sanction.

(iv) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is disqualified under chapter 245C, the identity of the license holder or applicant as the disqualified individual and the reason for the disqualification are public data at the time of the issuance of the licensing sanction or denial. If the applicant or license holder requests reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data.

(2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b, when any person subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home is a substantiated perpetrator of maltreatment, and the substantiated maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator of maltreatment is public data. For purposes of this clause, a person is a substantiated perpetrator if the maltreatment determination

has been upheld under section 256.045; 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or facility has not timely exercised appeal rights under these sections, except as provided under clause (1).

(3) For applicants who withdraw their application prior to licensure or denial of a license, the following data are public: the name of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, and the date of withdrawal of the application.

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that an individual subject to disqualification under chapter 245C is disqualified, the disqualification as a basis for the licensing sanction or denial is public data. As specified in clause (1), item (iv), if the disqualified individual is the license holder or applicant, the identity of the license holder or applicant and the reason for the disqualification are public data; and, if the license holder or applicant requested reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data. If the disqualified individual is an individual other than the license holder or applicant, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

(7) Notwithstanding clause (1), for child foster care, only the name of the license holder and the status of the license are public if the county attorney has requested that data otherwise classified as public data under clause (1) be considered private data based on the best interests of a child in placement in a licensed program.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters of complaints or alleged violations of licensing standards under chapters 245A, 245B, 245C, and applicable rules and alleged maltreatment under sections 626.556 and 626.557, are confidential data and may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as part of a disciplinary proceeding in which there is a public hearing concerning a license which has been suspended, immediately suspended, revoked, or denied.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of law are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, or 626.5572, subdivision 18, are subject to the destruction provisions of sections 626.556, subdivision 11c, and 626.557, subdivision 12b.

(h) Upon request, not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report of substantiated maltreatment as defined in section 626.556 or 626.557 may be exchanged with the Department of Health for purposes of completing background studies pursuant to section 144.057 and with the Department of Corrections for purposes of completing background studies pursuant to section 241.021.

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, data on individuals collected by the commissioner of human services according to investigations under chapters 245A, 245B, and 245C, and sections 626.556 and 626.557 may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the ombudsman for mental health and developmental disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated or the information may otherwise be relevant to the board's regulatory jurisdiction. Background study data on an individual who is the subject of a background study under chapter 245C for a licensed service for which the commissioner of human services is the license holder may be shared with the commissioner and the commissioner's delegate by the licensing division. Unless otherwise specified in this chapter, the identity of a reporter of alleged maltreatment or licensing violations may not be disclosed.

(j) In addition to the notice of determinations required under section 626.556, subdivision 10f, if the commissioner or the local social services agency has determined that an individual is a substantiated perpetrator of maltreatment of a child based on sexual abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social services agency knows that the individual is a person responsible for a child's care in another facility, the commissioner or local social services agency shall notify the head of that facility of this determination. The notification must include an explanation of the individual's available appeal rights and the status of any appeal. If a notice is given under this paragraph, the government entity making the notification shall provide a copy of the notice to the individual who is the subject of the notice.

(k) All not public data collected, maintained, used, or disseminated under this subdivision and subdivision 3 may be exchanged between the Department of Human Services, Licensing Division, and the Department of Corrections for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority.

Subd. 5.Medical data; contracts.

Data relating to the medical, psychiatric, or mental health of any individual, including diagnosis, progress charts, treatment received, case histories, and opinions of health care providers, that are maintained, used, or disseminated by any agency to the welfare system is private data on individuals and will be available to the data subject, unless the private health care provider has clearly requested in writing that the data be withheld pursuant to sections 144.291 to 144.298. Data on individuals that is collected, maintained, used, or disseminated by a private health care provider under contract to any agency of the welfare system are private data on individuals, and are subject to the provisions of sections 13.02 to 13.07 and this section, except that the provisions of section 13.04, subdivision 3, shall not apply. Access to medical data referred to in this subdivision by the individual who is the subject of the data is subject to the provisions of sections 144.291 to 144.298. Access to information that is maintained by the public authority responsible for support enforcement and that is needed to enforce medical support is subject to the provisions of section 518A.41.

Subd. 6.Other data.

Data collected, used, maintained, or disseminated by the welfare system that are not data on individuals are public pursuant to section 13.03, except the following data:

(a) investigative data classified by section 13.39;

(b) welfare investigative data classified by section 13.46, subdivision 3; and

(c) security information classified by section 13.37, subdivision 2.

Subd. 7.Mental health data.

(a) Mental health data are private data on individuals and shall not be disclosed, except:

(1) pursuant to section 13.05, as determined by the responsible authority for the community mental health center, mental health division, or provider;

(2) pursuant to court order;

(3) pursuant to a statute specifically authorizing access to or disclosure of mental health data or as otherwise provided by this subdivision; or

(4) with the consent of the client or patient.

(b) An agency of the welfare system may not require an individual to consent to the release of mental health data as a condition for receiving services or for reimbursing a community mental health center, mental health division of a county, or provider under contract to deliver mental health services.

(c) Notwithstanding section 245.69, subdivision 2, paragraph (f), or any other law to the contrary, the responsible authority for a community mental health center, mental health division of a county, or a mental health provider must disclose mental health data to a law enforcement agency if the law enforcement agency provides the name of a client or patient and communicates that the:

(1) client or patient is currently involved in an emergency interaction with the law enforcement agency; and

(2) data is necessary to protect the health or safety of the client or patient or of another person.

The scope of disclosure under this paragraph is limited to the minimum necessary for law enforcement to respond to the emergency. Disclosure under this paragraph may include, but is not limited to, the name and telephone number of the psychiatrist, psychologist, therapist, mental health professional, practitioner, or case manager of the client or patient. A law enforcement agency that obtains mental health data under this paragraph shall maintain a record of the requestor, the provider of the information, and the client or patient name. Mental health data obtained by a law enforcement agency under this paragraph are private data on individuals and must not be used by the law enforcement agency for any other purpose. A law enforcement agency that obtains mental health data under this paragraph shall inform the subject of the data that mental health data was obtained.

(d) In the event of a request under paragraph (a), clause (4), a community mental health center, county mental health division, or provider must release mental health data to Criminal Mental Health Court personnel in advance of receiving a copy of a consent if the Criminal Mental Health Court personnel communicate that the:

(1) client or patient is a defendant in a criminal case pending in the district court;

(2) data being requested is limited to information that is necessary to assess whether the defendant is eligible for participation in the Criminal Mental Health Court; and

(3) client or patient has consented to the release of the mental health data and a copy of the consent will be provided to the community mental health center, county mental health division, or provider within 72 hours of the release of the data.

For purposes of this paragraph, "Criminal Mental Health Court" refers to a specialty criminal calendar of the Hennepin County District Court for defendants with mental illness and

brain injury where a primary goal of the calendar is to assess the treatment needs of the defendants and to incorporate those treatment needs into voluntary case disposition plans. The data released pursuant to this paragraph may be used for the sole purpose of determining whether the person is eligible for participation in mental health court. This paragraph does not in any way limit or otherwise extend the rights of the court to obtain the release of mental health data pursuant to court order or any other means allowed by law.

Subd. 8.Access for auditing.

To the extent required by state or federal law, representatives of federal, state, or local agencies shall have access to data maintained by public or private community mental health centers, mental health divisions of counties, and other providers under contract to deliver mental health services which is necessary to achieve the purpose of auditing. Public or private community mental health centers, mental health divisions of counties, and other providers under contract to deliver mental health services shall not permit this data to identify any particular patient or client by name or contain any other unique personal identifier.

Subd. 9.Fraud.

In cases of suspected fraud, in which access to mental health data maintained by public or private community mental health centers or mental health divisions of counties and other providers under contract to deliver mental health services is necessary to a proper investigation, the county board or the appropriate prosecutorial authority shall refer the matter to the commissioner of human services. The commissioner and agents of the commissioner, while maintaining the privacy rights of individuals and families, shall have access to mental health data to conduct an investigation. Upon deeming it appropriate as a result of the investigation, the commissioner shall refer the matter to the appropriate legal authorities and may disseminate to those authorities whatever mental health data are necessary to properly prosecute the case.

Subd. 10.Responsible authority.

(a) Notwithstanding any other provision of this chapter to the contrary, the responsible authority for each component of the welfare system listed in subdivision 1, clause (c), shall be as follows:

(1) the responsible authority for the Department of Human Services, state hospitals, and nursing homes is the commissioner of the Department of Human Services;

(2) the responsible authority of a county welfare agency is the director of the county welfare agency;

(3) the responsible authority for a local social services agency, human services board, or community mental health center board is the chair of the board;

(4) the responsible authority of any person, agency, institution, organization, or other entity under contract to any of the components of the welfare system listed in subdivision 1, clause (c), is the person specified in the contract; and

(5) the responsible authority of the public authority for child support enforcement is the head of the public authority for child support enforcement.

(b) A responsible authority shall allow another responsible authority in the welfare system access to data classified as not public data when access is necessary for the administration and management of programs, or as authorized or required by statute or federal law.

Subd. 11.Nursing home appraisals.

Names, addresses, and other data that could identify nursing homes selected as part of a random sample to be appraised by the Department of Human Services in its rate setting process are classified as protected nonpublic data until the sample has been completed.

Subd. 12.Child care resource and referral programs.

This subdivision applies to data collected by child care resource and referral programs under section 119B.19. Data collected under section 119B.19 are not licensing data under subdivision 4. Data on unlicensed family child care providers are data on individuals governed by subdivision 2. In addition to the disclosures authorized by this section, the names and addresses of unlicensed family child care providers may be disclosed to the commissioner of education for purposes of promoting and evaluating school readiness.

Subd. 13.Family, friend, and neighbor grant program.

This subdivision applies to data collected by family, friend, and neighbor (FFN) grantees under section 119B.232. Data collected under section 119B.232 are data on individuals governed by subdivision 2. The commissioner may disclose private data collected under this section to early childhood care and education experts at the University of Minnesota to evaluate the impact of the grants under subdivision 2 on children's school readiness and to evaluate the FFN grant program. The commissioner may disclose the names and addresses of FFN caregivers to the commissioner of education for purposes of promoting and evaluating school readiness.

History:

1979 c 328 s 15; 1980 c 603 s 23; 1980 c 615 s 34; 1981 c 311 s 39; 1982 c 545 s 8,24; 1983 c 15 s 1; 1983 c 312 art 8 s 1; 1984 c 436 s 19-24; 1984 c 579 s 1-5; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1985 c 293 s 1,2; 1985 c 298 s 13-17; 1986 c 337 s 1; 1986 c 444; 1987 c 333 s 22; 1987 c 351 s 8-11; 1987 c 352 s 1; 1988 c 598 s 3; 1989 c 209 art 1 s 4; art 2 s 2; 1989 c 282 art 5 s 1; 1989 c 351 s 6; 1990 c 568 art 3 s 1; 1990 c 573 s 6,7; 1991 c 292 art 5 s 1; 1993 c 171 s 1; 1993 c 351 s 8-10; 1994 c 483 s 1; 1994 c 488 s 8; 1994 c 618 art 1 s 10,11; 1994 c 630 art 11 s 2; 1994 c 631 s 31; 1994 c 636 art 4 s 2; 1995 c 178 art 3 s 1; 1995 c 212 art 3 s 59; 1995 c 229 art 4 s 1; 1995 c 257 art 1 s 1; 1995 c 259 art 1 s 10-12; 1996 c 412 art 1 s 1; 1996 c 440 art 1 s 13; 1997 c 85 art 4 s 1,2; 1997 c 203 art 6 s 1; 1Sp1997 c 3 s 5; 1998 c 371 s 2; 1998 c 397 art 11 s 3; 1999 c 99 s 7; 1999 c 107 s 66; 1999 c 159 s 1,; 1999 c 205 art 1 s 1; 1999 c 227 s 22; 1999 c 241 art 9 s 1; 1999 c 245 art 7 s 1; 2000 c 260 s 87,90; 2000 c 311 art 6 s 1; 2000 c 343 s 4; 2001 c 178 art 2 s 4; 1Sp2001 c 9 art 10 s 66; art 14 s 1; 2002 c 375 art 1 s 2-4; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 1Sp2003 c 14 art 1 s 106; 2004 c 206 s 52; 2004 c 290 s 7-9; 2005 c 10 art 1 s 6; 2005 c 56 s 1; 2005 c 107 art 2 s 60; 2005 c 163 s 40; 2005 c 164 s 29; 1Sp2005 c 4 art 1 s 1; 1Sp2005 c 7 s 28; 2006 c 280 s

46; 2007 c 112 s 1,2; 2007 c 147 art 2 s 1; art 10 s 15; 2008 c 361 art 7 s 1,2; 2009 c 142 art 1 s 3,4; 2009 c 163 art 2 s 1; 2012 c 216 art 15 s 1-3; 2012 c 290 s 25-29

119B.11 COUNTY CONTRIBUTION.

Subdivision 1.County contributions required.

(a) In addition to payments from basic sliding fee child care program participants, each county shall contribute from county tax or other sources a fixed local match equal to its calendar year 1996 required county contribution reduced by the administrative funding loss that would have occurred in state fiscal year 1996 under section 119B.15. The commissioner shall recover funds from the county as necessary to bring county expenditures into compliance with this subdivision. The commissioner may accept county contributions, including contributions above the fixed local match, in order to make state payments.

(b) The commissioner may accept payments from counties to:

(1) fulfill the county contribution as required under subdivision 1;

(2) pay for services authorized under this chapter beyond those paid for with federal or state funds or with the required county contributions; or

(3) pay for child care services in addition to those authorized under this chapter, as authorized under other federal, state, or local statutes or regulations.

(c) The county payments must be deposited in an account in the special revenue fund. Money in this account is appropriated to the commissioner for child care assistance under this chapter and other applicable statutes and regulations and is in addition to other state and federal appropriations.

Subd. 2.

[Repealed, 1997 c 162 art 1 s 19]

Subd. 2a.Recovery of overpayments.

(a) An amount of child care assistance paid to a recipient in excess of the payment due is recoverable by the county agency under paragraphs (b) and (c), even when the overpayment was caused by agency error or circumstances outside the responsibility and control of the family or provider.

(b) An overpayment must be recouped or recovered from the family if the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements. If the family remains eligible for child care assistance, the overpayment must be recovered through recoupment as identified in Minnesota Rules, part 3400.0187, except that the overpayments must be calculated and collected on a service period basis. If the family no longer remains eligible for child care assistance, the county may choose to initiate efforts to recover overpayments from the family for overpayment less than $50. If the overpayment is greater than or equal to $50, the county shall seek voluntary repayment of the overpayment from the family.

If the county is unable to recoup the overpayment through voluntary repayment, the county shall initiate civil court proceedings to recover the overpayment unless the county's costs to recover the overpayment will exceed the amount of the overpayment. A family with an outstanding debt under this subdivision is not eligible for child care assistance until: (1) the debt is paid in full; or (2) satisfactory arrangements are made with the county to retire the debt consistent with the requirements of this chapter and Minnesota Rules, chapter 3400, and the family is in compliance with the arrangements.

(c) The county must recover an overpayment from a provider if the overpayment did not benefit the family by causing it to receive more child care assistance or to pay less for child care expenses than the family otherwise would have been eligible to receive or required to pay under child care assistance program requirements, and benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements. If the provider continues to care for children receiving child care assistance, the overpayment must be recovered through reductions in child care assistance payments for services as described in an agreement with the county. The provider may not charge families using that provider more to cover the cost of recouping the overpayment. If the provider no longer cares for children receiving child care assistance, the county may choose to initiate efforts to recover overpayments of less than $50 from the provider. If the overpayment is greater than or equal to $50, the county shall seek voluntary repayment of the overpayment from the provider. If the county is unable to recoup the overpayment through voluntary repayment, the county shall initiate civil court proceedings to recover the overpayment unless the county's costs to recover the overpayment will exceed the amount of the overpayment. A provider with an outstanding debt under this subdivision is not eligible to care for children receiving child care assistance until:

(1) the debt is paid in full; or

(2) satisfactory arrangements are made with the county to retire the debt consistent with the requirements of this chapter and Minnesota Rules, chapter 3400, and the provider is in compliance with the arrangements.

(d) When both the family and the provider acted together to intentionally cause the overpayment, both the family and the provider are jointly liable for the overpayment regardless of who benefited from the overpayment. The county must recover the overpayment as provided in paragraphs (b) and (c). When the family or the provider is in compliance with a repayment agreement, the party in compliance is eligible to receive child care assistance or to care for children receiving child care assistance despite the other party's noncompliance with repayment arrangements.

Subd. 3.Federal money; state recovery.

The commissioner shall recover from counties any state or federal money that was spent for persons found to be ineligible, except if the recovery is made by a county agency using any method other than recoupment, the county may keep 25 percent of the recovery. If a federal audit exception is taken based on a percentage of federal earnings, all counties shall pay a share proportional to their respective federal earnings during the period in question.

Subd. 4.Maintenance of funding effort.

To receive money through this program, each county shall certify, in its annual plan to the commissioner, that the county has not reduced allocations from other federal and state sources, which, in the absence of the child care fund, would have been available for child care assistance. However, the county must continue contributions, as necessary, to maintain on the basic sliding fee program, families who are receiving assistance on July 1, 1995, until the family loses eligibility for the program or until a family voluntarily withdraws from the program. This subdivision does not affect the local match required for this program under other sections of the law.

History:

1Sp1985 c 14 art 9 s 72; 1987 c 403 art 3 s 70; 1989 c 282 art 2 s 150; 1995 c 139 s 1; 1995 c 207 art 4 s 33-35; 1997 c 162 art 4 s 34-36; 1999 c 205 art 1 s 32; 1Sp2001 c 3 art 1 s 5; 1Sp2003 c 14 art 9 s 19

149A.97 PRENEED ARRANGEMENTS.

Subdivision 1.Purpose and intent.

It is the intent of the legislature that this section be construed as a limitation upon the manner in which a funeral provider is permitted to accept funds in prepayment of funeral services or burial site services to be performed in the future or in prepayment of funeral or burial goods to be used in connection with the final disposition of human remains. It is further intended to allow members of the public to arrange and pay for funeral goods, funeral services, burial site goods, or burial site services for themselves and their families in advance of need while at the same time providing all possible safeguards so that the prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of the services and goods selected.

Subd. 2.Scope and requirements.

This section shall not apply to any funeral goods or burial site goods purchased and delivered, either at purchase or within a commercially reasonable amount of time thereafter. When prior to the death of any person, that person or another, on behalf of that person, enters into any transaction, makes a contract, or any series or combination of transactions or contracts with a funeral provider lawfully doing business in Minnesota, other than an insurance company licensed to do business in Minnesota selling approved insurance or annuity products, by the terms of which, goods or services related to the final disposition of that person will be furnished at-need, then the total of all money paid by the terms of the transaction, contract, or series or combination of transactions or contracts shall be held in trust for the purpose for which it has been paid. The person for whose benefit the money was paid shall be known as the beneficiary, the person or persons who paid the money shall be known as the purchaser, and the funeral provider shall be known as the depositor.

Subd. 3.Nature of trust.

Except as provided in this section, nothing in this section shall abate the rights, duties, and powers granted under chapters 501B and 520. A trust created for the holding of preneed arrangement funds shall be revocable, in its entirety, unless specifically limited by the person purchasing the preneed funeral goods, funeral services, burial site goods, or burial site services. If the purchaser chooses to limit the revocability of the trust funds, the limitation must be declared in the trust instrument and must be limited to an amount equivalent to the allowable supplemental security income asset exclusion used for determining eligibility for public assistance at the time the trust is created.

Subd. 3a.Requirements for preneed funeral agreements.

It is unlawful for any person residing or doing business in this state to enter a preneed funeral agreement unless the agreement:

(1) is written in clear, understandable language and printed in a type that is easy to read in size and style;

(2) contains a complete, itemized description of the funeral goods, funeral services, burial site goods, or burial site services selected or purchased, including, when appropriate, manufacturer's name, model numbers, style numbers, and description of the type of material used in construction;

(3) discloses clearly and conspicuously whether the prices of the goods and services selected are guaranteed;

(4) discloses that funding options for a preneed funeral agreement consist of either prepayment to the funeral provider or the purchase of an insurance policy;

(5) discloses whether the funds received from the purchaser are required to be placed in a trust and, if the funds are required to be placed in a trust, provides the following information:

(i) lists the location of the trust account, including the name, address, and telephone number of the institution where the money will be held and any identifying account numbers, the amount of money to be trusted, and the names of the trustees; and

(ii) advises the purchaser as to the disposition of the interest from the trust and as to responsibility for taxes owed on the interest;

(6) contains the names, addresses, and telephone numbers of the Minnesota Department of Health as the regulatory agency for preneed trust accounts and the Minnesota Attorney General's Office as the regulatory agency that handles consumer complaints;

(7) discloses clearly and conspicuously that any person who makes payment under a preneed funeral agreement may cancel the agreement subject to the procedures for cancellation specified in subdivision 6a;

(8) contains the following statement, in boldfaced type and a minimum size of ten points:

"Within 15 calendar days after receipt of any money required to be held in trust, all such money must be deposited in a banking institution, savings association, or credit union,

organized under state or federal laws, the accounts of which are insured by an instrumentality of the federal government. The person for whose benefit the money was paid according to this agreement shall be known as the beneficiary; the person or persons who paid the money shall be known as the purchaser; and the funeral provider shall be known as the depositor. The money must be carried in a separate account with the names of the depositor and the purchaser as trustees for the beneficiary.

The preneed arrangement trust shall be considered an asset of the purchaser until the death of the beneficiary. At the death of the beneficiary, the money in the trust shall be considered an asset of the beneficiary's estate, to the extent that the value of the trust exceeds the actual value for the goods and services provided at-need. This does not alter any asset exclusion requirements that exist under federal law. The depositor as trustee must disclose in writing the location of the trust account, including the name and address of the institution where the money is being held and any identifying account numbers, to the beneficiary when the money is deposited and when there are any subsequent changes to the location of the trust account.";

(9) for agreements with revocable trusts, contains the following statement, in boldfaced type and a minimum size of ten points:

"REVOCABLE TRUST:

The preneed arrangement trust being created by the purchaser is revocable. These trust funds, including all principal and accrued interest, are the purchaser's assets. The purchaser may withdraw the principal and accrued interest at any time prior to the death of the beneficiary. At the death of the beneficiary, the funds shall be distributed in their entirety, principal plus accrued interest, with no fees retained by the trustees as administrative fees. The funds shall be distributed for the payment of the at-need funeral goods, funeral services, burial site goods, or burial site services selected, with any excess funds distributed to the beneficiary's estate. At any time before or at the time of the beneficiary's death, the purchaser may transfer the preneed arrangements and related trust funds for use in the payment of funeral goods, funeral services, burial site goods, or burial site services. The purchaser may not be charged any fee in connection with the transfer of a preneed arrangement and trust funds.";

(10) for agreements with irrevocable trusts, contains the following statement, in boldfaced type and a minimum size of ten points:

"IRREVOCABLE TRUST:

A trust created to hold preneed arrangement funds is revocable in its entirety unless specifically limited by the purchaser. The purchaser has chosen to create an irrevocable trust in the amount of $ (insert the dollar amount of the purchaser's irrevocable trust). The revocable portion of this trust fund is limited to that amount that exceeds the allowable supplemental security income asset exclusion used for determining eligibility for public assistance at the time the trust is created. The principal and accrued interest may not be withdrawn from the trust prior to the beneficiary's death, except to the extent that the trust funds exceed the irrevocable trust limitation. At the time of the beneficiary's death, the funds shall be distributed in their entirety, principal plus accrued interest, with no fees retained by the trustees as administrative fees. The

funds shall be distributed for the payment of the at-need funeral goods, funeral services, burial site goods, or burial site services selected, with any excess funds distributed to the beneficiary's estate. At any time prior to or at the time of the beneficiary's death, the purchaser may transfer the preneed arrangements and trust funds for use in the payment of funeral goods, funeral services, burial site goods, or burial site services. The purchaser may not be charged any fee in connection with the transfer of a preneed arrangement and trust funds.";

(11) provides that if the particular funeral goods, funeral services, burial site goods, or burial site services specified in the agreement are unavailable at the time of delivery, the funeral provider must furnish goods and services similar in style and at least equal in quality to the material and workmanship of the goods or services specified and that the representative of the beneficiary has the right to choose the goods or services to be substituted; and

(12) contains an itemization of the sale of grave lots, spaces, lawn crypts, niches, or mausoleum crypts separate from all other goods and services selected.

Subd. 4.Freedom of choice; designation of trustee.

The purchaser, regardless of whether the funds held in trust are designated revocable or irrevocable, retains the right to designate the trustee. At any time prior to the death of the beneficiary, the purchaser may designate a different trustee. Upon the death of the beneficiary, subject to section 149A.80, the rights of the purchaser vest in the individual with the legal right to control the disposition of the remains of the beneficiary. The depositor as trustee shall not have the right or power to designate another trustee prior to the death of the beneficiary or subsequent to such death.

Subd. 4a.Finance charges on preneed arrangements prohibited.

Funeral providers are prohibited from assessing finance charges on preneed arrangements.

Subd. 5.Deposit of trust funds and disclosures.

Within 15 calendar days after receipt of any money required to be held in trust, all of the money must be deposited in a banking institution, savings or building and loan association, or credit union, organized under state or federal laws, the accounts of which are insured by an instrumentality of the federal government. The money must be carried in a separate account with the name of the depositor and the purchaser as trustees for the beneficiary. The depositor as trustee shall not have power to distribute funds, either principal or interest, from the account until the death of the beneficiary, subject to section 149A.80. For purposes of this section, distribute does not mean transferring the trust funds to different investment accounts within an institution or between institutions provided that the depositor as trustee does not have sole access to the funds in a negotiable form. This section shall be construed to limit the depositor's access to trust funds, in a negotiable form, prior to the death of a beneficiary. The preneed arrangements trust shall be considered an asset of the purchaser until the death of the beneficiary, whereupon the money shall be considered an asset of the estate of the beneficiary, to the extent that the value of the trust exceeds the actual value for the goods and services provided at-need. The location of the trust account, including the name and address of the institution in which the money is being held and any identifying account numbers, must be

disclosed in writing to the beneficiary by the depositor as trustee at the time the money is deposited and when there are any subsequent changes to the location of the trust account. The depositor shall annually report to the beneficiary the amount of funds in the beneficiary's preneed arrangement trust account, including principal and accrued interest. The depositor may arrange for the banking institution, savings or building and loan association, or credit union to issue such reports. Upon the provision of any funeral or burial site goods or services in connection with a preneed arrangement, the depositor shall provide a statement itemizing the goods or services provided and cost of such goods or services and describing the disposition of all funds in the account.

Subd. 6.Disbursement of trust funds.

The funds held in trust, including principal and accrued interest, may be distributed prior to the death of the beneficiary upon demand by the purchaser as specified in subdivision 6a, to the extent that the trust is designated revocable. At the death of the beneficiary and with satisfactory proof of death provided to the institution holding the trust funds, the funds, including principal and accrued interest, may be distributed by either the depositor as trustee or the purchaser as trustee, subject to section 149A.80. The funds shall be distributed in their entirety, with no fees to be retained by the trustees as administrative fees. The funds shall be distributed for the payment of the actual at-need value of the funeral goods, funeral services, burial site goods, or burial site services selected with any excess funds distributed to the estate of the decedent.

Subd. 6a.Cancellation of agreement for preneed arrangements.

(a) If a purchaser cancels an agreement for an irrevocable trust for preneed arrangements at any time before midnight of the third business day after the date of the agreement, the purchaser shall receive a refund of all consideration paid according to the agreement. The refund must be distributed to the purchaser within 15 business days following receipt by the funeral provider of the cancellation notice from the purchaser.

(b) If the purchaser cancels an agreement for a revocable trust for preneed arrangements at any time after the date of the agreement, all funds held in a revocable trust, including all principal and accrued interest, must be distributed to the purchaser within 15 business days following receipt by the funeral provider of the cancellation notice.

(c) Cancellation is evidenced by the purchaser giving written notice of cancellation to the funeral provider at the address provided in the agreement. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the funeral provider and postage prepaid. Notice of cancellation need not take any specific form and is sufficient if it indicates, by any form of written expression, the intention of the purchaser not to be bound by the agreement.

Subd. 7.Reports to commissioner.

Every funeral provider lawfully doing business in Minnesota that accepts funds under subdivision 2 must make a complete annual report to the commissioner. The reports may be on forms provided by the commissioner or substantially similar forms containing, at least, identification and the state of each trust account, including all transactions involving principal

and accrued interest, and must be filed by March 31 of the calendar year following the reporting year along with a filing fee of $25 for each report. Fees shall be paid to the commissioner of management and budget, state of Minnesota, for deposit in the state government special revenue fund in the state treasury. Reports must be signed by an authorized representative of the funeral provider and notarized under oath. All reports to the commissioner shall be reviewed for account inaccuracies or possible violations of this section. If the commissioner has a reasonable belief to suspect that there are account irregularities or possible violations of this section, the commissioner shall report that belief, in a timely manner, to the state auditor. The commissioner shall also file an annual letter with the state auditor disclosing whether or not any irregularities or possible violations were detected in review of the annual trust fund reports filed by the funeral providers. This letter shall be filed with the state auditor by May 31 of the calendar year following the reporting year.

Subd. 8.

[Repealed, 1Sp2003 c 1 art 2 s 136]

Subd. 9.Required records.

Every funeral provider lawfully doing business in Minnesota that accepts funds under subdivision 2 must create and maintain on its premises or other business location in Minnesota an accurate record of every trust fund established with the funeral provider as trustee. The record must contain the following information:

(1) the names of the purchaser, beneficiary, and depositor;

(2) the date, location, identifying account numbers, and amount of the funds originally deposited;

(3) any subsequent changes to the location of the account, identifying account number, or trustee designation;

(4) the date, amount, and payee of any distributions from the account; and

(5) all supporting documentation, including a copy of the original trust agreement, copies of any contracts for the purchase of preneed goods and services, and any other appropriate documentation.

Subd. 10.Retention of records.

Records required under subdivision 9 shall be maintained for a period of three calendar years after the release of the trust funds. Following this period and subject to any other laws requiring retention of records, the funeral provider may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of release of the trust funds. At the end of this period and subject to any other laws requiring retention of records, the funeral provider may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified.

Subd. 11.Report data.

Data on individuals collected and maintained under subdivision 7 are private data on individuals as defined in section 13.02, subdivision 12. Section 13.10 applies to data on decedents collected under subdivision 7.

Subd. 12.Penalties.

Any violation of this section is grounds for disciplinary action pursuant to sections 149A.04 to 149A.10.

History:

1997 c 215 s 43; 2000 c 438 s 30-37; 2001 c 171 s 11; 2002 c 261 s 1; 2003 c 112 art 2 s 50; 2007 c 147 art 9 s 33; 2009 c 101 art 2 s 109

181.04 ASSIGNMENT, SALE, OR TRANSFER OF WAGES; WHEN NOT EFFECTIVE.

No assignment, sale, or transfer, however made or attempted to be made, of any wages or salary to be earned shall give any right of action either at law or in equity to the assignee or transferee of such wages or salary, nor shall any action lie for the recovery of such wages or salary, or any part thereof, by any other person than the person to whom such wages or salary are to become due unless a written notice, together with a true and complete copy of the instrument assigning or transferring such wages or salary, shall have been given within three days after the making of such instrument to the person, firm, or corporation from whom such wages or salary are accruing or may accrue.

History:

(4135) 1905 c 309 s 1; 1917 c 321 s 1

181.05 CONSENT OF EMPLOYER TO ASSIGNMENT REQUIRED.

No assignment, sale, or transfer, however made or attempted, of any unearned wages or salary shall be in any manner valid or effectual for the transfer of any salary or wages to be earned or accruing after the making of such assignment, sale, or transfer unless the person, firm, or corporation from whom such wages or salary are to accrue shall consent thereto in writing. Any employer or agent of such employer accepting or charging any fee or commission for collecting the amount due on any such assignment, sale, or transfer shall be deemed guilty of a misdemeanor.

History:

(4136) 1905 c 309 s 2

181.06 ASSIGNMENT OF WAGES; PAYROLL DEDUCTIONS.

Subdivision 1.Assignment of wages.

Every assignment, sale, or transfer, however made or attempted, of wages or salary to be earned or to become due, in whole or in part, more than 60 days from and after the date of making such transfer, sale or assignment shall be absolutely void; provided however, that the foregoing restriction against transfer, sale or assignment shall not apply to any assignment, sale or transfer of that portion of wages or salary to be earned or to become due in excess of the first $1,500 per month where such assignment is for less than five years.

Subd. 2.Payroll deductions.

A written contract may be entered into between an employer and an employee wherein the employee authorizes the employer to make payroll deductions for the purpose of paying union dues, premiums of any life insurance, hospitalization and surgical insurance, group accident and health insurance, group term life insurance, group annuities or contributions to credit unions or a community chest fund, a local arts council, a local science council or a local arts and science council, or Minnesota benefit association, a federally or state registered political action committee, or participation in any employee stock purchase plan or savings plan for periods longer than 60 days, including gopher state bonds established under section 16A.645.

History:

(4137) 1905 c 309 s 3; 1937 c 95 s 1; 1951 c 213 s 1; 1965 c 778 s 1; 1967 c 517 s 1; 1977 c 231 s 1; 1984 c 508 s 1; 1997 c 183 art 2 s 17

181.063 ASSIGNMENT OF WAGES, PUBLIC EMPLOYEES.

Any officer or employee of a county, town, city, school district, or the state, or any department thereof, has the same right to sell, assign, or transfer salary or wages as any officer of or person employed by any corporation, firm, or person.

History:

1945 c 424 s 26; 1973 c 123 art 5 s 7; 1986 c 444; 1997 c 83 s 3

245.481 FEES FOR MENTAL HEALTH SERVICES.

A client or, in the case of a child, the child or the child's parent may be required to pay a fee for mental health services provided under sections 245.461 to 245.486 and 245.487 to 245.4889. The fee must be based on the person's ability to pay according to the fee schedule adopted by the county board. In adopting the fee schedule for mental health services, the county board may adopt the fee schedule provided by the commissioner or adopt a fee schedule recommended by the county board and approved by the commissioner. Agencies or individuals under contract with a county board to provide mental health services under sections 245.461 to 245.486 and 245.487 to 245.4889 must not charge clients whose mental health services are paid

wholly or in part from public funds fees which exceed the county board's adopted fee schedule. This section does not apply to regional treatment center fees, which are governed by sections 246.50 to 246.55.

History:

1989 c 282 art 4 s 30; 1991 c 292 art 6 s 58 subd 1; 1Sp2003 c 14 art 11 s 11; 2007 c 147 art 8 s 38

246.53 CLAIM AGAINST ESTATE OF DECEASED CLIENT.

Subdivision 1.Client's estate.

Upon the death of a client, or a former client, the total cost of care given the client, less the amount actually paid toward the cost of care by the client and the client's relatives, shall be filed by the commissioner as a claim against the estate of the client with the court having jurisdiction to probate the estate and all proceeds collected by the state in the case shall be divided between the state and county in proportion to the cost of care each has borne.

Subd. 2.Preferred status.

An estate claim in subdivision 1 shall be considered an expense of the last illness for purposes of section 524.3-805.

If the commissioner of human services determines that the property or estate of any client is not more than needed to care for and maintain the spouse and minor or dependent children of a deceased client, the commissioner has the power to compromise the claim of the state in a manner deemed just and proper.

Subd. 3.

[Repealed, 2009 c 79 art 3 s 19]

Subd. 4.Exception from statute of limitations.

Any statute of limitations that limits the commissioner in recovering the cost of care obligation incurred by a client or former client shall not apply to any claim against an estate made under this section to recover the cost of care.

History:

1959 c 578 s 4; 1969 c 205 s 2; 1981 c 31 s 5; 1982 c 641 art 1 s 8; 1984 c 654 art 5 s 58; 1985 c 21 s 17; 1989 c 282 art 2 s 218; 2012 c 216 art 12 s 6

252.27 CHILDREN'S SERVICES; PARENTAL CONTRIBUTION.

Subdivision 1.County of financial responsibility.

Whenever any child who has a developmental disability, or a physical disability or emotional disturbance is in 24-hour care outside the home including respite care, in a facility licensed by the commissioner of human services, the cost of services shall be paid by the county

of financial responsibility determined pursuant to chapter 256G. If the child's parents or guardians do not reside in this state, the cost shall be paid by the responsible governmental agency in the state from which the child came, by the parents or guardians of the child if they are financially able, or, if no other payment source is available, by the commissioner of human services.

Subd. 1a.Definitions.

A "related condition" is a condition: (1) that is found to be closely related to a developmental disability, including, but not limited to, cerebral palsy, epilepsy, autism, fetal alcohol spectrum disorder, and Prader-Willi syndrome; and (2) that meets all of the following criteria:

(i) is severe and chronic;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with developmental disabilities;

(iii) requires treatment or services similar to those required for persons with developmental disabilities;

(iv) is manifested before the person reaches 22 years of age;

(v) is likely to continue indefinitely;

(vi) results in substantial functional limitations in three or more of the following areas of major life activity: (A) self-care, (B) understanding and use of language, (C) learning, (D) mobility, (E) self-direction, or (F) capacity for independent living; and

(vii) is not attributable to mental illness as defined in section 245.462, subdivision 20, or an emotional disturbance as defined in section 245.4871, subdivision 15.

For purposes of item (vii), notwithstanding section 245.462, subdivision 20, or 245.4871, subdivision 15, "mental illness" does not include autism or other pervasive developmental disorders.

Subd. 2.Parental responsibility.

Responsibility of the parents for the cost of services shall be based upon ability to pay. The state agency shall adopt rules to determine responsibility of the parents for the cost of services when:

(1) insurance or other health care benefits pay some but not all of the cost of services; and

(2) no insurance or other health care benefits are available.

Subd. 2a.Contribution amount.

(a) The natural or adoptive parents of a minor child, including a child determined eligible for medical assistance without consideration of parental income, must contribute to the cost of services used by making monthly payments on a sliding scale based on income, unless the child is married or has been married, parental rights have been terminated, or the child's adoption is subsidized according to section 259.67 or through title IV-E of the Social Security Act. The

parental contribution is a partial or full payment for medical services provided for diagnostic, therapeutic, curing, treating, mitigating, rehabilitation, maintenance, and personal care services as defined in United States Code, title 26, section 213, needed by the child with a chronic illness or disability.

(b) For households with adjusted gross income equal to or greater than 100 percent of federal poverty guidelines, the parental contribution shall be computed by applying the following schedule of rates to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 100 percent of federal poverty guidelines and less than 175 percent of federal poverty guidelines, the parental contribution is $4 per month;

(2) if the adjusted gross income is equal to or greater than 175 percent of federal poverty guidelines and less than or equal to 545 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at one percent of adjusted gross income at 175 percent of federal poverty guidelines and increases to 7.5 percent of adjusted gross income for those with adjusted gross income up to 545 percent of federal poverty guidelines;

(3) if the adjusted gross income is greater than 545 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be 7.5 percent of adjusted gross income;

(4) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 975 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at 7.5 percent of adjusted gross income at 675 percent of federal poverty guidelines and increases to ten percent of adjusted gross income for those with adjusted gross income up to 975 percent of federal poverty guidelines; and

(5) if the adjusted gross income is equal to or greater than 975 percent of federal poverty guidelines, the parental contribution shall be 12.5 percent of adjusted gross income.

If the child lives with the parent, the annual adjusted gross income is reduced by $2,400 prior to calculating the parental contribution. If the child resides in an institution specified in section 256B.35, the parent is responsible for the personal needs allowance specified under that section in addition to the parental contribution determined under this section. The parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid.

(c) The household size to be used in determining the amount of contribution under paragraph (b) includes natural and adoptive parents and their dependents, including the child receiving services. Adjustments in the contribution amount due to annual changes in the federal poverty guidelines shall be implemented on the first day of July following publication of the changes.

(d) For purposes of paragraph (b), "income" means the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form, except, effective retroactive to July 1, 2003, taxable capital gains to the extent the funds have been used to purchase a home shall not be counted as income.

(e) The contribution shall be explained in writing to the parents at the time eligibility for services is being determined. The contribution shall be made on a monthly basis effective with the first month in which the child receives services. Annually upon redetermination or at termination of eligibility, if the contribution exceeded the cost of services provided, the local agency or the state shall reimburse that excess amount to the parents, either by direct reimbursement if the parent is no longer required to pay a contribution, or by a reduction in or waiver of parental fees until the excess amount is exhausted. All reimbursements must include a notice that the amount reimbursed may be taxable income if the parent paid for the parent's fees through an employer's health care flexible spending account under the Internal Revenue Code, section 125, and that the parent is responsible for paying the taxes owed on the amount reimbursed.

(f) The monthly contribution amount must be reviewed at least every 12 months; when there is a change in household size; and when there is a loss of or gain in income from one month to another in excess of ten percent. The local agency shall mail a written notice 30 days in advance of the effective date of a change in the contribution amount. A decrease in the contribution amount is effective in the month that the parent verifies a reduction in income or change in household size.

(g) Parents of a minor child who do not live with each other shall each pay the contribution required under paragraph (a). An amount equal to the annual court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the adjusted gross income of the parent making the payment prior to calculating the parental contribution under paragraph (b).

(h) The contribution under paragraph (b) shall be increased by an additional five percent if the local agency determines that insurance coverage is available but not obtained for the child. For purposes of this section, "available" means the insurance is a benefit of employment for a family member at an annual cost of no more than five percent of the family's annual income. For purposes of this section, "insurance" means health and accident insurance coverage, enrollment in a nonprofit health service plan, health maintenance organization, self-insured plan, or preferred provider organization.

Parents who have more than one child receiving services shall not be required to pay more than the amount for the child with the highest expenditures. There shall be no resource contribution from the parents. The parent shall not be required to pay a contribution in excess of the cost of the services provided to the child, not counting payments made to school districts for education-related services. Notice of an increase in fee payment must be given at least 30 days before the increased fee is due.

(i) The contribution under paragraph (b) shall be reduced by $300 per fiscal year if, in the 12 months prior to July 1:

(1) the parent applied for insurance for the child;

(2) the insurer denied insurance;

(3) the parents submitted a complaint or appeal, in writing to the insurer, submitted a complaint or appeal, in writing, to the commissioner of health or the commissioner of commerce, or litigated the complaint or appeal; and

(4) as a result of the dispute, the insurer reversed its decision and granted insurance.

For purposes of this section, "insurance" has the meaning given in paragraph (h).

A parent who has requested a reduction in the contribution amount under this paragraph shall submit proof in the form and manner prescribed by the commissioner or county agency, including, but not limited to, the insurer's denial of insurance, the written letter or complaint of the parents, court documents, and the written response of the insurer approving insurance. The determinations of the commissioner or county agency under this paragraph are not rules subject to chapter 14.

(j) Notwithstanding paragraph (b), for the period from July 1, 2010, to June 30, 2015, the parental contribution shall be computed by applying the following contribution schedule to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 100 percent of federal poverty guidelines and less than 175 percent of federal poverty guidelines, the parental contribution is $4 per month;

(2) if the adjusted gross income is equal to or greater than 175 percent of federal poverty guidelines and less than or equal to 525 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at one percent of adjusted gross income at 175 percent of federal poverty guidelines and increases to eight percent of adjusted gross income for those with adjusted gross income up to 525 percent of federal poverty guidelines;

(3) if the adjusted gross income is greater than 525 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be 9.5 percent of adjusted gross income;

(4) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 900 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at 9.5 percent of adjusted gross income at 675 percent of federal poverty guidelines and increases to 12 percent of adjusted gross income for those with adjusted gross income up to 900 percent of federal poverty guidelines; and

(5) if the adjusted gross income is equal to or greater than 900 percent of federal poverty guidelines, the parental contribution shall be 13.5 percent of adjusted gross income. If the child

lives with the parent, the annual adjusted gross income is reduced by $2,400 prior to calculating the parental contribution. If the child resides in an institution specified in section 256B.35, the parent is responsible for the personal needs allowance specified under that section in addition to the parental contribution determined under this section. The parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid.

Subd. 2b.Child's responsibility.

Responsibility of the child for the cost of care shall be up to the maximum amount of the total income and resources attributed to the child except for the clothing and personal needs allowance as provided in section 256B.35, subdivision 1. Reimbursement by the parents and child shall be made to the county making any payments for services. The county board may require payment of the full cost of caring for children whose parents or guardians do not reside in this state.

To the extent that a child described in subdivision 1 is eligible for benefits under chapter 62A, 62C, 62D, 62E, or 64B, the county is not liable for the cost of services.

Subd. 2c.

[Repealed, 1995 c 207 art 6 s 124]

Subd. 3.Civil actions.

If the parent fails to make appropriate reimbursement as required in subdivision 2a and 2b, the attorney general, at the request of the commissioner, may institute or direct the appropriate county attorney to institute civil action to recover the required reimbursement.

Subd. 4.

[Repealed, 1986 c 414 s 5]

Subd. 4a.Order of payment.

If the parental contribution is for reimbursement for the cost of services to both the local agency and the medical assistance program, the local agency shall be reimbursed for its expenses first and the remainder must be deposited in the medical assistance account.

Subd. 5.Determination; redetermination; notice.

A determination order and notice of parental fee shall be mailed to the parent at least annually, or more frequently as provided in Minnesota Rules, parts 9550.6220 to 9550.6229. The determination order and notice shall contain the following information:

(1) the amount the parent is required to contribute;

(2) notice of the right to a redetermination and appeal; and

(3) the telephone number of the division at the Department of Human Services that is responsible for redeterminations.

Subd. 6.Appeals.

A parent may appeal the determination or redetermination of an obligation to make a contribution under this section, according to section 256.045. The parent must make a request for a hearing in writing within 30 days of the date the determination or redetermination order is mailed, or within 90 days of such written notice if the parent shows good cause why the request was not submitted within the 30-day time limit. The commissioner must provide the parent with a written notice that acknowledges receipt of the request and notifies the parent of the date of the hearing. While the appeal is pending, the parent has the rights regarding making payment that are provided in Minnesota Rules, part 9550.6235. If the commissioner's determination or redetermination is affirmed, the parent shall, within 90 calendar days after the date an order is issued under section 256.045, subdivision 5, pay the total amount due from the effective date of the notice of determination or redetermination that was appealed by the parent. If the commissioner's order under this subdivision results in a decrease in the parental fee amount, any payments made by the parent that result in an overpayment shall be credited to the parent as provided in Minnesota Rules, part 9550.6235, subpart 3.

History:

1969 c 582 s 1; 1971 c 648 s 1,2; 1973 c 696 s 1; 1974 c 406 s 45; 1975 c 293 s 1; 1976 c 163 s 53; 1977 c 331 s 2,3; 1978 c 560 s 3; 1981 c 355 s 28,29; 1982 c 607 s 12; 1984 c 530 s 2,3; 1984 c 654 art 5 s 58; 1985 c 21 s 33; 1985 c 49 s 41; 1986 c 444; 1989 c 282 art 2 s 92; 1990 c 568 art 2 s 56; 1990 c 612 s 11; 1991 c 292 art 6 s 32,33; 1993 c 339 s 6,7; 1994 c 631 s 31; 1995 c 207 art 6 s 4-8; 1996 c 451 art 2 s 3; 1Sp2003 c 14 art 6 s 39; 2004 c 288 art 3 s 13; 2005 c 56 s 1; 1Sp2005 c 4 art 3 s 5; 2007 c 147 art 7 s 2; 2009 c 145 s 1; 2009 c 147 s 1; 2009 c 159 s 84; 1Sp2010 c 1 art 17 s 6; 2012 c 247 art 4 s 13

253B.04 VOLUNTARY TREATMENT AND ADMISSION PROCEDURES.

Subdivision 1.Voluntary admission and treatment.

(a) Voluntary admission is preferred over involuntary commitment and treatment. Any person 16 years of age or older may request to be admitted to a treatment facility as a voluntary patient for observation, evaluation, diagnosis, care and treatment without making formal written application. Any person under the age of 16 years may be admitted as a patient with the consent of a parent or legal guardian if it is determined by independent examination that there is reasonable evidence that (1) the proposed patient has a mental illness, or is developmentally disabled or chemically dependent; and (2) the proposed patient is suitable for treatment. The head of the treatment facility shall not arbitrarily refuse any person seeking admission as a voluntary patient. In making decisions regarding admissions, the facility shall use clinical admission criteria consistent with the current applicable inpatient admission standards established by the American Psychiatric Association or the American Academy of Child and Adolescent Psychiatry. These criteria must be no more restrictive than, and must be consistent with, the requirements of section 62Q.53. The facility may not refuse to admit a person

voluntarily solely because the person does not meet the criteria for involuntary holds under section 253B.05 or the definition of mental illness under section 253B.02, subdivision 13.

(b) In addition to the consent provisions of paragraph (a), a person who is 16 or 17 years of age who refuses to consent personally to admission may be admitted as a patient for mental illness or chemical dependency treatment with the consent of a parent or legal guardian if it is determined by an independent examination that there is reasonable evidence that the proposed patient is chemically dependent or has a mental illness and is suitable for treatment. The person conducting the examination shall notify the proposed patient and the parent or legal guardian of this determination.

(c) A person who is voluntarily participating in treatment for a mental illness is not subject to civil commitment under this chapter if the person:

(1) has given informed consent or, if lacking capacity, is a person for whom legally valid substitute consent has been given; and

(2) is participating in a medically appropriate course of treatment, including clinically appropriate and lawful use of neuroleptic medication and electroconvulsive therapy. The limitation on commitment in this paragraph does not apply if, based on clinical assessment, the court finds that it is unlikely that the person will remain in and cooperate with a medically appropriate course of treatment absent commitment and the standards for commitment are otherwise met. This paragraph does not apply to a person for whom commitment proceedings are initiated pursuant to rule 20.01 or 20.02 of the Rules of Criminal Procedure, or a person found by the court to meet the requirements under section 253B.02, subdivision 17.

Legally valid substitute consent may be provided by a proxy under a health care directive, a guardian or conservator with authority to consent to mental health treatment, or consent to admission under subdivision 1a or 1b.

Subd. 1a.Voluntary treatment or admission for persons with mental illness.

(a) A person with a mental illness may seek or voluntarily agree to accept treatment or admission to a facility. If the mental health provider determines that the person lacks the capacity to give informed consent for the treatment or admission, and in the absence of a health care power of attorney that authorizes consent, the designated agency or its designee may give informed consent for mental health treatment or admission to a treatment facility on behalf of the person.

(b) The designated agency shall apply the following criteria in determining the person's ability to give informed consent:

(1) whether the person demonstrates an awareness of the person's illness, and the reasons for treatment, its risks, benefits and alternatives, and the possible consequences of refusing treatment; and

(2) whether the person communicates verbally or nonverbally a clear choice concerning treatment that is a reasoned one, not based on delusion, even though it may not be in the person's best interests.

(c) The basis for the designated agency's decision that the person lacks the capacity to give informed consent for treatment or admission, and that the patient has voluntarily accepted treatment or admission, must be documented in writing.

(d) A mental health provider that provides treatment in reliance on the written consent given by the designated agency under this subdivision or by a substitute decision maker appointed by the court is not civilly or criminally liable for performing treatment without consent. This paragraph does not affect any other liability that may result from the manner in which the treatment is performed.

(e) A person who receives treatment or is admitted to a facility under this subdivision or subdivision 1b has the right to refuse treatment at any time or to be released from a facility as provided under subdivision 2. The person or any interested person acting on the person's behalf may seek court review within five days for a determination of whether the person's agreement to accept treatment or admission is voluntary. At the time a person agrees to treatment or admission to a facility under this subdivision, the designated agency or its designee shall inform the person in writing of the person's rights under this paragraph.

(f) This subdivision does not authorize the administration of neuroleptic medications. Neuroleptic medications may be administered only as provided in section 253B.092.

Subd. 1b.Court appointment of substitute decision maker.

If the designated agency or its designee declines or refuses to give informed consent under subdivision 1a, the person who is seeking treatment or admission, or an interested person acting on behalf of the person, may petition the court for appointment of a substitute decision maker who may give informed consent for voluntary treatment and services. In making this determination, the court shall apply the criteria in subdivision 1a, paragraph (b).

Subd. 2.Release.

Every patient admitted for mental illness or developmental disability under this section shall be informed in writing at the time of admission that the patient has a right to leave the facility within 12 hours of making a request, unless held under another provision of this chapter. Every patient admitted for chemical dependency under this section shall be informed in writing at the time of admission that the patient has a right to leave the facility within 72 hours, exclusive of Saturdays, Sundays, and holidays, of making a request, unless held under another provision of this chapter. The request shall be submitted in writing to the head of the treatment facility or the person's designee.

History:

1982 c 581 s 4; 1983 c 251 s 7; 1986 c 444; 1997 c 217 art 1 s 29; 1998 c 399 s 28; 1999 c 32 s 1; 2000 c 316 s 2; 1Sp2001 c 9 art 9 s 25-27; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 6 s 45; 2005 c 56 s 1

253B.05 EMERGENCY ADMISSION.

Subdivision 1.Emergency hold.

(a) Any person may be admitted or held for emergency care and treatment in a treatment facility, except to a facility operated by the Minnesota sex offender program, with the consent of the head of the treatment facility upon a written statement by an examiner that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) If the proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. The statement of information must include, to the extent available, direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145, and advance psychiatric directives under section 253B.03, subdivision 6d.

(c) The examiner's statement shall be: (1) sufficient authority for a peace or health officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in conclusory language, and (3) of sufficient specificity to provide an adequate record for review. If danger to specific individuals is a basis for the emergency hold, the statement must identify those individuals, to the extent practicable. A copy of the examiner's statement shall be personally served on the person immediately upon admission and a copy shall be maintained by the treatment facility.

Subd. 2.Peace or health officer authority.

(a) A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation of the person's behavior, or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or psychiatric treatment, that the person is mentally ill or developmentally disabled and in danger of injuring self or others if not immediately detained. A peace or health officer or a person working under such officer's supervision, may take a person who is believed to be chemically dependent or is intoxicated in public into custody and transport the person to a treatment facility. If the person is intoxicated in public or is believed to be chemically dependent and is not in danger of causing self-harm or harm to any person or property, the peace or health officer may transport the person home. The peace or health officer shall make written application for admission of the person to the treatment facility. The application shall contain the peace or health officer's statement specifying the reasons for and circumstances under which the person was taken into custody. If

danger to specific individuals is a basis for the emergency hold, the statement must include identifying information on those individuals, to the extent practicable. A copy of the statement shall be made available to the person taken into custody.

(b) As far as is practicable, a peace officer who provides transportation for a person placed in a facility under this subdivision may not be in uniform and may not use a vehicle visibly marked as a law enforcement vehicle.

(c) A person may be admitted to a treatment facility for emergency care and treatment under this subdivision with the consent of the head of the facility under the following circumstances: (1) a written statement shall only be made by the following individuals who are knowledgeable, trained, and practicing in the diagnosis and treatment of mental illness or developmental disability; the medical officer, or the officer's designee on duty at the facility, including a licensed physician, a licensed physician assistant, or an advanced practice registered nurse who after preliminary examination has determined that the person has symptoms of mental illness or developmental disability and appears to be in danger of harming self or others if not immediately detained; or (2) a written statement is made by the institution program director or the director's designee on duty at the facility after preliminary examination that the person has symptoms of chemical dependency and appears to be in danger of harming self or others if not immediately detained or is intoxicated in public.

Subd. 2a.

[Repealed, 1997 c 217 art 1 s 118]

Subd. 2b.**Notice.**

Every person held pursuant to this section must be informed in writing at the time of admission of the right to leave after 72 hours, to a medical examination within 48 hours, and to request a change to voluntary status. The treatment facility shall, upon request, assist the person in exercising the rights granted in this subdivision.

Subd. 3.Duration of hold.

(a) Any person held pursuant to this section may be held up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays after admission. If a petition for the commitment of the person is filed in the district court in the county of financial responsibility or of the county in which the treatment facility is located, the court may issue a judicial hold order pursuant to section 253B.07, subdivision 2b.

(b) During the 72-hour hold period, a court may not release a person held under this section unless the court has received a written petition for release and held a summary hearing regarding the release. The petition must include the name of the person being held, the basis for and location of the hold, and a statement as to why the hold is improper. The petition also must include copies of any written documentation under subdivision 1 or 2 in support of the hold, unless the person holding the petitioner refuses to supply the documentation. The hearing must be held as soon as practicable and may be conducted by means of a telephone conference call or similar method by which the participants are able to simultaneously hear each other. If the court decides to release the person, the court shall direct the release and shall issue written findings

supporting the decision. The release may not be delayed pending the written order. Before deciding to release the person, the court shall make every reasonable effort to provide notice of the proposed release to:

(1) any specific individuals identified in a statement under subdivision 1 or 2 or individuals identified in the record who might be endangered if the person was not held;

(2) the examiner whose written statement was a basis for a hold under subdivision 1; and

(3) the peace or health officer who applied for a hold under subdivision 2.

(c) If a person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (d) as soon as the treatment facility determines the person is no longer a danger to themselves or others. Notice must be provided to the peace officer or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.

(d) If a treatment facility releases a person during the 72-hour hold period, the head of the treatment facility shall immediately notify the agency which employs the peace or health officer who transported the person to the treatment facility under this section.

(e) A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive emergency hold order under this section may not be issued.

Subd. 4.Change of status.

Any person admitted pursuant to this section shall be changed to voluntary status provided by section 253B.04 upon the person's request in writing and with the consent of the head of the treatment facility.

Subd. 5.

[Repealed, 1997 c 217 art 1 s 118]

History:

1982 c 581 s 5; 1983 c 251 s 8,9; 1986 c 444; 1991 c 64 s 1-3; 1995 c 189 s 4,5,8; 1996 c 277 s 1; 1997 c 217 art 1 s 30-34; 1998 c 313 s 4; 1Sp2001 c 9 art 9 s 29; 2002 c 335 s 1; 2002 c 379 art 1 s 113; 2003 c 108 s 3; 1Sp2003 c 14 art 6 s 46; 2005 c 56 s 1; 2005 c 165 art 3 s 3; 2009 c 159 s 88; 2010 c 300 s 19; 2010 c 357 s 3

254A.08 DETOXIFICATION CENTERS.

Subdivision 1.Detoxification services.

Every county board shall provide detoxification services for drug dependent persons. The board may utilize existing treatment programs and other agencies to meet this responsibility.

Subd. 2.Program requirements.

For the purpose of this section, a detoxification program means a social rehabilitation program established for the purpose of facilitating access into care and treatment by detoxifying and evaluating the person and providing entrance into a comprehensive program. Evaluation of the person shall include verification by a professional, after preliminary examination, that the person is intoxicated or has symptoms of chemical dependency and appears to be in imminent danger of harming self or others. A detoxification program shall have available the services of a licensed physician for medical emergencies and routine medical surveillance. A detoxification program licensed by the Department of Human Services to serve both adults and minors at the same site must provide for separate sleeping areas for adults and minors.

Subd. 3.

[Repealed, 1979 c 324 s 50]

History:

1973 c 572 s 8; 1976 c 286 s 1; 1978 c 674 s 26; 1979 c 324 s 45; 1981 c 355 s 33; 1989 c 282 art 2 s 101

256.019 RECOVERY OF MONEY; APPORTIONMENT.

Subdivision 1.Retention rates.

When an assistance recovery amount is collected and posted by a county agency under the provisions governing public assistance programs including general assistance medical care, general assistance, and Minnesota supplemental aid, the county may keep one-half of the recovery made by the county agency using any method other than recoupment. For medical assistance, if the recovery is made by a county agency using any method other than recoupment, the county may keep one-half of the nonfederal share of the recovery. For MinnesotaCare, if the recovery is collected and posted by the county agency, the county may keep one-half of the nonfederal share of the recovery.

This does not apply to recoveries from medical providers or to recoveries begun by the Department of Human Services' Surveillance and Utilization Review Division, State Hospital Collections Unit, and the Benefit Recoveries Division or, by the attorney general's office, or child support collections. In the food stamp or food support program, the nonfederal share of recoveries in the federal tax offset program only will be divided equally between the state agency and the involved county agency.

Subd. 2.Retention rates for AFDC and MFIP.

(a) When an assistance recovery amount is collected and posted by a county agency under the provisions governing the aid to families with dependent children program formerly codified in 1996 in sections 256.72 to 256.87 or MFIP under chapter 256J, the commissioner shall reimburse the county agency from the proceeds of the recovery using the applicable rate specified in paragraph (b) or (c).

(b) For recoveries of overpayments made on or before September 30, 1996, from the aid to families with dependent children program including the emergency assistance program, the commissioner shall reimburse the county agency at a rate of one-quarter of the recovery made by any method other than recoupment.

(c) For recoveries of overpayments made after September 30, 1996, from the aid to families with dependent children including the emergency assistance program and programs funded in whole or in part by the temporary assistance to needy families program under section 256J.02, subdivision 2, and recoveries of nonfederally funded food assistance under section 256J.11, the commissioner shall reimburse the county agency at a rate of one-quarter of the recovery made by any method other than recoupment.

History:

1988 c 719 art 8 s 29; 1993 c 306 s 2; 1997 c 85 art 5 s 4; 1999 c 159 s 38; 2000 c 488 art 10 s 3; 1Sp2003 c 14 art 1 s 106; 1Sp2005 c 4 art 8 s 7

256.045 ADMINISTRATIVE AND JUDICIAL REVIEW OF HUMAN SERVICES MATTERS.

Subdivision 1.Powers of the state agency.

The commissioner of human services may appoint one or more state human services referees to conduct hearings and recommend orders in accordance with subdivisions 3, 3a, 3b, 4a, and 5. Human services referees designated pursuant to this section may administer oaths and shall be under the control and supervision of the commissioner of human services and shall not be a part of the Office of Administrative Hearings established pursuant to sections 14.48 to 14.56.

Subd. 2.

[Repealed, 1987 c 148 s 9]

Subd. 3.State agency hearings.

(a) State agency hearings are available for the following:

(1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section 252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C, any individual or facility determined by a lead investigative agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557;

(5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit; or

(11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt.

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply

only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is only available when there is no juvenile court or adult criminal action pending. If such action is filed in either court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

(c) For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

(d) The scope of hearings involving claims to foster care payments under paragraph (a), clause (5), shall be limited to the issue of whether the county is legally responsible for a child's placement under court order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

(e) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

(f) An applicant or recipient is not entitled to receive social services beyond the services prescribed under chapter 256M or other social services the person is eligible for under state law.

(g) The commissioner may summarily affirm the county or state agency's proposed action without a hearing when the sole issue is an automatic change due to a change in state or federal law.

Subd. 3a.Prepaid health plan appeals.

(a) All prepaid health plans under contract to the commissioner under chapter 256B or 256D must provide for a complaint system according to section 62D.11. When a prepaid health plan denies, reduces, or terminates a health service or denies a request to authorize a previously authorized health service, the prepaid health plan must notify the recipient of the right to file a complaint or an appeal. The notice must include the name and telephone number of the ombudsman and notice of the recipient's right to request a hearing under paragraph (b). Recipients may request the assistance of the ombudsman in the complaint system process. The prepaid health plan must issue a written resolution of the complaint to the recipient within 30 days after the complaint is filed with the prepaid health plan. A recipient is not required to exhaust the complaint system procedures in order to request a hearing under paragraph (b).

(b) Recipients enrolled in a prepaid health plan under chapter 256B or 256D may contest a prepaid health plan's denial, reduction, or termination of health services, a prepaid health plan's denial of a request to authorize a previously authorized health service, or the prepaid health plan's written resolution of a complaint by submitting a written request for a hearing according to subdivision 3. A state human services referee shall conduct a hearing on the matter and shall recommend an order to the commissioner of human services. The commissioner need not grant a hearing if the sole issue raised by a recipient is the commissioner's authority to require mandatory enrollment in a prepaid health plan in a county where prepaid health plans are under

contract with the commissioner. The state human services referee may order a second medical opinion from the prepaid health plan or may order a second medical opinion from a nonprepaid health plan provider at the expense of the prepaid health plan. Recipients may request the assistance of the ombudsman in the appeal process.

(c) In the written request for a hearing to appeal from a prepaid health plan's denial, reduction, or termination of a health service, a prepaid health plan's denial of a request to authorize a previously authorized service, or the prepaid health plan's written resolution to a complaint, a recipient may request an expedited hearing. If an expedited appeal is warranted, the state human services referee shall hear the appeal and render a decision within a time commensurate with the level of urgency involved, based on the individual circumstances of the case.

Subd. 3b.Standard of evidence for maltreatment and disqualification hearings.

(a) The state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under sections 626.556 and 626.557. For purposes of hearings regarding disqualification, the state human services referee shall affirm the proposed disqualification in an appeal under subdivision 3, paragraph (a), clause (9), if a preponderance of the evidence shows the individual has:

(1) committed maltreatment under section 626.556 or 626.557, which is serious or recurring;

(2) committed an act or acts meeting the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or

(3) failed to make required reports under section 626.556 or 626.557, for incidents in which the final disposition under section 626.556 or 626.557 was substantiated maltreatment that was serious or recurring.

(b) If the disqualification is affirmed, the state human services referee shall determine whether the individual poses a risk of harm in accordance with the requirements of section 245C.22, and whether the disqualification should be set aside or not set aside. In determining whether the disqualification should be set aside, the human services referee shall consider all of the characteristics that cause the individual to be disqualified, including those characteristics that were not subject to review under paragraph (a), in order to determine whether the individual poses a risk of harm. A decision to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside. If a determination that the information relied upon to disqualify an individual was correct and is conclusive under section 245C.29, and the individual is subsequently disqualified under section 245C.14, the individual has a right to again request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding risk of harm are not subject to another hearing under this section.

(c) The state human services referee shall recommend an order to the commissioner of health, education, or human services, as applicable, who shall issue a final order. The

commissioner shall affirm, reverse, or modify the final disposition. Any order of the commissioner issued in accordance with this subdivision is conclusive upon the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided under section 245C.29.

Subd. 3c.

[Repealed, 2005 c 98 art 2 s 18]

Subd. 4.Conduct of hearings.

(a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services referee may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services referee shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), either party may subpoena the private data relating to the investigation prepared by the agency under section 626.556 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of the reporter may not be disclosed.

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than $1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8), and (9), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having

probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

(c) In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), involving determinations of maltreatment or disqualification made by more than one county agency, by a county agency and a state agency, or by more than one state agency, the hearings may be consolidated into a single fair hearing upon the consent of all parties and the state human services referee.

(d) For hearings under subdivision 3, paragraph (a), clause (4) or (10), involving a vulnerable adult, the human services referee shall notify the vulnerable adult who is the subject of the maltreatment determination and, if known, a guardian of the vulnerable adult appointed under section 524.5-310, or a health care agent designated by the vulnerable adult in a health care directive that is currently effective under section 145C.06 and whose authority to make health care decisions is not suspended under section 524.5-310, of the hearing. The notice must be sent by certified mail and inform the vulnerable adult of the right to file a signed written statement in the proceedings. A guardian or health care agent who prepares or files a written statement for the vulnerable adult must indicate in the statement that the person is the vulnerable adult's guardian or health care agent and sign the statement in that capacity. The vulnerable adult, the guardian, or the health care agent may file a written statement with the human services referee hearing the case no later than five business days before commencement of the hearing. The human services referee shall include the written statement in the hearing record and consider the statement in deciding the appeal. This subdivision does not limit, prevent, or excuse the vulnerable adult from being called as a witness testifying at the hearing or grant the vulnerable adult, the guardian, or health care agent a right to participate in the proceedings or appeal the human services referee's decision in the case. The lead investigative agency must consider including the vulnerable adult victim of maltreatment as a witness in the hearing. If the lead investigative agency determines that participation in the hearing would endanger the well-being of the vulnerable adult or not be in the best interests of the vulnerable adult, the lead investigative agency shall inform the human services referee of the basis for this determination, which must be included in the final order. If the human services referee is not reasonably able to determine the address of the vulnerable adult, the guardian, or the health care agent, the human services referee is not required to send a hearing notice under this subdivision.

Subd. 4a.Case management appeals.

Any recipient of case management services pursuant to section 256B.092, who contests the county agency's action or failure to act in the provision of those services, other than a failure to act with reasonable promptness or a suspension, reduction, denial, or termination of services, must submit a written request for a conciliation conference to the county agency. The county agency shall inform the commissioner of the receipt of a request when it is submitted and shall schedule a conciliation conference. The county agency shall notify the recipient, the

commissioner, and all interested persons of the time, date, and location of the conciliation conference. The commissioner may assist the county by providing mediation services or by identifying other resources that may assist in the mediation between the parties. Within 30 days, the county agency shall conduct the conciliation conference and inform the recipient in writing of the action the county agency is going to take and when that action will be taken and notify the recipient of the right to a hearing under this subdivision. The conciliation conference shall be conducted in a manner consistent with the commissioner's instructions. If the county fails to conduct the conciliation conference and issue its report within 30 days, or, at any time up to 90 days after the conciliation conference is held, a recipient may submit to the commissioner a written request for a hearing before a state human services referee to determine whether case management services have been provided in accordance with applicable laws and rules or whether the county agency has assured that the services identified in the recipient's individual service plan have been delivered in accordance with the laws and rules governing the provision of those services. The state human services referee shall recommend an order to the commissioner, who shall, in accordance with the procedure in subdivision 5, issue a final order within 60 days of the receipt of the request for a hearing, unless the commissioner refuses to accept the recommended order, in which event a final order shall issue within 90 days of the receipt of that request. The order may direct the county agency to take those actions necessary to comply with applicable laws or rules. The commissioner may issue a temporary order prohibiting the demission of a recipient of case management services from a residential or day habilitation program licensed under chapter 245A, while a county agency review process or an appeal brought by a recipient under this subdivision is pending, or for the period of time necessary for the county agency to implement the commissioner's order. The commissioner shall not issue a final order staying the demission of a recipient of case management services from a residential or day habilitation program licensed under chapter 245A.

Subd. 5.Orders of the commissioner of human services.

A state human services referee shall conduct a hearing on the appeal and shall recommend an order to the commissioner of human services. The recommended order must be based on all relevant evidence and must not be limited to a review of the propriety of the state or county agency's action. A referee may take official notice of adjudicative facts. The commissioner of human services may accept the recommended order of a state human services referee and issue the order to the county agency and the applicant, recipient, former recipient, or prepaid health plan. The commissioner on refusing to accept the recommended order of the state human services referee, shall notify the petitioner, the agency, or prepaid health plan of that fact and shall state reasons therefor and shall allow each party ten days' time to submit additional written argument on the matter. After the expiration of the ten-day period, the commissioner shall issue an order on the matter to the petitioner, the agency, or prepaid health plan.

A party aggrieved by an order of the commissioner may appeal under subdivision 7, or request reconsideration by the commissioner within 30 days after the date the commissioner issues the order. The commissioner may reconsider an order upon request of any party or on the commissioner's own motion. A request for reconsideration does not stay implementation of the

commissioner's order. Upon reconsideration, the commissioner may issue an amended order or an order affirming the original order.

Any order of the commissioner issued under this subdivision shall be conclusive upon the parties unless appeal is taken in the manner provided by subdivision 7. Any order of the commissioner is binding on the parties and must be implemented by the state agency, a county agency, or a prepaid health plan according to subdivision 3a, until the order is reversed by the district court, or unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10.

A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing or seek judicial review of an order issued under this section, unless assisting a recipient as provided in subdivision 4. A prepaid health plan is a party to an appeal under subdivision 3a, but cannot seek judicial review of an order issued under this section.

Subd. 6.Additional powers of commissioner; subpoenas.

(a) The commissioner of human services, or the commissioner of health for matters within the commissioner's jurisdiction under subdivision 3b, may initiate a review of any action or decision of a county agency and direct that the matter be presented to a state human services referee for a hearing held under subdivision 3, 3a, 3b, or 4a. In all matters dealing with human services committed by law to the discretion of the county agency, the commissioner's judgment may be substituted for that of the county agency. The commissioner may order an independent examination when appropriate.

(b) Any party to a hearing held pursuant to subdivision 3, 3a, 3b, or 4a may request that the commissioner issue a subpoena to compel the attendance of witnesses and the production of records at the hearing. A local agency may request that the commissioner issue a subpoena to compel the release of information from third parties prior to a request for a hearing under section 256.046 upon a showing of relevance to such a proceeding. The issuance, service, and enforcement of subpoenas under this subdivision is governed by section 357.22 and the Minnesota Rules of Civil Procedure.

(c) The commissioner may issue a temporary order staying a proposed demission by a residential facility licensed under chapter 245A while an appeal by a recipient under subdivision 3 is pending or for the period of time necessary for the county agency to implement the commissioner's order.

Subd. 7.Judicial review.

Except for a prepaid health plan, any party who is aggrieved by an order of the commissioner of human services, or the commissioner of health in appeals within the commissioner's jurisdiction under subdivision 3b, may appeal the order to the district court of the county responsible for furnishing assistance, or, in appeals under subdivision 3b, the county where the maltreatment occurred, by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days after the date the commissioner issued the order, the amended order, or order affirming the original order, and by filing the

original notice and proof of service with the court administrator of the district court. Service may be made personally or by mail; service by mail is complete upon mailing; no filing fee shall be required by the court administrator in appeals taken pursuant to this subdivision, with the exception of appeals taken under subdivision 3b. The commissioner may elect to become a party to the proceedings in the district court. Except for appeals under subdivision 3b, any party may demand that the commissioner furnish all parties to the proceedings with a copy of the decision, and a transcript of any testimony, evidence, or other supporting papers from the hearing held before the human services referee, by serving a written demand upon the commissioner within 30 days after service of the notice of appeal. Any party aggrieved by the failure of an adverse party to obey an order issued by the commissioner under subdivision 5 may compel performance according to the order in the manner prescribed in sections 586.01 to 586.12.

Subd. 8.Hearing.

Any party may obtain a hearing at a special term of the district court by serving a written notice of the time and place of the hearing at least ten days prior to the date of the hearing. The court may consider the matter in or out of chambers, and shall take no new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal.

Subd. 9.Appeal.

Any party aggrieved by the order of the district court may appeal the order as in other civil cases. Except for appeals under subdivision 3b, no costs or disbursements shall be taxed against any party nor shall any filing fee or bond be required of any party.

Subd. 10.Payments pending appeal.

If the commissioner of human services or district court orders monthly assistance or aid or services paid or provided in any proceeding under this section, it shall be paid or provided pending appeal to the commissioner of human services, district court, court of appeals, or supreme court. The human services referee may order the local human services agency to reduce or terminate medical assistance or general assistance medical care to a recipient before a final order is issued under this section if: (1) the human services referee determines at the hearing that the sole issue on appeal is one of a change in state or federal law; and (2) the commissioner or the local agency notifies the recipient before the action. The state or county agency has a claim for food stamps, food support, cash payments, medical assistance, general assistance medical care, and MinnesotaCare program payments made to or on behalf of a recipient or former recipient while an appeal is pending if the recipient or former recipient is determined ineligible for the food stamps, food support, cash payments, medical assistance, general assistance medical care, or MinnesotaCare as a result of the appeal, except for medical assistance and general assistance medical care made on behalf of a recipient pursuant to a court order. In enforcing a claim on MinnesotaCare program payments, the state or county agency shall reduce the claim amount by the value of any premium payments made by a recipient or former recipient during the period for which the recipient or former recipient has been determined to be ineligible. Provision of a health care service by the state agency under medical

assistance, general assistance medical care, or MinnesotaCare pending appeal shall not render moot the state agency's position in a court of law.

History:

1976 c 131 s 1; 1978 c 560 s 7; 1982 c 424 s 130; 1983 c 247 s 108,109; 1983 c 312 art 5 s 4; 1984 c 534 s 14-18; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 148 s 1-8; 1987 c 403 art 2 s 61; 1989 c 282 art 5 s 12-20; 1990 c 568 art 4 s 84; 1991 c 94 s 11; 1991 c 292 art 4 s 16; art 6 s 58 subd 2; 1993 c 247 art 4 s 1; 1993 c 339 s 9; 1994 c 625 art 8 s 72; 1995 c 207 art 2 s 27-29; art 11 s 5; 1995 c 229 art 3 s 6-14; 1996 c 408 art 10 s 6; 1996 c 416 s 1; 1996 c 451 art 5 s 9; 1997 c 85 art 5 s 5; 1997 c 203 art 4 s 11; art 5 s 6-10; art 9 s 5; 1997 c 225 art 2 s 55; 1999 c 205 art 1 s 49-51; 2001 c 178 art 2 s 6; 1Sp2001 c 9 art 14 s 26-28; 2002 c 375 art 1 s 19,20; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 1Sp2003 c 14 art 1 s 106; art 11 s 11; 2004 c 228 art 1 s 72; 2004 c 288 art 1 s 76,77; 2005 c 98 art 1 s 9,10; art 3 s 18; 1Sp2005 c 4 art 8 s 8,9; 2009 c 79 art 2 s 9; 2009 c 142 art 2 s 36,37; 2010 c 329 art 2 s 4; 2011 c 28 s 4,17

256.0451 HEARING PROCEDURES.

Subdivision 1.Scope.

The requirements in this section apply to all fair hearings and appeals under section 256.045, subdivision 3, paragraph (a), clauses (1), (2), (3), (5), (6), and (7). Except as provided in subdivisions 3 and 19, the requirements under this section apply to fair hearings and appeals under section 256.045, subdivision 3, paragraph (a), clauses (4), (8), and (9).

The term "person" is used in this section to mean an individual who, on behalf of themselves or their household, is appealing or disputing or challenging an action, a decision, or a failure to act, by an agency in the human services system. When a person involved in a proceeding under this section is represented by an attorney or by an authorized representative, the term "person" also refers to the person's attorney or authorized representative. Any notice sent to the person involved in the hearing must also be sent to the person's attorney or authorized representative.

The term "agency" includes the county human services agency, the state human services agency, and, where applicable, any entity involved under a contract, subcontract, grant, or subgrant with the state agency or with a county agency, that provides or operates programs or services in which appeals are governed by section 256.045.

Subd. 2.Access to files.

A person involved in a fair hearing appeal has the right of access to the person's complete case files and to examine all private welfare data on the person which has been generated, collected, stored, or disseminated by the agency. A person involved in a fair hearing appeal has the right to a free copy of all documents in the case file involved in a fair hearing appeal. "Case file" means the information, documents, and data, in whatever form, which have been

generated, collected, stored, or disseminated by the agency in connection with the person and the program or service involved.

Subd. 3.Agency appeal summary.

(a) Except in fair hearings and appeals under section 256.045, subdivision 3, paragraph (a), clauses (4), (8), and (9), the agency involved in an appeal must prepare a state agency appeal summary for each fair hearing appeal. The state agency appeal summary shall be mailed or otherwise delivered to the person who is involved in the appeal at least three working days before the date of the hearing. The state agency appeal summary must also be mailed or otherwise delivered to the department's Appeals Office at least three working days before the date of the fair hearing appeal.

(b) In addition, the appeals referee shall confirm that the state agency appeal summary is mailed or otherwise delivered to the person involved in the appeal as required under paragraph (a). The person involved in the fair hearing should be provided, through the state agency appeal summary or other reasonable methods, appropriate information about the procedures for the fair hearing and an adequate opportunity to prepare. These requirements apply equally to the state agency or an entity under contract when involved in the appeal.

(c) The contents of the state agency appeal summary must be adequate to inform the person involved in the appeal of the evidence on which the agency relies and the legal basis for the agency's action or determination.

Subd. 4.Enforcing access to files.

A person involved in a fair hearing appeal may enforce the right of access to data and copies of the case file by making a request to the appeals referee. The appeals referee will make an appropriate order enforcing the person's rights under the Minnesota Government Data Practices Act, including but not limited to, ordering access to files, data, and documents; continuing a hearing to allow adequate time for access to data; or prohibiting use by the agency of files, data, or documents which have been generated, collected, stored, or disseminated without compliance with the Minnesota Government Data Practices Act and which have not been provided to the person involved in the appeal.

Subd. 5.Prehearing conferences.

(a) The appeals referee prior to a fair hearing appeal may hold a prehearing conference to further the interests of justice or efficiency and must include the person involved in the appeal. A person involved in a fair hearing appeal or the agency may request a prehearing conference. The prehearing conference may be conducted by telephone, in person, or in writing. The prehearing conference may address the following:

(1) disputes regarding access to files, evidence, subpoenas, or testimony;

(2) the time required for the hearing or any need for expedited procedures or decision;

(3) identification or clarification of legal or other issues that may arise at the hearing;

(4) identification of and possible agreement to factual issues; and

(5) scheduling and any other matter which will aid in the proper and fair functioning of the hearing.

(b) The appeals referee shall make a record or otherwise contemporaneously summarize the prehearing conference in writing, which shall be sent to both the person involved in the hearing, the person's attorney or authorized representative, and the agency.

Subd. 6.Appeal request for emergency assistance or urgent matter.

(a) When an appeal involves an application for emergency assistance, the agency involved shall mail or otherwise deliver the state agency appeal summary to the department's Appeals Office within two working days of receiving the request for an appeal. A person may also request that a fair hearing be held on an emergency basis when the issue requires an immediate resolution. The appeals referee shall schedule the fair hearing on the earliest available date according to the urgency of the issue involved. Issuance of the recommended decision after an emergency hearing shall be expedited.

(b) The commissioner shall issue a written decision within five working days of receiving the recommended decision, shall immediately inform the parties of the outcome by telephone, and shall mail the decision no later than two working days following the date of the decision.

Subd. 7.Continuance, rescheduling, or adjourning a hearing.

(a) A person involved in a fair hearing, or the agency, may request a continuance, a rescheduling, or an adjournment of a hearing for a reasonable period of time. The grounds for granting a request for a continuance, a rescheduling, or adjournment of a hearing include, but are not limited to, the following:

(1) to reasonably accommodate the appearance of a witness;

(2) to ensure that the person has adequate opportunity for preparation and for presentation of evidence and argument;

(3) to ensure that the person or the agency has adequate opportunity to review, evaluate, and respond to new evidence, or where appropriate, to require that the person or agency review, evaluate, and respond to new evidence;

(4) to permit the person involved and the agency to negotiate toward resolution of some or all of the issues where both agree that additional time is needed;

(5) to permit the agency to reconsider a previous action or determination;

(6) to permit or to require the performance of actions not previously taken; and

(7) to provide additional time or to permit or require additional activity by the person or agency as the interests of fairness may require.

(b) Requests for continuances or for rescheduling may be made orally or in writing. The person or agency requesting the continuance or rescheduling must first make reasonable efforts to contact the other participants in the hearing or their representatives and seek to obtain an agreement on the request. Requests for continuance or rescheduling should be made no later than three working days before the scheduled date of the hearing, unless there is a good cause as

specified in subdivision 13. Granting a continuance or rescheduling may be conditioned upon a waiver by the requester of applicable time limits but should not cause unreasonable delay.

Subd. 8.Subpoenas.

A person involved in a fair hearing or the agency may request a subpoena for a witness, for evidence, or for both. A reasonable number of subpoenas shall be issued to require the attendance and the testimony of witnesses, and the production of evidence relating to any issue of fact in the appeal hearing. The request for a subpoena must show a need for the subpoena and the general relevance to the issues involved. The subpoena shall be issued in the name of the department and shall be served and enforced as provided in section 357.22 and the Minnesota Rules of Civil Procedure.

An individual or entity served with a subpoena may petition the appeals referee in writing to vacate or modify a subpoena. The appeals referee shall resolve such a petition in a prehearing conference involving all parties and shall make a written decision. A subpoena may be vacated or modified if the appeals referee determines that the testimony or evidence sought does not relate with reasonable directness to the issues of the fair hearing appeal; that the subpoena is unreasonable, over broad, or oppressive; that the evidence sought is repetitious or cumulative; or that the subpoena has not been served reasonably in advance of the time when the appeal hearing will be held.

Subd. 9.No ex parte contact.

The appeals referee shall not have ex parte contact on substantive issues with the agency or with any person or witness in a fair hearing appeal. No employee of the department or agency shall review, interfere with, change, or attempt to influence the recommended decision of the appeals referee in any fair hearing appeal, except through the procedure allowed in subdivision 18. The limitations in this subdivision do not affect the commissioner's authority to review or reconsider decisions or make final decisions.

Subd. 10.Telephone or face-to-face hearing.

A fair hearing appeal may be conducted by telephone, by other electronic media, or by an in-person, face-to-face hearing. At the request of the person involved in a fair hearing appeal or their representative, a face-to-face hearing shall be conducted with all participants personally present before the appeals referee.

Subd. 11.Hearing facilities and equipment.

The appeals referee shall conduct the hearing in the county where the person involved resides, unless an alternate location is mutually agreed upon before the hearing, or unless the person has agreed to a hearing by telephone. Hearings under section 256.045, subdivision 3, paragraph (a), clauses (4), (8), and (9), must be conducted in the county where the determination was made, unless an alternate location is mutually agreed upon before the hearing. The hearing room shall be of sufficient size and layout to adequately accommodate both the number of individuals participating in the hearing and any identified special needs of any individual participating in the hearing. The appeals referee shall ensure that all communication and recording equipment that is necessary to conduct the hearing and to create

an adequate record is present and functioning properly. If any necessary communication or recording equipment fails or ceases to operate effectively, the appeals referee shall take any steps necessary, including stopping or adjourning the hearing, until the necessary equipment is present and functioning properly. All reasonable efforts shall be undertaken to prevent and avoid any delay in the hearing process caused by defective communication or recording equipment.

Subd. 12.Interpreter and translation services.

The appeals referee has a duty to inquire and to determine whether any participant in the hearing needs the services of an interpreter or translator in order to participate in or to understand the hearing process. Necessary interpreter or translation services must be provided at no charge to the person involved in the hearing. If it appears that interpreter or translation services are needed but are not available for the scheduled hearing, the appeals referee shall continue or postpone the hearing until appropriate services can be provided.

Subd. 13.Failure to appear; good cause.

If a person involved in a fair hearing appeal fails to appear at the hearing, the appeals referee may dismiss the appeal. The person may reopen the appeal if within ten working days the person submits information to the appeals referee to show good cause for not appearing. Good cause can be shown when there is:

(1) a death or serious illness in the person's family;

(2) a personal injury or illness which reasonably prevents the person from attending the hearing;

(3) an emergency, crisis, or unforeseen event which reasonably prevents the person from attending the hearing;

(4) an obligation or responsibility of the person which a reasonable person, in the conduct of one's affairs, could reasonably determine takes precedence over attending the hearing;

(5) lack of or failure to receive timely notice of the hearing in the preferred language of the person involved in the hearing; and

(6) excusable neglect, excusable inadvertence, excusable mistake, or other good cause as determined by the appeals referee.

Subd. 14.Commencement of hearing.

The appeals referee shall begin each hearing by describing the process to be followed in the hearing, including the swearing in of witnesses, how testimony and evidence are presented, the order of examining and cross-examining witnesses, and the opportunity for an opening statement and a closing statement. The appeals referee shall identify for the participants the issues to be addressed at the hearing and shall explain to the participants the burden of proof which applies to the person involved and the agency. The appeals referee shall confirm, prior to proceeding with the hearing, that the state agency appeal summary, if required under subdivision 3, has been properly completed and provided to the person involved in the hearing,

and that the person has been provided documents and an opportunity to review the case file, as provided in this section.

Subd. 15.Conduct of the hearing.

The appeals referee shall act in a fair and impartial manner at all times. At the beginning of the hearing the agency must designate one person as their representative who shall be responsible for presenting the agency's evidence and questioning any witnesses. The appeals referee shall make sure that the person and the agency are provided sufficient time to present testimony and evidence, to confront and cross-examine all adverse witnesses, and to make any relevant statement at the hearing. The appeals referee shall make reasonable efforts to explain the hearing process to persons who are not represented and shall ensure that the hearing is conducted fairly and efficiently. Upon the reasonable request of the person or the agency involved, the appeals referee may direct witnesses to remain outside the hearing room, except during their individual testimony. The appeals referee shall not terminate the hearing before affording the person and the agency a complete opportunity to submit all admissible evidence and reasonable opportunity for oral or written statement. When a hearing extends beyond the time which was anticipated, the hearing shall be rescheduled or continued from day-to-day until completion. Hearings that have been continued shall be timely scheduled to minimize delay in the disposition of the appeal.

Subd. 16.Scope of issues addressed at the hearing.

The hearing shall address the correctness and legality of the agency's action and shall not be limited simply to a review of the propriety of the agency's action. The person involved may raise and present evidence on all legal claims or defenses arising under state or federal law as a basis for appealing or disputing an agency action but not constitutional claims beyond the jurisdiction of the fair hearing. The appeals referee may take official notice of adjudicative facts.

Subd. 17.Burden of persuasion.

The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing. If there is no specific law, then the participant in the hearing who asserts the truth of a claim is under the burden to persuade the appeals referee that the claim is true.

Subd. 18.Inviting comment by department.

The appeals referee or the commissioner may determine that a written comment by the department about the policy implications of a specific legal issue could help resolve a pending appeal. Such a written policy comment from the department shall be obtained only by a written request that is also sent to the person involved and to the agency or its representative. When such a written comment is received, both the person involved in the hearing and the agency shall have adequate opportunity to review, evaluate, and respond to the written comment, including submission of additional testimony or evidence, and cross-examination concerning the written comment.

Subd. 19.Developing the record.

The appeals referee shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the hearing. Except in fair hearings and appeals under section 256.045, subdivision 3, paragraph (a), clauses (4), (8), and (9), in cases involving medical issues such as a diagnosis, a physician's report, or a review team's decision, the appeals referee shall consider whether it is necessary to have a medical assessment other than that of the individual making the original decision. When necessary, the appeals referee shall require an additional assessment be obtained at agency expense and made part of the hearing record. The appeals referee shall ensure for all cases that the record is sufficiently complete to make a fair and accurate decision.

Subd. 20.Unrepresented persons.

In cases involving unrepresented persons, the appeals referee shall take appropriate steps to identify and develop in the hearing relevant facts necessary for making an informed and fair decision. These steps may include, but are not limited to, asking questions of witnesses and referring the person to a legal services office. An unrepresented person shall be provided an adequate opportunity to respond to testimony or other evidence presented by the agency at the hearing. The appeals referee shall ensure that an unrepresented person has a full and reasonable opportunity at the hearing to establish a record for appeal.

Subd. 21.Closing of the record.

The agency must present its evidence prior to or at the hearing. The agency shall not be permitted to submit evidence after the hearing except by agreement at the hearing between the person involved, the agency, and the appeals referee. If evidence is submitted after the hearing, based on such an agreement, the person involved and the agency must be allowed sufficient opportunity to respond to the evidence. When necessary, the record shall remain open to permit a person to submit additional evidence on the issues presented at the hearing.

Subd. 22.Decisions.

A timely, written decision must be issued in every appeal. Each decision must contain a clear ruling on the issues presented in the appeal hearing and should contain a ruling only on questions directly presented by the appeal and the arguments raised in the appeal.

(a) A written decision must be issued within 90 days of the date the person involved requested the appeal unless a shorter time is required by law. An additional 30 days is provided in those cases where the commissioner refuses to accept the recommended decision.

(b) The decision must contain both findings of fact and conclusions of law, clearly separated and identified. The findings of fact must be based on the entire record. Each finding of fact made by the appeals referee shall be supported by a preponderance of the evidence unless a different standard is required under the regulations of a particular program. The "preponderance of the evidence" means, in light of the record as a whole, the evidence leads the appeals referee to believe that the finding of fact is more likely to be true than not true. The legal claims or arguments of a participant do not constitute either a finding of fact or a

conclusion of law, except to the extent the appeals referee adopts an argument as a finding of fact or conclusion of law.

The decision shall contain at least the following:

(1) a listing of the date and place of the hearing and the participants at the hearing;

(2) a clear and precise statement of the issues, including the dispute under consideration and the specific points which must be resolved in order to decide the case;

(3) a listing of the material, including exhibits, records, reports, placed into evidence at the hearing, and upon which the hearing decision is based;

(4) the findings of fact based upon the entire hearing record. The findings of fact must be adequate to inform the participants and any interested person in the public of the basis of the decision. If the evidence is in conflict on an issue which must be resolved, the findings of fact must state the reasoning used in resolving the conflict;

(5) conclusions of law that address the legal authority for the hearing and the ruling, and which give appropriate attention to the claims of the participants to the hearing;

(6) a clear and precise statement of the decision made resolving the dispute under consideration in the hearing; and

(7) written notice of the right to appeal to district court or to request reconsideration, and of the actions required and the time limits for taking appropriate action to appeal to district court or to request a reconsideration.

(c) The appeals referee shall not independently investigate facts or otherwise rely on information not presented at the hearing. The appeals referee may not contact other agency personnel, except as provided in subdivision 18. The appeals referee's recommended decision must be based exclusively on the testimony and evidence presented at the hearing, and legal arguments presented, and the appeals referee's research and knowledge of the law.

(d) The commissioner will review the recommended decision and accept or refuse to accept the decision according to section 256.045, subdivision 5.

Subd. 23.Refusal to accept recommended orders.

(a) If the commissioner refuses to accept the recommended order from the appeals referee, the person involved, the person's attorney or authorized representative, and the agency shall be sent a copy of the recommended order, a detailed explanation of the basis for refusing to accept the recommended order, and the proposed modified order.

(b) The person involved and the agency shall have at least ten business days to respond to the proposed modification of the recommended order. The person involved and the agency may submit a legal argument concerning the proposed modification, and may propose to submit additional evidence that relates to the proposed modified order.

Subd. 24.Reconsideration.

Reconsideration may be requested within 30 days of the date of the commissioner's final order. If reconsideration is requested, the other participants in the appeal shall be informed of the request. The person seeking reconsideration has the burden to demonstrate why the matter should be reconsidered. The request for reconsideration may include legal argument and may include proposed additional evidence supporting the request. The other participants shall be sent a copy of all material submitted in support of the request for reconsideration and must be given ten days to respond.

(a) When the requesting party raises a question as to the appropriateness of the findings of fact, the commissioner shall review the entire record.

(b) When the requesting party questions the appropriateness of a conclusion of law, the commissioner shall consider the recommended decision, the decision under reconsideration, and the material submitted in connection with the reconsideration. The commissioner shall review the remaining record as necessary to issue a reconsidered decision.

(c) The commissioner shall issue a written decision on reconsideration in a timely fashion. The decision must clearly inform the parties that this constitutes the final administrative decision, advise the participants of the right to seek judicial review, and the deadline for doing so.

Subd. 25.Access to appeal decisions.

Appeal decisions must be maintained in a manner so that the public has ready access to previous decisions on particular topics, subject to appropriate procedures for safeguarding names, personal identifying information, and other private data on the individual persons involved in the appeal.

History:

1Sp2003 c 14 art 6 s 49

256.046 ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS.

Subdivision 1.Hearing authority.

A local agency must initiate an administrative fraud disqualification hearing for individuals, including child care providers caring for children receiving child care assistance, accused of wrongfully obtaining assistance or intentional program violations, in lieu of a criminal action when it has not been pursued, in the Minnesota family investment program and any affiliated program to include the diversionary work program and the work participation cash benefit program, child care assistance programs, general assistance, family general assistance program formerly codified in section 256D.05, subdivision 1, clause (15), Minnesota supplemental aid, food stamp programs, general assistance medical care, MinnesotaCare for adults without children, and upon federal approval, all categories of medical assistance and remaining categories of MinnesotaCare except for children through age 18. The Department of Human

Services, in lieu of a local agency, may initiate an administrative fraud disqualification hearing when the state agency is directly responsible for administration or investigation of the program for which benefits were wrongfully obtained. The hearing is subject to the requirements of section 256.045 and the requirements in Code of Federal Regulations, title 7, section 273.16.

Subd. 2.Combined hearing.

The referee may combine a fair hearing and administrative fraud disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the individual receives prior notice that the hearings will be combined. If the administrative fraud disqualification hearing and fair hearing are combined, the time frames for administrative fraud disqualification hearings specified in Code of Federal Regulations, title 7, section 273.16, apply. If the individual accused of wrongfully obtaining assistance is charged under section 256.98 for the same act or acts which are the subject of the hearing, the individual may request that the hearing be delayed until the criminal charge is decided by the court or withdrawn.

History:

1992 c 513 art 8 s 10; 1997 c 85 art 4 s 12; art 5 s 6; 1Sp1997 c 5 s 13; 1999 c 159 s 40; 1999 c 205 art 1 s 52; 1Sp2003 c 14 art 9 s 31; art 12 s 3; 2004 c 288 art 4 s 25; 1Sp2005 c 4 art 8 s 10; 2008 c 286 art 1 s 2; 2010 c 301 art 1 s 1

256.0471 OVERPAYMENTS BECOME JUDGMENTS BY OPERATION OF LAW.

Subdivision 1.Qualifying overpayment.

Any overpayment for assistance granted under chapter 119B, the MFIP program formerly codified under sections 256.031 to 256.0361, and the AFDC program formerly codified under sections 256.72 to 256.871; chapters 256B for state-funded medical assistance, 256D, 256I, 256J, 256K, and 256L for state-funded MinnesotaCare; and the food stamp or food support program, except agency error claims, become a judgment by operation of law 90 days after the notice of overpayment is personally served upon the recipient in a manner that is sufficient under rule 4.03(a) of the Rules of Civil Procedure for district courts, or by certified mail, return receipt requested. This judgment shall be entitled to full faith and credit in this and any other state.

Subd. 2.Overpayments included.

This section is limited to overpayments for which notification is issued within the time period specified under section 541.05.

Subd. 3.Notification requirements.

A judgment is only obtained after:

(1) a notice of overpayment has been personally served on the recipient or former recipient in a manner sufficient under rule 4.03(a) of the Rules of Civil Procedure for district courts, or mailed to the recipient or former recipient certified mail return receipt requested; and

(2) the time period under section 256.045, subdivision 3, has elapsed without a request for a hearing, or a hearing decision has been rendered under section 256.045 or 256.046 which concludes the existence of an overpayment that meets the requirements of this section.

Subd. 4.Notice of overpayment.

The notice of overpayment shall include the amount and cause of the overpayment, appeal rights, and an explanation of the consequences of the judgment that will be established if an appeal is not filed timely or if the administrative hearing decision establishes that there is an overpayment which qualifies for judgment.

Subd. 5.Judgments entered and docketed.

A judgment shall be entered and docketed under section 548.09 only after at least three months have elapsed since:

(1) the notice of overpayment was served on the recipient pursuant to subdivision 3; and

(2) the last time a monthly recoupment was applied to the overpayment.

Subd. 6.Docketing of overpayments.

On or after the date an unpaid overpayment becomes a judgment by operation of law under subdivision 1, the agency or public authority may file with the court administrator:

(1) a statement identifying, or a copy of, the overpayment notice which provides for an appeal process and requires payment of the overpayment;

(2) proof of service of the notice of overpayment;

(3) an affidavit of default, stating the full name, occupation, place of residence, and last known post office address of the debtor; the name and post office address of the agency or public authority; the date or dates the overpayment was incurred; the program that was overpaid; and the total amount of the judgment; and

(4) an affidavit of service of a notice of entry of judgment shall be made by first class mail at the address where the debtor was served with the notice of overpayment. Service is completed upon mailing in the manner designated.

Subd. 6a.Administrative renewal of overpayment judgments.

Overpayment judgments may be renewed by service of notice upon the debtor. Service must be by first class mail at the last known address of the debtor, with service deemed complete upon mailing in that manner designated, or in the manner provided for the service of civil process. Upon filing of the notice and proof of service, the court administrator shall administratively renew the judgment for the overpayment without any additional filing fee in the same court file as the original overpayment judgment. The judgment must be renewed in an amount equal to the unpaid principal plus the accrued unpaid interest. Overpayment judgments may be renewed multiple times until satisfied.

Subd. 7.Does not impede other methods.

Nothing in this section shall be construed to impede or restrict alternative recovery methods for these overpayments or overpayments which do not meet the requirements of this section.

History:

1997 c 85 art 5 s 7; 1999 c 159 s 41; 1Sp2003 c 14 art 1 s 106; art 9 s 32; 2009 c 175 art 2 s 2,3

256.25 OLD AGE ASSISTANCE TO BE ALLOWED AS CLAIM IN DISTRICT COURT.

On the death of any person who received any old age assistance under this or any previous old age assistance law of this state, or on the death of the survivor of a married couple, either or both of whom received old age assistance, the total amount paid as old age assistance to either or both, without interest, shall be allowed as a claim against the estate of such person or persons by the court having jurisdiction to probate the estate. If the value of the estate of any such person has been enhanced as a result of the failure on the part of a recipient to make a full disclosure of the amount or value of the recipient's property, or the amount or value of the combined property of a married couple, in any old age assistance proceeding, the claim shall be allowed by the court as a preferred claim and have preference to the extent of such enhancement over all other claims, excepting only claims for expenses of administration, funeral expenses, and expenses of last sickness. If the value of any such estate, exclusive of household goods, wearing apparel, and a burial lot, is more than the value of the property of such person, as disclosed by the applicant in any old age assistance proceeding, it shall be prima facie evidence that the value of such estate was enhanced by the payment of old age assistance to the extent of the excess, but not exceeding the total amount of old age assistance paid to such person or persons. The statute of limitations which limits the county agency or the state agency, or both, to recover only for assistance granted within six years shall not apply to any claim made under Minnesota Statutes 1971, sections 256.11 to 256.43 for reimbursement for any assistance granted hereunder.

History:

(3199-25) Ex1935 c 95 s 15; 1939 c 242 s 1; 1Sp1981 c 4 art 1 s 123; 1986 c 444; 1995 c 189 s 8; 1996 c 277 s 1

256.87 CONTRIBUTION BY PARENTS.

Subdivision 1.Actions against parents for assistance furnished.

A parent of a child is liable for the amount of public assistance, as defined in section 256.741, furnished to and for the benefit of the child, including any assistance furnished for the benefit of the caretaker of the child, which the parent has had the ability to pay. Ability to pay must be determined according to chapter 518A. The parent's liability is limited to the two years immediately preceding the commencement of the action, except that where child support has been previously ordered, the state or county agency providing the assistance, as assignee of the obligee, shall be entitled to judgments for child support payments accruing within ten years preceding the date of the commencement of the action up to the full amount of assistance

furnished. The action may be ordered by the state agency or county agency and shall be brought in the name of the county or in the name of the state agency against the parent for the recovery of the amount of assistance granted, together with the costs and disbursements of the action.

Subd. 1a.Continuing support contributions.

In addition to granting the county or state agency a money judgment, the court may, upon a motion or order to show cause, order continuing support contributions by a parent found able to reimburse the county or state agency. The order shall be effective for the period of time during which the recipient receives public assistance from any county or state agency and thereafter. The order shall require support according to chapter 518A and include the names and Social Security numbers of the father, mother, and the child or children. An order for continuing contributions is reinstated without further hearing upon notice to the parent by any county or state agency that public assistance, as defined in section 256.741, is again being provided for the child of the parent. The notice shall be in writing and shall indicate that the parent may request a hearing for modification of the amount of support or maintenance.

Subd. 2.

[Repealed, 1983 c 308 s 32]

Subd. 3.

MS 1980 [Repealed, 1981 c 360 art 2 s 52]

Subd. 3.Continuing contributions to former recipient.

The order for continuing support contributions shall remain in effect following the period after public assistance, as defined in section 256.741, granted is terminated unless the former recipient files an affidavit with the court requesting termination of the order.

Subd. 4.

[Repealed, 1989 c 282 art 2 s 219]

Subd. 5.Child not receiving assistance.

A person or entity having physical custody of a dependent child not receiving public assistance as defined in section 256.741 has a cause of action for child support against the child's noncustodial parents. Upon a motion served on the noncustodial parent, the court shall order child support payments, including medical support and child care support, from the noncustodial parent under chapter 518A. A noncustodial parent's liability may include up to the two years immediately preceding the commencement of the action. This subdivision applies only if the person or entity has physical custody with the consent of a custodial parent or approval of the court.

Subd. 6.Entry of judgment.

Any order for support issued under this section shall provide for a conspicuous notice that, if the obligor fails to make a support payment, the payment owed becomes a judgment by operation of law on and after the date the payment is due, and the obligee or public agency responsible for support enforcement may obtain entry and docketing of the judgment for the unpaid amounts under the provisions of section 548.091.

Subd. 7.Notice of docketing of maintenance judgment.

Every order for maintenance issued under this section shall provide for a conspicuous notice that, if the obligor fails to make the maintenance payments, the obligee or public agency responsible for maintenance enforcement may obtain docketing of a judgment for the unpaid amount under the provisions of section 548.091. The notice shall enumerate the conditions that must be met before the judgment can be docketed.

Subd. 8.Disclosure prohibited.

Notwithstanding statutory or other authorization for the public authority to release private data on the location of a party to the action, information on the location of one party may not be released to the other party by the public authority if:

(1) the public authority has knowledge that a protective order with respect to the other party has been entered; or

(2) the public authority has reason to believe that the release of the information may result in physical or emotional harm to the other party.

Subd. 9.Arrears for parent who reunites with family.

(a) A parent liable for assistance under this section may seek a suspension of collection efforts under Title IV-D of the Social Security Act or a payment agreement based on ability to pay if the parent has reunited with that parent's family and lives in the same household as the child on whose behalf the assistance was furnished.

(b) The Title IV-D agency shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay a proposed payment agreement and shall propose a reasonable payment agreement tailored to those individual financial circumstances.

(c) The Title IV-D agency may suspend collection of arrears owed to the state under this section for as long as the obligor continues to live in the same household as the child on whose behalf the assistance was furnished if the total gross household income of the obligor is less than 185 percent of the federal poverty level.

(d) An obligor must annually reapply for suspension of collection of arrearages under paragraph (c).

(e) The obligor must notify the Title IV-D agency if the obligor no longer resides in the same household as the child.

History:

(8688-21, 8688-22, 8688-23) 1937 c 438 s 19-21; 1953 c 639 s 3; 1977 c 282 s 1; 1980 c 408 s 1; 1981 c 360 art 2 s 21; 1983 c 308 s 2; 1984 c 547 s 2; 1985 c 131 s 3,4; 1Sp1985 c 9 art 2 s 32; 1988 c 593 s 1-4; 1989 c 282 art 2 s 114; 1993 c 340 s 3-6; 1994 c 630 art 11 s 4; 1995 c 257 art 4 s 2; 1997 c 203 art 6 s 6-10; 1997 c 245 art 1 s 3; 1999 c 245 art 7 s 2; 2005 c 164 s 29; 1Sp2005 c 7 s 28

256.98 WRONGFULLY OBTAINING ASSISTANCE; THEFT.

Subdivision 1.Wrongfully obtaining assistance.

A person who commits any of the following acts or omissions with intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program formerly codified in sections 256.72 to 256.871, chapters 256B, 256D, 256J, 256K, or 256L, and child care assistance programs, is guilty of theft and shall be sentenced under section 609.52, subdivision 3, clauses (1) to (5):

(1) obtains or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of any material fact, or by impersonation or other fraudulent device, assistance or the continued receipt of assistance, to include child care assistance or vouchers produced according to sections 145.891 to 145.897 and MinnesotaCare services according to sections 256.9365, 256.94, and 256L.01 to 256L.15, to which the person is not entitled or assistance greater than that to which the person is entitled;

(2) knowingly aids or abets in buying or in any way disposing of the property of a recipient or applicant of assistance without the consent of the county agency; or

(3) obtains or attempts to obtain, alone or in collusion with others, the receipt of payments to which the individual is not entitled as a provider of subsidized child care, or by furnishing or concurring in a willfully false claim for child care assistance.

The continued receipt of assistance to which the person is not entitled or greater than that to which the person is entitled as a result of any of the acts, failure to act, or concealment described in this subdivision shall be deemed to be continuing offenses from the date that the first act or failure to act occurred.

Subd. 2.Joint trials.

When two or more defendants are jointly charged with the same offense under subdivision 1, or are jointly charged with different offenses under subdivision 1 arising from the same course of conduct, they shall be tried jointly; however, if it appears to the court that a defendant or the state is substantially prejudiced by the joinder for trial, the court may order an election or separate trial of counts, grant a severance of defendants, or provide other relief.

Subd. 3.Amount of assistance incorrectly paid.

The amount of the assistance incorrectly paid under this section is:

(1) the difference between the amount of assistance actually received on the basis of misrepresented or concealed facts and the amount to which the recipient would have been entitled had the specific concealment or misrepresentation not occurred. Unless required by law, rule, or regulation, earned income disregards shall not be applied to earnings not reported by the recipient; or

(2) equal to all payments for health care services, including capitation payments made to a health plan, made on behalf of a person enrolled in MinnesotaCare, medical assistance, or general assistance medical care, for which the person was not entitled due to the concealment or misrepresentation of facts.

Subd. 4.Recovery of assistance.

The amount of assistance determined to have been incorrectly paid is recoverable from:

(1) the recipient or the recipient's estate by the county or the state as a debt due the county or the state or both; and

(2) any person found to have taken independent action to establish eligibility for, conspired with, or aided and abetted, any recipient of public assistance found to have been incorrectly paid.

The obligations established under this subdivision shall be joint and several and shall extend to all cases involving client error as well as cases involving wrongfully obtained assistance.

MinnesotaCare participants who have been found to have wrongfully obtained assistance as described in subdivision 1, but who otherwise remain eligible for the program, may agree to have their MinnesotaCare premiums increased by an amount equal to ten percent of their premiums or $10 per month, whichever is greater, until the debt is satisfied.

Subd. 5.Criminal or civil action.

To prosecute or to recover assistance wrongfully obtained under this section, the attorney general or the appropriate county attorney, acting independently or at the direction of the attorney general, may institute a criminal or civil action or both.

Subd. 6.Rule superseded.

Rule 17.03, subdivision 2, of the Minnesota Rules of Criminal Procedure that relates to joint trials is superseded by this section to the extent that it conflicts with this section.

Subd. 7.Division of recovered amounts.

Except for recoveries under chapter 119B, if the state is responsible for the recovery, the amounts recovered shall be paid to the appropriate units of government. If the recovery is directly attributable to a county, the county may retain one-half of the nonfederal share of any recovery from a recipient or the recipient's estate.

This subdivision does not apply to recoveries from medical providers or to recoveries involving the department of human services, surveillance and utilization review division, state hospital collections unit, and the benefit recoveries division.

Subd. 8.Disqualification from program.

(a) Any person found to be guilty of wrongfully obtaining assistance by a federal or state court or by an administrative hearing determination, or waiver thereof, through a disqualification consent agreement, or as part of any approved diversion plan under section 401.065, or any court-ordered stay which carries with it any probationary or other conditions, in the Minnesota family investment program and any affiliated program to include the diversionary work program and the work participation cash benefit program, the food stamp or food support program, the general assistance program, the group residential housing program, or the Minnesota supplemental aid program shall be disqualified from that program. In addition,

any person disqualified from the Minnesota family investment program shall also be disqualified from the food stamp or food support program. The needs of that individual shall not be taken into consideration in determining the grant level for that assistance unit:

(1) for one year after the first offense;

(2) for two years after the second offense; and

(3) permanently after the third or subsequent offense.

The period of program disqualification shall begin on the date stipulated on the advance notice of disqualification without possibility of postponement for administrative stay or administrative hearing and shall continue through completion unless and until the findings upon which the sanctions were imposed are reversed by a court of competent jurisdiction. The period for which sanctions are imposed is not subject to review. The sanctions provided under this subdivision are in addition to, and not in substitution for, any other sanctions that may be provided for by law for the offense involved. A disqualification established through hearing or waiver shall result in the disqualification period beginning immediately unless the person has become otherwise ineligible for assistance. If the person is ineligible for assistance, the disqualification period begins when the person again meets the eligibility criteria of the program from which they were disqualified and makes application for that program.

(b) A family receiving assistance through child care assistance programs under chapter 119B with a family member who is found to be guilty of wrongfully obtaining child care assistance by a federal court, state court, or an administrative hearing determination or waiver, through a disqualification consent agreement, as part of an approved diversion plan under section 401.065, or a court-ordered stay with probationary or other conditions, is disqualified from child care assistance programs. The disqualifications must be for periods of three months, six months, and two years for the first, second, and third offenses respectively. Subsequent violations must result in permanent disqualification. During the disqualification period, disqualification from any child care program must extend to all child care programs and must be immediately applied.

(c) A provider caring for children receiving assistance through child care assistance programs under chapter 119B is disqualified from receiving payment for child care services from the child care assistance program under chapter 119B when the provider is found to have wrongfully obtained child care assistance by a federal court, state court, or an administrative hearing determination or waiver under section 256.046, through a disqualification consent agreement, as part of an approved diversion plan under section 401.065, or a court-ordered stay with probationary or other conditions. The disqualification must be for a period of one year for the first offense and two years for the second offense. Any subsequent violation must result in permanent disqualification. The disqualification period must be imposed immediately after a determination is made under this paragraph. During the disqualification period, the provider is disqualified from receiving payment from any child care program under chapter 119B.

(d) Any person found to be guilty of wrongfully obtaining general assistance medical care, MinnesotaCare for adults without children, and upon federal approval, all categories of medical

assistance and remaining categories of MinnesotaCare, except for children through age 18, by a federal or state court or by an administrative hearing determination, or waiver thereof, through a disqualification consent agreement, or as part of any approved diversion plan under section 401.065, or any court-ordered stay which carries with it any probationary or other conditions, is disqualified from that program. The period of disqualification is one year after the first offense, two years after the second offense, and permanently after the third or subsequent offense. The period of program disqualification shall begin on the date stipulated on the advance notice of disqualification without possibility of postponement for administrative stay or administrative hearing and shall continue through completion unless and until the findings upon which the sanctions were imposed are reversed by a court of competent jurisdiction. The period for which sanctions are imposed is not subject to review. The sanctions provided under this subdivision are in addition to, and not in substitution for, any other sanctions that may be provided for by law for the offense involved.

Subd. 9.Welfare reform coverage.

All references to MFIP or Minnesota family investment program contained in sections 256.017, 256.019, 256.045, 256.046, and 256.98 to 256.9866 shall be construed to include all variations of the Minnesota family investment program including, but not limited to, chapter 256J, MFIP, MFIP-R, and chapter 256K.

History:

1971 c 550 s 1; 1973 c 348 s 1; 1973 c 717 s 16; 1975 c 437 art 2 s 2; 1977 c 225 s 1; 1986 c 444; 1987 c 254 s 6; 1987 c 403 art 2 s 72; 1988 c 712 s 2; 1990 c 566 s 6; 1990 c 568 art 4 s 84; 1991 c 292 art 5 s 26; 1992 c 513 art 8 s 14; 1995 c 207 art 2 s 30,31; 1997 c 85 art 5 s 8-10; 1Sp1997 c 5 s 14,15; 1999 c 159 s 46,47; 1999 c 205 art 1 s 54-56; 1Sp2001 c 9 art 10 s 2,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 106; art 9 s 33; art 12 s 12-14; 2004 c 288 art 4 s 26; 2008 c 277 art 1 s 34; 2010 c 301 art 1 s 2

256.9863 ELECTRONIC BENEFIT TRANSACTION CARD; RECEIPT OF BENEFITS.

Any person in whose name an electronic benefit transaction card has been issued shall be presumed to have received the benefit of all transactions involving that card. This presumption applies in all situations unless the card in question has been reported lost or stolen by the cardholder. This presumption may be overcome by a preponderance of evidence indicating that the card was neither used by nor with the consent of the cardholder. Overcoming this presumption does not create any new or additional payment obligation not otherwise established in law, rule, or regulation.

History:

1997 c 85 art 5 s 19; 2012 c 247 art 3 s 30

256.9866 COMMUNITY SERVICE AS A COUNTY OBLIGATION.

Community service shall be an acceptable sentencing option but shall not reduce the state or federal share of any amount to be repaid or any subsequent recovery. Any reduction or offset of any such amount ordered by a court shall be treated as follows:

(1) any reduction in an overpayment amount, to include the amount ordered as restitution, shall not reduce the underlying amount established as an overpayment by the state or county agency;

(2) total overpayments shall continue as a debt owed and may be recovered by any civil or administrative means otherwise available to the state or county agency; and

(3) any amount ordered to be offset against any overpayment shall be deducted from the county share only of any recovery and shall be based on the prevailing state minimum wage.

History:

1997 c 85 art 5 s 22; *2002 c 277 s 8*

256B.14 RELATIVE'S RESPONSIBILITY.

Subdivision 1.In general.

Subject to the provisions of sections 256B.055, 256B.056, and 256B.06, responsible relative means the parent of a minor recipient of medical assistance or the spouse of a medical assistance recipient.

Subd. 2.Actions to obtain payment.

The state agency shall promulgate rules to determine the ability of responsible relatives to contribute partial or complete payment or repayment of medical assistance furnished to recipients for whom they are responsible. All medical assistance exclusions shall be allowed, and a resource limit of $10,000 for nonexcluded resources shall be implemented. Above these limits, a contribution of one-third of the excess resources shall be required. These rules shall not require payment or repayment when payment would cause undue hardship to the responsible relative or that relative's immediate family. These rules shall be consistent with the requirements of section 252.27 for parents of children whose eligibility for medical assistance was determined without deeming of the parents' resources and income. The county agency shall give the responsible relative notice of the amount of the payment or repayment. If the state agency or county agency finds that notice of the payment obligation was given to the responsible relative, but that the relative failed or refused to pay, a cause of action exists against the responsible relative for that portion of medical assistance granted after notice was given to the responsible relative, which the relative was determined to be able to pay.

The action may be brought by the state agency or the county agency in the county where assistance was granted, for the assistance, together with the costs of disbursements incurred due to the action.

In addition to granting the county or state agency a money judgment, the court may, upon a motion or order to show cause, order continuing contributions by a responsible relative found able to repay the county or state agency. The order shall be effective only for the period of time during which the recipient receives medical assistance from the county or state agency.

Subd. 3.Community spouse contribution.

The community spouse of an institutionalized person who receives medical assistance under section 256B.059, subdivision 5, paragraph (b), has an obligation to pay for the cost of care equal to the dollar value of assets considered available under section 256B.059, subdivision 5.

Subd. 3a.Spousal contribution.

(a) For purposes of this subdivision, the following terms have the meanings given:

(1) "commissioner" means the commissioner of human services;

(2) "community spouse" means the spouse, who lives in the community, of an individual receiving long-term care services in a long-term care facility or home care services pursuant to the Medicaid waiver for elderly services under section 256B.0915 or the alternative care program under section 256B.0913. A community spouse does not include a spouse living in the community who receives a monthly income allowance under section 256B.058, subdivision 2, or who receives home and community-based services under section 256B.0915, 256B.092, or 256B.49, or the alternative care program under section 256B.0913;

(3) "cost of care" means the actual fee-for-service costs or capitated payments for the long-term care spouse;

(4) "department" means the Department of Human Services;

(5) "disabled child" means a blind or permanently and totally disabled son or daughter of any age based on the Social Security Administration disability standards;

(6) "income" means earned and unearned income, attributable to the community spouse, used to calculate the adjusted gross income on the prior year's income tax return. Evidence of income includes, but is not limited to, W-2 and 1099 forms; and

(7) "long-term care spouse" means the spouse who is receiving long-term care services in a long-term care facility or home and community based services pursuant to the Medicaid waiver for elderly services under section 256B.0915 or the alternative care program under section 256B.0913.

(b) The community spouse of a long-term care spouse who receives medical assistance or alternative care services has an obligation to contribute to the cost of care. The community spouse must pay a monthly fee on a sliding fee scale based on the community spouse's income. If a minor or disabled child resides with and receives care from the community spouse, then no fee shall be assessed.

(c) For a community spouse with an income equal to or greater than 250 percent of the federal poverty guidelines for a family of two and less than 545 percent of the federal poverty

guidelines for a family of two, the spousal contribution shall be determined using a sliding fee scale established by the commissioner that begins at 7.5 percent of the community spouse's income and increases to 15 percent for those with an income of up to 545 percent of the federal poverty guidelines for a family of two.

(d) For a community spouse with an income equal to or greater than 545 percent of the federal poverty guidelines for a family of two and less than 750 percent of the federal poverty guidelines for a family of two, the spousal contribution shall be determined using a sliding fee scale established by the commissioner that begins at 15 percent of the community spouse's income and increases to 25 percent for those with an income of up to 750 percent of the federal poverty guidelines for a family of two.

(e) For a community spouse with an income equal to or greater than 750 percent of the federal poverty guidelines for a family of two and less than 975 percent of the federal poverty guidelines for a family of two, the spousal contribution shall be determined using a sliding fee scale established by the commissioner that begins at 25 percent of the community spouse's income and increases to 33 percent for those with an income of up to 975 percent of the federal poverty guidelines for a family of two.

(f) For a community spouse with an income equal to or greater than 975 percent of the federal poverty guidelines for a family of two, the spousal contribution shall be 33 percent of the community spouse's income.

(g) The spousal contribution shall be explained in writing at the time eligibility for medical assistance or alternative care is being determined. In addition to explaining the formula used to determine the fee, the county or tribal agency shall provide written information describing how to request a variance for undue hardship, how a contribution may be reviewed or redetermined, the right to appeal a contribution determination, and that the consequences for not complying with a request to provide information shall be an assessment against the community spouse for the full cost of care for the long-term care spouse.

(h) The contribution shall be assessed for each month the long-term care spouse has a community spouse and is eligible for medical assistance payment of long-term care services or alternative care.

(i) The spousal contribution shall be reviewed at least once every 12 months and when there is a loss or gain in income in excess of ten percent. Thirty days prior to a review or redetermination, written notice must be provided to the community spouse and must contain the amount the spouse is required to contribute, notice of the right to redetermination and appeal, and the telephone number of the division at the agency that is responsible for redetermination and review. If, after review, the contribution amount is to be adjusted, the county or tribal agency shall mail a written notice to the community spouse 30 days in advance of the effective date of the change in the amount of the contribution.

(1) The spouse shall notify the county or tribal agency within 30 days of a gain or loss in income in excess of ten percent and provide the agency supporting documentation to verify the need for redetermination of the fee.

(2) When a spouse requests a review or redetermination of the contribution amount, a request for information shall be sent to the spouse within ten calendar days after the county or tribal agency receives the request for review.

(3) No action shall be taken on a review or redetermination until the required information is received by the county or tribal agency.

(4) The review of the spousal contribution shall be completed within ten days after the county or tribal agency receives completed information that verifies a loss or gain in income in excess of ten percent.

(5) An increase in the contribution amount is effective in the month in which the increase in income occurs.

(6) A decrease in the contribution amount is effective in the month the spouse verifies the reduction in income, retroactive to no longer than six months.

(j) In no case shall the spousal contribution exceed the amount of medical assistance expended or the cost of alternative care services for the care of the long-term care spouse. Annually, upon redetermination, or at termination of eligibility, the total amount of medical assistance paid or costs of alternative care for the care of the long-term care spouse and the total amount of the spousal contribution shall be compared. If the total amount of the spousal contribution exceeds the total amount of medical assistance expended or cost of alternative care, then the agency shall reimburse the community spouse the excess amount if the long-term care spouse is no longer receiving services, or apply the excess amount to the spousal contribution due until the excess amount is exhausted.

(k) A community spouse may request a variance by submitting a written request and supporting documentation that payment of the calculated contribution would cause an undue hardship. An undue hardship is defined as the inability to pay the calculated contribution due to medical expenses incurred by the community spouse. Documentation must include proof of medical expenses incurred by the community spouse since the last annual redetermination of the contribution amount that are not reimbursable by any public or private source, and are a type, regardless of amount, that would be allowable as a federal tax deduction under the Internal Revenue Code.

(1) A spouse who requests a variance from a notice of an increase in the amount of spousal contribution shall continue to make monthly payments at the lower amount pending determination of the variance request. A spouse who requests a variance from the initial determination shall not be required to make a payment pending determination of the variance request. Payments made pending outcome of the variance request that result in overpayment must be returned to the spouse, if the long-term care spouse is no longer receiving services, or applied to the spousal contribution in the current year. If the variance is denied, the spouse shall pay the additional amount due from the effective date of the increase or the total amount due from the effective date of the original notice of determination of the spousal contribution.

(2) A spouse who is granted a variance shall sign a written agreement in which the spouse agrees to report to the county or tribal agency any changes in circumstances that gave rise to the undue hardship variance.

(3) When the county or tribal agency receives a request for a variance, written notice of a grant or denial of the variance shall be mailed to the spouse within 30 calendar days after the county or tribal agency receives the financial information required in this clause. The granting of a variance will necessitate a written agreement between the spouse and the county or tribal agency with regard to the specific terms of the variance. The variance will not become effective until the written agreement is signed by the spouse. If the county or tribal agency denies in whole or in part the request for a variance, the denial notice shall set forth in writing the reasons for the denial that address the specific hardship and right to appeal.

(4) If a variance is granted, the term of the variance shall not exceed 12 months unless otherwise determined by the county or tribal agency.

(5) Undue hardship does not include action taken by a spouse which divested or diverted income in order to avoid being assessed a spousal contribution.

(l) A spouse aggrieved by an action under this subdivision has the right to appeal under subdivision 4. If the spouse appeals on or before the effective date of an increase in the spousal fee, the spouse shall continue to make payments to the county or tribal agency in the lower amount while the appeal is pending. A spouse appealing an initial determination of a spousal contribution shall not be required to make monthly payments pending an appeal decision. Payments made that result in an overpayment shall be reimbursed to the spouse if the long-term care spouse is no longer receiving services, or applied to the spousal contribution remaining in the current year. If the county or tribal agency's determination is affirmed, the community spouse shall pay within 90 calendar days of the order the total amount due from the effective date of the original notice of determination of the spousal contribution. The commissioner's order is binding on the spouse and the agency and shall be implemented subject to section 256.045, subdivision 7. No additional notice is required to enforce the commissioner's order.

(m) If the county or tribal agency finds that notice of the payment obligation was given to the community spouse and the spouse was determined to be able to pay, but that the spouse failed or refused to pay, a cause of action exists against the community spouse for that portion of medical assistance payment of long-term care services or alternative care services granted after notice was given to the community spouse. The action may be brought by the county or tribal agency in the county where assistance was granted for the assistance together with the costs of disbursements incurred due to the action. In addition to granting the county or tribal agency a money judgment, the court may, upon a motion or order to show cause, order continuing contributions by a community spouse found able to repay the county or tribal agency. The order shall be effective only for the period of time during which a contribution shall be assessed.

(n) Counties and tribes are entitled to one-half of the nonfederal share of contributions made under this section for long-term care spouses on medical assistance that are directly

attributed to county or tribal efforts. Counties and tribes are entitled to 25 percent of the contributions made under this section for long-term care spouses on alternative care directly attributed to county or tribal efforts.

Subd. 4.Appeals.

A responsible relative may appeal the determination of an obligation to make a contribution under this section according to section 256.045.

History:

Ex1967 c 16 s 14; 1973 c 725 s 46; 1977 c 448 s 7; 1982 c 640 s 6; 1983 c 312 art 5 s 19; 1984 c 530 s 4; 1986 c 444; 1988 c 689 art 2 s 150,268,270; 1989 c 282 art 3 s 63; 1990 c 568 art 3 s 62; 1992 c 513 art 7 s 79; 1Sp2011 c 9 art 3 s 5

256B.15 CLAIMS AGAINST ESTATES.

Subdivision 1.Policy and applicability.

(a) It is the policy of this state that individuals or couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the total cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state. The following provisions apply:

(1) subdivisions 1c to 1k shall not apply to claims arising under this section which are presented under section 525.313;

(2) the provisions of subdivisions 1c to 1k expanding the interests included in an estate for purposes of recovery under this section give effect to the provisions of United States Code, title 42, section 1396p, governing recoveries, but do not give rise to any express or implied liens in favor of any other parties not named in these provisions;

(3) the continuation of a recipient's life estate or joint tenancy interest in real property after the recipient's death for the purpose of recovering medical assistance under this section modifies common law principles holding that these interests terminate on the death of the holder;

(4) all laws, rules, and regulations governing or involved with a recovery of medical assistance shall be liberally construed to accomplish their intended purposes;

(5) a deceased recipient's life estate and joint tenancy interests continued under this section shall be owned by the remainderpersons or surviving joint tenants as their interests may appear on the date of the recipient's death. They shall not be merged into the remainder interest or the interests of the surviving joint tenants by reason of ownership. They shall be subject to the provisions of this section. Any conveyance, transfer, sale, assignment, or encumbrance by a remainderperson, a surviving joint tenant, or their heirs, successors, and assigns shall be deemed to include all of their interest in the deceased recipient's life estate or joint tenancy interest continued under this section; and

(6) the provisions of subdivisions 1c to 1k continuing a recipient's joint tenancy interests in real property after the recipient's death do not apply to a homestead owned of record, on the date the recipient dies, by the recipient and the recipient's spouse as joint tenants with a right of survivorship. Homestead means the real property occupied by the surviving joint tenant spouse as their sole residence on the date the recipient dies and classified and taxed to the recipient and surviving joint tenant spouse as homestead property for property tax purposes in the calendar year in which the recipient dies. For purposes of this exemption, real property the recipient and their surviving joint tenant spouse purchase solely with the proceeds from the sale of their prior homestead, own of record as joint tenants, and qualify as homestead property under section 273.124 in the calendar year in which the recipient dies and prior to the recipient's death shall be deemed to be real property classified and taxed to the recipient and their surviving joint tenant spouse as homestead property in the calendar year in which the recipient dies. The surviving spouse, or any person with personal knowledge of the facts, may provide an affidavit describing the homestead property affected by this clause and stating facts showing compliance with this clause. The affidavit shall be prima facie evidence of the facts it states.

(b) For purposes of this section, "medical assistance" includes the medical assistance program under this chapter and the general assistance medical care program under chapter 256D and alternative care for nonmedical assistance recipients under section 256B.0913.

(c) For purposes of this section, beginning January 1, 2010, "medical assistance" does not include Medicare cost-sharing benefits in accordance with United States Code, title 42, section 1396p.

(d) All provisions in this subdivision, and subdivisions 1d, 1f, 1g, 1h, 1i, and 1j, related to the continuation of a recipient's life estate or joint tenancy interests in real property after the recipient's death for the purpose of recovering medical assistance, are effective only for life estates and joint tenancy interests established on or after August 1, 2003. For purposes of this paragraph, medical assistance does not include alternative care.

Subd. 1a.Estates subject to claims.

(a) If a person receives any medical assistance hereunder, on the person's death, if single, or on the death of the survivor of a married couple, either or both of whom received medical assistance, or as otherwise provided for in this section, the total amount paid for medical assistance rendered for the person and spouse shall be filed as a claim against the estate of the person or the estate of the surviving spouse in the court having jurisdiction to probate the estate or to issue a decree of descent according to sections 525.31 to 525.313.

(b) For the purposes of this section, the person's estate must consist of:

(1) the person's probate estate;

(2) all of the person's interests or proceeds of those interests in real property the person owned as a life tenant or as a joint tenant with a right of survivorship at the time of the person's death;

(3) all of the person's interests or proceeds of those interests in securities the person owned in beneficiary form as provided under sections 524.6-301 to 524.6-311 at the time of the person's death, to the extent the interests or proceeds of those interests become part of the probate estate under section 524.6-307;

(4) all of the person's interests in joint accounts, multiple-party accounts, and pay-on-death accounts, brokerage accounts, investment accounts, or the proceeds of those accounts, as provided under sections 524.6-201 to 524.6-214 at the time of the person's death to the extent the interests become part of the probate estate under section 524.6-207; and

(5) assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, or other arrangements.

(c) For the purpose of this section and recovery in a surviving spouse's estate for medical assistance paid for a predeceased spouse, the estate must consist of all of the legal title and interests the deceased individual's predeceased spouse had in jointly owned or marital property at the time of the spouse's death, as defined in subdivision 2b, and the proceeds of those interests, that passed to the deceased individual or another individual, a survivor, an heir, or an assign of the predeceased spouse through a joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. A deceased recipient who, at death, owned the property jointly with the surviving spouse shall have an interest in the entire property.

(d) For the purpose of recovery in a single person's estate or the estate of a survivor of a married couple, "other arrangement" includes any other means by which title to all or any part of the jointly owned or marital property or interest passed from the predeceased spouse to another including, but not limited to, transfers between spouses which are permitted, prohibited, or penalized for purposes of medical assistance.

(e) A claim shall be filed if medical assistance was rendered for either or both persons under one of the following circumstances:

(1) the person was over 55 years of age, and received services under this chapter;

(2) the person resided in a medical institution for six months or longer, received services under this chapter, and, at the time of institutionalization or application for medical assistance, whichever is later, the person could not have reasonably been expected to be discharged and returned home, as certified in writing by the person's treating physician. For purposes of this section only, a "medical institution" means a skilled nursing facility, intermediate care facility, intermediate care facility for persons with developmental disabilities, nursing facility, or inpatient hospital; or

(3) the person received general assistance medical care services under chapter 256D.

(f) The claim shall be considered an expense of the last illness of the decedent for the purpose of section 524.3-805. Notwithstanding any law or rule to the contrary, a state or county agency with a claim under this section must be a creditor under section 524.6-307. Any statute of limitations that purports to limit any county agency or the state agency, or both, to recover for medical assistance granted hereunder shall not apply to any claim made hereunder for

reimbursement for any medical assistance granted hereunder. Notice of the claim shall be given to all heirs and devisees of the decedent, and to other persons with an ownership interest in the real property owned by the decedent at the time of the decedent's death, whose identity can be ascertained with reasonable diligence. The notice must include procedures and instructions for making an application for a hardship waiver under subdivision 5; time frames for submitting an application and determination; and information regarding appeal rights and procedures. Counties are entitled to one-half of the nonfederal share of medical assistance collections from estates that are directly attributable to county effort. Counties are entitled to ten percent of the collections for alternative care directly attributable to county effort.

[See Note.]

Subd. 1b.

[Repealed, 2001 c 203 s 19]

Subd. 1c.Notice of potential claim.

(a) A state agency with a claim or potential claim under this section may file a notice of potential claim under this subdivision anytime before or within one year after a medical assistance recipient dies. The claimant shall be the state agency. A notice filed prior to the recipient's death shall not take effect and shall not be effective as notice until the recipient dies. A notice filed after a recipient dies shall be effective from the time of filing.

(b) The notice of claim shall be filed or recorded in the real estate records in the office of the county recorder or registrar of titles for each county in which any part of the property is located. The recorder shall accept the notice for recording or filing. The registrar of titles shall accept the notice for filing if the recipient has a recorded interest in the property. The registrar of titles shall not carry forward to a new certificate of title any notice filed more than one year from the date of the recipient's death.

(c) The notice must be dated, state the name of the claimant, the medical assistance recipient's name and last four digits of the Social Security number if filed before their death and their date of death if filed after they die, the name and date of death of any predeceased spouse of the medical assistance recipient for whom a claim may exist, a statement that the claimant may have a claim arising under this section, generally identify the recipient's interest in the property, contain a legal description for the property and whether it is abstract or registered property, a statement of when the notice becomes effective and the effect of the notice, be signed by an authorized representative of the state agency, and may include such other contents as the state agency may deem appropriate.

Subd. 1d.Effect of notice.

From the time it takes effect, the notice shall be notice to remainderpersons, joint tenants, or to anyone else owning or acquiring an interest in or encumbrance against the property described in the notice that the medical assistance recipient's life estate, joint tenancy, or other interests in the real estate described in the notice:

(1) shall, in the case of life estate and joint tenancy interests, continue to exist for purposes of this section, and be subject to liens and claims as provided in this section;

(2) shall be subject to a lien in favor of the claimant effective upon the death of the recipient and dealt with as provided in this section;

(3) may be included in the recipient's estate, as defined in this section; and

(4) may be subject to administration and all other provisions of chapter 524 and may be sold, assigned, transferred, or encumbered free and clear of their interest or encumbrance to satisfy claims under this section.

Subd. 1e.Full or partial release of notice.

(a) The claimant may fully or partially release the notice and the lien arising out of the notice of record in the real estate records where the notice is filed or recorded at any time. The claimant may give a full or partial release to extinguish any life estates or joint tenancy interests which are or may be continued under this section or whose existence or nonexistence may create a cloud on the title to real property at any time whether or not a notice has been filed. The recorder or registrar of titles shall accept the release for recording or filing. If the release is a partial release, it must include a legal description of the property being released.

(b) At any time, the claimant may, at the claimant's discretion, wholly or partially release, subordinate, modify, or amend the recorded notice and the lien arising out of the notice.

Subd. 1f.Agency lien.

(a) The notice shall constitute a lien in favor of the Department of Human Services against the recipient's interests in the real estate it describes for a period of 20 years from the date of filing or the date of the recipient's death, whichever is later. Notwithstanding any law or rule to the contrary, a recipient's life estate and joint tenancy interests shall not end upon the recipient's death but shall continue according to subdivisions 1h, 1i, and 1j. The amount of the lien shall be equal to the total amount of the claims that could be presented in the recipient's estate under this section.

(b) If no estate has been opened for the deceased recipient, any holder of an interest in the property may apply to the lienholder for a statement of the amount of the lien or for a full or partial release of the lien. The application shall include the applicant's name, current mailing address, current home and work telephone numbers, and a description of their interest in the property, a legal description of the recipient's interest in the property, and the deceased recipient's name, date of birth, and last four digits of the Social Security number. The lienholder shall send the applicant by certified mail, return receipt requested, a written statement showing the amount of the lien, whether the lienholder is willing to release the lien and under what conditions, and inform them of the right to a hearing under section 256.045. The lienholder shall have the discretion to compromise and settle the lien upon any terms and conditions the lienholder deems appropriate.

(c) Any holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the validity, extent, or amount of the lien. The request must

be in writing, and must include the names, current addresses, and home and business telephone numbers for all other parties holding an interest in the property. A request for a hearing by any holder of an interest in the property shall be deemed to be a request for a hearing by all parties owning interests in the property. Notice of the hearing shall be given to the lienholder, the party filing the appeal, and all of the other holders of interests in the property at the addresses listed in the appeal by certified mail, return receipt requested, or by ordinary mail. Any owner of an interest in the property to whom notice of the hearing is mailed shall be deemed to have waived any and all claims or defenses in respect to the lien unless they appear and assert any claims or defenses at the hearing.

(d) If the claim the lien secures could be filed under subdivision 1h, the lienholder may collect, compromise, settle, or release the lien upon any terms and conditions it deems appropriate. If the claim the lien secures could be filed under subdivision 1i or 1j, the lien may be adjusted or enforced to the same extent had it been filed under subdivisions 1i and 1j, and the provisions of subdivisions 1i, clause (f), and 1j, clause (d), shall apply to voluntary payment, settlement, or satisfaction of the lien.

(e) If no probate proceedings have been commenced for the recipient as of the date the lien holder executes a release of the lien on a recipient's life estate or joint tenancy interest, created for purposes of this section, the release shall terminate the life estate or joint tenancy interest created under this section as of the date it is recorded or filed to the extent of the release. If the claimant executes a release for purposes of extinguishing a life estate or a joint tenancy interest created under this section to remove a cloud on title to real property, the release shall have the effect of extinguishing any life estate or joint tenancy interests in the property it describes which may have been continued by reason of this section retroactive to the date of death of the deceased life tenant or joint tenant except as provided for in section 514.981, subdivision 6.

(f) If the deceased recipient's estate is probated, a claim shall be filed under this section. The amount of the lien shall be limited to the amount of the claim as finally allowed. If the claim the lien secures is filed under subdivision 1h, the lien may be released in full after any allowance of the claim becomes final or according to any agreement to settle and satisfy the claim. The release shall release the lien but shall not extinguish or terminate the interest being released. If the claim the lien secures is filed under subdivision 1i or 1j, the lien shall be released after the lien under subdivision 1i or 1j is filed or recorded, or settled according to any agreement to settle and satisfy the claim. The release shall not extinguish or terminate the interest being released. If the claim is finally disallowed in full, the claimant shall release the claimant's lien at the claimant's expense.

Subd. 1g.Estate property.

Notwithstanding any law or rule to the contrary, if a claim is presented under this section, interests or the proceeds of interests in real property a decedent owned as a life tenant or a joint tenant with a right of survivorship shall be part of the decedent's estate, subject to administration, and shall be dealt with as provided in this section.

Subd. 1h.Estates of specific persons receiving medical assistance.

(a) For purposes of this section, paragraphs (b) to (j) apply if a person received medical assistance for which a claim may be filed under this section and died single, or the surviving spouse of the couple and was not survived by any of the persons described in subdivisions 3 and 4.

(b) Notwithstanding any law or rule to the contrary, the person's life estate or joint tenancy interest in real property not subject to a medical assistance lien under sections 514.980 to 514.985 on the date of the person's death shall not end upon the person's death and shall continue as provided in this subdivision. The life estate in the person's estate shall be that portion of the interest in the real property subject to the life estate that is equal to the life estate percentage factor for the life estate as listed in the Life Estate Mortality Table of the health care program's manual for a person who was the age of the medical assistance recipient on the date of the person's death. The joint tenancy interest in real property in the estate shall be equal to the fractional interest the person would have owned in the jointly held interest in the property had they and the other owners held title to the property as tenants in common on the date the person died.

(c) The court upon its own motion, or upon motion by the personal representative or any interested party, may enter an order directing the remainderpersons or surviving joint tenants and their spouses, if any, to sign all documents, take all actions, and otherwise fully cooperate with the personal representative and the court to liquidate the decedent's life estate or joint tenancy interests in the estate and deliver the cash or the proceeds of those interests to the personal representative and provide for any legal and equitable sanctions as the court deems appropriate to enforce and carry out the order, including an award of reasonable attorney fees.

(d) The personal representative may make, execute, and deliver any conveyances or other documents necessary to convey the decedent's life estate or joint tenancy interest in the estate that are necessary to liquidate and reduce to cash the decedent's interest or for any other purposes.

(e) Subject to administration, all costs, including reasonable attorney fees, directly and immediately related to liquidating the decedent's life estate or joint tenancy interest in the decedent's estate, shall be paid from the gross proceeds of the liquidation allocable to the decedent's interest and the net proceeds shall be turned over to the personal representative and applied to payment of the claim presented under this section.

(f) The personal representative shall bring a motion in the district court in which the estate is being probated to compel the remainderpersons or surviving joint tenants to account for and deliver to the personal representative all or any part of the proceeds of any sale, mortgage, transfer, conveyance, or any disposition of real property allocable to the decedent's life estate or joint tenancy interest in the decedent's estate, and do everything necessary to liquidate and reduce to cash the decedent's interest and turn the proceeds of the sale or other disposition over to the personal representative. The court may grant any legal or equitable relief including, but not limited to, ordering a partition of real estate under chapter 558 necessary to make the value of the decedent's life estate or joint tenancy interest available to the estate for payment of a claim under this section.

(g) Subject to administration, the personal representative shall use all of the cash or proceeds of interests to pay an allowable claim under this section. The remainderpersons or surviving joint tenants and their spouses, if any, may enter into a written agreement with the personal representative or the claimant to settle and satisfy obligations imposed at any time before or after a claim is filed.

(h) The personal representative may, at their discretion, provide any or all of the other owners, remainderpersons, or surviving joint tenants with an affidavit terminating the decedent's estate's interest in real property the decedent owned as a life tenant or as a joint tenant with others, if the personal representative determines in good faith that neither the decedent nor any of the decedent's predeceased spouses received any medical assistance for which a claim could be filed under this section, or if the personal representative has filed an affidavit with the court that the estate has other assets sufficient to pay a claim, as presented, or if there is a written agreement under paragraph (g), or if the claim, as allowed, has been paid in full or to the full extent of the assets the estate has available to pay it. The affidavit may be recorded in the office of the county recorder or filed in the Office of the Registrar of Titles for the county in which the real property is located. Except as provided in section 514.981, subdivision 6, when recorded or filed, the affidavit shall terminate the decedent's interest in real estate the decedent owned as a life tenant or a joint tenant with others. The affidavit shall:

(1) be signed by the personal representative;

(2) identify the decedent and the interest being terminated;

(3) give recording information sufficient to identify the instrument that created the interest in real property being terminated;

(4) legally describe the affected real property;

(5) state that the personal representative has determined that neither the decedent nor any of the decedent's predeceased spouses received any medical assistance for which a claim could be filed under this section;

(6) state that the decedent's estate has other assets sufficient to pay the claim, as presented, or that there is a written agreement between the personal representative and the claimant and the other owners or remainderpersons or other joint tenants to satisfy the obligations imposed under this subdivision; and

(7) state that the affidavit is being given to terminate the estate's interest under this subdivision, and any other contents as may be appropriate.

The recorder or registrar of titles shall accept the affidavit for recording or filing. The affidavit shall be effective as provided in this section and shall constitute notice even if it does not include recording information sufficient to identify the instrument creating the interest it terminates. The affidavit shall be conclusive evidence of the stated facts.

(i) The holder of a lien arising under subdivision 1c shall release the lien at the holder's expense against an interest terminated under paragraph (g) to the extent of the termination.

(j) If a lien arising under subdivision 1c is not released under paragraph (i), prior to closing the estate, the personal representative shall deed the interest subject to the lien to the remainderpersons or surviving joint tenants as their interests may appear. Upon recording or filing, the deed shall work a merger of the recipient's life estate or joint tenancy interest, subject to the lien, into the remainder interest or interest the decedent and others owned jointly. The lien shall attach to and run with the property to the extent of the decedent's interest at the time of the decedent's death.

Subd. 1i.Estates of persons receiving medical assistance and survived by others.

(a) For purposes of this subdivision, the person's estate consists of the person's probate estate and all of the person's interests in real property the person owned as a life tenant or a joint tenant at the time of the person's death and the person's legal title or interest at the time of the person's death in real property transferred to a beneficiary under a transfer on death deed under section 507.071, or in the proceeds from the subsequent sale of the person's interest in the transferred real property.

(b) Notwithstanding any law or rule to the contrary, this subdivision applies if a person received medical assistance for which a claim could be filed under this section but for the fact the person was survived by a spouse or by a person listed in subdivision 3, or if subdivision 4 applies to a claim arising under this section.

(c) The person's life estate or joint tenancy interests in real property not subject to a medical assistance lien under sections 514.980 to 514.985 on the date of the person's death shall not end upon death and shall continue as provided in this subdivision. The life estate in the estate shall be the portion of the interest in the property subject to the life estate that is equal to the life estate percentage factor for the life estate as listed in the Life Estate Mortality Table of the health care program's manual for a person who was the age of the medical assistance recipient on the date of the person's death. The joint tenancy interest in the estate shall be equal to the fractional interest the medical assistance recipient would have owned in the jointly held interest in the property had they and the other owners held title to the property as tenants in common on the date the medical assistance recipient died.

(d) The county agency shall file a claim in the estate under this section on behalf of the claimant who shall be the commissioner of human services, notwithstanding that the decedent is survived by a spouse or a person listed in subdivision 3. The claim, as allowed, shall not be paid by the estate and shall be disposed of as provided in this paragraph. The personal representative or the court shall make, execute, and deliver a lien in favor of the claimant on the decedent's interest in real property in the estate in the amount of the allowed claim on forms provided by the commissioner to the county agency filing the lien. The lien shall bear interest as provided under section 524.3-806, shall attach to the property it describes upon filing or recording, and shall remain a lien on the real property it describes for a period of 20 years from the date it is filed or recorded. The lien shall be a disposition of the claim sufficient to permit the estate to close.

(e) The state or county agency shall file or record the lien in the office of the county recorder or registrar of titles for each county in which any of the real property is located. The

recorder or registrar of titles shall accept the lien for filing or recording. All recording or filing fees shall be paid by the Department of Human Services. The recorder or registrar of titles shall mail the recorded lien to the Department of Human Services. The lien need not be attested, certified, or acknowledged as a condition of recording or filing. Upon recording or filing of a lien against a life estate or a joint tenancy interest, the interest subject to the lien shall merge into the remainder interest or the interest the recipient and others owned jointly. The lien shall attach to and run with the property to the extent of the decedent's interest in the property at the time of the decedent's death as determined under this section.

(f) The department shall make no adjustment or recovery under the lien until after the decedent's spouse, if any, has died, and only at a time when the decedent has no surviving child described in subdivision 3. The estate, any owner of an interest in the property which is or may be subject to the lien, or any other interested party, may voluntarily pay off, settle, or otherwise satisfy the claim secured or to be secured by the lien at any time before or after the lien is filed or recorded. Such payoffs, settlements, and satisfactions shall be deemed to be voluntary repayments of past medical assistance payments for the benefit of the deceased recipient, and neither the process of settling the claim, the payment of the claim, or the acceptance of a payment shall constitute an adjustment or recovery that is prohibited under this subdivision.

(g) The lien under this subdivision may be enforced or foreclosed in the manner provided by law for the enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. When the lien is paid, satisfied, or otherwise discharged, the state or county agency shall prepare and file a release of lien at its own expense. No action to foreclose the lien shall be commenced unless the lienholder has first given 30 days' prior written notice to pay the lien to the owners and parties in possession of the property subject to the lien. The notice shall:

(1) include the name, address, and telephone number of the lienholder;

(2) describe the lien;

(3) give the amount of the lien;

(4) inform the owner or party in possession that payment of the lien in full must be made to the lienholder within 30 days after service of the notice or the lienholder may begin proceedings to foreclose the lien; and

(5) be served by personal service, certified mail, return receipt requested, ordinary first class mail, or by publishing it once in a newspaper of general circulation in the county in which any part of the property is located. Service of the notice shall be complete upon mailing or publication.

Subd. 1j.Claims in estates of decedents survived by other survivors.

For purposes of this subdivision, the provisions in subdivision 1i, paragraphs (a) to (c) apply.

(a) If payment of a claim filed under this section is limited as provided in subdivision 4, and if the estate does not have other assets sufficient to pay the claim in full, as allowed, the personal representative or the court shall make, execute, and deliver a lien on the property in the

estate that is exempt from the claim under subdivision 4 in favor of the commissioner of human services on forms provided by the commissioner to the county agency filing the claim. If the estate pays a claim filed under this section in full from other assets of the estate, no lien shall be filed against the property described in subdivision 4.

(b) The lien shall be in an amount equal to the unpaid balance of the allowed claim under this section remaining after the estate has applied all other available assets of the estate to pay the claim. The property exempt under subdivision 4 shall not be sold, assigned, transferred, conveyed, encumbered, or distributed until after the personal representative has determined the estate has other assets sufficient to pay the allowed claim in full, or until after the lien has been filed or recorded. The lien shall bear interest as provided under section 524.3-806, shall attach to the property it describes upon filing or recording, and shall remain a lien on the real property it describes for a period of 20 years from the date it is filed or recorded. The lien shall be a disposition of the claim sufficient to permit the estate to close.

(c) The state or county agency shall file or record the lien in the office of the county recorder or registrar of titles in each county in which any of the real property is located. The department shall pay the filing fees. The lien need not be attested, certified, or acknowledged as a condition of recording or filing. The recorder or registrar of titles shall accept the lien for filing or recording.

(d) The commissioner shall make no adjustment or recovery under the lien until none of the persons listed in subdivision 4 are residing on the property or until the property is sold or transferred. The estate or any owner of an interest in the property that is or may be subject to the lien, or any other interested party, may voluntarily pay off, settle, or otherwise satisfy the claim secured or to be secured by the lien at any time before or after the lien is filed or recorded. The payoffs, settlements, and satisfactions shall be deemed to be voluntary repayments of past medical assistance payments for the benefit of the deceased recipient and neither the process of settling the claim, the payment of the claim, or acceptance of a payment shall constitute an adjustment or recovery that is prohibited under this subdivision.

(e) A lien under this subdivision may be enforced or foreclosed in the manner provided for by law for the enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. When the lien has been paid, satisfied, or otherwise discharged, the claimant shall prepare and file a release of lien at the claimant's expense. No action to foreclose the lien shall be commenced unless the lienholder has first given 30 days prior written notice to pay the lien to the record owners of the property and the parties in possession of the property subject to the lien. The notice shall:

(1) include the name, address, and telephone number of the lienholder;

(2) describe the lien;

(3) give the amount of the lien;

(4) inform the owner or party in possession that payment of the lien in full must be made to the lienholder within 30 days after service of the notice or the lienholder may begin proceedings to foreclose the lien; and

(5) be served by personal service, certified mail, return receipt requested, ordinary first class mail, or by publishing it once in a newspaper of general circulation in the county in which any part of the property is located. Service shall be complete upon mailing or publication.

(f) Upon filing or recording of a lien against a life estate or joint tenancy interest under this subdivision, the interest subject to the lien shall merge into the remainder interest or the interest the decedent and others owned jointly, effective on the date of recording and filing. The lien shall attach to and run with the property to the extent of the decedent's interest in the property at the time of the decedent's death as determined under this section.

(g)(1) An affidavit may be provided by a personal representative, at their discretion, stating the personal representative has determined in good faith that a decedent survived by a spouse or a person listed in subdivision 3, or by a person listed in subdivision 4, or the decedent's predeceased spouse did not receive any medical assistance giving rise to a claim under this section, or that the real property described in subdivision 4 is not needed to pay in full a claim arising under this section.

(2) The affidavit shall:

(i) describe the property and the interest being extinguished;

(ii) name the decedent and give the date of death;

(iii) state the facts listed in clause (1);

(iv) state that the affidavit is being filed to terminate the life estate or joint tenancy interest created under this subdivision;

(v) be signed by the personal representative; and

(vi) contain any other information that the affiant deems appropriate.

(3) Except as provided in section 514.981, subdivision 6, when the affidavit is filed or recorded, the life estate or joint tenancy interest in real property that the affidavit describes shall be terminated effective as of the date of filing or recording. The termination shall be final and may not be set aside for any reason.

Subd. 1k.Filing.

Any notice, lien, release, or other document filed under subdivisions 1c to 1l, and any lien, release of lien, or other documents relating to a lien filed under subdivisions 1h, 1i, and 1j must be filed or recorded in the office of the county recorder or registrar of titles, as appropriate, in the county where the affected real property is located. Notwithstanding section 386.77, the state or county agency shall pay any applicable filing fee. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the filing is registered property, the registrar of titles shall record the filing on the certificate of title for each parcel of property described in the filing. If the property described in the filing is abstract property, the recorder shall file and index the property in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the filing. The recorder or registrar of titles shall return the filed document to the party filing it at no cost.

If the party making the filing provides a duplicate copy of the filing, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the party at no extra cost.

Subd. 2.Limitations on claims.

The claim shall include only the total amount of medical assistance rendered after age 55 or during a period of institutionalization described in subdivision 1a, paragraph (e), and the total amount of general assistance medical care rendered, and shall not include interest. Claims that have been allowed but not paid shall bear interest according to section 524.3-806, paragraph (d). A claim against the estate of a surviving spouse who did not receive medical assistance, for medical assistance rendered for the predeceased spouse, shall be payable from the full value of all of the predeceased spouse's assets and interests which are part of the surviving spouse's estate under subdivisions 1a and 2b. Recovery of medical assistance expenses in the nonrecipient surviving spouse's estate is limited to the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage. The claim is not payable from the value of assets or proceeds of assets in the estate attributable to a predeceased spouse whom the individual married after the death of the predeceased recipient spouse for whom the claim is filed or from assets and the proceeds of assets in the estate which the nonrecipient decedent spouse acquired with assets which were not marital property or jointly owned property after the death of the predeceased recipient spouse. Claims for alternative care shall be net of all premiums paid under section 256B.0913, subdivision 12, on or after July 1, 2003, and shall be limited to services provided on or after July 1, 2003. Claims against marital property shall be limited to claims against recipients who died on or after July 1, 2009.

[See Note.]

Subd. 2a.

[Repealed, 2001 c 203 s 19]

Subd. 2b.Controlling provisions.

(a) For purposes of this subdivision and subdivisions 1a and 2, paragraphs (b) to (d) apply.

(b) At the time of death of a recipient spouse and solely for purpose of recovery of medical assistance benefits received, a predeceased recipient spouse shall have a legal title or interest in the undivided whole of all of the property which the recipient and the recipient's surviving spouse owned jointly or which was marital property at any time during their marriage regardless of the form of ownership and regardless of whether it was owned or titled in the names of one or both the recipient and the recipient's spouse. Title and interest in the property of a predeceased recipient spouse shall not end or extinguish upon the person's death and shall continue for the purpose of allowing recovery of medical assistance in the estate of the surviving spouse. Upon the death of the predeceased recipient spouse, title and interest in the predeceased spouse's property shall vest in the surviving spouse by operation of law and without the necessity for any probate or decree of descent proceedings and shall continue to exist after the death of the predeceased spouse and the surviving spouse to permit recovery of medical assistance. The recipient spouse and the surviving spouse of a deceased recipient

spouse shall not encumber, disclaim, transfer, alienate, hypothecate, or otherwise divest themselves of these interests before or upon death.

(c) For purposes of this section, "marital property" includes any and all real or personal property of any kind or interests in such property the predeceased recipient spouse and their spouse, or either of them, owned at the time of their marriage to each other or acquired during their marriage regardless of whether it was owned or titled in the names of one or both of them. If either or both spouses of a married couple received medical assistance, all property owned during the marriage or which either or both spouses acquired during their marriage shall be presumed to be marital property for purposes of recovering medical assistance unless there is clear and convincing evidence to the contrary.

(d) The agency responsible for the claim for medical assistance for a recipient spouse may, at its discretion, release specific real and personal property from the provisions of this section. The release shall extinguish the interest created under paragraph (b) in the land it describes upon filing or recording. The release need not be attested, certified, or acknowledged as a condition of filing or recording and shall be filed or recorded in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. The party to whom the release is given shall be responsible for paying all fees and costs necessary to record and file the release. If the property described in the release is registered property, the registrar of titles shall accept it for recording and shall record it on the certificate of title for each parcel of property described in the release. If the property described in the release is abstract property, the recorder shall accept it for filing and file it in the county's grantor-grantee indexes and any tract index the county maintains for each parcel of property described in the release.

Subd. 3.Surviving spouse, minor, blind, or disabled children.

If a decedent is survived by a spouse, or was single or the surviving spouse of a married couple and is survived by a child who is under age 21 or blind or permanently and totally disabled according to the supplemental security income program criteria, a claim shall be filed against the estate according to this section.

Subd. 4.Other survivors.

(a) If the decedent who was single or the surviving spouse of a married couple is survived by one of the following persons, a claim exists against the estate payable first from the value of the nonhomestead property included in the estate and the personal representative shall make, execute, and deliver to the county agency a lien against the homestead property in the estate for any unpaid balance of the claim to the claimant as provided under this section:

(1) a sibling who resided in the decedent medical assistance recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization; or

(2) a son or daughter or a grandchild who resided in the decedent medical assistance recipient's home for at least two years immediately before the parent's or grandparent's institutionalization and continuously since the date of institutionalization, and who establishes by a preponderance of the evidence having provided care to the parent or grandparent who

received medical assistance, that the care was provided before institutionalization, and that the care permitted the parent or grandparent to reside at home rather than in an institution.

(b) For purposes of this subdivision, "institutionalization" means receiving care:

(1) in a nursing facility or swing bed, or intermediate care facility for persons with developmental disabilities; or

(2) through home and community-based services under section 256B.0915, 256B.092, or 256B.49.

Subd. 5.Undue hardship.

(a) Any person entitled to notice in subdivision 1a has a right to apply for waiver of the claim based upon undue hardship. Any claim pursuant to this section may be fully or partially waived because of undue hardship. Undue hardship does not include action taken by the decedent which divested or diverted assets in order to avoid estate recovery. Any waiver of a claim must benefit the person claiming undue hardship. The commissioner shall have authority to hear claimant appeals, pursuant to section 256.045, when an application for a hardship waiver is denied in whole or part.

(b) Upon approval of a hardship waiver, this paragraph applies to a claim against the decedent's real property if an individual other than the recipient's spouse had an ownership interest in the property at the time of the decedent's death and actually and continuously occupied the real property as the individual's residence for at least 180 days before the date the decedent died. If the real property is classified as the individual's homestead property for property tax purposes under section 273.124, no adjustment or recovery may be made until the individual no longer resides in the property or until the property is sold or transferred.

Subd. 6.Life estate or joint tenancy interest.

For purposes of subdivision 1 and section 514.981, subdivision 6, a life estate or joint tenancy interest is established upon the earlier of:

(1) the date the instrument creating the interest is recorded or filed in the office of the county recorder or registrar of titles where the real estate interest it describes is located;

(2) the date of delivery by the grantor to the grantee of the signed instrument as stated in an affidavit made by a person with knowledge of the facts;

(3) the date on which the judicial order creating the interest was issued by the court; or

(4) the date upon which the interest devolves under section 524.3-101.

Subd. 7.Lien notices.

Medical assistance liens and liens under notices of potential claims that are of record against life estate or joint tenancy interests established prior to August 1, 2003, shall end, become unenforceable, and cease to be liens on those interests upon the death of the person named in the lien or notice of potential claim, shall be disregarded by examiners of title after the death of the life tenant or joint tenant, and shall not be carried forward to a subsequent certificate of title. This subdivision shall not apply to life estates that continue to exist after the

death of the person named in the lien or notice of potential claim under the terms of the instrument creating or reserving the life estate until the life estate ends as provided for in the instrument.

Subd. 8.Immunity.

The commissioner of human services, county agencies, and elected officials and their employees are immune from all liability for any action taken implementing Laws 2003, First Special Session chapter 14, article 12, sections 40 to 52 and 90, as those laws existed at the time the action was taken, and section 514.981, subdivision 6.

Subd. 9.Commissioner's intervention.

The commissioner shall be permitted to intervene as a party in any proceeding involving recovery of medical assistance upon filing a notice of intervention and serving such notice on the other parties.

History:

Ex1967 c 16 s 15; 1981 c 360 art 1 s 22; 1Sp1981 c 4 art 1 s 126; 1986 c 444; 1987 c 403 art 2 s 82; 1988 c 719 art 8 s 15; 1990 c 568 art 3 s 63; 1992 c 513 art 7 s 80,81; 1Sp1993 c 1 art 5 s 82,83; 1995 c 207 art 6 s 79-81; 1996 c 451 art 2 s 29,30,61,62; art 5 s 26; 2000 c 400 s 2,3; 2001 c 203 s 17; 1Sp2003 c 14 art 2 s 27-29; art 12 s 40-52; 2005 c 56 s 1; 1Sp2005 c 4 art 7 s 28-32; 2008 c 326 art 1 s 34; 2008 c 341 art 2 s 1,2; 2009 c 79 art 5 s 38-43; 2009 c 160 s 1,2; 2012 c 216 art 11 s 36,37

NOTE: The amendments to subdivisions 1a and 2 by Laws 1995, chapter 207, article 6, sections 79 and 80, relating only to the age of a medical assistance recipient for purposes of estate claims, are effective for persons who are between the ages of 55 and 64 on or after July 1, 1995, for the total amount of assistance on or after July 1, 1995. See Laws 1995, chapter 207, article 6, section 125, subdivision 1.

NOTE: Subdivision 2 (Minnesota Statutes 2008) was held preempted by federal law to the extent it allows recovery against the estate of a surviving spouse of a Medicaid recipient from assets in which the deceased Medicaid recipient did not have a legal interest at the time of death. In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008), cert. denied Vos v. Barg, 129 S.Ct. 2859 (2009). See Laws 2009, chapter 79, article 5, sections 38 to 43. Centers for Medicare and Medicaid Services approved state plan amendment effective July 1, 2009.

256B.35 PERSONAL NEEDS ALLOWANCE; PERSONS IN CERTAIN FACILITIES.

Subdivision 1.Personal needs allowance.

(a) Notwithstanding any law to the contrary, welfare allowances for clothing and personal needs for individuals receiving medical assistance while residing in any skilled nursing home, intermediate care facility, or medical institution including recipients of Supplemental Security Income, in this state shall not be less than $45 per month from all sources. When benefit amounts for Social Security or Supplemental Security Income recipients are increased pursuant

to United States Code, title 42, sections 415(i) and 1382f, the commissioner shall, effective in the month in which the increase takes effect, increase by the same percentage to the nearest whole dollar the clothing and personal needs allowance for individuals receiving medical assistance while residing in any skilled nursing home, medical institution, or intermediate care facility. The commissioner shall provide timely notice to local agencies, providers, and recipients of increases under this provision.

(b) The personal needs allowance may be paid as part of the Minnesota supplemental aid program, and payments to recipients of Minnesota supplemental aid may be made once each three months covering liabilities that accrued during the preceding three months.

(c) The personal needs allowance shall be increased to include income garnished for child support under a court order, up to a maximum of $250 per month but only to the extent that the amount garnished is not deducted as a monthly allowance for children under section 256B.0575, paragraph (a), clause (5).

Subd. 2.Purpose for allowance.

Neither the skilled nursing home, the intermediate care facility, the medical institution, nor the Department of Human Services shall withhold or deduct any amount of this allowance for any purpose contrary to this section.

Subd. 3.Prohibition on commingling of funds.

The nursing home may not commingle the patient's funds with nursing home funds or in any way use the funds for nursing home purposes.

Subd. 4.Field audits required.

The commissioner of human services shall conduct field audits at the same time as cost report audits required under section 256B.27, subdivision 2a, and at any other time but at least once every four years, without notice, to determine whether this section was complied with and that the funds provided residents for their personal needs were actually expended for that purpose.

Subd. 5.Designation on use of funds.

The nursing home may transfer the personal allowance to someone other than the recipient only when the recipient or the recipient's guardian or conservator designates that person in writing to receive or expend funds on behalf of the recipient and that person certifies in writing that the allowance is spent for the well-being of the recipient. Persons, other than the recipient, in possession of the personal allowance, may use the allowance only for the well-being of the recipient. Any person, other than the recipient, who, with intent to defraud, uses the personal needs allowance for purposes other than the well-being of the recipient shall be guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (2), (3)(a) and (c), (4), and (5). To prosecute under this subdivision, the attorney general or the appropriate county attorney, acting independently or at the direction of the attorney general, may institute a criminal action. A nursing home that transfers personal needs allowance funds to a person other than the recipient in good faith and in compliance with this section shall not be held liable under this subdivision.

Subd. 6.Civil action to recover damages.

In addition to the remedies otherwise provided by law, any person injured by a violation of any of the provisions of this section, may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney fees, and receive other equitable relief as determined by the court.

History:

1974 c 575 s 15; 1977 c 271 s 1,2; 1980 c 563 s 1; 1982 c 476 s 2; 1984 c 534 s 25; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 254 s 7; 1987 c 403 art 2 s 86,87; 1988 c 689 art 2 s 153; 1990 c 566 s 7; 1996 c 451 art 2 s 31; 2008 c 277 art 1 s 38

256D.16 GENERAL ASSISTANCE TO BE ALLOWED AS CLAIM IN COURT.

On the death of any person who received any general assistance under sections 256D.01 to 256D.21, or on the death of the survivor of a married couple, either or both of whom received general assistance, the total amount paid as general assistance to either or both, without interest, shall be allowed as a claim against the estate of such person or persons by the court having jurisdiction to probate the estate.

History:

1973 c 650 art 21 s 16; 1980 c 536 s 28

256G.01 APPLICATION; CITATION; COVERAGE.

Subdivision 1.Applicability.

This chapter governs the Minnesota human services system. The system includes the Department of Human Services, local social services agencies, county welfare agencies, human service boards, community mental health center boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations, and other entities under contract to any of those agencies to the extent specified in the contract.

Subd. 2.Citation.

This chapter may be cited as the "Minnesota Unitary Residence and Financial Responsibility Act."

Subd. 3.Program coverage.

This chapter applies to all social service programs administered by the commissioner in which residence is the determining factor in establishing financial responsibility. These include, but are not limited to: commitment proceedings, including voluntary admissions; emergency holds; poor relief funded wholly through local agencies; social services, including title XX, IV-E and section 256E.12; social services programs funded wholly through the resources of county agencies; social services provided under the Minnesota Indian Family Preservation Act,

sections 260.751 to 260.781; costs for delinquency confinement under section 393.07, subdivision 2; service responsibility for these programs; and group residential housing.

Subd. 4.Additional coverage.

The provisions in sections 256G.02, subdivision 4, paragraphs (a) to (d); 256G.02, subdivisions 5 to 8; 256G.03; 256G.04; 256G.05; and 256G.07, subdivisions 1 to 3, apply to the following programs: the aid to families with dependent children program formerly codified in sections 256.72 to 256.87, Minnesota family investment program; medical assistance; general assistance; the family general assistance program formerly codified in sections 256D.01 to 256D.23; general assistance medical care; and Minnesota supplemental aid.

Subd. 5.Scope and effect.

Unless stated otherwise, the provisions of this chapter also apply to disputes involving financial responsibility for social services when another definition of the county of financial responsibility has been created in Minnesota Statutes.

History:

1987 c 363 s 1; 1988 c 719 art 8 s 22; 1Sp1989 c 1 art 16 s 14; 1994 c 631 s 31; 1996 c 451 art 2 s 40-42; 1997 c 85 art 4 s 21; 1999 c 139 art 4 s 2; 1999 c 159 s 75; 1Sp2003 c 14 art 11 s 11; 2005 c 10 art 1 s 55; 2005 c 98 art 3 s 19

256G.02 DEFINITIONS.

Subdivision 1.Applicability.

The definitions in this section apply to this chapter.

Subd. 2.Board and lodging facility.

"Board and lodging facility" means a facility that serves as an alternative to institutionalization and provides a program of on-site care or supervision to persons who cannot live independently in the community because of age or physical, mental, or emotional disability.

Subd. 3.Commissioner.

"Commissioner" means the commissioner of human services.

Subd. 4.County of financial responsibility.

(a) "County of financial responsibility" has the meanings in paragraphs (b) to (f).

(b) For an applicant who resides in the state and is not in a facility described in subdivision 6, it means the county in which the applicant resides at the time of application.

(c) For an applicant who resides in a facility described in subdivision 6, it means the county in which the applicant last resided in nonexcluded status immediately before entering the facility.

(d) For an applicant who has not resided in this state for any time other than the excluded time, and subject to the limitations in section 256G.03, subdivision 2, it means the county in which the applicant resides at the time of making application.

(e) For an individual already having a social service case open in one county, financial responsibility for any additional social services attaches to the case that has the earliest date of application and has been open without interruption.

(f) Notwithstanding paragraphs (b) to (e), the county of financial responsibility for semi-independent living services provided under section 252.275, and Minnesota Rules, parts 9525.0500 to 9525.0660, is the county of residence in nonexcluded status immediately before the placement into or request for those services.

Subd. 5.Department.

"Department" means the Department of Human Services.

Subd. 6.Excluded time.

"Excluded time" means:

(1) any period an applicant spends in a hospital, sanitarium, nursing home, shelter other than an emergency shelter, halfway house, foster home, semi-independent living domicile or services program, residential facility offering care, board and lodging facility or other institution for the hospitalization or care of human beings, as defined in section 144.50, 144A.01, or 245A.02, subdivision 14; maternity home, battered women's shelter, or correctional facility; or any facility based on an emergency hold under sections 253B.05, subdivisions 1 and 2, and 253B.07, subdivision 6;

(2) any period an applicant spends on a placement basis in a training and habilitation program, including: a rehabilitation facility or work or employment program as defined in section 268A.01; semi-independent living services provided under section 252.275, and Minnesota Rules, parts 9525.0500 to 9525.0660; or day training and habilitation programs and assisted living services; and

(3) any placement for a person with an indeterminate commitment, including independent living.

Subd. 7.Local agency.

"Local agency" means the agency designated by the county board of commissioners, human services boards, local social services agencies in the several counties of the state or multicounty local social services agencies where those have been established in accordance with law.

Subd. 8.Reside.

"Reside" means to have an established place of abode in one state or county and not to have an established place of abode in another state or county.

History:

1987 c 363 s 2; 1988 c 689 art 2 s 268; 1988 c 719 art 8 s 23; 1989 c 209 art 1 s 25; 1Sp1989 c 1 art 16 s 15; 1991 c 199 art 2 s 1; 1994 c 631 s 31; 1996 c 451 art 2 s 43,44; 1997 c 203 art 4 s 58; 2009 c 79 art 6 s 15; 2012 c 216 art 11 s 41

256G.03 ESTABLISHING RESIDENCE.

Subdivision 1.State residence.

For purposes of this chapter, a resident of any Minnesota county is considered a state resident.

Subd. 2.No durational test.

Except as otherwise provided in sections 256J.75; 256B.056, subdivision 1; 256D.02, subdivision 12a, and 256J.12 for purposes of this chapter, no waiting period is required before securing county or state residence. A person cannot, however, gain residence while physically present in an excluded time facility unless otherwise specified in this chapter or in a federal regulation controlling a federally funded human service program. Interstate migrants who enter a shelter for battered women directly from another state can gain residency while in the facility provided the person can provide documentation that the person is a victim of domestic abuse and the county determines that the placement is appropriate; and the commissioner of human services is authorized to make per diem payments under section 256D.05, subdivision 3, on behalf of such individuals.

Subd. 3.Use of Code of Federal Regulations.

In the event that federal legislation eliminates the federal regulatory basis for medical assistance, the state shall continue to determine eligibility for Minnesota's medical assistance program using the provisions of Code of Federal Regulations, title 42, as construed on the day prior to their federal repeal, except as expressly superseded in chapter 256B, or as superseded by federal law, or as modified by state rule or by regulatory waiver granted to the state.

History:

1987 c 363 s 3; 1989 c 282 art 5 s 114; 1996 c 451 art 2 s 45; 1997 c 85 art 3 s 50; 1999 c 159 s 76; 1Sp2003 c 14 art 1 s 106

256G.04 DETERMINATION OF RESIDENCE.

Subdivision 1.Time of determination.

For purposes of establishing financial responsibility, residence must be determined as of the date a local agency receives a signed request or signed application or the date of eligibility, whichever is later. This subdivision extends to cases in which the applicant may move to another county after the date of application but before the grant or service is actually approved.

Subd. 2.Moving out of state.

A person retains county and state residence so long as the person's absence from Minnesota is viewed as a temporary absence within the context of the affected program.

Direct entry into a facility in another state does not end Minnesota residence for purposes of this chapter. Financial responsibility does not continue, however, unless placement was initiated by a human service agency or another governmental entity that has statutory authority to bind

the human service agency and is based on a formal, written plan of treatment, or unless federal regulations require payment for an out-of-state resident.

History:

1987 c 363 s 4; 1988 c 719 art 8 s 24

256G.05 RESPONSIBILITY FOR EMERGENCIES.

Subdivision 1.

[Repealed, 1996 c 451 art 2 s 61]

Subd. 2.Non-Minnesota residents.

State residence is not required for receiving emergency assistance in the Minnesota supplemental aid program. The receipt of emergency assistance must not be used as a factor in determining county or state residence.

History:

1987 c 363 s 5; 1988 c 719 art 8 s 25; 1Sp1989 c 1 art 16 s 16; 1997 c 85 art 3 s 51; art 4 s 59; 1Sp2003 c 14 art 12 s 70

256G.06 DETOXIFICATION SERVICES.

The county of financial responsibility for detoxification services is the county where the client is physically present when the need for services is identified. If that need is identified while the client is a resident of a chemical dependency facility, the provisions of section 256G.02, subdivision 4, paragraphs (c) and (d), apply.

History:

1987 c 363 s 6; 1989 c 209 art 1 s 26; 1996 c 451 art 2 s 46

256G.07 MOVING TO ANOTHER COUNTY.

Subdivision 1.Effect of moving.

Except as provided in subdivision 4, a person who has applied for and is receiving services or assistance under a program governed by this chapter, in any county in this state, and who moves to another county in this state, is entitled to continue to receive that service from the county from which that person has moved until that person has resided in nonexcluded status for two full calendar months in the county to which that person has moved.

Subd. 2.Transfer of records.

Before the person has resided in nonexcluded status for two calendar months in the county to which that person has moved, the local agency of the county from which the person has

moved shall complete an eligibility review and transfer all necessary records relating to that person to the local agency of the county to which the person has moved.

Subd. 3.Continuation of case.

When the case is terminated for 30 days or less before the recipient reapplies, that case remains the financial responsibility of the county from which the recipient moved until the residence requirement in subdivision 1 is met.

Subd. 3a.

[Repealed, 1996 c 451 art 2 s 61]

Subd. 4.Social service provision.

The types and level of social services to be provided in any case governed by this chapter are those otherwise provided in the county in which the person is physically residing at the time those services are provided.

History:

1987 c 363 s 7; 1988 c 719 art 8 s 26; 1Sp1989 c 1 art 16 s 17; 1996 c 451 art 2 s 47,48

256G.08 REIMBURSEMENT RESPONSIBILITY FOR COMMITMENTS.

Subdivision 1.Commitment proceedings.

In cases of voluntary admission or commitment to state or other institutions, the committing county shall initially pay for all costs. This includes the expenses of the taking into custody, confinement, emergency holds under sections 253B.05, subdivisions 1 and 2, and 253B.07, examination, commitment, conveyance to the place of detention, rehearing, and hearings under section 253B.092, including hearings held under that section which are venued outside the county of commitment.

Subd. 2.Responsibility for nonresidents.

If a person committed or voluntarily admitted to a state institution has no residence in this state, financial responsibility belongs to the county of commitment.

Subd. 3.Initiating county responsible.

The initial responsible county retains responsibility when adequate facts are not submitted to provide a sufficient legal basis for the transfer of responsibility.

History:

1987 c 363 s 8; 1996 c 281 s 1; 1996 c 451 art 2 s 49; 1999 c 118 s 7

256G.09 DETERMINING FINANCIAL RESPONSIBILITY.

Subdivision 1.General procedures.

If upon investigation the local agency decides that the application or commitment was not filed in the county of financial responsibility as defined by this chapter, but that the applicant is otherwise eligible for assistance, it shall send a copy of the application or commitment claim, together with the record of any investigation it has made, to the county it believes is financially responsible. The copy and record must be sent within 60 days of the date the application was approved or the claim was paid. The first local agency shall provide assistance to the applicant until financial responsibility is transferred under this section.

The county receiving the transmittal has 30 days to accept or reject financial responsibility. A failure to respond within 30 days establishes financial responsibility by the receiving county.

Subd. 2.Financial disputes.

(a) If the county receiving the transmittal does not believe it is financially responsible, it should provide to the department and the initially responsible county a statement of all facts and documents necessary for the department to make the requested determination of financial responsibility. The submission must clearly state the program area in dispute and must state the specific basis upon which the submitting county is denying financial responsibility.

(b) The initially responsible county then has 15 calendar days to submit its position and any supporting evidence to the department. The absence of a submission by the initially responsible county does not limit the right of the department to issue a binding opinion based on the evidence actually submitted.

(c) A case must not be submitted until the local agency taking the application or making the commitment has made an initial determination about eligibility and financial responsibility, and services have been initiated. This paragraph does not prohibit the submission of closed cases that otherwise meet the applicable statute of limitations.

Subd. 3.Department obligations.

The department shall then promptly decide any question of financial responsibility as outlined in this chapter and make an order referring the application to the local agency of the proper county for further action. Further action may include reimbursement by that county of assistance that another county has provided to the applicant under this subdivision. The department shall decide disputes within 60 days of the last county evidentiary submission and shall issue an immediate opinion.

The department may make any investigation it considers proper before making its decision. It may prescribe rules it considers necessary to carry out this subdivision. The order of the department binds the local agency involved and the applicant or recipient. That agency shall comply with the order unless reversed on appeal as provided in section 256.045, subdivision 7. The agency shall comply with the order pending the appeal.

Subd. 4.Appeals.

A local agency that is aggrieved by the order of the department may appeal the opinion to the district court of the county responsible for furnishing assistance or services by serving a written copy of a notice of appeal on the commissioner and any adverse party of record within 30 days after the date the department issued the opinion, and by filing the original notice and proof of service with the court administrator of district court. Service may be made personally or by mail. Service by mail is complete upon mailing.

The commissioner may elect to become a party to the proceedings in district court. The court may consider the matter in or out of chambers and shall take no new or additional evidence.

Subd. 5.Payment pending appeal.

After the department issues an opinion in any submission under this section, the service or assistance covered by the submission must be provided or paid pending or during an appeal to the district court.

History:

1987 c 363 s 9; 1992 c 464 art 1 s 56; 1996 c 451 art 2 s 50

256G.10 DERIVATIVE SETTLEMENT.

The residence of the parent of a minor child, with whom that child last lived in a nonexcluded time setting, or guardian of a ward shall determine the residence of the child or ward for all social services governed by this chapter.

For purposes of this chapter, a minor child is defined as being under 18 years of age unless otherwise specified in a program administered by the commissioner.

Physical or legal custody has no bearing on residence determinations. This section does not, however, apply to situations involving another state, limit the application of an interstate compact, or apply to situations involving state wards where the commissioner is defined by law as the guardian.

History:

1987 c 363 s 10; 1988 c 719 art 8 s 27; 1Sp1989 c 1 art 16 s 18; 1996 c 451 art 2 s 51

256G.11 NO RETROACTIVE EFFECT.

This chapter is not retroactive and does not require redetermination of financial responsibility for cases existing on January 1, 1988. This chapter applies only to applications and redeterminations of eligibility taken or routinely made after January 1, 1988.

Notwithstanding this section, existing social services cases shall be treated in the same manner as cases for those programs outlined in section 256G.02, subdivision 4, paragraph (g), for which an application is taken or a redetermination is made after January 1, 1988.

History:

1987 c 363 s 11; *1988 c 719 art 8 s 28*; *1Sp1989 c 1 art 16 s 19*

256G.12 STATUTE OF LIMITATIONS.

Subdivision 1.Limitation.

A submission to the department for a determination of financial responsibility must be made within three years from the date of application for the program in question.

Subd. 2.Reimbursement.

The obligation of the county ultimately found to be financially responsible extends only to the period immediately following the date the submission was received by the department. In the case of social service programs only, no reimbursement is required until the financially responsible county has an opportunity to review and act on the plan of treatment according to the applicable social service rules.

Subd. 3.Exception.

Subdivision 2 does not apply to timely and routine submissions for determination of financial responsibility under section 256G.09.

History:

1987 c 363 s 12

256J.38 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS.

Subdivision 1.Scope of overpayment.

(a) When a participant or former participant receives an overpayment due to agency, client, or ATM error, or due to assistance received while an appeal is pending and the participant or former participant is determined ineligible for assistance or for less assistance than was received, the county agency must recoup or recover the overpayment using the following methods:

(1) reconstruct each affected budget month and corresponding payment month;

(2) use the policies and procedures that were in effect for the payment month; and

(3) do not allow employment disregards in section 256J.21, subdivision 3 or 4, in the calculation of the overpayment when the unit has not reported within two calendar months following the end of the month in which the income was received.

(b) Establishment of an overpayment is limited to 12 months prior to the month of discovery due to agency error. Establishment of an overpayment is limited to six years prior to the month of discovery due to client error or an intentional program violation determined under section 256.046.

Subd. 2.Notice of overpayment.

When a county agency discovers that a participant or former participant has received an overpayment for one or more months, the county agency must notify the participant or former participant of the overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the authority for citing the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the participant's or former participant's right to appeal. No limit applies to the period in which the county agency is required to recoup or recover an overpayment according to subdivisions 3 and 4.

Subd. 3.Recovering overpayments.

A county agency must initiate efforts to recover overpayments paid to a former participant or caregiver. Caregivers, both parental and nonparental, and minor caregivers of an assistance unit at the time an overpayment occurs, whether receiving assistance or not, are jointly and individually liable for repayment of the overpayment. The county agency must request repayment from the former participants and caregivers. When an agreement for repayment is not completed within six months of the date of discovery or when there is a default on an agreement for repayment after six months, the county agency must initiate recovery consistent with chapter 270A, or section 541.05. When a person has been convicted of fraud under section 256.98, recovery must be sought regardless of the amount of overpayment. When an overpayment is less than $35, and is not the result of a fraud conviction under section 256.98, the county agency must not seek recovery under this subdivision. The county agency must retain information about all overpayments regardless of the amount. When an adult, adult caregiver, or minor caregiver reapplies for assistance, the overpayment must be recouped under subdivision 4.

Subd. 4.Recouping overpayments from participants.

A participant may voluntarily repay, in part or in full, an overpayment even if assistance is reduced under this subdivision, until the total amount of the overpayment is repaid. When an overpayment occurs due to fraud, the county agency must recover from the overpaid assistance unit, including child only cases, ten percent of the applicable standard or the amount of the monthly assistance payment, whichever is less. When a nonfraud overpayment occurs, the county agency must recover from the overpaid assistance unit, including child only cases, three percent of the MFIP standard of need or the amount of the monthly assistance payment, whichever is less.

Subd. 5.Recovering automatic teller machine errors.

For recipients receiving benefits via electronic benefit transfer, if the overpayment is a result of an ATM dispensing funds in error to the recipient, the agency may recover the ATM

error by immediately withdrawing funds from the recipient's electronic benefit transfer account, up to the amount of the error.

Subd. 6.Scope of underpayments.

A county agency must issue a corrective payment for underpayments made to a participant or to a person who would be a participant if an agency or client error causing the underpayment had not occurred. The county agency must issue the corrective payment according to subdivision 8.

Subd. 7.Identifying the underpayment.

An underpayment may be identified by a county agency, by a participant, by a former participant, or by a person who would be a participant except for agency or client error.

Subd. 8.Issuing corrective payments.

A county agency must correct an underpayment within seven calendar days after the underpayment has been identified, by adding the corrective payment amount to the monthly assistance payment of the participant or by issuing a separate payment to a participant or former participant, or by reducing an existing overpayment balance. When an underpayment occurs in a payment month and is not identified until the next payment month or later, the county agency must first subtract the underpayment from any overpayment balance before issuing the corrective payment. The county agency must not apply an underpayment in a current payment month against an overpayment balance. When an underpayment in the current payment month is identified, the corrective payment must be issued within seven calendar days after the underpayment is identified.

Subd. 9.Appeals.

A participant may appeal an underpayment, an overpayment, and a reduction in an assistance payment made to recoup the overpayment under subdivision 4. The participant's appeal of each issue must be timely under section 256.045. When an appeal based on the notice issued under subdivision 2 is not timely, the fact or the amount of that overpayment must not be considered as a part of a later appeal, including an appeal of a reduction in an assistance payment to recoup that overpayment.

History:

1997 c 85 art 1 s 27; 1998 c 407 art 6 s 76; 1999 c 245 art 6 s 49; 1Sp2003 c 14 art 1 s 48,49; 1Sp2011 c 9 art 9 s 5

256M.60 DUTIES OF COUNTY BOARDS.

Subdivision 1.Responsibilities.

The county board of each county shall be responsible for administration and funding of services as defined in section 256M.10, subdivision 1. Each county board shall singly or in combination with other county boards use funds available to the county under Laws 2003, First Special Session chapter 14, to carry out these responsibilities.

Subd. 2.

[Repealed, 1Sp2011 c 9 art 1 s 35]

Subd. 3.Reports.

The county board shall provide necessary reports and data as required by the commissioner.

Subd. 4.Contracts for services.

The county board may contract with a human services board, a multicounty board established by a joint powers agreement, other political subdivisions, a children's mental health collaborative, a family services collaborative, or private organizations in discharging its duties.

Subd. 5.Exemption from liability.

The state of Minnesota, the county boards, or the agencies acting on behalf of the county boards in the implementation and administration of children and community services shall not be liable for damages, injuries, or liabilities sustained through the purchase of services by the individual, the individual's family, or the authorized representative under this section.

Subd. 6.Fees for services.

The county board may establish a schedule of fees based upon clients' ability to pay to be charged to recipients of children and community services. Payment, in whole or in part, for services may be accepted from any person except that no fee may be charged to persons or families whose adjusted gross household income is below the federal poverty level. When services are provided to any person, including a recipient of aids administered by the federal, state, or county government, payment of any charges due may be billed to and accepted from a public assistance agency or from any public or private corporation.

History:

1Sp2003 c 14 art 11 s 7; 1Sp2011 c 9 art 1 s 28

257.85 RELATIVE CUSTODY ASSISTANCE.

Subdivision 1.Citation.

This section may be cited as the "Relative Custody Assistance Act."

Subd. 2.Scope.

The provisions of this section apply to those situations in which the legal and physical custody of a child is established with a relative or important friend with whom the child has resided or had significant contact according to section 260C.515, subdivision 4, by a district court order issued on or after July 1, 1997, or a tribal court order issued on or after July 1, 2005, when the child has been removed from the care of the parent by previous district or tribal court order.

Subd. 3.Definitions.

For purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "MFIP standard" means the transitional standard used to calculate assistance under the MFIP program, or, if permanent legal and physical custody of the child is given to a relative custodian residing outside of Minnesota, the analogous transitional standard or standard of need used to calculate assistance under the TANF program of the state where the relative custodian lives.

(b) "Local agency" means the county social services agency or tribal social services agency with legal custody of a child prior to the transfer of permanent legal and physical custody.

(c) "Permanent legal and physical custody" means permanent legal and physical custody ordered by a Minnesota Juvenile Court under section 260C.515, subdivision 4.

(d) "Relative" has the meaning given in section 260C.007, subdivision 27.

(e) "Relative custodian" means a person who has permanent legal and physical custody of a child. When siblings, including half-siblings and stepsiblings, are placed together in permanent legal and physical custody, the person receiving permanent legal and physical custody of the siblings is considered a relative custodian of all of the siblings for purposes of this section.

(f) "Relative custody assistance agreement" means an agreement entered into between a local agency and a person who has been or will be awarded permanent legal and physical custody of a child.

(g) "Relative custody assistance payment" means a monthly cash grant made to a relative custodian pursuant to a relative custody assistance agreement and in an amount calculated under subdivision 7.

(h) "Remains in the physical custody of the relative custodian" means that the relative custodian is providing day-to-day care for the child and that the child lives with the relative custodian; absence from the relative custodian's home for a period of more than 120 days raises a presumption that the child no longer remains in the physical custody of the relative custodian.

Subd. 4.Duties of local agency.

(a) When a local agency seeks a court order under section 260C.515, subdivision 4, to establish permanent legal and physical custody of a child with a relative or important friend with whom the child has resided or had significant contact, or if such an order is issued by the court, the local agency shall perform the duties in this subdivision.

(b) As soon as possible after the local agency determines that it will seek to establish permanent legal and physical custody of the child or, if the agency did not seek to establish custody, as soon as possible after the issuance of the court order establishing custody, the local agency shall inform the relative custodian about the relative custody assistance program, including eligibility criteria and payment levels. Anytime prior to, but not later than seven days after, the date the court issues the order establishing permanent legal and physical custody of the child, the local agency shall determine whether the eligibility criteria in subdivision 6 are met to allow the relative custodian to receive relative custody assistance. Not later than seven days after determining whether the eligibility criteria are met, the local agency shall inform the

relative custodian of its determination and of the process for appealing that determination under subdivision 9.

(c) If the local agency determines that the relative custodian is eligible to receive relative custody assistance, the local agency shall prepare the relative custody assistance agreement and ensure that it meets the criteria of subdivision 6.

(d) The local agency shall make monthly payments to the relative custodian as set forth in the relative custody assistance agreement. On a quarterly basis and on a form to be provided by the commissioner, the local agency shall make claims for reimbursement from the commissioner for relative custody assistance payments made.

(e) For a relative custody assistance agreement that is in place for longer than one year, and as long as the agreement remains in effect, the local agency shall send an annual affidavit form to the relative custodian of the eligible child within the month before the anniversary date of the agreement. The local agency shall monitor whether the annual affidavit is returned by the relative custodian within 30 days following the anniversary date of the agreement. The local agency shall review the affidavit and any other information in its possession to ensure continuing eligibility for relative custody assistance and that the amount of payment made according to the agreement is correct.

(f) When the local agency determines that a relative custody assistance agreement should be terminated or modified, it shall provide notice of the proposed termination or modification to the relative custodian at least ten days before the proposed action along with information about the process for appealing the proposed action.

Subd. 5.Relative custody assistance agreement.

(a) A relative custody assistance agreement will not be effective, unless it is signed by the local agency and the relative custodian no later than 30 days after the date of the order establishing permanent legal and physical custody, except that a local agency may enter into a relative custody assistance agreement with a relative custodian more than 30 days after the date of the order if it certifies that the delay in entering the agreement was through no fault of the relative custodian. There must be a separate agreement for each child for whom the relative custodian is receiving relative custody assistance.

(b) Regardless of when the relative custody assistance agreement is signed by the local agency and relative custodian, the effective date of the agreement shall be the date of the order establishing permanent legal and physical custody.

(c) If MFIP is not the applicable program for a child at the time that a relative custody assistance agreement is entered on behalf of the child, when MFIP becomes the applicable program, if the relative custodian had been receiving custody assistance payments calculated based upon a different program, the amount of relative custody assistance payment under subdivision 7 shall be recalculated under the Minnesota family investment program.

(d) The relative custody assistance agreement shall be in a form specified by the commissioner and shall include provisions relating to the following:

(1) the responsibilities of all parties to the agreement;

(2) the payment terms, including the financial circumstances of the relative custodian, the needs of the child, the amount and calculation of the relative custody assistance payments, and that the amount of the payments shall be reevaluated annually;

(3) the effective date of the agreement, which shall also be the anniversary date for the purpose of submitting the annual affidavit under subdivision 8;

(4) that failure to submit the affidavit as required by subdivision 8 will be grounds for terminating the agreement;

(5) the agreement's expected duration, which shall not extend beyond the child's eighteenth birthday;

(6) any specific known circumstances that could cause the agreement or payments to be modified, reduced, or terminated and the relative custodian's appeal rights under subdivision 9;

(7) that the relative custodian must notify the local agency within 30 days of any of the following:

(i) a change in the child's status;

(ii) a change in the relationship between the relative custodian and the child;

(iii) a change in composition or level of income of the relative custodian's family;

(iv) a change in eligibility or receipt of benefits under MFIP, or other assistance program; and

(v) any other change that could affect eligibility for or amount of relative custody assistance;

(8) that failure to provide notice of a change as required by clause (7) will be grounds for terminating the agreement;

(9) that the amount of relative custody assistance is subject to the availability of state funds to reimburse the local agency making the payments;

(10) that the relative custodian may choose to temporarily stop receiving payments under the agreement at any time by providing 30 days' notice to the local agency and may choose to begin receiving payments again by providing the same notice but any payments the relative custodian chooses not to receive are forfeit; and

(11) that the local agency will continue to be responsible for making relative custody assistance payments under the agreement regardless of the relative custodian's place of residence.

Subd. 6.Eligibility criteria.

A local agency shall enter into a relative custody assistance agreement under subdivision 5 if it certifies that the following criteria are met:

(1) the juvenile court has determined or is expected to determine that the child, under the former or current custody of the local agency, cannot return to the home of the child's parents;

(2) the court, upon determining that it is in the child's best interests, has issued or is expected to issue an order transferring permanent legal and physical custody of the child; and

(3) the child either:

(i) is a member of a sibling group to be placed together; or

(ii) has a physical, mental, emotional, or behavioral disability that will require financial support.

When the local agency bases its certification that the criteria in clause (1) or (2) are met upon the expectation that the juvenile court will take a certain action, the relative custody assistance agreement does not become effective until and unless the court acts as expected.

Subd. 7.Amount of relative custody assistance payments.

(a) The amount of a monthly relative custody assistance payment shall be determined according to the provisions of this paragraph.

(1) The total maximum assistance rate is equal to the base assistance rate plus, if applicable, the supplemental assistance rate.

(i) The base assistance rate is equal to the maximum amount that could be received as basic maintenance for a child of the same age under the adoption assistance program.

(ii) The local agency shall determine whether the child has physical, mental, emotional, or behavioral disabilities that require care, supervision, or structure beyond that ordinarily provided in a family setting to children of the same age such that the child would be eligible for supplemental maintenance payments under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. If the local agency determines that the child has such a disability, the supplemental assistance rate shall be the maximum amount of monthly supplemental maintenance payment that could be received on behalf of a child of the same age, disabilities, and circumstances under the adoption assistance program.

(2) The net maximum assistance rate is equal to the total maximum assistance rate from clause (1) less the following offsets:

(i) if the child is or will be part of an assistance unit receiving an MFIP grant or a grant from a similar program of another state, the portion of the MFIP standard relating to the child as calculated under paragraph (b), clause (2);

(ii) Supplemental Security Income payments received by or on behalf of the child;

(iii) veteran's benefits received by or on behalf of the child; and

(iv) any other income of the child, including child support payments made on behalf of the child.

(3) The relative custody assistance payment to be made to the relative custodian shall be a percentage of the net maximum assistance rate calculated in clause (2) based upon the gross

income of the relative custodian's family, including the child for whom the relative custodian has permanent legal and physical custody. In no case shall the amount of the relative custody assistance payment exceed that which the child could qualify for under the adoption assistance program if an adoption assistance agreement were entered on the child's behalf. The relative custody assistance payment shall be calculated as follows:

(i) if the relative custodian's gross family income is less than or equal to 200 percent of federal poverty guidelines, the relative custody assistance payment shall be the full amount of the net maximum assistance rate;

(ii) if the relative custodian's gross family income is greater than 200 percent and less than or equal to 225 percent of federal poverty guidelines, the relative custody assistance payment shall be 80 percent of the net maximum assistance rate;

(iii) if the relative custodian's gross family income is greater than 225 percent and less than or equal to 250 percent of federal poverty guidelines, the relative custody assistance payment shall be 60 percent of the net maximum assistance rate;

(iv) if the relative custodian's gross family income is greater than 250 percent and less than or equal to 275 percent of federal poverty guidelines, the relative custody assistance payment shall be 40 percent of the net maximum assistance rate;

(v) if the relative custodian's gross family income is greater than 275 percent and less than or equal to 300 percent of federal poverty guidelines, the relative custody assistance payment shall be 20 percent of the net maximum assistance rate; or

(vi) if the relative custodian's gross family income is greater than 300 percent of federal poverty guidelines, no relative custody assistance payment shall be made.

(b) The following provisions cover the relationship between relative custody assistance and assistance programs:

(1) The relative custodian of a child for whom the relative custodian is receiving relative custody assistance is expected to seek whatever assistance is available for the child through MFIP or, if the relative custodian resides in a state other than Minnesota, similar programs of that state. If a relative custodian fails to apply for assistance through MFIP or other program for which the child is eligible, the child's portion of the MFIP standard will be calculated as if application had been made and assistance received.

(2) The portion of the MFIP standard relating to each child for whom relative custody assistance is being received shall be calculated as follows:

(i) determine the total MFIP standard for the assistance unit;

(ii) determine the amount that the MFIP standard would have been if the assistance unit had not included the children for whom relative custody assistance is being received;

(iii) subtract the amount determined in item (ii) from the amount determined in item (i); and

(iv) divide the result in item (iii) by the number of children for whom relative custody assistance is being received that are part of the assistance unit.

(3) If a child for whom relative custody assistance is being received is not eligible for assistance through MFIP or similar programs of another state, the portion of MFIP standard relating to that child shall be equal to zero.

Subd. 8.Annual affidavit.

When a relative custody assistance agreement remains in effect for more than one year, the local agency shall require the relative custodian to annually submit an affidavit in a form to be specified by the commissioner. The affidavit must be submitted to the local agency each year no later than 30 days after the relative custody assistance agreement's anniversary date. The affidavit shall document the following:

(1) that the child remains in the physical custody of the relative custodian;

(2) that there is a continuing need for the relative custody assistance payments due to the child's physical, mental, emotional, or behavioral needs; and

(3) the current gross income of the relative custodian's family.

The relative custody assistance agreement may be modified based on information or documentation presented to the local agency under this requirement and as required by annual adjustments to the federal poverty guidelines.

Subd. 9.Right of appeal.

A relative custodian who enters or seeks to enter into a relative custody assistance agreement with a local agency has the right to appeal to the commissioner according to section 256.045 when the local agency establishes, denies, terminates, or modifies the agreement. Upon appeal, the commissioner may review only:

(1) whether the local agency has met the legal requirements imposed by this chapter for establishing, denying, terminating, or modifying the agreement;

(2) whether the amount of the relative custody assistance payment was correctly calculated under the method in subdivision 7;

(3) whether the local agency paid for correct time periods under the relative custody assistance agreement;

(4) whether the child remains in the physical custody of the relative custodian;

(5) whether the local agency correctly modified the amount of the supplemental assistance rate based on a change in the child's physical, mental, emotional, or behavioral needs, or based on the relative custodian's failure to provide documentation, after the local agency has requested such documentation, that the child continues to have physical, mental, emotional, or behavioral needs that support the current amount of relative custody assistance; and

(6) whether the local agency correctly modified or terminated the amount of relative custody assistance based on a change in the gross income of the relative custodian's family or based on the relative custodian's failure to provide documentation of the gross income of the relative custodian's family after the local agency has requested such documentation.

Subd. 10.Child's county of residence.

For the purposes of the Unitary Residency Act under chapter 256G, time spent by a child in the custody of a relative custodian receiving payments under this section is not excluded time. A child is a resident of the county where the relative custodian is a resident.

Subd. 11.Financial considerations.

(a) Payment of relative custody assistance under a relative custody assistance agreement is subject to the availability of state funds and payments may be reduced or suspended on order of the commissioner if insufficient funds are available.

(b) Upon receipt from a local agency of a claim for reimbursement, the commissioner shall reimburse the local agency in an amount equal to 100 percent of the relative custody assistance payments provided to relative custodians. The local agency may not seek and the commissioner shall not provide reimbursement for the administrative costs associated with performing the duties described in subdivision 4.

(c) For the purposes of determining eligibility or payment amounts under MFIP, relative custody assistance payments shall be excluded in determining the family's available income.

History:

1997 c 203 art 5 s 21; 1998 c 406 art 1 s 14,15,37; 1998 c 407 art 9 s 14; 1999 c 139 art 4 s 2; 1999 c 159 s 110-113; 1999 c 245 art 8 s 26-33; 2000 c 260 s 97; 2001 c 178 art 1 s 44; 1Sp2001 c 9 art 10 s 66; 2005 c 159 art 2 s 1,2; 2012 c 216 art 6 s 13

259.67 [Repealed, 2012 c 216 art 6 s 14]

259.85 POSTADOPTION SERVICE GRANTS PROGRAM.

Subdivision 1.Purpose.

The commissioner of human services shall establish and supervise a postadoption service grants program to be administered by local social service agencies for the purpose of preserving and strengthening adoptive families. The program will provide financial assistance to adoptive parents who are not receiving adoption assistance under section 259.67 to meet the special needs of an adopted child that cannot be met by other resources available to the family.

Subd. 2.Eligibility criteria.

A child may be certified by the local social services agency as eligible for a postadoption service grant after a final decree of adoption if:

(1) the child was a ward of the commissioner or a Minnesota licensed child-placing agency before adoption;

(2) the child had special needs at the time of adoption. For the purposes of this section, "special needs" means a child who had a physical, mental, emotional, or behavioral disability at

the time of an adoption or has a preadoption background to which the current development of such disabilities can be attributed;

(3) the adoptive parents have exhausted all other available resources. Available resources include public income support programs, medical assistance, health insurance coverage, services available through community resources, and any other private or public benefits or resources available to the family or to the child to meet the child's special needs; and

(4) the child is under 18 years of age, or if the child is under 22 years of age and remains dependent on the adoptive parent or parents for care and financial support and is enrolled in a secondary education program as a full-time student.

Subd. 3.Certification statement.

The local social services agency shall certify a child's eligibility for a postadoption service grant in writing to the commissioner. The certification statement shall include:

(1) a description and history of the special needs upon which eligibility is based;

(2) separate certification for each of the eligibility criteria under subdivision 2, that the criteria are met; and

(3) applicable supporting documentation including:

(i) the child's individual service plan;

(ii) medical, psychological, or special education evaluations;

(iii) documentation that all other resources have been exhausted; and

(iv) an estimate of the costs necessary to meet the special needs of the child.

Subd. 4.Commissioner review.

The commissioner shall review the facts upon which eligibility is based and shall award postadoption service grants to eligible adoptive parents to the extent funds are appropriated consistent with subdivision 5.

Subd. 5.Grant payments.

The amount of the postadoption service grant payment shall be based on the special needs of the child and the determination that other resources to meet those special needs are not available. The amount of any grant payments shall be based on the severity of the child's disability and the effect of the disability on the family and must not exceed $10,000 annually. Adoptive parents are eligible for grant payments until their child's 18th birthday, or if the child is under 22 years of age and remains dependent on the adoptive parent or parents for care and financial support and is enrolled in a secondary education program as a full-time student.

Permissible expenses that may be paid from grants shall be limited to:

(1) medical expenses not covered by the family's health insurance or medical assistance;

(2) therapeutic expenses, including individual and family therapy; and

(3) nonmedical services, items, or equipment required to meet the special needs of the child.

The grants under this section shall not be used for maintenance for out-of-home placement of the child in substitute care.

History:

1989 c 282 art 2 s 166; 1994 c 631 s 31; 1999 c 245 art 8 s 37-39; 2005 c 159 art 2 s 10

260B.255 JUVENILE COURT DISPOSITION BARS CRIMINAL PROCEEDING.

Subdivision 1.Certain violations not crimes.

A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court:

(1) certifies the matter in accordance with the provisions of section 260B.125;

(2) transfers the matter to a court in accordance with the provisions of section 260B.225; or

(3) convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence under section 260B.130, subdivision 5.

Subd. 2.Penalty.

Except for matters referred to the prosecuting authority under the provisions of this section or to a court in accordance with the provisions of section 260B.225, any peace officer knowingly bringing charges against a child in a court other than a juvenile court for violating a state or local law or ordinance is guilty of a misdemeanor. This subdivision does not apply to complaints brought for the purposes of extradition.

History:

1999 c 139 art 2 s 34; art 4 s 2

260B.331 COSTS OF CARE.

Subdivision 1.Care, examination, or treatment.

(a)(1) Whenever legal custody of a child is transferred by the court to a local social services agency, or

(2) whenever legal custody is transferred to a person other than the local social services agency, but under the supervision of the local social services agency, and

(3) whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, these costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.

(b) The court shall order, and the local social services agency shall require, the parents or custodian of a child, while the child is under the age of 18, to use the total income and resources attributable to the child for the period of care, examination, or treatment, except for clothing and personal needs allowance as provided in section 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income and resources attributable to the child include, but are not limited to, Social Security benefits, supplemental security income (SSI), veterans benefits, railroad retirement benefits and child support. When the child is over the age of 18, and continues to receive care, examination, or treatment, the court shall order, and the local social services agency shall require, reimbursement from the child for the cost of care, examination, or treatment from the income and resources attributable to the child less the clothing and personal needs allowance.

(c) If the income and resources attributable to the child are not enough to reimburse the county for the full cost of the care, examination, or treatment, the court shall inquire into the ability of the parents to support the child and, after giving the parents a reasonable opportunity to be heard, the court shall order, and the local social services agency shall require, the parents to contribute to the cost of care, examination, or treatment of the child. Except in delinquency cases where the victim is a member of the child's immediate family, when determining the amount to be contributed by the parents, the court shall use a fee schedule based upon ability to pay that is established by the local social services agency and approved by the commissioner of human services. In delinquency cases where the victim is a member of the child's immediate family, the court shall use the fee schedule but may also take into account the seriousness of the offense and any expenses which the parents have incurred as a result of the offense. The income of a stepparent who has not adopted a child shall be excluded in calculating the parental contribution under this section.

(d) The court shall order the amount of reimbursement attributable to the parents or custodian, or attributable to the child, or attributable to both sources, withheld under chapter 518A from the income of the parents or the custodian of the child. A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used.

(e) If the court orders a physical or mental examination for a child, the examination is a medically necessary service for purposes of determining whether the service is covered by a health insurance policy, health maintenance contract, or other health coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan requirements for medical necessity. Nothing in this paragraph changes or eliminates benefit limits, conditions of coverage, co-payments or deductibles, provider restrictions, or other requirements in the policy, contract, or plan that relate to coverage of other medically necessary services.

Subd. 2.Cost of group foster care.

Whenever a child is placed in a group foster care facility as provided in section 260B.198, subdivision 1, clause (2) or (3), item (v), the cost of providing the care shall, upon certification by the juvenile court, be paid from the welfare fund of the county in which the proceedings

were held. To reimburse the counties for the costs of providing group foster care for delinquent children and to promote the establishment of suitable group foster homes, the state shall quarterly, from funds appropriated for that purpose, reimburse counties 50 percent of the costs not paid by federal and other available state aids and grants. Reimbursement shall be prorated if the appropriation is insufficient.

The commissioner of corrections shall establish procedures for reimbursement and certify to the commissioner of management and budget each county entitled to receive state aid under the provisions of this subdivision. Upon receipt of a certificate the commissioner of management and budget shall issue a state warrant to the county treasurer for the amount due, together with a copy of the certificate prepared by the commissioner of corrections.

Subd. 3.Court expenses.

The following expenses are a charge upon the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law:

(1) the fees and mileage of witnesses, and the expenses and mileage of officers serving notices and subpoenas ordered by the court, as prescribed by law;

(2) the expense of transporting a child to a place designated by a child-placing agency for the care of the child if the court transfers legal custody to a child-placing agency;

(3) the expense of transporting a minor to a place designated by the court;

(4) reasonable compensation for an attorney appointed by the court to serve as counsel, except in the Eighth Judicial District where the state courts shall pay for counsel to a guardian ad litem until the recommendations of the task force created in Laws 1999, chapter 216, article 7, section 42, are implemented.

The state courts shall pay for guardian ad litem expenses.

Subd. 4.Legal settlement.

The county charged with the costs and expenses under subdivisions 1 and 2 may recover these costs and expenses from the county where the minor has legal settlement for general assistance purposes by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. If a dispute relating to general assistance settlement arises, the local social services agency of the county denying legal settlement shall send a detailed statement of the facts upon which the claim is denied together with a copy of the detailed statement of the facts upon which the claim is based to the commissioner of human services. The commissioner shall immediately investigate and determine the question of general assistance settlement and shall certify findings to the local social services agency of each county. The decision of the commissioner is final and shall be complied with unless, within 30 days thereafter, action is taken in district court as provided in section 256.045.

Subd. 5.Attorney fees.

(a) In proceedings in which the court has appointed counsel pursuant to section 260B.163, subdivision 4, for a minor unable to employ counsel, the court shall inquire into the ability of

the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorney fees.

(b) The court may order a parent under paragraph (a) to reimburse the state for the cost of the child's appointed counsel. In determining the amount of reimbursement, the court shall consider the parent's income, assets, and employment. If reimbursement is required under this subdivision, the court shall order the reimbursement when counsel is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from a parent if the parent's financial circumstances warrant establishing a reduced reimbursement schedule. If the parent does not agree to make payments, the court may order the parent's employer to withhold a percentage of the parent's income to be turned over to the court.

Subd. 6.Guardian ad litem fees.

(a) In proceedings in which the court appoints a guardian ad litem pursuant to section 260B.163, subdivision 6, paragraph (a), the court may inquire into the ability of the parents to pay for the guardian ad litem's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay guardian fees.

(b) In each fiscal year, the commissioner of management and budget shall deposit guardian ad litem reimbursements in the special revenue fund and credit them to a separate account with the State Guardian Ad Litem Board. The balance of this account is appropriated to the State Guardian Ad Litem Board and does not cancel but is available until expended. Revenue from this account must be spent in the judicial district in which the reimbursement is collected.

History:

1999 c 139 art 2 s 35; art 4 s 2; 1999 c 216 art 7 s 22,23; 2003 c 112 art 2 s 50; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2009 c 101 art 2 s 109; 2010 c 309 s 2; 2012 c 212 s 4

260B.335 CIVIL JURISDICTION OVER PERSONS CONTRIBUTING TO DELINQUENCY OR STATUS AS A JUVENILE PETTY OFFENDER.

Subdivision 1.Jurisdiction.

The juvenile court has civil jurisdiction over persons contributing to the delinquency or status as a juvenile petty offender under the provisions of this section.

Subd. 2.Petition; order to show cause.

A request for jurisdiction over a person described in subdivision 1 shall be initiated by the filing of a verified petition by the county attorney having jurisdiction over the place where the child is found, resides, or where the alleged act of contributing occurred. A prior or pending petition alleging that the child is delinquent or a juvenile petty offender is not a prerequisite to a petition under this section. The petition shall allege the factual basis for the claim that the person is contributing to the child's delinquency or status as a juvenile petty offender. If the court determines, upon review of the verified petition, that probable cause exists to believe that

the person has contributed to the child's delinquency or status as a juvenile petty offender, the court shall issue an order to show cause why the person should not be subject to the jurisdiction of the court. The order to show cause and a copy of the verified petition shall be served personally upon the person and shall set forth the time and place of the hearing to be conducted under subdivision 3.

Subd. 3.Hearing.

(a) The court shall conduct a hearing on the petition in accordance with the procedures contained in paragraph (b).

(b) Hearings under this subdivision shall be without a jury. The rules of evidence promulgated pursuant to section 480.0591 shall apply. In all proceedings under this section, the court shall admit only evidence that would be admissible in a civil trial. When the respondent is an adult, hearings under this subdivision shall be open to the public. Hearings shall be conducted within five days of personal service of the order to show cause and may be continued for a reasonable period of time if a continuance is in the best interest of the child or in the interests of justice.

(c) At the conclusion of the hearing, if the court finds by a fair preponderance of the evidence that the person has contributed to the child's delinquency or status as a juvenile petty offender as defined in section 260B.425, the court may make any of the following orders:

(1) restrain the person from any further act or omission in violation of section 260B.425;

(2) prohibit the person from associating or communicating in any manner with the child;

(3) require the person to participate in evaluation or services determined necessary by the court to correct the conditions that contributed to the child's delinquency or status as a juvenile petty offender;

(4) require the person to provide supervision, treatment, or other necessary care;

(5) require the person to pay restitution to a victim for pecuniary damages arising from an act of the child relating to the child's delinquency or status as a juvenile petty offender;

(6) require the person to pay the cost of services provided to the child or for the child's protection; or

(7) require the person to provide for the child's maintenance or care if the person is responsible for the maintenance or care, and direct when, how, and where money for the maintenance or care shall be paid. If the person is receiving public assistance for the child's maintenance or care, the court shall authorize the public agency responsible for administering the public assistance funds to make payments directly to vendors for the cost of food, shelter, medical care, utilities, and other necessary expenses.

(d) An order issued under this section shall be for a fixed period of time, not to exceed one year. The order may be renewed or modified prior to expiration upon notice and motion when there has not been compliance with the court's order or the order continues to be necessary to eliminate the contributing behavior or to mitigate its effect on the child.

Subd. 4.Criminal proceedings.

The county attorney may bring both a criminal proceeding under section 260B.425 and a civil action under this section.

History:

1999 c 139 art 2 s 36

260C.328 CHANGE OF GUARDIAN; TERMINATION OF GUARDIANSHIP.

(a) Upon its own motion or upon petition of an interested party, the juvenile court having jurisdiction of the child may, after notice to the parties and a hearing, remove the guardian appointed by the juvenile court and appoint a new guardian in accordance with section 260C.325, subdivision 1.

(b) The authority of a guardian appointed by the juvenile court terminates when the individual under guardianship becomes age 18. However, an individual who has been under the guardianship of the commissioner and who has not been adopted may continue in foster care or reenter foster care pursuant to section 260C.451 and the responsible social services agency has continuing legal responsibility for the placement of the individual.

History:

1999 c 139 art 3 s 35; 2012 c 216 art 1 s 25; art 4 s 23

260C.331 COSTS OF CARE.

Subdivision 1.Care, examination, or treatment.

(a) Except where parental rights are terminated,

(1) whenever legal custody of a child is transferred by the court to a responsible social services agency,

(2) whenever legal custody is transferred to a person other than the responsible social services agency, but under the supervision of the responsible social services agency, or

(3) whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, these costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.

(b) The court shall order, and the responsible social services agency shall require, the parents or custodian of a child, while the child is under the age of 18, to use the total income and resources attributable to the child for the period of care, examination, or treatment, except for clothing and personal needs allowance as provided in section 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income and resources attributable to the child include, but are not limited to, Social Security benefits, supplemental security income

(SSI), veterans benefits, railroad retirement benefits and child support. When the child is over the age of 18, and continues to receive care, examination, or treatment, the court shall order, and the responsible social services agency shall require, reimbursement from the child for the cost of care, examination, or treatment from the income and resources attributable to the child less the clothing and personal needs allowance. Income does not include earnings from a child over the age of 18 who is working as part of a plan under section 260C.212, subdivision 1, paragraph (c), clause (11), to transition from foster care, or the income and resources from sources other than supplemental security income and child support that are needed to complete the requirements listed in section 260C.203.

(c) If the income and resources attributable to the child are not enough to reimburse the county for the full cost of the care, examination, or treatment, the court shall inquire into the ability of the parents to support the child and, after giving the parents a reasonable opportunity to be heard, the court shall order, and the responsible social services agency shall require, the parents to contribute to the cost of care, examination, or treatment of the child. When determining the amount to be contributed by the parents, the court shall use a fee schedule based upon ability to pay that is established by the responsible social services agency and approved by the commissioner of human services. The income of a stepparent who has not adopted a child shall be excluded in calculating the parental contribution under this section.

(d) The court shall order the amount of reimbursement attributable to the parents or custodian, or attributable to the child, or attributable to both sources, withheld under chapter 518A from the income of the parents or the custodian of the child. A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used.

(e) If the court orders a physical or mental examination for a child, the examination is a medically necessary service for purposes of determining whether the service is covered by a health insurance policy, health maintenance contract, or other health coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan requirements for medical necessity. Nothing in this paragraph changes or eliminates benefit limits, conditions of coverage, co-payments or deductibles, provider restrictions, or other requirements in the policy, contract, or plan that relate to coverage of other medically necessary services.

(f) Notwithstanding paragraph (b), (c), or (d), a parent, custodian, or guardian of the child is not required to use income and resources attributable to the child to reimburse the county for costs of care and is not required to contribute to the cost of care of the child during any period of time when the child is returned to the home of that parent, custodian, or guardian pursuant to a trial home visit under section 260C.201, subdivision 1, paragraph (a).

Subd. 2.Cost of group foster care.

Whenever a child is placed in a group foster care facility as provided in section 260C.201, subdivision 1, paragraph (b), clause (2) or (3), the cost of providing the care shall, upon certification by the juvenile court, be paid from the welfare fund of the county in which the proceedings were held. To reimburse the counties for the costs of promoting the establishment

of suitable group foster homes, the state shall quarterly, from funds appropriated for that purpose, reimburse counties 50 percent of the costs not paid by federal and other available state aids and grants. Reimbursement shall be prorated if the appropriation is insufficient.

The commissioner of corrections shall establish procedures for reimbursement and certify to the commissioner of management and budget each county entitled to receive state aid under the provisions of this subdivision. Upon receipt of a certificate the commissioner of management and budget shall issue a state warrant to the county treasurer for the amount due, together with a copy of the certificate prepared by the commissioner of corrections.

Subd. 3.Court expenses.

The following expenses are a charge upon the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law:

(1) the fees and mileage of witnesses, and the expenses and mileage of officers serving notices and subpoenas ordered by the court, as prescribed by law;

(2) the expense of transporting a child to a place designated by a child-placing agency for the care of the child if the court transfers legal custody to a child-placing agency;

(3) the expense of transporting a minor to a place designated by the court;

(4) reasonable compensation for an attorney appointed by the court to serve as counsel.

The State Guardian Ad Litem Board shall pay for guardian ad litem expenses and reasonable compensation for an attorney to serve as counsel for a guardian ad litem, if necessary. In no event may the court order that guardian ad litem expenses or compensation for an attorney serving as counsel for a guardian ad litem be charged to a county.

Subd. 4.Legal settlement.

The county charged with the costs and expenses under subdivisions 1 and 3 may recover these costs and expenses from the county where the minor has legal settlement for general assistance purposes by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. If a dispute relating to general assistance settlement arises, the responsible social services agency of the county denying legal settlement shall send a detailed statement of the facts upon which the claim is denied together with a copy of the detailed statement of the facts upon which the claim is based to the commissioner of human services. The commissioner shall immediately investigate and determine the question of general assistance settlement and shall certify findings to the responsible social services agency of each county. The decision of the commissioner is final and shall be complied with unless, within 30 days thereafter, action is taken in district court as provided in section 256.045.

Subd. 5.Attorney fees.

(a) In proceedings in which the court has appointed counsel pursuant to sections 260C.163, subdivision 3, and 611.14, clause (4), for a minor unable to employ counsel, the court shall inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorney fees.

(b) In proceedings in which the court has appointed counsel pursuant to section 260C.163, subdivision 3, for a parent, guardian, or custodian, the court shall inquire into the ability of the parents, guardians, or custodians to pay for such counsel's services and, after giving these persons a reasonable opportunity to be heard, may order the appropriate person to pay attorney fees.

(c) The court may order the appropriate person or persons under paragraph (a) or (b), or both, to reimburse the governmental unit providing counsel for the cost of appointed counsel. In determining the amount of reimbursement, the court shall consider the appropriate person's income, assets, and employment. If reimbursement is required under this subdivision, the court shall order the reimbursement when counsel is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from a person if the person's financial circumstances warrant establishing a reduced reimbursement schedule. If the person does not agree to make payments, the court may order the person's employer to withhold a percentage of the person's income to be turned over to the court.

Subd. 6.Guardian ad litem fees.

(a) In proceedings in which the court appoints a guardian ad litem pursuant to section 260C.163, subdivision 5, clause (a), the court may inquire into the ability of the parents to pay for the guardian ad litem's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay guardian fees.

(b) In each fiscal year, the commissioner of management and budget shall deposit guardian ad litem reimbursements in the special revenue fund and credit them to a separate account with the State Guardian Ad Litem Board. The balance of this account is appropriated to the State Guardian Ad Litem Board and does not cancel but is available until expended. Revenue from this account must be spent in the judicial district in which the reimbursement is collected.

History:

1999 c 139 art 3 s 36; art 4 s 2; 1999 c 216 art 7 s 22,23; 2001 c 178 art 1 s 44; 2003 c 112 art 2 s 50; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2007 c 147 art 1 s 23; 2009 c 101 art 2 s 109; 2009 c 150 s 1; 2010 c 269 art 2 s 2; 2010 c 309 s 3,4; 1Sp2010 c 1 art 14 s 10; 1Sp2011 c 1 art 3 s 2; 2012 c 212 s 6; 2012 c 216 art 6 s 13

260C.456 [Repealed, 2012 c 216 art 6 s 14]

261.035 CREMATION, BURIAL, AND FUNERALS AT EXPENSE OF COUNTY.

When a person dies in any county without apparent means to provide for that person's funeral or final disposition, the county board shall first investigate to determine whether that person had contracted for any prepaid funeral arrangements. If prepaid arrangements have been made, the county shall authorize arrangements to be implemented in accord with the

instructions of the deceased. If it is determined that the person did not leave sufficient means to defray the necessary expenses of a funeral and final disposition, nor any spouse of sufficient ability to procure the burial, the county board shall pay for cremation of the person's remains and the person's burial or interment if the spouse or next of kin does not want to take possession of the ashes. If it is determined that cremation is not in accordance with the decedent's personal preferences or the known practices of the decedent's faith tradition or the personal preferences of the decedent's spouse or the decedent's next of kin, the county board shall provide for a burial and funeral. Any burial, funeral, and final disposition provided at the expense of the county shall be in accordance with personal preferences or known practices of the decedent's faith tradition or the personal preferences of the decedent's spouse or the decedent's next of kin. If neither the wishes of the decedent nor the practices of the decedent's faith tradition are known, and the county has no information about the existence of or location of any next of kin, the county may provide for cremation of the person's remains and burial or interment.

History:

(3176) RL s 1503; 1984 c 534 s 28; 1986 c 444; 1991 c 292 art 3 s 32; 1992 c 513 art 8 s 50; 2009 c 174 art 1 s 10

261.04 LIABILITY OF ESTATE.

Subdivision 1.Support, maintenance, care, or burial.

When any person is furnished or provided with support, maintenance, care, including care at the University of Minnesota hospitals, or burial as a poor person the county so furnishing such aid shall have a claim therefor against the person or the person's estate for the reasonable value thereof, which claim may be presented and prosecuted by such county at its option upon discovery of any property belonging to the poor person or to the estate.

Subd. 2.Claims filed in district court.

Such claims, when against the estate of a deceased person, shall be filed in district court and acted upon as in the case of other claims.

History:

(3159-1, 3159-2) 1925 c 60 s 1,2; 1969 c 247 s 1; 1973 c 380 s 8; 1973 c 650 art 21 s 23; 1986 c 444; 1995 c 189 s 8; 1996 c 277 s 1

268.19 DATA PRIVACY.

Subdivision 1.Use of data.

(a) Except as provided by this section, data gathered from any person under the administration of the Minnesota Unemployment Insurance Law are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except according to a district court order or section 13.05. A subpoena is not

considered a district court order. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(1) state and federal agencies specifically authorized access to the data by state or federal law;

(2) any agency of any other state or any federal agency charged with the administration of an unemployment insurance program;

(3) any agency responsible for the maintenance of a system of public employment offices for the purpose of assisting individuals in obtaining employment;

(4) the public authority responsible for child support in Minnesota or any other state in accordance with section 256.978;

(5) human rights agencies within Minnesota that have enforcement powers;

(6) the Department of Revenue to the extent necessary for its duties under Minnesota laws;

(7) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(8) the Department of Labor and Industry and the Division of Insurance Fraud Prevention in the Department of Commerce for uses consistent with the administration of their duties under Minnesota law;

(9) local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department or to monitor and evaluate the statewide Minnesota family investment program by providing data on recipients and former recipients of food stamps or food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(10) local and state welfare agencies for the purpose of identifying employment, wages, and other information to assist in the collection of an overpayment debt in an assistance program;

(11) local, state, and federal law enforcement agencies for the purpose of ascertaining the last known address and employment location of an individual who is the subject of a criminal investigation;

(12) the United States Immigration and Customs Enforcement has access to data on specific individuals and specific employers provided the specific individual or specific employer is the subject of an investigation by that agency;

(13) the Department of Health for the purposes of epidemiologic investigations;

(14) the Department of Corrections for the purpose of preconfinement and postconfinement employment tracking of committed offenders for the purpose of case planning; and

(15) the state auditor to the extent necessary to conduct audits of job opportunity building zones as required under section 469.3201.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation under section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except under statute or district court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Data gathered by the department in the administration of the Minnesota unemployment insurance program must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Subd. 1a.Wage detail data.

(a) Wage and employment data gathered under section 268.044 may be disseminated to and used, without the consent of the subject of the data, by an agency of another state that is designated as the performance accountability and consumer information agency for that state under Code of Federal Regulations, volume 20, part 663.510(c), in order to carry out the requirements of the Workforce Investment Act of 1998, United States Code, title 29, sections 2842 and 2871.

(b) The commissioner may enter into a data exchange agreement with an employment and training service provider under section 116L.17, or the Workforce Investment Act of 1998, United States Code, title 29, section 2864, under which the commissioner, with the consent of the subject of the data, may furnish data on the quarterly wages paid and number of hours worked on those individuals who have received employment and training services from the provider. With the initial consent of the subject of the data, this data may be shared for up to three years after termination of the employment and training services provided to the individual without execution of an additional consent. This data is furnished solely for the purpose of evaluating the employment and training services provided. The data subject's ability to receive service is not affected by a refusal to give consent under this paragraph. The consent form must state this fact.

Subd. 2.Employer information; absolute privilege.

(a) Regardless of any provision of law to the contrary, an employer may provide the commissioner with information on an applicant so that the commissioner can determine an applicant's entitlement to unemployment benefits under the Minnesota Unemployment Insurance Law.

(b) The commissioner may disseminate an employer's name and address and the name and address of any employer's unemployment insurance processing agent in order to administer the Minnesota unemployment insurance program.

(c) Information obtained under the Minnesota Unemployment Insurance Law, in order to determine an applicant's entitlement to unemployment benefits, are absolutely privileged and may not be made the subject matter or the basis for any civil proceeding, administrative, or judicial.

History:

Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 21,23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 55-58,79; 1998 c 265 s 30; 1998 c 273 s 13; 1998 c 371 s 11; 1999 c 107 s 45,66; 2000 c 343 s 4; 2000 c 468 s 25; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20; 1Sp2003 c 4 s 1; 1Sp2003 c 8 art 2 s 16; 1Sp2003 c 14 art 1 s 106; 2004 c 183 s 85; 2004 c 206 s 52; 2004 c 269 art 1 s 10; 2004 c 290 s 31,32; 2005 c 112 art 2 s 41; 1Sp2005 c 1 art 4 s 74; 2007 c 13 art 1 s 25; 2007 c 54 art 6 s 13; 2007 c 128 art 3 s 20; art 6 s 92,93; 2007 c 129 s 50; 2008 c 315 s 16; 2008 c 366 art 5 s 6; 2012 c 201 art 3 s 15

270A.03 DEFINITIONS.

Subdivision 1.Applicability.

For purposes of sections 270A.01 to 270A.12, the terms defined in this section have the meanings given them.

Subd. 2.Claimant agency.

"Claimant agency" means any state agency, as defined by section 14.02, subdivision 2, the regents of the University of Minnesota, any district court of the state, any county, any statutory or home rule charter city, including a city that is presenting a claim for a municipal hospital or a public library or a municipal ambulance service, a hospital district, a private nonprofit hospital that leases its building from the county or city in which it is located, any ambulance service licensed under chapter 144E, any public agency responsible for child support enforcement, any public agency responsible for the collection of court-ordered restitution, and any public agency established by general or special law that is responsible for the administration of a low-income housing program, and the Minnesota collection enterprise as defined in section 16D.02, subdivision 8, for the purpose of collecting the costs imposed under section 16D.11.

Subd. 3.Commissioner.

"Commissioner" means the commissioner of revenue.

Subd. 4.Debtor.

"Debtor" means a natural person obligated on a debt to a claimant agency or having a delinquent account with a public agency responsible for child support enforcement.

Subd. 5.Debt.

(a) "Debt" means a legal obligation of a natural person to pay a fixed and certain amount of money, which equals or exceeds $25 and which is due and payable to a claimant agency. The term includes criminal fines imposed under section 609.10 or 609.125, fines imposed for petty misdemeanors as defined in section 609.02, subdivision 4a, and restitution. A debt may arise under a contractual or statutory obligation, a court order, or other legal obligation, but need not have been reduced to judgment.

A debt includes any legal obligation of a current recipient of assistance which is based on overpayment of an assistance grant where that payment is based on a client waiver or an administrative or judicial finding of an intentional program violation; or where the debt is owed to a program wherein the debtor is not a client at the time notification is provided to initiate recovery under this chapter and the debtor is not a current recipient of food support, transitional child care, or transitional medical assistance.

(b) A debt does not include any legal obligation to pay a claimant agency for medical care, including hospitalization if the income of the debtor at the time when the medical care was rendered does not exceed the following amount:

(1) for an unmarried debtor, an income of $8,800 or less;

(2) for a debtor with one dependent, an income of $11,270 or less;

(3) for a debtor with two dependents, an income of $13,330 or less;

(4) for a debtor with three dependents, an income of $15,120 or less;

(5) for a debtor with four dependents, an income of $15,950 or less; and

(6) for a debtor with five or more dependents, an income of $16,630 or less.

(c) The commissioner shall adjust the income amounts in paragraph (b) by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B) the word "1999" shall be substituted for the word "1992." For 2001, the commissioner shall then determine the percent change from the 12 months ending on August 31, 1999, to the 12 months ending on August 31, 2000, and in each subsequent year, from the 12 months ending on August 31, 1999, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the Administrative Procedure Act contained in chapter 14. The income amount as adjusted must be rounded to the nearest $10 amount. If the amount ends in $5, the amount is rounded up to the nearest $10 amount.

(d) Debt also includes an agreement to pay a MinnesotaCare premium, regardless of the dollar amount of the premium authorized under section 256L.15, subdivision 1a.

Subd. 6.Department.

"Department" means the Department of Revenue.

Subd. 7.Refund.

"Refund" means an individual income tax refund or political contribution refund, pursuant to chapter 290, or a property tax credit or refund, pursuant to chapter 290A, or a sustainable forest payment to a claimant under chapter 290C.

For purposes of this chapter, lottery prizes, as set forth in section 349A.08, subdivision 8, and amounts granted to persons by the legislature on the recommendation of the joint senate-house of representatives Subcommittee on Claims shall be treated as refunds.

In the case of a joint property tax refund payable to spouses under chapter 290A, the refund shall be considered as belonging to each spouse in the proportion of the total refund that equals each spouse's proportion of the total income determined under section 290A.03, subdivision 3. In the case of a joint income tax refund under chapter 289A, the refund shall be considered as belonging to each spouse in the proportion of the total refund that equals each spouse's proportion of the total taxable income determined under section 290.01, subdivision 29. The commissioner shall remit the entire refund to the claimant agency, which shall, upon the request of the spouse who does not owe the debt, determine the amount of the refund belonging to that spouse and refund the amount to that spouse. For court fines, fees, and surcharges and court-ordered restitution under section 611A.04, subdivision 2, the notice provided by the commissioner of revenue under section 270A.07, subdivision 2, paragraph (b), serves as the appropriate legal notice to the spouse who does not owe the debt.

Subd. 8.Restitution.

"Restitution" means money due to the victim of a crime or a juvenile offense under an order of restitution issued by a court under section 609.10, or 609.125 as part of a sentence or as a condition of probation, or under an order entered by a court under section 260B.198, subdivision 1, clause (5), following a finding of delinquency.

History:

1980 c 607 art 12 s 3; 1Sp1981 c 2 s 20,21; 1982 c 424 s 130; 1984 c 502 art 14 s 3; 1985 c 235 s 2; 1Sp1986 c 1 art 8 s 7; 1987 c 261 s 1-3; 1988 c 638 s 1,2; 1988 c 668 s 5; 1990 c 480 art 10 s 2-4; 1991 c 291 art 6 s 6; 1992 c 571 art 17 s 1; 1993 c 375 art 17 s 8; 1994 c 614 s 2; 1995 c 264 art 4 s 1; 1996 c 471 art 3 s 52; art 13 s 10,11; 1997 c 17 s 4; 1997 c 85 art 5 s 24; 1997 c 231 art 2 s 70; 1998 c 407 art 5 s 41; 1999 c 139 art 4 s 2; 1999 c 243 art 16 s 8; 2000 c 490 art 13 s 7,8; 1Sp2001 c 5 art 7 s 8; art 8 s 4; 2003 c 127 art 8 s 6; 1Sp2003 c 2 art 3 s 1; 1Sp2003 c 14 art 1 s 106; 1Sp2003 c 21 art 11 s 7; 2005 c 151 art 9 s 14; 2007 c 61 s 1; 2008 c 154 art 11 s 1; art 16 s 6; 2011 c 71 s 1; 2011 c 112 art 10 s 1; art 11 s 5

270A.04 AGENCY PARTICIPATION.

Subdivision 1.Collection remedy.

The collection remedy under this section is in addition to and not in substitution for any other remedy available by law.

Subd. 2.Requirements for submission.

Any debt owed to a claimant agency must not be submitted by the agency for collection under the procedure established by sections 270A.01 to 270A.12 if (a) there is a written payment agreement between the debtor and the claimant agency in which revenue recapture is prohibited and the debtor is complying with the agreement, (b) the collection attempt would result in a loss of federal funds, or (c) the agency is unable to supply the department with the necessary identifying information required by subdivision 3 or rules promulgated by the commissioner, or (d) the debt is barred by section 541.05.

Subd. 3.Information required.

For each debt submitted, the claimant agency shall provide the commissioner with the name and Social Security number of the debtor and any other identifying information required by rules promulgated by the commissioner.

Subd. 4.Information obtained.

Whenever possible, a claimant agency shall obtain the identifying information required by subdivision 3 from any individual for whom the agency provides any service or transacts any business and who the claimant agency can foresee may become a debtor of the claimant agency.

History:

1980 c 607 art 12 s 4; 1984 c 502 art 14 s 4; 1990 c 480 art 10 s 5; 1991 c 292 art 5 s 71; 1992 c 511 art 7 s 3

270A.05 MINIMUM SUM COLLECTIBLE.

The minimum sum which a claimant agency may collect through use of the setoff procedure is $15.

History:

1980 c 607 art 12 s 5; 1992 c 511 art 7 s 4

270A.06 COLLECTION OF DEBTS THROUGH SETOFF.

Subject to the limitations of sections 270A.01 to 270A.12, the department shall, upon request by a claimant agency, render assistance in the collection of any debt owing to the agency. This assistance shall be provided by use of a procedure in which the sum of the refund due the debtor is applied to the amount due and owing from the debtor to the claimant agency.

History: *1980 c 607 art 12 s 6*

270A.07 PROCEDURE FOR SETOFF COLLECTION.

Subdivision 1.Notification requirement.

(a) Any claimant agency, seeking collection of a debt through setoff against a refund due, shall submit to the commissioner information indicating the amount of each debt and information identifying the debtor, as required by section 270A.04, subdivision 3.

(b) For each setoff of a debt against a refund due, the commissioner shall charge a fee of $15. The proceeds of fees shall be allocated by depositing $4 of each $15 fee collected into a Department of Revenue recapture revolving fund and depositing the remaining balance into the general fund. The sums deposited into the revolving fund are appropriated to the commissioner for the purpose of administering the Revenue Recapture Act.

(c) The claimant agency shall notify the commissioner when a debt has been satisfied or reduced by at least $200 within 30 days after satisfaction or reduction.

Subd. 2.Setoff procedures.

(a) The commissioner, upon receipt of notification, shall initiate procedures to detect any refunds otherwise payable to the debtor. When the commissioner determines that a refund is due to a debtor whose debt was submitted by a claimant agency, the commissioner shall first deduct the fee in subdivision 1, paragraph (b), and then remit the refund or the amount claimed, whichever is less, to the agency. In transferring or remitting moneys to the claimant agency, the commissioner shall provide information indicating the amount applied against each debtor's obligation and the debtor's address listed on the tax return.

(b) The commissioner shall remit to the debtor the amount of any refund due in excess of the debt submitted for setoff by the claimant agency. Notice of the amount set off and address of the claimant agency shall accompany any disbursement to the debtor of the balance of a refund, or shall be sent to the debtor at the time of setoff if the entire refund is set off. The notice shall also advise the debtor of the right to contest the validity of the claim, other than a claim based upon child support under chapter 518A or 518C at a hearing, subject to the restrictions in this paragraph. The debtor must assert this right by written request to the claimant agency, which request the claimant agency must receive within 45 days of the date of the notice. This right does not apply to (1) issues relating to the validity of the claim that have been previously raised at a hearing under this section or section 270A.09; (2) issues relating to the validity of the claim that were not timely raised by the debtor under section 270A.08, subdivision 2; (3) issues relating to the validity of the claim that have been previously raised at a hearing conducted under rules promulgated by the United States Department of Housing and Urban Development or any public agency that is responsible for the administration of a low-income housing program, or that were not timely raised by the debtor under those rules; or (4) issues relating to the validity of the claim for which a hearing is discretionary under section 270A.09. The notice shall include an explanation of the right of the spouse who does not owe the debt to request the claimant agency to repay the spouse's portion of a joint refund.

Subd. 3.Deposit of funds.

Any amounts remitted or transferred to state agencies shall be deposited as provided in section 16A.72.

Subd. 4.Effect of transfer or payment.

Transfer or remittance of funds to a claimant agency pursuant to this section constitutes payment of the department's obligation to refund the sums as overpayments of taxes or property tax credits or refunds. Any action for the setoff funds shall be made against the claimant agency pursuant to section 270A.09.

Subd. 5.Refunds wrongly applied.

Any refund wrongfully or incorrectly applied to a debt and transferred to a claimant agency shall be paid by the agency to the debtor. The sum wrongfully or incorrectly withheld shall bear interest at the rate specified in section 270C.405, computed from the date when the refund would begin to bear interest under section 289A.56, subdivision 2, regardless of whether the refund is payable under chapter 290 or 290A. If the claimant agency is a state agency, the payment shall be made out of the agency's appropriation.

History:

1980 c 607 art 12 s 7; 1Sp1985 c 13 s 308; 1Sp1985 c 14 art 15 s 4; 1987 c 268 art 17 s 9; 1990 c 480 art 1 s 46; 1992 c 511 art 7 s 5,6; 1995 c 264 art 9 s 6; 1999 c 243 art 16 s 9; 2000 c 490 art 13 s 9,10; 1Sp2001 c 10 art 2 s 72; 1Sp2003 c 1 art 2 s 80; 1Sp2003 c 21 art 11 s 8,9; 2005 c 151 art 2 s 17; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2006 c 280 s 46; 2011 c 71 s 2; 2011 c 112 art 11 s 6

270A.08 NOTICE AND HEARING REQUIRED.

Subdivision 1.Notice to debtor.

(a) Not later than five days after the claimant agency has sent notification to the department pursuant to section 270A.07, subdivision 1, the claimant agency shall send a written notification to the debtor asserting the right of the claimant agency to the refund or any part thereof. If the notice is returned to the claimant agency as undeliverable, or the claimant agency has reason to believe the debtor did not receive the notice, the claimant agency shall obtain the last known address of the debtor from the commissioner and resend the corrected notice.

(b) If a debt has been referred to the commissioner for collection under chapter 16D, and the referring agency meets the definition of claimant agency under this chapter, the commissioner must notify the debtor prior to using revenue recapture under this chapter for collection of the debt. The notice must be sent by United States mail or personal delivery to the last known address of the debtor.

Subd. 2.Requirements of notice.

(a) This written notice shall clearly and with specificity set forth the basis for the claim to the refund including the name of the benefit program involved if the debt arises from a public

assistance grant and the dates on which the debt was incurred and, further, shall advise the debtor of the claimant agency's intention to request setoff of the refund against the debt.

(b) Except as provided in paragraph (c), the notice will also advise the debtor that the debt can be set off against a refund unless the time period allowed by law for collecting the debt has expired, and will advise the debtor of the right to contest the validity of the claim at a hearing. The debtor must assert this right by written request to the claimant agency, which request the agency must receive within 45 days of the mailing date of the original notice or of the corrected notice, as required by subdivision 1. If the debtor has not received the notice, the 45 days shall not commence until the debtor has received actual notice. The debtor shall have the burden of showing no notice and shall be entitled to a hearing on the issue of notice as well as on the merits.

(c) If the claimant agency is a public agency that is responsible for the administration of a low-income housing program, the notice will also advise the debtor that the debt can be set off against a refund unless the time period allowed by law for collecting the debt has expired. If the public agency has provided the debtor with the opportunity to contest the issues relating to the validity of the claim at a hearing under rules promulgated by the United States Department of Housing and Urban Development or the public agency, the notice will advise the debtor of that fact and advise the debtor that no further hearing may be requested by the debtor to contest the validity of the claim.

History:

1980 c 607 art 12 s 8; 1984 c 502 art 14 s 5,6; 1986 c 444; 1990 c 480 art 10 s 6; 1991 c 292 art 5 s 72; 1992 c 511 art 7 s 7; 1999 c 243 art 16 s 10; 2008 c 366 art 16 s 4

270A.09 CONTESTED CLAIMS PROCEDURE.

Subdivision 1.Hearing.

If a claimant agency receives written notice of a debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall initiate a hearing according to contested case procedures established in the state Administrative Procedure Act not later than 30 days after receipt of the debtor's request for a hearing.

Subd. 1a.Employment and economic development claims.

Notwithstanding subdivision 1, any debtor contesting a setoff claim by the Department of Employment and Economic Development shall have a hearing conducted in the same manner as an appeal under section 268.105.

Subd. 1b.Department of Human Services claims.

Notwithstanding subdivision 1, any debtor contesting a setoff claim by the Department of Human Services or a county agency whose claim relates to a debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act shall have a hearing conducted in the same manner as an appeal under sections 256.045 and 256.0451.

Subd. 2.Issues raised.

No issue may be raised at the hearing which has been previously litigated. If a debt is based on a court judgment or court order, the hearing required by subdivision 1 need not, but may be granted at the sole discretion of the commissioner of the claimant agency.

Subd. 3.Contested case; final decision.

The report of the administrative law judge shall contain a decision and order, which constitute the final decision in the contested case. A copy of the decision and order shall be served by first class mail upon each party, the commissioner of revenue, and the attorney general. Fees and expenses may be awarded as provided in sections 15.471 to 15.474. The provisions for judicial review under sections 14.63 to 14.68 apply to decisions of the administrative law judge under this subdivision.

History:

1980 c 607 art 12 s 9; 1980 c 615 s 64; 1987 c 385 s 48; 1994 c 483 s 1; 1995 c 54 s 25; 1995 c 264 art 9 s 7; 1997 c 7 art 2 s 70; 2004 c 206 s 52; 2009 c 79 art 2 s 34

270A.10 PRIORITY OF CLAIMS.

If two or more debts, in a total amount exceeding the debtor's refund, are submitted for setoff, the priority of payment shall be as follows:

(1) delinquent tax obligations of the debtor which are owed to the department;

(2) debts for child support based on the order in time in which the commissioner received the debts;

(3) payment of restitution obligations;

(4) claims brought for a hospital or an ambulance service;

(5) the remaining debts based on the order in time in which the commissioner received the debts.

History:

1980 c 607 art 12 s 10; 1987 c 261 s 4; 1993 c 375 art 17 s 9; 2008 c 154 art 16 s 7

270A.11 DATA PRIVACY.

Private and confidential data on individuals may be exchanged among the department, the taxpayer's rights advocate, the attorney general, the claimant agency, and the debtor as necessary to accomplish and effectuate the intent of sections 270A.01 to 270A.12, as provided by section 13.05, subdivision 4, clause (b). The department may disclose to the claimant agency only the debtor's name, address, Social Security number and the amount of the refund, and in the case of a joint return, the name of the debtor's spouse. Any person employed by, or formerly

employed by, a claimant agency who discloses any such information for any other purpose, shall be subject to the civil and criminal penalties of section 270B.18. Data collected by the department from claimant agencies relating to claims filed under this chapter are private data on individuals.

History:

1980 c 607 art 12 s 11; 1981 c 311 s 39; 1982 c 545 s 24; 1989 c 184 art 2 s 16; 1992 c 511 art 7 s 8; 1995 c 264 art 9 s 8; 1Sp2001 c 5 art 7 s 9

270A.12 RULES.

The commissioner is authorized to develop and to require the use of any necessary forms. The commissioner or a claimant agency is authorized to make any rules necessary to effectuate the purposes of sections 270A.01 to 270A.12.

History:

1980 c 607 art 12 s 12; 1982 c 424 s 130; 1984 c 640 s 32; 1996 c 305 art 2 s 57

357.021 COURT ADMINISTRATOR OF DISTRICT COURT; FEES.

Subdivision 1.

[Expired]

Subd. 1a.Transmittal of fees to commissioner of management and budget.

(a) Every person, including the state of Minnesota and all bodies politic and corporate, who shall transact any business in the district court, shall pay to the court administrator of said court the sundry fees prescribed in subdivision 2. Except as provided in paragraph (d), the court administrator shall transmit the fees monthly to the commissioner of management and budget for deposit in the state treasury and credit to the general fund. $30 of each fee collected in a dissolution action under subdivision 2, clause (1), must be deposited by the commissioner of management and budget in the special revenue fund and is appropriated to the commissioner of employment and economic development for the displaced homemaker program under section 116L.96.

(b) In a county which has a screener-collector position, fees paid by a county pursuant to this subdivision shall be transmitted monthly to the county treasurer, who shall apply the fees first to reimburse the county for the amount of the salary paid for the screener-collector position. The balance of the fees collected shall then be forwarded to the commissioner of management and budget for deposit in the state treasury and credited to the general fund. In a county in a judicial district under section 480.181, subdivision 1, paragraph (b), which has a screener-collector position, the fees paid by a county shall be transmitted monthly to the commissioner of management and budget for deposit in the state treasury and credited to the general fund. A screener-collector position for purposes of this paragraph is an employee whose

function is to increase the collection of fines and to review the incomes of potential clients of the public defender, in order to verify eligibility for that service.

(c) No fee is required under this section from the public authority or the party the public authority represents in an action for:

(1) child support enforcement or modification, medical assistance enforcement, or establishment of parentage in the district court, or in a proceeding under section 484.702;

(2) civil commitment under chapter 253B;

(3) the appointment of a public conservator or public guardian or any other action under chapters 252A and 525;

(4) wrongfully obtaining public assistance under section 256.98 or 256D.07, or recovery of overpayments of public assistance;

(5) court relief under chapters 260, 260A, 260B, and 260C;

(6) forfeiture of property under sections 169A.63 and 609.531 to 609.5317;

(7) recovery of amounts issued by political subdivisions or public institutions under sections 246.52, 252.27, 256.045, 256.25, 256.87, 256B.042, 256B.14, 256B.15, 256B.37, 260B.331, and 260C.331, or other sections referring to other forms of public assistance;

(8) restitution under section 611A.04; or

(9) actions seeking monetary relief in favor of the state pursuant to section 16D.14, subdivision 5.

(d) $20 from each fee collected for child support modifications under subdivision 2, clause (13), must be transmitted to the county treasurer for deposit in the county general fund and $35 from each fee shall be credited to the state general fund. The fees must be used by the county to pay for child support enforcement efforts by county attorneys.

Subd. 2.Fee amounts.

The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, including any case arising under the tax laws of the state that could be transferred or appealed to the Tax Court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of $310, except in marriage dissolution actions the fee is $340.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of $310, except in marriage dissolution actions the fee is $340.

The party requesting a trial by jury shall pay $100.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall

include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under chapter 103E, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding, $14, and $8 for an uncertified copy.

(3) Issuing a subpoena, $16 for each name.

(4) Filing a motion or response to a motion in civil, family, excluding child support, and guardianship cases, $100.

(5) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, $55.

(6) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, $40.

(7) Filing and entering a satisfaction of judgment, partial satisfaction, or assignment of judgment, $5.

(8) Certificate as to existence or nonexistence of judgments docketed, $5 for each name certified to.

(9) Filing and indexing trade name; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians, or optometrists, $5.

(10) For the filing of each partial, final, or annual account in all trusteeships, $55.

(11) For the deposit of a will, $27.

(12) For recording notary commission, $20.

(13) Filing a motion or response to a motion for modification of child support, a fee of $100.

(14) All other services required by law for which no fee is provided, such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

(15) In addition to any other filing fees under this chapter, a surcharge in the amount of $75 must be assessed in accordance with section 259.52, subdivision 14, for each adoption petition filed in district court to fund the fathers' adoption registry under section 259.52.

The fees in clauses (3) and (5) need not be paid by a public authority or the party the public authority represents.

Subd. 2a.

[Repealed, 1999 c 216 art 7 s 45]

Subd. 3.Payment in advance.

All fees of said court administrators, except in criminal proceedings, shall be paid in advance at or prior to the time of the performance of any service requiring payment of such

fees, and said court administrator shall not proceed in any matter requiring the payment of fees until the full amount of the same is paid.

Subd. 4.Not affect library fees.

Nothing in this section shall be construed as amending, modifying, redistributing, or repealing the provisions as to library fees contained in chapter 134A.

Subd. 5.Exemption for government agencies.

Notwithstanding any other provision of the law to the contrary, no fee otherwise required to be paid to the court administrator of district court by a defendant or defendants when filing the first paper for that party in an action, shall be paid by the state of Minnesota, or any department or agency thereof, or when the state or a department or agency as plaintiff enters judgment pursuant to a confession of judgment executed by the defendant.

Subd. 6.Surcharges on criminal and traffic offenders.

(a) Except as provided in this paragraph, the court shall impose and the court administrator shall collect a $75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense, other than a violation of a law or ordinance relating to vehicle parking, for which there shall be a $12 surcharge. When a defendant is convicted of more than one offense in a case, the surcharge shall be imposed only once in that case. In the Second Judicial District, the court shall impose, and the court administrator shall collect, an additional $1 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense, including a violation of a law or ordinance relating to vehicle parking, if the Ramsey County Board of Commissioners authorizes the $1 surcharge. The surcharge shall be imposed whether or not the person is sentenced to imprisonment or the sentence is stayed. The surcharge shall not be imposed when a person is convicted of a petty misdemeanor for which no fine is imposed.

(b) If the court fails to impose a surcharge as required by this subdivision, the court administrator shall show the imposition of the surcharge, collect the surcharge, and correct the record.

(c) The court may not waive payment of the surcharge required under this subdivision. Upon a showing of indigency or undue hardship upon the convicted person or the convicted person's immediate family, the sentencing court may authorize payment of the surcharge in installments.

(d) The court administrator or other entity collecting a surcharge shall forward it to the commissioner of management and budget.

(e) If the convicted person is sentenced to imprisonment and has not paid the surcharge before the term of imprisonment begins, the chief executive officer of the correctional facility in which the convicted person is incarcerated shall collect the surcharge from any earnings the inmate accrues from work performed in the facility or while on conditional release. The chief executive officer shall forward the amount collected to the court administrator or other entity collecting the surcharge imposed by the court.

(f) A person who enters a diversion program, continuance without prosecution, continuance for dismissal, or stay of adjudication for a violation of chapter 169 must pay the surcharge described in this subdivision. A surcharge imposed under this paragraph shall be imposed only once per case.

(g) The surcharge does not apply to administrative citations issued pursuant to section 169.999.

Subd. 7.Disbursement of surcharges by commissioner of management and budget.

(a) Except as provided in paragraphs (b), (c), and (d), the commissioner of management and budget shall disburse surcharges received under subdivision 6 and section 97A.065, subdivision 2, as follows:

(1) one percent shall be credited to the peace officer training account in the game and fish fund to provide peace officer training for employees of the Department of Natural Resources who are licensed under sections 626.84 to 626.863, and who possess peace officer authority for the purpose of enforcing game and fish laws;

(2) 39 percent shall be credited to the peace officers training account in the special revenue fund; and

(3) 60 percent shall be credited to the general fund.

(b) The commissioner of management and budget shall credit $3 of each surcharge received under subdivision 6 and section 97A.065, subdivision 2, to the general fund.

(c) In addition to any amounts credited under paragraph (a), the commissioner of management and budget shall credit $47 of each surcharge received under subdivision 6 and section 97A.065, subdivision 2, and the $12 parking surcharge, to the general fund.

(d) If the Ramsey County Board of Commissioners authorizes imposition of the additional $1 surcharge provided for in subdivision 6, paragraph (a), the court administrator in the Second Judicial District shall transmit the surcharge to the commissioner of management and budget. The $1 special surcharge is deposited in a Ramsey County surcharge account in the special revenue fund and amounts in the account are appropriated to the trial courts for the administration of the petty misdemeanor diversion program operated by the Second Judicial District Ramsey County Violations Bureau.

History:

(6987) RL s 2694; 1913 c 414 s 1; 1937 c 187 s 1; 1947 c 95 s 1,2; 1957 c 620 s 1,2; 1959 c 250 s 4; 1965 c 822 s 1-5; 1969 c 495 s 1,3; 1971 c 25 s 65; 1971 c 255 s 1; 1971 c 259 s 1; 1974 c 394 s 2; 1978 c 730 s 1; 1981 c 360 art 2 s 41,42; 1983 c 262 art 1 s 6; 1983 c 312 art 3 s 1,2; 1984 c 654 art 5 s 53; 1985 c 172 s 127; 1Sp1985 c 14 art 9 s 75; 1986 c 442 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 282 art 2 s 185,186; 1989 c 335 art 3 s 6-9; art 4 s 82; 1Sp1989 c 1 art 17 s 5; 1990 c 391 art 8 s 38; 1990 c 544 s 1; 1990 c 574 s 4; 1990 c 594 art 1 s 72; 1990 c 604 art 9 s 3; 1991 c 281 s 1; 1992 c 513 art 3 s 71; art 4 s 42; art 8 s 51,52; 1992 c 571 art 4 s 1; 1993 c 192 s 91,92; 1993 c 326 art 12 s 7; 1994 c 465 art 3 s 28; 1994 c 630 art 10 s 2; 1994 c 636 art 8 s 3; 1995 c 226 art 6 s 8; 1997 c 218 s 12; 1997 c 239 art 12 s 1; 1998

c 366 s 75; 1998 c 367 art 8 s 4-6; 1998 c 382 art 2 s 17; 1999 c 139 art 4 s 2; 1999 c 196 art 2 s 7; 1999 c 243 art 11 s 5; 2000 c 478 art 2 s 7; 1Sp2001 c 5 art 5 s 10; 1Sp2001 c 8 art 7 s 1,2,13; 1Sp2001 c 9 art 18 s 15,16,19; 2002 c 220 art 11 s 6; 2002 c 379 art 1 s 113,114; 2003 c 112 art 2 s 50; 1Sp2003 c 2 art 2 s 2; art 8 s 6,7; 2004 c 228 art 1 s 64; 2004 c 278 s 2,3; 2005 c 136 art 14 s 3-5; 2005 c 164 s 1,2; 1Sp2005 c 1 art 4 s 99,100; 2006 c 212 art 3 s 37; 2008 c 363 art 12 s 11,12; 2009 c 59 art 4 s 4; 2009 c 83 art 2 s 21-23; 2009 c 101 art 2 s 109; 2009 c 158 s 7; 2010 c 380 s 1; 1Sp2011 c 1 art 3 s 3; 1Sp2011 c 2 art 4 s 27

373.41 MISCELLANEOUS FEES.

The county may charge a fee to record, file, certify, or provide copies of any instrument, document, or paper that is required by law to be filed or which may be filed in any county office. The county may charge fees for service provided by any county office, official, department, court, or employee. The county board may, after a public hearing, establish the amounts of fees to be charged for the services, unless a statute has specified the amount. There must be a reasonable relation between the fee and the cost of providing the service. A county may also impose a fee or an interest charge on payments of money to the county that are more than 90 days overdue, provided that late property tax payments remain subject only to the penalty and interest provisions of chapters 277 and 279.

History:

1987 c 164 s 1; 1993 c 217 s 1

393.12 FEES FOR SOCIAL SERVICES.

A local social services agency may charge fees for social services furnished to a family or individual not on public assistance. The local social services agency shall establish fee schedules based on the recipient's ability to pay and for day care services on the recommendations of the appropriate advisory council.

History:

1973 c 190 s 1; 1974 c 405 s 1; 1975 c 95 s 1; 1984 c 654 art 5 s 58; 1994 c 631 s 31; 1995 c 207 art 11 s 9

491A.01 ESTABLISHMENT; POWERS; JURISDICTION.

Subdivision 1.Establishment.

The district court in each county shall establish a conciliation court division with the jurisdiction and powers set forth in this chapter.

Subd. 2.Powers; issuance of process.

The conciliation court has all powers, and may issue process as necessary or proper to carry out the purposes of this chapter. No writ of execution or garnishment summons may be issued out of conciliation court.

Subd. 3.**Jurisdiction; general.**

(a) Except as provided in subdivisions 4 and 5, the conciliation court has jurisdiction to hear, conciliate, try, and determine civil claims if the amount of money or property that is the subject matter of the claim does not exceed: (1) $10,000; (2) $4,000, if the claim involves a consumer credit transaction; or (3) $15,000, if the claim involves money or personal property subject to forfeiture under section 84.7741, 169A.63, 609.5311, 609.5312, 609.5314, or 609.5318.

(b) "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate the purchase of personal property, in which:

(1) credit is granted by a seller or a lender who regularly engages as a seller or lender in credit transactions of the same kind;

(2) the buyer is a natural person;

(3) the claimant is the seller or lender in the transaction; and

(4) the personal property is purchased primarily for a personal, family, or household purpose and not for a commercial, agricultural, or business purpose.

(c) Except as otherwise provided in this subdivision and subdivisions 5 to 10, the territorial jurisdiction of conciliation court is coextensive with the county in which the court is established. The summons in a conciliation court action under subdivisions 6 to 10 may be served anywhere in the state, and the summons in a conciliation court action under subdivision 7, paragraph (b), may be served outside the state in the manner provided by law. The court administrator shall serve the summons in a conciliation court action by first class mail, except that if the amount of money or property that is the subject of the claim exceeds $2,500, the summons must be served by the plaintiff by certified mail, and service on nonresident defendants must be made in accordance with applicable law or rule. Subpoenas to secure the attendance of nonparty witnesses and the production of documents at trial may be served anywhere within the state in the manner provided by law.

When a court administrator is required to summon the defendant by certified mail under this paragraph, the summons may be made by personal service in the manner provided in the Rules of Civil Procedure for personal service of a summons of the district court as an alternative to service by certified mail.

(d) This subdivision expires August 1, 2014.

Subd. 3a.Jurisdiction; general.

(a) Except as provided in subdivisions 4 and 5, the conciliation court has jurisdiction to hear, conciliate, try, and determine civil claims if the amount of money or property that is the subject matter of the claim does not exceed: (1) $15,000; or (2) $4,000, if the claim involves a consumer credit transaction.

(b) "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate the purchase of personal property, in which:

(1) credit is granted by a seller or a lender who regularly engages as a seller or lender in credit transactions of the same kind;

(2) the buyer is a natural person;

(3) the claimant is the seller or lender in the transaction; and

(4) the personal property is purchased primarily for a personal, family, or household purpose and not for a commercial, agricultural, or business purpose.

(c) Except as otherwise provided in this subdivision and subdivisions 5 to 10, the territorial jurisdiction of conciliation court is coextensive with the county in which the court is established. The summons in a conciliation court action under subdivisions 6 to 10 may be served anywhere in the state, and the summons in a conciliation court action under subdivision 7, paragraph (b), may be served outside the state in the manner provided by law. The court administrator shall serve the summons in a conciliation court action by first class mail, except that if the amount of money or property that is the subject of the claim exceeds $2,500, the summons must be served by the plaintiff by certified mail, and service on nonresident defendants must be made in accordance with applicable law or rule. Subpoenas to secure the attendance of nonparty witnesses and the production of documents at trial may be served anywhere within the state in the manner provided by law.

When a court administrator is required to summon the defendant by certified mail under this paragraph, the summons may be made by personal service in the manner provided in the Rules of Civil Procedure for personal service of a summons of the district court as an alternative to service by certified mail.

[See Note.]

Subd. 4.Jurisdiction; exclusions.

The conciliation court does not have jurisdiction over the following actions:

(1) involving title to real estate, including actions to determine boundary lines;

(2) involving claims of defamation by libel or slander;

(3) for specific performance, except to the extent authorized in subdivision 5;

(4) brought or defended on behalf of a class;

(5) requesting or involving prejudgment remedies;

(6) involving injunctive relief, except to the extent authorized in subdivision 5;

(7) pursuant to chapters 256, 257, 259, 260, 518, 518A, 518B, and 518C, except for actions involving debts owed to state agencies or political subdivisions that arise under those chapters;

(8) pursuant to chapters 524 and 525;

(9) where jurisdiction is vested exclusively in another court or division of district court;

(10) for eviction; and

(11) involving medical malpractice.

Subd. 5.Jurisdiction; personal property.

If the controversy concerns the ownership or possession of personal property the value of which does not exceed the jurisdictional limit under subdivision 3, the conciliation court has jurisdiction to determine the ownership and possession of the property and direct any party to deliver the property to another party. Notwithstanding any other law to the contrary, once the judgment of the court directing return of the property becomes final, it is enforceable by the sheriff of the county in which the property is located without further legal process. The sheriff is authorized to effect repossession of the property according to law, including, but not limited to: (1) entry upon the premises for the purposes of demanding the property and ascertaining whether the property is present and taking possession of it; and (2) causing the building or enclosure where the property is located to be broken open and the property taken out of the building and if necessary to that end, the sheriff may call the power of the county to the sheriff's aid. If the party against whom the judgment is directed is not physically present at the time of entry by the sheriff, then a copy of the judgment must be served upon any person in possession of the property or if no person is present, a copy of the judgment must be left on the premises. After taking possession of the property, the sheriff shall turn the property over to the prevailing party.

Subd. 6.Jurisdiction; student loans.

The conciliation court also has jurisdiction to determine a civil action commenced by a plaintiff educational institution, including but not limited to, a state college or university governed by the Board of Trustees of the Minnesota State Colleges and Universities, with administrative offices in the county in which the conciliation court is located, to recover the amount of a student loan or loans even though the defendant or defendants are not residents of the county under the following conditions:

(1) the student loan or loans were originally awarded in the county in which the conciliation court is located;

(2) notice that payment on the loan is overdue has previously been sent by first class mail to the borrower to the last known address reported by the borrower to the educational institution; and

(3) the notice states that the educational institution may commence a conciliation court action in the county where the loan was awarded to recover the amount of the loan.

Subd. 7.Jurisdiction; foreign defendants.

(a) If a foreign corporation is subject by law to service of process in this state or is subject to service of process outside this state under section 543.19, a conciliation court action may be commenced against the foreign corporation:

(1) in the county where the corporation's registered agent is located;

(2) in the county where the cause of action arose, if the corporation has a place of business in that county either at the time the cause of action arose or at the time the action was commenced; or

(3) in the county in which the plaintiff resides, if the corporation does not appoint or maintain a registered agent in this state, withdraws from the state, or the certificate of authority of the corporation is canceled or revoked.

(b) If a nonresident other than a foreign corporation is subject to service of process outside this state under section 543.19, a conciliation court action may be commenced against the nonresident in the county in which the plaintiff resides.

Subd. 8.Jurisdiction; multiple defendants.

The conciliation court also has jurisdiction to determine a civil action commenced against two or more defendants in the county in which one or more of the defendants resides. Counterclaims may be commenced in the county where the original action was commenced.

Subd. 9.Jurisdiction; rental property.

The conciliation court also has jurisdiction to determine an action for damages arising from the landlord and tenant relationship under chapter 504B or under the rental agreement in the county in which the rental property is located.

Subd. 10.Jurisdiction; dishonored checks.

The conciliation court also has jurisdiction to determine a civil action commenced by a plaintiff, resident of the county, to recover the amount of a dishonored check issued in the county, even though the defendant or defendants are not residents of the county, if the notice of nonpayment or dishonor described in section 609.535, subdivision 3, is sent to the maker or drawer as specified in that section and the notice states that the payee or holder of the check may commence a conciliation court action in the county where the dishonored check was issued to recover the amount of the check. This subdivision does not apply to a check that has been dishonored by stop payment order.

History:

1993 c 321 s 2; 1994 c 465 art 1 s 57; 1994 c 502 s 2; 1996 c 395 s 18; 1999 c 199 art 2 s 28; 2003 c 2 art 2 s 15; 2010 c 391 s 6; 2012 c 128 s 15; 2012 c 283 s 1,2

NOTE: Subdivision 3a, as added by Laws 2012, chapter 283, section 2, is effective August 1, 2014, and applies to claims filed on or after that date. Laws 2012, chapter 283, section 2, the effective date.

491A.02 PROCEDURE.

Subdivision 1.Procedure; rules; forms.

The determination of claims in conciliation court must be without jury trial and by a simple and informal procedure. Conciliation court proceedings must not be reported. By July 1, 1993, the Supreme Court shall promulgate rules governing pleading, practice, and procedure for

conciliation courts, and shall promulgate uniform claim and counterclaim forms. The claim and summons must include a conspicuous notice in at least 10-point bold type regarding the consequences of a failure to appear at a conciliation court hearing. Each conciliation court shall accept a uniform claim or counterclaim that has been properly completed and forwarded to the court together with the entire filing fee, if any.

Subd. 2.Assistance to litigants.

Under the supervision of the conciliation court judges, the court administrator shall explain to litigants the procedure and functions of the conciliation court and shall on request assist them in filling out all forms and pleading necessary for the presentation of their claims or counterclaims to the court. The uniform claim and counterclaim forms must be accepted by any court administrator and shall on request be forwarded together with the entire filing fee, if any, to the court administrator of the appropriate conciliation court. The court administrator shall on request assist judgment creditors and debtors in the preparation of the forms necessary to obtain satisfaction of a final judgment. The performance of duties prescribed in this subdivision do not constitute the practice of law for purposes of section 481.02, subdivision 8.

Subd. 3.Fees.

The court administrator shall charge and collect the fee established pursuant to section 357.022, together with applicable law library fees established pursuant to law, from a plaintiff and from a defendant when the first paper for that party is filed in any conciliation court action. The rules promulgated by the Supreme Court shall provide for commencement of an action without payment of fees when a litigant who is a natural person claims an inability to pay the fees, provided that if the litigant prevails on a claim or counterclaim, the fees must be paid to the administrator out of any money recovered by the litigant.

Subd. 4.Representation.

(a) A corporation, partnership, limited liability company, sole proprietorship, or association may be represented in conciliation court by an officer, manager, or partner or an agent in the case of a condominium, cooperative, or townhouse association, or may appoint a natural person who is an employee or commercial property manager to appear on its behalf or settle a claim in conciliation court. The state or a political subdivision of the state may be represented in conciliation court by an employee of the pertinent governmental unit without a written authorization. The state also may be represented in conciliation court by an employee of the Division of Risk Management of the Department of Administration without a written authorization. Representation under this subdivision does not constitute the practice of law for purposes of section 481.02, subdivision 8. In the case of an officer, employee, commercial property manager, or agent of a condominium, cooperative, or townhouse association, an authorized power of attorney, corporate authorization resolution, corporate bylaw, or other evidence of authority acceptable to the court must be filed with the claim or presented at the hearing. This subdivision also applies to appearances in district court by a corporation or limited liability company with five or fewer shareholders or members and to any condominium, cooperative, or townhouse association, if the action was removed from conciliation court.

(b) "Commercial property manager" means a corporation, partnership, or limited liability company or its employees who are hired by the owner of commercial real estate to perform a broad range of administrative duties at the property including tenant relations matters, leasing, repairs, maintenance, the negotiation and resolution of tenant disputes, and related matters. In order to appear in conciliation court, a property manager's employees must possess a real estate license under section 82.87 and be authorized by the owner of the property to settle all disputes with tenants and others within the jurisdictional limits of conciliation court.

(c) A commercial property manager who is appointed to settle a claim in conciliation court may not charge or collect a separate fee for services rendered under paragraph (a).

Subd. 5.Installment payments.

A judgment ordered may provide for satisfaction by payments in installments in amounts and at such times, not exceeding one year for the last installment, as the judge determines to be just and reasonable. If any installment is not paid when due, the entire balance of the judgment order becomes immediately due and payable.

Subd. 6.Appeal by removal to district court; trial de novo; notice of costs.

The rules promulgated by the Supreme Court must provide for a right of appeal from the decision of the conciliation court by removal to the district court for a trial de novo. The notice of order for judgment must contain a statement that if the removing party does not prevail in district court as provided in subdivision 7, the opposing party may be awarded an additional $50 as costs.

Subd. 7.Costs in district court.

(a) For the purposes of this subdivision, "removing party" means the first party who serves or files a demand for removal. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as though the action were commenced in district court. If the removing party does not prevail, the court shall order an additional $50 to be paid to the opposing party as costs. If the removing party is eligible to proceed under section 563.01, the additional $50 costs may be waived if the court, in its discretion, determines that a hardship exists and that the case was removed from conciliation court in good faith.

(c) For purposes of this section, the removing party prevails in district court if:

(1) the removing party recovers at least $500 or 50 percent of the amount of value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court when the opposing party recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least $500 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least $500 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district court must not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this section.

Subd. 8.Appeal from district court.

Decisions of the district court on removal from a conciliation court determination on the merits may be appealed to the Court of Appeals as in other civil actions.

Subd. 9.Judgment debtor disclosure.

Notwithstanding any contrary provision in rule 518 of the Conciliation Court Rules, unless the parties have otherwise agreed, if a conciliation court judgment or a judgment of district court on removal from conciliation court has been docketed in district court, the judgment creditor's attorney as an officer of the court may or the district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earning. The information must be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order must contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

History:

1993 c 321 s 3; 1994 c 502 s 3; 1995 c 254 art 5 s 15; 2004 c 226 s 1; 2007 c 148 art 2 s 69; 2009 c 83 art 2 s 32

514.981 MEDICAL ASSISTANCE LIEN.

Subdivision 1.Property subject to lien; lien amount.

(a) Subject to sections 514.980 to 514.985, payments made by a medical assistance agency to provide medical assistance benefits to a medical assistance recipient who owns property in this state or to the recipient's spouse constitute a lien in favor of the agency upon all real property that is owned by the medical assistance recipient on or after the time when the recipient is institutionalized.

(b) The amount of the lien is limited to the same extent as a claim against the estate under section 256B.15, subdivision 2.

Subd. 2.Attachment.

(a) A medical assistance lien attaches and becomes enforceable against specific real property as of the date when the following conditions are met:

(1) payments have been made by an agency for a medical assistance benefit;

(2) notice and an opportunity for a hearing have been provided under paragraph (b);

(3) a lien notice has been filed as provided in section 514.982;

(4) if the property is registered property, the lien notice has been memorialized on the certificate of title of the property affected by the lien notice; and

(5) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a medical assistance lien notice until the medical assistance recipient or the recipient's legal representative has been sent, by certified or registered mail, written notice of the agency's lien rights and there has been an opportunity for a hearing under section 256.045. In addition, the agency may not file a lien notice unless the agency determines as medically verified by the recipient's attending physician that the medical assistance recipient cannot reasonably be expected to be discharged from a medical institution and return home.

(c) An agency may not file a medical assistance lien notice against real property while it is the home of the recipient's spouse.

(d) An agency may not file a medical assistance lien notice against real property that was the homestead of the medical assistance recipient or the recipient's spouse when the medical assistance recipient received medical institution services if any of the following persons are lawfully residing in the property:

(1) a child of the medical assistance recipient if the child is under age 21 or is blind or permanently and totally disabled according to the supplemental security income criteria;

(2) a child of the medical assistance recipient if the child resided in the homestead for at least two years immediately before the date the medical assistance recipient received medical institution services, and the child provided care to the medical assistance recipient that permitted the recipient to live without medical institution services; or

(3) a sibling of the medical assistance recipient if the sibling has an equity interest in the property and has resided in the property for at least one year immediately before the date the medical assistance recipient began receiving medical institution services.

(e) A medical assistance lien applies only to the specific real property described in the lien notice.

Subd. 3.Continuation of lien notice and lien.

A medical assistance lien notice remains effective from the time it is filed until it can be disregarded under sections 514.980 to 514.985. A medical assistance lien that has attached to

specific real property continues until the lien is satisfied, becomes unenforceable under subdivision 6, or is released and discharged under subdivision 5.

Subd. 4.Lien priority.

A medical assistance lien that attaches to specific real property is subject to the rights of any other person whose interest in the real property is perfected before a lien notice has been filed under section 514.982, including:

(a) an owner, other than the recipient or recipient's spouse;

(b) a purchaser;

(c) a holder of a mortgage or security interest; or

(d) a judgment lien creditor.

The rights of the other person have the same protections against a medical assistance lien as are afforded against a judgment lien that arises out of an unsecured obligation and that arises as of the time of the filing of the medical assistance lien notice under section 514.982. A medical assistance lien is inferior to a lien for taxes or special assessments or other lien that would be superior to the perfected lien of a judgment creditor.

Subd. 5.Release.

(a) An agency that files a medical assistance lien notice shall release and discharge the lien in full if:

(1) the medical assistance recipient is discharged from the medical institution and returns home;

(2) the medical assistance lien is satisfied;

(3) the agency has received reimbursement for the amount secured by the lien or a legally enforceable agreement has been executed providing for reimbursement of the agency for that amount; or

(4) the medical assistance recipient, if single, or the recipient's surviving spouse, has died, and a claim may not be filed against the estate of the decedent under section 256B.15, subdivision 3.

(b) Upon request, the agency that files a medical assistance lien notice shall release a specific parcel of real property from the lien if:

(1) the property is or was the homestead of the recipient's spouse during the time of the medical assistance recipient's institutionalization, or the property is or was attributed to the spouse under section 256B.059, subdivision 3 or 4, and the spouse is not receiving medical assistance benefits;

(2) the property would be exempt from a claim against the estate under section 256B.15, subdivision 4;

(3) the agency receives reimbursement, or other collateral sufficient to secure payment of reimbursement, in an amount equal to the lesser of the amount secured by the lien, or the

amount the agency would be allowed to recover upon enforcement of the lien against the specific parcel of property if the agency attempted to enforce the lien on the date of the request to release the lien; or

(4) the medical assistance lien cannot lawfully be enforced against the property because of an error, omission, or other material defect in procedure, description, identity, timing, or other prerequisite to enforcement.

(c) The agency that files a medical assistance lien notice may release the lien if the attachment or enforcement of the lien is determined by the agency to be contrary to the public interest.

(d) The agency that files a medical assistance lien notice shall execute the release of the lien and file the release as provided in section 514.982, subdivision 2.

Subd. 6.Time limits; claim limits; liens on life estates and joint tenancies.

(a) A medical assistance lien is a lien on the real property it describes for a period of ten years from the date it attaches according to section 514.981, subdivision 2, paragraph (a), except as otherwise provided for in sections 514.980 to 514.985. The agency may renew a medical assistance lien for an additional ten years from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed. The certificate must refer to the recording or filing data for the medical assistance lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The registrar of titles or the recorder shall file, record, index, and return the certificate of renewal in the same manner as provided for medical assistance liens in section 514.982, subdivision 2.

(b) A medical assistance lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the agency's medical assistance lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of the surviving spouse or minor children under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

(c) Notwithstanding any law or rule to the contrary, the provisions in clauses (1) to (7) apply if a life estate subject to a medical assistance lien ends according to its terms, or if a medical assistance recipient who owns a life estate or any interest in real property as a joint tenant that is subject to a medical assistance lien dies.

(1) The medical assistance recipient's life estate or joint tenancy interest in the real property shall not end upon the recipient's death but shall merge into the remainder interest or other interest in real property the medical assistance recipient owned in joint tenancy with others. The medical assistance lien shall attach to and run with the remainder or other interest in the real

property to the extent of the medical assistance recipient's interest in the property at the time of the recipient's death as determined under this section.

(2) If the medical assistance recipient's interest was a life estate in real property, the lien shall be a lien against the portion of the remainder equal to the percentage factor for the life estate of a person the medical assistance recipient's age on the date the life estate ended according to its terms or the date of the medical assistance recipient's death as listed in the Life Estate Mortality Table in the health care program's manual.

(3) If the medical assistance recipient owned the interest in real property in joint tenancy with others, the lien shall be a lien against the portion of that interest equal to the fractional interest the medical assistance recipient would have owned in the jointly owned interest had the medical assistance recipient and the other owners held title to that interest as tenants in common on the date the medical assistance recipient died.

(4) The medical assistance lien shall remain a lien against the remainder or other jointly owned interest for the length of time and be renewable as provided in paragraph (a).

(5) Subdivision 5, paragraph (a), clause (4), paragraph (b), clauses (1) and (2); and subdivision 6, paragraph (b), do not apply to medical assistance liens which attach to interests in real property as provided under this subdivision.

(6) The continuation of a medical assistance recipient's life estate or joint tenancy interest in real property after the medical assistance recipient's death for the purpose of recovering medical assistance provided for in sections 514.980 to 514.985 modifies common law principles holding that these interests terminate on the death of the holder.

(7) Notwithstanding any law or rule to the contrary, no release, satisfaction, discharge, or affidavit under section 256B.15 shall extinguish or terminate the life estate or joint tenancy interest of a medical assistance recipient subject to a lien under sections 514.980 to 514.985 on the date the recipient dies.

(8) The provisions of clauses (1) to (7) do not apply to a homestead owned of record, on the date the recipient dies, by the recipient and the recipient's spouse as joint tenants with a right of survivorship. Homestead means the real property occupied by the surviving joint tenant spouse as their sole residence on the date the recipient dies and classified and taxed to the recipient and surviving joint tenant spouse as homestead property for property tax purposes in the calendar year in which the recipient dies. For purposes of this exemption, real property the recipient and their surviving joint tenant spouse purchase solely with the proceeds from the sale of their prior homestead, own of record as joint tenants, and qualify as homestead property under section 273.124 in the calendar year in which the recipient dies and prior to the recipient's death shall be deemed to be real property classified and taxed to the recipient and their surviving joint tenant spouse as homestead property in the calendar year in which the recipient dies. The surviving spouse, or any person with personal knowledge of the facts, may provide an affidavit describing the homestead property affected by this clause and stating facts showing compliance with this clause. The affidavit shall be prima facie evidence of the facts it states. All provisions in this paragraph related to the continuation of a recipient's life estate or joint tenancy interests

in real property after the recipient's death, for the purpose of recovering medical assistance but not alternative care, are effective only for life estates and joint tenancy interests established on or after August 1, 2003.

History:

1Sp1993 c 1 art 5 s 118; 1997 c 217 art 2 s 11; 2000 c 400 s 4; 1Sp2003 c 14 art 12 s 90; 1Sp2005 c 4 art 7 s 49

518.167 INVESTIGATIONS AND REPORTS.

Subdivision 1.**Court order.**

In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. If the county elects to conduct an investigation, the county may charge a fee. The investigation and report may be made by the county welfare agency or department of court services.

Subd. 2.Preparation.

(a) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the potential custodial arrangements except for persons involved in mediation efforts between the parties. Mediation personnel may disclose to investigators and evaluators information collected during mediation only if agreed to in writing by all parties. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, school personnel, or other expert persons who have served the child in the past after obtaining the consent of the parents or the child's custodian or guardian.

(b) The report submitted by the investigator must consider and evaluate the factors in section 518.17, subdivision 1, and include a detailed analysis of all information considered for each factor. If joint custody is contemplated or sought, the report must consider and evaluate the factors in section 518.17, subdivision 2, state the position of each party and the investigator's recommendation and the reason for the recommendation, and reference established means for dispute resolution between the parties.

Subd. 3.Availability to counsel.

The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days before the hearing. The investigator shall maintain and, upon request, make available to counsel and to a party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subdivision 2, and the names and addresses of all persons whom the investigator has consulted. The investigator and any person the investigator has consulted is subject to other pretrial discovery in accordance with the requirements of the Minnesota Rules of Civil Procedure. Mediation proceedings are not subject to discovery without written consent of both parties. A party to the proceeding may call the investigator and any person whom the

investigator has consulted for cross-examination at the hearing. A party may not waive the right of cross-examination before the hearing.

Subd. 4.Use at hearing.

The investigator's report may be received in evidence at the hearing.

Subd. 5.Costs.

The court shall order all or part of the cost of the investigation and report to be paid by either or both parties, based on their ability to pay. Any part of the cost that the court finds the parties are incapable of paying must be borne by the county welfare agency or department of court services that performs the investigation. The court may not order costs under this subdivision to be paid by a party receiving public assistance or legal assistance from a qualified legal services program or by a party whose annual income falls below the poverty line under United States Code, title 42, section 9902(2).

History:

1978 c 772 s 37; 1984 c 635 s 1; 1986 c 444; 1990 c 574 s 12; 1991 c 271 s 3; 1Sp2003 c 14 art 6 s 57

518A.53 INCOME WITHHOLDING.

Subdivision 1.Definitions.

(a) For the purpose of this section, the following terms have the meanings provided in this subdivision unless otherwise stated.

(b) "Payor of funds" means any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or unemployment benefits, or a financial institution as defined in section 13B.06.

(c) "Business day" means a day on which state offices are open for regular business.

(d) "Arrears" means amounts owed under a support order that are past due.

Subd. 2.Application.

This section applies to all support orders issued by a court or an administrative tribunal and orders for or notices of withholding issued by the public authority.

Subd. 3.Order.

Every support order must address income withholding. Whenever a support order is initially entered or modified, the full amount of the support order must be subject to income withholding from the income of the obligor. If the obligee or obligor applies for either full IV-D services or for income withholding only services from the public authority responsible for child support enforcement, the full amount of the support order must be withheld from the income of the obligor and forwarded to the public authority. Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this section that complies with section

518.68, subdivision 2. An order without this notice remains subject to this section. This section applies regardless of the source of income of the person obligated to pay the support or maintenance.

A payor of funds shall implement income withholding according to this section upon receipt of an order for or notice of withholding. The notice of withholding shall be on a form provided by the commissioner of human services.

Subd. 4.Collection services.

(a) The commissioner of human services shall prepare and make available to the courts a notice of services that explains child support and maintenance collection services available through the public authority, including income withholding, and the fees for such services. Upon receiving a petition for dissolution of marriage or legal separation, the court administrator shall promptly send the notice of services to the petitioner and respondent at the addresses stated in the petition.

(b) Either the obligee or obligor may at any time apply to the public authority for either full IV-D services or for income withholding only services.

(c) For those persons applying for income withholding only services, a monthly service fee of $15 must be charged to the obligor. This fee is in addition to the amount of the support order and shall be withheld through income withholding. The public authority shall explain the service options in this section to the affected parties and encourage the application for full child support collection services.

(d) If the obligee is not a current recipient of public assistance as defined in section 256.741, the person who applied for services may at any time choose to terminate either full IV-D services or income withholding only services regardless of whether income withholding is currently in place. The obligee or obligor may reapply for either full IV-D services or income withholding only services at any time. Unless the applicant is a recipient of public assistance as defined in section 256.741, a $25 application fee shall be charged at the time of each application.

(e) When a person terminates IV-D services, if an arrearage for public assistance as defined in section 256.741 exists, the public authority may continue income withholding, as well as use any other enforcement remedy for the collection of child support, until all public assistance arrears are paid in full. Income withholding shall be in an amount equal to 20 percent of the support order in effect at the time the services terminated.

Subd. 5.Payor of funds responsibilities.

(a) An order for or notice of withholding is binding on a payor of funds upon receipt. Withholding must begin no later than the first pay period that occurs after 14 days following the date of receipt of the order for or notice of withholding. In the case of a financial institution, preauthorized transfers must occur in accordance with a court-ordered payment schedule.

(b) A payor of funds shall withhold from the income payable to the obligor the amount specified in the order or notice of withholding and amounts specified under subdivisions 6 and

9 and shall remit the amounts withheld to the public authority within seven business days of the date the obligor is paid the remainder of the income. The payor of funds shall include with the remittance the Social Security number of the obligor, the case type indicator as provided by the public authority and the date the obligor is paid the remainder of the income. A payor of funds may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment.

(c) A payor of funds shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of wage or salary withholding authorized by this section. A payor of funds shall be liable to the obligee for any amounts required to be withheld. A payor of funds that fails to withhold or transfer funds in accordance with this section is also liable to the obligee for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld or transferred. A payor of funds is liable for reasonable attorney fees of the obligee or public authority incurred in enforcing the liability under this paragraph. A payor of funds that has failed to comply with the requirements of this section is subject to contempt sanctions under section 518A.73. If the payor of funds is an employer or independent contractor and violates this subdivision, a court may award the obligor twice the wages lost as a result of this violation. If a court finds a payor of funds violated this subdivision, the court shall impose a civil fine of not less than $500. The liabilities in this paragraph apply to intentional noncompliance with this section.

(d) If a single employee is subject to multiple withholding orders or multiple notices of withholding for the support of more than one child, the payor of funds shall comply with all of the orders or notices to the extent that the total amount withheld from the obligor's income does not exceed the limits imposed under the Consumer Credit Protection Act, United States Code, title 15, section 1673(b), giving priority to amounts designated in each order or notice as current support as follows:

(1) if the total of the amounts designated in the orders for or notices of withholding as current support exceeds the amount available for income withholding, the payor of funds shall allocate to each order or notice an amount for current support equal to the amount designated in that order or notice as current support, divided by the total of the amounts designated in the orders or notices as current support, multiplied by the amount of the income available for income withholding; and

(2) if the total of the amounts designated in the orders for or notices of withholding as current support does not exceed the amount available for income withholding, the payor of funds shall pay the amounts designated as current support, and shall allocate to each order or notice an amount for past due support, equal to the amount designated in that order or notice as past due support, divided by the total of the amounts designated in the orders or notices as past due support, multiplied by the amount of income remaining available for income withholding after the payment of current support.

(e) When an order for or notice of withholding is in effect and the obligor's employment is terminated, the obligor and the payor of funds shall notify the public authority of the

termination within ten days of the termination date. The termination notice shall include the obligor's home address and the name and address of the obligor's new payor of funds, if known.

(f) A payor of funds may deduct one dollar from the obligor's remaining salary for each payment made pursuant to an order for or notice of withholding under this section to cover the expenses of withholding.

Subd. 6.Financial institutions.

(a) If income withholding is ineffective due to the obligor's method of obtaining income, the court shall order the obligor to identify a child support deposit account owned solely by the obligor, or to establish an account, in a financial institution located in this state for the purpose of depositing court-ordered child support payments. The court shall order the obligor to execute an agreement with the appropriate public authority for preauthorized transfers from the obligor's child support account payable to an account of the public authority. The court shall order the obligor to disclose to the court all deposit accounts owned by the obligor in whole or in part in any financial institution. The court may order the obligor to disclose to the court the opening or closing of any deposit account owned in whole or in part by the obligor within 30 days of the opening or closing. The court may order the obligor to execute an agreement with the appropriate public authority for preauthorized transfers from any deposit account owned in whole or in part by the obligor to the obligor's child support deposit account if necessary to satisfy court-ordered child support payments. The court may order a financial institution to disclose to the court the account number and any other information regarding accounts owned in whole or in part by the obligor. An obligor who fails to comply with this subdivision, fails to deposit funds in at least one deposit account sufficient to pay court-ordered child support, or stops payment or revokes authorization of any preauthorized transfer is subject to contempt of court procedures under chapter 588.

(b) A financial institution shall execute preauthorized transfers for the deposit accounts of the obligor in the amount specified in the order and amounts required under this section as directed by the public authority. A financial institution is liable to the obligee if funds in any of the obligor's deposit accounts identified in the court order equal the amount stated in the preauthorization agreement but are not transferred by the financial institution in accordance with the agreement.

Subd. 7.Subsequent income withholding.

(a) This subdivision applies to support orders that do not contain provisions for income withholding.

(b) For cases in which the public authority is providing child support enforcement services to the parties, the income withholding under this subdivision shall take effect without prior judicial notice to the obligor and without the need for judicial or administrative hearing. Withholding shall result when:

(1) the obligor requests it in writing to the public authority;

(2) the obligee or obligor serves on the public authority a copy of the notice of income withholding, a copy of the court's order, an application, and the fee to use the public authority's collection services; or

(3) the public authority commences withholding according to section 518A.46, subdivision 5, paragraph (a), clause (5).

(c) For cases in which the public authority is not providing child support services to the parties, income withholding under this subdivision shall take effect when an obligee requests it by making a written motion to the court and the court finds that previous support has not been paid on a timely consistent basis or that the obligor has threatened expressly or otherwise to stop or reduce payments.

(d) Within two days after the public authority commences withholding under this subdivision, the public authority shall send to the obligor at the obligor's last known address, notice that withholding has commenced. The notice shall include the information provided to the payor of funds in the notice of withholding.

Subd. 8.Contest.

(a) The obligor may contest withholding under subdivision 7 on the limited grounds that the withholding or the amount withheld is improper due to mistake of fact. If the obligor chooses to contest the withholding, the obligor must do so no later than 15 days after the employer commences withholding, upon proper motion pursuant to section 484.702 and the rules of the expedited child support process.

(b) The income withholding must remain in place while the obligor contests the withholding.

(c) If the court finds a mistake in the amount of the arrearage to be withheld, the court shall continue the income withholding, but it shall correct the amount of the arrearage to be withheld.

Subd. 9.Priority.

(a) An order for or notice of withholding under this section or execution or garnishment upon a judgment for child support arrearage or preadjudicated expenses shall have priority over an attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor. Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b).

(b) If more than one order for or notice of withholding exists involving the same obligor and child, the public authority shall enforce the most recent order or notice. An order for or notice of withholding that was previously implemented according to this section shall end as of the date of the most recent order. The public authority shall notify the payor of funds to withhold under the most recent withholding order or notice.

Subd. 10.Arrearage order.

(a) This section does not prevent the court from ordering the payor of funds to withhold amounts to satisfy the obligor's previous arrearage in support order payments. This remedy shall

not operate to exclude availability of other remedies to enforce judgments. The employer or payor of funds shall withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.

(b) Notwithstanding any law to the contrary, funds from income sources included in section 518A.26, subdivision 8, whether periodic or lump sum, are not exempt from attachment or execution upon a judgment for child support arrearage.

(c) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order plus an additional 20 percent of the monthly child support obligation, until all arrears have been paid in full.

Subd. 11.Lump-sum payments.

Before transmittal to the obligor of a lump-sum payment of $500 or more including, but not limited to, severance pay, accumulated sick pay, vacation pay, bonuses, commissions, or other pay or benefits, a payor of funds:

(1) who has been served with an order for or notice of income withholding under this section shall:

(i) notify the public authority of the lump-sum payment that is to be paid to the obligor;

(ii) hold the lump-sum payment for 30 days after the date on which the lump-sum payment would otherwise have been paid to the obligor, notwithstanding sections 176.221, 176.225, 176.521, 181.08, 181.101, 181.11, 181.13, and 181.145, and Minnesota Rules, part 1415.2000, subpart 10; and

(iii) upon order of the court, and after a showing of past willful nonpayment of support, pay any specified amount of the lump-sum payment to the public authority for future support; or

(2) shall pay the lessor of the amount of the lump-sum payment or the total amount of the judgment and arrearages upon service by United States mail of a sworn affidavit from the public authority or a court order that includes the following information:

(i) that a judgment entered pursuant to section 548.091, subdivision 1a, exists against the obligor, or that other support arrearages exist;

(ii) the current balance of the judgment or arrearage; and

(iii) that a portion of the judgment or arrearage remains unpaid.

The Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b), does not apply to lump-sum payments.

Subd. 12.Interstate income withholding.

(a) Upon receipt of an order for support entered in another state and the specified documentation from an authorized agency, the public authority shall implement income withholding. A payor of funds in this state shall withhold income under court orders for withholding issued by other states or territories.

(b) An employer receiving an income withholding notice from another state shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:

(1) the employer's fee for processing an income withholding notice;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) deadlines for implementing and forwarding the child support payment.

(c) An obligor may contest withholding under this subdivision pursuant to section 518C.506.

Subd. 13.Order terminating income withholding.

An order terminating income withholding must specify the effective date of the order and reference the initial order or decree that establishes the support obligation and shall be entered once the following conditions have been met:

(1) the obligor serves written notice of the application for termination of income withholding by mail upon the obligee at the obligee's last known mailing address, and a duplicate copy of the application is served on the public authority;

(2) the application for termination of income withholding specifies the event that terminates the support obligation, the effective date of the termination of the support obligation, and the applicable provisions of the order or decree that established the support obligation;

(3) the application includes the complete name of the obligor's payor of funds, the business mailing address, the court action and court file number, and the support and collections file number, if known; and

(4) after receipt of the application for termination of income withholding, the obligee or the public authority fails within 20 days to request a contested hearing on the issue of whether income withholding of support should continue clearly specifying the basis for the continued support obligation and, ex parte, to stay the service of the order terminating income withholding upon the obligor's payor of funds, pending the outcome of the contested hearing.

Subd. 14.Termination by public authority.

If the public authority determines that income withholding is no longer applicable, the public authority shall notify the obligee and the obligor of intent to terminate income withholding.

Five days following notification to the obligee and obligor, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order unless the obligee has requested an expedited child support hearing under section 484.702.

Subd. 15.Contract for service.

To carry out the provisions of this section, the public authority responsible for child support enforcement may contract for services, including the use of electronic funds transfer.

Subd. 16.Waiver.

(a) If the public authority is providing child support and maintenance enforcement services and child support or maintenance is not assigned under section 256.741, the court may waive the requirements of this section if:

(1) one party demonstrates and the court determines there is good cause to waive the requirements of this section or to terminate an order for or notice of income withholding previously entered under this section. The court must make written findings to include the reasons income withholding would not be in the best interests of the child. In cases involving a modification of support, the court must also make a finding that support payments have been timely made; or

(2) the obligee and obligor sign a written agreement providing for an alternative payment arrangement which is reviewed and entered in the record by the court.

(b) If the public authority is not providing child support and maintenance enforcement services and child support or maintenance is not assigned under section 256.741, the court may waive the requirements of this section if the parties sign a written agreement.

(c) If the court waives income withholding, the obligee or obligor may at any time request income withholding under subdivision 7.

Subd. 17.Nonliability; payor of funds.

A payor of funds who complies with an income withholding order or notice of withholding according to this chapter or chapter 518C, that appears regular on its face shall not be subject to civil liability to any individual or agency for taking action in compliance with the order or notice.

Subd. 18.Electronic transmission.

Orders or notices for withholding under this section may be transmitted for enforcement purposes by electronic means.

Subd. 19.Timing of automated enforcement remedies.

The public authority shall make reasonable efforts to ensure that automated enforcement remedies take into consideration the time periods allowed under this section.

History:

1997 c 203 art 6 s 48; 1Sp1997 c 5 s 18; 1998 c 382 art 1 s 14-16; 1999 c 86 art 1 s 77; 1999 c 107 s 66; 1999 c 196 art 2 s 15-18; 2000 c 343 s 4; 2001 c 134 s 2; 2001 c 158 s 2; 1Sp2001 c 9 art 12 s 12; 2002 c 344 s 18; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 6 s 59-62; 2005 c 98 art 1 s 22; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2008 c 363 art 16 s 7

519.05 LIABILITY OF HUSBAND AND WIFE.

(a) A spouse is not liable to a creditor for any debts of the other spouse. Where husband and wife are living together, they shall be jointly and severally liable for necessary medical services

that have been furnished to either spouse, including any claims arising under section 246.53, 256B.15, 256D.16, or 261.04, and necessary household articles and supplies furnished to and used by the family. Notwithstanding this paragraph, in a proceeding under chapter 518 the court may apportion such debt between the spouses.

(b) Either spouse may close a credit card account or other unsecured consumer line of credit on which both spouses are contractually liable, by giving written notice to the creditor.

History:

(8620) RL s 3608; 1981 c 31 s 11; 1997 c 245 art 2 s 7; 2001 c 158 s 5; 2009 c 79 art 5 s 73

524.1-201 GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

(1) "Adoptee" means an individual who is adopted.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, part 3.

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(4) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(5) "Birth mother" means a woman who gives birth to a child, including a woman who is the child's genetic mother and including a woman who gives birth to a child of assisted reproduction. "Birth mother" does not include a woman who gives birth pursuant to a gestational agreement.

(6) "Child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(7) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a child conceived pursuant to a gestational agreement.

(8) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

(9) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(10) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(11) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(12) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(13) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(14) "Disability" means cause for appointment of a conservator as described in section 524.5-401, or a protective order as described in section 524.5-412.

(15) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(16) "Divorce" includes an annulment, dissolution, and declaration of invalidity of marriage.

(17) "Estate" includes all of the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

(18) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(19) "Foreign personal representative" means a personal representative of another jurisdiction.

(20) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(21) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.

(22) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under chapter 257, "genetic father" means only the man for whom that relationship is established.

(23) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(24) "Genetic parent" means a child's genetic father or genetic mother.

(25) "Gestational agreement" means an agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent or intended parents.

(26) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(27) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(28) "Incapacitated person" is as described in section 524.5-102, subdivision 6, other than a minor.

(29) "Incapacity" when used in sections 524.2-114 to 524.2-120 means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

(30) "Informal proceedings" means those conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

(31) "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a woman by means of assisted reproduction, including an individual who has a genetic relationship with the child.

(32) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(33) "Lease" includes an oil, gas, or other mineral lease.

(34) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(35) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(37) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(38) "Person" means an individual, a corporation, an organization, or other legal entity.

(39) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(40) "Petition" means a written request to the court for an order after notice.

(41) "Proceeding" includes action at law and suit in equity.

(42) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(43) "Protected person" is as described in section 524.5-102, subdivision 14.

(44) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

(45) "Relative" means a grandparent or a descendant of a grandparent.

(46) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(47) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(48) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

(49) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(50) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(51) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent, or a state or county agency with a claim authorized under section 256B.15.

(52) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(i) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(ii) the birth mother of a child of assisted reproduction; or

(iii) a man who has been determined under section 524.2-120, subdivision 4 or 5, to have a parent-child relationship with a child of assisted reproduction.

(55) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149A.97, 318.01 to 318.06, 527.21 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(57) "Ward" is as described in section 524.5-102, subdivision 17.

(58) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

History:

1974 c 442 art 1 s 524.1-201; 1975 c 347 s 15; 1978 c 525 s 1; 1986 c 444; 1987 c 384 art 2 s 1; 1992 c 423 s 2; 1994 c 472 s 1; 1995 c 130 s 11; 1995 c 186 s 119; 1995 c 189 s 8; 1996 c 277 s 1; 1997 c 215 s 45; 1997 c 217 art 2 s 15; 2004 c 146 art 3 s 40; 2010 c 334 s 5

524.2-401 APPLICABLE LAW.

This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

History:

1994 c 472 s 31

524.2-402 DESCENT OF HOMESTEAD.

(a) If there is a surviving spouse, the homestead, including a manufactured home which is the family residence, descends free from any testamentary or other disposition of it to which the spouse has not consented in writing or as provided by law, as follows:

(1) if there is no surviving descendant of decedent, to the spouse; or

(2) if there are surviving descendants of decedent, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the decedent's descendants by representation.

(b) If there is no surviving spouse and the homestead has not been disposed of by will it descends as other real estate.

(c) If the homestead passes by descent or will to the spouse or decedent's descendants or to a trustee of a trust of which the spouse or the decedent's descendants are the sole current beneficiaries, it is exempt from all debts which were not valid charges on it at the time of decedent's death except that the homestead is subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If the homestead passes to a person other than a spouse or decedent's descendants or to a trustee of a trust of which the spouse or the decedent's descendants are the sole current beneficiaries, it is subject to the payment of expenses of administration, funeral expenses, expenses of last illness, taxes, and debts. The claimant may seek to enforce a lien or other charge against a homestead so exempted by an appropriate action in the district court.

(d) For purposes of this section, except as provided in section 524.2-301, the surviving spouse is deemed to consent to any testamentary or other disposition of the homestead to which the spouse has not previously consented in writing unless the spouse files in the manner provided in section 524.2-211, paragraph (f), a petition that asserts the homestead rights provided to the spouse by this section.

History:

1994 c 472 s 32; *1997 c 7 art 1 s 165*; *1997 c 9 s 6*; *2008 c 341 art 4 s 2*

524.2-403 EXEMPT PROPERTY.

(a) If there is a surviving spouse, then, in addition to the homestead and family allowance, the surviving spouse is entitled from the estate to:

(1) property not exceeding $10,000 in value in excess of any security interests therein, in household furniture, furnishings, appliances, and personal effects, subject to an award of sentimental value property under section 525.152; and

(2) one automobile, if any, without regard to value.

(b) If there is no surviving spouse, the decedent's children are entitled jointly to the same property as provided in paragraph (a), except that where it appears from the decedent's will a child was omitted intentionally, the child is not entitled to the rights conferred by this section.

(c) If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the surviving spouse or children are entitled to other personal property of the estate, if any, to the extent necessary to make up the $10,000 value.

(d) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance.

(e) The rights granted by this section are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession or by way of elective share.

(f) No rights granted to a decedent's adult children under this section shall have precedence over a claim under section 246.53, 256B.15, 256D.16, 261.04, or 524.3-805, paragraph (a), clause (1), (2), or (3).

History:

1994 c 472 s 33; 1996 c 338 art 2 s 2; 1996 c 451 art 2 s 54; 1997 c 9 s 7; 1998 c 262 s 9

524.2-404 FAMILY ALLOWANCE.

(a) In addition to the right to the homestead and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support, and children who were in fact being supported by the decedent, shall be allowed a reasonable family allowance in money out of the estate for their maintenance as follows:

(1) for one year if the estate is inadequate to discharge allowed claims; or

(2) for 18 months if the estate is adequate to discharge allowed claims.

(b) The amount of the family allowance may be determined by the personal representative in an amount not to exceed $1,500 per month.

(c) The family allowance is payable to the surviving spouse, if living; otherwise to the children, their guardian or conservator, or persons having their care and custody.

(d) The family allowance is exempt from and has priority over all claims.

(e) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to family allowance does not terminate the right of that person to the allowance.

(f) The personal representative or an interested person aggrieved by any determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

History:
1994 c 472 s 34

524.2-405 SOURCE, DETERMINATION, AND DOCUMENTATION.

(a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, guardians or conservators of minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child.

(b) The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property.

(c) The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a selection or determination under this section other than that which the surviving spouse, guardians or conservators of minor children, children who are adults, or the personal representative selected, could have selected, determined, or could have determined.

History:
1994 c 472 s 35

524.2-516 DUTY OF CUSTODIAN OF WILL; LIABILITY.

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History:
1994 c 472 s 46

524.3-108 PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS; ULTIMATE TIME LIMIT.

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absentee, or disappeared or missing person, at any time within three years after the death of the absentee or disappeared or missing person is established; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death. These limitations do not apply to proceedings to construe probated wills, determine heirs of an intestate, or proceedings to determine descent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death. Nothing herein contained prohibits the formal appointment of a special administrator at any time for the purposes of reducing assets to possession, administering the same under direction of the court, or making distribution of any residue to the heirs or distributees determined to be entitled thereto pursuant to a descent proceeding under section 525.31 or an exempt summary proceeding under section 524.3-1203, even though the three-year period above referred to has expired.

History:

1974 c 442 art 3 s 524.3-108; 1975 c 347 s 27; 1977 c 440 s 3; 1996 c 305 art 1 s 112

524.3-201 VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS; LOCATION OF PROPERTY.

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the county of the decedent's domicile at the time of death; or

(2) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 524.1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

History:

1974 c 442 art 3 s 524.3-201; 1986 c 444

524.3-204 DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDENT'S ESTATE.

Any person desiring notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of the interest in the estate, and the demandant's address or that of the demandant's attorney. The court administrator shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no personal representative or other person shall apply to the court for an order or filing to which the demand relates unless demandant or the demandant's attorney is given notice thereof at least 14 days before the date of such order or filing, except that this requirement shall not apply to any order entered or petition filed in any formal proceeding. Such notice shall be given by delivery of a copy thereof to the person being notified or by mailing a copy thereof by certified, registered or ordinary first class mail addressed to the person at the post office address given in the demand or at the person's office or place of residence, if known. The court for good cause shown may provide for a different method or time of giving such notice and proof thereof shall be made on or before the making or acceptance of such order or filing and filed in the proceeding. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of the demandant's interest in the estate.

History:

1974 c 442 art 3 s 524.3-204; 1975 c 347 s 30; 1986 c 444; 1Sp1986 c 3 art 1 s 82

524.3-605 DEMAND FOR BOND BY INTERESTED PERSON.

Any person apparently having an interest in the estate worth in excess of $1,000, or any creditor having a claim in excess of $1,000, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, the court may require or excuse the requirement of a bond. After having received notice and until the filing of the bond or until the requirement of bond is excused, the personal representative shall refrain from exercising any powers of office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for removal and appointment of a successor personal representative. An interested person who initially waived bond may demand bond under this section.

History:

1974 c 442 art 3 s 524.3-605; 1975 c 347 s 49; 1986 c 444

524.3-801 NOTICE TO CREDITORS.

(a) Unless notice has already been given under this section, upon appointment of a general personal representative in informal proceedings or upon the filing of a petition for formal appointment of a general personal representative, notice thereof, in the form prescribed by court rule, shall be given under the direction of the court administrator by publication once a week for two successive weeks in a legal newspaper in the county wherein the proceedings are pending giving the name and address of the general personal representative and notifying creditors of the estate to present their claims within four months after the date of the court administrator's notice which is subsequently published or be forever barred, unless they are entitled to further service of notice under paragraph (b) or (c).

(b) The personal representative shall, within three months after the date of the first publication of the notice, serve a copy of the notice upon each then known and identified creditor in the manner provided in paragraph (c). If the decedent or a predeceased spouse of the decedent received assistance for which a claim could be filed under section 246.53, 256B.15, 256D.16, or 261.04, notice to the commissioner of human services must be given under paragraph (d) instead of under this paragraph or paragraph (c). A creditor is "known" if: (i) the personal representative knows that the creditor has asserted a claim that arose during the decedent's life against either the decedent or the decedent's estate; (ii) the creditor has asserted a claim that arose during the decedent's life and the fact is clearly disclosed in accessible financial records known and available to the personal representative; or (iii) the claim of the creditor would be revealed by a reasonably diligent search for creditors of the decedent in accessible financial records known and available to the personal representative. Under this section, a creditor is "identified" if the personal representative's knowledge of the name and address of the creditor will permit service of notice to be made under paragraph (c).

(c) Unless the claim has already been presented to the personal representative or paid, the personal representative shall serve a copy of the notice required by paragraph (b) upon each creditor of the decedent who is then known to the personal representative and identified either by delivery of a copy of the required notice to the creditor, or by mailing a copy of the notice to the creditor by certified, registered, or ordinary first class mail addressed to the creditor at the creditor's office or place of residence.

(d)(1) Effective for decedents dying on or after July 1, 1997, if the decedent or a predeceased spouse of the decedent received assistance for which a claim could be filed under section 246.53, 256B.15, 256D.16, or 261.04, the personal representative or the attorney for the personal representative shall serve the commissioner of human services with notice in the manner prescribed in paragraph (c) as soon as practicable after the appointment of the personal representative. The notice must state the decedent's full name, date of birth, and Social Security number and, to the extent then known after making a reasonably diligent inquiry, the full name, date of birth, and Social Security number for each of the decedent's predeceased spouses. The notice may also contain a statement that, after making a reasonably diligent inquiry, the personal representative has determined that the decedent did not have any predeceased spouses or that the personal representative has been unable to determine one or more of the previous items of information for a predeceased spouse of the decedent. A copy of the notice to creditors must be attached to and be a part of the notice to the commissioner.

(2) Notwithstanding a will or other instrument or law to the contrary, except as allowed in this paragraph, no property subject to administration by the estate may be distributed by the estate or the personal representative until 70 days after the date the notice is served on the commissioner as provided in paragraph (c), unless the local agency consents as provided for in clause (6). This restriction on distribution does not apply to the personal representative's sale of real or personal property, but does apply to the net proceeds the estate receives from these sales. The personal representative, or any person with personal knowledge of the facts, may provide an affidavit containing the description of any real or personal property affected by this paragraph and stating facts showing compliance with this paragraph. If the affidavit describes real property, it may be filed or recorded in the office of the county recorder or registrar of titles for the county where the real property is located. This paragraph does not apply to proceedings under sections 524.3-1203 and 525.31, or when a duly authorized agent of a county is acting as the personal representative of the estate.

(3) At any time before an order or decree is entered under section 524.3-1001 or 524.3-1002, or a closing statement is filed under section 524.3-1003, the personal representative or the attorney for the personal representative may serve an amended notice on the commissioner to add variations or other names of the decedent or a predeceased spouse named in the notice, the name of a predeceased spouse omitted from the notice, to add or correct the date of birth or Social Security number of a decedent or predeceased spouse named in the notice, or to correct any other deficiency in a prior notice. The amended notice must state the decedent's name, date of birth, and Social Security number, the case name, case number, and district court in which the estate is pending, and the date the notice being amended was served on the commissioner. If

the amendment adds the name of a predeceased spouse omitted from the notice, it must also state that spouse's full name, date of birth, and Social Security number. The amended notice must be served on the commissioner in the same manner as the original notice. Upon service, the amended notice relates back to and is effective from the date the notice it amends was served, and the time for filing claims arising under section 246.53, 256B.15, 256D.16 or 261.04 is extended by 60 days from the date of service of the amended notice. Claims filed during the 60-day period are undischarged and unbarred claims, may be prosecuted by the entities entitled to file those claims in accordance with section 524.3-1004, and the limitations in section 524.3-1006 do not apply. The personal representative or any person with personal knowledge of the facts may provide and file or record an affidavit in the same manner as provided for in clause (1).

(4) Within one year after the date an order or decree is entered under section 524.3-1001 or 524.3-1002 or a closing statement is filed under section 524.3-1003, any person who has an interest in property that was subject to administration by the estate may serve an amended notice on the commissioner to add variations or other names of the decedent or a predeceased spouse named in the notice, the name of a predeceased spouse omitted from the notice, to add or correct the date of birth or Social Security number of a decedent or predeceased spouse named in the notice, or to correct any other deficiency in a prior notice. The amended notice must be served on the commissioner in the same manner as the original notice and must contain the information required for amendments under clause (3). If the amendment adds the name of a predeceased spouse omitted from the notice, it must also state that spouse's full name, date of birth, and Social Security number. Upon service, the amended notice relates back to and is effective from the date the notice it amends was served. If the amended notice adds the name of an omitted predeceased spouse or adds or corrects the Social Security number or date of birth of the decedent or a predeceased spouse already named in the notice, then, notwithstanding any other laws to the contrary, claims against the decedent's estate on account of those persons resulting from the amendment and arising under section 246.53, 256B.15, 256D.16, or 261.04 are undischarged and unbarred claims, may be prosecuted by the entities entitled to file those claims in accordance with section 524.3-1004, and the limitations in section 524.3-1006 do not apply. The person filing the amendment or any other person with personal knowledge of the facts may provide and file or record an affidavit describing affected real or personal property in the same manner as clause (1).

(5) After one year from the date an order or decree is entered under section 524.3-1001 or 524.3-1002, or a closing statement is filed under section 524.3-1003, no error, omission, or defect of any kind in the notice to the commissioner required under this paragraph or in the process of service of the notice on the commissioner, or the failure to serve the commissioner with notice as required by this paragraph, makes any distribution of property by a personal representative void or voidable. The distributee's title to the distributed property shall be free of any claims based upon a failure to comply with this paragraph.

(6) The local agency may consent to a personal representative's request to distribute property subject to administration by the estate to distributees during the 70-day period after

service of notice on the commissioner. The local agency may grant or deny the request in whole or in part and may attach conditions to its consent as it deems appropriate. When the local agency consents to a distribution, it shall give the estate a written certificate evidencing its consent to the early distribution of assets at no cost. The certificate must include the name, case number, and district court in which the estate is pending, the name of the local agency, describe the specific real or personal property to which the consent applies, state that the local agency consents to the distribution of the specific property described in the consent during the 70-day period following service of the notice on the commissioner, state that the consent is unconditional or list all of the terms and conditions of the consent, be dated, and may include other contents as may be appropriate. The certificate must be signed by the director of the local agency or the director's designees and is effective as of the date it is dated unless it provides otherwise. The signature of the director or the director's designee does not require any acknowledgment. The certificate shall be prima facie evidence of the facts it states, may be attached to or combined with a deed or any other instrument of conveyance and, when so attached or combined, shall constitute a single instrument. If the certificate describes real property, it shall be accepted for recording or filing by the county recorder or registrar of titles in the county in which the property is located. If the certificate describes real property and is not attached to or combined with a deed or other instrument of conveyance, it shall be accepted for recording or filing by the county recorder or registrar of titles in the county in which the property is located. The certificate constitutes a waiver of the 70-day period provided for in clause (2) with respect to the property it describes and is prima facie evidence of service of notice on the commissioner. The certificate is not a waiver or relinquishment of any claims arising under section 246.53, 256B.15, 256D.16, or 261.04, and does not otherwise constitute a waiver of any of the personal representative's duties under this paragraph. Distributees who receive property pursuant to a consent to an early distribution shall remain liable to creditors of the estate as provided for by law.

(7) All affidavits provided for under this paragraph:

(i) shall be provided by persons who have personal knowledge of the facts stated in the affidavit;

(ii) may be filed or recorded in the office of the county recorder or registrar of titles in the county in which the real property they describe is located for the purpose of establishing compliance with the requirements of this paragraph; and

(iii) are prima facie evidence of the facts stated in the affidavit.

(8) This paragraph applies to the estates of decedents dying on or after July 1, 1997. Clause (5) also applies with respect to all notices served on the commissioner of human services before July 1, 1997, under Laws 1996, chapter 451, article 2, section 55. All notices served on the commissioner before July 1, 1997, pursuant to Laws 1996, chapter 451, article 2, section 55, shall be deemed to be legally sufficient for the purposes for which they were intended, notwithstanding any errors, omissions or other defects.

History:

1975 c 347 s 58; 1Sp1986 c 3 art 1 s 82; 1989 c 163 s 1; 1996 c 451 art 2 s 55; 1997 c 217 art 2 s 16; 2000 c 400 s 6; 2008 c 341 art 4 s 3

524.3-802 STATUTES OF LIMITATIONS.

Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death or notice given under section 524.3-801 against a decedent is suspended during the 12 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 524.3-804 is equivalent to commencement of a proceeding on the claim.

History:

1975 c 347 s 58; 1989 c 163 s 2

524.3-803 LIMITATIONS ON PRESENTATION OF CLAIMS.

(a) All claims as defined in section 524.1-201 (6), against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) in the case of a creditor who is only entitled, under the United States Constitution and under the Minnesota Constitution, to notice by publication under section 524.3-801, within four months after the date of the court administrator's notice to creditors which is subsequently published pursuant to section 524.3-801;

(2) in the case of a creditor who was served with notice under section 524.3-801(c), within the later to expire of four months after the date of the first publication of notice to creditors or one month after the service;

(3) within one year after the decedent's death, whether or not notice to creditors has been published or served under section 524.3-801. Claims authorized by section 246.53, 256B.15, or 256D.16 must not be barred after one year as provided in this clause.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(2) any proceeding to establish liability of the decedent or the personal representative for which there is protection by liability insurance, to the limits of the insurance protection only;

(3) the presentment and payment at any time within one year after the decedent's death of any claim arising before the death of the decedent that is referred to in section 524.3-715, clause (18), although the same may be otherwise barred under this section; or

(4) the presentment and payment at any time before a petition is filed in compliance with section 524.3-1001 or 524.3-1002 or a closing statement is filed under section 524.3-1003, of:

(i) any claim arising after the death of the decedent that is referred to in section 524.3-715, clause (18), although the same may be otherwise barred hereunder;

(ii) any other claim, including claims subject to clause (3), which would otherwise be barred hereunder, upon allowance by the court upon petition of the personal representative or the claimant for cause shown on notice and hearing as the court may direct.

History:

1975 c 347 s 58; 1976 c 161 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 163 s 3; 2006 c 221 s 22; 2008 c 326 art 1 s 41; 2008 c 341 art 4 s 4

524.3-805 CLASSIFICATION OF CLAIMS.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable and necessary medical, hospital, or nursing home expenses of the last illness of the decedent, including compensation of persons attending the decedent, a claim filed under section 256B.15 for recovery of expenditures for alternative care for nonmedical assistance recipients under section 256B.0913, and including a claim filed pursuant to section 256B.15;

(5) reasonable and necessary medical, hospital, and nursing home expenses for the care of the decedent during the year immediately preceding death;

(6) debts with preference under other laws of this state, and state taxes;

(7) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due, except that if claims for expenses of the last illness involve only claims filed under section 256B.15 for recovery of expenditures for alternative care for nonmedical assistance recipients under section 256B.0913, section 246.53 for costs of state hospital care and claims filed under section 256B.15, claims filed to recover expenditures for alternative care for nonmedical assistance recipients under section 256B.0913 shall have preference over claims filed under both sections 246.53 and other claims filed under section 256B.15, and claims filed under section 246.53 have preference over claims filed under section 256B.15 for recovery of amounts other than those for expenditures for alternative care for nonmedical assistance recipients under section 256B.0913.

History:

1975 c 347 s 58; 1982 c 621 s 2; 1982 c 641 art 1 s 19; 1983 c 180 s 19; 1986 c 444; 1987 c 325 s 2; 1Sp2003 c 14 art 2 s 52

524.3-806 ALLOWANCE OF CLAIMS.

(a) As to claims presented in the manner described in section 524.3-804 within the time limit prescribed or permitted in section 524.3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. Without order of the court for cause shown, the personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than two months after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claim for two months after the time for original presentation of the claim has expired has the effect of a notice of allowance, except that upon petition of the personal representative and upon notice to the claimant, the court at any time before payment of such claim may for cause shown permit the personal representative to disallow such claim. Any claim in excess of $3,000 for personal services rendered by an individual to the decedent including compensation of persons attending the decedent during a last illness, and any claim of the personal representative which arose before the death of the decedent or in which the personal representative has an interest in excess of $3,000 may be allowed only in compliance with subsection (b).

(b) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal

representative or filed with the court administrator in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision. Notwithstanding the preceding sentence, claims that have been disallowed pursuant to clause (a) and are subsequently allowed by the personal representative or reduced to judgment shall bear interest at the legal rate from the latter of the following dates:

(1) 60 days after the time for original presentation of the claim; or

(2) the date the claim is allowed or the date judgment is entered.

History:
1975 c 347 s 58; 1976 c 161 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 82

524.3-1005 LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE.

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History:
1974 c 442 art 3 s 524.3-1005

524.3-1006 LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (1) three

years after the decedent's death; or (2) one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

History:

1974 c 442 art 3 s 524.3-1006

524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of a decedent, (i) any person indebted to the decedent, (ii) any person having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent, or (iii) any safe deposit company, as defined in section 55.01, controlling the right of access to decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action or deliver the entire contents of the safe deposit box to a person claiming to be the successor of the decedent, or a state or county agency with a claim authorized by section 256B.15, upon being presented a certified death record of the decedent and an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire probate estate, determined as of the date of death, wherever located, including specifically any contents of a safe deposit box, less liens and encumbrances, does not exceed $50,000;

(2) 30 days have elapsed since the death of the decedent or, in the event the property to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) if presented, by a state or county agency with a claim authorized by section 256B.15, to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account; and

(5) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) The claiming successor or state or county agency shall disburse the proceeds collected under this section to any person with a superior claim under section 524.2-403 or 524.3-805.

(d) A motor vehicle registrar shall issue a new certificate of title in the name of the successor upon the presentation of an affidavit as provided in subsection (a).

(e) The person controlling access to decedent's safe deposit box need not open the box or deliver the contents of the box if:

(1) the person has received notice of a written or oral objection from any person or has reason to believe that there would be an objection; or

(2) the lessee's key or combination is not available.

History:

1974 c 442 art 3 s 524.3-1201; 1976 c 161 s 13; 1977 c 159 s 1; 1978 c 741 s 9; 1984 c 655 art 1 s 74; 1987 c 403 art 2 s 151; 1991 c 11 s 1; 1992 c 461 art 1 s 2; 1995 c 130 s 18; 1997 c 217 art 2 s 18; 3Sp1997 c 3 s 13; 1Sp2001 c 9 art 15 s 32; 2002 c 347 s 3; 2009 c 117 art 1 s 3

524.3-1202 EFFECT OF AFFIDAVIT.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of section 524.3-1201 is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. In particular, the person delivering the contents of a safe deposit box is not required to inquire into the value of the contents of the box and is authorized to rely solely upon the representation in the affidavit concerning the value of the entire probate estate. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

History:

1974 c 442 art 3 s 524.3-1202; 1978 c 741 s 10; 1Sp1985 c 14 art 13 s 13; 1986 c 444; 1995 c 130 s 19

524.3-1203 SUMMARY PROCEEDINGS.

Subdivision 1.Petition and payment.

Upon petition of an interested person, the court, with or without notice, may determine that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had for it, or if there is no property except property recovered for death by wrongful act, property that is exempt from all debts and charges in the probate court, or property that may be appropriated for the payment of the property selection as provided in section 524.2-403, the allowances to the spouse and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, the personal representative by order of the court may pay the estate in the order named. The court may then, with or without notice, summarily

determine the heirs, legatees, and devisees in its final decree or order of distribution assigning to them their share or part of the property with which the personal representative is charged.

Subd. 2.Final decree or order.

If upon hearing of a petition for summary assignment or distribution, for special administration, or for any administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree or order of distribution may be entered, with or without notice, assigning that property to the persons entitled to it under the terms of the will, or if there is no will, under the law of intestate succession in force at the time of the decedent's death.

Subd. 3.Summary distribution.

Summary distribution may be made under this section in any proceeding of any real, personal, or other property in kind in reimbursement or payment of the property selection as provided in section 524.2-403, the allowances to the spouse and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, in the order named, if the court is satisfied as to the propriety of the distribution and as to the valuation, based upon appraisal in the case of real estate other than homestead, of the property being assigned to exhaust the assets of the estate.

Subd. 4.Personal representative.

Summary proceedings may be had with or without the appointment of a personal representative. In all summary proceedings in which no personal representative is appointed, the court may require the petitioner to file a corporate surety bond in an amount fixed and approved by the court. The condition of the bond must be that the petitioner has made a full, true, and correct disclosure of all the facts related in the petition and will perform the terms of the decree or order of distribution issued pursuant to the petition. Any interested person suffering damages as a result of misrepresentation or negligence of the petitioner in stating facts in the petition pursuant to which an improper decree or order of distribution is issued, or the terms of the decree or order of distribution are not performed by the petitioner as required, has a cause of action against the petitioner and the surety to recover those damages in the court in which the proceeding took place. That court has jurisdiction of the cause of action.

Subd. 5.Exhaustion of estate.

In any summary, special, or other administration in which it appears that the estate will not be exhausted in payment of the priority items enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate estate, exclusive of any exempt homestead as defined in section 524.2-402, and any exempt property as defined in section 524.2-403, does not exceed the value of $100,000. If the closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will as provided in sections 524.3-401 to 524.3-413.

No summary closing of an estate shall be made to any distributee under this subdivision, unless a showing is made by the personal representative or the petitioner, that all property selected by and allowances to the spouse and children as provided in section 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid, and provided, further, that a bond shall be filed by the personal representative or the petitioner, conditioned upon the fact that all such obligations have been paid and that all the facts shown on the petition are true, with sufficient surety approved by the court in an amount as may be fixed by the court to cover potential improper distributions. If a personal representative is appointed, the representative's bond shall be sufficient for such purpose unless an additional bond is ordered, and the sureties on the bond shall have the same obligations and liabilities as provided for sureties on a distribution bond.

In the event that an improper distribution or disbursement is made in a summary closing, in that not all of said obligations have been paid or that other facts as shown by the personal representative or the petitioner, are not true, resulting in damage to any party, the court may vacate its summary decree or closing order, and the petitioner or the personal representative, together with the surety, shall be liable for damages to any party determined to be injured thereby as herein provided. The personal representative, petitioner, or the surety, may seek reimbursement for damages so paid or incurred from any distributee or recipient of assets under summary decree or order, who shall be required to make a contribution to cover such damages upon a pro rata basis or as may be equitable to the extent of assets so received. The court is hereby granted complete and plenary jurisdiction of any and all such proceedings and may enter such orders and judgments as may be required to effectuate the purposes of this subdivision.

Any judgment rendered for damages or the recovery of assets in such proceedings shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and a copy of petition served personally upon the personal representative and the surety and upon any distributee or recipient of assets where applicable. Any action for the recovery of money or damages under this subdivision is subject to the time and other limitations imposed by section 524.1-304.

History:

1974 c 442 art 3 s 524.3-1203; 1975 c 347 s 69; 1995 c 130 s 20; 2000 c 362 s 3; 2009 c 117 art 1 s 4

524.6-207 RIGHTS OF CREDITORS.

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children or against the state or a county agency with a claim authorized by section 256B.15, if other assets of the estate are insufficient, to the extent the deceased party is the source of the funds or beneficial owner. A surviving party or P.O.D. payee who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal

representative or the state or a county agency with a claim authorized by section 256B.15 for amounts the decedent owned beneficially immediately before death to the extent necessary to discharge any such claims and charges remaining unpaid after the application of the assets of the decedent's estate. No proceeding to assert this liability shall be commenced by the personal representative unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless, before payment, the institution has been served with process in a proceeding by the personal representative or the state or a county agency with a claim authorized by section 256B.15, or has been presented by the state or a county agency with a claim authorized by section 256B.15 with an affidavit pursuant to section 524.3-1201. Upon being presented with such an affidavit, the financial institution shall make payment of the multiple-party account to the affiant in an amount equal to the lesser of the claim stated in the affidavit or the extent to which the affidavit identifies the decedent as the source of funds or beneficial owner of the account.

History:

1973 c 619 s 8; 1985 c 292 s 16; 1994 c 472 s 63; 1995 c 207 art 2 s 35; 1997 c 217 art 2 s 19

525.31 ESSENTIALS.

Whenever any person has been dead for more than three years and has left real or personal property, or any interest therein, and no will or authenticated copy of a will probated outside this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state, any interested person or assignee or successor of an interested person may petition the court of the county of the decedent's residence or of the county wherein such real or personal property, or any part thereof, is situated to determine the descent of such property and to assign such property to the persons entitled thereto.

History:

1975 c 347 s 100; 1976 c 161 s 15

525.312 DECREE OF DESCENT.

Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 524.1-401. Notice of the hearing, in the form prescribed by court rule, shall also be given under direction of the court administrator by publication once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time

set for hearing. Upon proof of the petition and of the will if there be one; or upon proof of the petition and of an authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved, if there be one; and if a clearance for medical assistance claims is on file in the proceeding and any medical assistance claims are paid or satisfied, the court shall allow the same and enter its decree of descent assigning the real or personal property, or any interest therein, to the persons entitled thereto pursuant to the will or such authenticated copy, if there be one, otherwise pursuant to the laws of intestate succession in force at the time of the decedent's death. The decree of descent shall operate to assign the property free and clear of any and all claims for medical assistance arising under section 525.313 without regard to the final disposition of those claims. The court may appoint two or more disinterested persons to appraise the property.

History:

1975 c 347 s 100; 1977 c 207 s 1; 1979 c 303 art 3 s 37; 1Sp1986 c 3 art 1 s 82; 2000 c 400 s 7

525.313 CLEARANCE FOR MEDICAL ASSISTANCE CLAIMS.

(a) The court shall not enter a decree of descent until the petitioner has filed a clearance for medical assistance claims under this section, and until any medical assistance claims filed under this section have been paid, settled, or otherwise finally disposed of.

(b) After filing the petition, the petitioner or the petitioner's attorney shall apply to the county agency in the county in which the petition is pending for a clearance of medical assistance claims. The application must state the decedent's name, date of birth, and Social Security number; the name, date of birth, and Social Security number of any predeceased spouse of the decedent; the names and addresses of the devisees and heirs; and the name, address, and telephone number of the petitioner or the attorney making the application on behalf of the petitioner, and include a copy of the notice of hearing.

(c) The county agency shall determine whether the decedent or any of the decedent's predeceased spouses received medical assistance under chapter 256B or general assistance medical care under chapter 256D giving rise to a claim under section 256B.15. If there are no claims, the county agency shall issue the petitioner a clearance for medical assistance claims stating no medical assistance claims exist. If there is a claim, the county agency shall issue the petitioner a clearance for medical assistance claims stating that a claim exists and the total amount of the claim. The county agency shall mail the completed clearance for medical assistance claims to the applicant within 15 working days after receiving the application without cost to the applicant or others.

(d) The petitioner or attorney shall file the certificate in the proceedings for the decree of descent as soon as practicable after it is received. Notwithstanding any rule or law to the contrary, if a medical assistance claim appears in a clearance for medical assistance claims, then:

(1) the claim shall be a claim against the decedent's property which is the subject of the petition. The county agency issuing the certificate shall be the claimant. The filing of the clearance for medical assistance claims in the proceeding for a decree of descent constitutes presentation of the claim;

(2) the claim shall be an unbarred and undischarged claim and shall be payable, in whole or in part, from the decedent's property which is the subject of the petition, including the net sale proceeds from any sale of property free and clear of the claim under this section;

(3) the claim may be allowed, denied, appealed, and bear interest as provided for claims in estates under chapter 524; and

(4) the county agency may collect, compromise, or otherwise settle the claim with the estate, the petitioner, or the assignees of the property on whatever terms and conditions are deemed appropriate.

(e) Any of the decedent's devisees, heirs, successors, assigns, or their successors and assigns, may apply for a partial decree of descent to facilitate the good faith sale of their interest in any real or personal property described in the petition free and clear of any medical assistance claim any time before the entry of a decree of descent under section 525.312. The applicant must prove an interest in the property as provided under section 525.312. The court may enter a partial decree of descent any time after it could hear and decide the petition for a decree of descent. A partial decree of descent shall assign the interests in the real and personal property described in the application to the parties entitled to the property free and clear of any and all medical assistance claims. The net sale proceeds from the sale shall be:

(1) substituted in the estate according to this section for the property sold;

(2) paid over to and held by the petitioner pending the entry of a decree of descent;

(3) used for payment of medical assistance claims; and

(4) distributed according to the decree of descent after any medical assistance claims are paid.

(f) The clearance for medical assistance claims must:

(1) include the case name, case number, and district court in which the proceeding for a decree of descent is pending;

(2) include the name, date of birth, and Social Security number of the decedent and any of the decedent's predeceased spouses;

(3) state whether there are medical assistance claims against the decedent, or a predeceased spouse, and the total amount of each claim; and

(4) include the name, address, and telephone number of the county agency giving the clearance for medical assistance claims. The certificate shall be signed by the director of the county agency or the director's designee. The signature of the director or the director's designee does not require an acknowledgment.

(g) All recoveries under this section are recoveries under section 256B.15.

(h) For purposes of this section and chapter 256B, all property identified in the petition and all subsequent amendments to the petition shall constitute an estate.

(i) No clearance for medical assistance claims is required under this section and section 525.312 in an action for a decree of descent proceeding in which all of the following apply to the decedent whose property is the subject of the proceeding:

(1) the decedent's estate was previously probated in this state;

(2) the previous probate was not a special administration or summary proceeding; and

(3) the decedent's property, which is the subject of the petition for a decree of descent, was omitted from the previous probate.

History:

2000 c 400 s 8; 2002 c 347 s 4

541.04 JUDGMENTS, TEN YEARS.

No action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment.

History:

(9190) RL s 4075; 2010 c 238 s 4,7; 2010 c 371 s 5; 2011 c 66 s 8; 2012 c 183 s 1; 2012 c 216 art 1 s 45

541.05 VARIOUS CASES, SIX YEARS.

Subdivision 1.Six-year limitation.

Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within six years:

(1) upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed;

(2) upon a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;

(3) for a trespass upon real estate;

(4) for taking, detaining, or injuring personal property, including actions for the specific recovery thereof;

(5) for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated;

(6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(7) to enforce a trust or compel a trustee to account, where the trustee has neglected to discharge the trust, or claims to have fully performed it, or has repudiated the trust relation;

(8) against sureties upon the official bond of any public officer, whether of the state or of any county, town, school district, or a municipality therein; in which case the limitation shall not begin to run until the term of such officer for which the bond was given shall have expired;

(9) for damages caused by a dam, used for commercial purposes; or

(10) for assault, battery, false imprisonment, or other tort resulting in personal injury, if the conduct that gives rise to the cause of action also constitutes domestic abuse as defined in section 518B.01.

Subd. 2.Strict liability.

Unless otherwise provided by law, any action based on the strict liability of the defendant and arising from the manufacture, sale, use or consumption of a product shall be commenced within four years.

History:

(9191) RL s 4076; 1953 c 378 s 1; 1965 c 812 s 20; 1978 c 738 s 1; 1986 c 444; 2000 c 471 s 1

541.09 ACTION TO BE COMMENCED WITHIN ONE YEAR.

Subdivision 1.Instrument authorizing a confession.

No action shall be maintained upon any judgment note or other instrument, heretofore or hereafter executed, containing any provision authorizing a confession of judgment thereon, unless begun within one year after the cause of action shall have accrued.

Subd. 2.Action upon judgment from United States court.

No action shall be maintained upon any judgment or decree of any court of the United States, or of any state or territory thereof, heretofore or hereafter entered upon a plea of confession under any warrant of attorney or other instrument signed by the debtor authorizing such confession, unless the action upon such judgment be begun within one year after the rendition or entry thereof.

History:

(9195, 9196) 1915 c 222 s 1,2

541.13 ABSENCE FROM STATE.

When a cause of action accrues against a person who is out of the state and while out of the state is not subject to process under the laws of this state or after diligent search the person cannot be found for the purpose of personal service when personal service is required, an action may be commenced within the times herein limited after the person's return to the state; and if, after a cause of action accrues, the person departs from and resides out of the state and while out of the state is not subject to process under the laws of this state or after diligent search the person cannot be found for the purpose of personal service when personal service is required, the time of the person's absence is not part of the time limited for the commencement of the action.

History:

(9200) RL s 4082; 1976 c 153 s 1; 1986 c 444

541.17 NEW PROMISE MUST BE IN WRITING.

No acknowledgment or promise shall be evidence of a new or continuing contract sufficient to take the case out of the operation of this chapter unless the same is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of a payment of principal or interest.

History:

(9204) RL s 4086

548.09 LIEN OF JUDGMENT.

Subdivision 1.Entry and docketing; survival of judgment.

Except as provided in section 548.091, every judgment requiring the payment of money shall be entered by the court administrator when ordered by the court and will be docketed by the court administrator upon the filing of an affidavit as provided in subdivision 2. Upon a transcript of the docket being filed with the court administrator in any other county, the court administrator shall also docket it. From the time of docketing the judgment is a lien, in the amount unpaid, upon all real property in the county then or thereafter owned by the judgment debtor, but it is not a lien upon registered land unless it is also recorded pursuant to sections 508.63 and 508A.63. The judgment survives, and the lien continues, for ten years after its entry. Child support judgments may be renewed pursuant to section 548.091.

Subd. 2.Judgment creditor's affidavit.

No judgment, except for taxes, shall be docketed until the judgment creditor, or the creditor's agent or attorney, has filed with the court administrator an affidavit, stating the full name, occupation, place of residence, and post office address of the judgment debtor, to the best of affiant's information and belief. If the residence is within an incorporated place having more

than 5,000 inhabitants, the street number of both the judgment debtor's place of residence and place of business, if the debtor has one, shall be stated.

Subd. 3.Violations by court administrator.

If the court administrator violates this provision, neither the judgment nor the docketing is invalid, but the court administrator shall be liable to a person damaged by the violation in the sum of $5.

History:

(9400) RL s 4272; 1913 c 112 s 1; 1983 c 308 s 30; 1984 c 547 s 22,23; 1986 c 335 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1989 c 209 art 1 s 43; 1993 c 340 s 50; 1999 c 245 art 7 s 12; 2005 c 4 s 129; 2010 c 238 s 5,7; 2010 c 371 s 5; 2011 c 66 s 8; 2012 c 183 s 2; 2012 c 216 art 1 s 46

548.15 DISCHARGE OF RECORD.

Subdivision 1.General.

Except as provided in subdivision 2, upon the satisfaction of a judgment, whether wholly or in part, or as to all or any of several defendants, the court administrator shall enter the satisfaction in the judgment roll, and note it, with its date, on the docket. If the docketing is upon a transcript from another county, the entry on the docket is sufficient. A judgment is satisfied when there is filed with the court administrator:

(1) an execution satisfied, to the extent stated in the sheriff's return on it;

(2) a certificate of satisfaction signed and acknowledged by the judgment creditor;

(3) a like certificate signed and acknowledged by the attorney of the creditor, unless that attorney's authority as attorney has previously been revoked and an entry of the revocation made upon the register; the authority of an attorney to satisfy a judgment ceases at the end of six years from its entry;

(4) an order of the court, made on motion, requiring the execution of a certificate of satisfaction, or directing satisfaction to be entered without it;

(5) where a judgment is docketed on transcript, a copy of either of the foregoing documents, certified by the court administrator in which the judgment was originally entered and in which the originals were filed.

A satisfaction made in the name of a partnership is valid if executed by a member of it while the partnership continues. The judgment creditor, or the creditor's attorney while the attorney's authority continues, may also satisfy a judgment of record by a brief entry on the register, signed by the creditor or the creditor's attorney, and dated and witnessed by the court administrator, who shall note the satisfaction on the margin of the docket. Except as provided in subdivision 2, when a judgment is satisfied otherwise than by return of execution, the judgment creditor or the creditor's attorney shall file a certificate of it with the court administrator within

ten days after the satisfaction or within 30 days of payment by check or other noncertified funds.

Subd. 2.Child support or maintenance judgment.

In the case of a judgment for child support or spousal maintenance, an execution or certificate of satisfaction need not be filed with the court until the judgment is satisfied in full.

History:

(9406) RL s 4278; 1979 c 12 s 2; 1981 c 121 s 3; 1983 c 235 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 484 s 2; 1995 c 257 art 3 s 14

549.09 INTEREST ON VERDICTS, AWARDS, AND JUDGMENTS.

Subdivision 1.When owed; rate.

(a) When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.

(b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. The action must be commenced within two years of a written notice of claim for interest to begin to accrue from the time of the notice of claim. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 30 days. After that time, interest on the judgment or award shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from the time when special damages were incurred, if later, until the time of verdict, award, or report only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment or award than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment or award, whichever is less, and only from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (2), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following:

(1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;

(2) judgments or awards for future damages;

(3) punitive damages, fines, or other damages that are noncompensatory in nature;

(4) judgments or awards not in excess of the amount specified in section 491A.01; and

(5) that portion of any verdict, award, or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court or arbitrator.

(c)(1) For a judgment or award of $50,000 or less or a judgment or award for or against the state or a political subdivision of the state, regardless of the amount, the interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States Treasury bills, calculated on a bank discount basis as provided in this section.

On or before the 20th day of December of each year the state court administrator shall determine the rate from the one-year constant maturity treasury yield for the most recent calendar month, reported on a monthly basis in the latest statistical release of the board of governors of the Federal Reserve System. This yield, rounded to the nearest one percent, or four percent, whichever is greater, shall be the annual interest rate during the succeeding calendar year. The state court administrator shall communicate the interest rates to the court administrators and sheriffs for use in computing the interest on verdicts and shall make the interest rates available to arbitrators.

This clause applies to any section that references section 549.09 by citation for the purposes of computing an interest rate on any amount owed to or by the state or a political subdivision of the state, regardless of the amount.

(2) For a judgment or award over $50,000, other than a judgment or award for or against the state or a political subdivision of the state, the interest rate shall be ten percent per year until paid.

(3) When a judgment creditor, or the judgment creditor's attorney or agent, has received a payment after entry of judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process other than execution levy where a proper return has been filed with the court administrator, the judgment creditor, or the judgment creditor's attorney, before applying to the court administrator for an execution shall file with the court administrator an affidavit of partial satisfaction. The affidavit must state the dates and amounts of payments made upon the judgment after the most recent affidavit of partial satisfaction filed, if any; the part of each payment that is applied to taxable disbursements and to accrued interest and to the unpaid principal balance of the judgment; and the accrued, but the unpaid interest owing, if any, after application of each payment.

(d) This section does not apply to arbitrations between employers and employees under chapter 179 or 179A. An arbitrator is neither required to nor prohibited from awarding interest under chapter 179 or under section 179A.16 for essential employees.

(e) For purposes of this subdivision:

(1) "state" includes a department, board, agency, commission, court, or other entity in the executive, legislative, or judicial branch of the state; and

(2) "political subdivision" includes a town, statutory or home rule charter city, county, school district, or any other political subdivision of the state.

Subd. 2.Accrual of interest.

During each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual rate provided in subdivision 1. The court administrator shall compute and add the accrued interest to the total amount to be collected when the execution is issued and compute the amount of daily interest accruing during the calendar year. The person authorized by statute to make the levy shall compute and add interest from the date that the writ of execution was issued to the date of service of the writ of execution and shall direct the daily interest to be computed and added from the date of service until any money is collected as a result of the levy.

Subd. 3.Deductions.

If an affidavit is filed pursuant to subdivision 4, a judgment creditor, or the judgment creditor's attorney or agent, is entitled to deduct from any payment made upon a judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process, all disbursements that are made taxable by statute or by rule of court, that have been paid or incurred by the judgment creditor or the judgment creditor's attorney, after the entry of judgment. Any remaining portion of the payment must be applied to the interest that has accrued upon the unpaid principal balance of the judgment before any remaining part is applied to reduce the unpaid principal balance of the judgment.

Subd. 4.Affidavit.

A judgment creditor, or the judgment creditor's attorney, may file an affidavit specifying the nature and amount of taxable disbursements paid or incurred by the judgment creditor, or the judgment creditor's attorney, after the entry of judgment. An execution issued by the court administrator must include increased disbursements as are included in the affidavit filed with the court administrator.

History:

(9477) RL s 4344; 1909 c 371 s 1; 1979 c 105 s 1; 1980 c 509 s 179; 1984 c 399 s 1; 1984 c 472 s 2; 1986 c 455 s 81; 1Sp1986 c 3 art 1 s 82; 1987 c 273 s 3; 1988 c 503 s 1; 1991 c 266 s 10; 1991 c 321 s 7; 1992 c 363 art 1 s 8; 1993 c 321 s 5; 1994 c 465 art 1 s 58; 2002 c 247 s 1; 2009 c 83 art 2 s 35; 2010 c 249 s 1; 2010 c 385 s 8

550.01 ENFORCEMENT OF JUDGMENT.

The party in whose favor a judgment is given, or the assignee of such judgment, may proceed to enforce the same, at any time within ten years after the entry thereof, in the manner provided by law.

History:

(9416) RL s 4287

550.011 JUDGMENT DEBTOR DISCLOSURE.

Unless the parties have otherwise agreed, if a judgment has been docketed in district court for at least 30 days, and the judgment is not satisfied, the judgment creditor's attorney as an officer of the court may or the district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail by certified mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earnings. The information must be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order must contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

History:

1993 c 321 s 6; 2009 c 83 art 2 s 36

550.02 JUDGMENTS; METHODS OF ENFORCEMENT.

Where a judgment requires the payment of money, or the delivery of real or personal property, it may be enforced in those respects by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same . A person so served who refuses may be punished by the court as for contempt, and the individual's obedience thereto enforced.

History:

(9417) RL s 4288; 1986 c 444

550.37 PROPERTY EXEMPT.

Subdivision 1.Exemption.

The property mentioned in this section is not liable to attachment, garnishment, or sale on any final process, issued from any court.

Subd. 2.Bible and musical instrument.

The family Bible, library, and musical instruments.

[See Note.]

Subd. 3.Pew and burial lot.

A seat or pew in any house or place of public worship and a lot in any burial ground.

Subd. 4.Personal goods.

(a) All wearing apparel, one watch, utensils, and foodstuffs of the debtor and the debtor's family.

(b) Household furniture, household appliances, phonographs, radio and television receivers of the debtor and the debtor's family, not exceeding $4,500 in value.

(c) The debtor's aggregate interest, not exceeding $1,225 in value, in wedding rings or other religious or culturally recognized symbols of marriage exchanged between the debtor and spouse at the time of the marriage and in the debtor's possession.

The exemption provided by this subdivision may not be waived except with regard to purchase money security interests. Except for a pawnbroker's possessory lien, a nonpurchase money security interest in the property exempt under this subdivision is void.

If a debtor has property of the type which would qualify for the exemption under clause (b), of a value in excess of $4,500 an itemized list of the exempt property, together with the value of each item listed, shall be attached to the security agreement at the time a security interest is taken, and a creditor may take a nonpurchase money security interest in the excess over $4,500 by requiring the debtor to select the exemption in writing at the time the loan is made.

[See Note.]

Subd. 4a.Adjustment of dollar amounts.

(a) Except for subdivisions 5 and 7, the dollar amounts in this section shall change periodically as provided in this subdivision to the extent of changes in the implicit price deflator for the gross national product, 1972 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for December 1980 is the reference base index.

(b) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index is ten percent or more. The portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts stated in this section.

(c) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the Department of Commerce. If the index is superseded, the index referred to in this section is the one represented by the Department of Commerce as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(d) The commissioner of commerce shall announce and publish:

(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by paragraph (b); and

(2) promptly after the changes occur, changes in the index required by paragraph (c) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if the person relies on dollar amounts either determined according to paragraph (b) or appearing in the last publication of the commissioner announcing the then current dollar amounts.

Subd. 5.Farm machines.

Farm machines and implements used in farming operations by a debtor engaged principally in farming, livestock, farm produce, and standing crops, not exceeding $13,000 in value. When a debtor is a partnership of spouses or a partnership of natural persons related to each other within the third degree of kindred according to the rules of the civil law, for the purposes of the exemption in this subdivision, the partners may elect to treat the assets of the partnership as assets of the individual partners.

Subd. 6.Tools of trade.

The tools, implements, machines, instruments, office furniture, stock in trade, and library reasonably necessary in the trade, business, or profession of the debtor, not exceeding $5,000 in value.

[See Note.]

Subd. 7.Value limitations.

The total value of property selected by a debtor pursuant to subdivisions 5 and 6 shall not exceed $13,000, if the exemptions under subdivisions 5 and 6 are combined.

Subd. 8.University apparatus.

The library and philosophical and chemical or other apparatus belonging to, and used for the instruction of youth in, any university, college, seminary of learning, or school which is indiscriminately open to the public.

Subd. 9.Exempt property claims.

All money arising from any claim on account of the destruction of, or damage to, exempt property.

Subd. 10.Insurance proceeds.

All money received by, or payable to, a surviving spouse or child from insurance payable at the death of a spouse, or parent, not exceeding $20,000. The $20,000 exemption provided by this subdivision shall be increased by $5,000 for each dependent of the surviving spouse or child.

[See Note.]

Subd. 11.Beneficiary associations.

All money, relief, or other benefits payable or to be rendered by any police department association, fire department association, beneficiary association, or fraternal benefit association to any person entitled to assistance therefrom, or to any certificate holder thereof or beneficiary under any such certificate.

[See Note.]

Subd. 12.Manufactured home.

A manufactured home, as defined in section 168.002, subdivision 16, which is actually inhabited as a home by the debtor.

Subd. 12a.Motor vehicles.

One motor vehicle to the extent of a value not exceeding $2,000; or one motor vehicle to the extent of a value not exceeding $20,000 that has been modified, at a cost of not less than $1,500, to accommodate the physical disability making a disabled person eligible for a certificate authorized by section 169.345.

[See Note.]

Subd. 13.Earnings.

All earnings not subject to garnishment by the provisions of section 571.922. A subsequent attachment, garnishment, or levy of execution shall impound only that pay period's nonexempt disposable earnings not subject to a prior attachment, garnishment or levy of execution, but in no instance shall more than an individual's total nonexempt disposable earnings in that pay period be subject to attachment, garnishment, or levy of execution. Garnishments shall impound the nonexempt disposable earnings in the order of their service upon the employer. The disposable earnings exempt from garnishment are exempt as a matter of right, whether claimed or not by the person to whom due. The exemptions may not be waived. The exempt disposable earnings are payable by the employer when due. The exempt disposable earnings shall also be exempt for 20 days after deposit in any financial institution, whether in a single or joint account. This 20-day exemption also applies to any contractual setoff or security interest asserted by a financial institution in which the earnings are deposited by the individual. In tracing the funds, the first-in first-out method of accounting shall be used. The burden of establishing that funds are exempt rests upon the debtor. As used in this section, the term "financial institution"

includes credit unions. Nothing in this paragraph shall void or supersede any valid assignment of earnings or transfer of funds held on account made prior to the attachment, garnishment, or levy of execution.

Subd. 14.Public assistance.

All government assistance based on need, and the earnings or salary of a person who is a recipient of government assistance based on need, shall be exempt from all claims of creditors including any contractual setoff or security interest asserted by a financial institution. For the purposes of this chapter, government assistance based on need includes but is not limited to Minnesota family investment program, general assistance medical care, Supplemental Security Income, medical assistance, MinnesotaCare, payment of Medicare part B premiums or receipt of part D extra help, MFIP diversionary work program, work participation cash benefit, Minnesota supplemental assistance, emergency Minnesota supplemental assistance, general assistance, emergency general assistance, emergency assistance or county crisis funds, energy or fuel assistance, and food support. The salary or earnings of any debtor who is or has been an eligible recipient of government assistance based on need, or an inmate of a correctional institution shall, upon the debtor's return to private employment or farming after having been an eligible recipient of government assistance based on need, or an inmate of a correctional institution, be exempt from attachment, garnishment, or levy of execution for a period of six months after the debtor's return to employment or farming and after all public assistance for which eligibility existed has been terminated. The exemption provisions contained in this subdivision also apply for 60 days after deposit in any financial institution, whether in a single or joint account. In tracing the funds, the first-in first-out method of accounting shall be used. The burden of establishing that funds are exempt rests upon the debtor. Agencies distributing government assistance and the correctional institutions shall, at the request of creditors, inform them whether or not any debtor has been an eligible recipient of government assistance based on need, or an inmate of a correctional institution, within the preceding six months.

Subd. 15.Minor child earnings.

The earnings of the minor child of any debtor and any child support paid to any debtor, or the proceeds thereof, by reason of any liability of such debtor not contracted for the special benefit of such minor child.

Subd. 16.Claims for damages.

The claim for damages recoverable by any person by reason of a levy upon or sale under execution of the person's exempt personal property, or by reason of the wrongful taking or detention of such property by any person, and any judgment recovered for such damages.

Subd. 17.Selection.

All articles exempted by this section shall be selected by the debtor, the debtor's agent, or legal representative.

Subd. 18.Natural persons limitation.

The exemptions provided for in subdivisions 3 to 15 extend only to debtors who are natural persons except as provided in subdivision 5 for partnerships.

Subd. 19.Waiver.

The exemption of the property listed in subdivisions 2, 3, and 5 to 12a may not be waived except by a statement in substantially the following form, in boldface type of a minimum size of 12 points, signed and dated by the debtor at the time of the execution of the contract surrendering the exemption, immediately adjacent to the listing of the property: "I understand that some or all of the above property is normally protected by law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract."

Subd. 20.Traceable funds.

The exemption of funds from creditors' claims, provided by subdivisions 9, 10, 11, 15, and 24, shall not be affected by the subsequent deposit of the funds in a bank or any other financial institution, whether in a single or joint account, if the funds are traceable to their exempt source. In tracing the funds, the first-in first-out method of accounting shall be used. The burden of establishing that funds are exempt rests upon the debtor. No bank or other financial institution shall be liable for damages for complying with process duly issued out of any court for the collection of a debt even if the funds affected by the process are subsequently determined to have been exempt.

Subd. 21.Value.

For the purpose of this section, "value" means current fair market value.

Subd. 22.Rights of action.

Rights of action for injuries to the person of the debtor or of a relative whether or not resulting in death.

Subd. 23.Life insurance aggregate interest.

The debtor's aggregate interest not to exceed in value $4,000 in any accrued dividend or interest under or loan value of any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

[See Note.]

Subd. 24.Employee benefits.

(a) The debtor's right to receive present or future payments, or payments received by the debtor, under a stock bonus, pension, profit sharing, annuity, individual retirement account, Roth IRA, individual retirement annuity, simplified employee pension, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent of the debtor's aggregate interest under all plans and contracts up to a present value of $30,000 and additional amounts under all the plans and contracts to the extent reasonably necessary for the support of the debtor and any spouse or dependent of the debtor.

(b) The exemptions in paragraph (a) do not apply when the debt is owed under a support order as defined in section 518A.26, subdivision 21.

[See Note.]

Subd. 25.Proceeds for improvements to property.

Proceeds of payments received by a person for labor, skill, material, or machinery contributing to an improvement to real estate within the meaning of section 514.01.

History:

(9447) RL s 4317; 1909 c 12 s 1; 1913 c 375 s 1; 1915 c 202 s 1; 1923 c 154 s 1; 1923 c 350 s 1; 1927 c 272; 1933 c 350 s 1; 1939 c 263; 1941 c 351; 1949 c 282 s 1; 1951 c 673 s 1; 1955 c 859 s 1; 1961 c 568 s 1; 1967 c 835 s 1; 1969 c 1142 s 23,24; 1976 c 335 s 6-10; 1977 c 180 s 3; 1980 c 550 s 1-4; 1980 c 599 s 6-8; 1981 c 7 s 1; 1981 c 322 s 1; 1981 c 365 s 9; 1983 c 235 s 5-11; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 306 s 2-6; 1Sp1985 c 1 s 24; 1986 c 444; 1988 c 490 s 2-4; 1989 c 284 s 1; 1989 c 350 art 16 s 2-4; 1991 c 199 art 2 s 1; 1993 c 79 s 7; 1993 c 156 s 6; 1995 c 207 art 2 s 36; 1997 c 85 art 4 s 37; 1997 c 203 art 6 s 84; 1999 c 159 s 143; 1999 c 160 s 1; 2000 c 430 s 3; 2005 c 137 s 1; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 2009 c 31 s 2

NOTE: The dollar amounts in this section, except the dollar amounts in subdivisions 5 and 7, do not reflect the amounts as adjusted by the commissioner of commerce pursuant to subdivision 4a. The current dollar amounts are published in the State Register, volume 36, pages 1216 and 1217 and within the department's Web site, www.commerce.state.mn.us.

NOTE: Subdivision 2 was found unconstitutional with regard to musical instruments in In re Hilary, 76 B.R. 683 (Bankr. D. Minn. 1987).

NOTE: Subdivision 11 was found unconstitutional in In re Tveten, 402 N.W.2d 551 (Minn. 1987).

NOTE: The part of subdivision 24 which limits the amount of a qualified employee benefit plan that is exempt under subdivision 1 is preempted by the Employee Retirement Income Security Act (ERISA). Community Bank Henderson v. Noble, 552 N.W.2d 37 (Minn. Ct. App. 1996).

571.71 GARNISHMENT; WHEN AUTHORIZED.

As an ancillary proceeding to a civil action for the recovery of money, a creditor may issue a garnishment summons as provided in this chapter against any third party in the following instances:

(1) at the time the civil action is commenced or at any time after the commencement of the civil action, but before the entry of a judgment, if the court orders the issuance of the garnishment summons pursuant to section 571.93;

(2) at any time 45 days or more after service of the summons and complaint upon the debtor in the civil action when a judgment by default could have, but has not, been entered pursuant to Rule 55.01(a) of the Minnesota Rules of Civil Procedure for the District Courts. Garnishment under this clause is effective only after the Notice of Intent to Garnish form in section 571.72, subdivision 11, and the Exemption form in section 571.72, subdivision 10, are served on the

debtor at any time 20 or more days after the service of the Summons and Complaint and, in addition, the creditor does not receive an Answer from the debtor within 25 days after service of the Notice of Intent to Garnish. The Notice of Intent to Garnish form and the Exemption form must be substantially in the form set forth in section 571.72, subdivisions 10 and 11. If a creditor sends a Notice of Intent to Garnish form to a debtor under this clause, the creditor cannot obtain a default judgment against the debtor under Rule 55.01(a) of the Minnesota Rules of Civil Procedure for the District Courts until 25 days after the service of the Notice of Intent to Garnish form. No filing of a pleading or other documents by the creditor is required to issue a garnishment summons under this clause; however, the creditor must comply with the service requirement of section 571.72, subdivision 4; or

(3) at any time after entry of a money judgment in the civil action.

History:

1990 c 606 art 3 s 1; 2009 c 31 s 4

571.711 SCOPE OF GENERAL AND SPECIFIC PROVISIONS.

General provisions and definitions relating to all garnishment proceedings, as authorized in this chapter, are set forth in sections 571.71 to 571.90. Specific provisions relating to garnishments involving financial institutions are set forth in sections 571.911 to 571.915. Specific provisions relating to the garnishment of earnings are set forth in sections 571.92 to 571.927. When a garnishment summons is issued against either earnings or funds in a financial institution, the applicable provisions cited in this chapter must be complied with in addition to the general provisions and definitions relating to all garnishment proceedings. Provisions contained in the statutory forms are incorporated in this chapter and have the same force of law as any other provision in this chapter.

History:

1990 c 606 art 3 s 2

571.712 DEFINITIONS.

Subdivision 1.Scope.

For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2.Definitions.

(a) "Creditor" means the party who has a claim for the recovery of money in the civil action whether that party is the plaintiff, defendant, or other party in the civil action and who is issuing or requesting the issuance of a garnishment summons.

(b) "Debtor" means a party against whom the creditor has a claim for the recovery of money in the civil action whether that party is the plaintiff, defendant, or other party in the civil action.

(c) "Garnishee" means the third party upon whom the garnishment summons is served.

(d) "Claim" means the unpaid balance of the creditor's judgment against the debtor or, in a prejudgment garnishment proceeding, the unpaid balance of the creditor's claim against the debtor and all lawful interest and costs and disbursements paid or incurred in the civil action or in the garnishment proceedings.

Subd. 3.Designation of parties.

Each pleading or other document in the ancillary proceeding of garnishment must designate each party as creditor or debtor or garnishee.

History:

1990 c 606 art 3 s 3

571.72 GENERAL GARNISHMENT PROVISIONS.

Subdivision 1.Rules of Civil Procedure.

Unless this chapter specifically provides otherwise, the Rules of Civil Procedure for the District Courts shall apply in all proceedings under this chapter.

Subd. 2.Service of garnishment summons.

To enforce a claim asserted in a civil action venued in a court of record, a garnishment summons may be issued by a creditor and served upon the garnishee in the same manner as other summons in that court of record, except that service may not be made by publication. Service of a garnishment summons on the garnishee may also be made by certified mail, return receipt requested. A garnishment summons served by certified mail is effective if served at the garnishee's regular place of business. The effective date of service by certified mail is the time of receipt by the garnishee. A single garnishment summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

The garnishment summons must state:

(1) the full name of the debtor, the debtor's last known mailing address, and the amount of the claim that remains unpaid;

(2) the date of the entry of judgment against the debtor or that the debtor is in default pursuant to rule 55.01 of the Minnesota Rules of Civil Procedure for the District Courts. Where there is a prejudgment garnishment pursuant to section 571.93, the garnishment summons must include a copy of the court order;

(3) if the garnishment is on any indebtedness, money, or property other than earnings, the garnishee shall serve upon the creditor and upon the debtor within 20 days after service of the garnishment summons, a written disclosure, of the garnishee's indebtedness, money, or other

property owing to the debtor and answers to all written interrogatories that are served with the garnishment summons. The garnishment summons shall also state that if the garnishment is on earnings and the debtor has garnishable earnings, the garnishee shall serve the disclosure within ten days of the last payday to occur within the 70 days after the date of service of the garnishment summons;

(4) that the creditor shall not require disclosure of the disposable earnings, indebtedness, money, or property of debtor in the garnishee's possession or under the garnishee's control in excess of 110 percent of the amount of the claim that remains unpaid;

(5) that the garnishee shall retain disposable earnings, indebtedness, money, or property of the debtor in the garnishee's possession or under the garnishee's control not in excess of 110 percent of the amount of the claim that remains unpaid, until the creditor causes a writ of execution to be served upon the garnishee, until the debtor authorizes release to the creditor, until the creditor authorizes release to the debtor, upon court order, or by operation of law;

(6) that after the expiration of the period of time specified in section 571.79 from the date of service of the garnishment summons, the garnishee's retention obligation automatically expires;

(7) that an assignment of wages made by the debtor within ten days before the service of the first garnishment summons on a debt is void and that any indebtedness to the garnishee incurred with ten days before the service of the first garnishment summons on a debt may not be set off against amounts otherwise subject to the garnishment.

Subd. 3.Representation by an attorney.

Whenever a creditor is represented by an attorney, a responsive pleading or document from the garnishee or debtor under this chapter must be served on the creditor's attorney.

Subd. 4.Service of garnishment summons on debtor.

A copy of the garnishment summons and copies of all other papers served on the garnishee must be served by mail at the last known mailing address of the debtor not later than five days after the service is made upon the garnishee. The first time a garnishment summons is served on the debtor pursuant to section 571.71, clause (2), the creditor shall also serve a copy of the affidavit of service of the original summons and complaint. Service of the garnishment documents on the debtor is effective upon mailing.

Subd. 5.Garnishment disclosure form.

The creditor shall serve with the garnishment summons the applicable garnishment disclosure form substantially in the form set forth in section 571.75. The creditor may also serve written interrogatories with the garnishment summons.

Subd. 6.Bad faith claim.

If, in a proceeding brought under section 571.91, or a similar proceeding under this chapter to determine a claim of exemption, the claim of exemption is not upheld, and the court finds that it was asserted in bad faith, the creditor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed $100. If

the claim of exemption is upheld, and the court finds that the creditor disregarded the claim of exemption in bad faith, the debtor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed $100. The underlying judgment shall be modified to reflect assessment of damages, costs, and attorney fees. However, if the party in whose favor a penalty assessment is made is not actually indebted to that party's attorney for fees, the attorney's fee award shall be made directly to the attorney and if not paid an appropriate judgment in favor of the attorney shall be entered.

Subd. 7.Forms.

No creditor shall use a form that contains alterations or changes from the statutory forms that mislead debtors as to their rights and the garnishment procedure generally. If a court finds that a creditor has used a misleading form, the debtor shall be awarded actual damages, costs, reasonable attorney's fees resulting from additional proceedings, and an amount not to exceed $100. All forms must be clearly legible and printed in not less than the equivalent of 10-point type. A form that uses both sides of a sheet must clearly indicate on the front side that there is additional information on the back side of the sheet.

Forms, including the statutory forms, used in garnishments of earnings for the satisfaction of judgments for child support must be changed by the creditor to reflect the fact that the 70-day period of effectiveness does not apply to these garnishments if the judgment creditor is a county and the employer is notified by the county when the judgment is satisfied.

Subd. 8.Exemption notice.

In every garnishment where the debtor is a natural person, the debtor shall be provided with a garnishment exemption notice. If the creditor is garnishing earnings, the earnings exemption notice provided in section 571.924 must be served ten or more days before the service of the first garnishment summons. If the creditor is garnishing funds in a financial institution, the exemption notice provided in section 571.912 must be served with the garnishment summons. In all other cases, the exemption notice must be in the following form and served on the debtor with a copy of the garnishment summons.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)
against

(Debtor) EXEMPTION NOTICE
and

(Garnishee)

A Garnishment Summons is being served upon you. Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37 of the Minnesota Statutes and other state and federal laws. The dollar amounts contained in this list are subject to the provisions of section 550.37, subdivision 4a, at the time of garnishment. If you have questions about an exemption, you should obtain legal advice.

(1) a homestead or the proceeds from the sale of a homestead;

(2) household furniture, appliances, phonographs, radios, and televisions up to a total current value of $5,850;

(3) a manufactured (mobile) home used as your home;

(4) one motor vehicle currently worth less than $2,600 after deducting any security interest;

(5) farm machinery used by an individual principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to $13,000;

(6) relief based on need. This includes:

(i) Minnesota Family Investment Program (MFIP) and Work First Program;

(ii) Medical Assistance (MA);

(iii) General Assistance (GA);

(iv) General Assistance Medical Care (GAMC);

(v) Emergency General Assistance (EGA);

(vi) Minnesota Supplemental AID (MSA);

(vii) MSA-Emergency Assistance (MSA-EA);

(viii) Supplemental Security Income (SSI);

(ix) Energy Assistance; and

(x) Emergency Assistance (EA);

(7) Social Security benefits;

(8) unemployment benefits, workers' compensation, or veteran's benefits;

(9) an accident, disability, or retirement pension or annuity;

(10) life insurance proceeds;

(11) earnings of your minor child; and

(12) money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

Subd. 9.Motion to determine objections.

Upon motion of any party in interest, on notice, the court shall determine the validity of any claim of exemption and may make any order necessary to protect the rights of those interested.

Subd. 10.Exemption notice for prejudgment garnishment.

EXEMPTION NOTICE

IMPORTANT NOTICE: A garnishment summons may be served on your employer, bank, or other third parties without any further court proceeding or notice to you. See the attached Notice of Intent to Garnish for more information.

The following money and wages may be protected (the legal word is exempt) from garnishment:

1. Financial institutions/bank

Some of the money in your account may be protected because you receive government benefits from one or more of the following places:

MFIP - Minnesota family investment program,

MFIP Diversionary Work Program,

Work participation cash benefit,

GA - general assistance,

EA - emergency assistance,

MA - medical assistance,

GAMC - general assistance medical care,

EGA - emergency general assistance or county crisis funds,

MSA - Minnesota supplemental aid,

MSA-EA - MSA emergency assistance,

Food Support,

SSI - Supplemental Security Income,

MinnesotaCare,

Medicare Part B premium payments,

Medicare Part D extra help,

Energy or fuel assistance,

Social Security benefits,

Unemployment benefits,

Workers' compensation,

Veterans benefits.

Sending the creditor's attorney (or creditor, if no attorney) a copy of BANK STATEMENTS that show what was in your account for the past 60 days may give the creditor enough information about your exemption claim to avoid a garnishment.

2. Earnings

All or some of your earnings may be completely protected from garnishment if:

All of your earnings (wages) may be protected if:

You get government benefits (see list of government benefits)

You currently receive other assistance based on need

You have received government benefits in the last six months

You were in jail or prison in the last six months

Your wages are only protected for 60 days after they are deposited in your account so **it would be helpful if you immediately send the undersigned creditor a copy of BANK STATEMENTS** that show what was in your account **for the past 60 days**.

Some of your earnings (wages) may be protected if:

If all of your earnings are not exempt, some of your earnings may still be protected for 20 days after they were deposited in your account. The amount protected is the larger amount of:

75 percent of your wages (after taxes are taken out); or

(insert the sum of the current federal minimum wage) multiplied by 40.

The money from the following are also exempt for 20 days after they are deposited in your account.

An accident, disability, or retirement pension or annuity

Payments to you from a life insurance policy

Earnings of your child who is under 18 years of age

Child support

Money paid to you from a claim for damage or destruction of property. Property includes household goods, farm tools or machinery, tools for your job, business equipment, a mobile home, a car, a musical instrument, a pew or burial lot, clothes, furniture, or appliances.

Death benefits paid to you.

YOU WILL BE ABLE TO CLAIM THESE EXEMPTIONS WHEN YOU RECEIVE A NOTICE. You will get the notice at least ten days BEFORE a wage garnishment. BUT if the creditor garnishes your bank account, you will not get the notice until AFTER the account has been frozen. IF YOU BELIEVE THE MONEY IN YOUR BANK ACCOUNT OR YOUR WAGES ARE EXEMPT, YOU SHOULD IMMEDIATELY CONTACT THE PERSON BELOW. YOU SHOULD TELL THEM WHY YOU THINK YOUR

ACCOUNT OR WAGES ARE EXEMPT TO SEE IF YOU CAN AVOID GARNISHMENT.

Creditor

Creditor address

Creditor telephone number

Subd. 11.Notice of intent to garnish.

The notice of intent to garnish must be in substantially the following form:

IMPORTANT! READ THIS CAREFULLY!

NOTICE OF INTENT TO GARNISH

against

Plaintiff/Creditor Defendant/Debtor

Your money, property, or earnings are in danger of being garnished because you did not send a written "Answer" to the Summons and Complaint served on you over 20 days ago.

There may not be a case filed in court, BUT because you did not send a written "Answer" the creditor may serve a garnishment summons on your employer, bank, or other third parties. This means that your money or wages can be garnished (held or taken). Under Minnesota law, this can happen any time 20 days after the date you receive this notice.

There will be **NO COURT HEARING** or any further notice to you prior to a garnishment if you do nothing. There may not be a file open at the Clerk of the Court's office. **There are things you can do to avoid a garnishment, but you must act quickly.**

Please read these instructions carefully. **You have 20 days** to do one of the following:

1. **Send an Answer.** If you do not think you owe the money or if you have a legal reason that you did not pay, send a written "Answer" to the Summons and Complaint. Your "Answer" should tell the creditor why you think you do not owe some or all of the money. Contact a lawyer if you do not know what to do, need help with an answer, or have any questions about the debt.

2. **Claim an Exemption.** Even if you do not have a defense to the complaint, some of your money may be protected (the legal word is exempt) from garnishment. This means it is protected and cannot be taken. The creditor will send you a form to claim these exemptions at a later time, **but you can possibly avoid the garnishment** by contacting the person below

immediately to claim your exemption. Attached to this notice is a list of exemptions you may be able to claim.

3. **If you do not have a defense and your money is not exempt** you can **call** the person below before the 20 days are up and try to set up a payment plan that works for both you and your creditor. You can contact the person below at any time to try to work out a payment plan, but if you wait too long or cannot agree on a payment plan, they may garnish your wages, bank accounts, or assets.

If you do not do any of these things, your money can be garnished. The creditor can garnish your wages, bank accounts, or other assets. They do not have to go to court to let you know when they start taking your money.

LAW FIRM

Dated: By:

Attorney, #

Attorneys for Plaintiff

Address

Telephone

History:

1990 c 606 art 3 s 4; 1993 c 156 s 15; 1994 c 488 s 8; 1999 c 107 s 66; 1999 c 159 s 148; 2000 c 343 s 4; 2000 c 405 s 17; 2009 c 31 s 5,6

571.73 PROPERTY ATTACHABLE BY GARNISHMENT; GOOD FAITH REQUIREMENT.

Subdivision 1.Retention obligation.

Except as provided in subdivision 4 and section 571.79, service of the garnishment summons upon the garnishee shall obligate the garnishee to retain possession and control of the disposable earnings, indebtedness, money, and property of the debtor specified in subdivision 3, except that the garnishee shall not retain possession and control of disposable earnings, indebtedness, money, or property of the debtor in the garnishee's possession or under the

garnishee's control in excess of 110 percent of the amount claimed by the creditor in the garnishment summons.

Subd. 2.Garnishee good faith requirement.

The garnishee is not liable to the debtor, creditor, or other person for wrongful retention if the garnishee retains disposable earnings, indebtedness, money, or property of the debtor or any other person, pending the garnishee's disclosure or consistent with the disclosure the garnishee makes, if the garnishee has a good faith belief that the property retained is subject to the garnishment summons. In addition, the garnishee may, at any time before or after disclosure, proceed under rule 67 of the Minnesota Rules of Civil Procedure for the District Courts to make deposit into court. No garnishee is liable for damages if the garnishee complies with the provisions of this chapter.

Subd. 3.Property attachable.

Subject to the exemptions provided by sections 550.37 and 571.922 and any other applicable statute, the service of a garnishment summons under this chapter attaches:

(1) except as otherwise provided in clause (4), all unpaid nonexempt disposable earnings owed or to be owed by the garnishee and earned or to be earned by the debtor within the pay period in which the garnishment summons is served and within all subsequent pay periods whose paydays occur within the 70 days after the date of service of the garnishment summons. "Payday" means the day upon which the garnishee pays earnings to the debtor in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month;

(2) all other nonexempt indebtedness, money, or other property due or belonging to the debtor and owing by the garnishee or in the possession or under the control of the garnishee at the time of service of the garnishment summons, whether or not the same has become payable. The garnishee shall not be compelled to pay or deliver the same before the time specified by any agreement unless the agreement was fraudulently contracted to defeat a garnishment or other collection remedy;

(3) all other nonexempt intangible or tangible personal property of the debtor in the possession or under the control of the garnishee at the time of service of the garnishment summons, including property of any kind due from or in the hands of an executor, administrator, personal representative, receiver, or trustee, and all written evidences of indebtedness whether or not negotiable or not yet underdue or overdue; and

(4) for a garnishment on a judgment for child support by a county, all unpaid nonexempt disposable earnings owed or to be owed by the garnishee and earned or to be earned by the debtor within the pay period in which the garnishment summons is served and within all subsequent pay periods until the judgment is satisfied.

Subd. 4.Property not attachable.

The following property is not subject to attachment by garnishment:

(1) any indebtedness, money, or other property due to the debtor, unless at the time of the garnishment summons the same is due absolutely or does not depend upon any contingency;

(2) any judgment in favor of the debtor against the garnishee, if the garnishee or the garnishee's property is liable on an execution levy upon the judgment;

(3) any debt owed by the garnishee to the debtor for which any negotiable instrument has been issued or endorsed by the garnishee;

(4) any indebtedness, money, or other property due to the debtor where the debtor is a bank, savings bank, trust company, credit union, savings association, or industrial loan and thrift companies with deposit liabilities;

(5) any indebtedness, money, or other property due to the debtor with a cumulative value of less than $10; and

(6) any disposable earnings, indebtedness, money, or property that is exempt under Minnesota or federal law.

History:

1990 c 606 art 3 s 5; 1993 c 156 s 16; 1995 c 202 art 1 s 25

571.74 GARNISHMENT SUMMONS AND NOTICE TO DEBTOR.

The garnishment summons and notice to debtor must be substantially in the following form. The notice to debtor must be in no smaller than 14-point type.

GARNISHMENT SUMMONS

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor) UNPAID BALANCE

(Debtor's Address) Date of Entry

GARNISHMENT SUMMONS

The State of Minnesota

To the Garnishee named above:

You are hereby summoned and required to serve upon the creditor's attorney (or the creditor if not represented by an attorney) and on the debtor within 20 days after service of this garnishment summons upon you, a written disclosure, of the nonexempt indebtedness, money, or other property due or belonging to the debtor and owing by you or in your possession or under your control and answers to all written interrogatories that are served with the garnishment summons. However, if the garnishment is on earnings and the debtor has garnishable earnings, you shall serve the completed disclosure form on the creditor's attorney, or the creditor if not represented by an attorney, within ten days of the last payday to occur within the 70 days after the date of the service of this garnishment summons. "Payday" means the day which you pay earnings in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month.

Your disclosure need not exceed 110 percent of the amount of the creditor's claim that remains unpaid.

You shall retain garnishable earnings, other indebtedness, money, or other property in your possession in an amount not to exceed 110 percent of the creditor's claim until such time as the creditor causes a writ of execution to be served upon you, until the debtor authorizes you in writing to release the property to the creditor, or until the expiration of ..... days from the date of service of this garnishment summons upon you, at which time you shall return the disposable earnings, other indebtedness, money, or other property to the debtor.

EARNINGS

In the event you are summoned as a garnishee because you owe "earnings" (as defined on the Earnings Garnishment Disclosure form attached to this Garnishment Summons, if applicable) to the debtor, then you are required to serve upon the creditor's attorney, or the creditor if not represented by an attorney, a written earnings disclosure form within the time limit set forth above.

In the case of earnings you are further required to retain in your possession all unpaid nonexempt disposable earnings owed or to be owed by you and earned or to be earned to the debtor within the pay period in which this garnishment summons is served and within all subsequent pay periods whose paydays (defined above) occur within the 70 days after the date of service of this garnishment summons.

Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to you incurred by the

debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.

You are prohibited by law from discharging or disciplining the debtor because the debtor's earnings have been subject to garnishment.

This Garnishment Summons includes:

(check applicable box)

Earnings garnishment
(see attached Earnings Disclosure Form)

Nonearnings garnishment
(see attached Nonearnings Disclosure Form)

Both Earnings and Nonearnings garnishment
(see both attached Earnings and Nonearnings Disclosure Form)

NOTICE TO DEBTOR

A Garnishment Summons, Earnings Garnishment Disclosure form, Nonwage Garnishment Disclosure form, Garnishment Exemption Notices and/or written Interrogatories (strike out if not applicable), copies of which are hereby served on you, were served upon the Garnishee by delivering copies to the Garnishee. The Garnishee was paid $15.

Dated:

Attorney for Creditor (or creditor)

Address

Telephone

Attorney I.D. No

History:

1990 c 606 art 3 s 6; *2000 c 405 s 18*

571.75 GARNISHEE DISCLOSURE.

Subdivision 1.Garnishee to disclose.

The garnishee shall serve on both the creditor and the debtor, within 20 days after service of the garnishment summons, a written disclosure of the garnishee's indebtedness, money, or other property owing to the debtor. However, if the garnishment is on earnings and the debtor has garnishable earnings, the garnishee shall serve the disclosure and earnings disclosure worksheet within ten days after the last payday to occur within the 70 days after the date of the service of this garnishment summons. "Payday" means the day upon which the garnishee pays earnings to the debtor in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month. The amount of the garnishee's disclosure need not exceed 110 percent of the amount of the creditor's claim that remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownership claims, or other interests. The answers to the garnishment disclosure form may be served personally or by first class mail. If the disclosure is by a corporation, it shall be made by an officer, managing agent, or other authorized person having knowledge of the facts.

Subd. 2.
Contents of disclosure.

The disclosure must state:

(a) If an earnings garnishment disclosure, the amount of disposable earnings earned by the debtor within the debtor's pay periods as specified in section 571.921.

(b) If a nonearnings garnishment disclosure, a description of any personal property or any instrument or papers relating to this property belonging to the judgment debtor or in which the debtor is interested or other indebtedness of the garnishee to the debtor.

(c) If the garnishee asserts any setoff, defense, claim, or lien on disposable earnings, other indebtedness, money, or property, the garnishee shall disclose the amount and the facts concerning the same.

(d) Whether the debtor asserts any exemption, or any other objection, known to the garnishee against the right of the creditor to garnish the disposable earnings, other indebtedness, money, or property disclosed.

(e) If other persons assert claims to any disposable earnings, other indebtedness, money, or property disclosed, the garnishee shall disclose the names and addresses of these claimants and, so far as known by the garnishee, the nature of their claims.

(f) The garnishment disclosure forms and earnings disclosure worksheet must be the same or substantially similar to the following forms. If the garnishment affects earnings of the debtor, the creditor shall use the earnings garnishment disclosure form. If the garnishment affects any indebtedness, money, or property of the debtor, other than earnings, the creditor shall use the nonearnings garnishment disclosure form. Nothing contained in this paragraph limits the simultaneous use of the earnings and nonearnings garnishment disclosure forms.

EARNINGS DISCLOSURE FORM AND WORKSHEET

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor) GARNISHMENT

(Garnishee) EARNINGS DISCLOSURE

DEFINITIONS

"EARNINGS": For the purpose of garnishment, "earnings" means compensation paid or payable to an employee for personal services or compensation paid or payable to the producer for the sale of agricultural products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement.

"DISPOSABLE EARNINGS": Means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. (Amounts required by law to be withheld do not include items such as health insurance, charitable contributions, or other voluntary wage deductions.)

"PAYDAY": For the purpose of garnishment, "payday(s)" means the date(s) upon which the employer pays earnings to the debtor in the ordinary course of business. If the debtor has no regular payday, payday(s) means the fifteenth and the last day of each month.

THE GARNISHEE MUST ANSWER THE FOLLOWING QUESTIONS:

1. Do you now owe, or within 70 days from the date the garnishment summons was served on you, will you or do you expect to owe money to the debtor for earnings?

Yes No

2. Does the debtor earn more than $..... per week? (This amount is the federal minimum wage per week.)

Yes No

INSTRUCTIONS FOR COMPLETING THE EARNINGS DISCLOSURE

A. If your answer to either question 1 or 2 is "No," then you must sign the affirmation on Page 2 and return this disclosure to the creditor's attorney (or the creditor if not represented by an attorney) within 20 days after it was served on you, and you do not need to answer the remaining questions.

B. If your answers to both questions 1 and 2 are "Yes," you must complete this form and the Earnings Disclosure Worksheet as follows:

For each payday that falls within 70 days from the date the garnishment summons was served on you, YOU MUST calculate the amount of earnings to be retained by completing Steps 3 through 11, and enter the amounts on the Earnings Disclosure Worksheet. UPON REQUEST, THE EMPLOYER MUST PROVIDE THE DEBTOR WITH INFORMATION AS TO HOW THE CALCULATIONS REQUIRED BY THIS DISCLOSURE WERE MADE.

Each payday, you must retain the amount of earnings listed in Column I on the Earnings Disclosure Worksheet.

You must return this Earnings Disclosure Form and the Earnings Disclosure Worksheet to the creditor's attorney (or the creditor if not represented by an attorney) and deliver a copy to the debtor within ten days after the last payday that falls within the 70-day period.

If the claim is wholly satisfied or if the debtor's employment ends before the expiration of the 70-day period, your disclosure should be made within ten days after the last payday for which earnings were attached.

For Steps 3 through 11, "Columns" refers to columns on the Earnings Disclosure Worksheet.

3. COLUMN A. Enter the date of debtor's payday.

4. COLUMN B. Enter debtor's gross earnings for each payday.

5. COLUMN C. Enter debtor's disposable earnings for each payday.

6. COLUMN D. Enter 25 percent of disposable earnings. (Multiply Column C by .25.)

7. COLUMN E. Enter here 40 times the hourly federal minimum wage ($.....) times the number of work weeks included in each payday. (Note: If a pay period includes days in excess of whole work weeks, the additional days should be counted as a fraction of a work week equal to the number of workdays in excess of a whole work week divided by the number of

workdays in a normal work week.)

8. COLUMN F. Subtract the amount in Column E from the amount in Column C, and enter here.

9. COLUMN G. Enter here the lesser of the amount in Column D and the amount in Column F.

10. COLUMN H. Enter here any amount claimed by you as a setoff, defense, lien, or claim, or any amount claimed by any other person as an exemption or adverse interest which would reduce the amount of earnings owing to the debtor. (Note: Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment. Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void.)

You must also describe your claim(s) and the claims of others, if known, in the space provided below the worksheet and state the name(s) and address(es) of these persons.

Enter zero in Column H if there are no claims by you or others which would reduce the amount of earnings owing to the debtor.

11. COLUMN I. Subtract the amount in Column H from the amount in Column G and enter here. This is the amount of earnings that you must retain for the payday for which the calculations were made.

AFFIRMATION

I, ... (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this earnings disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

Signature

Title

Telephone Number

EARNINGS DISCLOSURE WORKSHEET

.....

Debtor's Name

A	B	C
Payday Date	Gross Earnings	Disposable Earnings
1.	$	$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

D	E	F
25% of Column C	40 X Min. Wage	Column C minus Column E

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

G	H	I
Lesser of Column D and Column F	Setoff, Lien, Adverse Interest, or Other Claims	Column G minus Column H
1.		
2.		
3.		
4.		

5.

6.

7.

8.

9.

10.

TOTAL OF COLUMN I $

*If you entered any amount in Column H for any payday(s), you must describe below either your claims, or the claims of others. For amounts claimed by others you must both state the names and addresses of these persons, and the nature of their claim, if known.

AFFIRMATION

I, ... (person signing Affirmation), am the third party or I am authorized by the third party to complete this earnings disclosure worksheet, and have done so truthfully and to the best of my knowledge.

Dated: .....

Signature .....

Title .....

Telephone Number (...).....

EARNINGS DISCLOSURE FORM AND WORKSHEET
FOR CHILD SUPPORT DEBTOR

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor) GARNISHMENT

(Garnishee) EARNINGS DISCLOSURE

DEFINITIONS

"EARNINGS": For the purpose of execution, "earnings" means compensation paid or payable to an employee for personal services or compensation paid or payable to the producer for the sale of agricultural products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement, workers' compensation, or unemployment benefits.

"DISPOSABLE EARNINGS": Means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. (Amounts required by law to be withheld do not include items such as health insurance, charitable contributions, or other voluntary wage deductions.)

"PAYDAY": For the purpose of execution, "payday(s)" means the date(s) upon which the employer pays earnings to the debtor in the ordinary course of business. If the judgment debtor has no regular payday, payday(s) means the 15th and the last day of each month.

THE GARNISHEE MUST ANSWER THE FOLLOWING QUESTION:

(1) Do you now owe, or within 70 days from the date the execution levy was served on you, will you or may you owe money to the debtor for earnings?

Yes No

INSTRUCTIONS FOR COMPLETING THE

EARNINGS DISCLOSURE

A. If your answer to question 1 is "No," then you must sign the affirmation below and return this disclosure to the creditor's attorney (or the creditor if not represented by an attorney) within 20 days after it was served on you, and you do not need to answer the remaining questions.

B. If your answer to question 1 is "Yes," you must complete this form and the Earnings Disclosure Worksheet as follows:

For each payday that falls within 70 days from the date the garnishment summons was served on you, YOU MUST calculate the amount of earnings to be retained by completing steps 2 through 8 on page 2, and enter the amounts on the Earnings Disclosure Worksheet. UPON REQUEST, THE EMPLOYER MUST PROVIDE THE DEBTOR WITH INFORMATION AS TO HOW THE CALCULATIONS REQUIRED BY THIS DISCLOSURE WERE MADE.

Each payday, you must retain the amount of earnings listed in column G on the Earnings Disclosure Worksheet.

You must pay the attached earnings and return this earnings disclosure form and the Earnings Disclosure Worksheet to the creditor's attorney (or the creditor if not represented by an attorney) and deliver a copy to the debtor within ten days after the last payday that falls within the 70-day period. If the claim is wholly satisfied or if the debtor's employment ends before the expiration of the 70-day period, your disclosure should be made within ten days after the last payday for which earnings were attached.

For steps 2 through 8, "columns" refers to columns on the Earnings Disclosure Worksheet.

(2) COLUMN A. Enter the date of debtor's payday.

(3) COLUMN B. Enter debtor's gross earnings for each payday.

(4) COLUMN C. Enter debtor's disposable earnings for each payday.

(5) COLUMN D. Enter either 50, 55, 60, or 65 percent of disposable earnings, based on which of the following descriptions fits the child support judgment debtor:

(a) 50 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child and the judgment is 12 weeks old or less (12 weeks to be calculated to the beginning of the work week in which the execution levy is received);

(b) 55 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the execution levy is received);

(c) 60 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child and the judgment is 12 weeks old or less (12 weeks to be calculated to the beginning of the work week in which the execution levy is received); or

(d) 65 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the execution levy is received). (Multiply column C by .50, .55, .60, or .65, as appropriate.)

(6) COLUMN E. Enter here any amount claimed by you as a setoff, defense, lien, or claim, or any amount claimed by any other person as an exemption or adverse interest that would reduce the amount of earnings owing to the debtor. (Note: Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.)

You must also describe your claim(s) and the claims of others, if known, in the space provided below the worksheet and state the name(s) and address(es) of these persons.

Enter zero in column E if there are no claims by you or others that would reduce the amount of earnings owing to the judgment debtor.

(7) COLUMN F. Subtract the amount in column E from the amount in column D and enter here. This is the amount of earnings that you must remit for the payday for which the calculations were made.

AFFIRMATION

I, ... (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this earnings disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

Signature

Title

Telephone Number

EARNINGS DISCLOSURE WORKSHEET

Debtor's Name

A	B	C

Payday Date	Gross Earnings	Disposable Earnings
1.	$	$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

D	E	F
Either 50, 55, 60, or 65% of Column C	Setoff, Lien, Adverse Interest, or Other Claims	Column D minus Column E
1.		
2.		
3.		

4.

5.

6.

7.

8.

9.

10.

TOTAL OF COLUMN F $

*If you entered any amount in column E for any payday(s), you must describe below either your claims, or the claims of others. For amounts claimed by others, you must both state the names and addresses of such persons, and the nature of their claim, if known.

AFFIRMATION

I, ... (person signing Affirmation), am the third party or I am authorized by the third party to complete this earnings disclosure worksheet, and have done so truthfully and to the best of my knowledge.

Signature

Dated: (...)

Title Phone Number

NONEARNINGS DISCLOSURE FORM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)
against

(Debtor) NONEARNINGS DISCLOSURE
and

(Garnishee)

On the ..... day of ....., ..., the time of service of garnishment summons herein, there was due and owing the debtor from the garnishee the following:

(1) Money. Enter on the line below any amounts due and owing the debtor, except earnings, from the garnishee.

(2) Property. Describe on the line below any personal property, instruments, or papers belonging to the debtor and in the possession of the garnishee.

(3) Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines (1) and (2) above. State the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.)

(4) Exemption. Enter on the line below any amounts or property claimed by the debtor to be exempt from execution.

(5) Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the debtor's property.

(6) Enter on the line below the total of lines (3), (4), and (5).

(7) Enter on the line below the difference obtained (never less than zero) when line (6) is subtracted from the sum of lines (1) and (2).

(8) Enter on the line below 110 percent of the amount of the creditor's claim which remains unpaid.

(9) Enter on the line below the lesser of line (7) and line (8). Retain this amount only if it is $10 or more.

AFFIRMATION

I, ... (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this nonearnings garnishment disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

Signature

Title

Telephone Number

Subd. 3.Oral disclosure.

Before or after the service of a written disclosure by a garnishee under subdivision 1, upon a showing by affidavit upon information and belief that an oral examination of the garnishee would provide a complete disclosure of relevant facts, any party to the garnishment proceedings may obtain an ex parte order requiring the garnishee, or a representative of the garnishee designated by name or by title, to appear for oral examination before the court or a referee appointed by the court. Notice of the examination must be given to all parties.

Subd. 4.Supplemental complaint.

If a garnishee holds property, money, or other indebtedness by a title that is void as to the debtor's creditors, the property may be garnished although the debtor would be barred from maintaining an action to recover the property, money, or indebtedness. In this and all other cases where the garnishee denies liability, the creditor may move the court at any time before the garnishee is discharged, on notice to both the debtor and the garnishee for an order making the garnishee a party to the civil action and granting the creditor leave to file a supplemental complaint against the garnishee and the debtor. The supplemental complaint shall set forth the facts upon which the creditor claims to charge the garnishee. If probable cause is shown, the motion shall be granted. The supplemental complaint shall be served upon the garnishee and the debtor and any other parties. The parties served shall answer or respond pursuant to the Minnesota Rules of Civil Procedure for the District Courts, and if they fail to do so, judgment by default may be rendered against them pursuant to section 571.82.

History:

1990 c 606 art 3 s 7; 1991 c 156 s 19; 1991 c 199 art 1 s 82; 1994 c 488 s 8; 1998 c 254 art 1 s 107; 1999 c 107 s 66; 2000 c 343 s 4

571.76 GARNISHEE FEES.

A garnishee shall be paid a $15 fee by the creditor at the time of service of a garnishment summons. Failure to pay the fee renders the garnishment void, and the garnishee shall take no action. If a garnishee is required to appear and submit to oral examination, the garnishee shall be tendered, in advance of the examination, fees and mileage for attendance at the rate allowed by law to a witness. These fees may be recovered by the creditor as an allowable disbursement. In extraordinary cases, the garnishee may be allowed additional sums the court considers reasonable for attorneys fees and other necessary expenses. The court shall then determine which party bears the burden of this expense. If specific articles of personal property are garnished, the garnishee is not required to deliver the property to any person until payment of the garnishee's reasonable charges for storage.

History:

1990 c 606 art 3 s 8

571.77 SALARY OF PUBLIC SERVANTS.

The salary or wages of an official or employee of a county, town, city, or school district, or any department of these bodies, is subject to garnishment. The garnishment summons shall be served upon the auditor, treasurer, or clerk of the body, or head of the department of the body of which that person is an official or employee. The disclosure shall be made by the officer or person so served, or by some person designated by that person having knowledge of the facts. If payment is made by the county, town, city, or school district, or any department of these bodies pursuant to a judgment against it as garnishee, a certified copy of the judgment with a certificate of satisfaction to the extent of the payment endorsed on it shall be delivered to the treasurer as a voucher for the payment.

History:

1990 c 606 art 3 s 9

571.771 MONEY DUE FROM STATE DEPARTMENTS.

Money due or owing to any entity or person by the state on account of any employment, work, contract with, or services provided to any state department or agency is subject to garnishment. The garnishment summons may be served upon the head of the department or agency in the same manner as other summons in that court of record except that service may not be made by publication. Service of the garnishment summons may also be made by certified mail, return receipt requested. The disclosure must be made by the head of the department or agency, or by some person designated by the head having knowledge of the facts. If payment is made pursuant to judgment against the state as garnishee, a certificate of satisfaction to the extent of the payment endorsed on it must be delivered to the head of the department or agency as a voucher for the payment.

History:
2000 c 405 s 19

571.78 DUTIES OF A GARNISHEE.

A garnishee shall:

(1) complete the garnishment disclosure form and return it to the creditor, and serve a copy on the debtor as required by section 571.75;

(2) retain nonexempt disposable earnings, indebtedness, money, or other property belonging to the debtor up to 110 percent of the amount claimed in the garnishment summons, as required by section 571.73, except as limited by section 571.922;

(3)(a) remit and deliver the garnished nonexempt disposable earnings, indebtedness, money, or other property to the creditor upon levy, written authorization of the debtor, court order, or operation of law. However, the garnishee shall not be compelled to deliver the nonexempt earnings, indebtedness, money, or other property at any time or place other than as stipulated in the contract between the garnishee and the debtor; or

(b) return the garnished nonexempt disposable earnings, indebtedness, money, or other property to the debtor when the garnishment retention period expires as set forth in section 571.79.

History:
1990 c 606 art 3 s 10

571.79 DISCHARGE OF A GARNISHEE.

Except as provided in paragraph (h), the garnishee, after disclosure, shall be discharged of any further retention obligation to the creditor with respect to a specific garnishment summons when one of the following conditions are met:

(a) The garnishee discloses that the garnishee is not indebted to the debtor or does not possess any money or other property belonging to the debtor that is attachable as defined in section 571.73, subdivision 3. The disclosure is conclusive against the creditor and discharges the garnishee from any further obligation to the creditor other than to retain all nonexempt disposable earnings, indebtedness, money, and property of the debtor which was disclosed.

(b) The garnishee discloses that the garnishee is indebted to the debtor as indicated on the garnishment disclosure form. The disclosure is conclusive against the creditor and discharges the garnishee from any further obligation to the creditor other than to retain all nonexempt disposable earnings, indebtedness, money, and property of the debtor that was disclosed.

(c) If the garnishee was served with a garnishment summons before entry of judgment against the debtor by the creditor in the civil action and the garnishee has retained any

disposable earnings, indebtedness, money, or property of the debtor, 270 days after the garnishment summons is served the garnishee is discharged and the garnishee shall return any disposable earnings, indebtedness, money, and property to the debtor.

(d) If the garnishee was served with a garnishment summons after entry of judgment against the debtor by the creditor in the civil action and the garnishee has retained any disposable earnings, indebtedness, money, or property of the debtor, 180 days after the garnishment summons is served the garnishee is discharged and the garnishee shall return any disposable earnings, other indebtedness, money, and property to the debtor.

(e) If the garnished indebtedness, money, or other property is destroyed without any negligence of the garnishee, the garnishee is discharged of any liability to the creditor for nondelivery of the garnished indebtedness, money, and other property.

(f) The court may, upon motion of an interested person, discharge the garnishee as to any disposable earnings, other indebtedness, money, and property in excess of the amount that may be required to satisfy the creditor's claim.

(g) The discharge of the garnishee pursuant to paragraph (a), (b), (c), or (d) is not determinative of the rights of the creditor, debtor, or garnishee with respect to any other garnishment summons, even another garnishment summons involving the same parties, unless and to the extent adjudicated pursuant to the procedures described in paragraph (h).

(h) The garnishee is not discharged if within 20 days of the service of the garnishee's disclosure or the return to the debtor of any disposable earnings, indebtedness money, or other property of the debtor, whichever is later, an interested person (1) serves a motion scheduled to be heard within 30 days of the service of the motion relating to the garnishment, or (2) serves a motion scheduled to be heard within 30 days of the service of the motion for leave to file a supplemental complaint against the garnishee, as provided under section 571.75, subdivision 4, and the court upon proper showing vacates the discharge of the garnishee.

History:

1990 c 606 art 3 s 11; 2000 c 405 s 20

571.80 [Repealed, 2000 c 405 s 25]

571.81 GARNISHMENT LIEN; PRIORITIES OF CREDITORS.

Subdivision 1.Garnishment lien.

From the time of service of a garnishment summons upon a garnishee, either before or after judgment, the creditor has a perfected lien upon all disposable earnings, indebtedness, money, or other property of the debtor that is attached by garnishment pursuant to section 571.73, subdivision 3.

Subd. 2.Priorities of creditors.

Except as provided in this subdivision or in section 518A.53, a perfected lien by garnishment is subordinate to a preexisting voluntary or involuntary transfer, setoff, security interest, lien, or other encumbrance that is perfected, but a lien perfected by garnishment is superior to such interests subsequently perfected. Priorities of creditors relating to multiple wage garnishments are set forth in section 571.923. An assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to the garnishee incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.

Subd. 3.Continuity of garnishment lien.

When a lien by garnishment is perfected in disposable earnings, indebtedness, money, or property, neither that lien nor the date and priority of that lien is lost for any purpose when the creditor: (1) obtains the debtor's assignment of the same to the creditor; (2) levies execution upon the same or against the garnishee whether or not a release of garnishment accompanies the levy; or (3) obtains a court-ordered sale of the same.

History:

1990 c 606 art 3 s 13; 1991 c 199 art 1 s 83; 1997 c 203 art 6 s 92; 2005 c 164 s 29; 1Sp2005 c 7 s 28

571.82 JUDGMENT AGAINST GARNISHEE.

Subdivision 1.Judgment upon failure to disclose.

If a garnishee fails to serve a disclosure as required in this chapter, the court may render judgment against the garnishee, upon motion by the creditor, for an amount not exceeding 110 percent of the amount claimed in the garnishment summons. The motion shall be supported by an affidavit of the facts and shall be served upon both the debtor and the garnishee. The court upon good cause shown may remove the default and permit the garnishee to disclose on just terms.

Subd. 2.Limitation of liability.

Judgment against a garnishee shall be rendered, if at all, for the amount due to the debtor, or as much as may be necessary to satisfy the creditor's claim against the debtor, with costs taxed and allowed in the proceeding against the garnishee but not to exceed 110 percent of the amount claimed in the garnishment summons. This judgment discharges the garnishee from all claims of all parties named in the process in and to the property or money paid, delivered, or accounted for by the garnishee by force of the judgment.

History:

1990 c 606 art 3 s 14; 2000 c 405 s 21

571.83 JOINDER AND INTERVENTION BY PERSONS IN INTEREST.

If it appears that a person, who is not a party to the action, has or claims an interest in any of the disposable earnings, other indebtedness, money, or other property, the court shall permit that person to intervene or join in the garnishment proceeding. If that person does not appear, the court may summon that person to appear or order the claim barred. The person so appearing or summoned shall be joined as a party and be bound by the judgment.

History:

1990 c 606 art 3 s 15

571.84 VALUATION AND DISPOSITION OF PROPERTY IN HANDS OF THE GARNISHEE.

On motion of a person in interest the court may: (1) determine the value of property of the debtor in the hands of the garnishee; (2) make an order relative to the keeping, delivery, or sale of the property that is necessary to protect the rights of those interested; or (3) require the property to be delivered to a receiver or other person appointed by the court. If the garnishee refuses or neglects to comply with an order of the court, the garnishee may be held in contempt of court, and is also liable to the creditor for the value of the property, less the amount of a lien.

History:

1990 c 606 art 3 s 16

571.85 LIEN OF GARNISHEE.

If it appears that the garnishee has a security interest or lien on the indebtedness or property, the creditor, on motion, may be permitted to pay the amount of the lien or security interest, and the amount that is paid shall be repaid to the creditor, with interest, out of the proceeds from the sale of the indebtedness or property. The garnishee may sell the property to satisfy the lien, if a sale is authorized by the contract between the debtor and garnishee, at any time before the payment or tender.

History:

1990 c 606 art 3 s 17

571.86 DISCHARGE NOT A BAR.

If a person summoned as a garnishee is discharged pursuant to section 571.79, or released by the creditor, the discharge is no bar to an action brought against the garnishee by the debtor or other claimants.

History: *1990 c 606 art 3 s 18*

571.87 TRANSFER TO ANOTHER COURT.

In case of a change in venue or removal to a United States District Court, whether before or after full disclosure, the garnishment proceeding must be changed to the county or court to which the action is transferred. Written notice of the transfer, specifying the court to which the transfer is made, shall be served by the creditor on the garnishee. The transfer carries with it all pending proceedings and any disclosure made in those proceedings.

History:

1990 c 606 art 3 s 19

571.88 APPEAL.

A party to a garnishment proceeding aggrieved by an order or final judgment may appeal as in other civil cases.

History:

1990 c 606 art 3 s 20

571.90 PENALTY IN CERTAIN GARNISHMENT PROCEEDINGS.

A creditor who serves or causes to be served a garnishment summons before entry of judgment in the main action, except when garnishment before entry of judgment is permitted under this chapter, is liable to the debtor named in the garnishment proceedings in the amount of $100, plus actual damages, plus reasonable attorney's fees and costs. Any action by a creditor made in bad faith and in violation of this chapter renders the garnishment void and the creditor liable to the debtor named in the garnishment in the amount of $100, actual damages, and reasonable attorney's fees and costs.

History:

1990 c 606 art 3 s 21

571.91 GARNISHMENT OF FUNDS AT A FINANCIAL INSTITUTION.

Sections 571.911 to 571.915 relate to the garnishment of funds at a financial institution.

History:

1990 c 606 art 3 s 22

571.911 EXEMPTION NOTICE; DUTY OF FINANCIAL INSTITUTION.

If the garnishment summons is used to garnish funds of a debtor who is a natural person and if the funds to be garnished are held on deposit at a financial institution, the creditor shall serve with the garnishee summons a notice, instructions, and two copies of an exemption notice. The notice, instructions, and exemption notices must be substantially in the forms set forth in section 571.912. Failure of the creditor to send the exemption notice renders the garnishment void, and the financial institution shall take no action. Upon receipt of the garnishment summons and exemption notices, the financial institution shall retain as much of the amount under section 571.73 as the financial institution has on deposit owing to the debtor, but not more than 110 percent of the creditor's claim.

History:

1990 c 606 art 3 s 23; 2009 c 31 s 7

571.912 FORM OF NOTICE, INSTRUCTIONS, AND EXEMPTION NOTICE.

Subdivision 1.Form of notice.

The notice, instructions, and exemption notice informing a debtor that a garnishment summons has been used to attach funds of the debtor to satisfy a claim must be a separate notice and must be substantially in the following form:

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor)

(Financial institution)

IMPORTANT NOTICE

YOUR FUNDS HAVE BEEN GARNISHED

The Creditor has frozen money in your account at your financial institution.

Your account balance is $.....

The amount being held is $.....

The amount being held will be frozen for 14 days from the date of this notice.

Some of your money in your account may be protected (the legal word is exempt). You may be able to get it sooner than 14 days if you act quickly and follow the instructions on the next page.

The attached exemption form lists some different sources of money in your account that may be protected. If your money is from one or more of these sources, place a check on the line on the form next to the sources of your money. If it is from one of these sources, the Creditor cannot take it.

BUT, **you must follow the instructions and return the exemption form and copies of your bank statements from the last 60 days** to have the bank unfreeze your money. If you do not follow the instructions or your Creditor gets an order from the court or writ of execution, your financial institution will give the money to your Creditor. If that happens and it is protected, you can still get it back from the Creditor later, but that is not as easy to do as filling in the form now.

See next pages for instructions and the exemption form.

Subd. 2.Form of instructions.

The instructions required must be in a separate form and must be substantially in the following form:

INSTRUCTIONS

Note: The creditor is who you owe the money to. You are the debtor.

1. Fill out **both** of the attached exemption forms in this packet.

If you check one of the lines, you should also give proof that shows that some or all of the money in your account is from one or more of the protected sources. Creditors may ask for a hearing if they question your exemptions.

To avoid a hearing:

Case numbers should be added to the form.

Copies of documents should be sent with the form.

NOTICE: YOU MUST SEND TO THE CREDITOR'S ATTORNEY (OR TO THE CREDITOR, IF NO ATTORNEY) COPIES OF YOUR BANK STATEMENTS FOR THE PAST 60 DAYS BEFORE THE GARNISHMENT. Keep a copy of your bank statements in case there are questions about your claim. If you do not send to the creditor's attorney (or to the creditor, if no attorney) bank statements with your exemption claim, the financial institution may release your money to the creditor once the creditor gives the financial institution a court order directing it to turn over the funds.

2. **Sign** the exemption forms. **Make one copy to keep for yourself.**

3. **Mail or deliver** the other copies of the form by (insert date).

BOTH COPIES MUST BE MAILED OR DELIVERED THE SAME DAY.

One copy of the form and the copies of your bank statements go to:

(Insert name of creditor or creditor's attorney)

(Insert address of creditor or creditor's attorney)

One copy goes to:

(Insert name of bank)

(Insert address of bank)

HOW THE PROCESS WORKS

If You Do Not Send in the Exemption Form and Bank Statements:

14 days after the date of this letter some or all of your money may be turned over to the creditor once they get an order from the court telling the financial institution to do this.

If You Send in the Exemption Form and Bank Statements:

Any money that is NOT protected can be turned over to the creditor once they get an order from the court.

If the Creditor Does Not Object:

The financial institution will unfreeze your money six business days after the institution gets your completed form.

If the Creditor Objects:

The money you have said is protected on the form will be held by the bank. The creditor has six business days to object (disagree) and ask the court to hold a hearing. You will receive a Notice of Objection and a Notice of Hearing.

The financial institution will hold the money until a court decides whether your money is protected or not. Some reasons a creditor may object are because you did not send copies of your bank statements or other proof of the benefits you received. Be sure to include these when you send your exemption form.

You may want to talk to a lawyer for advice about this process. If you are low income you can call Legal Aid.

PENALTIES:

If you claim that your money is protected and a court decides you made that claim in bad faith, the court can order you to pay costs, actual damages, attorney fees, and an additional

amount of up to $100. For example, it may be bad faith if you claim you receive government benefits that you do not receive.

If the creditor made a bad faith objection to your claim that your money is protected, the court can order them to pay costs, actual damages, attorney fees, and an additional amount of up to $100.

Subd. 3.Exemption notice.

The exemption notice must be a separate form and must be in substantially the following form:

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor)

(Financial institution)

EXEMPTION FORM

A. **HOW MUCH MONEY IS PROTECTED**

I claim ALL of the money being frozen by the bank is protected.

I claim SOME of the money is protected. The amount I claim is protected is $.....

B. **WHY THE MONEY IS PROTECTED**

My money is protected because I get it from one or more of the following places: **(Check all that apply)**

Government benefits

Government benefits include, but are not limited to, the following:

MFIP - Minnesota family investment program,

MFIP Diversionary Work Program,

Work participation cash benefit,

GA - general assistance,

EA - emergency assistance,

MA - medical assistance,

GAMC - general assistance medical care,

EGA - emergency general assistance,

MSA - Minnesota supplemental aid,

MSA-EA - MSA emergency assistance,

Food Support,

SSI - Supplemental Security Income,

MinnesotaCare,

Medicare Part B premium payments,

Medicare Part D extra help,

Energy or fuel assistance.

LIST SOURCE(S) OF FUNDING IN YOUR ACCOUNT

LIST THE CASE NUMBER AND COUNTY

Case Number:

County:

Government benefits also include:

Social Security benefits

Unemployment benefits

Workers' compensation

Veterans benefits

If you receive any of these government benefits, include copies of any documents you have that show you receive Social Security, unemployment, workers' compensation, or veterans benefits.

Other assistance based on need

You may have assistance based on need from another source that is not on the list. If you do, check this box, and fill in the source of your money on the line below:

Source:

Include copies of any documents you have that show the source of this money.

EARNINGS

ALL or SOME of your earnings (wages) may also be protected.

All of your earnings (wages) are protected if:

You get government benefits (see list of government benefits)

You currently receive other assistance based on need

You have received government benefits in the last six months

You were in jail or prison in the last six months

If you check one of these lines, your wages are only protected for 60 days after they are deposited in your account so **you MUST send the creditor a copy of BANK STATEMENTS** that show what was in your account **for the 60 days right before the bank froze your money**.

Some of your earnings (wages) are protected.

If all of your earnings are not exempt, then some of your earnings are still protected for 20 days after they were deposited in your account. The amount protected is the larger amount of:

75 percent of your wages (after taxes are taken out); or

(insert the sum of the current federal minimum wage) multiplied by 40.

OTHER EXEMPT FUNDS

The money from the following are also completely protected after they are deposited in your account.

An accident, disability, or retirement pension or annuity

Payments to you from a life insurance policy

Earnings of your child who is under 18 years of age

Child support

Money paid to you from a claim for damage or destruction of property Property includes household goods, farm

tools or machinery, tools for your job, business equipment, a mobile home, a car, a musical instrument, a pew or burial lot, clothes, furniture, or appliances.

Death benefits paid to you

I give permission to any agency that has given me cash benefits to give information about my benefits to the above-named creditor, or its attorney. The information will **ONLY** concern whether I get benefits or not, or whether I have gotten them in the past six months.

If I was an inmate in the last six months, I give my permission to the correctional institution to tell the above-named creditor that I was an inmate there.

YOU MUST SIGN AND SEND THIS FORM BACK TO THE CREDITOR'S ATTORNEY (OR TO THE CREDITOR, IF NO ATTORNEY) AND THE BANK. REMEMBER TO INCLUDE A COPY OF YOUR BANK STATEMENTS FOR THE PAST 60 DAYS. FILL IN THE BLANKS BELOW AND GO BACK TO THE INSTRUCTIONS TO MAKE SURE YOU DO IT CORRECTLY.

I have mailed or delivered a copy of this form to:

(Insert name of creditor or creditor's attorney)

(Insert address of creditor or creditor's attorney)

I have also mailed or delivered a copy of this exemption form to my bank at the address listed in the instructions.

DATED:

DEBTOR

DEBTOR ADDRESS

DEBTOR TELEPHONE NUMBER

History:

1990 c 606 art 3 s 24; 1992 c 464 art 1 s 56; 1993 c 156 s 17; 1994 c 488 s 8; 1999 c 107 s 66; 1999 c 159 s 149; 2000 c 343 s 4; 2000 c 405 s 22; 2009 c 31 s 8

571.913 EFFECT OF EXEMPTION NOTICE.

Within two business days after receipt of the garnishment summons, the notice, instructions, and two copies of the exemption notice, the financial institution shall serve upon the debtor the notice, instructions, and two copies of the exemption notice. The financial institution shall serve these forms by first class mail to the last known address of the debtor. If no claim of exemption is received by the financial institution within 14 days after the exemption notices are mailed to the debtor, the funds remain subject to the garnishment summons. If the debtor elects to claim an exemption, the debtor shall complete the exemption notices, sign them under penalty of perjury, and deliver one copy to the financial institution and one copy to the attorney for the creditor within 14 days of the date postmarked on the correspondence mailed to the debtor containing the exemption notices. The debtor is also required to include copies of bank statements for the prior 60 days with the exemption notice delivered to the attorney for the creditor. In the event that there is no attorney for the creditor, then the notice and the bank statements must be sent directly to the creditor. Failure of the debtor to deliver the executed exemption notice or copies of the required bank statements for the prior 60 days does not constitute a waiver of a claimed right to an exemption. Upon timely receipt of a claim of exemption, funds not claimed to be exempt by the debtor remain subject to the garnishment summons. All money claimed to be exempt shall be released to the debtor upon the expiration of six business days after the date postmarked on the envelope containing the executed exemption notice mailed to the financial institution, or the date of personal delivery of the executed exemption notice to the financial institution, unless within that time the creditor interposes an objection to the exemption.

History:

1990 c 606 art 3 s 25; 2009 c 31 s 9

571.914 OBJECTION TO EXEMPTION CLAIM.

Subdivision 1.Objections and request for hearing.

An objection shall be interposed, within six business days of receipt by the creditor of an exemption claim from the debtor, by mailing or delivering one copy of the Notice of Objection and Notice of Hearing to the financial institution and one copy of the Notice of Objection and Notice of Hearing to the debtor.

The Notice of Objection and Notice of Hearing form must be substantially in the form set out in subdivision 2.

The court administrator may charge a fee of $1 for the filing of a Notice of Objection and Notice of Hearing. Upon the filing of a Notice of Objection and Notice of Hearing, the court administrator shall schedule the matter for hearing no sooner than five business days but no later than seven business days from the date of filing. A debtor may request continuance of the hearing by notifying the creditor and the court. The court shall schedule the continued hearing within seven days of the original hearing date.

An order stating whether the debtor's funds are exempt shall be issued by the court within three days of the date of the hearing.

Subd. 2.Form of Notice of Objection and Notice of Hearing.

The Written Objection and Notice of Hearing must be in substantially the following form:

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor) CREDITOR'S NOTICE OF OBJECTION

(Garnishee) AND NOTICE OF HEARING ON EXEMPTION CLAIM

(CREDITOR OR CREDITOR'S ATTORNEY)

NOTICE OF HEARING

The creditor objects to your exemption claim. This hearing is to resolve your exemption claim.

Hearing Date:

Time:

Hearing Place:

The creditor objects to your claim of exemption from garnishment for the following reason(s):

(Note: Bring with you to the hearing all documents and materials supporting your exemption claim. Failure to do so could delay the court's decision.**)**

If the creditor receives all documents and materials supporting your exemption claim before the hearing date, the creditor may agree with your claim and you can avoid a hearing.

Because a court hearing will be held on your claim that your funds are protected, your financial institution will retain the funds until it receives an order from the court.

Subd. 3.

[Repealed by amendment, 2009 c 31 s 10]

Subd. 4.Duties of financial institution if objection is made to exemption claim.

Upon receipt of a Notice of Objection and Notice of Hearing from the creditor within the specified six-day period, the financial institution shall retain the funds claimed to be exempt. The financial institution shall retain the funds claimed to be exempt until otherwise ordered by the court, upon mutual agreement of the parties, or until the garnishment lapses pursuant to section 571.79.

History:

1990 c 606 art 3 s 26; 1992 c 464 art 1 s 56; 2000 c 405 s 23; 2009 c 31 s 10; 2010 c 382 s 80

571.915 RELEASE OF FUNDS.

At any time the debtor or the creditor may, by a writing dated after the service of the garnishment summons, direct the financial institution to release the funds in question to the other party. Upon receipt of a release, the financial institution shall release the funds as directed.

History:

1990 c 606 art 3 s 27

571.92 GARNISHMENT OF EARNINGS.

Sections 571.921 to 571.926 relate to the garnishment of earnings.

History:

1990 c 606 art 3 s 28

571.921 DEFINITIONS.

For purposes of sections 571.921 to 571.926, the following terms have the meanings given them:

(a) "Earnings" means:

(1) compensation paid or payable to an employee for personal service whether denominated as wages, salary, commissions, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program;

(2) compensation paid or payable to the producer for the sale of agricultural products; livestock or livestock products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2; or

(3) maintenance as defined in section 518.003, subdivision 3a.

(b) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(c) "Employee" means an individual who performs services subject to the right of the employer to control both what is done and how it is done.

(d) "Employer" means a person for whom an individual performs services as an employee.

History:
1990 c 606 art 3 s 29; 1998 c 382 art 2 s 19; 2005 c 164 s 29; 1Sp2005 c 7 s 28

571.922 LIMITATION ON WAGE GARNISHMENT.

(a) Unless the judgment is for child support, the maximum part of the aggregate disposable earnings of an individual for any pay period subjected to garnishment may not exceed the lesser of:

(1) 25 percent of the debtor's disposable earnings; or

(2) the amount by which the debtor's disposable earnings exceed the following product: 40 times the federal minimum hourly wages prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, United States Code, title 29, section 206(a)(1), in effect at the time the earnings are payable, times the number of work weeks in the pay period. When a pay period consists of other than a whole number of work weeks, each day of that pay period in excess of the number of completed work weeks shall be counted as a fraction of a work week equal to the number of excess workdays divided by the number of days in the normal work week.

(b) If the judgment is for child support, the garnishment may not exceed:

(1) 50 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child and the judgment is 12 weeks old or less (12 weeks to be calculated to the beginning of the work week in which the execution levy is received);

(2) 55 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the garnishment summons is received);

(3) 60 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child and the judgment is 12 weeks old or less (12 weeks to be calculated to the beginning of the work week in which the execution levy is received); or

(4) 65 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the garnishment summons is received).

Wage garnishments on judgments for child support are effective until the judgments are satisfied if the judgment creditor is a county and the employer is notified by the county when the judgment is satisfied.

(c) No court may make, execute, or enforce an order or any process in violation of this section.

History:

1990 c 606 art 3 s 30; 1991 c 156 s 20; 1993 c 156 s 18

571.923 MULTIPLE EARNINGS GARNISHMENTS.

Except as otherwise provided in this chapter or section 518A.53, the priority of multiple earnings garnishments shall be determined by the order in which the garnishment summonses were served on the employer. If the employer is served with two or more garnishment summonses at the same time on the same day, the garnishment summons issued pursuant to the first judgment entered has priority. If two or more garnishment summonses are served on the same day and are based on judgments entered on the same day or if there are two or more garnishment summonses based on prejudgment garnishment pursuant to section 571.93, then the employer shall select the priority of the earnings garnishments. However, in all cases except wage garnishments on judgments for child support if the judgment creditor is a county and the employer is notified by the county when the judgment is satisfied, garnishments shall be effective no longer than 70 days from the date of the service of the garnishment summons.

History:

1990 c 606 art 3 s 31; 1993 c 156 s 19; 1997 c 203 art 6 s 92; 2005 c 164 s 29; 1Sp2005 c 7 s 28

571.924 GARNISHMENT EXEMPTION NOTICE.

Subdivision 1.Requirement.

The creditor shall serve upon the debtor, no less than ten days before the service of the garnishment summons, a notice that a summons may be issued. The notice shall: (1) be substantially in the form set out in section 571.925; (2) be served personally, in the manner of a summons and complaint, or by first class mail to the last known address of the debtor; (3) inform the debtor that a garnishment summons may be served on the debtor's employer after ten

days, and that the debtor may, within that time, cause to be served on the creditor a signed statement under penalties of perjury asserting an entitlement to an exemption from garnishment; (4) inform the debtor of the earnings garnishment exemptions contained in section 550.37, subdivision 14; and (5) advise the debtor of the relief set forth in this chapter to which the debtor may be entitled if a creditor in bad faith disregards a valid claim and the fee, costs, and penalty that may be assessed against a debtor who in bad faith falsely claims an exemption or in bad faith takes action to frustrate the garnishment process.

Subd. 2.Additional notices.

If the garnishment summons has not been served within one year after service of the notice, the creditor shall serve another notice upon the debtor before serving the garnishment summons on the debtor's employer. If more than one year has passed since the service of the creditor's most recent garnishment summons, the creditor shall, no less than ten days before service of another garnishment summons, serve notice that another garnishment summons may be served.

History:

1990 c 606 art 3 s 32

571.925 FORM OF NOTICE.

The ten-day notice informing a debtor that a garnishment summons may be used to garnish the earnings of an individual must be substantially in the following form:

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)
against

GARNISHMENT EXEMPTION

(Debtor) NOTICE AND NOTICE OF

and INTENT TO GARNISH EARNINGS

(Garnishee)

PLEASE TAKE NOTICE that a garnishment summons or levy may be served upon your employer or other third parties, without any further court proceedings or notice to you, ten days or more from the date hereof. Some or all of your earnings are exempt from garnishment. If your earnings are garnished, your employer must show you how the amount that is garnished from your earnings was calculated. You have the right to request a hearing if you claim the garnishment is incorrect.

Your earnings are completely exempt from garnishment if you are now a recipient of assistance based on need, if you have been a recipient of assistance based on need within the last six months, or if you have been an inmate of a correctional institution in the last six months.

Assistance based on need includes, but is not limited to:

MFIP - Minnesota family investment program,

MFIP Diversionary Work Program,

Work participation cash benefit,

GA - general assistance,

EA - emergency assistance,

MA - medical assistance,

GAMC - general assistance medical care,

EGA - emergency general assistance,

MSA - Minnesota supplemental aid,

MSA-EA - MSA emergency assistance,

Food Support,

SSI - Supplemental Security Income,

MinnesotaCare,

Medicare Part B premium payments,

Medicare Part D extra help,

Energy or fuel assistance.

If you wish to claim an exemption, you should fill out the appropriate form below, sign it, and send it to the creditor's attorney and the garnishee.

You may wish to contact the attorney for the creditor in order to arrange for a settlement of the debt or contact an attorney to advise you about exemptions or other rights.

PENALTIES

(1) Be advised that even if you claim an exemption, a garnishment summons may still be served on your employer. If your earnings are garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorney fees, actual damages, and an amount not to exceed $100.

(2) HOWEVER, BE WARNED if you claim an exemption, the creditor can also petition the court for a determination of your exemption, and if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable attorney's fees plus an amount not to exceed $100.

(3) If after receipt of this notice, you in bad faith take action to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the problem, you will be liable to the creditor for costs and reasonable attorney's fees plus an amount not to exceed $100.

Dated:

(Attorney for) Creditor

Address

Telephone

DEBTOR'S EXEMPTION CLAIM NOTICE

I hereby claim that my earnings are exempt from garnishment because:

(1) I am presently a recipient of relief based on need. (Specify the program, case number, and the county from which relief is being received.)

Program Case Number (if known) County

(2) I am not now receiving relief based on need, but I have received relief based on need within the last six months. (Specify the program, case number, and the county from which relief has been received.)

Program Case Number (if known) County

(3) I have been an inmate of a correctional institution within the last six months. (Specify the correctional institution and location.)

Correctional Institution Location

I hereby authorize any agency that has distributed relief to me or any correctional institution in which I was an inmate to disclose to the above-named creditor or the creditor's attorney only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institution within the last six months. I have mailed or delivered a copy of this form to the creditor or creditor's attorney.

Date Debtor

Address

Debtor Telephone Number

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

(Creditor)

(Debtor)

(Financial institution)

History:

1986 c 444; *1990 c 606 art 3 s 33*; *1999 c 159 s 150*; *2000 c 405 s 24*; *2009 c 31 s 11*

571.926 PROCEEDINGS IF NO EXEMPTION STATEMENT IS RECEIVED.

If no statement of exemption is received by the creditor on an earnings garnishment within ten days from the service of the notice, the creditor may proceed with the garnishment. Failure of the debtor to serve a statement does not constitute a waiver of any right the debtor may have to an exemption. If the statement of exemption is received by the creditor, the creditor may still cause a garnishment summons to be issued subject to sanctions provided in section 571.72, subdivision 6.

History:

1990 c 606 art 3 s 34

571.927 PENALTY FOR RETALIATION FOR GARNISHMENT.

Subdivision 1.Prohibition.

An employer shall not discharge or otherwise discipline an employee as a result of an earnings garnishment authorized by this chapter.

Subd. 2.Remedy.

If an employer violates this section, a court may order the reinstatement of an aggrieved party who demonstrates a violation of this section, and other relief the court considers appropriate. The aggrieved party may bring a civil action within 90 days of the date of the prohibited action. If an employer-employee relationship existed before the violation of this section, the employee shall recover twice the wages lost as a result of this violation.

Subd. 3.Nonwaiver.

The rights guaranteed by this section may not be waived or altered by employment contract.

History:

1990 c 606 art 3 s 35

571.93 GARNISHMENT BEFORE JUDGMENT OR DEFAULT.

Subdivision 1.Grounds.

The court may order the issuance of a garnishment summons before judgment or default in the civil action, if a summons and complaint, or copies of these documents, are filed with the appropriate court, and if, upon application to the court, it appears that any of the following grounds exist:

(1) the debtor has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the debtor's nonexempt property, with intent to delay or defraud any of debtor's creditors;

(2) the debtor has removed, or is about to remove, any of the debtor's nonexempt property from this state, with intent to delay or defraud any of debtor's creditors;

(3) the debtor has converted or is about to convert any of the debtor's nonexempt property into money or credits, for the purpose of placing the property beyond the reach of any of debtor's creditors;

(4) the debtor has committed an intentional fraud giving rise to the claim upon which the civil action is brought;

(5) the debtor has committed any act or omission, for which the debtor has been convicted of a felony, giving rise to the claim upon which the civil action is brought; or

(6) the purpose of the garnishment is to establish quasi in rem jurisdiction and

(i) debtor is a resident individual having left the state with intent to defraud creditors, or to avoid service; or

(ii) a judgment had previously been obtained in another state consistent with due process; or

(iii) the claim in the civil action is directly related to and arises from the property sought to be attached; or

(iv) no forum is available to obtain a personal judgment against the debtor in the United States or elsewhere; or

(7) the creditor has been unable to serve upon the debtor the summons and complaint in the civil action because the debtor has been inaccessible due to residence and employment in a building where access is restricted.

Subd. 2.Notice and hearing requirements.

If the garnishment is before notice and hearing, the requirements of section 571.931 must be met. If the garnishment is after notice and hearing, the requirements of section 571.932 must be met.

History:

1990 c 606 art 3 s 36

571.931 PREJUDGMENT GARNISHMENT BEFORE NOTICE AND HEARING.

Subdivision 1.Written application.

A creditor seeking a prejudgment garnishment order in extraordinary circumstances to secure property before the hearing specified in section 571.932 shall proceed by written application. The application must be accompanied by affidavits or by oral testimony, or both, setting forth in detail:

(1) the basis and the amount of the claim in the civil action;

(2) the facts which constitute the conditions for prejudgment garnishment as specified in section 571.93, subdivision 1; and

(3) a good faith estimate, based on facts known to the creditor, of any harm that would be suffered by the debtor if a prejudgment garnishment order is entered without notice and hearing.

Subd. 2.Conditions.

A prejudgment garnishment order may be issued before the hearing specified in subdivision 4 only if the following conditions are met:

(1) the creditor has made a good faith effort to inform the debtor of the application for a prejudgment garnishment order or that informing the debtor would endanger the ability of the creditor to recover upon a judgment subsequently awarded;

(2) the creditor has demonstrated the probability of success on the merits;

(3) the creditor has demonstrated the existence of one or more of the grounds specified in section 571.93, subdivision 1; and

(4) due to extraordinary circumstances, the creditor's interests cannot be protected pending a hearing by an appropriate order of the court, other than by directing a prehearing seizure of property.

Subd. 3.Order.

All prejudgment garnishment orders must:

(1) state the names and addresses of all persons whose affidavits were submitted to the court and of all witnesses who gave oral testimony;

(2) contain specific findings of fact, based upon competent evidence presented either in the form of affidavits or oral testimony, supporting the conclusion that each of the conditions in subdivision 1 have been met;

(3) be narrowly drafted to minimize any harm to the debtor as a result of the seizure of the debtor's property; and

(4) provide for the bond required by section 571.932, subdivision 6.

Subd. 4.Subsequent hearing.

If the court issues a prejudgment garnishment order, the order must establish a date for a hearing at which the debtor may be heard. The subsequent hearing must be conducted at the

earliest practicable time. At the hearing, the burden of proof is on the creditor to establish the grounds justifying the prejudgment garnishment order.

Subd. 5.Standards at subsequent hearing.

The hearing held pursuant to subdivision 4 must be conducted in accordance with the standards established in section 571.932. In addition, if the court finds that the motion for a prejudgment garnishment order was made in bad faith, the court shall award debtor the actual damages, costs, and reasonable attorney's fees, suffered by reason of the prejudgment garnishment.

Subd. 6.Notice.

The debtor shall be served with a copy of the prejudgment garnishment order issued pursuant to this section together with a copy of all pleadings and other documents not previously served, including any affidavits upon which the claimant intends to rely at the subsequent hearing and a transcript of any oral testimony given at the prejudgment garnishment hearing upon which the creditor intends to rely and a notice of hearing. Service must be in the manner prescribed for personal service of a summons unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the debtor.

The notice of hearing served upon the debtor must be signed by the creditor or the attorney for the creditor and must be accompanied by an exemption notice. The notice of hearing must be accompanied by an exemption notice, and both notices must provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

TO: (the debtor)

The (insert the name of court) Court has ordered the prejudgment garnishment of some of your property in the possession or control of a third party. Some of your property may be exempt from seizure. See the exemption notice below.

The Court issued this Order based upon the claim of (insert name of creditor) that (insert name of creditor) is entitled to a court order for garnishment of your property to secure your payment of any money judgment that (insert name of creditor) may later be obtained against you and that immediate action was necessary.

You have the legal right to challenge (insert name of creditor) claims at a court hearing before a judge. The hearing will be held at the (insert place) on (insert date) at (insert time). You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide what should be done with your property until the lawsuit against you is finally decided.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER GARNISHMENT OF YOUR PROPERTY.

EXEMPTION NOTICE

Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. If you have questions about an exemption, you should obtain competent legal advice.

(1) A homestead or the proceeds from the sale of a homestead.

(2) Household furniture, appliances, phonographs, radios, and televisions up to a total current value of $4,500 at the time of attachment.

(3) A manufactured (mobile) home used as your home.

(4) One motor vehicle currently worth less than $2,000 after deducting any security interests.

(5) Farm machinery used by someone principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to $10,000.

(6) Relief based on need. This includes the Minnesota Family Investment Program (MFIP), Emergency Assistance (EA), Work First Program, Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.

(7) Social Security benefits.

(8) Unemployment benefits, workers' compensation, or veterans' benefits.

(9) An accident, disability or retirement pension or annuity.

(10) Life insurance proceeds.

(11) The earnings of your minor child.

(12) Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

History:

1990 c 606 art 3 s 37; 1994 c 488 s 8; 1999 c 107 s 66; 1999 c 159 s 151; 2000 c 343 s 4

571.932 PREJUDGMENT GARNISHMENT AFTER NOTICE AND HEARING.

Subdivision 1.Motion.

A creditor seeking to obtain an order of garnishment in other than extraordinary circumstances shall proceed by motion. The motion must be accompanied by an affidavit setting forth in detail:

(1) the basis and amount of the claim in the civil action; and

(2) the facts that constitute one or more of the grounds for garnishment as specified in section 571.93, subdivision 1.

Subd. 2.Service.

The creditor's motion to obtain an order of garnishment together with the creditor's affidavit and notice of hearing must be served in the manner prescribed for service of a summons in a civil action in district court unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the debtor. If the debtor has already appeared in the action, the motion must be served in the manner prescribed for service of pleadings subsequent to the summons. The date of the hearing must be fixed in accordance with rule 6 of the Minnesota Rules of Civil Procedure for the District Courts, unless a different date is fixed by order of the court.

The notice of hearing served upon the debtor shall be signed by the creditor or the attorney for the creditor and shall provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

TO: (the debtor)

A hearing will be held (insert place) on (insert date) at (insert time) to determine whether nonexempt property belonging to you will be garnished to secure a judgment that may be entered against you.

You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide whether your property should be garnished until the lawsuit which has been commenced against you is finally decided.

If the court directs the issuance of a garnishment summons while the lawsuit is pending, you may still keep the property until the lawsuit is decided if you file a bond in an amount set by the court.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER YOUR NONEXEMPT PROPERTY TO BE GARNISHED.

EXEMPTION NOTICE

Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. The dollar amounts contained in this list are subject to the provisions of section 550.37, subdivision 4a, at the time of the garnishment. If you have questions about an exemption, you should obtain competent legal advice.

(1) A homestead or the proceeds from the sale of a homestead.

(2) Household furniture, appliances, phonographs, radios, and televisions up to a total current value of $5,850.

(3) A manufactured (mobile) home used as your home.

(4) One motor vehicle currently worth less than $2,600 after deducting any security interests.

(5) Farm machinery used by an individual principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to $13,000.

(6) Relief based on need. This includes the Minnesota Family Investment Program (MFIP), Emergency Assistance (EA), Work First Program, Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.

(7) Social Security benefits.

(8) Unemployment benefits, workers' compensation, or veterans' benefits.

(9) An accident, disability or retirement pension or annuity.

(10) Life insurance proceeds.

(11) The earnings of your minor child.

(12) Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

Subd. 3.Standards for order.

An order for prejudgment garnishment may be issued only if the creditor has demonstrated the probability of success on the merits, and the creditor has stated facts that show the existence of at least one of the grounds stated in section 571.93, subdivision 1. However, even if those standards are met, the order may not be issued if:

(1) the circumstances do not constitute a risk to collectibility of any judgment that may be entered; or

(2)(i) the debtor has raised a defense to the merits of the creditor's claim or has raised a counterclaim in an amount equal to or greater than the claim and the defense or counterclaim is not frivolous; and

(ii) the interests of the debtor cannot be adequately protected by a bond filed by the creditor pursuant to section 571.932, subdivision 6, if property is garnished; and

(iii) the harm suffered by the debtor as a result of garnishment would be greater than the harm that would be suffered by the creditor if property is not attached.

Subd. 4.Protection of creditor.

If the creditor makes the showing prescribed by subdivision 3 but the court nevertheless determines that an order of garnishment should not be issued for the reasons set forth in subdivision 3, clause (2), the court shall enter a further order protecting the rights of the creditor to the extent possible. The order may require that the debtor post a bond in an amount set by the court, that the debtor make the property available for inspection from time to time, that the

debtor be restrained from certain activities, including, but not limited to, selling, disposing, or otherwise encumbering property, or any other provision the court considers appropriate.

Subd. 5.Stay of order.

An order permitting prejudgment garnishment of property may be stayed up to three days to allow the debtor time to post a bond.

Subd. 6.Bonding requirement.

(a) Before issuing an order of garnishment, the court shall require the creditor to post a bond in the penal sum of at least $500, conditioned that if judgment be given for the debtor or if the order is vacated, the creditor will pay all costs that may be awarded against the creditor and all damages caused by the garnishment. Damages may be awarded in a sum in excess of the bond only if, before the issuance of the order establishing the amount of the bond, the debtor specifically notified the creditor and the court of the likelihood that the debtor would suffer the specific damages, or the court finds that the creditor acted in bad faith in bringing or pursuing the garnishment proceeding. In establishing the amount of the bond, the court shall consider the value and nature of the property garnished, the method of retention or storage of the property, the potential harm to the debtor or any party, and other factors that the court considers appropriate. Nothing in this section modifies or restricts the application of section 549.20 or 549.211.

(b) The court may at any time modify the amount of the bond upon its own motion or upon the motion of a party based on the value of the property garnished, the nature of the property attached, the methods of retention or storage of the property, the potential harm to the debtor or a party, or other factor that the court considers appropriate.

(c) In lieu of filing a bond, either the creditor or the debtor may satisfy the bonding requirements by depositing cash, an irrevocable letter of credit, a cashier's check, or a certified check with the court.

Subd. 7.Requirements of order.

An order for prejudgment garnishment after notice and hearing must:

(1) contain the findings required by section 571.932, subdivision 3;

(2) state with particularity the facts upon which the findings are made;

(3) state that a debtor who attended the hearing was offered an opportunity to identify exempt property, without waiver of the right to claim exemption in property not identified at the hearing;

(4) direct the issuance of a garnishment summons; and

(5) specify the amount of the bond.

History:

1990 c 606 art 3 s 38; 1994 c 488 s 8; 1997 c 213 art 2 s 4; 1999 c 107 s 66; 1999 c 159 s 152; 2000 c 343 s 4

604.113 ISSUANCE OF WORTHLESS CHECK.

Subdivision 1.Definitions.

(a) The definitions provided in this subdivision apply to this section.

(b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(c) "Credit" means an arrangement or understanding with the drawee for the payment of the check.

(d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

(e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2.Acts constituting.

Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge, not to exceed $30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check on behalf of the payee or holder, up to the entire amount of the service charge may be retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to $100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over $1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

Subd. 3.Notice of dishonor required.

Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4.Proof of identity.

The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

(1) name;

(2) home or work address;

(3) home or work telephone number; and

(4) identification number issued pursuant to section 171.07;

(b) compares the issuer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5.Defenses.

Any defense otherwise available to the issuer also applies to liability under this section.

History:

1983 c 225 s 6; 1984 c 576 s 26; 1985 c 140 s 1,2; 1991 c 256 s 8,9; 1992 c 565 s 113; 1996 c 414 art 1 s 41; 1997 c 157 s 65,66; 1999 c 218 s 1; 2001 c 204 s 1; 2004 c 174 s 3

609.535 ISSUANCE OF DISHONORED CHECKS.

Subdivision 1.Definitions.

For the purpose of this section, the following terms have the meanings given them.

(a) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(b) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

Subd. 2.Acts constituting.

Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subdivision 2a. In addition, restitution may be ordered by the court.

Subd. 2a.Penalties.

(a) A person who is convicted of issuing a dishonored check under subdivision 2 may be sentenced as follows:

(1) to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than $500;

(2) to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than $250 but not more than $500; or

(3) to imprisonment for not more than 90 days or to payment of a fine of not more than $1,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than $250.

(b) In a prosecution under this subdivision, the value of dishonored checks issued by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the dishonored checks was issued for all of the offenses aggregated under this paragraph.

Subd. 3.Proof of intent.

Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

Notice of nonpayment or dishonor that includes a citation to and a description of the penalties in this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within five business days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4.Proof of lack of funds or credit.

If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

Subd. 5.Exceptions.

This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

Subd. 6.Release of account information to law enforcement authorities.

A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3), item (i), and that 15 days have elapsed since the mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

(1) documents relating to the opening of the account by the drawer and to the closing of the account;

(2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;

(3) periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or

(4) the last known home and business addresses and telephone numbers of the drawer.

The drawee shall release all of the information described in clauses (1) to (4) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may not impose a fee for furnishing this information to law enforcement or prosecuting authorities.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

Subd. 7.Release of account information to payee or holder.

(a) A drawee shall release the information specified in paragraph (b), clauses (1) to (3) to the payee or holder of a check that has been dishonored who makes a written request for this information and states in writing that the check has been dishonored and that 30 days have elapsed since the mailing of the notice described in subdivision 8 and who accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.

The requesting payee or holder shall notify the drawee immediately to cancel this request if payment is made before the drawee has released this information.

(b) This subdivision applies to the following information relating to the drawer's account:

(1) whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or restricted for any reason and the date it was closed or restricted;

(2) the last known home address and telephone number of the drawer. The drawee may not release the address or telephone number of the place of employment of the drawer unless the drawer is a business entity or the place of employment is the home; and

(3) a statement as to whether the aggregated value of dishonored checks attributable to the drawer within six months before or after the date of the dishonored check exceeds $250; for purposes of this clause, a check is not dishonored if payment was not made pursuant to a stop payment order.

The drawee shall release all of the information described in clauses (1) to (3) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may require the person requesting the information to pay the reasonable costs, not to exceed 15 cents per page, of reproducing and mailing the requested information.

(c) A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

Subd. 8.Notice.

The provisions of subdivisions 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities.

History:

1963 c 753 art 1 s 609.535; 1967 c 466 s 1; 1971 c 23 s 56; 1974 c 106 s 1,2; 1981 c 202 s 1; 1981 c 247 s 1-3; 1983 c 225 s 10; 1984 c 436 s 34; 1985 c 140 s 3; 1986 c 444; 1988 c 527 s 2,3; 1991 c 256 s 11-13; 1992 c 569 s 26; 1999 c 218 s 3; 2004 c 228 art 1 s 72

Minnesota Administrative Rules

CHILD CARE

3400.0187 RECOUPMENT AND RECOVERY OF OVERPAYMENTS.

Subpart 1. State recovery of overpayments.

The commissioner must recover from counties any state or federal money that was spent for persons found to be ineligible for child care assistance, except as provided in Minnesota Statutes, section 119B.11, subdivision 3.

Subp. 1a. [Repealed, 33 SR 695]

Subp. 2. Notice of overpayment.

The county must notify the person or persons assigned responsibility for the overpayment of the overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the right to appeal the county's overpayment determination.

Subp. 3. Redetermination of eligibility.

When a county discovers that a family has received an overpayment, the county must immediately redetermine the family's eligibility for child care assistance.

Subp. 4. Recoupment of overpayments from participants.

If the redetermination of eligibility indicates the family remains eligible for child care assistance, the county must recoup the overpayment by reducing the amount of assistance paid to or on behalf of the family for every service period at the rates in item A, B, C, or D until the overpayment debt is retired.

A. When a family has an overpayment due to agency or provider error, the recoupment amount is one-fourth the family's copayment or $10, whichever is greater.

B. When the family has an overpayment due to the family's first failure to report changes as required by part 3400.0040, subpart 4, the recoupment amount is one-half the family's copayment or $10, whichever is greater.

C. When a family has an overpayment due to the family's failure to provide accurate information at the time of application or redetermination or the family's second or subsequent failure to report changes as required by part 3400.0040, subpart 4, the recoupment amount is one-half the family's copayment or $50, whichever is greater.

D. When a family has an overpayment due to a violation of Minnesota Statutes, section 256.98, subdivision 1, as established by a court conviction, a court-ordered stay of conviction with probationary or other terms, a disqualification agreement, a pretrial diversion, or an administrative disqualification hearing or waiver, the recoupment amount equals the greater of:

(1) the family's copayment;

(2) ten percent of the overpayment; or

(3) $100.

E. This item applies to families who have been disqualified or found to be ineligible for the child care assistance program and who have outstanding overpayments. If a disqualified or previously ineligible family returns to the child care assistance program, the county must begin recouping the family's outstanding overpayment using the recoupment schedule in items A to D unless another repayment schedule has been specified in a court order.

F. If a family has more than one overpayment, the overpayments must not be consolidated into one overpayment. Instead, each overpayment must be recouped according to the schedule specified in this subpart from the child care benefit paid for the service period. If the amount to be recouped in a service period exceeds the child care benefit paid for that service period, the amount recouped must be applied to overpayments in the following order:

(1) payment must first be applied to the oldest overpayment being recouped under item D and then to any other overpayments to be recouped under this item according to the age of the claim;

(2) payment then must be applied to the oldest overpayment being recouped under item C and then to any other overpayments to be recouped under this item according to the age of the claim;

(3) payment then must be applied to the oldest overpayment being recouped under item B and then to any other overpayments to be recouped under this item according to the age of the claim; and

(4) payment then must be applied to the oldest overpayment being recouped under item A and then to any other overpayments to be recouped under this item according to the age of the claim.

Subp. 5. [Repealed, 33 SR 695]

Subp. 6. Recoupment of overpayments from providers.

If the provider continues to receive child care assistance payments, the county must recoup the overpayment by reducing the amount of assistance paid to the provider for every payment at the rates in item A, B, or C until the overpayment debt is retired.

A. When a provider has an overpayment due to agency or family error, the recoupment amount is one-tenth the provider's payment or $20, whichever is greater.

B. When a provider has an overpayment due to the provider's failure to provide accurate information, the recoupment amount is one-fourth the provider's payment or $50, whichever is greater.

C. When a provider has an overpayment due to a violation of Minnesota Statutes, section 256.98, subdivision 1, as established by a court conviction, a court-ordered stay of conviction with probationary or other terms, a disqualification agreement, a pretrial diversion, or an administrative disqualification hearing or waiver, the recoupment amount equals the greater of:

(1) one-half the provider's payment;

(2) ten percent of the overpayment; or

(3) $100.

D. This item applies to providers who have been disqualified from or are no longer able to be authorized by the child care assistance program and who have outstanding overpayments. If a provider returns to the child care assistance program as a provider or a participant, the county must begin recouping the provider's outstanding overpayment using the recoupment schedule in items A to D unless another repayment schedule has been specified in a court order.

E. If a provider has more than one overpayment, the overpayments must not be consolidated into one overpayment. Instead, each overpayment must be recouped according to the schedule specified in this subpart from the payment made to the provider for the service period. If the amount to be recouped in a service period exceeds the payment to the provider for that service period, the amount recouped must be applied to overpayments in the following order:

(1) payment must first be applied to the oldest overpayment being recouped under item C and then to any other overpayments to be recouped under this item according to the age of the claim;

(2) payment then must be applied to the oldest overpayment being recouped under item B and then to any other overpayments to be recouped under this item according to the age of the claim; and

(3) payment then must be applied to the oldest overpayment being recouped under item A and then to any other overpayments to be recouped under this item according to the age of the claim.

Statutory Authority:
MS s 119B.02; 119B.04; 119B.06; 256.01

History:
26 SR 253; 33 SR 695

Posted:
October 29, 2008

REVENUE RECAPTURE

8165.0100 REVENUE RECAPTURE; IDENTIFYING INFORMATION.

In addition to the name and social security number of the debtor as required by Minnesota Statutes, section 270A.04, subdivision 3, the commissioner of revenue may require an agency making a revenue recapture claim to furnish any of the following information in order for the commissioner to correctly identify the debtor:

A. the address of the debtor;

B. a former address of the debtor;

C. the name and social security number of the debtor's spouse;

D. the name and social security number of the debtor's ex-spouse;

E. the name and address of the debtor's employer or a former employer; and

F. the names of dependents of the debtor.

Statutory Authority:
MS s 270A.04; 270C.06

History:
17 SR 1229; L 2005 c 151 art 1 s 114

Posted:
November 14, 2006

8165.0200 SUSPENSION OF CLAIMANT AGENCY STATUS.

Subpart 1. Commissioner's power to suspend.

A claimant agency defined under Minnesota Statutes, section 270A.03, subdivision 2, shall be suspended from participation in the Revenue Recapture Act for a violation of the act after due notice and an opportunity for hearing.

For purposes of this part, the terms used have the same meaning as in Minnesota Statutes, chapter 270A. The specified proceedings shall be governed by the procedure for contested case proceedings as provided in Minnesota Statutes, chapter 14.

Subp. 2. Reasons for suspension.

A claimant agency shall be suspended from filing new claims or receiving offsets on existing claims, if the agency has done one of the following:

A. failed to remit to a spouse who does not owe the debt the spouse's properly allocated share of a joint tax refund which has been recaptured to satisfy a debt of the liable spouse;

B. filed claims on debts for which the time period allowed by law for collecting the debt has expired;

C. failed to notify the commissioner to remove from revenue recapture satisfied debts or debts for which the time period allowed by law for collecting the debt has expired;

D. failed to notify debtors of the basis and validity of the agency's claim, whether the debtor might be exempt, or of the debtor's right to a contested case hearing; or

E. violated any other provisions of Minnesota Statutes, chapter 270A.

Subp. 3. Warning.

Whenever a claimant agency has violated a provision of the Revenue Recapture Act, the commissioner shall notify the claimant agency in writing of the specific violation committed. The notification must contain a warning to the claimant agency that if the violation continues, the commissioner shall commence a proceeding for suspension from participation in the Revenue Recapture Act. The claimant agency must mail its reply to the notice within 30 days after the notice is mailed and when necessary, correct any deficiencies.

Subp. 4. Proceeding.

A. If a claimant agency fails to comply with the warning in subpart 3, the commissioner shall send a written notice to the claimant agency, providing the following information:

(1) the nature of the violations of the Revenue Recapture Act that the agency has committed;

(2) the commissioner's intent to suspend the agency from filing new claims or receiving offsets on existing claims;

(3) the right of the claimant agency to appeal the suspension by submitting a written request for a contested case hearing to the commissioner within 30 days after the notice is mailed; and

(4) the right of the claimant agency to petition for reinstatement as provided in subpart 6.

B. If the commissioner receives written notice of a claimant agency's request for a contested case hearing, the commissioner must schedule a hearing within 30 days after the request is mailed. The claimant agency must be billed for and pay one-half of the costs of the hearing.

Subp. 5. Disciplinary actions.

If the claimant agency fails to timely request a hearing, or if upon completion of the contested case proceedings the commissioner makes a determination to suspend the claimant agency, the commissioner shall send written notice of the suspension to the claimant agency. The suspension begins as of the date of the notice. The commissioner's determination must explain the basis for the disciplinary action being taken.

Subp. 6. Petition for reinstatement.

Beginning 90 days after suspension, a suspended claimant agency may petition the commissioner for reinstatement to participate in the Revenue Recapture Act. The petition must be supported with documentation that the claimant agency has corrected the prior violations and has taken steps to ensure that the prior violations will not be repeated. The commissioner shall review the petition and make a determination within 30 days as to whether the claimant agency may be reinstated to participate in the Revenue Recapture Act. If the petition is denied by the commissioner, the claimant agency may request the commissioner in writing for a contested case hearing within 30 days after the notice of denial is mailed. If the commissioner receives written notice of a claimant agency's request for a contested case hearing, the commissioner must schedule a hearing within 30 days after the request is mailed. The claimant agency must be billed for and pay one-half of the costs of the hearing. Upon completion of the contested case proceedings, the commissioner shall send the claimant agency written notice of the commissioner's decision.

Statutory Authority:

MS s 270.06; 270C.06

History:

26 SR 771; L 2005 c 151 art 1 s 114

Posted:

November 14, 2006

8165.0300 DEBTS TO CLAIMANT AGENCIES.

Subpart 1. Notice to debtor.

Under Minnesota Statutes, section 270A.08, subdivision 1, a claimant agency is required to send notice to a debtor asserting its right to a refund or a part of a refund. The agency must advise the debtor in that notice of the provisions of Minnesota Statutes, section 270A.03, subdivision 5, when the claims are submitted for the following types of obligations:

A. an obligation of a current recipient of assistance based on an overpayment of an assistance grant;

B. a debt that is owed to a program of which the debtor is a client as of the date of the notice and the debtor is a current recipient of food stamps or food support, transitional child care, or transitional medical assistance; or

C. an obligation to pay a claimant agency for medical care, including hospitalization.

The notice must explain that debtors receiving assistance may be exempt from revenue recapture under items A and B, and debtors with income below specified levels may be exempt under item C.

Subp. 2. Definition of debtor; disclosure to claimant agencies.

In addition to the specifications provided under Minnesota Statutes, section 270A.03, subdivision 4, the term "debtor" means a taxpayer of record with the department at the time the claim is filed. The commissioner is authorized to disclose to the claimant agency that the debtor against whom the agency is attempting to file a claim under the Revenue Recapture Act is not a taxpayer of record, pursuant to Minnesota Statutes, section 270A.11.

Subp. 3. Debt for medical care.

A debt is not subject to revenue recapture if it is a legal obligation to pay a claimant agency for medical care and if the debtor's income does not exceed the amount provided in the table in Minnesota Statutes, section 270A.03, subdivision 5. For purposes of that table, the word "income" means income as defined in Minnesota Statutes, section 290.067, subdivision 2a.

Statutory Authority:
MS s 270.06; 270C.06

History:
26 SR 771; L 2003 1Sp14 art 1 s 106; L 2005 c 151 art 1 s 114

Posted:
November 14, 2006

8165.0400 NONLIABLE SPOUSE.

Subpart 1. Allocation of fee.

The $10 fee charged by the commissioner under Minnesota Statutes, section 270A.07, subdivision 1, shall not be allocated to the share of refund due to the spouse who does not owe the debt. When one or more revenue recapture claims are made against a refund and the nonliable spouse is due 100 percent of the refund, the department shall return each $10 fee to the nonliable spouse.

Subp. 2. Time limit to request an allocation of refund.

The right of a spouse who does not owe a debt to request payment from the claimant agency of that spouse's share of the refund expires 18 months after the date of the notice sent by the department under Minnesota Statutes, section 270A.07, subdivision 2, paragraph (b).

Subp. 3. Allocation of joint income tax refund.

In the case of an allocation of a joint income tax refund under Minnesota Statutes, section 270A.03, subdivision 7, if the total taxable income as determined under Minnesota Statutes, section 290.01, subdivision 29, is zero, the refund must be allocated based upon each spouse's share of federal adjusted gross income.

Statutory Authority:

MS s 270.06; 270C.06

History:

26 SR 771; L 2005 c 151 art 1 s 114

Posted:

November 14, 2006

PARENTAL FEES FOR CARE OF CHILDREN

9550.6200 SCOPE.

Subpart 1. Applicability.

Parts 9550.6200 to 9550.6240 govern the assessment and collection of parental fees by county boards or the Department of Human Services from parents of children in 24-hour care outside the home, including respite care, in a facility licensed by the commissioner, who:

A. have a developmental disability;

B. have an emotional disturbance;

C. have a physical disability; or

D. are in a state facility.

Parts 9550.6200 to 9550.6240 also specify parental responsibility for the cost of services of children who are not specified in items A to D, who are living in or out of their parents' home, and whose eligibility for medical assistance was determined without considering parental resources or income as specified in Minnesota Statutes, section 256B.14, subdivision 2.

Subp. 2. Exclusion.

Children who are under court order and subject to Minnesota Statutes, section 260B.331, subdivision 1, or 260C.331, subdivision 1, and who also do not fall under the provisions of Minnesota Statutes, section 252.27, are excluded from the scope of parts 9550.6200 to 9550.6240.

Parents of a minor child identified in subpart 1 must contribute monthly to the cost of services unless the child is married or has been married, parental rights have been terminated, or the child's adoption is subsidized according to Minnesota Statutes, section 259.67, or through title IV-E of the Social Security Act, or the parents are determined not to owe a fee under the formula in Minnesota Statutes, section 252.27, subdivision 2a.

Statutory Authority:

MS s 246.511; 252.27; 256B.14

History:

10 SR 2005; 16 SR 2780; L 1994 c 631 s 31; L 1999 c 139 art 4 s 2; L 2005 c 56 s 2; 32 SR 565

Posted:

October 31, 2007

9550.6210 DEFINITIONS.

Subpart 1. Applicability.

As used in parts 9550.6200 to 9550.6240, the following terms have the meanings given them.

Subp. 2. Child or children.

"Child" or "children" means a person or persons under 18 years of age.

Subp. 3. Commissioner.

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

Subp. 4. Cost of services.

"Cost of services" means the cost for:

A. the per diem rate established by the department or the per diem and negotiated monthly rate adopted by the county board for the 24-hour care outside the home, treatment, and training of a child provided in a facility licensed by the Department of Health, Department of Human Services, or approved by the commissioner according to the interstate placement compacts of Minnesota Statutes, sections 245.51 to 245.53, 260.51 to 260.57, and 260.851 to 260.91; and

B. services to children whose eligibility for medical assistance was determined without consideration of parental income or assets as specified in part 9550.6200, subpart 1.

Subp. 5. County board.

"County board" means the county board of commissioners in each county. When a Human Services Board has been established under Minnesota Statutes, sections 402.02 to 402.10, it shall be considered to be the county board for purposes of parts 9550.6200 to 9550.6240.

Subp. 6. County of financial responsibility.

"County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

Subp. 7. Department.

"Department" means the Minnesota Department of Human Services.

Subp. 8. Emotional disability or emotional disturbance.

"Emotional disability" or "emotional disturbance" has the meaning given it in Minnesota Statutes, section 245.4871, subdivision 15.

Subp. 9. Income.

"Income" means the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form as specified in Minnesota Statutes, section 252.27, subdivision 2a, paragraph (d), or a verified statement of the adjusted gross income if no tax forms are available.

Subp. 10. Medical assistance.

"Medical assistance" means the program which provides for the health service needs of eligible clients, as specified in Minnesota Statutes, chapter 256B, and title XIX of the Social Security Act, United States Code, title 42, section 1396.

Subp. 11. Developmental disability.

"Developmental disability" has the meaning of "developmental disability" under part 9525.0016, subpart 2, and the meaning of "related condition" given in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 12. Parents.

"Parents" means the natural or adoptive parents.

Subp. 13. Physical disability.

"Physical disability" has the meaning given it in part 9570.2200, subpart 7.

Subp. 13a. Respite care.

"Respite care" means short-term supervision and care provided to a child due to temporary absence or need for relief of the child's parents. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 14. [Repealed, 16 SR 2780]

Subp. 15. Severe emotional disturbance.

"Severe emotional disturbance" means an emotional disturbance that has:

A. resulted in the child's admission within the last three years or the child's being at risk of admission to inpatient treatment or residential treatment for an emotional disturbance;

B. required the child to receive inpatient treatment or residential treatment for an emotional disturbance as a Minnesota resident through the interstate compact; or

C. resulted in a determination by a mental health professional that the child has one of the following conditions:

(1) psychosis or clinical depression;

(2) risk of harming self or others as a result of an emotional disturbance;

(3) psychopathological symptoms as a result of being a victim of physical or sexual abuse or of psychic trauma within the past year; or

(4) resulted in the child's having significantly impaired home, school, or community functioning that has lasted at least one year or that, in the written opinion of a mental health professional, presents substantial risk of lasting at least one year.

Subp. 16. State facility.

"State facility" means any facility owned or operated by the state of Minnesota that is under the programmatic direction or fiscal control of the commissioner. State facility includes regional treatment centers; the state nursing homes; state-operated community-based programs; and other facilities owned or operated by the state and under the commissioner's control.

Statutory Authority:

MS s 246.511; 252.27; 256B.092; 256B.14

History:

10 SR 2005; 12 SR 102; L 1987 c 403 art 3 s 96; 16 SR 2780; 18 SR 2244; L 1999 c 139 art 4 s 2; L 2005 c 56 s 2

Posted:

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9550.6220 DETERMINATION OF PARENTAL FEE.

Subpart 1. Parental responsibility.

The extent to which parents are responsible for reimbursing the county of financial responsibility or the department for the cost of services must be determined according to subparts 2 to 13. Parents have no obligation to contribute assets. The parental responsibility and the role of the agency responsible for collection of the parental fee shall be explained in writing to the parents at the time eligibility for services is being determined. The parental fee shall be retroactive to the first date covered services are received, including any services received in months of retroactive eligibility.

Subp. 2. Determination of household size.

Natural and adoptive parents and their dependents, as specified in Minnesota Statutes, section 290A.03, subdivision 7, including the child receiving services, shall be counted as members of the household when determining the fee, except that a stepparent shall not be included.

Subp. 3. Determination of income.

Income must be determined according to Minnesota Statutes, section 252.27, subdivision 2a, paragraph (d).

Subp. 4. Percentage schedule.

The parental fee shall be computed according to the formula specified in Minnesota Statutes, section 252.27, subdivision 2a, paragraph (b).

Subp. 5. Annual revision of federal poverty guidelines.

The parental fee shall be revised annually on July 1 to reflect changes in the federal poverty guidelines. The revised guidelines are effective on the first day of July following the publication of changes in the Federal Register.

Subp. 5a. [Repealed, 33 SR 1107]

Subp. 6. [Repealed, 33 SR 1107]

Subp. 7. [Repealed, 16 SR 2780]

Subp. 8. [Repealed, 16 SR 2780]

Subp. 9. Parental responsibility for clothing or personal needs.

Payment of the parental fee does not exempt the parents from responsibility for the child's clothing and personal needs not included in the cost of services, except as specified in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 10. Discharge.

Except as provided in subpart 10a, the full monthly parental fee must be assessed unless services are terminated before the end of a calendar month. In this case, the full fee must be reduced only if the actual cost of services during that month is less than the regular fee.

Subp. 10a. Parental fee for respite care.

When a child is receiving respite care services, the parental fee must be a per diem fee multiplied by the number of days the child receives respite care. The parental fee for respite care shall be used only when respite care is the single service the child is receiving. When the child is receiving additional services governed by parts 9550.6200 to 9550.6240, the parental fee determined under part 9550.6220 shall apply. The per diem fee must be determined in the following manner:

A. Household size must be determined as specified in subpart 2.

B. Income must be determined as specified in subpart 3.

C. Using the household size and income figures in items A and B, the percentage schedule in Minnesota Statutes, section 252.27, subdivision 2a, paragraph (b), must be used to determine the applicable percent to be applied to the parents' income.

D. Determine the per diem fee by multiplying the income from item B by the percent from item C and divide the product by 365.

E. Any part of a day spent in respite care must be counted as a full day for purposes of this fee.

F. The parental fee must be determined at the end of a month when respite care is used.

Subp. 11. Number of fees.

As specified in Minnesota Statutes, section 252.27, subdivision 2, parents who have more than one child receiving services who meet the criteria identified in part 9550.6200, subpart 1, shall not be required to pay more than the amount for the child with the highest expenditures.

Subp. 12. Parents not living with each other.

Parents of a minor child who do not live with each other as specified in Minnesota Statutes, section 252.27, subdivision 2a, paragraph (g), shall each pay a fee.

Subp. 13. Child support payments.

A court-ordered child support payment actually paid on behalf of the child receiving services shall reduce the fee of the parent making the payment.

Subp. 14. Fees in excess of cost.

The total amount parents must pay between the time the first monthly payment is due under either the initial determination of the fee amount or notice of an increase in the fee amount, and the end of the state's fiscal year in June of each year cannot be higher than the cost of services the child receives during the fiscal year. At the end of each state fiscal year, the department or county board shall review the total amount that the parent paid in fees during the fiscal year and the total cost of services paid by the department or county board, not including payments made to school districts for medical services identified in an individualized education plan and covered under the medical assistance state plan, that the child received during the fiscal year. If the total amount of fees paid by the parents exceeds the total cost of services, the department or county board shall: (1) reimburse the parents the excess amount if their child is no longer receiving services; or (2) apply the excess amount to parental fees due starting July 1 of that year, until the excess amount is exhausted.

Statutory Authority:

MS s 14.388; 246.511; 252.27; 256B.14

History:

10 SR 2005; 12 SR 102; 16 SR 2780; 33 SR 1107

Posted:

January 14, 2009

9550.6225 HEALTH INSURANCE BENEFITS.

The parental fee determined under part 9550.6220 shall be increased by an additional five percent if the department or local agency determines that insurance coverage is available to the parents, but not obtained for the child receiving services. For purposes of this part, "available" and "insurance" have following meanings.

A. "Available" means the insurance is a benefit of employment for a family member at an annual cost of no more than five percent of the family's annual income.

B. "Insurance" means health and accident insurance coverage, enrollment in a nonprofit health service plan, health maintenance organization, self-insured plan, or preferred provider organization.

Statutory Authority:
MS s 246.511; 252.27; 256B.14

History:
10 SR 2005; 16 SR 2780

Posted:
October 31, 2007

9550.6226 RESPONSIBILITY OF PARENTS TO COOPERATE.

Subpart 1. Request for information.
The department or county board shall send the parents a form describing:

A. the formula used to determine the fee;

B. how to obtain information on possible variances from the fee amount;

C. information on the circumstances under which a fee may be reviewed or redetermined;

D. the right to appeal a fee determination; and

E. the consequences for not complying with a request to provide information when a request for information is sent in the following instances:

(1) when making an initial determination of the amount of the parental fee under part 9550.6220; and

(2) when a review and redetermination of the parental fee is required under part 9550.6228.

Parents shall provide any and all information that is required by the department or county board as necessary to determine or review the parental fee.

Subp. 2. Determination of parental fees.

Parents shall attach to the form requesting financial information, a copy of their previous year's federal income tax return or a verified statement concerning their income if no federal income tax form is available. Failure or refusal by the parents to provide to the department or county board within 30 calendar days after the date the request is postmarked, the financial information needed to determine parental responsibility for a fee shall result in notification to the parents that the department or county board may institute civil action to recover the required reimbursement under Minnesota Statutes, sections 252.27, subdivision 3, and 256B.14, subdivision 2.

Subp. 3. Review and redetermination of parental fees.

When parents are requesting a review or redetermination of the fee under part 9550.6228, a request for information shall be sent to the parents within ten calendar days after the department or county board receives the parents' request for review. Parents shall:

A. notify the department or county board within 30 calendar days of a gain in income or a loss of a household member; and

B. provide to the department or county board all information required under part 9550.6228, subpart 3, to verify the need for redetermination of the fee.

No action shall be taken on a review or redetermination of the parental fee until the required information is received by the department or county board.

Subp. 4. Variance requests.

No action shall be taken by the department or county board on a request for a variance until the department or county board receives all information required under part 9550.6230. Failure of the parents to cooperate by completing and returning the form requesting parental information to the department or county board within 30 calendar days after the date the request is postmarked, will result in a final written notice to the parents stating that the request for a variance will be denied unless the parents complete and return this information within ten calendar days after the date this final notice is postmarked.

Subp. 5. Refusal or failure to pay.

If the parents refuse or fail to pay the fee as determined under parts 9550.6200 to 9550.6240, the department or county board may institute civil action to enforce payment of the required amount when the action is cost effective.

Statutory Authority:
MS s 252.27; 256B.14

History:
16 SR 2780

Posted:
October 31, 2007

9550.6228 REVIEW AND REDETERMINATION OF FEES.

Subpart 1. Review.

Parental fees must be reviewed by the county board or the department according to Minnesota Statutes, section 252.27, subdivision 2a, paragraph (f), in any of the following situations:

A. at least once every 12 months;

B. when there is a change in household size as specified in part 9550.6220, subpart 2;

C. when the department or county billing records, on the history of service use, indicate a disparity between the fee amount and the cost of services provided of 60 percent or more; or

D. when there is a loss of or gain in income from one month to another in excess of ten percent.

For self-employed individuals, the following conditions shall apply to the verification of loss or gain of income under item D:

(1) the loss or gain in income shall be documented over a three-month period;

(2) paystubs, signed statements from employers and contractors, and/or bank statements or verified statements from the parents shall be furnished to support the request for redetermination; and

(3) the county or department may require other information which is necessary to support the request for redetermination.

Subp. 2. [Repealed, 16 SR 2780]

Subp. 3. Procedures for review.

In reviewing the parental fees under this part, the department or county board shall use the following procedures:

A. The annual review of parental fees under subpart 1, item A, shall be done according to procedures in part 9550.6220, subpart 14.

B. The review of parental fees under subpart 1, item B, shall be done within ten calendar days after the department or county board receives a copy of the record of birth or other supporting documents as verification of the change in household size.

C. The review of parental fees under subpart 1, item C, shall consist of a review of historical department or county billing records. Parents whose fee is adjusted under subpart 1, item C, shall sign a written agreement in which the parents agree to report to the department or county board any increase in the amount of services provided and to make up any shortfall at the end of the fiscal year based upon the increase in the amount of services provided.

D. The review of parental fees under subpart 1, item D, shall be done within ten calendar days after the department or county board receives completed information that verifies a loss or gain in income in excess of ten percent.

Statutory Authority:

MS s 246.511; 252.27; 256B.14

History:

10 SR 2005; 16 SR 2780; L 2001 1Sp9 art 15 s 32

Posted:

October 31, 2007

9550.6229 NOTIFICATION OF CHANGE IN FEE.

Subpart 1. Increase in fee.

Notice of an increase in the parental fee amount shall be mailed by the department or county board to the parents of children currently receiving services, 30 calendar days before the increased fee is effective. An increase in the parental fee is effective in the month in which the

decrease in household size or increase in parental income occurs for parents who fail to comply with part 9550.6226, subpart 3.

Subp. 2. Decrease in fee.

A decrease in the parental fee is effective in the month that the parents verify a reduction in income or a change in household size occurred, retroactive to no earlier than the beginning of the current fiscal year.

Statutory Authority:
MS s 246.511; 252.27; 256B.14

History:
10 SR 2005; 16 SR 2780

Posted:
October 31, 2007

9550.6230 VARIANCE FOR UNDUE HARDSHIP.

Subpart 1. Definition; limitations on variance.

For purposes of this part, "variance" means any modification of the parental fee as determined by Minnesota Statutes, section 252.27, subdivision 2a, when it is determined that strict enforcement of the parental fee would cause undue hardship. All variances shall be granted for a term not to exceed 12 months, unless otherwise determined by the department or county board. The parents' liability to pay under Minnesota Statutes, section 252.27, subdivision 2a, shall be modified only by the provisions in subparts 1a and 2.

Subp. 1a. Variance for undue hardship.

A variance of the parental fee determined according to Minnesota Statutes, section 252.27, subdivision 2a, and parts 9550.6220 to 9550.6240 may be requested when expenditures for items A through D are made by the parents and the expenditures are not reimbursable by any public or private source. Each expenditure may be the basis for a variance only one time. The total amount of items A, B, C, and D shall be deducted from income as defined in part 9550.6210, subpart 9.

A. Payments made since the last review of the fee or within the last 12 months for medical expenditures for the child receiving services or for that child's parents and parents' other dependents when the medical expenditures are not covered by medical assistance or health insurance and are a type, irrespective of amount, which would be allowable as a federal tax deduction under the Internal Revenue Code.

B. Expenditures since the last review of the fee or within the last 12 months for adaptations to the parents' vehicle which are necessary to accommodate the child's medical needs and are a type, irrespective of amount, which would be allowable as a federal tax deduction under the Internal Revenue Code.

C. Expenditures since the last review of the fee or within the last 12 months for physical adaptations to the child's home which are necessary to accommodate the child's physical, behavioral, or sensory needs and are a type, irrespective of amount, that would be allowable as a deductible medical expense under the Internal Revenue Code. A variance for physical adaptations to the child's home will be granted only for that portion of the adaptation that does not increase the value of the property.

D. Unexpected, sudden, or unusual expenditures by the parents since the last review or within the past 12 months that are not reimbursed by any type of insurance or civil action and which are a type, irrespective of amount, which would be allowable as a casualty loss deduction under the Internal Revenue Code.

Subp. 2. Variance for tax status.

A variance shall be granted, in the form of a deduction from income, as defined in part 9550.6210, subpart 9, if the parents can show that, as a result of the parents' peculiar tax status, there is a gross disparity between the amount of income, as defined in part 9550.6210, subpart 9, allocated to the parents and the amount of the cash distributions made to the parents.

A. The disparity must adversely affect the parents' actual ability to pay.

B. A variance shall not be granted in cases where the tax status was created in whole or in part for the purpose of avoiding liability under parts 9550.6200 to 9550.6240.

C. Income to be deducted under this subpart shall be deducted only if:

(1) the income has never been legally available to the parents as a cash distribution; and

(2) the parents have no authority to alter the amount of cash distributed during a given year, or the method whereby the cash is distributed.

D. A variance granted under this subpart shall only be made on the recommendation of the department or county board according to subpart 5.

E. Parents who are granted a variance under this subpart must sign a written agreement in which the parents agree to report any change in the circumstances which gave rise to the tax status variance, such as an increased distribution, a sale, transfer, or any other transaction affecting the parents' ability to pay within 30 days of that change.

Subp. 3. Exceptions.

The following expenses shall not be considered to constitute undue hardship and shall not reduce the parental fee or income as defined in part 9550.6210, subpart 9:

A. new home purchases, other than that portion of the cost of a new home that is directly attributable to the physical, behavioral, or sensory needs of the child receiving services and that is a type, irrespective of amount, which would be allowable as a deductible medical expense under the Internal Revenue Code;

B. college education expenses;

C. clothing and personal expenses, other than expenses allowed in subpart 1a such as specialized clothing needed by the child receiving services due to their disability; or

D. any expenditures that are usual and typical, other than those which are allowable under subpart 1a.

Subp. 4. Procedures for requesting a variance.

Parents may request a variance from parts 9550.6200 to 9550.6240 by submitting a written request to the department or county board that states why compliance with parts 9550.6200 to 9550.6240 would cause undue hardship.

The department or county board shall forward to the parents a request for financial information within ten calendar days after receiving a written request for a variance. Parents must provide the department or county board with the requested financial information, including the previous year's tax forms, and verification of any physical adaptations to the home or vehicle, medical expenditures, casualty losses, or peculiar tax status. The information supplied must be sufficient to verify the existence of undue hardship necessitating a variance. Parents must cooperate by completing and returning all information requested by the department or the county board as necessary to determine or review the parental fee. If parents fail to cooperate by providing this required information, part 9550.6226, subpart 4, applies.

Subp. 5. Department and county authority to grant variances.

A. The commissioner shall delegate to the county board the authority to grant variances according to parts 9550.6200 to 9550.6240 for children in 24-hour care outside the home, other than a state facility, where only social services funds are expended for the cost of services.

B. The department shall grant variances according to parts 9550.6200 to 9550.6240 for parents of children who have a developmental disability, a severe emotional disturbance, or a physical disability and who are:

(1) residing in state facilities;

(2) residing outside the home where medical assistance funds are expended for the costs of services;

(3) residing outside the home when both medical assistance and social services funds are expended for the cost of services; and

(4) determined eligible for medical assistance without consideration of parental income or assets.

Subp. 6. Payment pending determination of variance request.

Those parents requesting a variance from a notice of an increase in the amount of the parental fee shall continue to make monthly payments at the lower amount pending determination of the variance request. Those parents requesting a variance from an initial determination of the parental fee amount shall not be required to make payment pending determination of the variance request. However, these parents may make payments as desired during the determination. If the variance is granted, any payments made pending outcome of the request that result in overpayment, shall be: (1) reimbursed to the parents if the child is no longer receiving services; or (2) applied to the parental fees remaining in the current fiscal year and the remainder of the excess amount applied to the parental fees due starting in the next fiscal year, if the child is still receiving services. If the variance is denied, the parents shall pay to the department or county board:

A. the additional amount due from the effective date of the increase in the parental fee; or

B. the total amount due from the effective date of the original notice of determination of the parental fee as specified in part 9550.6235, subpart 3.

Subp. 7. Insurance settlements; settlements in civil actions.

Parents who are granted a variance under subpart 1a, item D, shall sign a written agreement in which the parents agree to report to the department or the county board any changes in circumstances that gave rise to the undue hardship variance, such as subsequent payment by the insurer on a medical or casualty claim or receipt of settlement in a civil action. Failure by the parents to sign this agreement will result in denial of the variance. The variance shall terminate or be adjusted effective on the date of the parents' receipt of any such settlement.

Subp. 8. Grant or denial of variance.

When the department or county board receives a request for a variance, written notice of a grant or denial of the variance shall be mailed to the parents within 30 calendar days after the department or county board receives the financial information required under subpart 4. A grant will necessitate a written agreement between the parents and the department or county board with regard to the specific terms of the variance. The variance will not become effective until the written agreement is signed by the parents. If the department or the county board denies in

whole or in part the parents' request for a variance, the denial notice shall set forth in writing the reasons for the denial that address the specific hardship raised by the parents and of the parents' right to appeal under part 9550.6235.

Statutory Authority:
MS s 246.511; 252.27; 256B.14

History:
10 SR 2005; 16 SR 2780; L 2005 c 56 s 2

Posted:
October 31, 2007

9550.6235 APPEALS.

Subpart 1. Right of appeal.

Parents aggrieved by an action under parts 9550.6200 to 9550.6240 have the right to appeal according to Minnesota Statutes, section 256.045.

Subp. 2. Appeal process.

Parents may appeal an action under parts 9550.6200 to 9550.6240 by submitting a written request for a hearing to the department within 30 calendar days after the aggrieved action, or within 90 calendar days if an appeals referee finds that the parents have good cause for failing to request a hearing within 30 calendar days. The hearing is governed by Minnesota Statutes, section 256.045.

Subp. 3. Rights pending hearing.

If parents appeal on or before the effective date of the increase in the parental fee, the parents shall continue to make payments to the department or the county board in the lower amount while the appeal is pending. Parents appealing an initial determination of a parental fee shall not be required to make monthly payments pending an appeal decision. However, parents may continue to make monthly payments as desired during the appeal process. Any payments made that result in an overpayment shall be: (1) reimbursed to the parents if their child is no longer receiving services; or (2) applied to the parental fees remaining in the current fiscal year and the remainder of the excess amount applied to the parental fees due starting in the next fiscal year.

If the department's or county board's determination is affirmed, the parents shall pay to the department or the county board, within 90 calendar days after the date of the order, the total amount due from the effective date of the original notice of determination of the parental fee. The commissioner's order is binding on the parents and the department or county board and

shall be implemented subject to Minnesota Statutes, section 256.045, subdivision 7. No additional notice is required to enforce the commissioner's order.

Statutory Authority:
MS s 252.27; 256B.14

History:
16 SR 2780

Posted:
October 31, 2007

9550.6240 COLLECTIONS.

Subpart 1. County responsibility.
The county board shall be responsible for the assessment and collection of parental fees for children in 24-hour care outside the home other than state facilities, where only social services funds are expended for the cost of services.

Subp. 2. Department responsibility.
The department shall be responsible for the assessment and collection of fees for children who have developmental disabilities, a severe emotional disturbance, or a physical disability and who are:

A. residing in state facilities;

B. residing outside the home when medical assistance funds are expended for the cost of services;

C. residing outside the home when both medical assistance and social services funds are expended for the costs of services; and

D. determined eligible for medical assistance without consideration of parental income or assets.

If the parental fee is for reimbursement for the cost of services to both the local agency and medical assistance, the department shall reimburse the local agency for its expenses first and the remainder shall be reimbursed to the medical assistance account.

Statutory Authority:
MS s 246.511; 252.27; 256B.14

History:
10 SR 2005; 16 SR 2780; L 2005 c 56 s 2

Posted:
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FOSTER CARE FOR CHILDREN

9560.0640 FINANCIAL ARRANGEMENTS AND FUNDING CONSIDERATIONS.

The local agency and the parent(s) shall evaluate the various resources available to meet the costs of care.

Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so and with any applicable state laws or rules.

If the local agency establishes that the parent(s) are able to meet some or all of the costs of care, but are unwilling to do so, the following courses of action are indicated:

A. For a child under legal custody, the local agency shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.

B. For a child placed by voluntary agreement, the local agency shall file a dependency or neglect petition with the court and ask the court to establish the parents' responsibility to reimburse the agency.

The local agency shall make the payments directly to foster parents and other providers of care.

Statutory Authority:
MS s 256.01; 256.82; 256E.05; 257.071; 257.175; 260.40; 260C.212; 260C.451; 393.07

History:
20 SR 2778; L 1999 c 139 art 4 s 2

Posted:
October 11, 2007