



To: Members of the MSRS Correctional Plan Eligibility Work Group

From: Sean Kelly, Deputy Director, and Susan Lenczewski, Executive Director

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Subject: Current Statutes and Recent Legislation Regarding MSRS Correctional Plan Eligibility

MSRS Correctional Plan Coverage

The Minnesota State Retirement System (MSRS) Correctional Employees Retirement Plan (Correctional Plan) covers state employees of the Department of Corrections (DOC) or the Department of Human Services (DHS) in specified positions at:

- correctional facilities,
- the state-operated forensic services program,
- the Minnesota Sex Offender Program,
- “security units” (not defined), or
- the Minnesota Specialty Health System-Cambridge.

If the employee is in one of the 9 positions listed in subdivision 1 of Section 352.91, the employee is automatically a member of the Correctional Plan. If the state employee is not in one of the 9 positions, the employee will be covered by the Correctional Plan if the employee is one of the many positions listed in these subdivisions:

- 2 (“maintenance, correctional industry, and trades”),
- 2a (“special teachers”),
- 3c (“nursing personnel”),
- 3d (“other correctional personnel”),
- 3e (at the “Minnesota Specialty Health System-Cambridge”),
- 3f (“additional DHS personnel”), or
- 3g (“additional DOC personnel”),

BUT ONLY IF at least 75% of the employee's working time is spent in direct contact with inmates or patients AND the determination of this direct contact is certified to the executive director of MSRS by the Commissioner of Corrections or the Commissioner of Human Services.

Potential Pitfalls to Correctional Plan Coverage Provisions

This approach to determining which employees of DOC or DHS will be covered by the Correctional Plan is fraught with ambiguity and potential problems. To identify just a few:

- What happens to a covered employee (i.e., the employee is in a covered position, has the requisite level of direct contact, and MSRS was notified of the requisite level of direct contact), but the employee transfers to a different position that is listed as covered? Does the employee have to go through the direct contact review again and must notice be provided to MSRS?
- What happens to a covered employee whose position title changes so it no longer matches one of the covered positions, but otherwise the position stays the same? Subdivision 3h of Section 352.91 addresses this issue to ensure that coverage will continue, but one part of this process requires notice to the executive director of the LCPR and, in Susan's 9-year tenure as executive director, she has never received such notice.
- What happens to a covered employee who has a month or a year where the level of direct contact falls below 75%?
- What is "direct contact" and over what period of time is it evaluated?
- If the evaluation is based on a position description, not real-time observation, what happens if the position description is out of date and no longer accurately describes the level of direct contact?
- What if the Commissioner does not notify MSRS that the direct contact requirement is met?
- What if one covered employee in a position at one facility has the requisite level of direct contact but transfers to the same position at another facility and does not have the direct level of contact? (Subdivision 3i of Section 352.91 applies only if the facility to which the employee transfers is "new." For how long will a facility be considered "new"?)

Process for Adding Positions to Correctional Plan Coverage

Subdivisions 4a, 4b, and 4c of Section 352.91 set forth procedures for addressing these circumstances:

- Including a position for Correctional Plan coverage;
- Determining that a position no longer qualifies for Correctional Plan coverage;
- For DOC employees and retirees only, determining whether prior DOC employment should be considered service covered by the Correctional Plan and transferred from the MSRS General Plan to the Correctional Plan.

These procedures, if applied to a request for coverage, modify and add to the direct contact requirement that would otherwise apply. Under these procedures, it is not enough for an employee to “routinely spend...75% of the employee’s time in direct contact with inmates or patients,” the employee must also “regularly engage...in the rehabilitation, treatment, custody, or supervisions of inmates or patients.”

Interestingly, these procedures include a requirement that the resulting Commissioner’s recommendation regarding adding a new position, along with supporting documentation and proposed legislation, be delivered to the executive director of the LCPR. In Susan’s 9-year tenure as executive director, she has never received such documentation or proposed legislation.

This process requires DOC and DHS to each establish a review committee to evaluate requests from employees and determine whether an employment position satisfies the direct contact requirement. Each review committees must meet periodically to review all requests for Correctional Plan coverage and must make a recommendation on each request to the applicable Commissioner.

If the employee does not agree with the review committee’s determination, the employee has a right to appeal the determination. For DOC, an appeals committee appointed by the Commissioner will hear the appeal and the appeals committee’s determination is final. For DHS, the Commissioner will hear the appeal and the Commissioner’s determination is final.

This prompts any number of questions, the primary one being: Has any position ever been added to Section 352.91 by following these procedures?

Transferring Past Service Credit from the MSRS General Plan to the Correctional Plan

If an employment position is added to Correctional Plan coverage under the process described above, Section 352.955 permits the employees working in that position to elect to transfer past service credit from the MSRS General Plan to the Correctional Plan. The employee can elect a past service credit transfer if the employee’s past service would have been considered Correctional Plan service had the employee been covered by the plan at the time.

Before the transfer can occur, a payment must be made by the employee and the employer. The employee must pay the difference between amount that would have been contributed to the Correctional Plan for the period of service and the amount that was actually contributed to the MSRS General Plan for the period of service plus interest. If the period of service is longer than the most recent 12 months, an additional amount may have to be paid that is based on the unfunded actuarial accrued liability attributable to the service credit transfer.

If the employee makes the payment, then the employer must pay the difference between the plans' employer contributions for the period and may have to pay an additional amount based on the unfunded actuarial accrued liability.

If the procedures under Section 352.91, subdivisions 4a, have never been followed, the right to a past service transfer under Section 352.955 would never have been effective. As noted below, special legislation that added new positions has authorized past service transfers under Section 352.955, as if that statute applied.

Relevant Legislation from the 2024 Legislative Session

HF 3930 (Frederick)/SF 3761 (Frentz)

HF 3930/SF 3761 was enacted into law as part of the 2024 Pension and Retirement Policy and Supplemental Budget Bill. The bill added the position of "music therapist" to the list of DHS positions covered by the Correctional Plan and authorized employees working as a music therapist to transfer past service credit from the MSRS General Plan to the Correctional Plan if elected by the employee.

The process for adding positions to plan coverage was not followed for this bill. DHS conducted a review of the music therapist position description after the bill was introduced. DHS, in an email to LCPR staff, stated that the music therapist position, based on the position description, does meet the direct contact requirement and is appropriate for coverage by the MSRS Correctional Plan.

A session law at the end of the bill requires the MSRS executive director to consider employees in the new covered position as an employee eligible for a past service transfer under Section 352.955, if the employee elects to transfer past service and the other requirements of this section are met.

HF 4539 (Frederick)/SF 4424 (Pappas)

HF 4539/SF 4424 was also enacted into law as part of the 2024 Pension Bill. The bill added the positions of "baker," "cook," "culinary supervisor," "food service worker," and "food services supervisor" to the list of DHS positions covered by the Correctional Plan and authorized employees working in those positions to transfer past service credit from the MSRS General Plan to the Correctional Plan if elected by the employee.

The process for adding positions to plan coverage was not followed for this bill. DHS conducted a review of the position descriptions for these positions after the bill was introduced and determined that the positions do not meet the direct contact requirement. The labor organization representing these positions, AFSCME Council 5, testified at a Commission meeting on March 4, 2024, that the positions do meet the direct contact requirement, but the position descriptions do not accurately reflect the work being done at the facilities.

A session law at the end of the bill requires the MSRS executive director to consider employees in the new covered positions as employees eligible for a past service transfer under Section 352.955, if the employee elects to transfer past service and the other requirements of this section are met.

HF 4358 (Brand)/SF 5288 (Frentz)

HF 4358/SF 5288 was heard by the Commission on April 2, 2024, but the bill was not included in the 2024 Pension Bill. The bill, if passed, would have (1) added the position of “registered nurse – supervisor” to the list of positions covered by the Correctional Plan and (2) moved the positions of “group supervisor” and “group supervisor assistant” from the list of DHS positions in section 352.91, subdivision 3f, to the list of positions in section 352.91, subdivision 1. As a result, the bill would have eliminated the direct contact requirement for the positions of group supervisor and group supervisor assistant.

At the time the bill was heard by the Commission, according to DHS, there were 52 group supervisors and 25 group supervisor assistants employed by DHS. Of these employees, one group supervisor and 11 group supervisor assistants would have become eligible for the Correctional Plan under the bill. DOC reported that it does not employ any group supervisors or group supervisor assistants.

The process for adding positions to plan coverage was not followed for the registered nurse – supervisor position. DHS determined that, based on the position description, the position does not meet the direct contact requirement. DOC, in an email to LCPR staff, stated that DOC did not evaluate the registered nurse – supervisor position. At the time the bill was heard, according to DHS and DOC, there were 15 registered nurse supervisors employed by DHS and 12 registered nurse supervisors employed by DOC.

HF 3987 (Fischer)/SF 3936 (Hoffman)

DHS, because of legislation passed in 2023, is being split up and reorganized.¹ As part of this restructure, DHS’s Direct Care and Treatment division is established as its own agency, the Department of Direct Care and Treatment (DCT), effective January 1, 2025. In addition, the Department of Children, Youth, and Families (DCYF) is established, effective July 1, 2024. Once the creation of DCT takes effect, some of the employees covered by the Correctional Plan who are currently working for DHS will be employed by DCT.

HF 3987/SF 3936, which was enacted into law in 2024, reorganized the statutes governing the programs, services, and functions of DHS that are transferred to DCT.² To conform with this reorganization, section 352.91 is amended to replace some references to DHS with references to DCT. In addition, references to DCT’s “executive board” are added. The executive board will oversee DCT and consists of no more than five members, all appointed by the Governor. These

¹ Laws 2023, Ch. 61, Art. 8, and Laws 2023, Ch. 70, Art. 12.

² Laws 2024, Ch. 79, Art. 9, Secs. 14-19.

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changes are effective January 1, 2025. At that time, some of the provisions mentioned in this memo will apply to DCT and no longer apply to DHS.

Current Statutes and Recent Legislation Memo