



S.F. 2308

(Johnson)

H.F. 2604

(Murphy, M., by request)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-Correctional
Relevant Provisions of Law: Minnesota Statutes, Sections 352.90 and 352.91
General Nature of Proposal: Coverage modifications for Dept. of Human Services employees
Date of Summary: March 14, 2014

Specific Proposed Changes

- Ratifies or validates the actions of the Department of Human Services extending MSRS-Correctional retirement coverage to various employees of the Forensic Nursing Home, the Forensic Transition Service, and the Competency Restoration Program in addition to the Minnesota Security Hospital at St. Peter.
- Grandparents retirement coverage for former Minnesota Extended Treatment Option (METO) Program Employees at Cambridge.
- The currently unutilized (by Department of Human Services) employment position of Clinical Program Therapist 2 is proposed for addition to the retirement plan coverage list.

Policy Issues Raised by the Proposed Legislation

1. Appropriateness of ratifying or validating past non-legislative extensions of MSRS-Correctional coverage at St. Peter.
2. Appropriateness of grandparenting MSRS-Correctional coverage for former METO employees.
3. Appropriateness of adding the Department of Human Services Clinical Program Therapist 2 position to MSRS-Correctional coverage.
4. Need to get better MSRS-Correctional plan coverage compliance.
5. Need for reorganization and recodification of Minnesota Statutes, Section 352.91.

Potential Amendments

- S2308-1A replaces the proposed grandparenting provision with one-time settlement amount authority; the amount and the effective date to be determined by the Commission.
- S2308-2A replaces the proposed grandparenting provision with authority for ongoing Minnesota State Deferred Compensation Program payments for affected employees equal to the difference between MSRS-Correctional and MSRS-General employer contributions.
- S2308-3A requires a determination by the commissioners of the Department of Human Services and Minnesota Management and Budget that the subsequent employment position of a former METO/Minnesota Specialty Health System-Cambridge employee has a physical ability condition requirement and a security hazard condition substantially similar to the pre-2014 employment position.
- S2308-4A requires a determination akin to that in amendment S2308-3A that the patient contact in the post-2014 employment position is at least 75% of employment time.
- S2308-5A limits the duration of the grandparenting to a period to be set by the Commission.
- S2308-6A requires Minnesota Management and Budget to periodically conduct an audit of each MSRS-Correctional member's inclusion requirement compliance, including the minimum inmate or patient direct contact percentage.

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TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *JLM*
RE: S.F. 2308 (Johnson); H.F. 2604 (Murphy, M., by request): MSRS-Correctional; Modifications of Coverage for Department of Human Services Employees
DATE: March 14, 2014

General Summary of S.F. 2308 (Johnson); H.F. 2604 (Murphy, M., by request)

S.F. 2308 (Johnson); H.F. 2604 (Murphy, M., by request) amends Minnesota Statutes, Sections 352.90 and 352.91, the policy and covered correctional service definition portions of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) governing law, by making the following changes:

1. Ratification/Validation of Agency Expansion of Plan Coverage for the State Security Hospital. The actions of the Department of Human Services extending MSRS-Correctional retirement coverage to various employees of the Forensic Nursing Home, the Forensic Transition Service, and the Competency Restoration Program in addition to the Minnesota Security Hospital at St. Peter is proposed for ratification or validation (Sec. 1-5, 7-8);
2. Grandparenting Retirement Coverage for Former Minnesota Extended Treatment Option Program Employees at Cambridge. The employees of the former Minnesota Extended Treatment Option Program at Cambridge who continued in plan coverage at the Minnesota Specialty Health System-Cambridge up to its conversion as a community-based home are grandparented into plan coverage for any subsequent Department of Human Services employment in direct care and treatment services administration (Sec. 6); and
3. Adds Department of Human Services Clinical Program Therapist 2 to Retirement Plan Coverage. The currently unutilized (by Department of Human Services) employment position of Clinical Program Therapist 2 is proposed for addition to the retirement plan coverage list (Sec. 7).

Section-by-Section Summary

A section-by-section summary of S.F. 2308; H.F. 2604 is attached.

Background Information on Relevant Topics

The following attachments provide background information on topics relevant to the proposed legislation:

- **Attachment A:** Background information on the State Employees Covered by the MSRS-Correctional State Employees Retirement Plan
- **Attachment B:** Background information on the Department of Human Services Facilities/Programs with Employees Covered by the MSRS-Correctional Plan
- **Attachment C:** Background information on the State-Operated Services Division of the Department of Human Services: Problems Identified in the 2012 Legislative Auditor's Report
- **Attachment D:** Background information on the Closure of the Minnesota Extended Treatment Options Program and Subsequent Developments

Discussion and Analysis

S.F. 2308 (Johnson); H.F. 2604 (Murphy, M., by request) makes modifications in the coverage of certain Department of Human Services employees at St. Peter and Cambridge by the MSRS Correctional State Employees Retirement Plan (MSRS-Correctional) by ratifying the past department expansions of plan coverage from solely the State Security Hospital to three programs on the St. Peter campus, by grandparenting in plan coverage any former Minnesota Extended Treatment Options Program employees with MSRS-Correctional coverage in February 2014 in any subsequent Department of Human Services

employment in direct care and treatment services administration, and by extending plan coverage to the planned unfilled, position of Clinical Program Therapist 2 at the Minnesota Security Hospital or at the Minnesota Sex Offender Program.

The proposed legislation raises several pension and related public policy issues for consideration and possible discussion by the Commission, as follows:

1. Appropriateness of Ratifying or Validating Past Non-Legislative Extensions of MSRS-Correctional Coverage at St. Peter. The policy issue is the appropriateness of the Department of Human Services requesting, after the fact and without prior legislative disclosure or approval, the inclusion of Department of Human Services employees at the St. Peter campus in the Forensic Nursing Home, at the Forensic Transition Service, and at the Competency Restoration Program. Only designated employee occupational classifications at the Minnesota Security Hospital at St. Peter have been authorized in legislation for inclusion in the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional).

Over time, with the apparent acquiescence of MSRS, the Department of Human Services has expanded its definition or interpretation of the phrase "Minnesota Security Hospital" to mean the Minnesota Security Hospital and three other programs of the nine operating on the St. Peter campus. Although the Commission staff has had suspicions that there has been an unsanctioned expansion of St. Peter program with employees in the retirement plan, the Department of Human Services has never admitted its reinterpretation/redefinition of the statutory specification. This is the first department verification of that occurrence. If the employment positions at the Forensic Nursing Home, the Forensic Transition Service, and the Competency Restoration Program have the extent of patient or inmate contact and the extent of employment threat and hazard as the employment positions included in MSRS-Correctional coverage by specific direct legislative action, the Commission and the Legislature would undoubtedly have included the positions in coverage if the Department of Human Services had requested the expansion in proposed legislation. The inclusions of positions by internally redefining the name of the institution when new programs are created, moved, or appended to the named program/institution, the procedure for verifying the qualifications are circumvented. Because this Department of Human Services practice has potentially been going on since at least 2007, with at least 167 state employees now with substantial service covered by the MSRS-Correctional plan rather than the MSRS General State Employees Retirement Plan, the Legislature's options in responding to this request are constrained and undoubtedly do not include the normal procedure for correction erroneous retirement plan membership inclusions, which trigger transfers from the incorrect retirement plan coverage to the applicable retirement plan coverage, with member contribution overages refunded with interest.

2. Appropriateness of Grandparenting MSRS-Correctional Plan Coverage for Former Minnesota Extended Treatment Options Program Employees. The policy issue is the appropriateness of the proposed handling of future retirement plan coverage for former METO-Minnesota Specialty Health System-Cambridge employees who change employment in 2014 and continue in Department of Human Services employment with direct care and treatment services administration. The proposal is to grandparent these employees in eligibility for future MSRS-Correctional plan coverage, even if the post-2014 employment does not have the same level of employment conditions and threat that qualified METO employees for MSRS-Correctional coverage in the first place.

Coverage by the MSRS-Correctional plan, initially restricted to prison guards and comparable Security Hospital staff in 1973, and subsequently extended 1974-1996 to other employment positions based on a determination of particular employment hazards applicable to the position, remains premised on the need for a particularly vigorous workforce to be employed in that environment, with an earlier age normal retirement eligibility and a greater retirement annuity, disability benefit or survivor benefit when benefits commence. The grandparenting language does not even require any determination process to be followed for the retirement plan coverage to continue, meaning that the grandparenting eligibility will likely become a personal entitlement, does not require that any threshold quantity of inmate/patient contact be met (MSRS-Correctional plan members generally are required to have 75% of employment time spent indirect inmate/patient contact), and applies without regard to the nature of the individuals to be treated or cared for, even if wholly different than the patients in the former METO program.

Although not purely a pension concern, but a personnel system concern, the grandparenting provision continues indefinitely (potentially for 20 or 30 years) and will be difficult to keep track of as employees transfer or move within the Department of Human Services, will be prone to mistakes that will need to be corrected in the future, potentially with special legislation, in the future, will engender

dissatisfaction and dissension by other employees who lack MSRS-Correctional coverage, and imposes greater costs on Department of Human Services programs currently not included in MSRS-Correctional plan coverage, with an employer contribution that is 142% greater than the MSRS-General employer contribution.

The grandparenting proposal appears to be premised on a perceived need to make employees affected by the METO/Minnesota Specialty Health System-Cambridge closure whole because the consequent employment changes are a system/employer responsibility, rather than based on the employment conditions of their future state employment. If the Department of Human Services is responsible for this unfortunate change in state employment for former METO/Minnesota Specialty Health System-Cambridge employees and their potential loss of future enhanced pension coverage, there may be a different approach that avoids the pension issue difficulties of a grandparenting, which would be a cash settlement payment, either direct to the personnel involved or as an employer contribution to the Minnesota State Deferred Compensation Program.

- **Amendment S2308-1A** replaces the proposed grandparenting provision with one-time settlement amount authority.
 - **Amendment S2308-2A** replaces the proposed grandparenting provision with authority for ongoing Minnesota State Deferred Compensation Program payments for affected employees equal to the difference between the MSRS-Correctional employer contribution and the MSRS-General employer contribution.
 - **Amendment S2308-3A** requires a determination by the Department of Human Services Commissioner and the Minnesota Management and Budget Commissioner that the subsequent employment position of a former METO/Minnesota Specialty Health System-Cambridge employee has a physical ability condition requirement and a security hazard condition substantially similar to the pre-2014 employment position.
 - **Amendment S2308-4A** requires a determination akin to that in Amendment S2308-3A that the patient contact in the post-2014 employment position is at least 75% of employment time. In an answer to Commission staff inquiries, results of a time card study of direct patient contact by MSRS-Cambridge staff in 2013 indicated that 43% of the reviewed employees did not meet the 75% direct patient contact requirement. While the study results are not conclusive on the question, the results do indicate that some classifications or some personnel at MSHS-Cambridge are incorrectly covered by the MSRS-Correctional plan and further reviews to determine the question are needed.
 - **Amendment S2308-5A** addresses the duration of the grandparenting, limiting it to a period to be set by the Commission.
3. Appropriateness of Including in MSRS-Correctional Coverage the DHS Clinical Program Therapist 2. The policy issue is the appropriateness of adding the Department of Human Services Clinical Program Therapist 2 position to MSRS-Correctional coverage when the position does not currently exist within the Department of Human Services and the position does not appear to be filled during the balance of this biennium. The Department of Human Services indicates, in response to Commission staff inquiries, that the inclusion of the occupational title in the list of positions included in MSRS-Correctional is needed because there are plans to utilize the position in the Minnesota Sex Offender Program. Membership in the MSRS-Correctional Plan is wholly dependent on the type of employment rendered, requiring particular mental and physical capabilities to maintain a certain level of safety, security, discipline, and custody of inmates or patients at specifically designated correctional or human services secure facilities and the extent of direct contact with inmates or patients in the course of that employment.

As the Commission staff has argued, unsuccessfully in the main, previously is that it is impossible to make that judgment for a planned, unestablished, and unfilled employment position except based on predictions or conjectures that may be incorrect. When the position description supplied for this extension is for a different title than the employment position title set forth in the statute change, making any judgment about the consistency with the past legislative policy underlying the MSRS-Correctional plan is impossible and the statute change could become authority for an inappropriate plan coverage extension.

4. Need to Get Better MSRS-Correctional Plan Coverage Compliance. The policy issue is the need to address the longstanding problem of inadequate compliance with the inclusion requirements of the MSRS Correctional State Employees Retirement Plan. Membership in MSRS-Correctional, as provided in statute, for correctional officers and security counselors, the initial employees included in plan membership, depends on two factors, the employing facility (either a correctional facility, the Minnesota Security Hospital, or the Minnesota Sex Offender Program facilities), and the employment occupation title (corrections officer 1, 2, or 3, corrections officer supervisor, corrections lieutenant, corrections captain, corrections canine officer, security counselor, or security counselor lead). For all other plan members, inclusion is a function of the employing facility (the three identified for correctional officers/security counselors plus the Minnesota Specialty Health System-Cambridge), the employment occupational title (198 occupational positions beyond the nine identified for correctional officers/security counselors), and the extent of working time (75%) spent in direct contact with inmates or patients in a covered facility as certified by the applicable commissioner.

The Commission staff last reviewed a detailed listing, by occupational title and employing facility, as of October 12, 2012, and that review, in addition to noting the 569 employment positions (almost half of the Department of Human Services total plan membership) listed as the "St. Peter Regional Treatment Center" rather than specifying the Minnesota Security Hospital, which is the only specifically, indicated entity at St. Peter that is included in plan coverage in statute, or any other entity or program located in St. Peter, identified 32 MSRS-Correctional plan members who are likely incorrectly included in coverage, as follows:

<u>Number of Employees</u>	<u>Position Name</u>	<u>Employment Place</u>	<u>Reason for Coverage Question</u>
Department of Corrections:			
1	Correctional Food Services Super	MCF-St. Cloud	Not referenced in M.S. Sec. 352.91
2	Corrections Program Director	MCF-Rush City	Not referenced in M.S. Sec. 352.91
1	Clinical Program Therapist 2	Community Services Field	Not included DOC facility
1	Correctional Agent	Community Services Field	Not included DOC facility
1	Correctional Captain	Minn. Dept. of Corrections	Not included DOC facility
2	Correctional Lieutenant	Minn. Dept. of Corrections	Not included DOC facility
4	Correctional Officer 2	Minn. Dept. of Corrections	Not included DOC facility
1	Correctional Officer 3	Community Services Field Services-St. Paul	Not included DOC facility
15	Correctional Officer 3	Minn. Dept. of Corrections	Not included DOC facility
2	Corr. Security Caseworker Career	Minn. Dept. of Corrections	Not included DOC facility
Department of Human Services:			
2	Behavior Analyst 2	Minn. Intensive Therapeutic Homes-Moose Lake	Not included DHS facility
1	Behavior Analyst 3	Forensic Team	Not included DHS facility
2	Clinical Program Therapist 3	Minn. Intensive Therapeutic Homes-Moose Lake	Not included DHS facility

A decade ago, when the Commission staff reviewed an MSRS-Correctional plan membership occupation name and facility list, MSRS acknowledged some inclusion errors, but disputed many of the questioned inclusions by simply asserting, without providing any documentation of its contention, that the inclusion was properly certified.

To ensure that MSRS is vigilant in verifying that the inclusion requirements have been met in all MSRS-Correctional plan membership instances, and more importantly, to ensure that the commissioners of the two departments are properly certifying MSRS-Correctional plan members, it might be appropriate to have the state's personnel department, Minnesota Management and Budget, periodically conduct an actual audit of each MSRS-Correctional member's inclusion requirement compliance, including the minimum inmate or patient direct contact percentage.

- **Amendment S2308-6A** would add that Minnesota Management and Budget audit requirement.

5. Need for Reorganization and Recodification of Minnesota Statutes, Section 352.91. The policy issue is the question of a need to reorganize and revise the structure of the statute provision specifying the occupational position names and institutions or facilities covered by the MSRS Correctional State Employees Retirement Plan, Minnesota Statutes, Section 352.91. Through incremental amendment over time, the statutes providing for MSRS-Correctional plan coverage for the Department of Corrections and for the Department of Human Services have been intertwined. That intertwining in Minnesota Statutes, Section 352.91, Subdivisions 1, 2, 2a, 3c, and 3d, has resulted in many covered occupational positions specific to either the Department of Corrections or the Department of Human Services to appear to also apply to the other department.

The statutory inclusion provisions would be more helpful and informative to potentially applicable state employees, departmental human resources personnel, MSRS staff, legislators, and the general public if the provisions were reorganized broadly into three lists, those applicable solely to the Department of Corrections, those applicable solely to the Department of Human Services, and those applicable to both departments.

As time permits over the 2014-2015 Interim, the Commission staff will be working on that reorganization/recodification project for Minnesota Statutes, Section 352.91.

Section-by-Section Summary of S.F. 2308 (Johnson); H.F. 2604 (Murphy, M., by request)

Sec.	Pg.Ln	Stat. Provision	Plan	Topic	Summary
1	1.7	352.90	MSRS-Correctional	Policy and legislative intent	Replaces Plan Coverage For The Minnesota Security Hospital With Coverage For The State-Operated Forensics Services Program, Consisting of the Minnesota Security Hospital, Forensic Nursing Home, the Forensic Transition Service, and the Competency Restoration Program.
2	1.17	352.91, Subd. 1	MSRS-Correctional	Correction Officer and Security Counselors	Replaces reference to the Minnesota Security Hospital with reference to State-Operated Forensic Services Program.
3	2.8	352.91, Subd. 2	MSRS-Correctional	Maintenance, Industry, and Trades	Replaces reference to the Minnesota Security Hospital with reference to State-Operated Forensic Services Program.
4	2.17	352.91, Subd. 3c	MSRS-Correctional	Nursing Personnel	Replaces reference to the Minnesota Security Hospital with reference to State-Operated Forensic Services Program.
5	2.31	352.91, Subd. 3d	MSRS-Correctional	Other Corrections Personnel	Replaces reference to the Minnesota Security Hospital with reference to State-Operated Forensic Services Program.
6	4.8	352.91, Subd. 3e	MSRS-Correctional	Former METO employees	Grandparents coverage in MSRS-Correctional for any Minnesota Specialty Health System-Cambridge with coverage by that plan immediately prior to the 2014 conversion of the facility to the Community-Based Homes program, no matter what DHS facility employs the person if there is no break in service with the DHS direct care and treatment services administration.
7	5.3	352.91, Subd. 3f	MSRS-Correctional	Additional DHS Personnel	Adds the position of clinical program therapist 2 to plan coverage and replaces references to the Minnesota Security Hospital with reference to the State-Operated Forensic Services Program.
8	6.12	352.91, New Subd. 3j	MSRS-Correctional	State-Operated Forensic definition	Adds definition of "state-operate forensic services program" to mean the Minnesota Security Hospital, the Forensic Nursing Home, the Forensic Transition Service, and the Competency Restoration Program.

Background Information on the State Employees Covered by the MSRS-Correctional State Employees Retirement Plan

1. Current Plan Benefits and Attraction of MSRS-Correctional Plan Coverage. The premise for Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) coverage is that certain employment positions in correctional or security hospital or psychopathic personality treatment center service are hazardous. Because of these hazards, a younger, particularly vigorous workforce in these specific positions is needed. In turn, this justifies creating a plan separate from the Minnesota State Retirement System General Plan (MSRS-General) with larger retirement benefits payable at an earlier normal retirement age, and with disability coverage appropriate for hazardous occupations.

The attraction of MSRS-Correctional for groups seeking this coverage is that the plan pays higher benefits than a general employee plan and has an earlier retirement age. This leads to groups seeking to have positions added to MSRS-Correctional with transfer from MSRS-General.

Because of the better benefits and earlier retirement age, the plan is more costly than a regular employee plan. The plan offers a hybrid of general employee plan and public safety plan features. MSRS-Correctional Plan members are coordinated members, unlike Public Employees Retirement Association Police and Fire Plan (PERA-P&F) members. Like a public safety plan, members can retire without a reduction for early retirement at age 55 or with a reduction at age 50. The accrual rate used to compute the annuity was revised for new employees in 2010. The annuity is computed using a 2.4% yearly service benefit accrual factor if the employee was employed before July 1, 2010, or 2.2% if the employee was first employed in a covered position after June 30, 2010.

Also like a public safety plan, the MSRS-Correctional Plan uses an occupational definition of disability rather than the total impairment disability definition used by the MSRS-General Plan. To qualify for a duty-related disability, the person must have a physical or psychological disease or injury resulting from performance of normal work duties or less frequent work duties specific to the correctional employee. Duty-related disability benefits are generous, typical of a public safety plan. The duty-related disability benefit receives 50% of high-five average salary plus an additional percentage for service in excess of 20 years and ten months. For any excess service, the disability benefit receives an additional 2.4% of the high-five average salary for each additional service year if the disability benefit was first employed before July 1, 2010, or 2.2% of the high-five average salary for each additional service year if first employed after June 30, 2010.

For employees injured while not on the job or while performing work duties that do not present inherent danger, a plan member can receive a non-duty (regular) disability benefit. The regular disability benefit is computed like a retirement benefit but without any reduction due to early retirement. If the individual was hired before July 1, 2009, the minimum benefit must be equivalent to a 15-year service pension. For those hired later, no minimum applies. To qualify for a regular disability benefit the employee must have at least one year of service if hired before July 1, 2009. If hired later than that date, the person must be vested. The person hired after June 30, 2009, is not fully vested until ten years of service is reached. The person is not vested at all prior to five years of service, and is 50% vested at five years, 60% at six years, 70% at seven years, 80% at eight years, 90% at nine years, and 100% vested at ten years. Thus, a person hired after June 30, 2009, is not eligible for any regular disability benefit prior to five years of service, and would receive only a fraction of the computed benefit if the disability occurs prior to achieving ten years of service.

Historically, about 85% of MSRS-Correctional members are employees of the Department of Corrections and about 15% of MSRS-Correctional members are employees of the Department of Human Services. The correctional facilities with the largest numbers of MSRS-Correctional members are MCF-Stillwater, MCF-Lino Lakes, MCF-St. Cloud, and MCF-Faribault. The plan currently has 4,322 active members in approximately 100 employment classifications. Correctional officers comprise the largest single occupational group covered by the plan.

2. Pre-1973 Correctional State Employee Retirement Coverage. Before 1973, all employees of the Department of Corrections were covered by the State Employees Retirement Association (SERA) until 1967, and then by SERA's successor, MSRS-General. MSRS-General's predecessor was established in 1929 (Laws 1929, Ch. 191).

MSRS-General has been a defined benefit plan since its creation 1929 and has been entirely coordinated with the federal Social Security program since 1957. At that time, coordination was available on an "all or none" basis. The then SERA members, by a majority vote on a Social Security referendum, chose

coordination. At the same time, and on the same basis of all or none coverage, the other two statewide funds, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and the Teachers Retirement Association (TRA), held similar referenda, which were rejected by the existing membership of those plans. TRA coordinated with Social Security in 1959 on a “split fund” basis, with the members who did not elect Social Security coverage placed in a phasing-out Basic program. In 1965-1967, PERA coordinated on a “split fund” basis.

The SERA/MSRS-General benefit plan has changed considerably since 1929. Significant plan changes have occurred in 1967, when retirement coverage and contributions were extended to a person’s full salary (up to a limit of \$4,800 before 1965 and a limit of \$7,200 before 1967), in 1969, when the predecessor to the Minnesota Post Retirement Investment Fund was created, in 1973, when the calculation of retirement benefits shifted from a career average salary to the highest five successive years average salary and the benefit accrual rates were simplified and increased, in 1989, when the Rule of 90 benefit tier was created, in 1992, when the Minnesota Post Retirement Investment Fund adjustment mechanism was revised, in 1997, when the benefit accrual rates were increased to achieve “uniformity” among the various general employee retirement plans, and in 2010, various benefit and related downsizings were made to address the significant actuarial cost impact resulting from the 2008-2009 Great Recession.

3. 1973 Creation of the MSRS-Correctional Retirement Plan. MSRS-Correctional was established in 1973 as a result of collective bargaining by the State of Minnesota with the American Federation of State, County and Municipal Employees, Council 6, and the resulting implementing legislation (Laws 1973, Ch. 653, Sec. 39-44). The membership of the 1973 plan was limited to a small number of employees of the Department of Corrections or of the Department of Public Welfare (now Human Services), as follows:

– Attendant Guard	– Director of Attendant Guards
– Attendant Guard Supervisor	– Guard Farmer Garden
– Correctional Captain	– License Plant Manager
– Correctional Counselor I	– Prison Industry Foreman
– Correctional Counselor II	– Prison Industry Supervisor
– Correctional Counselor III	– Food Service Manager
– Correctional Counselor IV	– Prison Farmer Supervisor
– Correctional Lieutenant	– Prison Farmer Assistant Supervisor
– Correctional Officer	– Rehabilitation Therapist
– Correctional Sergeant	

Pre-July 1, 1973, service in a covered position was generally transferred from MSRS-General, as was prior state employment as a houseparent, guard instructor, and guard farmer dairy. The identification of the state personnel for inclusion in the plan was made by the collective bargaining process and the administrations of the two affected departments. Although a separate retirement plan, MSRS-Correctional shared the State Employees Retirement Fund as its funding and investment mechanism until 1987, when a separate retirement fund was created for MSRS-Correctional. The creation of MSRS-Correctional, with an age 55 normal retirement age, coincided with the imposition of a statutory early mandatory retirement age for correctional personnel covered by MSRS-Correctional. Under Laws 1973, Chapter 653, Section 12, the previously applicable age 70 mandatory retirement age was reduced for correctional employees to age 65 as of July 1, 1974, to age 62 as of January 1, 1975, and phased down to age 55 as of July 1, 1976. The creation of MSRS-Correctional was part of an initiative to accelerate the retirement of the prior cadre of Minnesota prison guards, to upgrade the function and reliability of the security personnel at the state’s correctional facilities, reflected in the renaming of the prison guards as correctional officers, to increase the pre-employment educational attainment of correctional personnel to match their upgraded job responsibilities, and to reduce the amount of contraband that was then entering correctional facilities from correctional employees. The initial active membership of the plan on July 1, 1973, was 677.

4. MSRS-Correctional Membership and Coverage Changes

- 1974 Membership Expansion of MSRS-Correctional. The initial expansion for MSRS-Correctional occurred in 1974 (Laws 1974, Ch. 520). Following Interim hearings by the Legislative Retirement Study Commission (renamed in 1975 the Legislative Commission on Pensions and Retirement) at the St. Cloud Reformatory and otherwise, the Legislature authorized an expansion in the plan membership to include special teachers, trades personnel, and maintenance personnel at the Minnesota Correctional Facility (MCF)-Stillwater, MCF-St. Cloud, and MCF -Shakopee. The special teachers, trades personnel, and maintenance personnel transferred to coverage by MSRS-Correctional were those certified by the then newly created Commissioner of Personnel (now Commissioner of Employee Relations) as being regularly engaged in the rehabilitation, treatment, custody, or supervision of inmates. Credit for past applicable correctional employment, including

employment as a special schools counselor or a shop instructor, was transferred to MSRS-Correctional. For correctional teachers covered by TRA, a transfer of past member, employer regular, and employer additional contributions from TRA accompanied the service credit transfer. The Commission hearings leading to the 1974 expansion focused primarily on the safety hazards reportedly suffered by these state employees from inmates and the public safety-related rationale of the need to maintain a particularly vigorous workforce through emphasizing an early age normal retirement. The 1974 expansion of the plan increased its active membership by 60, to 737.

- 1975-1978 MSRS-Correctional Coverage Changes. In 1975 (Laws 1975, Ch. 230, Sec. 1), following complaints from correctional personnel facing imminent early retirement, the mandatory retirement age for MSRS-Correctional active members was modified by making it a conditional mandatory retirement age through age 65, with annual extensions beyond the mandatory age if a medical examination supports the extension. The amendment reflected considerable disgruntlement by MSRS-Correctional active members approaching the mandatory retirement age because the 1974 recession considerably reduced the second career employment prospects of the early retirees, especially when those members believed that they retained a physical capacity to continue to perform the employment position responsibilities.

Also in 1975 (Laws 1975, Ch. 368, Sec. 35), allowable service credit for prior state employment at a correctional facility as a farmer or a farmer manager by an MSRS-Correctional active member on July 1, 1973, was transferred to the plan. Special teachers previously covered by the TRA Basic program had a TRA Basic program retirement annuity amount set as a floor benefit amount.

In 1978 (Laws 1978, Ch. 781, Sec. 2), institution educational administrators and institution educational supervisors at correctional facilities were included in MSRS-Correctional membership.

- 1980 Addition of MSRS-Correctional Covered Position Administrative Certification Process. In 1980 (Laws 1980, Ch. 600, Sec. 2-5), coverage by MSRS-Correctional was classified as applicable only to employees in adult correctional facilities, and post-June 1, 1980, employment as a special teacher, a tradesperson, or a maintenance person at MCF-Lino Lakes was included in MSRS-Correctional coverage. Additionally, special authority was enacted for the Commissioner of Personnel (also renamed Employee Relations in 1980), upon the recommendation of the Commissioner of Corrections or the recommendation of the Commissioner of Public Welfare (subsequently renamed Human Services), whichever applies, the notification of and receipt of comments from the Legislative Commission on Pensions and Retirement, and the approval of the Legislative Advisory Committee, to certify additional civil service classifications in adult correctional facilities or in the Minnesota Security Hospital as covered by MSRS-Correctional. The provision was codified as Minnesota Statutes, Section 352.91, Subdivision 4. The provision was intended to allow for plan expansions between legislative sessions when there was an urgency to do so.
- 1981-1987 MSRS-Correctional Coverage Changes. In 1981 (Laws 1981, Ch. 297, Sec. 3-4), service credit for pre-1981 state employment as a security guard by an MSRS-Correctional member was transferred to MSRS-Correctional, with the payment of an additional contribution amount.

In 1986 (Laws 1986, Ch. 458, Sec. 31-32), service credit for correctional employment rendered between 1973 and 1980, that was excluded from MSRS-Correctional coverage because the person was age 45 or older upon hiring were given the option to elect MSRS-Correctional coverage with the payment of an additional contribution amount.

In 1987 (Laws 1987, Ch. 372, Art. 1, Sec. 4), the 1980 administrative certification process for additional MSRS-Correctional active members was amended to require both the Commissioner of Corrections and the Commissioner of Human Services to establish written criteria for basing a recommendation on certifying additional positions for MSRS-Correctional membership to the Commissioner of Employee Relations.

- 1980s MSRS-Correctional Administrative Transfers. Before 1998, several transfers of retirement coverage to MSRS-Correctional were approved by the Commissioner of Employee Relations and implemented by MSRS without the receipt of Legislative Commission on Pensions and Retirement comments as required by Minnesota Statutes 1998, Section 352.91, Subdivision 4. Some or all of these past coverage changes may have been implemented without Legislative Advisory Commission approval also. Although the requested information was not gathered in a timely fashion, the Commission staff was provided with information for at least 48 recent retirement coverage transfers under Minnesota Statutes 1998, Section 352.91, Subdivision 4, which occurred without explicit Commission comment. The 48 transfers involved 19 employment classifications in six correctional facilities and two Department of Human Services' facilities.

- 1996 MSRS-Correctional Coverage Expansion. In 1996 (Laws 1996, Ch. 408, Art. 8, Sec. 10-17), various positions providing service at a correctional facility or the state security hospital were made newly eligible for MSRS-Correctional coverage, providing the employee has at least 75% inmate or patient contact. The groups added to MSRS-Correctional coverage were in 31 job classifications, as follows:

- | | |
|---|--|
| – Special Teacher in Juvenile Facilities | – Dentist |
| – Registered Nurse Senior | – Electrician Supervisor |
| – Registered Nurse | – General Repair Worker |
| – Registered Nurse-Principal | – Library/Information Research Services Specialist |
| – Licensed Practical Nurse 2 | – Plumber Supervisor |
| – Baker | – Psychologist 3 |
| – Chemical Dependency Counselor Supervisor | – Recreation Therapist |
| – Chief Cook | – Recreation Therapist Coordinator |
| – Cook | – Recreation Program Assistant |
| – Cook Coordinator | – Recreation Therapist Senior |
| – Corrections Behavior Therapist | – Stores Clerk Senior |
| – Corrections Behavior Therapist Specialist | – Water Treatment Plant Operator |
| – Corrections Parent Education Coordinator | – Work Therapy Technician |
| – Corrections Security Caseworker | – Work Therapy Assistant |
| – Corrections Security Caseworker Career | – Work Therapy Program Coordinator |
| – Corrections Teaching Assistant | |

Incumbents in the state employment positions that were newly included in plan coverage were permitted to waive the coverage change and retain their prior coverage and incumbents were permitted to transfer any prior applicable state employment with the payment of an additional contribution amount. The MSRS-Correctional member and employer contribution rates were increased to cover the cost of the coverage expansion. The transfer involved 54 special teachers, 70 nurses, and 277 other classifications of state employees. By July 1, 1996, the plan active membership had increased to 2,264.

- 1997 MSRS-Correctional Coverage Changes. In 1997 (Laws 1997, Ch. 239, Art. 9, Sec. 40-41, and Laws 1997, Ch. 241, Art. 11), certain individuals at the Minnesota sexual psychopathic personality treatment center and individuals in certain employment classifications at MCF-Red Wing (auto mechanic lead, electrician, electrician master of record, groundskeeper intermediate, or plumber master) were added to an uncoded 1996 coverage election law authorizing prospective coverage by MSRS-Correctional rather than continued MSRS-General coverage, with the deadline for making an election set at December 31, 1997. The individuals who transferred prospective coverage to MSRS-Correctional were authorized to elect to transfer prior state service if that service would have been eligible for current MSRS-Correctional coverage, with a deadline of December 31, 1997.
- Post-1996 Administrative Transfers to MSRS-Correctional. Under the 1980 administrative transfer provision, Minnesota Statutes 1998, Section 352.91, Subdivision 4, the Commission considered requests for the transfer of state employees to MSRS-Correctional on three instances – June 1998, June 1999, and December 1999. The June 1998 transfer request involved seven employees in five employment positions in four correctional facilities. The June 1999 transfer request involved a ratification of prior transfers of 51 employees in 20 employment positions in six correctional facilities and two Department of Human Services facilities and a transfer request that involved 39 employees in 10 employment positions and that involved 13 employment positions without incumbents in eight Department of Corrections facilities and two Department of Human Services facilities. The December 1999 transfer request involved 40 employees in 11 employment positions and one employment position without incumbents in eight Department of Corrections' facilities and two Department of Human Services' facilities. Except for the prospective transfers contained in the June 1999 transfer request, the Legislative Advisory Committee approved the transfers.
- 1999 MSRS-Correctional Coverage Changes. In 1999 (Laws 1999, Ch. 222, Art. 13), nine positions in the Minnesota Extended Treatment Options (METO) Program, located at the Cambridge Regional Treatment Center and operated by the Department of Human Services, were included in MSRS-Correctional coverage if the positions are certified by the Commissioner of Human Services as having at least 75% direct patient contact. The METO Program is a statewide program for adults who have developmental disabilities and who exhibit severe behaviors that present a risk to public safety. The nine job classifications added to MSRS-Correctional coverage were as follows:

– Behavior Analyst I	– Recreation Therapist Senior
– Human Services Support Specialist	– Registered Nurse Senior
– Mental Retardation Residential Program Lead	– Skills Development Specialist
– Psychologist 2	– Social Worker Senior
– Recreation Program Assistant	

Individuals who gained prospective MSRS-Correctional coverage were allowed to elect to transfer past METO service to MSRS-Correctional, back to July 1, 1997, providing that the service was in one of the specified positions and the 75% inmate contact requirement was met. To transfer past service coverage, the employee was required to pay the difference between the employee contribution paid to MSRS-General and the employee contribution that would have been paid to MSRS-Correctional, if coverage by that plan had been provided during that time period, plus 6% interest. If payment was made by the member, MSRS was required to transfer from MSRS-General to MSRS-Correctional the funded portion of the benefit that accrued during that period. The transfer involved 115 state employees, including 90 Human Services Support Specialists. The 1999 METO transfer also involved the transfer of several part-time employees to MSRS-Correctional coverage, which was perhaps the first large-scale introduction of part-time employees into Minnesota public safety retirement plan coverage.

- 2000 MSRS-Correctional Coverage Changes. In 2000 (Laws 2000, Ch. 461, Art. 6, Sec. 1-4, 6), several positions in the Department of Corrections and the Department of Human Services were included in MSRS-Correctional if the applicable Commissioner certified that at least 75% of the employee's working time was spent in direct inmate or patient contact. The applicable positions were as follows:
 - registered nurse practitioner at a correctional facility or at the Minnesota Security Hospital;
 - behavior analyst 2, licensed practical nurse 1, office and administrative specialist senior, psychologist 2, social worker specialist, behavior analyst 3, and social worker senior at the Minnesota Security Hospital or the Minnesota Sexual Psychopathic Personality Treatment Center;
 - corrections discipline unit supervisor at Minnesota correctional facilities at Lino Lakes, Oak Park Heights, and St. Cloud;
 - dental assistant registered, at Minnesota correctional facilities at Faribault, Lino Lakes, Moose Lake, Oak Park Heights, and Red Wing;
 - dental hygienist, at MCF-Shakopee;
 - psychologist 2, at the correctional facilities at Faribault, Lino Lakes, Moose Lake, Oak Park Heights, Red Wing, St. Cloud, Shakopee, and Stillwater;
 - the sentencing-to-service crew chief leader involved with the inmate community work crew program at MCF-Faribault and MCF-Lino Lakes; and
 - director and assistant group supervisor of the former Phoenix/Pomiga treatment/behavioral change program at MCF-St. Cloud.

Individuals who newly gained MSRS-Correctional coverage were permitted to have comparable past service, if continuous and if performed after June 20, 1975, transferred to MSRS-Correctional. To transfer the past service credit, the individuals were required to have paid in a lump sum by June 30, 2002, the difference for the applicable period between the MSRS-Correctional employee contribution and the employee contributions paid to MSRS-General, plus 6% interest. Upon payment, assets equal to the individual's present value of benefits in MSRS-General were required to be transferred to MSRS-Correctional. The Department of Corrections and the Department of Human Services must cover the expense of computing the proper transfer amounts. The transferred positions were the various Department of Corrections and Department of Human Services employees who were recommended for administrative transfer during 1999, who were formally reviewed by the Legislative Commission on Pensions and Retirement in December 1999, but who were not subsequently approved by the Legislative Advisory Commission.

Additionally, Minnesota Statutes 1998, Section 352.94, Subdivision 4, which previously provided an administrative process for adding additional positions to MSRS-Correctional based on recommendations from the Commissioner of Human Services or Corrections, a review by the Legislative Commission on Pensions and Retirement, and approval by the Legislative Advisory Committee, was repealed.

- 2003-2004 Interim Review of MSRS-Correctional Coverage Provisions. During the 2003-2004 Legislative Interim, Commission staff made a detailed specific comparison of every employment position reported by MSRS as a member of MSRS-Correctional with the governing statutory provisions, indicated that there is a disparity between the MSRS-Correctional membership eligibility provisions and the various Department of Corrections and Department of Human Services occupational positions then reported by MSRS as covered by the plan. The Commission staff analysis identified approximately 5% of the reported MSRS-Correctional membership who lacked a clear statutory basis for inclusion in the plan. The problematic MSRS-Correctional inclusions occurred where information on the employment position or employing facility was lacking, where there was no specific statutory inclusion authority, where there was ambiguous or unclear statutory authority for inclusion, where coverage authority for some employment positions

was lacking for the Minnesota Sex Offender Program, where covered personnel were employed at a non-correctional/non-security facility, where reported job titles were incorrect, or where occupational titles have changed without statutory correction. The 2003-2004 interim project resulted in the preparation of corrective legislation in 2004, which was not heard by the Commission due to opposition by affected employee organizations.

- 2004 MSRS-Correctional Coverage Changes. In 2004 (Laws 2004, Ch, 267, Art. 1, Sec. 1), three additional positions in the Department of Corrections were included in MSRS-Correctional if the Commissioner of Corrections certified that at least 75% of the employee's working time was spent in direct inmate or patient contact. The positions were:
 - corrections discipline unit supervisor at MCF-Rush City;
 - dental hygienist at MCF-Rush City; and
 - psychologist 2 at MCF-Rush City.

No transfer to MSRS-Correctional of any past service credit related to past employment in the affected position and covered by MSRS-General was permitted in the 2004 legislation, which resulted from a House Governmental Operations and Veterans Affairs Policy Committee amendment to the 2004 Omnibus Retirement Bill.

- 2005 MSRS-Correctional Coverage Transfer Request Process. In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 4, Sec. 3), the Department of Corrections and the Department of Human Services were required to establish a procedure for recommending positions for Correctional Plan coverage, and for determining positions no longer qualified for inclusion under that plan. The evaluation must consider the extent of working time spent in direct contact with patients or inmates, the extent of the physical hazard, and the extent of intervention routinely expected by the employee in a facility incident. Positions may be recommended for inclusion if the individual routinely spends 75% of the employee's time in direct inmate contact and is regularly engaged in rehabilitation, treatment, custody, or supervision of inmates or patients. Any recommendations must be in the form of proposed legislation and be forwarded to the Chair of the Legislative Commission on Pensions and Retirement, the executive director of the Legislative Commission on Pensions and Retirement, the Chair of the House Government Operations and Veterans Affairs Policy Committee, and the Chair of the Senate Government Operations Committee. The recommendations must be received by January 15 to be considered during the upcoming legislative session. In the initial set of recommendations under the 2005 transfer request procedure, the Department of Corrections recommended the transfer of 11 positions, involving 36 employees, and the Department of Human Services recommended the transfer of 13 positions, involving 75 employees.
- 2006 MSRS-Correctional Coverage Changes. In 2006 (Laws 2006, Ch. 271, Art. 2, Sec. 2-12), 22 additional employment positions within the Department of Corrections or the Department of Human Services were added to MSRS-Correctional coverage.
 - The corrections officer inclusion provision was updated to correct a reference to the Minnesota Sex Offender Program, to revise the correctional lieutenant title, and to add corrections canine officers.
 - The maintenance and trades coverage provision was revised to add specific correctional industry personnel with a plan qualification requirement that 75% of the employee's working time be spent in inmate/patient contact.
 - The nursing personnel inclusion provision was updated to correct the registered nurse advance practice title.
 - The "other" correctional personnel inclusion provision was updated to correct title references for central services administrative specialist, intermediate, central services administrative specialists, principal, corrections program therapists 1, 2, and 3, and work therapy technician, and to add the positions of chaplain, corrections inmate program coordinator, corrections transition program coordinator, delivery van driver, general maintenance worker, laundry coordinator, library technician, psychologist 1, and sports medicine specialist.
 - The Minnesota Extended Treatment Options Program covered personnel provision was expanded by adding the positions of behavior analysts 2 and 3, group supervisor, group supervisor assistant, social worker specialists, and speech pathology specialist.
 - The Department Human Services covered personnel provision was expanded by adding the positions of behavior analyst 3, client advocate, dental assistant registered, group supervisor, group supervisor assistant, licensed practical nurse 1, occupational therapist, occupational therapist senior, skills development specialist, social worker specialist, social worker specialist senior, and speech pathology clinician, chemical dependency counselor senior, psychologist 1, psychologist 3, recreation program assistant, recreation therapist senior, rehabilitation counselor senior, work therapy assistant, and work therapy program coordinator.

- The Department of Corrections coverage provision was amended to make the positions of correctional discipline unit supervisor, dental assistant registered, dental hygienist, psychologist 2, and sentencing-to-service crew leader involved with the inmate community work crew program eligible for plan coverage, with 75% inmate contact, at all facilities.
 - A procedure for retaining coverage following an occupational position name change and a procedure for retaining coverage following the transfer of personnel to a newly established correctional facility were established.
 - The Department of Corrections procedure for recommending coverage changes was codified.
 - Past service credit was transferred for the laundry coordinators and delivery van drivers at MCF-Faribault and for the corrections discipline unit supervisor, dental hygienist, and psychologist 2 positions at MCF-Rush City.
- 2007 MSRS-Correctional Coverage Changes. In 2007 (Laws 2007, Ch. 134, Art. 3), four ineligible Department of Corrections and one ineligible Department of Human Services occupational titles were removed from coverage and two Department of Corrections occupational titles (corrections program therapist 4 and plant maintenance engineer lead) and nine Department of Human Services Security Hospital or Sex Offender Program occupational positions (certified occupational therapy assistant 1, certified occupational therapy assistant 2, customer services specialist principal, human services support specialist, licensed alcohol and drug counselor, management analyst 3, recreation therapist lead, security supervisor, and special education program assistant) were added to plan coverage. An ongoing procedure was also established for transferring past service credit from MSRS-General to MSRS-Correctional and funding the additional actuarial liability resulting from the service credit transfer. An individual with service as a stores clerk from 1990 to 1994 at MCF-St. Cloud was authorized to transfer that past service from MSRS-General to MSRS-Correctional using the newly enacted transfer and payment process.
 - 2008 MSRS-Correctional Coverage Changes. In 2008 (Laws 2008, Ch. 349, Art. 6, Sec. 1-2), the positions “general maintenance worker lead” and “painter lead” were added to the positions eligible for Correctional Plan coverage if the employee has at least 75% inmate or patient contact, with the painter lead position placed in the plan for prospective service only and with an eligible individual or individuals in the general maintenance worker lead position authorized to have MSRS-Correctional coverage back to December 1, 2007, if the individual elects that retroactive coverage and makes the contributions necessary to have that service transferred from MSRS-General to MSRS-Correctional.
 - 2009 MSRS-Correctional Coverage Changes. In 2009 (Laws 2009, Ch. 169, Art. 3, Sec. 1-2), the position of “automotive mechanic” was added as an employment position for MSRS-Correctional coverage if the employee has at least 75% inmate or patient contact, and clarified that the position of “automotive mechanic lead” is not included in MSRS-Correctional coverage.
 - 2010 MSRS-Correctional Coverage Changes. In 2010 (Laws 2010, Ch. 359, Art. 2, Sec. 5), a transfer of member and employer contributions that were determined to be erroneous because a plan coverage error was provided for under the general law erroneous correction provision.
 - 2012 MSRS-Correctional Coverage Changes. In 2012 (Laws 2012, Ch. 286, Art. 3, Sec. 1-5), the METO program is ended and remnant functions renamed the Minnesota Specialty Health System-Cambridge. The titles of corrections program therapist positions 1 to 4, which were renamed, are corrected in the plan. The position of psychiatric advanced practice registered nurse is added to the plan, and the occupation titles clinical program therapist 3 and 4 are added to the Department of Human Services membership provision.
 - 2013 MSRS-Correctional Coverage Changes. In 2013 (Laws 2013, Ch. 111, Art. 2, Sec. 19-20, 33), the service credit transfer accompanying coverage changes was modified by eliminating obsolete language from the currently applicable provision and by repealing a pre-2007 transfer procedure.

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**Background Information on the
Department of Human Services Facilities/Programs with
Employees Covered by the MSRS-Correctional Plan**

1. Introduction. When the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) was created in 1973 (Laws 1973, Ch. 653, Sec. 39-44), the plan was primarily created to engender personnel changes within the prison guard population within the Department of Corrections by providing enhanced retirement benefits at an earlier normal retirement age. Sometime during its drafting or during legislative consideration of the legislation, rehabilitation therapists at the Minnesota Security Hospital were included in the program, which traded enhanced retirement coverage for an early mandatory retirement age. With the inclusion in MSRS-Correctional of Minnesota Security Hospital rehabilitation counselors, Department of Human Services facilities or programs and their employees were incorporated into quasi-public-safety personnel retirement coverage.
2. State Provision of Secure Confinement of Dangerous Mentally or Psychologically Impaired Persons. Minnesota has a long history of providing human services to individuals at state-run facilities. The Minnesota Legislature began establishing state institutions for individuals with physical or mental disabilities shortly after statehood.

In 1866 (Laws 1866, Ch. 6), the Legislature authorized the establishment of the first state-operated hospital. A temporary hospital opened in St. Peter in 1866, and the first wing of the permanent hospital at St. Peter opened in 1873. Although most state hospitals have closed over time, the regional treatment center at Anoka and the Minnesota Security Hospital in St. Peter continue to serve individuals with mental illness from throughout the state.

State-Operated Services (SOS) is a division of the Department of Human Services, and delivers publicly funded behavioral health care and support services to persons who have complex and sometimes interrelated conditions, including chemical dependency, developmental disabilities, mental illness, and traumatic brain injuries.

3. Department of Human Services Program/Facilities with MSRS-Correctional Plan Coverage.
 - a. In General. The Department of Human Services operates three programs or facilities at which there are employees covered by MSRS-Correctional. The programs or facilities are the Minnesota Security Hospital at St. Peter, the Minnesota Specialty Health System in Cambridge, and the Minnesota Sex Offender Program facilities at Moose Lake and at St. Peter. The Department of Human Services was included in MSRS-Correctional coverage solely for rehabilitation therapists at the Minnesota Security Hospital in 1973, when the retirement plan was created. Coverage of Department of Human Services employees by the MSRS-Correctional plan has grown considerably over the 41-year existence of the plan. The Department of Human Services provided the following information on the growth of MSRS-Correctional coverage for its employees over the 28-year period 1994-2012:

Year	1994	1997	2000	2003	2006	2009	2012
Employees	26	72	149	221	666	992	1391
Numeric Change	--	+46	+77	+72	+445	+326	+399
Percentage Change	--	277%	107%	48%	201%	49%	40%

- b. Minnesota Security Hospital and the St. Peter Regional Treatment Center Campus. The St. Peter campus is the locale for the State Operated Forensic Services. That division of the Department of Human Services consists of nine programs that provide evaluation and treatment to individuals involved with the legal system due to a crime. These programs serve people committed, under Minnesota Statutes, Chapter 253B, to the Commissioner of Human Services as Mentally Ill and Dangerous (MI&D) or as a person with developmental disabilities or a related condition who presents a public safety risk. Also served are people with mental illness who the court has ordered for evaluation and treatment, under Minnesota Rules of Criminal Procedure, 20.01 and 20.02, before the start of a criminal trial.

The nine programs operated in St. Peter, according to the Department of Human Services, are:

- Minnesota Security Hospital
- Forensics Transition Services
- Competency Restoration Program
- Forensic Nursing Home
- Community Support Services
- Forensic Network
- Special Needs Services
- Young Adult and Adolescent Program
- Forensic Community Residential Support Services

- 1) **Minnesota Security Hospital.** Despite its name, the Minnesota Security Hospital is not licensed as a hospital. Rather, it is Minnesota's only facility that provides extended residential treatment for mental illness in a secure setting.

The Minnesota Security Hospital is located on a large campus in St. Peter that once housed both the Security Hospital and a regional treatment center for individuals with mental illness and developmental disabilities. The Security Hospital consists of several buildings, the largest being a high-security building constructed in 1982 and further expanded in 1996. Despite its name, the Minnesota Security Hospital is not licensed as a hospital, but rather as a residential treatment facility and supervised living facility.

Although the Minnesota Security Hospital is frequently thought of as a single, large facility, its campus in St. Peter actually houses four separate SOS programs. All of these programs are "forensic" programs in that they provide evaluation, treatment, or care for mentally ill individuals involved with the criminal justice system.

The secure residential units of the Minnesota Security Hospital provide long-term care and treatment for patients that are civilly committed as mentally ill and dangerous. Additionally, some individuals are sent to the secure units for court-ordered mental health evaluations. Patients live on locked wards with 24-hour monitoring by security staff. Patients are housed in three different buildings at the Security Hospital. The largest building is entirely secure, and contains eight patient residential units as well as the Competency Restoration Unit. A second building houses only Transition Services patients and is non-secure. A third building is shared by three secure residential units and one less-secure unit for Transition Services patients. In the secure residential units, each unit is separately secured. Patients with similar mental illnesses are housed together, and each unit provides differentiated programming directed toward its patients' particular needs. Each unit also has rooms where patients can be restrained or held in seclusion when necessary.

Programming and treatment are designed to improve mental health so that patients can transfer to less restrictive settings. On July 1, 2012, there were 247 patients housed in the secure units.

- 2) **Forensics Transition Services** is a less restrictive environment for former residents of the secure residential units who have improved to the point that they can more safely interact with each other, staff, and the community. Patient activities are monitored, but there are no security staff in Transition Services residential units, and patients have greater flexibility to choose their activities.

In Forensics Transition Services, patients have relatively unrestricted access to building amenities and staff work areas. The unit in the shared building is locked from the inside so that patients can only leave the premises when permitted by a staff member; however, it is open from the outside so that patients can return at will. The other building has no physical barrier to entrances or exits. Patients in either setting are routinely permitted to leave the buildings and walk around the campus. The majority can earn passes which allow them to have unsupervised access to the community.

Programming is designed to teach skills patients will need to live long term in less restrictive settings. Individuals committed as mentally ill and dangerous may not be transferred to less restrictive settings without the approval of a special review board appointed by the Commissioner of Human Services. On July 1, 2012, there were 84 patients in Transition Services.

Some employees of the Forensics Transition Services were initially covered by the MSRS-Correctional plan in 2007 without any specific legislative authorization. As of February 2014, 73 Department of Human Services employees were covered by MSRS-Correctional in nine occupational classifications, as follows:

<u>Position Title</u>	<u>Number of Employees</u>
Behavior Analyst 2	4
Human Services Support Specialist	18
Licensed Practical Nurse	24
Occupational Therapist Senior	1
Psychologist 3	1
Recreation Therapist Senior	6
Registered Nurse	10
Registered Nurse Senior	3
Social Worker Specialist	6

- 3) **The Competency Restoration Program** is a short-term program for individuals who were determined by a court to be incompetent to stand trial. Individuals in this program are assisted to understand basic legal concepts so that they can participate in a trial. The average length of stay in the program was about 5.5 months. The Competency Restoration Program is housed within the Security Hospital's secure building and operates under the same license, but it serves a fundamentally different purpose than the treatment programs serving other patients at the Security Hospital. On July 1, 2012, there were 29 persons enrolled in the Competency Restoration Program.

It is unclear when some employees of the Competency Restoration Program were initially covered by the MSRS-Correctional plan. The Department of Human Services, in response to Commission staff inquiries, indicates that some personnel "were relocated from Human Services Technicians to Security Counselors were moved into CERP in 2012." The expansion of MSRS-Correctional plan coverage to this program was never specifically authorized by legislation. As of February 2014, 42 Department of Human Services employees were covered by MSRS-Correctional in seven occupational classifications, as follows:

<u>Position Title</u>	<u>Number of Employees</u>
Licensed Practical Nurse	5
Recreation Program Assistant	1
Recreation Therapist Senior	1
Registered Nurse	6
Registered Nurse Senior	1
Security Counselor	26
Social Work Specialist	2

- 4) **The Forensic Nursing Home** operates under a separate license and in a separate building from the rest of the Minnesota Security Hospital complex. The Forensic Nursing Home is a facility for residents who are potentially a danger to themselves or others and who need higher levels of medical care for physical illnesses or disabilities. Patients primarily come from the Minnesota Security Hospital, the state-run Minnesota Sex Offender Program, or state prisons. Many of the patients have chronic medical issues that require long-term or permanent nursing care. Others are receiving end-of-life care. On July 1, 2012, there were 28 patients housed at the Forensic Nursing Home.

Some employees of the Forensic Nursing Home were initially covered by the MSRS-Correctional plan in 2008 without any specific legislative authorization. As of February 2014, 52 Department of Human Services employees were covered by MSRS-Correctional in seven occupational classifications, as follows:

<u>Position Title</u>	<u>Number of Employees</u>
Human Services Support Specialist	30
Licensed Practical Nurse	10
Recreation Therapist Lead	1
Recreation Therapist Senior	1
Registered Nurse	6
Registered Nurse Senior	3
Social Work Specialist	1

- c. **Former METO/Minnesota Specialty Health System in Cambridge.** The 1995 Legislature authorized the Commissioner of Human Services to develop a specialized service model at the Cambridge Regional Human Services Center campus to serve Minnesotans who have a developmental disability and exhibit severe behaviors that present a risk to public safety. The program that was developed was known as the Minnesota Extended Treatment Options (METO) Program. METO combined extensive outreach and support services with the availability of specialized residential beds so that individuals can be served in the least restrictive setting necessary. With extensive outreach and support services available elsewhere, admission to the program was limited to those few individuals who exhibited such extreme behaviors that they could not be served safely in their communities.

METO program participants were required to be mentally retarded, be of adult age, and exhibit behaviors that present a risk to public safety. Most individuals were placed in METO under the Minnesota Civil Commitment and Treatment Act, with the majority being committed as a person with mental retardation. Before its closure in 2011, METO had the capacity to provide specialized residential services for up to 48 clients.

Minnesota Specialty Health System-Cambridge provides services to individuals diagnosed with developmental disabilities or related conditions who may be highly complex with a history of legal problems, public safety and/or personal safety concerns due to significant behavioral disturbances and/or poorly managed medical conditions. The program replaced the Minnesota Extended Treatment Options Program. METO closed on June 30, 2011, as a result of the settlement of the 2009 federal district court *Jensen v. Minnesota Department of Human Services* litigation and initially was replaced by the Minnesota Specialty Health System-Cambridge. Subsequent events, including a delay until 2012 in Minnesota Department of Health licensing, Department of Human Services Licensing Division correction orders for failures in 2012 to discontinue the use of mechanical restraints at the facility as required under the 2011 federal litigation settlement, a 2012 State Ombudsman for Mental Health and Developmental Disabilities report criticizing the facility's treatment activities, and a suspended departmental plan to convert the facility into a Minnesota Sex Offender Program facility leave the future of the facility and the appropriateness of its continued inclusion in MSRS-Correctional plan coverage is in doubt.

Inclusion of nine occupational classifications of the METO Program in the MSRS-Correctional plan occurred by specific legislation (Laws 1999, Ch. 222, Art. 13). The following compares the 53 METO Program employees covered by the MSRS-Correctional plan as of June 30, 2011, when the program was closed, with the 34 Minnesota Specialty Health System-Cambridge employees covered by MSRS-Correctional as of February 2014:

Minnesota Extended Treatment Options Program June 30, 2011		MSHS-Cambridge February 18, 2014	
<u>Position Title</u>	<u>Number of Employees</u>	<u>Position Title</u>	<u>Number of Employees</u>
Behavior Analyst 1	4	Behavior Analyst 1	3
--	--	Behavior Analyst 2	1
Behavior Analyst 3	1	--	--
Group Supervisor Assistant	1	Group Supervisor Assistant	1
Human Services Support Specialist	42	Human Services Support Specialist	26
Psychologist 2	1	--	--
Recreational Therapist Senior	1	Recreational Therapist Senior	1
Registered Nurse Senior	1	Registered Nurse Senior	1
Residential Program Lead	1	--	--
Skills Development Specialist	1	Skills Development Specialist	1

- d. The Minnesota Sex Offender Program. The Minnesota Sex Offender Program (MSOP) provides services for persons who are civilly committed for sex offenses or for individuals that are found to be either a “sexual psychopathic personality” or a “sexually dangerous person” by a court. Most MSOP clients have completed prison sentences and are civilly committed by the courts and placed in treatment for an indeterminate period of time.

A sexual psychopathic personality is a person who, as a result of a mental or emotional condition:

- engaged in a “habitual course of misconduct in sexual matters;”
- has an “utter lack of power to control the person’s sexual impulses;” and
- as a result of this inability to control his/her behavior is “dangerous to other persons.”

A sexually dangerous person is a person who:

- has “engaged in a course of harmful sexual conduct” that creates a “substantial likelihood of serious physical or emotional harm to another;”
- the person has a sexual, personality, or mental disorder; and
- the person is likely to engage in harmful sexual conduct in the future.

MSOP is one program with two locations – Moose Lake and St. Peter. As of January 1, 2012, MSOP was providing treatment for 635 clients across both sites, with 474 clients at Moose Lake and with 161 clients at St. Peter. Most clients begin treatment at the MSOP Moose Lake facility and after successfully completing the first two phases of treatment, are transferred to the St. Peter facility to complete treatment and begin working toward provisional discharge. Clients acquire skills through active participation in group therapy and are provided opportunities to demonstrate meaningful change through participation in rehabilitative services including education classes, therapeutic recreational activities and vocational work program assignments. MSOP staff observes and monitors clients not only in treatment groups, but also in all aspects of daily living.

MSOP clients average 46 years of age and the vast majority are European/European-American. Over 57% of MSOP clients were committed from a non-Metro county, with over 22% committed from Hennepin County. Over 81% of MSOP clients have completed 12 years of education or have a General Education Diploma (GED).

- 1) **Moose Lake MSOP Treatment Facility.** With the exception of clients receiving alternative treatment, clients begin the commitment at MSOP's Moose Lake facility. Moose Lake clients include individuals involved in the civil commitment process, non-participants and those participating in initial and primary stages of treatment. MSOP'S Moose Lake facility clients are housed in two buildings. Main, originally built in 1995, houses 102 clients. Complex One, built in 2009, houses 337 clients.
- 2) **St. Peter MSOP Treatment Facility.** The DHS-run Minnesota Sex Offender Program on the St. Peter campus was physically and administratively separated from State Operated Services in 2008. Its buildings are contained within a separate high-security perimeter; other than a few shared functions like mail and food service, it shares no staff with the Minnesota Security Hospital or other State Operated Services programs. Individuals who have demonstrated meaningful change and have progressed through treatment move to St. Peter to begin the reintegration process. St. Peter also provides alternative treatment for clients for whom conventional programming is not appropriate. These clients require unique treatment approaches due to development disabilities, traumatic brain injuries and/or severe learning disabilities. MSOP's St. Peter facility occupies four buildings on the Minnesota Security Hospital campus, housing 148 patients.
- 3) **Minnesota Sex Offender Program – Department of Corrections.** In addition to MSOP's two primary facilities, MSOP operates a 50-bed sex offender treatment program at the Moose Lake Minnesota Correctional Facility for offenders who have been identified as likely to be referred for civil commitment, but are still serving their correctional sentences. This program offers treatment similar in scope and design to treatment provided at the MSOP Moose Lake facility.

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Background Information on the State-Operated Forensics Services Division of the Department of Human Services: Problems Identified in the 2012 Legislative Auditor's Report

A 2012 study by the Program Evaluation unit of the Office of the Legislative Auditor of the state-operated human services of the Department of Human Services indicated the following problems with the State-Operated Forensics Services (SOS) division of the department and with the Minnesota Security Hospital:

- **State-Operated Services leadership allowed systemic problems at the Minnesota Security Hospital to persist for years.**

The Minnesota Security Hospital has lacked cohesion in recent years, reflecting confusion about mission, changes in leadership and organization, turnover of key medical staff, shifting rules regarding patient treatment, ongoing concerns about staff injuries, labor-management disagreements, and a difficult relationship between the Security Hospital and SOS leadership.
- **The Security Hospital's balance between security and treatment shifted towards security during the 2000s, when Security Hospital patients were intermingled with patients from the Minnesota Sex Offender Program.**

Although individuals committed to the Minnesota Sex Offender Program had previously been treated at the Minnesota Security Hospital, the number of sex offender commitments rose dramatically in the 2000s. Individuals committed as sex offenders have somewhat different characteristics and treatment approaches from those committed as mentally ill and dangerous.
- **Adjusting to many organizational changes in a short period of time has been challenging for administrators and staff.**

The Security Hospital has experienced turnover in many key leadership positions since 2010. SOS leadership chose to replace the Security Hospital's chief administrator in 2011, seeking someone who could more effectively address long-term problems at the facility. However, the new chief administrator lasted only about six months before being relieved of his duties. In addition, the program director of the secure units at the Security Hospital has changed three times since 2008. The clinical director of the secure units changed in 2011, but then the new clinical director resigned in 2012 and the position was discontinued. Lastly, the long-term medical director of the Security Hospital left in early 2012. Another difficulty described by Security Hospital staff was the changing role of security staff. Many security staff did not have human services backgrounds when they came to the Security Hospital, and many worked for years in the security-focused environment that characterized the facility in the 2000s. The recent emphasis on reducing the "correctional" atmosphere of the facility has changed how security staff are asked to do their jobs and how their performance is assessed.
- **Prior to 2012, Security Hospital administrators allowed psychiatrists to work irregular or unpredictable schedules that impeded collaboration and communication with other staff.**

The Security Hospital has had ongoing difficulties holding some of its psychiatrists accountable for fulfilling their professional responsibilities. Most notably, some psychiatrists would not show up to conduct patient visits with other treatment team members and sometimes did not visit residential units for long periods.
- **The Security Hospital has been critically understaffed with licensed psychiatrists since January 2012.**

Until late 2011, the Security Hospital had eight psychiatrists, including the facility's medical director. Several psychiatrists clashed with the Security Hospital chief administrator who was hired in August 2011 and was later dismissed. After 2011, all of these psychiatrists, including the facility's medical director, left their positions within a two-month period, leaving the facility dangerously short-staffed with psychiatric care starting in January 2012.
- **Because the Security Hospital had relied for years on the use of improper seclusion and restraint techniques, it was unprepared when required to change its methods of managing difficult patient behaviors.**

Security Hospital reports show no sustained decrease over time in the use of seclusion and restraint prior to late 2010. The total amount of time spent by patients in protective isolation averaged over 1,800 hours per month in the four months before administrators discontinued the practice. When the changes were introduced, staff on residential units were suddenly deprived of some of their standard methods of managing disruptive patients.
- **The number of injuries to Security Hospital staff increased sharply in 2012.**

Patient assaults led to 32 staff injuries in 2011 that required medical treatment beyond simple first aid. In 2012, that number doubled while the number of patients stayed roughly constant. As of December 9, 2012, Security Hospital staff had sustained 63 injuries as a result of patient assaults.
- **A tense relationship exists between Security Hospital administrators and the labor union affiliate representing security staff.**

Over one-third of all Security Hospital employees are security staff represented by the American Federation of State, County, and Municipal Employees (AFSCME). Many administrative staff have viewed the union as resistant to needed changes and quick to fight decisions it does not like by appealing to senior DHS leadership or political allies. Union leaders, on the other hand, believe that administrators have implemented changes without understanding the implications for staff safety and working conditions.

- **Difficult Relationship with State-Operated Services Administration**

The Security Hospital's clientele, programming, and needs are unlike those of other SOS programs. But there has been a perception among SOS (and DHS) managers that Security Hospital management has been dysfunctional, contributing to unresolved problems. Senior SOS administrators have also perceived the Security Hospital to be somewhat disconnected from the rest of SOS and resistant to some necessary changes. Additionally, the Security Hospital's location in St. Peter has geographically isolated it from the central office in St. Paul; most of the other SOS programs have had their senior management based in the Twin Cities metropolitan area. In 2010, an internal DHS program review argued that "significant change [at the Security Hospital] cannot occur within the current [DHS organizational] structure."

- **It is unclear whether the Minnesota Security Hospital is the most suitable program for some patients committed there.**

Unlike many private facilities that treat the mentally ill, the Minnesota Security Hospital does not specialize in treating patients with particular conditions. By law, any patient found mentally ill and dangerous must be committed to a "secure treatment facility"—usually this is the Minnesota Security Hospital—unless the patient can establish that a less restrictive program can meet the patient's needs while protecting public safety.²⁶ The Security Hospital must admit and treat any patient committed to it by a court, regardless of diagnosis. The finding that an individual is mentally ill and dangerous is a legal decision, not a medical one. Persons diagnosed with antisocial personality disorder likely are more appropriately treated in a correctional setting rather than a medical setting. Persons with developmental disabilities that involve cognitive impairments may be more appropriately treated in a setting more akin to the one that they will eventually be discharged into.

- **Many Security Hospital patients receive a modest amount of mental health therapy.**

State law declares that the Minnesota Security Hospital shall function as a secure treatment facility and that the Department of Human Services commissioner shall manage and supervise the Security Hospital the same as in the case of other state hospitals, required to provide active treatment that meets contemporary professional standards for staffing levels and for quality of program, staffing, and physical environment. The amount of time devoted to counseling and psychoeducational activities was quite limited, just over one hour per day of scheduled therapeutic activities. This small amount, including mental health treatment-related meetings or groups, educational courses, and community meetings that most residential units held on weekdays.

- **State-Operated Services has inconsistent standards that specify how often patients should be seen by psychiatrists, and a majority of patients have been seen less than monthly.**

A number of SOS policies address the frequency of psychiatrist contacts with patients. These policies typically address the frequency of contact by indicating how often the psychiatrist is required to make "progress notes" on a patient. In the past, the Security Hospital has been cautioned about having standards that did not require sufficiently frequent psychiatrist-patient interaction. Specifically, in 2010, national mental health consultants told SOS they were unaware of comparable programs in the nation with standards that allowed, as did the Security Hospital, for psychiatrist contacts as infrequently as every three months. The consultants said most programs require at least monthly contacts.

- **Some patients have remained at the Minnesota Security Hospital for many years.**

As the state's most secure residential treatment facility for the mentally ill and as the statutorily designated commitment location for the mentally ill and dangerous, the Minnesota Security Hospital receives a slow but steady stream of new patients every year. To make room for these patients, the Security Hospital needs to regularly discharge patients that no longer need the level of care required there. However, progress toward discharge for Security Hospital patients is often very slow.

- **According to Security Hospital administrators, many patients could be discharged from the Security Hospital to less restrictive settings, but there is nowhere to send them.**

The Security Hospital's lack of available beds, however, does not appear to be due to lack of resources. Instead, it is primarily due to the fact that the Security Hospital has great difficulty finding placements for patients who are ready to be discharged. According to Security Hospital administrators, there are several patients in the Security Hospital's Transition Services program at any given time that staff have deemed ready to move to community settings but for whom such settings cannot be found.

- **In December 2011, the Department of Human Services placed the Minnesota Security Hospital on a "conditional" license for two years and levied a \$2,200 fine—in large part, for problems related to use of restraint and seclusion.**

In effect, the Security Hospital was placed on "probation" for a two-year period. This was partly based on 21 violations stemming from a May 2011 licensing inspection, of which 8 violations were related to seclusion or restraint policies or practices. In some cases, licensing staff documented instances of maltreatment by the facility itself, individual staff persons, or both. In other cases, licensors found inadequacies in maltreatment-related policies, training, and reporting practices. Several licensing violations related to the Security Hospital's use of a practice called "protective isolation."

Background Information on the Closure of the Minnesota Extended Treatment Options Program and Subsequent Developments

METO was the former Minnesota Extended Treatment Options Program (METO). METO was created within the Department of Human Services in the 1990s. There was concern at that time that there would be situations in which individuals with disabilities were going to have crises, had lost their placements, were coming out of prison, or were at risk of going to prison, and so the Department of Human Services wanted an alternative to do that and a 48-bed facility was established on the former Cambridge State Hospital campus. The 1995 Legislature authorized the Commissioner of Human Services to develop a specialized service model at the Cambridge Regional Human Services Center campus to serve Minnesotans who have a developmental disability and exhibit severe behaviors that present a risk to public safety. The program that developed was known as the Minnesota Extended Treatment Options Program. METO combined extensive outreach and support services with the availability of specialized residential beds so that individuals can be served in the least restrictive setting necessary. With extensive outreach and support services available, admission to the program was limited to those few individuals who exhibited such extreme behaviors that they could not be served safely in their communities.

METO program participants were required to be mentally retarded, be of adult age, and exhibit behaviors that present a risk to public safety. Most individuals were placed in METO under the Minnesota Civil Commitment and Treatment Act. METO had the capacity to provide specialized residential services for up to 48 clients.

Family members of three patients first raised concerns about patient treatment at METO in 2007. The state ombudsman launched a year-long investigation that found that individuals were being routinely restrained in a prone face down position and placed in metal handcuffs and leg hobbles. Litigation followed.

Jensen v. Minnesota Department of Human Services, litigation heard by U.S. District Judge Donovan Frank in St. Paul, alleged that the Minnesota Extended Treatment Options, a facility in Cambridge, frequently subjected patients with developmental disabilities to improper and inhumane use of seclusion and mechanical restraints. A federal judge gave final approval to a settlement reached between the State of Minnesota and 300 developmentally disabled former residents of a state-run institution. The 2012 settlement includes not only compensation for victims, but a far-ranging plan to improve the treatment of disabled people in the state. The settlement mandates training for DHS staff with an emphasis on positive behavioral support and requires regular reporting over the next two years. METO closed as a part of a settlement of the litigation. The agreement required DHS, in part, to

- 1) close METO by June 30, 2011;
- 2) adopt new policies prohibiting seclusion and limiting the use of restraints to emergency situations in SOS facilities for people with developmental disabilities and severe behavioral problems;
- 3) increase nonresidential services staffing;
- 4) implement new and increased training requirements; and
- 5) put in place an oversight process to ensure that new restraint policies were followed.

The agreement also required the state to establish a class action settlement fund of \$3 million for METO residents who had been unlawfully restrained, with \$2.8 million coming from the state and \$200,000 coming from two insurance companies.

METO closed on June 30, 2011, as a result of the settlement of the 2009 federal district court Jensen v. Minnesota Department of Human Services litigation and has been replaced by the Minnesota Specialty Health System-Cambridge. In July 2011, the 48-bed facility in Cambridge was shut down as part of a statewide reorganization. It reopened with a new, 16-bed facility known as Minnesota Specialty Health System-Cambridge in the same location. As reconfigured, Minnesota Specialty Health System-Cambridge provided services to individuals diagnosed with developmental disabilities or related conditions who may be highly complex with a history of legal problems, public safety and/or personal safety concerns due to significant behavioral disturbances and/or poorly managed medical conditions. The facility was initially licensed by DHS as a residential facility for persons with developmental disabilities, a license that does not qualify the facility for federal reimbursements.

Subsequently, the Stipulated Class Action Settlement Agreement (09-CV-1775 DWF/FLN) associated with the former Minnesota Extended Treatment Options (METO) program required DHS to draft a bill to replace outdated terms that appear in Minnesota Statutes and Rules. Instruction to that effect was provided in Laws 2012, Chapter 216, Article 12, Section 10.

In 2011, as part of a \$3 million federal class action settlement, DHS agreed to “immediately and permanently discontinue the use of mechanical restraint,” including handcuffs and leg irons at its facility in Cambridge. The state agency also agreed to extend the terms of the settlement to all state-operated facilities serving people with developmental disabilities. However, DHS did not submit a license application for the Minnesota Specialty Health System-Cambridge facility until February 2012. The facility was licensed by the Minnesota Department of Health on April 24, 2012, roughly 10 months after its reopening.

DHS’s Licensing Division determined that the new Cambridge facility also had problems with use of restraints in emergency situations. In February 2012, DHS conducted its first licensing review and issued a correction order because the facility did not adhere to its policy that required reporting the use of restraints within 24 hours. In July 2012, the department issued two more correction orders within a week of each other for similar violations. In October 2012, licensing staff cited the facility for using restraints in inappropriate circumstances. A day later, licensing staff issued another correction order—the facility’s fourth since mid-February for not adhering to facility policy regarding the review and reporting of the use of restraints.

In September 2012, the state Ombudsman for Mental Health and Developmental Disabilities made an unannounced visit to the facility. The ombudsman’s report documented various concerns related to the facility’s treatment activities, inappropriate medication of residents as a form of “chemical restraints,” lack of vocational and rehabilitative programming, and use of the local medical center when a resident’s behavior is out of control.

In October 2013, the Department of Human Services formulated a plan that would move clients of the Minnesota Sex Offender Program to Cambridge to be housed at the Minnesota Specialty Health System-Cambridge campus. That proposal was opposed by city officials and residents. In November, 2013, Governor Mark Dayton suspended the plans by the Minnesota Sex Offender Program to transfer clients to a facility in Cambridge until certain conditions have been met.

The Minnesota Specialty Health System-Cambridge campus serves individuals who are civilly committed for developmental disabilities and present a public safety risk. They include some clients with sexual offense histories and others who are sent to the program as they undergo competency assessments to stand trial for criminal charges. Some clients have dual diagnoses as developmentally disabled and mentally ill.

In December 2013, a federal judge admonished the state Department of Human Services (DHS) for illegally operating a home for people with developmental disabilities in Cambridge for 10 months without a license and for concealing the oversight. The licensing violation raised new questions about safety and oversight of the Cambridge facility, where over a decade’s time numerous developmentally disabled adults were improperly restrained by staff. The failure to obtain a license was significant because it meant the Cambridge facility was not subject to regular inspections by state officials to determine if it was still using restraints in violation of the settlement. Federal Judge Donovan Franks’ order included a finding that DHS consciously concealed and misled the federal court and the plaintiffs in the prior class action settlement. Attorneys in the class action case are seeking \$150,000 in sanctions against DHS for the violation. The money would be paid into a court fund to assist people with developmental disabilities and their families.

1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 4, delete section 6

1.3 Page 6, after line 18, insert:

1.4 "Sec. 8. **FORMER METO PROGRAM EMPLOYEES; SETTLEMENT FOR**
1.5 **INTERRUPTION OF SPECIAL RETIREMENT COVERAGE.**

1.6 (a) An eligible person described in paragraph (b) is entitled to receive or have
1.7 deposited on the person's behalf a settlement amount specified in paragraph (c).

1.8 (b) An eligible person is a person who:

1.9 (1) was employed at the Minnesota Specialty Health System-Cambridge on the
1.10 day immediately prior to the date in 2014 on which the facility was converted to the
1.11 community-based homes;

1.12 (2) remains employed by the Department of Human Services without a break
1.13 in service; and

1.14 (3) renders in that employment capacity direct care and treatment services
1.15 administration.

1.16 (c) The settlement amount is \$..... multiplied by the number of months between
1.17 the month in which the facility conversion date occurred and the month in which the
1.18 person attains the age of 55.

1.19 (d) As specified by the eligible person, the settlement amount is payable in a lump
1.20 sum or, notwithstanding any provision of Minnesota Statutes, sections 352.965 and
1.21 356.24, to the contrary, as a special employer contribution to the Minnesota deferred
1.22 compensation plan.

1.23 (e) The commissioner of human services is authorized to pay the settlement amounts
1.24 under this section.

1.25 (f) Authority to make settlement amount payments or deposits under this section
1.26 terminates on January 1 2015.

1.27 **EFFECTIVE DATE.** This section is effective on the day following the
1.28 date on which the Minnesota Specialty Health System-Cambridge is converted to
1.29 community-based homes or July 1, 2014, whichever is later.

1.30 Sec. 9. **REPEALER.**

1.31 Minnesota Statutes 2012, section 352.91, subdivision 3e, is repealed.

1.32 **EFFECTIVE DATE.** This section is effective"

1.33 Renumber the sections in sequence

1.34 Amend the title accordingly

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1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 4, delete section 6

1.3 Page 6, after line 18, insert:

1.4 "Sec. 8. **FORMER METO PROGRAM EMPLOYEES; SETTLEMENT FOR**
1.5 **INTERRUPTION OF SPECIAL RETIREMENT COVERAGE.**

1.6 (a) An eligible person described in paragraph (b) is entitled to have deposited on the
1.7 person's behalf a settlement amount specified in paragraph (c).

1.8 (b) An eligible person is a person who:

1.9 (1) was employed at the Minnesota Specialty Health System-Cambridge on the
1.10 day immediately prior to the date in 2014 on which the facility was converted to the
1.11 community-based homes;

1.12 (2) remains employed by the Department of Human Services without a break
1.13 in service; and

1.14 (3) renders in that employment capacity direct care and treatment services
1.15 administration.

1.16 (c) The settlement amount is the percentage of covered salary difference between the
1.17 employer contribution rate specified in Minnesota Statutes, section 352.04, subdivision
1.18 3, and the employer contribution rate specified in Minnesota Statutes, section 352.92,
1.19 subdivision 2, applied to the eligible person's covered salary each payroll period from
1.20 the first day of the first payroll period after the date on which the Minnesota Specialty
1.21 Health System-Cambridge is converted to community-based homes or July 1, 2014,
1.22 whichever is later, and continues for the duration of the eligible person's employment by
1.23 the Department of Human Services until attaining the age of 55.

1.24 (d) The settlement amount, notwithstanding any provision of Minnesota Statutes,
1.25 sections 352.965 and 356.24, to the contrary, must be deposited in the eligible person's
1.26 account in the Minnesota deferred compensation plan each payroll period as a special
1.27 employer contribution.

1.28 (e) The commissioner of human services is authorized to make the special settlement
1.29 amount deposits under this section.

1.30 (f) Authority to make settlement amount payments or deposits under this section
1.31 terminates on January 1 2015.

1.32 **EFFECTIVE DATE.** This section is effective on the day following the
1.33 date on which the Minnesota Specialty Health System-Cambridge is converted to
1.34 community-based homes or July 1, 2014, whichever is later.

2.1 Sec. 9. **REPEALER.**

2.2 Minnesota Statutes 2012, section 352.91, subdivision 3e, is repealed.

2.3 **EFFECTIVE DATE.** This section is effective"

2.4 Renumber the sections in sequence

2.5 Amend the title accordingly

1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 4, line 33, after "(c)" insert "If the commissioner of human services and the
1.3 commissioner of Minnesota management and budget certify their determination with
1.4 respect to the person under paragraph (d), "

1.5 Page 5, after line 3, insert:

1.6 "(d) The continuation of retirement plan coverage under paragraph (c) applies to a
1.7 person only if the commissioner of human services and the commissioner of Minnesota
1.8 management and budget certify to the executive director that the person in the person's
1.9 subsequent employment is in an employment position that has mental and physical
1.10 capability requirements for the maintenance of safety, security, discipline, and custody of
1.11 patients comparable to the employment position that the person held on the day prior to
1.12 the date on which the Minnesota Specialty Health System-Cambridge converted to the
1.13 community-based homes."

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1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 4, line 33, after "(c)" insert "If the commissioner of human services and the
1.3 commissioner of Minnesota management and budget certify their determination with
1.4 respect to the person under paragraph (d), "

1.5 Page 5, after line 3, insert:

1.6 "(d) The continuation of retirement plan coverage under paragraph (c) applies to a
1.7 person only if the commissioner of human services and the commissioner of Minnesota
1.8 management and budget certify to the executive director that the person in the person's
1.9 subsequent employment is in an employment position that has mental and physical
1.10 capability requirements for the maintenance of safety, security, discipline, and custody of
1.11 patients comparable to the employment position that the person held on the day prior to
1.12 the date on which the Minnesota Specialty Health System-Cambridge converted to the
1.13 community-based homes, and that the person spends at least 75 percent of working time
1.14 in direct contact with patients."

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1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 5, line 2, after "employed" insert ", but not to exceed years,"

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1.1 moves to amend S.F. No. 2308; H.F. No. 2604, as follows:

1.2 Page 6, after line 18, insert:

1.3 "Sec. 9. Minnesota Statutes 2012, section 352.91, is amended by adding a subdivision
1.4 to read:

1.5 Subd. 7. **Periodic membership requirement compliance audit.** (a) On or before
1.6 September 15, 2015, and every five years thereafter, the commissioner of Minnesota
1.7 management and budget shall conduct an audit of the active membership of the
1.8 correctional state employees retirement plan of the Minnesota State Retirement System
1.9 and report its results tot he commissioner of corrections, the commissioner of human
1.10 services, the executive director of the Minnesota State Retirement System, and the
1.11 executive director of the Legislative Commission on Pensions and Retirement.

1.12 (b) The audit shall:

1.13 (1) determine whether or not the position name for each active plan member is
1.14 provided for in this section;

1.15 (2) determine whether or not the place of employment for each active plan member
1.16 for the position name conforms with this section; and

1.17 (3) determine whether or not the amount of direct inmate or patient contact, if a
1.18 minimum is specified in this section, for each active plan member meets or exceeds the
1.19 specified minimum.

1.20 **EFFECTIVE DATE.** This section is effective the day following final enactment."

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SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2308

(SENATE AUTHORS: JOHNSON and Pappas)

DATE	D-PG	OFFICIAL STATUS
03/04/2014	5963	Introduction and first reading Referred to State and Local Government

A bill for an act

1.1 relating to human services; modifying coverage in the correctional employee
 1.2 retirement plan for certain state employees employed by the state-operated
 1.3 forensic services program; allowing certain employees of the Minnesota
 1.4 Specialty Health System-Cambridge to remain in the correctional employee
 1.5 retirement plan; amending Minnesota Statutes 2012, sections 352.90; 352.91,
 1.6 subdivisions 1, 2, 3c, 3d, 3e, 3f, by adding a subdivision.
 1.7

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

1.9 Section 1. Minnesota Statutes 2012, section 352.90, is amended to read:

1.10 **352.90 POLICY.**

1.11 It is the policy of the legislature to provide special retirement benefits for and special
 1.12 contributions by certain correctional employees who may be required to retire at an early
 1.13 age because they lose the mental or physical capacity required to maintain the safety,
 1.14 security, discipline, and custody of inmates at state correctional facilities ~~or~~₂ of patients
 1.15 at in the state-operated forensic services program, which is comprised of the Minnesota
 1.16 Security Hospital, the forensic nursing home, the forensic transition service, and the
 1.17 competency restoration program; of patients in the Minnesota sex offender program₂; or of
 1.18 patients in the Minnesota Specialty Health System-Cambridge.

1.19 Sec. 2. Minnesota Statutes 2012, section 352.91, subdivision 1, is amended to read:

1.20 Subdivision 1. **Qualifying jobs.** "Covered correctional service" means service
 1.21 performed by a state employee, as defined in section 352.01, employed at a state
 1.22 correctional facility, the ~~Minnesota Security Hospital~~ state-operated forensic services
 1.23 program, or the Minnesota sex offender program as:

1.24 (1) a corrections officer 1;

- 2.1 (2) a corrections officer 2;
- 2.2 (3) a corrections officer 3;
- 2.3 (4) a corrections officer supervisor;
- 2.4 (5) a corrections lieutenant;
- 2.5 (6) a corrections captain;
- 2.6 (7) a security counselor;
- 2.7 (8) a security counselor lead; or
- 2.8 (9) a corrections canine officer.

2.9 Sec. 3. Minnesota Statutes 2012, section 352.91, subdivision 2, is amended to read:

2.10 Subd. 2. **Maintenance, correctional industry, and trades.** "Covered correctional
 2.11 service" also means service rendered at any time by state employees as maintenance
 2.12 personnel, correctional industry personnel, or members of trades certified by the
 2.13 commissioner of management and budget to the executive director as being engaged for at
 2.14 least 75 percent of the employee's working time in the rehabilitation, treatment, custody,
 2.15 or supervision of inmates at a Minnesota correctional facility, or of patients ~~at~~ in the
 2.16 ~~Minnesota Security Hospital~~ state-operated forensic services program or the Minnesota
 2.17 sex offender program.

2.18 Sec. 4. Minnesota Statutes 2012, section 352.91, subdivision 3c, is amended to read:

2.19 Subd. 3c. **Nursing personnel.** (a) "Covered correctional service" means service
 2.20 by a state employee in one of the employment positions at a correctional facility ~~or at~~
 2.21 in the Minnesota Security Hospital state-operated forensic services program, or in the
 2.22 Minnesota sex offender program that are specified in paragraph (b) if at least 75 percent of
 2.23 the employee's working time is spent in direct contact with inmates or patients and the fact
 2.24 of this direct contact is certified to the executive director by the appropriate commissioner.

2.25 (b) The employment positions are as follows:

- 2.26 (1) registered nurse - senior;
- 2.27 (2) registered nurse;
- 2.28 (3) registered nurse - principal;
- 2.29 (4) licensed practical nurse 2;
- 2.30 (5) registered nurse advance practice; and
- 2.31 (6) psychiatric advance practice registered nurse.

2.32 Sec. 5. Minnesota Statutes 2012, section 352.91, subdivision 3d, is amended to read:

3.1 Subd. 3d. **Other correctional personnel.** (a) "Covered correctional service"
3.2 means service by a state employee in one of the employment positions at a correctional
3.3 facility or at in the Minnesota Security Hospital state-operated forensic services program
3.4 specified in paragraph (b) if at least 75 percent of the employee's working time is spent
3.5 in direct contact with inmates or patients and the fact of this direct contact is certified to
3.6 the executive director by the appropriate commissioner.

3.7 (b) The employment positions are:

3.8 (1) automotive mechanic;

3.9 (2) baker;

3.10 (3) central services administrative specialist, intermediate;

3.11 (4) central services administrative specialist, principal;

3.12 (5) chaplain;

3.13 (6) chief cook;

3.14 (7) clinical program therapist 1;

3.15 (8) clinical program therapist 2;

3.16 (9) clinical program therapist 3;

3.17 (10) clinical program therapist 4;

3.18 (11) cook;

3.19 (12) cook coordinator;

3.20 (13) corrections inmate program coordinator;

3.21 (14) corrections transitions program coordinator;

3.22 (15) corrections security caseworker;

3.23 (16) corrections security caseworker career;

3.24 (17) corrections teaching assistant;

3.25 (18) delivery van driver;

3.26 (19) dentist;

3.27 (20) electrician supervisor;

3.28 (21) general maintenance worker lead;

3.29 (22) general repair worker;

3.30 (23) library/information research services specialist;

3.31 (24) library/information research services specialist senior;

3.32 (25) library technician;

3.33 (26) painter lead;

3.34 (27) plant maintenance engineer lead;

3.35 (28) plumber supervisor;

3.36 (29) psychologist 1;

- 4.1 (30) psychologist 3;
- 4.2 (31) recreation therapist;
- 4.3 (32) recreation therapist coordinator;
- 4.4 (33) recreation program assistant;
- 4.5 (34) recreation therapist senior;
- 4.6 (35) sports medicine specialist;
- 4.7 (36) work therapy assistant;
- 4.8 (37) work therapy program coordinator; and
- 4.9 (38) work therapy technician.

4.10 Sec. 6. Minnesota Statutes 2012, section 352.91, subdivision 3e, is amended to read:

4.11 Subd. 3e. **Minnesota Specialty Health System-Cambridge.** (a) "Covered
 4.12 correctional service" means service by a state employee in one of the employment positions
 4.13 with the Minnesota Specialty Health System-Cambridge specified in paragraph (b) if at
 4.14 least 75 percent of the employee's working time is spent in direct contact with patients
 4.15 who are in the Minnesota Specialty Health System-Cambridge and if service in such a
 4.16 position is certified to the executive director by the commissioner of human services.

4.17 (b) The employment positions are:

- 4.18 (1) behavior analyst 1;
- 4.19 (2) behavior analyst 2;
- 4.20 (3) behavior analyst 3;
- 4.21 (4) group supervisor;
- 4.22 (5) group supervisor assistant;
- 4.23 (6) human services support specialist;
- 4.24 (7) residential program lead;
- 4.25 (8) psychologist 2;
- 4.26 (9) recreation program assistant;
- 4.27 (10) recreation therapist senior;
- 4.28 (11) registered nurse senior;
- 4.29 (12) skills development specialist;
- 4.30 (13) social worker senior;
- 4.31 (14) social worker specialist; and
- 4.32 (15) speech pathology specialist.

4.33 (c) A Department of Human Services employee who was employed at the Minnesota
 4.34 Specialty Health System-Cambridge immediately preceding the 2014 conversion to the
 4.35 community-based homes and was in covered correctional service at the time of the

5.1 transition shall continue to be covered by the correctional employee retirement plan while
 5.2 employed and without a break in service with the Department of Human Services in the
 5.3 direct care and treatment services administration.

5.4 Sec. 7. Minnesota Statutes 2012, section 352.91, subdivision 3f, is amended to read:

5.5 Subd. 3f. **Additional Department of Human Services personnel.** (a) "Covered
 5.6 correctional service" means service by a state employee in one of the employment
 5.7 positions specified in paragraph (b) ~~at in the Minnesota Security Hospital state-operated~~
 5.8 forensic services program or ~~in the~~ Minnesota sex offender program if at least 75
 5.9 percent of the employee's working time is spent in direct contact with patients and
 5.10 the determination of this direct contact is certified to the executive director by the
 5.11 commissioner of human services.

5.12 (b) The employment positions are:

- 5.13 (1) behavior analyst 2;
- 5.14 (2) behavior analyst 3;
- 5.15 (3) certified occupational therapy assistant 1;
- 5.16 (4) certified occupational therapy assistant 2;
- 5.17 (5) chemical dependency counselor senior;
- 5.18 (6) client advocate;
- 5.19 (7) clinical program therapist 2;
- 5.20 ~~(7)~~ (8) clinical program therapist 3;
- 5.21 ~~(8)~~ (9) clinical program therapist 4;
- 5.22 ~~(9)~~ (10) customer services specialist principal;
- 5.23 ~~(10)~~ (11) dental assistant registered;
- 5.24 ~~(11)~~ (12) group supervisor;
- 5.25 ~~(12)~~ (13) group supervisor assistant;
- 5.26 ~~(13)~~ (14) human services support specialist;
- 5.27 ~~(14)~~ (15) licensed alcohol and drug counselor;
- 5.28 ~~(15)~~ (16) licensed practical nurse 1;
- 5.29 ~~(16)~~ (17) management analyst 3;
- 5.30 ~~(17)~~ (18) occupational therapist;
- 5.31 ~~(18)~~ (19) occupational therapist, senior;
- 5.32 ~~(19)~~ (20) psychologist 1;
- 5.33 ~~(20)~~ (21) psychologist 2;
- 5.34 ~~(21)~~ (22) psychologist 3;
- 5.35 ~~(22)~~ (23) recreation program assistant;

- 6.1 ~~(23)~~ (24) recreation therapist lead;
- 6.2 ~~(24)~~ (25) recreation therapist senior;
- 6.3 ~~(25)~~ (26) rehabilitation counselor senior;
- 6.4 ~~(26)~~ (27) security supervisor;
- 6.5 ~~(27)~~ (28) skills development specialist;
- 6.6 ~~(28)~~ (29) social worker senior;
- 6.7 ~~(29)~~ (30) social worker specialist;
- 6.8 ~~(30)~~ (31) social worker specialist, senior;
- 6.9 ~~(31)~~ (32) special education program assistant;
- 6.10 ~~(32)~~ (33) speech pathology clinician;
- 6.11 ~~(33)~~ (34) work therapy assistant; and
- 6.12 ~~(34)~~ (35) work therapy program coordinator.

6.13 Sec. 8. Minnesota Statutes 2012, section 352.91, is amended by adding a subdivision
6.14 to read:

6.15 Subd. 3j. **State-operated forensic services program.** For purposes of this section,
6.16 "state-operated forensic services program" means the Minnesota Security Hospital, the
6.17 forensic nursing home, the forensic transition service, and the competency restoration
6.18 program.