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S.F. No. 3936 - Transfer of duties from the Department of Human Services to the Department of Direct Care and Treatment

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2023 enacted legislation

Minnesota Laws 2023, Chapter 61, Article 8, now codified as Minnesota Statutes, Chapter 246C, establishes the Department of Direct Care and Treatment as a separate state agency effective January 1, 2025, and specifies that the new department is to be headed by an executive board.

The 2023 legislation also contained a direction to the non-partisan legislative staff to “prepare legislation ... proposing the statutory changes necessary to implement the transfers of duties” from the Commissioner of Human Services to the Executive Board of the Department of Direct Care and Treatment. S.F. 3936, as introduced, is the product of this direction from the legislature to the non-partisan legislative staff.

By way of clarification, be aware that the legislature also directed the Commissioner of Human Services to “prepare legislation ... for the creation and implementation of the direct care and treatment executive board and defining the responsibilities, powers, and function of the ... executive board.” The Commissioner’s proposals relating to the Executive Board are not contained in S.F. 3936, as introduced.

The purpose of S.F. 3936

The purpose of S.F. 3936 is relatively simple. The non-partisan legislature staff was asked by the legislature to search the statutes for all the instances of a duty imposed on or authority granted to the Commissioner of Human Services with respect to the activities of the Division of Direct Care and Treatment and to modify the relevant language to transfer those existing duties and authorities in the Executive Board.

The task, however, was complicated because the statutes are complicated, and as a result, the bill is complicated.

Drafting techniques in S.F. 3936

Changing terms

The easiest way to accomplish the changes requested by the legislature is to change every relevant instance of “commissioner of human services” to “direct care and treatment executive board.” Putting every instance of such a change in a bill is inefficient, so you will see on page 122, lines 3 and 10, revisor instructions to make these changes during the upcoming interim prior to publishing the 2024 edition of Minnesota Statutes.

Renumbering

In addition to term changes, S.F. 3936 compiles into chapter 246C all the existing language concerning the duties and authorities relating to Direct Care and Treatment currently vested in the Commissioner of Human Services and compiles into chapter 246 all the language relating to specific services offered by the existing Division of Direct Care and Treatment unless those services are covered by chapter 246B. These compilations are accomplished primarily via the revisor instruction that begins on page 120, line 10. This revisor instruction also includes instances of moving some language around to put similar topics together. For instance, see page 120, line 34 to page 121, line 7, which moves language from Chapter 251, Care of Tuberculous Persons, to chapter 176, Workers’ Compensation.

Repeal and re-enactment

Sometimes the existing language does not lend itself to being easily renumbered, usually because the language being moved is at the sentence level. In this situation, the existing language is repealed in the bill and recreated as appropriate as new language in the bill. The repealer is on page 123, and while most of the statutory language on the list is being repealed because it is obsolete or redundant, three repealed sections are at least partially reenacted in the bill: sections 246.01, 246.014, and 252.50, subdivision 1.

Inline amendments

Any section of existing statute that non-partisan staff determined needed to be amended in a way not captured by the revisor’s instructions was pulled into one of the first nine articles of the bill. These sections include technical and editorial changes as well as language to accomplish the transfer of duties and authorities that could not be accomplished by simply changing “commissioner” to “executive board.”

New language

Relocated language appearing as new

Sometimes relocated language appears as new language. For example, compare page 9, lines 24 to 30 to page 12, lines 22 to 28. All the language in Article 1, sections 24 through 26 appears new, but none of it really is new. This new language is nearly identical to existing language that appears elsewhere in statute but could not be easily renumbered by a revisor instruction. Another example appears in Article 1, sections 52 and 53.

New language capturing existing authorities

Non-partisan legislative staff did draft some new language when it was required to express how the Department of Direct Care and Treatment Executive Board was going to exercise the authorities transfer to it by the legislature. Article 1, section 27 contains new language that captures existing administrative functions currently performed by the Commissioner of Human Services that the executive board, under the proposed language, will contract with the Commissioner to continue to perform on behalf of the executive board.

The new language in Article 3 is required to differentiate between which final orders following an administrative hearing are to be made by the Commissioner and which by the Executive Board, so that one agency does not infringe on the discretion of the other, and to ensure that the two agencies communicate information that the other may require.

Other examples of new language capturing existing authority include cases where the Executive Board is being given joint authority with the Commissioner, the discretion of the Executive Board is being preserved, or a provision is being expanded to include both the Commissioner and the Executive Board.

Multiple techniques

Many sections of the first nine articles of the bill are amended but are also included in the revisor instruction to renumber the sections. In these cases, the language as amended in this bill will be moved as the instruction indicates.

Process during the 2024 legislative session

The non-partisan legislative staff are aware of other legislative proposals that will affect the language in this bill, particularly the Commissioner of Human Service's proposal related to the Executive Board. The staff has various contingency plans in place to handle all these proposals and ensure that by session's end, any proposals that are enacted can be effectively merged.