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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4548

03/04/2024 Authored by Frederick, Baker, Fischer, Noor, Kiel and others
The bill was read for the first time and referred to the Committee on Human Services Policy
03/11/2024 Adoption of Report: Re-referred to the Committee on Human Services Finance

1.1 A bill for an act
1.2 relating to behavioral health; modifying provisions related to the ombudsman for
1.3 mental health and developmental disabilities; prohibiting the classification of
1.4 recovery peers as independent contractors; amending Minnesota Statutes 2022,
1.5 sections 245.93, subdivision 2; 245.94, subdivision 2; 245.945; 245.95, subdivision
1.6 2; Minnesota Statutes 2023 Supplement, sections 245.91, subdivision 4; 245I.04,
1.7 subdivision 18; 254B.05, subdivision 1.

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

1.9 Section 1. Minnesota Statutes 2023 Supplement, section 245.91, subdivision 4, is amended
1.10 to read:

1.11 Subd. 4. Facility or program. "Facility" or "program" means a nonresidential or
1.12 residential program as defined in section 245A.02, subdivisions 10 and 14, and any agency,
1.13 facility, or program that provides services or treatment for mental illness, developmental
1.14 disability, substance use disorder, or emotional disturbance that is required to be licensed,
1.15 certified, or registered by the commissioner of human services, health, or education; a sober
1.16 home as defined in section 254B.01, subdivision 11; peer recovery support services provided
1.17 by a recovery community organization as defined in section 254B.01, subdivision 8; and
1.18 an acute care inpatient facility that provides services or treatment for mental illness,
1.19 developmental disability, substance use disorder, or emotional disturbance.

1.20 Sec. 2. Minnesota Statutes 2022, section 245.93, subdivision 2, is amended to read:

1.21 Subd. 2. Advocacy. The function of ~~mental~~ behavioral health and developmental
1.22 disability client advocacy in the Department of Human Services is transferred to the Office
1.23 of ~~Ombudsman~~ Ombudsperson according to section 15.039. The ~~ombudsman~~ ombudsperson
1.24 shall maintain at least one client advocate in each regional center.

2.1 Sec. 3. Minnesota Statutes 2022, section 245.94, subdivision 2, is amended to read:

2.2 Subd. 2. **Matters appropriate for review.** (a) In selecting matters for review by the  
 2.3 office, the ~~ombudsman~~ ombudsperson shall give particular attention to unusual deaths or  
 2.4 injuries of a client or reports of emergency use of manual restraint as identified in section  
 2.5 245D.061, served by an agency, facility, or program, or actions of an agency, facility, or  
 2.6 program that:

2.7 (1) may be contrary to law or rule;

2.8 (2) may be unreasonable, unfair, oppressive, or inconsistent with a policy or order of an  
 2.9 agency, facility, or program;

2.10 (3) may be mistaken in law or arbitrary in the ascertainment of facts;

2.11 (4) may be unclear or inadequately explained, when reasons should have been revealed;

2.12 (5) may result in abuse or neglect of a person receiving treatment;

2.13 (6) may disregard the rights of a client or other individual served by an agency or facility;

2.14 (7) may impede or promote independence, community integration, and productivity for  
 2.15 clients; or

2.16 (8) may impede or improve the monitoring or evaluation of services provided to clients.

2.17 (b) The ~~ombudsman~~ ombudsperson shall, in selecting matters for review and in the  
 2.18 course of the review, avoid duplicating other investigations or regulatory efforts.

2.19 (c) The ~~ombudsman~~ ombudsperson shall give particular attention to the death or unusual  
 2.20 injury of any individual who is participating in a University of Minnesota Department of  
 2.21 Psychiatry clinical drug trial.

2.22 (d) The ombudsperson shall review complaints regarding the quality of peer recovery  
 2.23 support services provided by a recovery community organization as defined in section  
 2.24 254B.01, subdivision 8; misclassification of recovery peers as independent contractors under  
 2.25 section 181.722; and the adequacy of peer recovery support services billing codes and  
 2.26 procedures.

2.27 Sec. 4. Minnesota Statutes 2022, section 245.945, is amended to read:

2.28 **245.945 REIMBURSEMENT TO ~~OMBUDSMAN~~ OMBUDSPERSON FOR**  
 2.29 **~~MENTAL~~ BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES.**

2.30 The commissioner shall obtain federal financial participation for eligible activity by the  
 2.31 ~~ombudsman~~ ombudsperson for ~~mental~~ behavioral health and developmental disabilities.

3.1 The ~~ombudsman~~ ombudsperson shall maintain and transmit to the Department of Human  
 3.2 Services documentation that is necessary in order to obtain federal funds.

3.3 Sec. 5. Minnesota Statutes 2022, section 245.95, subdivision 2, is amended to read:

3.4 Subd. 2. **General reports.** In addition to whatever conclusions or recommendations the  
 3.5 ~~ombudsman~~ ombudsperson may make to the governor on an ad hoc basis, the ~~ombudsman~~  
 3.6 ombudsperson shall, at the end of each biennium, report to the governor concerning the  
 3.7 exercise of the ~~ombudsman's~~ ombudsperson's functions during the preceding biennium. The  
 3.8 ombudsperson must include in the biennial report summary information on complaints  
 3.9 received regarding peer recovery support services provided by a recovery community  
 3.10 organization as defined in section 254B.01, and any recommendations to the legislature to  
 3.11 improve the quality of peer recovery support services, recovery peer worker misclassification,  
 3.12 and peer recovery support services billing codes and procedures.

3.13 Sec. 6. Minnesota Statutes 2023 Supplement, section 245I.04, subdivision 18, is amended  
 3.14 to read:

3.15 Subd. 18. **Recovery peer qualifications.** (a) A recovery peer must:

3.16 (1) have a minimum of one year in recovery from substance use disorder; and

3.17 (2) hold a current credential from the Minnesota Certification Board, the Upper Midwest  
 3.18 Indian Council on Addictive Disorders, or the National Association for Alcoholism and  
 3.19 Drug Abuse Counselors that demonstrates skills and training in the domains of ethics and  
 3.20 boundaries, advocacy, mentoring and education, and recovery and wellness support.

3.21 (b) A recovery peer who receives a credential from a Tribal Nation when providing peer  
 3.22 recovery support services in a tribally licensed program satisfies the requirement in paragraph  
 3.23 (a), clause (2).

3.24 (c) A recovery peer must not be classified as an independent contractor.

3.25 Sec. 7. Minnesota Statutes 2023 Supplement, section 254B.05, subdivision 1, is amended  
 3.26 to read:

3.27 Subdivision 1. **Licensure required.** (a) Programs licensed by the commissioner are  
 3.28 eligible vendors. Hospitals may apply for and receive licenses to be eligible vendors,  
 3.29 notwithstanding the provisions of section 245A.03. American Indian programs that provide  
 3.30 substance use disorder treatment, extended care, transitional residence, or outpatient treatment  
 3.31 services, and are licensed by tribal government are eligible vendors.

4.1 (b) A licensed professional in private practice as defined in section 245G.01, subdivision  
4.2 17, who meets the requirements of section 245G.11, subdivisions 1 and 4, is an eligible  
4.3 vendor of a comprehensive assessment and assessment summary provided according to  
4.4 section 245G.05, and treatment services provided according to sections 245G.06 and  
4.5 245G.07, subdivision 1, paragraphs (a), clauses (1) to (5), and (b); and subdivision 2, clauses  
4.6 (1) to (6).

4.7 (c) A county is an eligible vendor for a comprehensive assessment and assessment  
4.8 summary when provided by an individual who meets the staffing credentials of section  
4.9 245G.11, subdivisions 1 and 5, and completed according to the requirements of section  
4.10 245G.05. A county is an eligible vendor of care coordination services when provided by an  
4.11 individual who meets the staffing credentials of section 245G.11, subdivisions 1 and 7, and  
4.12 provided according to the requirements of section 245G.07, subdivision 1, paragraph (a),  
4.13 clause (5). A county is an eligible vendor of peer recovery services when the services are  
4.14 provided by an individual who meets the requirements of section 245G.11, subdivision 8.

4.15 (d) A recovery community organization that meets the requirements of clauses (1) to  
4.16 (10) and meets membership or accreditation requirements of the Association of Recovery  
4.17 Community Organizations, the Council on Accreditation of Peer Recovery Support Services,  
4.18 or a Minnesota statewide recovery community organization identified by the commissioner  
4.19 is an eligible vendor of peer support services. Eligible vendors under this paragraph must:

4.20 (1) be nonprofit organizations;

4.21 (2) be led and governed by individuals in the recovery community, with more than 50  
4.22 percent of the board of directors or advisory board members self-identifying as people in  
4.23 personal recovery from substance use disorders;

4.24 (3) primarily focus on recovery from substance use disorders, with missions and visions  
4.25 that support this primary focus;

4.26 (4) be grassroots and reflective of and engaged with the community served;

4.27 (5) be accountable to the recovery community through processes that promote the  
4.28 involvement and engagement of, and consultation with, people in recovery and their families,  
4.29 friends, and recovery allies;

4.30 (6) provide nonclinical peer recovery support services, including but not limited to  
4.31 recovery support groups, recovery coaching, telephone recovery support, skill-building  
4.32 groups, and harm-reduction activities;

5.1 (7) allow for and support opportunities for all paths toward recovery and refrain from  
5.2 excluding anyone based on their chosen recovery path, which may include but is not limited  
5.3 to harm reduction paths, faith-based paths, and nonfaith-based paths;

5.4 (8) be purposeful in meeting the diverse needs of Black, Indigenous, and people of color  
5.5 communities, including board and staff development activities, organizational practices,  
5.6 service offerings, advocacy efforts, and culturally informed outreach and service plans;

5.7 (9) be stewards of recovery-friendly language that is supportive of and promotes recovery  
5.8 across diverse geographical and cultural contexts and reduces stigma; ~~and~~

5.9 (10) maintain an employee and volunteer code of ethics and easily accessible grievance  
5.10 procedures posted in physical spaces, on websites, or on program policies or forms; and

5.11 (11) not classify any recovery peer as an independent contractor.

5.12 (e) Recovery community organizations approved by the commissioner before June 30,  
5.13 2023, shall retain their designation as recovery community organizations.

5.14 (f) A recovery community organization that is aggrieved by an accreditation or  
5.15 membership determination and believes it meets the requirements under paragraph (d) may  
5.16 appeal the determination under section 256.045, subdivision 3, paragraph (a), clause (15),  
5.17 for reconsideration as an eligible vendor.

5.18 (g) Detoxification programs licensed under Minnesota Rules, parts 9530.6510 to  
5.19 9530.6590, are not eligible vendors. Programs that are not licensed as a residential or  
5.20 nonresidential substance use disorder treatment or withdrawal management program by the  
5.21 commissioner or by tribal government or do not meet the requirements of subdivisions 1a  
5.22 and 1b are not eligible vendors.

5.23 (h) Hospitals, federally qualified health centers, and rural health clinics are eligible  
5.24 vendors of a comprehensive assessment when the comprehensive assessment is completed  
5.25 according to section 245G.05 and by an individual who meets the criteria of an alcohol and  
5.26 drug counselor according to section 245G.11, subdivision 5. The alcohol and drug counselor  
5.27 must be individually enrolled with the commissioner and reported on the claim as the  
5.28 individual who provided the service.

5.29 (i) Any complaints about a recovery community organization or peer recovery support  
5.30 services may be made to and reviewed or investigated by the ombudsperson for behavioral  
5.31 health and developmental disabilities, pursuant to sections 245.91 and 245.94.

6.1 Sec. 8. **REVISOR INSTRUCTION.**

6.2 (a) The revisor of statutes shall change the term "ombudsman" to "ombudsperson"  
6.3 wherever it appears in Minnesota Statutes, sections 245.91 to 245.97.

6.4 (b) The revisor of statutes shall change the term "ombudsman for mental health and  
6.5 developmental disabilities" to "ombudsperson for behavioral health and developmental  
6.6 disabilities" wherever it appears in the next edition of Minnesota Statutes and Minnesota  
6.7 Rules and in the online publication.