

eration, bubbler, water circulation, and similar systems used to increase dissolved oxygen or to maintain open water on the ice of public waters.

Approved May 20, 1987

CHAPTER 185—H.F.No. 931

An act relating to public guardianship; modifying standards and procedures for the appointment of public guardians for mentally retarded persons; providing for powers and duties of public guardians; amending Minnesota Statutes 1986, sections 252.291, subdivision 3; 252A.01; 252A.02, subdivisions 2, 4, 6, 7, 8, 11, 12, and by adding subdivisions; 252A.03, subdivisions 2 and 3; 252A.04, subdivisions 1 and 3; 252A.05; 252A.06; 252A.07, subdivisions 1 and 3; 252A.14; 252A.16; 252A.17; 252A.19, subdivisions 1, 2, and 3, and by adding a subdivision; 252A.20, subdivision 1; 252A.21, subdivision 2; 253B.03, subdivisions 1 and 6; and 525.56, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 252A; repealing Minnesota Statutes 1986, sections 252A.08; 252A.10; 252A.11; 252A.13; 252A.15; and 252A.18.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

PUBLIC GUARDIANSHIP

Section 1. Minnesota Statutes 1986, section 252A.01, is amended to read:

252A.01 POLICY AND CITATION.

Subdivision 1. **POLICY.** (a) It is the policy of the state of Minnesota to provide a coordinated approach to the supervision, protection and habilitation of its adult mentally retarded citizens. In furtherance of this policy, sections 252A.01 to 252A.21 are enacted to authorize the commissioner of human services to:

(1) supervise those adult mentally retarded citizens who are unable to fully provide for their own needs and for whom no qualified person is willing and able to seek private guardianship or conservatorship under sections 525.539 to 525.705; and

(2) to protect ~~such~~ adult mentally retarded persons from violation of their human and civil rights by assuring that ~~such individuals~~ they receive the full range of needed social, financial, residential and habilitative services to which they are lawfully entitled.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(b) Public guardianship or conservatorship is the most restrictive form of guardianship or conservatorship and should be imposed only when no other acceptable alternative is available.

Subd. 2. **CITATION.** Sections 252A.01 to 252A.21 may be cited as the “~~Minnesota public guardianship for adults with mental retardation protection~~ act.”

Sec. 2. Minnesota Statutes 1986, section 252A.02, subdivision 2, is amended to read:

Subd. 2. **MENTALLY RETARDED PERSON.** “Mentally retarded person” refers to any person age 18 or older who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for the person’s welfare or the public welfare.

Sec. 3. Minnesota Statutes 1986, section 252A.02, subdivision 4, is amended to read:

Subd. 4. **REGIONAL CENTER.** “~~State institution~~ Regional center” means a ~~state school or hospital or other residential facility operated by the state of Minnesota or any other state~~ state-operated facility for persons with mental illness, mental retardation, or chemical dependency that is under the direct administrative authority of the commissioner.

Sec. 4. Minnesota Statutes 1986, section 252A.02, subdivision 6, is amended to read:

Subd. 6. **NEAR RELATIVE.** “Near relative” means a spouse, parent, brother, sister, adult sibling, or adult child.

Sec. 5. Minnesota Statutes 1986, section 252A.02, subdivision 7, is amended to read:

Subd. 7. **PUBLIC GUARDIAN.** “Public guardian” means the commissioner of human services when exercising all the powers designated in article 1, section 252A.11 22.

Sec. 6. Minnesota Statutes 1986, section 252A.02, subdivision 8, is amended to read:

Subd. 8. **PUBLIC CONSERVATOR.** “Public conservator” means the commissioner of human services when exercising some, but not all the powers designated in article 1, section 252A.11 22.

Sec. 7. Minnesota Statutes 1986, section 252A.02, subdivision 11, is amended to read:

Subd. 11. **INTERESTED PERSON.** “Interested person” means an interest-

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ed responsible adult, including, but not limited to, a public official, guardian, spouse, parent, adult sibling, legal counsel, adult child or next of kin of an allegedly mentally retarded person.

Sec. 8. Minnesota Statutes 1986, section 252A.02, subdivision 12, is amended to read:

Subd. 12. **COMPREHENSIVE EVALUATION.** "Comprehensive evaluation" shall consist of:

(1) ~~a diagnosis of a proposed ward's physical condition~~ medical report on the health status and physical condition of the proposed ward, prepared under the direction of a licensed physician;

(2) a report on the proposed ward's intellectual capacity and functional abilities, specifying the tests and other data used in reaching its conclusions, prepared by a psychologist who is qualified in the diagnosis and treatment of mental retardation; and

(3) ~~a report on the proposed ward's social history and adjustment, prepared by a social worker who is experienced in working with mentally retarded persons. The psychologist's report shall specify the tests and other data used in reaching its conclusions. The social worker's report shall describe what educational, medical and social services have previously been made available to the person under review and shall specify the data used in reaching its conclusions. The reports of the psychologist and social worker from the case manager that includes:~~

(i) the most current assessment of individual service needs as described in rules of the commissioner;

(ii) the most current individual service plan as described in rules of the commissioner; and

(iii) a description of contacts with and responses of near relatives of the proposed ward notifying them that a nomination for public guardianship has been made and advising them that they may seek private guardianship.

Each report shall contain recommendations as to the ability of the proposed ward to function in society without amount of assistance and supervision required by the proposed ward to function as independently as possible in society. To be considered part of the comprehensive evaluation, reports must be completed no more than one year before filing the petition under section 252A.05.

Sec. 9. Minnesota Statutes 1986, section 252A.02, is amended by adding a subdivision to read:

Subd. 13. CASE MANAGER. "Case manager" means the person designated by the county board under rules of the commissioner to provide case management services.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 10. Minnesota Statutes 1986, section 252A.02, is amended by adding a subdivision to read:

Subd. 14. LOCAL AGENCY. "Local agency" means the agency designated by the county board of commissioners, human services boards, county welfare boards in the several counties of the state, or multicounty welfare boards or departments where those have been established under law.

Sec. 11. Minnesota Statutes 1986, section 252A.02, is amended by adding a subdivision to read:

Subd. 15. VISITOR. "Visitor" means a person who is trained in law, health care, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Sec. 12. Minnesota Statutes 1986, section 252A.03, subdivision 2, is amended to read:

Subd. 2. **ACCEPTANCE OR REJECTION.** The commissioner shall accept or reject the nomination in writing within ~~45~~ 20 working days of the receipt of a comprehensive evaluation provided for in section 252A.04. The commissioner's acceptance shall be binding upon the commissioner and successors. Acceptance of a nomination shall confer no authority on the commissioner unless affirmed at a judicial hearing. Rejection of a nomination by the commissioner shall not bar the filing of a petition pursuant to section 252A.06.

Sec. 13. Minnesota Statutes 1986, section 252A.03, subdivision 3, is amended to read:

Subd. 3. **STANDARD FOR ACCEPTANCE.** The commissioner shall accept the nomination if ~~the psychologist's report contained in~~ the comprehensive evaluation concludes that:

(1) the alleged mentally retarded person alleged to have mental retardation is, in fact, mentally retarded and if the comprehensive evaluation concludes that such;

(2) the person is in need of the supervision and protection of a conservator or guardian; and

(3) no qualified person is willing to assume private guardianship or conservatorship under sections 525.539 to 525.705.

Sec. 14. Minnesota Statutes 1986, section 252A.04, subdivision 1, is amended to read:

Subdivision 1. **LOCAL AGENCY.** Upon receipt of a written nomination, the commissioner shall promptly order the local agency of the county welfare department in which the proposed ward resides to coordinate or arrange for a comprehensive evaluation of the proposed ward. ~~The evaluation shall be conducted in a public or private hospital, school, mental health center or other suitable and appropriate facility.~~

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Sec. 15. Minnesota Statutes 1986, section 252A.04, subdivision 3, is amended to read:

Subd. 3. **TIME.** The ~~county welfare department~~ local agency shall prepare and forward the comprehensive evaluation to the commissioner within 90 days of the date the commissioner orders the evaluation.

Sec. 16. Minnesota Statutes 1986, section 252A.05, is amended to read:

252A.05 COMMISSIONER'S PETITION FOR APPOINTMENT AS PUBLIC GUARDIAN OR PUBLIC CONSERVATOR.

In every case ~~on agreeing in which the commissioner agrees~~ to accept a nomination, the ~~commissioner~~ local agency, within ~~45~~ 20 working days of ~~such receipt of the commissioner's acceptance~~, shall petition on behalf of the commissioner in the county or probate court of the county of residence of the mentally retarded person for appointment to act as public conservator or public guardian of the mentally retarded person.

Sec. 17. Minnesota Statutes 1986, section 252A.06, is amended to read:

252A.06 CONTENTS OF PETITION FOR APPOINTMENT OF PUBLIC GUARDIAN OR PUBLIC CONSERVATOR.

Subdivision 1. **WHO MAY FILE.** The commissioner, the local agency, a mentally retarded person or any parent, spouse or relative of a mentally retarded person may file a verified petition alleging that the appointment of a public conservator or public guardian is required. ~~If the commissioner brings the petition after accepting the nomination as conservator or guardian, the petition shall so state and shall set forth the name and address of the nominating person.~~

Subd. 2. **CONTENTS.** The petition shall set forth:

(a) (1) the name and address of the petitioner, and, in the case of a petition brought by a person other than the commissioner, whether the petitioner is a parent, spouse, or relative of the proposed ward;

(2) whether the commissioner has accepted a nomination to act as public conservator or public guardian;

~~(b)~~ (3) the name ~~and~~, address, and date of birth of the proposed ward;

~~(c)~~ (4) the names and addresses of the nearest relatives and spouse, if any, of the proposed ward;

~~(d)~~ (5) the probable value and general character of the proposed ward's real and personal property and the probable amount of the proposed ward's debts; ~~and~~

~~(e)~~ (6) the reasons ~~and supporting facts why~~ supporting the establishment of public conservatorship or guardianship should be awarded, including that no

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family member or other qualified individual is willing to assume private guardianship or conservatorship responsibilities under sections 525.539 to 525.705; and

(7) if conservatorship is requested, the powers the petitioner believes are necessary to protect and supervise the proposed conservatee.

Sec. 18. Minnesota Statutes 1986, section 252A.07, subdivision 1, is amended to read:

Subdivision 1. **WITH PETITION.** When a petition is brought by the commissioner ~~following acceptance of nomination or local agency~~, a copy of the comprehensive evaluation shall be filed with the petition. If a petition is brought by a person other than the commissioner ~~or local agency~~ and a comprehensive evaluation has been prepared within a year of the filing of the petition, the ~~commissioner~~ local agency shall forward a copy of the comprehensive evaluation to the court upon notice of the filing of ~~said~~ the petition. If a comprehensive evaluation has not been prepared within a year of the filing of the petition, the ~~commissioner~~ local agency, upon notice of the filing of ~~said~~ the petition, shall arrange for a comprehensive evaluation to be prepared and forwarded to the court within 90 days.

Sec. 19. Minnesota Statutes 1986, section 252A.07, subdivision 3, is amended to read:

Subd. 3. **EVALUATION REQUIRED; EXCEPTION.** No action for the appointment of a public guardian may proceed to hearing unless a comprehensive evaluation has been first filed with the court; provided, however, that ~~such an~~ an action may proceed and a guardian appointed if the director of the ~~county welfare department~~ local agency responsible for conducting the comprehensive evaluation has filed an affidavit that the proposed ward refused to participate in the comprehensive evaluation and the court finds on the basis of clear and convincing evidence that the proposed ward is mentally retarded and in need of the supervision and protection of a guardian.

Sec. 20. **[252A.081] NOTICE OF HEARING.**

Subdivision 1. GENERAL. Except as otherwise provided in this section, section 525.55 applies to a notice of hearing for public guardianship.

Subd. 2. SERVICE OF NOTICE. Service of notice on the ward or proposed ward must be made by a nonuniformed person. To the extent possible, the process server or visitor shall explain the document's meaning to the proposed ward. In addition to the persons required to be served under section 525.55, subdivision 1, the mailed notice of the hearing must be served on the commissioner, the local agency, and the county attorney.

Subd. 3. ATTORNEY. In place of the notice of attorney provisions in section 525.55, subdivision 2, the notice must state that the court will appoint

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an attorney for the proposed ward unless an attorney is provided by other persons.

Subd. 4. SERVICE OF PETITION ON COMMISSIONER. When a petition has been filed by a person other than the commissioner, the court shall promptly forward a copy of the petition and any other documents filed with or issued by the court to the commissioner.

Subd. 5. DEFECTIVE NOTICE OF SERVICE. A defect in the service of notice or process, other than personal service upon the proposed ward or conservatee or service upon the commissioner and local agency within the time allowed and the form prescribed in this section and section 525.55, does not invalidate any public guardianship or conservatorship proceedings.

Sec. 21. [252A.101] HEARING.

Subdivision 1. GENERAL. Except as otherwise provided in this section, section 525.551, subdivisions 1 to 4, apply to public guardianship hearings.

Subd. 2. WAIVER OF PRESENCE. The proposed ward may waive the right to be present at the hearing only if the proposed ward has met with counsel and specifically waived the right to appear.

Subd. 3. MEDICAL CARE. If, at the time of the hearing, the proposed ward has been under medical care, the ward has the same rights regarding limitation on the use of drugs, medication, or other treatment before the hearing that are available under section 252A.04, subdivision 2.

Subd. 4. COUNTY ATTORNEY. The county attorney shall appear and represent the petitioner upon the request of the court or the petitioner. The petitioner must be notified of the right to request that the county attorney appear. The attorney general may appear and represent the commissioner in any proceedings brought under this chapter.

Subd. 5. FINDINGS. (a) In all cases the court shall make specific written findings of fact, conclusions of law, and direct entry of an appropriate judgment or order. The court shall order the appointment of the commissioner as guardian or conservator if it finds that:

(1) the proposed ward or conservatee is a mentally retarded person as defined in section 252A.02, subdivision 2;

(2) the proposed ward or conservatee is incapable of exercising specific legal rights, which must be enumerated in its findings;

(3) the proposed ward or conservatee is in need of the supervision and protection of a guardian or conservator; and

(4) no appropriate alternatives to public guardianship or public conservatorship exist that are less restrictive of the person's civil rights and liberties, such as appointing a guardian or conservator under sections 525.539 to 525.705.

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(b) The court shall grant the specific powers that are necessary for the commissioner to act as public guardian or conservator on behalf of the ward or conservatee.

Subd. 6. NOTICE OF ORDER; APPEAL. A copy of the order shall be served by mail upon the ward or conservatee and the ward's counsel. The order must be accompanied by a notice that advises the ward or conservatee of the right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 7. LETTERS OF GUARDIANSHIP. Letters of guardianship or conservatorship must be issued by the court and contain:

(1) the name, address, and telephone number of the person delegated by the commissioner to act as the guardian or conservator;

(2) the name, address, and telephone number of the ward or conservatee;
and

(3) the powers to be exercised on behalf of the ward or conservatee.

The letters must be served by mail upon the ward or conservatee, the ward's counsel, the commissioner, and the local agency.

Subd. 8. DISMISSAL. If upon the completion of the hearing and consideration of the record, the court finds that the proposed ward is not mentally retarded or is mentally retarded but not in need of the supervision and protection of a conservator or guardian, it shall dismiss the application and shall notify the proposed ward, the ward's counsel, and the petitioner.

Sec. 22. [252A.111] POWERS AND DUTIES OF PUBLIC GUARDIAN OR CONSERVATOR.

Subdivision 1. GENERAL. Except as otherwise provided in this section, section 525.56, subdivisions 1 to 3, apply to the powers and duties of a public guardian or conservator.

Subd. 2. ADDITIONAL POWERS. In addition to the powers contained in section 525.56, subdivision 3, the powers of a public guardian or those that the court may grant to a public conservator include:

(1) the power to permit or withhold permission for the ward to marry;

(2) the power to begin legal action or defend against legal action in the name of the ward; and

(3) the power to consent to the adoption of the ward as provided in section 259.24.

Subd. 3. SPECIAL TREATMENT SERVICES. The public guardian shall obtain the concurrence of the local agency and the chief executive officer or designee of the hospital before a ward may receive outpatient services or temporary care from a regional treatment center. The ward may not receive these services or care for a period exceeding 90 days in any calendar year unless the ward is committed under chapter 253B. Services must be provided under an

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individual service plan and individual habilitation plan as required under rules of the commissioner. The plans must be completed within ten working days of the first admission in the calendar year.

Subd. 4. APPOINTMENT OF GUARDIAN OR CONSERVATOR OF THE ESTATE. If the ward has a personal estate beyond that which is necessary for the ward's personal and immediate needs, the commissioner shall determine whether a guardian of the estate has been appointed for the ward. If no guardian of the estate has been appointed, the commissioner, after consulting with the parents, spouse, or nearest relative of the ward, may petition the probate court for the appointment of a private guardian or conservator of the estate of the ward.

Subd. 5. LOCAL AGENCIES. The commissioner may carry out the powers and duties prescribed by this chapter directly or through local agencies.

Subd. 6. SPECIAL DUTIES. In exercising powers and duties under this chapter, the commissioner shall:

- (1) maintain close contact with the ward, visiting at least twice a year;
- (2) prohibit filming a ward in any way that would reveal the identity of the ward;
- (3) take actions and make decisions on behalf of the ward that encourage and allow the maximum level of independent functioning in a manner least restrictive of the ward's personal freedom consistent with the need for supervision and protection; and
- (4) permit and encourage maximum self-reliance on the part of the ward and permit and encourage input by the nearest relative of the ward in planning and decision making on behalf of the ward.

Sec. 23. Minnesota Statutes 1986, section 252A.14, is amended to read:

252A.14 COMMISSIONER AS ADVISOR.

The commissioner, acting through the county welfare departments local agency, shall seek out those mentally retarded persons who are not under state in need of guardianship and shall advise ~~such persons~~ them as to the availability of suitable services and assistance. The provision of advice and guidance may be made without prior appointment by a court and shall not be dependent upon a finding of incompetency. The provision of ~~such~~ services by the commissioner does not authorize the care, treatment, supervision or any control over any mentally retarded person.

Sec. 24. Minnesota Statutes 1986, section 252A.16, is amended to read:

252A.16 ANNUAL REVIEW.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **REVIEW REQUIRED.** The commissioner shall provide an annual review of the physical, mental and social adjustment and progress of every ward and conservatee. A copy of this review shall be kept on file at the department of human services and may be inspected by the ward or conservatee, the ward's or conservatee's parents, spouse or relatives and ~~such~~ other persons ~~as~~ who receive the permission of the commissioner. The review shall contain information required under rules of the commissioner.

Subd. 2. **ASSESSMENT OF NEED FOR CONTINUED GUARDIANSHIP.** The commissioner shall annually review the legal status of each ward in light of the progress indicated in the annual review. If the commissioner determines the ward is no longer in need of public guardianship or conservatorship or is capable of functioning under a less restrictive conservatorship, the commissioner or local agency shall petition the court pursuant to section 252A.19 to restore the ward to capacity or for a modification of the court's previous order.

Sec. 25. Minnesota Statutes 1986, section 252A.17, is amended to read:

252A.17 EFFECT OF SUCCESSION IN OFFICE.

The appointment by the court of the commissioner of human services as public conservator or guardian shall be by the title of the commissioner's office. The authority of the commissioner as public conservator or guardian shall cease upon the termination of the commissioner's term of office and shall vest in a successor or successors in office without further court proceedings.

Sec. 26. **[252A.171] TRANSFER OF VENUE.**

Section 525.57 applies to the transfer of venue in proceedings under this chapter. Notice of a transfer of venue petition must be given to the persons and in the manner required by article 1, section 20.

Sec. 27. Minnesota Statutes 1986, section 252A.19, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER TO SERVE.** The commissioner shall serve as public guardian or conservator with all the powers awarded pursuant to the guardianship or conservatorship, until termination or modification ~~thereof~~ by the court.

Sec. 28. Minnesota Statutes 1986, section 252A.19, subdivision 2, is amended to read:

Subd. 2. **PETITION.** The commissioner, ward or any interested person may petition the appointing court or the court to which venue has been transferred for an order to remove the guardianship or to limit or expand the powers of the conservatorship or to appoint a guardian or conservator under sections 525.539 to 525.705 or to restore the ward or conservatee to full legal capacity or to review de novo any decision made by the public guardian or public conservator for or on behalf of a ward or conservatee or for ~~such~~ any other order as the court may deem just and equitable.

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Sec. 29. Minnesota Statutes 1986, section 252A.19, subdivision 3, is amended to read:

Subd. 3. **NOTICE OF TIME AND PLACE.** Upon the filing of the petition the court shall fix the time and place for the hearing. Notice of the filing of the petition and of the hearing shall be provided in the manner set forth in article 1, section 252A.08 20.

Sec. 30. Minnesota Statutes 1986, section 252A.19, is amended by adding a subdivision to read:

Subd. 9. COSTS FOR PRIVATE GUARDIANSHIP. In proceedings where private guardianship or conservatorship is being sought under sections 525.539 to 525.705, costs are reimbursable under section 525.703, subdivision 3, paragraph (b).

Sec. 31. Minnesota Statutes 1986, section 252A.20, subdivision 1, is amended to read:

Subdivision 1. **WITNESS AND ATTORNEY FEES.** In each proceeding under sections 252A.01 to 252A.21, the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each physician, psychologist or social worker who assists in the preparation of the comprehensive evaluation and who is not in the employ of the ~~county welfare department~~ local agency, state department of human services or area mental health-mental retardation board, a reasonable sum for services and for travel; and to the ward's counsel, when appointed by the court, a reasonable sum for travel and for each day or portion thereof ~~of a day~~ of a day actually employed in court or actually consumed in preparing for the hearing. Upon ~~such~~ order the county auditor shall issue a warrant on the county treasurer for payment of the amount allowed.

Sec. 32. Minnesota Statutes 1986, section 252A.21, subdivision 2, is amended to read:

Subd. 2. **RULES.** The commissioner shall ~~establish such adopt rules not inconsistent with the provisions of sections 252A.01 to 252A.21 as the commissioner finds necessary for the proper and efficient administration thereof. In promulgating such rules, the commissioner shall specifically develop methods of administration under which the county welfare departments shall have sufficient authority to effectively implement the duties and responsibilities of the commissioner under sections 252A.01 to 252A.21, consistent with the commissioner's ultimate responsibility as public guardian or public conservator to implement this chapter. The rules must include standards for performance of guardianship or conservatorship duties including, but not limited to: twice a year visits with the ward; quarterly reviews of records from day, residential, and support services; a requirement that the duties of guardianship or conservatorship and case management not be performed by the same person; specific standards for action on "do not resuscitate" orders, sterilization requests, and the use of psychotropic medication and aversive procedures.~~

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ARTICLE 2

MISCELLANEOUS PROVISIONS

Section 1. Minnesota Statutes 1986, section 252.291, subdivision 3, is amended to read:

Subd. 3. **DUTIES OF COMMISSIONER OF HUMAN SERVICES.** The commissioner shall:

(a) establish standard admission criteria for state hospitals and county utilization targets to limit and reduce the number of intermediate care beds in state hospitals and community facilities in accordance with approved waivers under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, to assure that appropriate services are provided in the least restrictive setting;

(b) define services, including respite care, that may be needed in meeting individual service plan objectives;

(c) provide technical assistance so that county boards may establish a request for proposal system for meeting individual service plan objectives through home and community-based services; alternative community services; or, if no other alternative will meet the needs of identifiable individuals for whom the county is financially responsible, a new intermediate care facility for persons with mental retardation or related conditions; ~~and~~

(~~d~~) (d) establish a client tracking and evaluation system as required under applicable federal waiver regulations, Code of Federal Regulations, title 42, sections 431, 435, 440, and 441, as amended through December 31, 1982; and

(~~e~~) (e) develop a state plan for the delivery and funding of residential day and support services to persons with mental retardation or related conditions in Minnesota and submit that plan to the clerk of each house of the Minnesota legislature on or before the 15th of January of each biennium beginning January 15, 1985. The biennial mental retardation plan shall include but not be limited to:

- (1) county by county maximum intermediate care bed utilization quotas;
- (2) plans for the development of the number and types of services alternative to intermediate care beds;
- (3) procedures for the administration and management of the plan;
- (4) procedures for the evaluation of the implementation of the plan; and
- (5) the number, type, and location of intermediate care beds targeted for decertification.

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The commissioner shall modify the plan to ensure conformance with the medical assistance home and community-based services waiver.

Sec. 2. Minnesota Statutes 1986, section 253B.03, subdivision 1, is amended to read:

Subdivision 1. **RESTRAINTS.** A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the head of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others. Restraints shall not be applied to patients with mental retardation except as permitted under section 245.825 and rules of the commissioner of human services. Consent must be obtained from the person or person's guardian except for emergency procedures as permitted under rules of the commissioner adopted under section 245.825. Each use of a restraint and reason for it shall be made part of the clinical record of the patient under the signature of the head of the treatment facility.

Sec. 3. Minnesota Statutes 1986, section 253B.03, subdivision 6, is amended to read:

Subd. 6. **CONSENT FOR MEDICAL PROCEDURE.** A patient has the right to prior consent to any medical or surgical treatment, other than the treatment of mental illness; ~~mental retardation~~ or chemical dependency. A patient with mental retardation or the patient's guardian has the right to give or withhold consent before:

(1) the implementation of any aversive or deprivation procedure except for emergency procedures permitted in rules of the commissioner adopted under section 245.825; or

(2) the administration of psychotropic medication.

The following procedures shall be used to obtain consent for any treatment necessary to preserve the life or health of any committed patient:

(+) (a) The consent of a competent adult patient for the treatment is sufficient.

(2) (b) If the patient is subject to guardianship or conservatorship which includes the provision of medical care, the consent of the guardian or conservator for the treatment is sufficient.

(3) (c) If the head of the treatment facility determines that the patient is not competent to consent to the treatment and the patient has not been adjudicated incompetent, consent for the surgery shall be obtained from the nearest proper relative. For this purpose, the following persons are proper relatives, in the order listed: the patient's spouse, parent, adult child, or adult sibling. If the nearest proper relatives cannot be located or refuse to consent to the procedure, the head of the treatment facility or an interested person may petition the committing court for approval for the treatment or may petition an appropriate court for the appointment of a guardian or conservator. The determination that

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the patient is not competent, and the reasons for the determination, shall be documented in the patient's clinical record.

(4) (d) Consent to treatment of any minor patient shall be secured in accordance with sections 144.341 to 144.346, except that a minor 16 years of age or older may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

(5) (e) In the case of an emergency and when the persons ordinarily qualified to give consent cannot be located, the head of the treatment facility may give consent.

No person who consents to treatment pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing the treatment. No person shall be liable for performing treatment without consent if consent was given pursuant to this subdivision. This provision shall not affect any other liability which may result from the manner in which the treatment is performed.

Sec. 4. Minnesota Statutes 1986, section 525.56, subdivision 3, is amended to read:

Subd. 3. The court may appoint a guardian of the person if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the person if it determines that a conservator is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator of the person include, but are not limited to:

(1) The power to have custody of the ward or conservatee and the power to establish a place of abode within or without the state, except as otherwise provided in this clause. The ward or conservatee or any person interested in the ward's or conservatee's welfare may petition the court to prevent or to initiate a change in abode. A ward or conservatee may not be admitted to ~~any state institution~~ a regional treatment center by the guardian or conservator except after a hearing pursuant to ~~section 253A.07~~ chapter 253B.

(2) The duty to provide for the ward's or conservatee's care, comfort and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. The guardian or conservator has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian or conservator, but the guardian or conservator shall have no personal or monetary liability.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(3) The duty to take reasonable care of the ward's or conservatee's clothing, furniture, vehicles and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian or conservator of the estate. The guardian or conservator must give notice in the manner required and to those persons specified in section 525.55 prior to the disposition of the ward's or conservatee's clothing, furniture, vehicles or other personal effects. The notice must inform the person of the right to object to the disposition of the property within ten days and to petition the court for a review of the guardian's or conservator's proposed actions. Notice of the objection must be served by mail or personal service on the guardian or conservator and the ward or conservatee unless the ward or conservatee be the objector. The guardian or conservator served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves the disposition after a hearing.

(4) (a) The power to give any necessary consent to enable the ward or conservatee to receive necessary medical or other professional care, counsel, treatment or service, except that no guardian or conservator may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by order of the court as provided in this clause. The guardian or conservator shall not consent to any medical care for the ward or conservatee which violates the known conscientious, religious, or moral belief of the ward or conservatee.

(b) A guardian or conservator who believes a procedure described in clause (4)(a) requiring prior court approval to be necessary for the proper care of the ward or conservatee shall petition the court for an order and, in the case of a public guardianship or conservatorship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward or conservatee and to the other persons specified in section 525.55, subdivision 1. The notice shall comply with the requirements of, and be served in the manner provided in section 525.55, subdivision 2. The court shall appoint an attorney to represent the ward or conservatee who is not represented by counsel. In every case the court shall determine if the procedure is in the best interests of the ward or conservatee. In making its determination the court shall consider a written medical report which specifically considers the medical risks of the procedure and, whether alternative, less restrictive methods of treatment could be used to protect the best interests of the ward or conservatee, and any recommendation of the commissioner of human services for a public ward or conservatee. The standard of proof is that of clear and convincing evidence.

(c) In the case of a petition for sterilization of a mentally retarded ward or conservatee, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's or conservatee's social history and adjustment or the case manager for the ward or conservatee to examine or evaluate the ward or conservatee and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is neces-

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sary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interests of the ward or conservatee. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interests of the ward or conservatee.

(d) Any conservatee whose right to consent to a sterilization has not been restricted under this section or article 1, section 21, may be sterilized only if the conservatee consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the conservatee. The consent must certify that the conservatee has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization operation.

(e) A guardian or conservator or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under article 1, section 21, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including but not limited to, the administration of psychotropic medication or the implementation of aversive and deprivation procedures to which the guardian or conservator or the public guardian's designee has consented.

(5) The power to approve or withhold approval of any contract, except for necessities, which the ward or conservatee may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward or conservatee in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

Sec. 5. REPEALER.

Minnesota Statutes 1986, sections 252A.08; 252A.10; 252A.11; 252A.13; 252A.15; and 252A.18, are repealed.

Approved May 20, 1987

CHAPTER 186—H.F.No. 948

An act relating to state government; providing for affirmative action improvements; regulating job eligibility lists; providing for the title of state agency heads; giving the commissioner of health access to private or confidential data on individual state employees for purposes of epidemiologic studies; setting a mandatory age for certain employees and abolishing it for others; regulating hiring and personnel practices; amending Minnesota Statutes 1986, sections 15.06, subdivision 1; 15.46; 43A.08, subdivision 1; 43A.13, subdivisions 1 and 7; 43A.18, subdivision 4; 43A.191, subdivision 3; 43A.24, subdivision 2; 43A.30, subdivision 4;

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