

# MINNESOTA STATUTES 1978

3459

DEPARTMENT OF PUBLIC WELFARE 245.0312

## Public Welfare and Related Activities

### CHAPTER 245

#### DEPARTMENT OF PUBLIC WELFARE

Sec.		Sec.	
245.03	Department of public welfare established; commissioner.	245.71	Conditions to federal aid for mentally ill and mentally retarded.
245.0311	Transfer of personnel.	245.72	Community mental health pilot programs, certain counties.
245.0312	Designating special units and regional centers.	245.75	Federal grants for Indians.
245.0313	Aid to the disabled; mentally retarded.	245.76	Indian relief; reimbursement of costs.
245.035	Interview expenses.	245.765	Reimbursement of county for certain Indian welfare costs.
245.04	Transfer of powers and duties.	245.77	Legal settlement of persons receiving assistance; acceptance of federal funds.
245.05	Succession to rights and obligations of former agencies.		<b>PUBLIC WELFARE LICENSING ACT</b>
245.06	Pending proceedings and business.	245.781	Citation.
245.07	Transfer of property and employees of former agencies.	245.782	Definitions.
245.072	Mental retardation division.	245.783	Applications; inspection.
245.51	Interstate compact on mental health.	245.791	Exclusions.
245.52	Commissioner of public welfare as compact administrator.	245.801	Revocation of license; denial.
245.53	Transmittal of copies of act.	245.802	Rules; regulations.
245.61	Commissioner of public welfare may make grants for local mental health programs.	245.803	Violations; penalties.
245.62	Community mental health program; tax levy.	245.804	Inspection.
245.63	Assistance or grant.	245.805	Fines.
245.64	Funds allocated.	245.811	Fees.
245.65	Limitation on grants.	245.812	Location and zoning.
245.651	Allocation of fees.	245.813	Neglect; abuse; penalty.
245.66	Community mental health boards.	245.814	Liability insurance for foster parents.
245.67	Members of community health boards; terms, vacancies, removal.	245.821	Notice of establishment of facilities for treatment, housing or counseling of handicapped persons.
245.68	Duties of community health boards.	245.83	Grants for child care services; definitions.
245.69	Additional duties of commissioner.	245.84	Authorization to make grants.
245.691	Group homes; pilot program certain counties.	245.85	Termination of all or part of a grant.
245.70	Mentally ill and mentally retarded; federal aid.	245.86	Authorization to counties and municipalities to make grants.
		245.87	Allocations.
		245.90	Court awarded funds, disposition.

**245.01** [ Repealed, 1953 c 593 s 6 ]

**245.02** [ Repealed, 1953 c 593 s 6 ]

**245.03 DEPARTMENT OF PUBLIC WELFARE ESTABLISHED; COMMISSIONER.** There is created a department of public welfare. A commissioner of public welfare shall be appointed by the governor under the provisions of section 15.06. The commissioner shall be selected on the basis of ability and experience in welfare and without regard to political affiliations. The commissioner shall appoint a deputy commissioner.

[ 1953 c 593 s 1; 1965 c 45 s 17; 1969 c 1129 art 8 s 6; 1977 c 305 s 30 ]

**245.031** [ Obsolete ]

**245.0311 TRANSFER OF PERSONNEL.** (a) Notwithstanding any other law to the contrary, the commissioner of public welfare shall transfer authorized positions between institutions under his control in order to properly staff the institutions, taking into account the differences between programs in each institution.

(b) Notwithstanding any other law to the contrary, the commissioner of corrections may transfer authorized positions between institutions under his control in order to more properly staff the institutions.

[ 1971 c 961 s 18 ]

**245.0312 DESIGNATING SPECIAL UNITS AND REGIONAL CENTERS.** Notwithstanding any provision of law to the contrary, during the biennium, the commissioner of public welfare, upon the approval of the governor after consulting with the legislative advisory commission, may designate portions of hospitals for the mentally ill under his control as special care units for mentally retarded or inebriate persons, or as nursing homes for persons over the age of 65, and he likewise may designate portions of the hospitals designated in Minnesota Statutes 1969, Section 252.025, Subdivision 1, as special care units for mentally ill or inebriate persons, and he may plan to

# MINNESOTA STATUTES 1978

## 245.0313 DEPARTMENT OF PUBLIC WELFARE

3460

develop all hospitals for mentally ill, mentally retarded, or inebriate persons under his control as multi-purpose regional centers for programs related to all of the said problems.

If approved by the governor, the commissioner may rename the state hospital as a state regional center and appoint the hospital administrator as administrator of the center, in accordance with section 246.0251.

The directors of the separate program units of regional centers shall be responsible directly to the commissioner in his discretion.

[ 1971 c 961 s 19; 1975 c 271 s 6 ]

**245.0313 AID TO THE DISABLED; MENTALLY RETARDED.** Notwithstanding any provision of law to the contrary, the cost of care not met by federal funds for any mentally retarded patient eligible for the medical assistance program or the supplemental security income for the aged, blind and disabled program in institutions under the control of the commissioner of public welfare shall be paid for from state funds.

[ 1969 c 1136 s 23 subd 2; 1971 c 961 s 20; 1973 c 717 s 10 ]

**245.032** [ Obsolete ]

**245.033** [ Repealed, 1973 c 717 s 33 ]

**245.035 INTERVIEW EXPENSES.** Job applicants for professional, administrative, or highly technical positions recruited by the commissioner of public welfare may be reimbursed for necessary travel expenses to and from interviews arranged by the commissioner of public welfare.

[ 1976 c 163 s 42 ]

**245.04 TRANSFER OF POWERS AND DUTIES.** All powers and duties now vested in or imposed upon the director of social welfare and the division of social welfare and upon the director of public institutions and the division of public institutions, by the laws of this state or by any law of the United States are hereby transferred to, vested in, and imposed upon the commissioner of public welfare. The commissioner of public welfare is hereby constituted the "state agency" as defined by the social security act of the United States.

[ 1953 c 593 s 2 ]

**245.05 SUCCESSION TO RIGHTS AND OBLIGATIONS OF FORMER AGENCIES.** The department of public welfare to which the functions, powers, and duties of a previously existing department or other agency are by sections 245.03 to 245.12 assigned and transferred shall be deemed and held to constitute a continuation of the former department or agency as to matters within the jurisdiction of the former department or agency, and not a new authority, for the purpose of succession to all rights, powers, duties, and obligations of the former department or agency as constituted at the time of such assignment or transfer, except as otherwise provided by such sections, with the same force and effect as if such functions, powers and duties had not been assigned or transferred.

[ 1953 c 593 s 3 ]

**245.06 PENDING PROCEEDINGS AND BUSINESS.** Any proceeding, court action, prosecution, or other business or matter undertaken or commenced prior to April 21, 1953, by a department or other agency, the functions, powers, and duties whereof are by sections 245.03 to 245.12 assigned and transferred to the department of public welfare, and are still pending on April 21, 1953, may be conducted and completed by the new department in the same manner and under the same terms and conditions and with the same effect as though it were undertaken or commenced and were conducted or completed by the former department or agency prior to said transfer.

[ 1953 c 593 s 4 ]

**245.07 TRANSFER OF PROPERTY AND EMPLOYEES OF FORMER AGENCIES.** The head of a department or other agency whose functions, powers, and duties are by sections 245.03 to 245.12 assigned and transferred to the department of public welfare shall transfer and deliver to such department of public welfare all contracts, books, maps, plans, papers, records, and property of every description within his jurisdiction or control, and shall also transfer thereto any or all employees engaged in the exercise of such functions, powers, or duties. The commissioner of public welfare

# MINNESOTA STATUTES 1978

3461

DEPARTMENT OF PUBLIC WELFARE 245.51

to which such assignment or transfer is made is hereby authorized to take possession of said property, and shall take charge of said employees and shall employ them in the exercise of their respective functions, powers, and duties transferred as aforesaid, without reduction of compensation, subject, however, to change or termination of employment or compensation as may be otherwise provided by law.

[ 1953 c 593 s 5 ]

**245.071** [ Repealed, 1969 c 334 s 2 ]

**245.072 MENTAL RETARDATION DIVISION.** A mental retardation division is created in the department of public welfare which shall coordinate those laws administered and enforced by the commissioner of public welfare relating to mental retardation and mental deficiency which the commissioner may assign to the division. The mental retardation division shall be under the supervision of a director whose responsibility it shall be to maximize the availability of federal or private moneys for programs to assist mentally retarded and mentally deficient persons. The commissioner shall appoint the director who shall serve in the classified service of the state civil service. The commissioner may employ additional personnel with such qualifications and in such numbers as are reasonable and are necessary to carry out the provisions of this section.

[ 1971 c 486 s 1 ]

**245.08** [ Obsolete ]

**245.09** [ Unnecessary ]

**245.10** [ Unnecessary ]

**245.11** [ Unnecessary ]

**245.12** [ Unnecessary ]

**245.21** [ Renumbered 256.451 ]

**245.22** [ Renumbered 256.452 ]

**245.23** [ Renumbered 256.453 ]

**245.24** [ Renumbered 256.454 ]

**245.25** [ Renumbered 256.455 ]

**245.26** [ Renumbered 256.456 ]

**245.27** [ Renumbered 256.457 ]

**245.28** [ Renumbered 256.458 ]

**245.29** [ Renumbered 256.459 ]

**245.30** [ Renumbered 256.461 ]

**245.31** [ Renumbered 256.462 ]

**245.32** [ Renumbered 256.463 ]

**245.33** [ Renumbered 256.464 ]

**245.34** [ Renumbered 256.465 ]

**245.35** [ Renumbered 256.466 ]

**245.36** [ Renumbered 256.467 ]

**245.37** [ Renumbered 256.468 ]

**245.38** [ Renumbered 256.469 ]

**245.39** [ Renumbered 256.471 ]

**245.40** [ Renumbered 256.472 ]

**245.41** [ Renumbered 256.473 ]

**245.42** [ Renumbered 256.474 ]

**245.43** [ Renumbered 256.475 ]

**245.46** [ Repealed, 1973 c 650 art 21 s 33 ]

**245.51 INTERSTATE COMPACT ON MENTAL HEALTH.** The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authori-

ties so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

# MINNESOTA STATUTES 1978

3465

DEPARTMENT OF PUBLIC WELFARE 245.61

## ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

## ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

## ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[ 1957 c 326 s 1 ]

**245.52 COMMISSIONER OF PUBLIC WELFARE AS COMPACT ADMINISTRATOR.** The commissioner of public welfare is hereby designated as "compact administrator." He shall have the powers and duties specified in the compact, and he may, in the name of the state of Minnesota, subject to the approval of the attorney general as to form and legality, enter into such agreements authorized by the compact as he deems appropriate to effecting the purpose of the compact. He shall, within the limits of the appropriations for the care of the mentally ill and mentally deficient available therefor, authorize such payments as are necessary to discharge any financial obligations imposed upon this state by the compact or any agreement entered into under the compact.

[ 1957 c 326 s 2 ]

**245.53 TRANSMITTAL OF COPIES OF ACT.** Fully authenticated copies of sections 245.51 to 245.53 shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the secretary of state of the United States, and the council of state governments.

[ 1957 c 326 s 3 ]

**245.61 COMMISSIONER OF PUBLIC WELFARE MAY MAKE GRANTS FOR LOCAL MENTAL HEALTH PROGRAMS.** The commissioner of public welfare is hereby authorized to make grants to assist cities, counties, towns or any combinations thereof, or non-profit corporations in the establishment and operation of local mental health programs to provide the following services: (a) collaborative and cooperative services with public health and other groups for programs of prevention of mental illness, mental retardation, alcoholism, and other psychiatric disabilities; (b) informational and educational services to the general public, and lay and professional groups; (c) consultative services to schools, courts and health and welfare agencies, both public and private, including diagnostic evaluation of cases from juvenile courts; (d) outpatient diagnostic and treatment services; (e) rehabilitative services for patients suffering from mental or emotional disorders, mental retardation, alcoholism, and other psychiatric conditions particularly those who have received prior treatment in an inpatient facility; (f) detoxification in alcoholism evaluation and service facilities.

[ 1957 c 392 s 1; 1969 c 1043 s 7; 1973 c 123 art 5 s 7; 1976 c 163 s 43 ]

**245.62 COMMUNITY MENTAL HEALTH PROGRAM; TAX LEVY.** Any city, county, town, or any combination thereof, of over 50,000 population, and upon consent of the commissioner of public welfare, any city, county, town or combination thereof with less than 50,000 population, may establish a community mental health services program and may establish clinics and staff same with persons specially trained in psychiatry and related fields. Such programs and clinics may be administered by a city, county, town, or non-profit corporation or a community mental health board established pursuant to sections 245.61 to 245.69. After June 30, 1977, each community mental health services program must be contained completely within the boundaries of one Minnesota economic development region except that a community mental health board may encompass completely two Minnesota economic development regions.

In order to provide the necessary funds to establish and operate a mental health services program and to establish and maintain a clinic, the governing body of any city, county or town may levy annually upon all taxable property in such city, county or town a special tax in excess of any statutory or charter limitation but except when levied by a county, such levy shall not exceed two-thirds of one mill. The governing body of any city, county or town may make such a levy, where necessary, separate from the general levy and at any time of the year. Nothing contained herein shall in any way preclude the use of funds available for this purpose under any existing statute or charter provision relating to cities, towns or counties.

[ 1957 c 392 s 2; 1959 c 530 s 1; 1967 c 888 s 1; 1973 c 123 art 5 s 7; 1973 c 583 s 14; 1973 c 773 s 1; 1975 c 69 s 1 ]

NOTE: For Yellow Medicine County participation in a mental health services program outside its region, see Laws 1977, Chapter 24.

**245.63 ASSISTANCE OR GRANT.** Any city, county, town, non-profit corporation or community mental health board administering a mental health services program may apply for the assistance provided by sections 245.61 to 245.69 by submitting annually to the commissioner of public welfare its plan and budget for the next fiscal year together with the recommendations of the community mental health board thereon. No programs shall be eligible for a grant hereunder unless its plan and budget have been approved by the commissioner. After June 30, 1977, no program shall be eligible for a grant hereunder unless it is contained completely within the boundaries of one Minnesota economic development region except that a community mental health board may encompass completely two Minnesota economic development regions.

[ 1957 c 392 s 3; 1973 c 123 art 5 s 7; 1975 c 69 s 2 ]

NOTE: For Yellow Medicine County participation in a mental health services program outside its region, see Laws 1977, Chapter 24.

**245.64 FUNDS ALLOCATED.** At the beginning of each fiscal year the commissioner of public welfare shall allocate available funds to the mental health programs for disbursement during the fiscal year in accordance with such approved plans and budgets. The commissioner shall, from time to time during the fiscal year, review the budgets and expenditures of the various programs and if funds are not needed for a program to which they were allocated, he may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other programs. He may withdraw funds from any program which is not being administered in accordance with its approved plan and budget.

[ 1957 c 392 s 4 ]

**245.65 LIMITATION ON GRANTS.** Subdivision 1. Except as hereinafter provided, grants for any program shall not exceed 50 percent of the total expenditures for (a) salaries, (b) contract facilities and services, (c) operation, maintenance, rental and service costs, (d) per diem and travel expense of members of community mental health boards, (e) mortgage or other financial costs specifically approved by the commissioner of public welfare for buildings and facilities constructed under the auspices of community mental health centers construction programs sponsored by the government of the United States, (f) mortgage or other financial costs specifically approved by the commissioner of public welfare for buildings and facilities which are not con-



# MINNESOTA STATUTES 1978

3467

DEPARTMENT OF PUBLIC WELFARE 245.66

structured under the auspices of community mental health centers construction programs sponsored by the government of the United States, providing such grants do not exceed 25 percent of total construction costs, and (g) other expenditures specifically approved and authorized by the commissioner of public welfare. No grants shall be made for capital expenditures, except as herein provided. Grants may be made for expenditures for mental health services whether provided by operation of a local facility or through contract with other public or private agencies. No state money shall be used for matching that part of salaries paid above the class of persons in comparable positions in the state civil service, nor shall any state money be used for matching that part of fringe benefits that exceeds the fringe benefits provided to employees in the state civil service.

Subd. 2. Where local funds from any source other than the department of public welfare are being used to finance community mental health services prior to the effective date of sections 245.61 to 245.69, such funds shall not be used for matching state funds hereunder except that such local funds may be used for matching state funds for expansion of the existing services if such existing and expanded services conform to the provisions of sections 245.61 to 245.69.

Subd. 3. Existing local out-patient psychiatric clinic services now 100 percent state supported shall continue to receive such support until local funds are secured to provide 50 percent of such support but in no event beyond four years from the effective date hereof. Nothing in sections 245.61 to 245.69 shall be construed to limit the power of the commissioner of public welfare to establish clinics pursuant to section 246.014(10).

[ 1957 c 392 s 5; 1963 c 796 s 1; 1965 c 389 s 1; 1967 c 888 s 2; 1967 c 889 s 1; 1973 c 583 s 15; 1976 c 163 s 44 ]

**245.651 ALLOCATION OF FEES.** Subdivision 1. All fees for services collected by a community mental health program may be retained by the program until the total of the fees collected and the state grant to the program pursuant to sections 245.61 to 245.69 equals 70 percent of the program budget approved by the commissioner of public welfare. One-half of the additional fees collected by the center in excess of the 70 percent shall be deducted from the state grant. For the purpose of this section, "fees for services" or "fees" shall mean income derived from clinical services and paid to the community mental health program by the patient or on his behalf pursuant to section 62A.152.

Subd. 2. The amount of any reductions in state grants pursuant to subdivision 1 shall revert to the general fund.

[ 1978 c 704 s 1 ]

**245.66 COMMUNITY MENTAL HEALTH BOARDS.** Every city, county or town or combination thereof establishing a community mental health services program shall, before it may come within the provisions of sections 245.61 to 245.69, establish a community mental health board. When a combination of six or less political subdivisions establish a program, the board shall consist of at least nine members, but not more than twelve members, at the option of the selection committee. When seven or more political subdivisions establish a program the board shall consist of at least nine members, but not more than fifteen members, at the option of the selecting committee. When any city, county or town singly establishes a program, the board shall be appointed by the chief executive officer of the city or the chairman of the governing body of the county or town. When a non-profit corporation is the administrator of a program not established by a city, county or town, the corporation shall select a community mental health board which shall be representative of the groups herein enumerated, but the number of members need not be nine. When any combination of the political subdivisions herein enumerated establishes a community mental health services program, the chief executive officer of each participating city and the chairman of the governing body of each participating county or town shall appoint two members to a selecting committee, which shall select the members of the board. Membership of the community mental health boards shall include at least one county commissioner representative from each participating county and shall also be representative of local health departments, medical societies, county welfare boards, hospital boards, lay associations concerned with mental health, mental retardation and chemical dependency, labor, agriculture, business, civic and professional groups and the general public. Membership may include a representative from any county which purchases

substantial services from the community mental health board. Nothing in Laws 1975, Chapter 69 shall prevent a county or community mental health board from purchasing services from an agency outside the boundaries of the Minnesota economic development region.

[ 1957 c 392 s 6; 1959 c 303 s 1; 1963 c 796 s 2; 1973 c 123 art 5 s 7; 1975 c 69 s 3; 1975 c 169 s 2 ]

**245.67 MEMBERS OF COMMUNITY HEALTH BOARDS; TERMS, VACANCIES, REMOVAL.** Except for boards appointed by non-profit corporations, the term of office of each member of the community mental health board shall be for three years measured from the first day of the year of appointment except that of the members first appointed, one-third shall be appointed for a term of one year, one-third for a term of two years, and one-third for a term of three years if there is a nine, twelve, or fifteen member board. Any remaining members first appointed shall serve the three year term. Vacancies shall be filled for the unexpired term in the same manner as original appointments. Any member of a board may be removed by the appointing authority for neglect of duty, misconduct or malfeasance in office, after being given a written statement of charges and an opportunity to be heard thereon.

[ 1957 c 392 s 7; 1963 c 796 s 3 ]

**245.68 DUTIES OF COMMUNITY HEALTH BOARDS.** Subject to the provisions of this section and the rules and regulations of the commissioner of public welfare, each community mental health board shall:

(a) Facilitate and implement programs in mental health, mental retardation and inebriacy so as to assure delivery of services;

(b) Review and evaluate community mental health service provided pursuant to sections 245.61 to 245.69, and report thereon to the commissioner of public welfare, the administrator of the program, and, when indicated, the public, together with recommendations for additional services and facilities;

(c) Recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources, and promote public support for municipal and county appropriations;

(d) Promote, arrange and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;

(e) Advise the administrator of the community mental health program on the adoption and implementation of policies to stimulate effective community relations;

(f) Review the annual plan and budget and make recommendations thereon;

(g) When so determined by the authority establishing the program, act as the administrator of the program;

(i) Establish and operate a detoxification center;

(j) Encourage and assist innovative private treatment programs;

(k) Provide services for drug dependent persons; and

(l) Appoint advisory committees in at least the areas of mental health, mental retardation and inebriacy. A committee shall consist of residents of the area served who are interested and knowledgeable in the area governed by such committee. These advisory committees shall report regularly to the board.

[ 1957 c 392 s 8; 1971 c 109 s 1; 1971 c 892 s 4; 1976 c 2 s 83 ]

**245.69 ADDITIONAL DUTIES OF COMMISSIONER.** In addition to the powers and duties already conferred upon him by law the commissioner of public welfare shall:

(a) Promulgate rules and regulations governing eligibility of community mental health programs to receive state grants, prescribing standards for qualification of personnel and quality of professional service and for in-service training and educational leave programs for personnel, governing eligibility for service so that no person will be denied service on the basis of race, color or creed, or inability to pay, providing for establishment, subject to the approval of the commissioner, of fee schedules which shall be based upon ability to pay and the guiding principle of which shall be that no

# MINNESOTA STATUTES 1978

3469

DEPARTMENT OF PUBLIC WELFARE 245.71

one who can afford to pay for his own treatment at the rate customarily charged in private practice shall be treated in the community mental health services clinic except as hereinafter provided, regulating fees for consultation and diagnostic services which services may be provided to anyone without regard to his financial status when referred by the courts, schools, or health or welfare agencies whether public or private, and such other rules and regulations as he deems necessary to carry out the purposes of sections 245.61 to 245.69.

(b) Review and evaluate local programs and the performance of administrative and psychiatric personnel and make recommendations thereon to community mental health boards and program administrators;

(c) Provide consultative staff service to communities to assist in ascertaining local needs and in planning and establishing community mental health programs; and

(d) Employ qualified personnel to implement sections 245.61 to 245.69.

[ 1957 c 392 s 9; 1975 c 122 s 1 ]

**245.691 GROUP HOMES; PILOT PROGRAM CERTAIN COUNTIES.** Subdivision 1. In order to better ascertain the effectiveness of caring for the mentally ill, mentally retarded, and juvenile delinquents in a small home-personalized environment as opposed to institutional care, the counties of Becker, Clay, Douglas, Grant, Otter Tail, Pope, Stevens, Traverse, and Wilkin may, as a pilot program, establish not more than ten group homes, no more than two of which shall be located in any one of the above enumerated counties, for the care and rehabilitation of the mentally ill, mentally retarded, and juvenile delinquents.

Subd. 2. The homes authorized under this section shall be subject to the provisions of the Community Mental Health Act (Minnesota Statutes 1967, Sections 245.61 to 245.69), and the provisions of this section.

Subd. 3. Not more than ten patients shall be cared for in any group home established under this section. Sections 144.50 to 144.58, and 144A.02, are not applicable to group homes established by this section.

Subd. 4. The Lakeland Area Program Board established by the counties enumerated in subdivision 1 of this section under Minnesota Statutes 1967, Section 245.66, is designated as the regional agency to receive grants for the purposes of this section from the commissioner of public welfare, subject to the limitations of Minnesota Statutes 1967, Section 245.65. No grants may be made under this section for the costs of construction or remodeling of any building. The commissioner of public welfare is authorized to make reasonable rules not inconsistent with the provisions of this section.

Subd. 5. The commissioner of public welfare may permit personnel of the Fergus Falls State Hospital to assist in developing and carrying out the programs authorized by this section.

[ 1969 c 904 s 1; 1976 c 173 s 55 ]

**245.692** [ Repealed, 1973 c 572 s 18 ]

**245.693** [ Repealed, 1973 c 572 s 18 ]

**245.694** [ Repealed, 1973 c 572 s 18 ]

**245.695** [ Repealed, 1973 c 572 s 18 ]

**245.70 MENTALLY ILL AND MENTALLY RETARDED; FEDERAL AID.** The commissioner of public welfare is hereby designated the state agency to establish and administer a state-wide plan for the construction, equipment, maintenance, and operation of any facilities for the care, treatment, diagnosis, or rehabilitation, of the mentally retarded or mentally ill which are or may be required as a condition for eligibility for benefits under any federal law and in particular under the Federal Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164). The commissioner of public welfare is authorized and directed to receive, administer, and expend any funds that may be available under any federal law or from any other source, public or private, for such purposes.

[ 1965 c 626 s 1 ]

**245.71 CONDITIONS TO FEDERAL AID FOR MENTALLY ILL AND MENTALLY RETARDED.** The commissioner of public welfare is authorized and empowered to comply with all conditions and requirements necessary to receive federal aid or grants with respect to the establishment, construction, maintenance, equipment or

# MINNESOTA STATUTES 1978

## 245.72 DEPARTMENT OF PUBLIC WELFARE

3470

operation, for all the people of this state, of adequate facilities and services as specified in section 245.70, including the authority:

(a) To designate or establish a state advisory council, with representation as required as a condition of eligibility for benefits under any federal law, to consult with him in carrying out the purposes of this act;

(b) To provide an inventory of existing facilities or a particular category thereof, and to survey the need for additional facilities;

(c) To develop and administer a construction program or programs which, in conjunction with existing facilities will afford adequate facilities to serve the people of this state;

(d) To provide for priority of projects or facilities;

(e) To provide to applicants an opportunity for a hearing before him;

(f) To prescribe and require compliance with such standards of maintenance and operation applicable to such facilities as are reasonably necessary to protect the public health, welfare, and safety;

(g) To promulgate rules and regulations as to methods of administration, reporting and personnel standards.

[ 1965 c 626 s 2 ]

**245.72 COMMUNITY MENTAL HEALTH PILOT PROGRAMS, CERTAIN COUNTIES.** The counties of Dakota, Washington, and Ramsey may individually or jointly establish pilot programs to provide nonresidential community based services of individualized treatment and rehabilitation to mentally ill persons residing in those counties. The pilot programs shall emphasize teaching basic skills to persons who would otherwise be hospitalized or who are unable to use currently available aftercare services, and shall be designed to enable those persons to live independently in the community without further hospitalization.

[ 1976 c 327 s 1 ]

**245.75 FEDERAL GRANTS FOR INDIANS.** The commissioner of public welfare is authorized to enter into contracts with the department of health, education, welfare and the department of interior, bureau of Indian affairs, for the purpose of receiving federal grants for the welfare and relief of Minnesota Indians. Such contract and the plan of distribution of such funds shall be subject to approval of the Minnesota public relief advisory committee.

[ 1965 c 886 s 23 ]

**245.76 INDIAN RELIEF; REIMBURSEMENT OF COSTS.** Subdivision 1. The care and relief of persons of Indian blood is declared to be a matter of special state concern and responsibility. To effectuate this responsibility, the commissioner of public welfare shall reimburse counties, cities, towns or any other political subdivision for up to 75 percent of the costs of relief and related services provided to persons of Indian blood to the extent that state and federal moneys are available for this purpose.

Subd. 2. For the purposes of this section: (a) An Indian is a person who has at least one-quarter Indian blood or a person listed on the rolls of the United States bureau of Indian affairs as an Indian and who is not residing on the Red Lake Indian Reservation; (b) The term "relief" includes but is not limited to direct relief to persons in their own homes, medical care, hospital care, burial, maintenance of children not under state guardianship and state wards not otherwise provided for. It shall not include university hospital care, sanatorium care, or state institutional charges; (c) The commissioner of public welfare shall promulgate rules and regulations for the administration of relief including standards of assistance and the manner and form of assistance grants. He shall have the authority to negotiate for and accept grants from the government of the United States.

Subd. 3. The commissioner of public welfare may advance grants to the counties, cities, towns or any other political subdivision on an estimated basis subject to audit and adjustment at the end of each state fiscal year.

[ 1969 c 909 s 1-3 ]

**245.765 REIMBURSEMENT OF COUNTY FOR CERTAIN INDIAN WELFARE COSTS.** Subdivision 1. The commissioner of public welfare, to the extent that state

# MINNESOTA STATUTES 1978

3471

DEPARTMENT OF PUBLIC WELFARE 245.782

and federal money is available therefor, shall reimburse any county for all welfare costs expended by the county to any Indian who is an enrolled member of the Red Lake Band of Chippewa Indians and resides upon the Red Lake Indian Reservation. The commissioner may advance payments to a county on an estimated basis subject to audit and adjustment at the end of each state fiscal year.

Subd. 2. The commissioner may promulgate rules for the carrying out of the provisions of subdivision 1. He may negotiate for and accept grants from the United States for the purposes of this section.

[ 1971 c 935 s 1 ]

**245.77 LEGAL SETTLEMENT OF PERSONS RECEIVING ASSISTANCE; ACCEPTANCE OF FEDERAL FUNDS.** In the event federal funds become available to the state for purposes of reimbursing the several local agencies of the state for costs incurred in providing financial relief to poor persons under the liability imposed by section 256D.18, or for reimbursing the state and counties for categorical aid assistance furnished to persons who are eligible for such assistance only because of the United States Supreme Court decision invalidating state residence requirements the commissioner of public welfare is hereby designated the state agent for receipt of such funds. Upon receipt of any federal funds the commissioner shall in a uniform and equitable manner use such funds to reimburse counties for expenditures made in providing financial relief to poor persons. The commissioner is further authorized to promulgate rules and regulations, consistent with the rules and regulations promulgated by the secretary of health, education and welfare, governing the reimbursement provided for by this provision.

[ 1969 c 910 s 1; 1973 c 380 s 5; 1973 c 650 art 21 s 22; 1976 c 2 s 84 ]

**245.78** [ Repealed, 1976 c 243 s 15 ]

## PUBLIC WELFARE LICENSING ACT

**245.781 CITATION.** Laws 1976, Chapter 243, Sections 2 to 14 shall be known as the "public welfare licensing act".

[ 1976 c 243 s 2 ]

**245.782 DEFINITIONS.** Subdivision 1. For the purposes of Laws 1976, Chapter 243, Sections 2 to 14, the following terms shall have the meanings given them:

Subd. 2. "Person" means an adult who is handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap and a child, whether handicapped or not.

Subd. 3. "Child" means anyone who has not reached his eighteenth birthday.

Subd. 4. "Agency" means any individual, organization, association, or corporation which for gain or otherwise regularly provides needed social or counseling services for persons living in their own homes, or receives persons unable to remain in their own homes and places them in residential or foster care, or places persons in adoptive homes. "Agency" does not include a local welfare agency or agencies sponsored by community mental health boards pursuant to section 245.66.

Subd. 5. "Day care facility" means any facility, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. Day care facilities include, but are not limited to: family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, daytime activity centers, day treatment programs, and day services.

Subd. 6. "Residential facility" means any facility, public or private, which for gain or otherwise regularly provides one or more persons with a 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to: state institutions under the control of the commissioner of public welfare, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, or schools for handicapped children.

# MINNESOTA STATUTES 1978

## 245.783 DEPARTMENT OF PUBLIC WELFARE

3472

Subd. 7. "Placing persons in foster care" means placing persons in any of the following residential facilities: foster home, work home, free home, group home, residential treatment center, institution, residential program, or maternity shelter. It also means placement in a private home for the purpose of legal adoption.

Subd. 8. "Commissioner" means the commissioner of public welfare and includes any duly authorized representative of the commissioner.

Subd. 9. "Regularly" or "on a regular basis" means the provision of day care or residential or agency services to one or more persons for a cumulative total of more than 30 days within any 12 month period.

Subd. 10. "Related" means any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, step parent, step sister, step brother, uncle, aunt, child, niece, nephew. It shall also include a legally appointed guardian.

Subd. 11. "License" means a certificate issued by the commissioner authorizing the operator to provide specified services for a specified period of time in accordance with the terms of the license, Laws 1976, Chapter 243, and the rules and regulations of the commissioner.

Subd. 12. "Provisional license" means the certificate issued by the commissioner, prior to the issuance of a license, authorizing the operator to begin providing specified services for a specified period of time in accordance with the provisions of the provisional license, Laws 1976, Chapter 243, and the rules and regulations of the commissioner. A provisional license may be issued if the operator is temporarily unable to comply with all of the requirements for a license.

Subd. 13. "Operator" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or service or agency.

[ 1976 c 243 s 3 ]

**245.783 APPLICATIONS; INSPECTION.** Subdivision 1. No individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the commissioner. No unlicensed individual or agency shall receive a child for care or placement, place a child in foster care, assist with plans for his placement in foster care, or solicit money in behalf of the agency. Application for license and renewal of license shall be made on forms supplied by the commissioner and in the manner he prescribes. The commissioner shall offer consultation, assistance and information to all applicants for licensure under Laws 1976, Chapter 243. This shall include information regarding regulations and requirements of other state agencies and departments which affect the applicant, and shall assist applicants and operators to meet and maintain requirements for licensure.

Subd. 2. The commissioner shall be responsible for processing applications for licensure made under Laws 1976, Chapter 243. State agencies and departments including, but not limited to, the state fire marshal, state building code, state commissioner of health and state planning agency, which are involved in the investigation and review of a facility or an applicant's qualifications shall direct their employees to report directly to the commissioner on these matters and shall be subject to the rules promulgated by the commissioner with respect to the coordination of licensing and inspection functions. This subdivision relates only to other state departments or agencies and confers no additional powers or duties upon the commissioner respecting federal, county, municipal, or other nonstate agencies. Nothing in this subdivision shall prevent the state fire marshal from delegating inspection duties to local units of government.

Subd. 3. Before issuing a license or renewing a license, the commissioner shall conduct a study of the applicant and the agency or the day care or residential facility. If the commissioner is satisfied that the provisions of Laws 1976, Chapter 243 and the applicable rules and regulations promulgated by him are substantially met, a license shall be issued. If the results of the study indicate that all of the applicable laws, rules and regulations cannot be met immediately, but can and will be met within one year or less, and the deviations do not threaten the health, rights, or safety of persons to be served, a provisional license shall be issued for a period not to exceed one year from the date of issuance.

# MINNESOTA STATUTES 1978

3473

DEPARTMENT OF PUBLIC WELFARE 245.801

The commissioner may request advice from persons using the facility, agency, or service, operators of a similar facility, agency, or service, and relevant professionals as part of the evaluation of an applicant.

Subd. 4. An initial license shall remain in force for up to one year. A renewal license may be issued for a period of up to two years at the discretion of the commissioner.

Subd. 5. Every license and provisional license issued to a day care or residential facility shall prescribe the number and age groupings of persons who may receive care at any one time.

Subd. 6. Every license and provisional license shall state the date of expiration and the location of the facility, the rule or rules under which the program is licensed, the name and address of the operator, and the provisional status of a license. A license shall not be transferrable to a new operator or location.

[ 1976 c 243 s 4; 1977 c 305 s 45 ]

**245.79** [ Repealed, 1976 c 243 s 15 ]

**245.791. EXCLUSIONS.** Sections 245.781 to 245.813 shall not apply to:

- (1) Day care or residential care provided by a relative to related persons;
- (2) Day care or residential care provided for a cumulative total of less than 30 days in any 12 month period;
- (3) Day care provided for persons from a single unrelated family for any length of time;
- (4) A home caring for a person placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years after placement;
- (5) A licensed hospital whose psychiatric or chemical dependency program is located within the hospital.
- (6) A nursing home, hospital, or boarding care home, licensed by the state commissioner of health, except that an identifiable unit of such a facility which regularly provides care for more than five handicapped persons must be licensed under sections 245.781 to 245.813;
- (7) A day care or residential facility serving fewer than five physically or mentally handicapped adults;
- (8) A day care or residential program serving any number of nonhandicapped adults;
- (9) A sheltered workshop day program, certified by the state board of education;
- (10) A work activity day program, certified by the state board of education;
- (11) A work-wage home providing care for one nonrelated child who has reached his sixteenth birthday and who has been independently placed for purposes of education or employment;
- (12) A school under the general supervision of the commissioner of education or a local education agency;
- (13) A residential or day care facility under the direct control and supervision of a local education agency or a state agency other than the commissioner;
- (14) Day care provided for periods of no more than three hours per day for any person while his relatives are in the same building, or can be present in the same building within 30 minutes;
- (15) Facilities which in the judgment of the commissioner of education are operated for the primary purpose of educating children shall be exempt from these rules and regulations except insofar as the regulations affect the health and safety of the children therein. The classrooms shall meet the applicable standards of the commissioner of public safety and state commissioner of health.

[ 1976 c 243 s 5; 1977 c 25 s 1; 1977 c 305 s 45 ]

**245.80** [ Repealed, 1976 c 243 s 15 ]

**245.801 REVOCATION OF LICENSE; DENIAL.** Subdivision 1. An applicant who has been denied a license by the department shall be given prompt written notice thereof, by certified mail to the address shown in the application. The notice shall contain a statement of the reasons for the denial and shall inform the applicant of his

right to appeal the decision to the commissioner. Written notice of appeal must be mailed within 20 days after receipt of the notice of denial. Upon receiving a timely written appeal, the commissioner shall give the applicant reasonable notice and an opportunity for a prompt hearing before an impartial hearing examiner. The hearing examiner shall make a recommendation to the commissioner of whether the application shall be denied or granted either for a license or a provisional license. The commissioner shall not be bound by the recommendation of the hearing examiner. The final decision of the commissioner shall be sent to the applicant by certified mail, and shall inform the applicant of his rights under chapter 15.

Subd. 2. Failure of the commissioner to approve or deny an application within 90 days of receipt of a completed application shall be deemed to be an approval of license.

Subd. 3. The commissioner may suspend, revoke, or make probationary a license if an operator fails to comply with applicable laws or the rules and regulations of the commissioner.

Subd. 4. An operator whose license the commissioner proposes to suspend, revoke, or make probationary shall be given notice by certified mail addressed to the location shown on the license. The notice shall contain a statement of, and the reasons for, the proposed action and shall inform the operator of his right to appeal the decision to the commissioner, in writing, within ten days after receipt of the notice of the proposed action. Upon receiving a timely written appeal, the commissioner shall give the operator reasonable notice and an opportunity for a prompt hearing before an impartial hearing examiner. The hearing examiner shall make a recommendation to the commissioner as to whether the license shall be suspended, revoked, or made probationary. However, if the commissioner finds that the health, safety or rights of the persons served by the facility or agency are in imminent danger, he shall order the immediate suspension of the license. The operator shall be given written notice of the order by personal service. The notice shall contain a statement of the reasons for the suspension and shall inform the operator of his right to petition the commissioner for reconsideration of the order. The petition shall be in writing and shall be made within five days after the personal service of the order. Upon receiving a timely written petition, the commissioner shall give the operator reasonable notice and an opportunity for a prompt hearing before an impartial hearing examiner with respect to the order of suspension of the license. The hearing examiner shall make a recommendation to the commissioner as to whether the order of suspension should be affirmed or reversed. The commissioner shall not be bound by the recommendation of the hearing examiner. The final decision of the commissioner shall be served on the operator by personal service, and shall inform the applicant of his rights under chapter 15.

Subd. 5. At any hearing provided for by Laws 1976, Chapter 243, the applicant or operator may be represented by counsel and has the right to call, examine, and cross-examine witnesses. The hearing examiner is empowered to require the presence of witnesses and evidence by subpoena on the behalf of any party. Each decision of a hearing examiner shall be in writing, shall contain findings of fact and conclusions, and shall be mailed to the parties by certified mail to their last known addresses as shown in the application.

Subd. 6. An operator whose license has been revoked or not renewed because of noncompliance with applicable laws, or rules and regulations may not be granted a new license for five years following the revocation or denial of renewal.

[ 1976 c 243 s 6; 1978 c 674 s 60 ]

**245.802 RULES; REGULATIONS.** Subdivision 1. The commissioner shall develop and promulgate rules and regulations pursuant to chapter 15 for the operation and maintenance of day care and residential facilities and agencies, and for granting, suspending, revoking, and making licenses probationary. In developing rules and regulations, he shall consult with:

(1) Other appropriate state agencies including, but not limited to, the state commissioner of health, the state board of education, and the fire marshal. Any agency consulted is directed to cooperate with and assist the commissioner in developing appropriate rules and regulations for the licensing of day care and residential facilities and agencies;

(2) Persons and the relatives of the persons who use the service;



# MINNESOTA STATUTES 1978

3475

DEPARTMENT OF PUBLIC WELFARE 245.805

(3) Advocacy groups;

(4) Representatives of those who operate daycare or residential facilities or agencies;

(5) Experts in relevant professional fields.

Subd. 2. The commissioner shall conduct a comprehensive review of the rules and regulations promulgated under Laws 1976, Chapter 243, Sections 2 to 14 at least once every five years.

[ 1976 c 243 s 7; 1977 c 305 s 45 ]

**245.803 VIOLATIONS; PENALTIES.** Subdivision 1. The operation of a day care or residential facility or agency required to be licensed under Laws 1976, Chapter 243, Sections 2 to 14 without a license is a misdemeanor punishable by a fine of not more than \$300. The commissioner may seek an injunction in the district court against the continuing operation of a day care or residential facility or agency:

(1) If the facility or agency is in violation of Laws 1976, Chapter 243, Sections 2 to 14 or of the rules and regulations promulgated by the commissioner and the operator has failed to correct the violation within 30 days of receipt of a written order to do so; or

(2) If an operator has willfully failed to apply for a license or renewal of license.

Proceedings for securing injunctions may be brought by the attorney general, or by the appropriate county attorney.

Subd. 2. Any individual who advertises a facility required to be licensed pursuant to Laws 1976, Chapter 243, Sections 2 to 14 prior to obtaining a license is guilty of a misdemeanor.

Subd. 3. The sanctions provided in Laws 1976, Chapter 243, Sections 2 to 14 are cumulative, and shall not be construed as restricting any sanctions otherwise available.

[ 1976 c 243 s 8 ]

**245.804 INSPECTION.** Subdivision 1. In exercising the powers of licensing, renewing, suspending, revoking, or making licenses probationary, the commissioner shall study and evaluate operators and applicants for a license. To carry out these duties the commissioner shall employ qualified personnel who, insofar as possible, are knowledgeable about the operation of the types and characters of facilities and agencies to be inspected. Authorized representatives of the commissioner may visit a day care or residential facility or agency at any time during the hours of operation for purposes of the study and inspection. In conducting evaluations and inspections, the commissioner may call upon and receive appropriate assistance from other governmental agencies within their authorized fields. Inspections may be made without prior notice to the applicant or operator.

Subd. 2. The operator or applicant shall cooperate with the evaluation and inspection by providing access to its facilities, records, and staff. Failure to comply with the reasonable requests of the commissioner in connection with the study and inspection is cause for revocation of license or for a denial of application. The study and inspection may involve consideration of any facts, conditions, or circumstances relative to the operation of the day care or residential facility or agency, including data on previous operation of a facility or service, references, and other information about the character and qualifications of the personnel of the facility or agency.

[ 1976 c 243 s 9 ]

**245.805 FINES.** Whenever the commissioner finds, upon inspection of a facility, that the operator is not in compliance with an applicable law or rule or regulation, a correction order shall be issued to the operator. The correction order shall state the deficiency or deficiencies, cite the specific law or regulations violated, and specify the time allowed for correction.

If, upon reinspection, it is found that the operator has not corrected the deficiency or deficiencies specified in the correction order, the operator may be required to forfeit to the state within 15 days a sum of up to \$250 for each deficiency not corrected. A forfeiture order may be appealed in accordance with the procedures set

# MINNESOTA STATUTES 1978

## 245.811 DEPARTMENT OF PUBLIC WELFARE

3476

forth in section 245.801. All forfeitures shall be paid into the general fund. Any unpaid forfeitures may be recovered by the attorney general.

[ 1976 c 243 s 10 ]

**245.81** [ Repealed, 1976 c 243 s 15 ]

**245.811 FEES.** The commissioner may charge a reasonable fee for the issuance or renewal of a license except that no fee may be charged to a day care or residential facility for the mentally retarded. In no event shall the fee exceed \$150. Fees may be waived at the discretion of the commissioner.

[ 1976 c 243 s 11 ]

**245.812 LOCATION AND ZONING.** Subdivision 1. No license or provisional license shall be granted when the issuance of the license would substantially contribute to the excessive concentration of residential facilities within any town, municipality or county of the state.

Subd. 2. In determining whether a license shall be issued, the commissioner shall specifically consider the population, size, land use plan, availability of community services and the number and size of existing public and private community residential facilities in the town, municipality or county in which an applicant seeks to operate a residence. Except as specified in section 252.28, under no circumstances may the commissioner newly license any group residential facility pursuant to Laws 1976, Chapter 243 if such residential facility will be within 1,320 feet of any existing community residential facility unless the appropriate town, municipality or county zoning authority grants the facility a conditional use or special use permit.

Subd. 3. A licensed day care or residential facility serving six or fewer persons shall be considered a permitted single family residential use of property for the purposes of zoning.

Subd. 4. Unless otherwise provided in any town, municipal or county zoning regulation, a licensed day care or residential facility serving from seven through sixteen persons shall be considered a permitted multi-family residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the homes which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless such additional conditions are necessary to protect the health and safety of the residents of the facility. Nothing herein shall be construed to exclude or prohibit residential homes from single family zones if otherwise permitted by a local zoning regulation.

Subd. 5. Notwithstanding any law to the contrary, no license or provisional license shall be issued under Laws 1976, Chapter 243 without 30 days written notice from the commissioner to the affected municipality or other political subdivision.

Subd. 6. No state funds shall be made available to or be expended by any state or local agency for facilities licensed under Laws 1976, Chapter 243 unless and until the provisions of subdivision 5 have been complied with in full.

[ 1976 c 243 s 12 ]

**245.813 NEGLECT; ABUSE; PENALTY.** Subdivision 1. **Conditions at facility.** Any operator, employee or volunteer worker at any facility or agency required to be licensed who intentionally physically or sexually abuses or willfully neglects any person in the care of that facility or agency may be charged pursuant to section 609.23.

It shall be the responsibility of any operator of a facility or agency required to be licensed to provide living conditions, programs, policies and procedures to safeguard the well-being and safety of any person in the care of that facility or agency. Any operator who permits conditions to exist which result in the physical or sexual abuse or willful neglect of any person in the care of that agency or facility may be charged pursuant to section 609.23.

Subd. 2. **Persons mandated to report.** Any professional individual or his delegate in the field of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care education, or law enforcement who has knowledge of or reasonable cause to believe a person in the care of a facility or agency required to be licensed is being neglected or physically or sexually abused by an individual in that facility or agency shall immediately report the information to the

# MINNESOTA STATUTES 1978

3477

DEPARTMENT OF PUBLIC WELFARE 245.813

commissioner, the local welfare agency, or police department. The local welfare agency or police department, upon receiving a report, shall immediately notify the commissioner. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this section may voluntarily report to the commissioner, the local welfare agency or police department if he has knowledge of or reasonable cause to believe a person in the care of a facility or agency required to be licensed is being neglected or subjected to physical or sexual abuse by an individual in that facility or agency. The local welfare agency or police department upon receiving a report shall immediately notify the commissioner.

**Subd. 3. Immunity from liability.** Any person participating in good faith and exercising due care in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

**Subd. 4. Falsified reports.** Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

**Subd. 5. Failure to report.** Any person required by this section to report suspected physical or sexual abuse who willfully fails to do so shall be guilty of a misdemeanor.

**Subd. 6. Report.** An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 2 to report shall be followed as soon as possible thereafter by a report in writing to the commissioner, the appropriate police department or local welfare agency. Any report shall be of sufficient content to identify the person, the facility or agency responsible for his care, the nature and extent of the person's injuries, and the name and address of the reporter. Written reports received by a police department or local welfare agency shall be forwarded immediately to the commissioner.

**Subd. 7. Mandatory reporting to a medical examiner or coroner.** When a person required to report under the provisions of subdivision 2 has reasonable cause to believe a person has died as a result of neglect or physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner. Medical examiners or coroners shall notify the commissioner, the local welfare agency, or police department in instances in which they believe that the person has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the appropriate law enforcement authorities, the commissioner, and the local welfare agency.

**Subd. 8. Investigation.** The commissioner shall immediately investigate any report received under this section. The commissioner shall arrange for the transmittal of reports received by local agencies to him, and may delegate to any local welfare agency the duty to investigate reports.

**Subd. 9. Records.** All records maintained by the commissioner or a local welfare agency under this section, including any written reports filed under subdivision 6, shall be private. The records shall be collected and maintained in accordance with the provisions of sections 15.162 to 15.168, and an individual subject of a record shall have access to the record in accordance with those sections except that the name of the reporter shall be disclosed only (a) by the commissioner or the local welfare agency if the report is unsubstantiated and (b) upon court order if the report is substantiated.

Records maintained by the commissioner or local welfare agencies under this section must be destroyed as follows:

(a) All records relating to reports which, upon investigation, are found to be unsubstantiated shall be destroyed immediately;

(b) All records relating to reports which, upon investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record; and

(c) All records of reports which, upon initial investigation, cannot be substantiated to the satisfaction of the commissioner or the local agency may be kept for a period of one year. If the commissioner or the local agency is unable to substantiate the

# MINNESOTA STATUTES 1978

## 245.814 DEPARTMENT OF PUBLIC WELFARE

3478

report within that period, all records relating to the report shall be destroyed immediately.

[ 1976 c 243 s 13 ]

**245.814 LIABILITY INSURANCE FOR FOSTER PARENTS.** The commissioner of public welfare shall within the appropriation provided purchase and provide insurance to foster parents to cover their liability for:

(1) injuries or property damage caused or sustained by foster children in their home; and

(2) actions arising out of alienation of affections sustained by the natural parents of a foster child.

Coverage shall apply to all foster boarding homes licensed by the department of public welfare, or established by the juvenile court and certified by the commissioner of corrections pursuant to section 260.185, subdivision 1, clause (c) (5), to the extent that the liability is not covered by the provisions of the standard homeowner's or automobile insurance policy. The insurance shall not cover property owned by the foster parents, damage caused intentionally by a child over 12 years of age, or property damage arising out of business pursuits or the operation of any vehicle, machinery, or equipment.

[ 1977 c 360 s 1 ]

**245.82** [ Repealed, 1976 c 243 s 15 ]

**245.821 NOTICE OF ESTABLISHMENT OF FACILITIES FOR TREATMENT, HOUSING OR COUNSELING OF HANDICAPPED PERSONS.** Subdivision 1. Notwithstanding any law to the contrary, no private or public facility for the treatment, housing, or counseling of more than five mentally retarded, physically disabled, mentally ill, chemically or otherwise dependent persons, nor any correctional facility for more than five persons, shall be established without 30 days written notice to the affected municipality or other political subdivision.

Subd. 2. No state funds shall be made available to or be expended by any state or local agency for facilities or programs enumerated in this section unless and until the provisions of this section have been complied with in full.

[ 1974 c 274 s 3 ]

**245.83 GRANTS FOR CHILD CARE SERVICES; DEFINITIONS.** Subdivision 1. As used in sections 245.83 to 245.87 the words defined in this section shall have the meanings given them.

Subd. 2. "Child care services" means family day care homes, group day care centers, nursery schools, day nurseries, child day care centers, play groups, head start and parent cooperatives, as defined by rules of the commissioner, and in-home child care as defined in the Minnesota plan for social services to families and children.

Subd. 3. "Child" means any person 14 years of age or younger.

Subd. 4. "Commissioner" means the commissioner of public welfare.

Subd. 5. "Interim financing" means funds to carry out such activities as are necessary for family day care homes, group family day care homes and cooperative child care centers to receive and maintain state licensing, and operating funds for a period of six consecutive months following receipt of state licensing by a family day care home, group family day care home, or cooperative child care center.

[ 1971 c 848 s 1; 1973 c 584 s 1-3; 1976 c 306 s 1,2 ]

**245.84 AUTHORIZATION TO MAKE GRANTS.** Subdivision 1. The commissioner is authorized to make grants from the general fund in the state treasury to any municipality, county, corporation or combination thereof for the cost of providing technical assistance and child care services as the commissioner deems necessary or proper to carry out the purposes of sections 245.83 to 245.87.

The commissioner is further authorized to make grants to any municipality, county, incorporated licensed child care facility, or corporation or combination thereof for any of the following purposes:

(a) For creating new licensed day care facilities and expanding existing facilities including, but not limited to, supplies, equipment, and facility renovation and remodeling;

# MINNESOTA STATUTES 1978

3479

DEPARTMENT OF PUBLIC WELFARE 245.87

(b) For improving licensed day care facility programs, including, but not limited to, staff specialists, staff training, supplies, equipment, and facility renovation and remodeling;

(c) For supportive child development services including, but not limited to, inservice training, curriculum development, consulting specialist, resource centers, and program and resource materials;

(d) For carrying out programs including, but not limited to, staff, supplies, equipment, facility renovation, and training; and,

(e) For interim financing.

Subd. 2. The commissioner may make grants to counties, municipalities, corporations or incorporated licensed day care facilities and may promulgate rules for grants using a sliding fee scale. The commissioner shall review the program annually. Excluding that portion charged to parents, grants made pursuant to the sliding fee scale shall not exceed 95 percent of the total cost of the program for fiscal year 1977, 85 percent for fiscal year 1978, and 75 percent for each year thereafter.

Subd. 3. For the purposes of this section, donated professional and volunteer services, program materials, equipment, supplies, and facilities may be approved as part of a matching share of the cost, provided that total costs shall be reduced by the costs charged to parents if a sliding fee scale has been used.

Subd. 4. The commissioner may appoint an advisory council of not more than 35 members which shall advise the commissioner on grants and other child care issues. One-third of the members of the advisory council shall be parents who use child care services. The membership terms, compensation and removal from office of members of the advisory council shall be according to section 15.059.

Subd. 5. The commissioner shall annually develop a plan for the distribution of funds for child care services. All licensed child care programs shall be given written notice concerning the availability of funds and the application process.

[ 1971 c 848 s 2; 1973 c 584 s 4; 1976 c 306 s 3 ]

**245.85 TERMINATION OF ALL OR PART OF A GRANT.** The commissioner shall supervise and coordinate all child care services and programs for which a grant has been made pursuant to sections 245.83 to 245.87, and shall endeavor insofar as possible to establish a set of program standards and uniform regulations to coordinate child care services and programs at the state and local level. The commissioner shall, from time to time, review the budgets, expenditures and development of each child care service and program to which a grant has been made pursuant to sections 245.83 to 245.87. If the commissioner determines that any portion of the grants made to establish and operate a child care service or a program are no longer needed, that local support is not available to finance the local share of the cost of such service or programs, or that such service or programs do not comply with the rules, regulations, standards or requirements of the commissioner, the commissioner may, upon 30 days notice, withdraw any funds not allocated prior to the delivery of such notice and cancel the grant to the extent of such withdrawal.

Funds for each year of the biennium which have not been granted by the end of the sixth month of that year may be allocated without regard to restrictions set forth in section 245.87.

[ 1971 c 848 s 3; 1973 c 584 s 5; 1976 c 306 s 4 ]

**245.86 AUTHORIZATION TO COUNTIES AND MUNICIPALITIES TO MAKE GRANTS.** Any county or municipality may make grants from special tax revenues or from its general fund to any organization, governmental or corporate, for the same purposes for which the commissioner is authorized to make grants by sections 245.83 to 245.87.

[ 1971 c 848 s 4; 1973 c 584 s 6; 1976 c 306 s 5 ]

**245.87 ALLOCATIONS.** For the purposes of sections 245.83 to 245.87 grants shall be distributed between the metropolitan area, comprising the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, and the area outside the metropolitan area so that no more than 55 percent of the total fund goes to either area after excluding allocations for migrant day care services, administrative costs and statewide projects. At least ten percent of the total program allocation shall be designated for interim financing. The commissioner is further instructed that the allo-

# MINNESOTA STATUTES 1978

## 245.90 DEPARTMENT OF PUBLIC WELFARE

3480

cation in each area be based on a need and population basis.

[ 1971 c 848 s 5; 1973 c 584 s 7; 1976 c 306 s 6 ]

**245.90 COURT AWARDED FUNDS, DISPOSITION.** The commissioner of public welfare shall notify the house appropriations and senate finance committees of the terms of any contractual arrangement entered into by the commissioner and the attorney general, pursuant to an order of any court of law, which provides for the receipt of funds by the commissioner.

Any funds recovered or received by the commissioner pursuant to an order of any court of law shall be placed in the general fund.

[ 1975 c 434 s 24 ]