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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1979

01/26/2012 Authored by Schomacker, Hamilton, Huntley, Abeler and Pelowski  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act  
1.2 relating to human services; modifying group residential housing and Minnesota  
1.3 supplemental aid shelter needy provisions; modifying adult foster care homes;  
1.4 amending Minnesota Statutes 2010, sections 245A.11, subdivisions 2, 2a, 7,  
1.5 7a, 8; 245B.07, subdivision 1; 245C.04, subdivision 6; 256B.092, subdivision  
1.6 1b; 256D.44, subdivision 5; 256I.04, subdivision 2a; 326B.103, by adding a  
1.7 subdivision; proposing coding for new law in Minnesota Statutes, chapters 245B;  
1.8 256B; repealing Minnesota Rules, part 9555.5105, subpart 37, item B.

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

1.10 Section 1. Minnesota Statutes 2010, section 245A.11, subdivision 2, is amended to read:

1.11 Subd. 2. **Permitted single-family residential use.** Residential programs with a  
1.12 licensed capacity of six or fewer persons shall be considered a permitted single-family  
1.13 residential use of property for the purposes of zoning and other land use regulations  
1.14 and the State Building Code, sections 326B.101 to 326B.191, except that a residential  
1.15 program whose primary purpose is to treat juveniles who have violated criminal statutes  
1.16 relating to sex offenses or have been adjudicated delinquent on the basis of conduct in  
1.17 violation of criminal statutes relating to sex offenses shall not be considered a permitted  
1.18 use. This exception shall not apply to residential programs licensed before July 1, 1995.  
1.19 Programs otherwise allowed under this subdivision shall not be prohibited by operation of  
1.20 restrictive covenants or similar restrictions, regardless of when entered into, which cannot  
1.21 be met because of the nature of the licensed program, including provisions which require  
1.22 the home's occupants be related, and that the home must be occupied by the owner, or  
1.23 similar provisions.

1.24 Sec. 2. Minnesota Statutes 2010, section 245A.11, subdivision 2a, is amended to read:

2.1 Subd. 2a. **Adult foster care license capacity.** (a) The commissioner shall issue  
2.2 adult foster care licenses with a maximum licensed capacity of four beds, including  
2.3 nonstaff roomers and boarders, except that the commissioner may issue a license with a  
2.4 capacity of five beds, including roomers and boarders, according to paragraphs (b) to (f).

2.5 (b) An adult foster care license holder may have a maximum license capacity of five  
2.6 if all persons in care are age 55 or over and do not have a serious and persistent mental  
2.7 illness or a developmental disability.

2.8 (c) The commissioner may grant variances to paragraph (b) to allow a foster care  
2.9 provider with a licensed capacity of five persons to admit an individual under the age of 55  
2.10 if the variance complies with section 245A.04, subdivision 9, and approval of the variance  
2.11 is recommended by the county in which the licensed foster care provider is located.

2.12 (d) The commissioner may grant variances to paragraph (b) to allow the use of a  
2.13 fifth bed for emergency crisis services for ~~a person with serious and persistent mental~~  
2.14 ~~illness or a developmental disability~~ persons with disabilities, or for respite services as  
2.15 defined in section 245A.02, regardless of age, if the variance complies with section  
2.16 245A.04, subdivision 9, and approval of the variance is recommended by the county in  
2.17 which the licensed foster care provider is located. Respite services may be provided  
2.18 under the following conditions:

2.19 (1) staffing ratios cannot be reduced below the approved level for the individuals  
2.20 being served;

2.21 (2) no more than two different individuals can be accepted for respite services in  
2.22 any calendar month;

2.23 (3) the person receiving respite services must have a private bedroom, which could  
2.24 be used for alternative purposes when not used as a respite bedroom, and cannot use the  
2.25 room of another person who lives in the foster care home; and

2.26 (4) individuals living in the foster care home must be notified when the variance  
2.27 is approved. The provider must give 60 days' notice in writing to the residents and their  
2.28 legal representatives prior to accepting the first respite placement. Notice is not required  
2.29 prior to each subsequent placement.

2.30 (e) ~~If the 2009 legislature adopts a rate reduction that impacts providers of adult~~  
2.31 ~~foster care services,~~ The commissioner may issue an adult foster care license with a  
2.32 capacity of five adults if the fifth bed does not increase the overall statewide capacity of  
2.33 licensed adult foster care beds in homes that are not the primary residence of the license  
2.34 holder, ~~over the licensed capacity in such homes on July 1, 2009,~~ as identified in a plan  
2.35 submitted to the commissioner by the county, when the capacity is recommended by

3.1 the county licensing agency of the county in which the facility is located and if the  
3.2 recommendation verifies that:

3.3 (1) the facility meets the physical environment requirements in the adult foster  
3.4 care licensing rule;

3.5 (2) the five-bed living arrangement is specified for each resident in the resident's:

3.6 (i) individualized plan of care;

3.7 (ii) individual service plan under section 256B.092, subdivision 1b, if required; or

3.8 (iii) individual resident placement agreement under Minnesota Rules, part

3.9 9555.5105, subpart 19, if required; and

3.10 (3) the license holder ~~obtains written and signed informed consent from~~ notifies each  
3.11 resident or resident's legal representative documenting the resident's informed choice to  
3.12 living in the home and that the resident's refusal to consent would not have resulted in  
3.13 service termination; ~~and~~.

3.14 ~~(4) the facility was licensed for adult foster care before March 1, 2009.~~

3.15 ~~(f) The commissioner shall not issue a new adult foster care license under paragraph~~  
3.16 ~~(e) after June 30, 2011. The commissioner shall allow a facility with an adult foster care~~  
3.17 ~~license issued under paragraph (e) before June 30, 2011, to continue with a capacity of five~~  
3.18 ~~adults if the license holder continues to comply with the requirements in paragraph (e).~~

3.19 Sec. 3. Minnesota Statutes 2010, section 245A.11, subdivision 7, is amended to read:

3.20 Subd. 7. **Adult foster care; variance for alternate overnight supervision.** (a) The  
3.21 commissioner may grant a variance under section 245A.04, subdivision 9, to rule parts  
3.22 requiring a caregiver to be present in an adult foster care home during normal sleeping  
3.23 hours to allow for alternative methods of overnight supervision. The commissioner may  
3.24 grant the variance if the local county licensing agency recommends the variance and the  
3.25 county recommendation includes documentation verifying that:

3.26 (1) the county has approved the license holder's plan for alternative methods of  
3.27 providing overnight supervision and determined the plan protects the residents' health,  
3.28 safety, and rights;

3.29 (2) the license holder has obtained written and signed informed consent from  
3.30 each resident or each resident's legal representative documenting the resident's or legal  
3.31 representative's agreement with the alternative method of overnight supervision; and

3.32 (3) the alternative method of providing overnight supervision, which may include  
3.33 the use of technology, is specified for each resident in the resident's: (i) individualized  
3.34 plan of care; (ii) individual service plan under section 256B.092, subdivision 1b, if

4.1 required; or (iii) individual resident placement agreement under Minnesota Rules, part  
4.2 9555.5105, subpart 19, if required.

4.3 (b) To be eligible for a variance under paragraph (a), the adult foster care license  
4.4 holder must not have had a ~~licensing action~~ conditional license issued under section  
4.5 245A.06 or 245A.07 during the prior ~~24~~ 12 months based on failure to ~~provide adequate~~  
4.6 ~~supervision, health care services, or resident safety in the adult foster care home~~ perform  
4.7 any of the functions directly related to overnight supervision.

4.8 (c) A license holder requesting a variance under this subdivision to utilize  
4.9 technology as a component of a plan for alternative overnight supervision may request  
4.10 the commissioner's review in the absence of a county recommendation. Upon receipt of  
4.11 such a request from a license holder, the commissioner shall review the variance request  
4.12 with the county.

4.13 (d) For the purposes of this subdivision, "supervision" means oversight as specified  
4.14 in the individual resident's place agreement and awareness of the resident's needs and  
4.15 activities.

4.16 Sec. 4. Minnesota Statutes 2010, section 245A.11, subdivision 7a, is amended to read:

4.17 Subd. 7a. **Alternate overnight supervision technology; adult foster care license.**

4.18 (a) The commissioner may grant an applicant or license holder an adult foster care license  
4.19 for a residence that does not have a caregiver in the residence during normal sleeping  
4.20 hours as required under Minnesota Rules, part 9555.5105, subpart 37, item B, but uses  
4.21 monitoring technology to alert the license holder when an incident occurs that may  
4.22 jeopardize the health, safety, or rights of a foster care recipient. The applicant or license  
4.23 holder must comply with all other requirements under Minnesota Rules, parts 9555.5105  
4.24 to 9555.6265, and the requirements under this subdivision. The license printed by the  
4.25 commissioner must state in bold and large font:

4.26 (1) that the facility is under electronic monitoring; and

4.27 (2) the telephone number of the county's common entry point for making reports of  
4.28 suspected maltreatment of vulnerable adults under section 626.557, subdivision 9.

4.29 (b) Applications for a license under this section must be submitted directly to  
4.30 the Department of Human Services licensing division. The licensing division must  
4.31 immediately notify the host county and lead county contract agency and the host county  
4.32 licensing agency. The licensing division must collaborate with the county licensing  
4.33 agency in the review of the application and the licensing of the program.

4.34 (c) Before a license is issued by the commissioner, and for the duration of the  
4.35 license, the applicant or license holder must establish, maintain, and document the

5.1 implementation of written policies and procedures addressing the requirements in  
5.2 paragraphs (d) through (f).

5.3 (d) The applicant or license holder must have policies and procedures that:

5.4 (1) establish characteristics of target populations that will be admitted into the home,  
5.5 and characteristics of populations that will not be accepted into the home;

5.6 (2) explain the discharge process when a foster care recipient requires overnight  
5.7 supervision or other services that cannot be provided by the license holder due to the  
5.8 limited hours that the license holder is on site;

5.9 (3) describe the types of events to which the program will respond with a physical  
5.10 presence when those events occur in the home during time when staff are not on site, and  
5.11 how the license holder's response plan meets the requirements in paragraph (e), clause  
5.12 (1) or (2);

5.13 (4) establish a process for documenting a review of the implementation and  
5.14 effectiveness of the response protocol for the response required under paragraph (e),  
5.15 clause (1) or (2). The documentation must include:

5.16 (i) a description of the triggering incident;

5.17 (ii) the date and time of the triggering incident;

5.18 (iii) the time of the response or responses under paragraph (e), clause (1) or (2);

5.19 (iv) whether the response met the resident's needs;

5.20 (v) whether the existing policies and response protocols were followed; and

5.21 (vi) whether the existing policies and protocols are adequate or need modification.

5.22 When no physical presence response is completed for a three-month period, the  
5.23 license holder's written policies and procedures must require a physical presence response  
5.24 drill to be conducted for which the effectiveness of the response protocol under paragraph  
5.25 (e), clause (1) or (2), will be reviewed and documented as required under this clause; and

5.26 (5) establish that emergency and nonemergency phone numbers are posted in a  
5.27 prominent location in a common area of the home where they can be easily observed by a  
5.28 person responding to an incident who is not otherwise affiliated with the home.

5.29 (e) The license holder must document and include in the license application which  
5.30 response alternative under clause (1) or (2) is in place for responding to situations that  
5.31 present a serious risk to the health, safety, or rights of people receiving foster care services  
5.32 in the home:

5.33 (1) response alternative (1) requires only the technology to provide an electronic  
5.34 notification or alert to the license holder that an event is underway that requires a response.  
5.35 Under this alternative, no more than ten minutes will pass before the license holder will be  
5.36 physically present on site to respond to the situation; or

6.1 (2) response alternative (2) requires the electronic notification and alert system  
6.2 under alternative (1), but more than ten minutes may pass before the license holder is  
6.3 present on site to respond to the situation. Under alternative (2), all of the following  
6.4 conditions are met:

6.5 (i) the license holder has a written description of the interactive technological  
6.6 applications that will assist the license holder in communicating with and assessing the  
6.7 needs related to the care, health, and safety of the foster care recipients. This interactive  
6.8 technology must permit the license holder to remotely assess the well being of the foster  
6.9 care recipient without requiring the initiation of the foster care recipient. Requiring the  
6.10 foster care recipient to initiate a telephone call does not meet this requirement;

6.11 (ii) the license holder documents how the remote license holder is qualified and  
6.12 capable of meeting the needs of the foster care recipients and assessing foster care  
6.13 recipients' needs under item (i) during the absence of the license holder on site;

6.14 (iii) the license holder maintains written procedures to dispatch emergency response  
6.15 personnel to the site in the event of an identified emergency; and

6.16 (iv) each foster care recipient's individualized plan of care, individual service plan  
6.17 under section 256B.092, subdivision 1b, if required, or individual resident placement  
6.18 agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the  
6.19 maximum response time, which may be greater than ten minutes, for the license holder  
6.20 to be on site for that foster care recipient.

6.21 (f) All placement agreements, individual service agreements, and plans applicable  
6.22 to the foster care recipient must clearly state that the adult foster care license category is  
6.23 a program without the presence of a caregiver in the residence during normal sleeping  
6.24 hours; the protocols in place for responding to situations that present a serious risk to  
6.25 the health, safety, or rights of foster care recipients under paragraph (e), clause (1)  
6.26 or (2); and a signed informed consent from each foster care recipient or the person's  
6.27 legal representative documenting the person's or legal representative's agreement with  
6.28 placement in the program. If electronic monitoring technology is used in the home, the  
6.29 informed consent form must also explain the following:

6.30 (1) how any electronic monitoring is incorporated into the alternative supervision  
6.31 system;

6.32 (2) the backup system for any electronic monitoring in times of electrical outages or  
6.33 other equipment malfunctions;

6.34 (3) how the license holder is trained on the use of the technology;

6.35 (4) the event types and license holder response times established under paragraph (e);

7.1 (5) how the license holder protects the foster care recipient's privacy related to  
7.2 electronic monitoring and related to any electronically recorded data generated by the  
7.3 monitoring system. A foster care recipient may not be removed from a program under  
7.4 this subdivision for failure to consent to electronic monitoring. The consent form must  
7.5 explain where and how the electronically recorded data is stored, with whom it will be  
7.6 shared, and how long it is retained; and

7.7 (6) the risks and benefits of the alternative overnight supervision system.

7.8 The written explanations under clauses (1) to (6) may be accomplished through  
7.9 cross-references to other policies and procedures as long as they are explained to the  
7.10 person giving consent, and the person giving consent is offered a copy.

7.11 (g) Nothing in this section requires the applicant or license holder to develop or  
7.12 maintain separate or duplicative policies, procedures, documentation, consent forms, or  
7.13 individual plans that may be required for other licensing standards, if the requirements of  
7.14 this section are incorporated into those documents.

7.15 (h) The commissioner may grant variances to the requirements of this section  
7.16 according to section 245A.04, subdivision 9.

7.17 (i) For the purposes of paragraphs (d) through (h), "license holder" has the meaning  
7.18 under section 245A.2, subdivision 9, and additionally includes all staff, volunteers, and  
7.19 contractors affiliated with the license holder.

7.20 (j) For the purposes of paragraph (e), the terms "assess" and "assessing" mean to  
7.21 remotely determine what action the license holder needs to take to protect the well-being  
7.22 of the foster care recipient.

7.23 (k) The commissioner shall evaluate license applications using the requirements in  
7.24 paragraphs (d) to (f). The commissioner shall publicly post guidance or criteria used in  
7.25 evaluating applications.

7.26 (l) To be eligible for a variance under paragraph (a), the adult foster care license  
7.27 holder must not have had a conditional license issued under section 245A.06 during  
7.28 the prior 12 months.

7.29 (m) The commissioner shall approve or deny an application for an alternative  
7.30 overnight supervision license within 60 days of receipt of the application. If no notification  
7.31 is issued, the application shall be considered approved until written notification to the  
7.32 applicant is issued by the commissioner. If the application is denied, the commissioner  
7.33 shall provide a written explanation to the applicant listing the criteria that were not  
7.34 satisfied and describe how the applicant may meet the criteria in order to be issued a  
7.35 license. The commissioner shall allow the applicant to modify and update the application

8.1 to correct deficiencies. The commissioner shall respond to the updated application within  
 8.2 14 days of receipt of the updated application.

8.3 (n) For the purposes of this subdivision, "supervision" means oversight as specified  
 8.4 in the individual resident's place agreement and awareness of the resident's needs and  
 8.5 activities.

8.6 Sec. 5. Minnesota Statutes 2010, section 245A.11, subdivision 8, is amended to read:

8.7 Subd. 8. **Community residential setting license.** (a) The commissioner shall  
 8.8 establish provider standards for residential support services that integrate service standards  
 8.9 and the residential setting under one license. The commissioner shall propose statutory  
 8.10 language and an implementation plan for licensing requirements for residential support  
 8.11 services to the legislature by January 15, 2011.

8.12 (b) Providers licensed under chapter 245B, and providing, contracting, or arranging  
 8.13 for services in settings licensed as adult foster care under Minnesota Rules, parts  
 8.14 9555.5105 to 9555.6265, or child foster care under Minnesota Rules, parts 2960.3000 to  
 8.15 2960.3340; and meeting the provisions of section 256B.092, subdivision 11, paragraph  
 8.16 (b), must be required to obtain a community residential setting license.

8.17 (c) Providers of adult foster care licensed under this chapter and governed by the  
 8.18 standards in chapter 245B are exempt from Minnesota Rules, chapter 4665.

8.19 Sec. 6. **[245B.065] COMMUNITY RESIDENTIAL SETTINGS.**

8.20 (a) Individuals who are receiving services under the community residential setting  
 8.21 license issued pursuant to section 245A.11, subdivision 8, shall have a support team to  
 8.22 help them make decisions regarding services. The team shall be composed of:

8.23 (1) the individual receiving services;

8.24 (2) the case manager or services coordinator;

8.25 (3) the individual's legal representative;

8.26 (4) the person's advocate, if any;

8.27 (5) other individuals chosen by the individual receiving services; and

8.28 (6) representatives of the providers of service, described in the individual service  
 8.29 plan, relevant to the needs of the individual.

8.30 (b) Support teams shall have the final decision regarding plans to mitigate the  
 8.31 individual's identified vulnerabilities. Based on an assessment by the support team, the  
 8.32 team may choose not to create a plan for identified vulnerabilities if the vulnerabilities do  
 8.33 not rise to the level of self-neglect, maltreatment, or violations of the law. If the support  
 8.34 team chooses not to create a plan, the team must provide written documentation, signed by



9.1 all members of the team, supporting its decision. Licensors or other regulators shall not  
9.2 have the authority to challenge the decision of the team.

9.3 (c) Support teams shall be included in any formal or informal evaluation of the  
9.4 quality of services provided to an individual.

9.5 (d) Region 10 staff shall be consulted regarding establishment of a system to  
9.6 evaluate the quality of services provided under the community residential setting license.

9.7 Sec. 7. Minnesota Statutes 2010, section 245B.07, subdivision 1, is amended to read:

9.8 Subdivision 1. **Consumer data file.** The license holder must maintain the following  
9.9 information for each consumer:

9.10 (1) identifying information that includes date of birth, medications, legal  
9.11 representative, history, medical, and other individual-specific information, and names and  
9.12 telephone numbers of contacts;

9.13 (2) consumer health information, including individual medication administration  
9.14 and monitoring information;

9.15 (3) the consumer's individual service plan.

9.16 (i) When a consumer's case manager does not provide a current individual service  
9.17 plan, the license holder shall make a written request to the case manager to provide a  
9.18 copy of the individual service plan and inform the consumer or the consumer's legal  
9.19 representative of the right to an individual service plan and the right to appeal under  
9.20 section 256.045;

9.21 (ii) In the event the case manager fails to provide an individual service plan after  
9.22 a written request from the license holder, the license holder shall not be sanctioned or  
9.23 penalized financially for not having a current individual service plan in the consumer's  
9.24 data file;

9.25 (4) copies of assessments, analyses, summaries, and recommendations;

9.26 (5) progress review reports;

9.27 (6) incidents involving the consumer;

9.28 (7) reports required under section 245B.05, subdivision 7;

9.29 (8) discharge summary, when applicable;

9.30 (9) record of other license holders serving the consumer that includes a contact  
9.31 person and telephone numbers, services being provided, services that require coordination  
9.32 between two license holders, and name of staff responsible for coordination;

9.33 (10) information about verbal aggression directed at the consumer by another  
9.34 consumer; and

9.35 (11) information about self-abuse.

10.1 Sec. 8. Minnesota Statutes 2010, section 245C.04, subdivision 6, is amended to read:

10.2 Subd. 6. **Unlicensed home and community-based waiver providers of service to**  
 10.3 **seniors and individuals with disabilities.** (a) Providers required to initiate background  
 10.4 studies under section 256B.4912 must initiate a study before the individual begins in a  
 10.5 position allowing direct contact with persons served by the provider.

10.6 (b) ~~The commissioner shall conduct~~ Except as provided in paragraph (c), the  
 10.7 providers must initiate a background study annually of an individual required to be studied  
 10.8 under section 245C.03, subdivision 6.

10.9 (c) After an initial background study under this subdivision is initiated on an  
 10.10 individual by a provider of both services licensed by the commissioner and the unlicensed  
 10.11 services under this subdivision, a repeat annual background study is not required if:

10.12 (1) the provider maintains compliance with the requirements of section 245C.07,  
 10.13 paragraph (a), regarding one individual with one address and telephone number as the  
 10.14 person to receive sensitive background study information for the multiple programs that  
 10.15 depend on the same background study, and that the individual who is designated to receive  
 10.16 the sensitive background information is capable of determining, upon the request of the  
 10.17 commissioner, whether a background study subject is providing direct contact services  
 10.18 in one or more of the provider's programs or services and, if so, at which location or  
 10.19 locations; and

10.20 (2) the individual who is the subject of the background study provides direct  
 10.21 contact services under the provider's licensed program for at least 40 hours per year so  
 10.22 the individual will be recognized by a probation officer or corrections agent to prompt  
 10.23 a report to the commissioner regarding criminal convictions as required under section  
 10.24 245C.05, subdivision 7.

10.25 Sec. 9. Minnesota Statutes 2010, section 256B.092, subdivision 1b, is amended to read:

10.26 Subd. 1b. **Individual service plan.** (a) The individual service plan must:

10.27 (1) include the results of the assessment information on the person's need for service,  
 10.28 including identification of service needs that will be or that are met by the person's  
 10.29 relatives, friends, and others, as well as community services used by the general public;

10.30 (2) identify the person's preferences for services as stated by the person, the person's  
 10.31 legal guardian or conservator, or the parent if the person is a minor;

10.32 (3) identify long- and short-range goals for the person;

10.33 (4) identify specific services and the amount and frequency of the services to be  
 10.34 provided to the person based on assessed needs, preferences, and available resources.

11.1 The individual service plan shall also specify other services the person needs that are  
11.2 not available;

11.3 (5) identify the need for an individual program plan to be developed by the provider  
11.4 according to the respective state and federal licensing and certification standards, and  
11.5 additional assessments to be completed or arranged by the provider after service initiation;

11.6 (6) identify provider responsibilities to implement and make recommendations for  
11.7 modification to the individual service plan;

11.8 (7) include notice of the right to request a conciliation conference or a hearing  
11.9 under section 256.045;

11.10 (8) be agreed upon and signed by the person, the person's legal guardian  
11.11 or conservator, or the parent if the person is a minor, and the authorized county  
11.12 representative; and

11.13 (9) be reviewed by a health professional if the person has overriding medical needs  
11.14 that impact the delivery of services.

11.15 (b) Service planning formats developed for interagency planning such as transition,  
11.16 vocational, and individual family service plans may be substituted for service planning  
11.17 formats developed by county agencies.

11.18 (c) Approved, written, and signed changes to a consumer's services shall be an  
11.19 addendum to that consumer's individual service plan.

11.20 Sec. 10. **[256B.492] ADULT FOSTER CARE VOLUNTARY CLOSURE;**  
11.21 **ALTERNATIVES.**

11.22 Subdivision 1. **Definitions.** (a) The following definitions apply for the purposes  
11.23 of this section.

11.24 (b) "Closure" means the cessation of operations of an adult foster care home,  
11.25 licensed under Minnesota Rules, parts 9555.5105 to 9555.6265.

11.26 (c) "Closure plan" means a plan to close a foster care home.

11.27 (d) "Commencement of closure" means the date on which residents and designated  
11.28 representatives are notified of a planned closure as part of an approved closure plan.

11.29 (e) "Completion of closure" means the date on which the final resident of the adult  
11.30 foster care home designated for closure in an approved closure plan is discharged from  
11.31 the adult foster care home.

11.32 (f) "Partial closure" means the licensed capacity of the adult foster care home has  
11.33 been decreased by the department.

12.1 (g) "Planned closure rate adjustment" means an increase in the operating rate of an  
12.2 adult foster care home resulting from a planned closure or planned partial closure of  
12.3 another adult foster care home.

12.4 Subd. 2. **Applications for planned closure of adult foster care homes.** (a) By  
12.5 August 15, 2012, the commissioner shall implement and announce a program for closure  
12.6 or partial closure of adult foster care homes. Names and identifying information provided  
12.7 in response to the announcement shall remain private unless approved according to the  
12.8 timelines established in the plan. The announcement must specify:

12.9 (1) the criteria in subdivision 3 that will be used by the commissioner to approve or  
12.10 reject applications; and

12.11 (2) the information that must accompany the application.

12.12 (b) To be considered for approval, an application must include:

12.13 (1) a description of the proposed closure plan, which must include identification of  
12.14 the home or homes to receive a planned closure rate adjustment;

12.15 (2) the proposed timetable for a proposed closure, including the proposed dates for  
12.16 announcement to residents or designated representatives, commencement of closure,  
12.17 and completion of closure;

12.18 (3) if available, the proposed relocation plan for current residents of the adult foster  
12.19 care home designated for closure. If a relocation plan is not available, the application must  
12.20 include a statement agreeing to develop a relocation plan; and

12.21 (4) documentation, in a format approved by the commissioner, that all adult foster  
12.22 care homes receiving a planned closure rate adjustment under the plan have accepted joint  
12.23 and several liability for recovery of overpayments under section 256B.0641, subdivision  
12.24 2, for the adult foster care home designated for closure under the plan.

12.25 (c) The application must address the criteria in subdivision 3.

12.26 Subd. 3. **Criteria for review of application.** In reviewing and approving closure  
12.27 proposals, the commissioner shall consider, but not be limited to, the following criteria:

12.28 (1) improved quality of care and quality of life for consumers;

12.29 (2) development of alternative services that reduce the cost of care to the Medicaid  
12.30 program;

12.31 (3) low occupancy rates. In analyzing occupancy rates, the commissioner shall  
12.32 examine waiting lists in the applicant facility and at facilities in the surrounding area;

12.33 (4) proposed usage of funds available from a planned closure rate adjustment for  
12.34 care-related purposes;

12.35 (5) evidence that the proposal serves the interests of the state; and

12.36 (6) evidence of other factors that affect the viability of the facility.

13.1 Subd. 4. **Review and approval of applications.** (a) The commissioner of human  
 13.2 services shall approve or disapprove an application on a regularly scheduled basis.

13.3 (b) Approval of a planned closure expires 18 months after approval by the  
 13.4 commissioner, unless the commencement of closure has begun.

13.5 Subd. 5. **Planned closure rate adjustment.** Within the limits of money specifically  
 13.6 appropriated to the medical assistance program for this purpose, the commissioner may  
 13.7 approve increases to rates for planned closure rate adjustments. The commissioner shall  
 13.8 negotiate the adjustment to rates directly with the applicant. The commissioner shall  
 13.9 approve or disapprove a project. The commissioner shall base approvals or disapprovals  
 13.10 on a comparison and ranking of proposals using only the criteria in subdivision 3, and  
 13.11 any rules adopted by the commissioner. The cost to the medical assistance program of  
 13.12 approved proposals must be within the limits of the appropriation specifically made for  
 13.13 this purpose.

13.14 Sec. 11. Minnesota Statutes 2010, section 256D.44, subdivision 5, is amended to read:

13.15 **Subd. 5. Special needs.** In addition to the state standards of assistance established in  
 13.16 subdivisions 1 to 4, payments are allowed for the following special needs of recipients of  
 13.17 Minnesota supplemental aid who are not residents of a nursing home, a regional treatment  
 13.18 center, or a group residential housing facility.

13.19 (a) The county agency shall pay a monthly allowance for medically prescribed  
 13.20 diets if the cost of those additional dietary needs cannot be met through some other  
 13.21 maintenance benefit. The need for special diets or dietary items must be prescribed by  
 13.22 a licensed physician. Costs for special diets shall be determined as percentages of the  
 13.23 allotment for a one-person household under the thrifty food plan as defined by the United  
 13.24 States Department of Agriculture. The types of diets and the percentages of the thrifty  
 13.25 food plan that are covered are as follows:

13.26 (1) high protein diet, at least 80 grams daily, 25 percent of thrifty food plan;

13.27 (2) controlled protein diet, 40 to 60 grams and requires special products, 100 percent  
 13.28 of thrifty food plan;

13.29 (3) controlled protein diet, less than 40 grams and requires special products, 125  
 13.30 percent of thrifty food plan;

13.31 (4) low cholesterol diet, 25 percent of thrifty food plan;

13.32 (5) high residue diet, 20 percent of thrifty food plan;

13.33 (6) pregnancy and lactation diet, 35 percent of thrifty food plan;

13.34 (7) gluten-free diet, 25 percent of thrifty food plan;

13.35 (8) lactose-free diet, 25 percent of thrifty food plan;

14.1 (9) antidumping diet, 15 percent of thrifty food plan;

14.2 (10) hypoglycemic diet, 15 percent of thrifty food plan; or

14.3 (11) ketogenic diet, 25 percent of thrifty food plan.

14.4 (b) Payment for nonrecurring special needs must be allowed for necessary home  
14.5 repairs or necessary repairs or replacement of household furniture and appliances using  
14.6 the payment standard of the AFDC program in effect on July 16, 1996, for these expenses,  
14.7 as long as other funding sources are not available.

14.8 (c) A fee for guardian or conservator service is allowed at a reasonable rate  
14.9 negotiated by the county or approved by the court. This rate shall not exceed five percent  
14.10 of the assistance unit's gross monthly income up to a maximum of \$100 per month. If the  
14.11 guardian or conservator is a member of the county agency staff, no fee is allowed.

14.12 (d) The county agency shall continue to pay a monthly allowance of \$68 for  
14.13 restaurant meals for a person who was receiving a restaurant meal allowance on June 1,  
14.14 1990, and who eats two or more meals in a restaurant daily. The allowance must continue  
14.15 until the person has not received Minnesota supplemental aid for one full calendar month  
14.16 or until the person's living arrangement changes and the person no longer meets the criteria  
14.17 for the restaurant meal allowance, whichever occurs first.

14.18 (e) A fee of ten percent of the recipient's gross income or \$25, whichever is less,  
14.19 is allowed for representative payee services provided by an agency that meets the  
14.20 requirements under SSI regulations to charge a fee for representative payee services. This  
14.21 special need is available to all recipients of Minnesota supplemental aid regardless of  
14.22 their living arrangement.

14.23 (f)(1) Notwithstanding the language in this subdivision, an amount equal to the  
14.24 maximum allotment authorized by the federal Food Stamp Program for a single individual  
14.25 which is in effect on the first day of July of each year will be added to the standards of  
14.26 assistance established in subdivisions 1 to 4 for adults under the age of 65 who qualify  
14.27 as shelter needy and are: (i) relocating from an institution, or an adult mental health  
14.28 residential treatment program under section 256B.0622; (ii) eligible for the self-directed  
14.29 supports option as defined under section 256B.0657, subdivision 2; or (iii) home and  
14.30 community-based waiver recipients living in their own home or rented or leased apartment  
14.31 which is not owned, operated, or controlled by a provider of service not related by blood  
14.32 or marriage, unless allowed under paragraph (g).

14.33 (2) Notwithstanding subdivision 3, paragraph (c), an individual eligible for the  
14.34 shelter needy benefit under this paragraph is considered a household of one. An eligible  
14.35 individual who receives this benefit prior to age 65 may continue to receive the benefit  
14.36 after the age of 65.

15.1 (3) "Shelter needy" means that the assistance unit incurs monthly shelter costs that  
 15.2 exceed 40 percent of the assistance unit's gross income before the application of this  
 15.3 special needs standard. "Gross income" for the purposes of this section is the applicant's or  
 15.4 recipient's income as defined in section 256D.35, subdivision 10, or the standard specified  
 15.5 in subdivision 3, paragraph (a) or (b), whichever is greater. A recipient of a federal or  
 15.6 state housing subsidy, that limits shelter costs to a percentage of gross income, shall not be  
 15.7 considered shelter needy for purposes of this paragraph.

15.8 (g) Notwithstanding this subdivision, to access housing and services as provided  
 15.9 in paragraph (f), the recipient may choose housing that may be owned, operated, or  
 15.10 controlled by the recipient's service provider. In a multifamily building ~~of four or more~~  
 15.11 ~~units, the maximum number of apartments that may be used by recipients of this program~~  
 15.12 ~~shall be 50 percent of the units in a building. This paragraph expires on June 30, 2012. the~~  
 15.13 service provider shall implement a plan with the recipient to transition the lease to the  
 15.14 recipient's name. Within two years of the initial lease, the service provider shall transfer  
 15.15 the lease entered into under this subdivision to the recipient. In the event the landlord  
 15.16 denies this transfer, the commissioner shall approve an exception within sufficient time to  
 15.17 ensure the continued occupancy by the recipient.

15.18 Sec. 12. Minnesota Statutes 2010, section 256I.04, subdivision 2a, is amended to read:

15.19 Subd. 2a. **License required.** A county agency may not enter into an agreement with  
 15.20 an establishment to provide group residential housing unless:

15.21 (1) the establishment is licensed by the Department of Health as a hotel and  
 15.22 restaurant; a board and lodging establishment; a residential care home; a boarding care  
 15.23 home before March 1, 1985; or a supervised living facility, and the service provider  
 15.24 for residents of the facility is licensed under chapter 245A. However, an establishment  
 15.25 licensed by the Department of Health to provide lodging need not also be licensed to  
 15.26 provide board if meals are being supplied to residents under a contract with a food vendor  
 15.27 who is licensed by the Department of Health;

15.28 (2) the residence is: (i) licensed by the commissioner of human services under  
 15.29 Minnesota Rules, parts 9555.5050 to 9555.6265; (ii) certified by a county human services  
 15.30 agency prior to July 1, 1992, using the standards under Minnesota Rules, parts 9555.5050  
 15.31 to 9555.6265; or (iii) a residence licensed by the commissioner under Minnesota Rules,  
 15.32 parts 2960.0010 to 2960.0120, with a variance under section 245A.04, subdivision 9;

15.33 (3) the establishment is registered under chapter 144D and provides three meals a  
 15.34 day, or is an establishment voluntarily registered under section 144D.025 as a supportive  
 15.35 housing establishment; or

16.1 (4) an establishment voluntarily registered under section 144D.025, other than  
 16.2 a supportive housing establishment under clause (3), is not eligible to provide group  
 16.3 residential housing.

16.4 The requirements under clauses (1) to (4) do not apply to establishments exempt  
 16.5 from state licensure because they are located on Indian reservations and subject to tribal  
 16.6 health and safety requirements.

16.7 Notwithstanding clause (2), if a recipient receiving group residential housing  
 16.8 payments chooses services not licensed under Minnesota Rules, parts 9555.5050 to  
 16.9 9555.6265, the recipient may continue receiving group residential housing payments if the  
 16.10 recipient remains at the same address and if access to shelter needy funding under section  
 16.11 256D.44, subdivision 5, is unavailable. If the housing provider and service provider is the  
 16.12 same entity, the provider shall enter into a lease agreement with the recipient receiving  
 16.13 group residential housing payments within one year after the facility is no longer licensed  
 16.14 as an adult foster care facility.

16.15 Sec. 13. Minnesota Statutes 2010, section 326B.103, is amended by adding a  
 16.16 subdivision to read:

16.17 Subd. 12a. **Residential programs; permitted single-family residential use.**  
 16.18 Residential programs under section 245A.11, subdivision 2, are considered single-family  
 16.19 residences for the purposes of the State Building Code.

16.20 Sec. 14. **CONSUMER CHOICE TASK FORCE.**

16.21 (a) The commissioner of human services shall convene a consumer choice task force  
 16.22 comprised of the following representatives: two representatives from the Department of  
 16.23 Human Services, one from the disability services division and one from the licensing  
 16.24 division; one representative from the Department of Health; one representative from  
 16.25 the attorney general's office; three representatives, including one recipient of disability  
 16.26 services, appointed by the Minnesota Consortium for Citizens with Disabilities; one  
 16.27 representative from the Disability Law Center; and three service providers.

16.28 (b) The task force shall:

16.29 (1) identify issues pertaining to financial and personal risk that impede Minnesotans  
 16.30 with disabilities from optimizing their choice of community-based services; and

16.31 (2) recommend to the chairs of the legislative committees with jurisdiction over  
 16.32 human services and civil law, by January 15, 2013, statutory and rule changes related to  
 16.33 the findings under clause (1) that promote individualized service and housing choices  
 16.34 balanced with appropriate individualized protection.



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

17.2 Sec. 15. **INNOVATION COMMISSION.**

17.3 (a) The commissioner of human services shall appoint members to the Innovation  
17.4 Commission to review and make recommendations on provider or lead agency initiated  
17.5 pilot projects in home and community-based services for people with disabilities that  
17.6 otherwise would be limited by state-imposed regulatory or funding restrictions.

17.7 (b) The commission membership shall include: two providers of disability services;  
17.8 one person receiving disability services or a family member; one advocate for people with  
17.9 disabilities; one representative from the Disability Law Center; one county representative;  
17.10 and two representatives from the Department of Human Services, one from the disability  
17.11 services division and one from the licensing division. Members of the commission shall  
17.12 serve three-year terms and shall not be reimbursed for commission work or meetings.

17.13 (c) On January 1 and July 1 of each year, the commissioner shall issue a request for  
17.14 proposals in the State Register for service providers or lead agencies to develop and  
17.15 implement new models for residential services that support people with disabilities. The  
17.16 commission shall review and recommend to the commissioner projects for implementation  
17.17 twice per year.

17.18 (d) Each proposed pilot project must:

17.19 (1) spend no more in state and federal funding than is spent in total funding for the  
17.20 affected service recipients;

17.21 (2) be two years in duration;

17.22 (3) have the informed consent of all affected recipients or their guardians;

17.23 (4) be based on recipients' individual needs and designed for specific quality  
17.24 outcomes; and

17.25 (5) be evaluated by the commission after two years with recommendations to the  
17.26 commissioner to either discontinue the pilot project or continue the pilot project with  
17.27 no time limitation.

17.28 (e) The commissioner shall review the commission's recommendations for start-up  
17.29 or continuation of pilot projects and may approve new and continued pilot projects twice  
17.30 per year.

17.31 (f) If a pilot project is discontinued, the affected recipients may return to services  
17.32 provided prior to the pilot project and shall have funding for services restored to prepilot  
17.33 project levels.

18.1 (g) Providers or lead agencies whose pilot projects are not continued shall not be  
18.2 penalized due to a pilot project's performance but remain accountable to state and federal  
18.3 Medicaid, vulnerable adult, and maltreatment of minors laws.

18.4 Sec. 16. **DIRECTION TO THE COMMISSIONER; DUPLICATIVE**  
18.5 **STANDARDS.**

18.6 The commissioner of human services shall consult with the commissioner of health  
18.7 and stakeholders, including service providers, advocates, and counties to consolidate the  
18.8 ICF/DD standards in Minnesota Statutes, chapter 245B, and the standards in Minnesota  
18.9 Rules to eliminate duplicative and outdated standards and report their recommendations to  
18.10 the chairs of the legislative committees with jurisdiction over health and human services  
18.11 policy by January 15, 2013.

18.12 Sec. 17. **RESIDENTIAL SERVICES FOR THE DISABLED.**

18.13 The commissioner shall not impose any limitations on the authorization for services  
18.14 or resident capacity in living settings more restrictive than those prescribed under federal  
18.15 regulations for recipients of CADI, BI, or DD waived services. If necessary to comply  
18.16 with this requirement, the commissioner shall submit a waiver amendment to the state  
18.17 plan no later than December 31, 2012.

18.18 Sec. 18. **INDEPENDENT LIVING SERVICES BILLING.**

18.19 The commissioner shall allow for day rate and 15 minute increment billing for  
18.20 independent living services under the BI and CADI waivers. If necessary to comply with  
18.21 this requirement, the commissioner shall submit a waiver amendment to the state plan  
18.22 no later than December 31, 2012.

18.23 Sec. 19. **REPEALER.**

18.24 Minnesota Rules, part 9555.5105, subpart 37, item B, is repealed. If necessary to  
18.25 comply with this repeal, the commissioner shall submit a waiver amendment to the state  
18.26 plan no later than December 31, 2012.