

# Position Statement

For 2023 Session

## CHILDREN'S MENTAL HEALTH RESIDENTIAL SERVICES PATHWAY

### Proposal

#### Issue:

In compliance with legislation that passed in 2021, the state of Minnesota developed a new way for parents to access residential treatment for youth with a severe emotional disturbance (SED). The new service pathway is called the Children's Mental Health Residential Services Pathway or "third pathway" and is available to youth covered under public health plans (MA-FFS and PMAP's). This was developed with the goal of providing youth and their families an alternative way to gain access to treatment services that would meet a child's individual and specific needs in a Residential Treatment Center (RTC) without the requirements under the Family First Preservation Services Act (FFPSA).

The legislation included an annual allocation to counties and initiative tribes of \$1,921,334 to cover the lost IV-E funding counties had previously received to cover the room and board portion of the RTC per diem. This allocation was divided between counties/tribes based on the average number of youths over a 3-year period from each county placed in an RTC.

The way that the Children's Mental Health Residential Services Pathway was written in legislation does not provide the youth with the protections afforded to them under 260C and 260D to receive treatment in the least restrictive setting, to ensure that reasonable efforts are taken to prevent the placement, and to ensure that reasonable efforts are put forth to have the youth return home as soon as possible.

The way the current legislation is written results in cost shifts to counties to administer and coordinate access to residential treatment and to cover the treatment portion of the per diem for youth covered under MA-FFS. In the execution of these functions, the counties are exposed to potential legal liability and the inability to ensure that county funds are being utilized appropriately. More than half of Minnesota counties have opted out of accepting this allocation due to the increased financial burden and potential liability. As a result, there is uneven access to residential treatment for youth and families throughout the state.

#### Implementation Strategy:

To ensure equitable access to residential treatment under this legislation, MACSSA supports moving the responsibility for coordination of access for families and oversight of the use of the funds to the Department of Human Services Behavioral Health Division. There would also be a need for an increased appropriation to cover the treatment costs associated with youth covered by MA-FFS receiving residential treatment by a facility designated as an Institute of Mental Disease (IMD). In addition, there may need to be additional appropriations of state funds for additional staffing needs to coordinate access and provide oversight to the funds.

Laws of Minnesota 2021, 1st Spec. Sess. chapter 7, article 11, sections 2-5, 49(b); and article 16, section 2, subdivision 7(a) <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/7/>

## Systemic Priority Alignment (highlight all that apply and explain why)

- **Equity**
- **Integrated Services**
- **Fiscal Framework**

From the GARE Toolkit (See [www.racialequityalliance.org](http://www.racialequityalliance.org)): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

The current process for allocating funds to individual counties and initiative tribes creates inequity in access to use of this new service. A county with very limited funds is not able to fully fund a service for one or more children for a sufficient length of time to benefit from the service. A larger county may be able to fully fund several children using this service. However, access to the service will be based on “first come first serve” basis instead of determined by highest need for the service. In both situations, inequitable distribution of funds results in inequitable access to the service. Moving the responsibility for use of the service and the fiscal allocation to a statewide system will improve equitable access across the state if funding is available. Persons from greater MN and initiative tribes would have similar ability to access services as youth and families residing in larger metropolitan areas.

This strategy would also impact fiscal framework by reducing the cost shift to counties for youth who receive fee for service MA or TEFRA. The legislation was to fully cover costs to counties/initiative tribes with the assumption made the youth served would have treatment costs covered through a PMAP. Treatment costs for youth receiving fee for service MA or TEFRA are born by counties/tribes. Moving the funding in totality to the behavioral health fund with full funding for the services would prevent this cost shift to counties/tribes.

## Relevant Committee (highlight all that apply and explain why)

- **Adult Services**
- **Behavioral Health**
- **Children’s Services**
- **Equity**
- **Healthcare**
- **Modernization**
- **Policy**
- **Self-Sufficiency**

Youth receiving services at a residential treatment facility meet the criteria for placement due to a mental health need and diagnosis. However, the service needs and FFPSA requirements also fall under the child safety and permanency division of the department of human services. Eligible youth and their families are receiving publicly funded healthcare. As stated above, a major concern in the current structure of access to this service is one of equity, especially for youth and their families residing in greater Minnesota where the allocation of funds is quite limited.

## Rationale/Background:

The 2021 legislature implemented the Children’s Mental Health Residential Services Pathway to provide equal opportunity for youth and families receiving publicly funded health care to residential treatment as those covered under private health insurance. The intent was to allow all youth equal access to services without the requirements under the Family First Preservation Services Act. FFPSA required youth and families to have a Qualified Individual Assessment to approve placement in an RTC and additional oversight by the Court on a voluntary placement if there was use of public funds or access to services through a voluntary placement agreement.

The stated intent of the authors of this legislation was to hold counties and initiative tribes “harmless” for additional service costs or costs associated with the implementation and administration of this legislation. As part of this legislation, an allocation was made to cover the lost IV-E funding counties previously received to cover the room and board portion of the RTC per diem. DHS devised a formula based on the number of youths served in the prior 3-year period to distribute funding to individual counties or tribes. This formula distribution resulted in allocations as low as \$1300 per year to some counties. This amount would cover 1-2 weeks of room and board expenses for one youth. This creates a dilemma for the family and county related to the continuity of care for youth if a placement needed to be ended once the funding was exhausted. There is the option to shift access to the processes for voluntary placements under chapter 260D which would require the family to comply with the very regulations that this legislation was supposed to circumvent. Therefore, more than half of Minnesota counties opted out of the allocation,

thus, not providing this access to residential treatment to youth in their counties. This results in inequitable access to the new service as it is based on the size of the allocations and a county's ability to absorb the administrative burden of coordinating access and managing the funding.

The allocation referred to in the previous paragraph covers the room and board costs of the placement for youth covered under MA-FFS and PMAP's. There is also a treatment portion of the per diem. The PMAP's would cover the treatment costs for youth placed under this legislation. MA-FFS will cover the treatment costs for youth placed in facilities that are not designated as Institutes for Mental Disease (IMD). The counties are required to cover the treatment costs of youth covered by MA-FFS who receive residential treatment in a facility designated as an IMD. It is important to note that of the nine facilities licensed in Minnesota to provide residential treatment services, eight of them are designated as IMD's.

Due to the implementation challenges, unforeseen costs to counties, inequitable access to the service for families, and concern for lack of oversight to assure medical necessity and appropriateness of services, over half of Minnesota counties declined the funding. MACSSA's proposed solution is movement of the legislatively authorized allocation for this service to the behavioral health fund, with oversight for implementation of the service delegated to the behavioral health division of the Minnesota Department of Human Services and to fully fund the service.



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Approved on: