

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2456

02/22/2012 Authored by Abeler and Loeffler

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

03/08/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law

03/22/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Health and Human Services Finance

04/02/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
 1.2 relating to human services; amending continuing care policy provisions; making
 1.3 changes to disability services and licensing provisions; establishing home and
 1.4 community-based services standards; developing payment methodologies;
 1.5 amending Minnesota Statutes 2010, sections 245A.03, subdivision 2; 245A.041,
 1.6 by adding subdivisions; 245A.085; 245B.02, subdivision 10, by adding a
 1.7 subdivision; 245B.04, subdivisions 1, 2, 3; 245B.05, subdivision 1; 245B.07,
 1.8 subdivisions 5, 9, 10, by adding a subdivision; 256B.4912; proposing coding for
 1.9 new law in Minnesota Statutes, chapters 245A; 256B; proposing coding for new
 1.10 law as Minnesota Statutes, chapter 245D.

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

1.12 Section 1. Minnesota Statutes 2010, section 245A.03, subdivision 2, is amended to
 1.13 read:

1.14 Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

1.15 (1) residential or nonresidential programs that are provided to a person by an
 1.16 individual who is related unless the residential program is a child foster care placement
 1.17 made by a local social services agency or a licensed child-placing agency, except as
 1.18 provided in subdivision 2a;

1.19 (2) nonresidential programs that are provided by an unrelated individual to persons
 1.20 from a single related family;

1.21 (3) residential or nonresidential programs that are provided to adults who do
 1.22 not abuse chemicals or who do not have a chemical dependency, a mental illness, a
 1.23 developmental disability, a functional impairment, or a physical disability;

1.24 (4) sheltered workshops or work activity programs that are certified by the
 1.25 commissioner of employment and economic development;

1.26 (5) programs operated by a public school for children 33 months or older;

- 2.1 (6) nonresidential programs primarily for children that provide care or supervision
2.2 for periods of less than three hours a day while the child's parent or legal guardian is in
2.3 the same building as the nonresidential program or present within another building that is
2.4 directly contiguous to the building in which the nonresidential program is located;
- 2.5 (7) nursing homes or hospitals licensed by the commissioner of health except as
2.6 specified under section 245A.02;
- 2.7 (8) board and lodge facilities licensed by the commissioner of health that do not
2.8 provide children's residential services under Minnesota Rules, chapter 2960, mental health
2.9 or chemical dependency treatment;
- 2.10 (9) homes providing programs for persons placed by a county or a licensed agency
2.11 for legal adoption, unless the adoption is not completed within two years;
- 2.12 (10) programs licensed by the commissioner of corrections;
- 2.13 (11) recreation programs for children or adults that are operated or approved by a
2.14 park and recreation board whose primary purpose is to provide social and recreational
2.15 activities;
- 2.16 (12) programs operated by a school as defined in section 120A.22, subdivision 4;
2.17 YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as
2.18 defined in section 315.51, whose primary purpose is to provide child care or services to
2.19 school-age children;
- 2.20 (13) Head Start nonresidential programs which operate for less than 45 days in
2.21 each calendar year;
- 2.22 (14) noncertified boarding care homes unless they provide services for five or more
2.23 persons whose primary diagnosis is mental illness or a developmental disability;
- 2.24 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and
2.25 art programs, and nonresidential programs for children provided for a cumulative total of
2.26 less than 30 days in any 12-month period;
- 2.27 (16) residential programs for persons with mental illness, that are located in hospitals;
- 2.28 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or
2.29 the congregate care of children by a church, congregation, or religious society during the
2.30 period used by the church, congregation, or religious society for its regular worship;
- 2.31 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
2.32 4630;
- 2.33 (19) mental health outpatient services for adults with mental illness or children
2.34 with emotional disturbance;
- 2.35 (20) residential programs serving school-age children whose sole purpose is cultural
2.36 or educational exchange, until the commissioner adopts appropriate rules;

3.1 ~~(21) unrelated individuals who provide out-of-home respite care services to persons~~
3.2 ~~with developmental disabilities from a single related family for no more than 90 days in a~~
3.3 ~~12-month period and the respite care services are for the temporary relief of the person's~~
3.4 ~~family or legal representative;~~

3.5 ~~(22) respite care services provided as a home and community-based service to a~~
3.6 ~~person with a developmental disability, in the person's primary residence;~~

3.7 ~~(23)~~ (21) community support services programs as defined in section 245.462,
3.8 subdivision 6, and family community support services as defined in section 245.4871,
3.9 subdivision 17;

3.10 ~~(24)~~ (22) the placement of a child by a birth parent or legal guardian in a preadoptive
3.11 home for purposes of adoption as authorized by section 259.47;

3.12 ~~(25)~~ (23) settings registered under chapter 144D which provide home care services
3.13 licensed by the commissioner of health to fewer than seven adults;

3.14 ~~(26)~~ (24) chemical dependency or substance abuse treatment activities of licensed
3.15 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
3.16 15, when the treatment activities are not paid for by the consolidated chemical dependency
3.17 treatment fund;

3.18 ~~(27)~~ (25) consumer-directed community support service funded under the Medicaid
3.19 waiver for persons with developmental disabilities when the individual who provided
3.20 the service is:

3.21 (i) the same individual who is the direct payee of these specific waiver funds or paid
3.22 by a fiscal agent, fiscal intermediary, or employer of record; and

3.23 (ii) not otherwise under the control of a residential or nonresidential program that is
3.24 required to be licensed under this chapter when providing the service; or

3.25 ~~(28)~~ (26) a program serving only children who are age 33 months or older, that is
3.26 operated by a nonpublic school, for no more than four hours per day per child, with no
3.27 more than 20 children at any one time, and that is accredited by:

3.28 (i) an accrediting agency that is formally recognized by the commissioner of
3.29 education as a nonpublic school accrediting organization; or

3.30 (ii) an accrediting agency that requires background studies and that receives and
3.31 investigates complaints about the services provided.

3.32 A program that asserts its exemption from licensure under item (ii) shall, upon
3.33 request from the commissioner, provide the commissioner with documentation from the
3.34 accrediting agency that verifies: that the accreditation is current; that the accrediting
3.35 agency investigates complaints about services; and that the accrediting agency's standards
3.36 require background studies on all people providing direct contact services.

4.1 (b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a
4.2 building in which a nonresidential program is located if it shares a common wall with the
4.3 building in which the nonresidential program is located or is attached to that building by
4.4 skyway, tunnel, atrium, or common roof.

4.5 (c) Except for the home and community-based services identified in section
4.6 245D.03, subdivision 1, nothing in this chapter shall be construed to require licensure for
4.7 any services provided and funded according to an approved federal waiver plan where
4.8 licensure is specifically identified as not being a condition for the services and funding.

4.9 Sec. 2. Minnesota Statutes 2010, section 245A.041, is amended by adding a
4.10 subdivision to read:

4.11 Subd. 3. **Record retention; license holder requirements.** (a) A license holder must
4.12 maintain and store records in a manner that will allow for review by the commissioner as
4.13 identified in section 245A.04, subdivision 5. The following records must be maintained as
4.14 specified and in accordance with applicable state or federal law, regulation, or rule:

4.15 (1) service recipient records, including verification of service delivery, must be
4.16 maintained for a minimum of five years following discharge or termination of service;

4.17 (2) personnel records must be maintained for a minimum of five years following
4.18 termination of employment; and

4.19 (3) program administration and financial records must be maintained for a minimum
4.20 of five years from the date the program closes.

4.21 (b) A license holder who ceases to provide services must maintain all records related
4.22 to the licensed program for five years from the date the program closes. The license holder
4.23 must notify the commissioner of the location where the licensing records will be stored
4.24 and the name of the person responsible for maintaining the stored records.

4.25 (c) If the ownership of a licensed program or service changes, the transferor, unless
4.26 otherwise provided by law or written agreement with the transferee, is responsible for
4.27 maintaining, preserving, and making available to the commissioner on demand the license
4.28 records generated before the date of the transfer.

4.29 (d) In the event of a contested case, the license holder must retain records as required
4.30 in paragraph (a) or until the final agency decision is issued and the conclusion of any
4.31 related appeal, whichever period is longer.

4.32 Sec. 3. Minnesota Statutes 2010, section 245A.041, is amended by adding a
4.33 subdivision to read:

5.1 Subd. 4. **Electronic records; license holder use.** A license holder's use of
5.2 electronic record keeping or electronic signatures must meet the following requirements:

5.3 (1) use of electronic record keeping or electronic signatures does not alter the license
5.4 holder's obligations under state or federal law, regulation, or rule;

5.5 (2) the license holder must ensure that the use of electronic record keeping does not
5.6 limit the commissioner's access to records as specified under section 245A.04, subdivision
5.7 5;

5.8 (3) upon request, the license holder must assist the commissioner in accessing and
5.9 copying all records, including encrypted records and electronic signatures; and

5.10 (4) the license holder must establish a mechanism or procedure to ensure that:

5.11 (i) the act of creating the electronic record or signature is attributable to the license
5.12 holder, according to section 325L.09;

5.13 (ii) the electronic records and signatures are maintained in a form capable of being
5.14 retained and accurately reproduced;

5.15 (iii) the commissioner has access to information that establishes the date and time
5.16 that data and signatures were entered into the electronic record; and

5.17 (iv) the license holder's use of electronic record keeping or electronic signatures does
5.18 not compromise the security of the records.

5.19 Sec. 4. **[245A.042] HOME AND COMMUNITY-BASED SERVICES;**
5.20 **ADDITIONAL STANDARDS AND PROCEDURES.**

5.21 Subdivision 1. **Standards governing the provision of home and community-based**
5.22 **services.** Residential and nonresidential programs for persons with disabilities or
5.23 age 65 and older must obtain a license according to this chapter to provide home and
5.24 community-based services defined in the federal waiver plans governed by United States
5.25 Code, title 42, sections 1396 et seq., or the state's alternative care program according to
5.26 section 256B.0913, and identified in section 245D.03, subdivision 1. As a condition
5.27 of licensure, an applicant or license holder must demonstrate and maintain verification
5.28 of compliance with:

5.29 (1) licensing requirements under this chapter and chapter 245D;

5.30 (2) applicable health care program requirements under Minnesota Rules, parts
5.31 9505.0170 to 9505.0475 and 9505.2160 to 9505.2245; and

5.32 (3) provider standards and qualifications identified in the federal waiver plans or the
5.33 alternative care program.

5.34 Subd. 2. **Modified application procedures.** (a) Applicants seeking chapter 245D
5.35 licensure who meet the following criteria are subject to modified application procedures:

6.1 (1) the applicant holds a chapter 245B license issued on or before December 31,
6.2 2012, at the time of application;

6.3 (2) the applicant's chapter 245B license or licenses are in substantial compliance
6.4 according to the licensing standards in this chapter and chapter 245B; and

6.5 (3) the commissioner has conducted at least one on-site inspection of the chapter
6.6 245B license or licenses within the two-year period before submitting the chapter 245D
6.7 license application.

6.8 For purposes of this subdivision, substantial compliance means the commissioner
6.9 has not issued a sanction according to section 245A.07 against any chapter 245B license
6.10 held by the applicant or made the chapter 245B license or licenses conditional according
6.11 to section 245A.06 within the 12-month period before submitting the application for
6.12 chapter 245D licensure.

6.13 (b) The modified application procedures mean the commissioner must accept
6.14 the applicant's attestation of compliance with certain requirements in lieu of providing
6.15 information to the commissioner for evaluation that is otherwise required when seeking
6.16 chapter 245D licensure.

6.17 Subd. 3. **Implementation.** (a) Licensure of home and community-based services
6.18 according to this section will be implemented upon authorization for the commissioner
6.19 to collect fees according to section 245A.10, subdivisions 3 and 4, necessary to support
6.20 licensing functions. License applications will be received on a phased in schedule as
6.21 determined by the commissioner. Licenses will be issued on or after January 1, 2013,
6.22 according to section 245A.04.

6.23 (b) Implementation of compliance monitoring must be phased in after January
6.24 1, 2013.

6.25 (1) Applicants who do not currently hold a license issued under this chapter must
6.26 receive an initial compliance monitoring visit within 12 months of the effective date of
6.27 the initial license for the purpose of providing technical assistance on how to achieve and
6.28 maintain compliance with the applicable law or rules governing the provision of home and
6.29 community-based services under chapter 245D. If during the review the commissioner
6.30 finds that the license holder has failed to achieve compliance with an applicable law or
6.31 rule and this failure does not imminently endanger the health, safety, or rights of the
6.32 persons served by the program, the commissioner may issue a licensing review report with
6.33 recommendations for achieving and maintaining compliance.

6.34 (2) Applicants who do currently hold a license issued under this chapter must receive
6.35 a compliance monitoring visit after 24 months of the effective date of the initial license.

7.1 (c) Nothing in this subdivision shall be construed to limit the commissioner's
 7.2 authority to suspend or revoke a license or issue a fine at any time under section 245A.07,
 7.3 or make correction orders and make a license conditional for failure to comply with
 7.4 applicable laws or rules under section 245A.06, based on the nature, chronicity, or severity
 7.5 of the violation of law or rule and the effect of the violation on the health, safety, or
 7.6 rights of persons served by the program.

7.7 Sec. 5. Minnesota Statutes 2010, section 245A.085, is amended to read:

7.8 **245A.085 CONSOLIDATION OF HEARINGS; RECONSIDERATION.**

7.9 Hearings authorized under this chapter, chapter 245C, and sections 256.045,
 7.10 256B.04, 626.556, and 626.557, shall be consolidated if feasible and in accordance with
 7.11 other applicable statutes and rules. Reconsideration under sections 245C.28; 626.556,
 7.12 subdivision 10i; and 626.557, subdivision 9d, shall also be consolidated if feasible.

7.13 Sec. 6. Minnesota Statutes 2010, section 245B.02, is amended by adding a subdivision
 7.14 to read:

7.15 Subd. 8a. **Emergency.** "Emergency" means any fires, severe weather, natural
 7.16 disasters, power failures, or any event that affects the ordinary daily operation of the
 7.17 program, including, but not limited to, events that threaten the immediate health and
 7.18 safety of a person receiving services and that require calling 911, emergency evacuation,
 7.19 moving to an emergency shelter, or temporary closure or relocation of the program
 7.20 to another facility or service site.

7.21 Sec. 7. Minnesota Statutes 2010, section 245B.02, subdivision 10, is amended to read:

7.22 Subd. 10. **Incident.** "Incident" means an occurrence that affects the ordinary
 7.23 provision of services to a person and includes any of the following:

7.24 (1) serious injury as determined by section 245.91, subdivision 6;

7.25 (2) a consumer's death;

7.26 (3) any medical ~~emergencies~~ emergency, unexpected serious ~~illnesses~~ illness, or
 7.27 ~~accidents~~ significant unexpected changes in an illness or medical condition, or the mental
 7.28 health status of a person that require ~~requires~~ calling 911 or a mental health mobile crisis
 7.29 intervention team, physician treatment, or hospitalization;

7.30 (4) a consumer's unauthorized or unexplained absence;

7.31 ~~(5) any fires or other events that require the relocation of services for more than 24~~
 7.32 ~~hours, or circumstances involving a law enforcement agency or fire department related to~~
 7.33 ~~the health, safety, or supervision of a consumer;~~

8.1 ~~(6)~~ (5) physical aggression by a consumer against another consumer that causes
8.2 physical pain, injury, or persistent emotional distress, including, but not limited to, hitting,
8.3 slapping, kicking, scratching, pinching, biting, pushing, and spitting;

8.4 ~~(7)~~ (6) any sexual activity between consumers involving force or coercion as defined
8.5 under section 609.341, subdivisions 3 and 14; or

8.6 ~~(8)~~ (7) a report of child or vulnerable adult maltreatment under section 626.556 or
8.7 626.557.

8.8 Sec. 8. Minnesota Statutes 2010, section 245B.04, subdivision 1, is amended to read:

8.9 Subdivision 1. **License holder's responsibility for consumers' rights.** The license
8.10 holder must:

8.11 (1) provide the consumer or the consumer's legal representative a copy of the
8.12 consumer's rights on the day that services are initiated and an explanation of the rights
8.13 in subdivisions 2 and 3 within five working days of service initiation and annually
8.14 thereafter. Reasonable accommodations shall be made by the license holder to provide
8.15 this information in other formats as needed to facilitate understanding of the rights by the
8.16 consumer and the consumer's legal representative, if any;

8.17 (2) document the consumer's or the consumer's legal representative's receipt of a
8.18 copy of the rights and an explanation of the rights; and

8.19 (3) ensure the exercise and protection of the consumer's rights in the services
8.20 provided by the license holder and authorized in the individual service plan.

8.21 Sec. 9. Minnesota Statutes 2010, section 245B.04, subdivision 2, is amended to read:

8.22 Subd. 2. **Service-related rights.** A consumer's service-related rights include the
8.23 right to:

8.24 (1) refuse or terminate services and be informed of the consequences of refusing
8.25 or terminating services;

8.26 (2) know, in advance, limits to the services available from the license holder;

8.27 (3) know conditions and terms governing the provision of services, including ~~those~~
8.28 the license holder's policies and procedures related to initiation and termination;

8.29 (4) know what the charges are for services, regardless of who will be paying for the
8.30 services, and be notified upon request of changes in those charges;

8.31 (5) know, in advance, whether services are covered by insurance, government
8.32 funding, or other sources, and be told of any charges the consumer or other private party
8.33 may have to pay; and

9.1 (6) receive licensed services from individuals who are competent and trained,
 9.2 who have professional certification or licensure, as required, and who meet additional
 9.3 qualifications identified in the individual service plan.

9.4 Sec. 10. Minnesota Statutes 2010, section 245B.04, subdivision 3, is amended to read:

9.5 Subd. 3. **Protection-related rights.** (a) The consumer's protection-related rights
 9.6 include the right to:

9.7 (1) have personal, financial, services, and medical information kept private, and
 9.8 be advised of the license holder's policies and procedures regarding disclosure of such
 9.9 information;

9.10 (2) access records and recorded information about the person in accordance with
 9.11 applicable state and federal law, regulation, or rule;

9.12 (3) be free from maltreatment;

9.13 (4) be treated with courtesy and respect for the consumer's individuality, mode of
 9.14 communication, and culture, and receive respectful treatment of the consumer's property;

9.15 (5) reasonable observance of cultural and ethnic practice and religion;

9.16 (6) be free from bias and harassment regarding race, gender, age, disability,
 9.17 spirituality, and sexual orientation;

9.18 (7) be informed of and use the license holder's grievance policy and procedures,
 9.19 including knowing how to contact persons responsible for addressing problems and to
 9.20 appeal under section 256.045;

9.21 (8) know the name, telephone number, and the Web site, e-mail, and street
 9.22 addresses of protection and advocacy services, including the appropriate state-appointed
 9.23 ombudsman, and a brief description of how to file a complaint with these offices;

9.24 ~~(5)~~ (9) voice grievances, know the contact persons responsible for addressing
 9.25 problems and how to contact those persons;

9.26 ~~(6)~~ (10) any procedures for grievance or complaint resolution and the right to appeal
 9.27 under section 256.045;

9.28 ~~(7)~~ (11) know the name and address of the state, county, or advocacy agency to
 9.29 contact for additional information or assistance;

9.30 ~~(8)~~ (12) assert these rights personally, or have them asserted by the consumer's
 9.31 family or legal representative, without retaliation;

9.32 ~~(9)~~ (13) give or withhold written informed consent to participate in any research or
 9.33 experimental treatment;

9.34 ~~(10)~~ (14) have daily, private access to and use of a non-coin-operated telephone for
 9.35 local calls and long-distance calls made collect or paid for by the resident;

10.1 ~~(11)~~ (15) receive and send, without interference, uncensored, unopened mail or
 10.2 electronic correspondence or communication;

10.3 ~~(12)~~ (16) marital privacy for visits with the consumer's spouse and, if both are
 10.4 residents of the site, the right to share a bedroom and bed;

10.5 ~~(13)~~ (17) associate with other persons of the consumer's choice;

10.6 ~~(14)~~ (18) personal privacy; and

10.7 ~~(15)~~ (19) engage in chosen activities.

10.8 (b) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or
 10.9 this paragraph is allowed only if determined necessary to ensure the health, safety, and
 10.10 well-being of the person. Any restriction of these rights must be documented in the service
 10.11 plan for the person and must include the following information:

10.12 (1) the justification for the restriction based on an assessment of the person's
 10.13 vulnerability related to exercising the right without restriction;

10.14 (2) the objective measures set as conditions for ending the restriction;

10.15 (3) a schedule for reviewing the need for the restriction based on the conditions for
 10.16 ending the restriction to occur, at a minimum, every three months for persons who do not
 10.17 have a legal representative and annually for persons who do have a legal representative
 10.18 from the date of initial approval; and

10.19 (4) signed and dated approval for the restriction from the person, or the person's
 10.20 legal representative, if any. A restriction may be implemented only when the required
 10.21 approval has been obtained. Approval may be withdrawn at any time. If approval is
 10.22 withdrawn, the right must be immediately and fully restored.

10.23 Sec. 11. Minnesota Statutes 2010, section 245B.05, subdivision 1, is amended to read:

10.24 Subdivision 1. **Environment.** The license holder must:

10.25 (1) ensure that services are provided in a safe and hazard-free environment when the
 10.26 license holder is the owner, lessor, or tenant of the service site. All other license holders
 10.27 shall inform the consumer or the consumer's legal representative and case manager about
 10.28 any environmental safety concerns in writing;

10.29 (2) ~~lock doors~~ ensure that doors are locked or toxic substances or dangerous items
 10.30 normally accessible to persons served by the program are stored in locked cabinets,
 10.31 drawers, or containers only to protect the safety of consumers and not as a substitute for
 10.32 staff supervision or interactions with consumers. If doors are locked or toxic substances
 10.33 or dangerous items normally accessible to persons served by the program are stored in
 10.34 locked cabinets, drawers, or containers, the license holder must justify and document
 10.35 how this determination was made in consultation with the person or the person's legal

11.1 representative and how access will otherwise be provided to the person and all other
11.2 affected persons receiving services;

11.3 (3) follow procedures that minimize the consumer's health risk from communicable
11.4 diseases; and

11.5 (4) maintain equipment, vehicles, supplies, and materials owned or leased by the
11.6 license holder in good condition.

11.7 Sec. 12. Minnesota Statutes 2010, section 245B.07, subdivision 5, is amended to read:

11.8 Subd. 5. **Staff orientation.** (a) Within 60 days of hiring staff who provide direct
11.9 service, the license holder must provide 30 hours of staff orientation. Direct care staff
11.10 must complete 15 of the 30 hours orientation before providing any unsupervised direct
11.11 service to a consumer. If the staff person has received orientation training from a license
11.12 holder licensed under this chapter, or provides semi-independent living services only, the
11.13 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may
11.14 be reduced to 15 hours if the staff person has previously received orientation training from
11.15 a license holder licensed under this chapter.

11.16 (b) The 30 hours of orientation must combine supervised on-the-job training with
11.17 ~~coverage~~ review of and instruction on the following material:

11.18 (1) review of the consumer's service plans and risk management plan to achieve an
11.19 understanding of the consumer as a unique individual and staff responsibilities related to
11.20 implementation of those plans;

11.21 (2) review and instruction on implementation of the license holder's policies and
11.22 procedures, including their location and access;

11.23 (3) staff responsibilities related to emergency procedures;

11.24 (4) explanation of specific job functions, including implementing objectives from
11.25 the consumer's individual service plan;

11.26 (5) explanation of responsibilities related to section 245A.65; sections 626.556
11.27 and 626.557, governing maltreatment reporting and service planning for children and
11.28 vulnerable adults; and section 245.825, governing use of aversive and deprivation
11.29 procedures;

11.30 (6) medication administration as it applies to the individual consumer, from a
11.31 training curriculum developed by a health services professional described in section
11.32 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding
11.33 health care needs, then medication administration taught by a health services professional.
11.34 Staff may administer medications only after they demonstrate the ability, as defined in the
11.35 license holder's medication administration policy and procedures. Once a consumer with

12.1 overriding health care needs is admitted, staff will be provided with remedial training as
 12.2 deemed necessary by the license holder and the health professional to meet the needs of
 12.3 that consumer.

12.4 For purposes of this section, overriding health care needs means a health care
 12.5 condition that affects the service options available to the consumer because the condition
 12.6 requires:

12.7 (i) specialized or intensive medical or nursing supervision; and

12.8 (ii) nonmedical service providers to adapt their services to accommodate the health
 12.9 and safety needs of the consumer;

12.10 (7) consumer rights and staff responsibilities related to protecting and ensuring
 12.11 the exercise of the consumer rights; and

12.12 (8) other topics necessary as determined by the consumer's individual service plan or
 12.13 other areas identified by the license holder.

12.14 (c) The license holder must document each employee's orientation received.

12.15 Sec. 13. Minnesota Statutes 2010, section 245B.07, is amended by adding a
 12.16 subdivision to read:

12.17 Subd. 7a. **Subcontractors.** If the license holder uses a subcontractor to perform
 12.18 services licensed under this chapter on the license holder's behalf, the license holder must
 12.19 ensure that the subcontractor meets and maintains compliance with all requirements under
 12.20 this chapter that apply to the services to be provided.

12.21 Sec. 14. Minnesota Statutes 2010, section 245B.07, subdivision 9, is amended to read:

12.22 Subd. 9. **Availability of current written policies and procedures.** The license
 12.23 holder shall:

12.24 (1) review and update, as needed, the written policies and procedures in this chapter;

12.25 (2) inform consumers or the consumer's legal representatives of the written policies
 12.26 and procedures in this chapter upon service initiation. Copies of policies and procedures

12.27 affecting a consumer's rights under section 245D.04 must be provided upon service
 12.28 initiation. Copies of all other policies and procedures must be available to consumers

12.29 or the consumer's legal representatives, case managers, the county where services are
 12.30 located, and the commissioner upon request;

12.31 (3) provide all consumers or the consumers' legal representatives and case managers
 12.32 a copy of the revised policies and procedures and explanation of the revisions to policies

12.33 and procedures that affect consumers' service-related or protection-related rights under
 12.34 section 245B.04 and maltreatment reporting policies and procedures. Unless there is

13.1 reasonable cause, the license holder must provide this notice at least 30 days before
13.2 implementing the revised policy and procedure. The license holder must document the
13.3 reason for not providing the notice at least 30 days before implementing the revisions;

13.4 (4) annually notify all consumers or the consumers' legal representatives and case
13.5 managers of any revised policies and procedures under this chapter, other than those in
13.6 clause (3). Upon request, the license holder must provide the consumer or consumer's
13.7 legal representative and case manager copies of the revised policies and procedures;

13.8 (5) before implementing revisions to policies and procedures under this chapter,
13.9 inform all employees of the revisions and provide training on implementation of the
13.10 revised policies and procedures; and

13.11 (6) document and maintain relevant information related to the policies and
13.12 procedures in this chapter.

13.13 Sec. 15. Minnesota Statutes 2010, section 245B.07, subdivision 10, is amended to read:

13.14 Subd. 10. **Consumer funds.** (a) The license holder must ensure that consumers
13.15 retain the use and availability of personal funds or property unless restrictions are justified
13.16 in the consumer's individual service plan.

13.17 (b) The license holder must ensure separation of consumer funds from funds of the
13.18 license holder, the program, or program staff.

13.19 (c) Whenever the license holder assists a consumer with the safekeeping of funds
13.20 or other property, the license holder must have written authorization to do so by the
13.21 consumer or the consumer's legal representative, and the case manager. In addition, the
13.22 license holder must:

13.23 (1) document receipt and disbursement of the consumer's funds or the property;

13.24 (2) annually survey, document, and implement the preferences of the consumer,
13.25 consumer's legal representative, and the case manager for frequency of receiving a
13.26 statement that itemizes receipts and disbursements of consumer funds or other property;
13.27 and

13.28 (3) return to the consumer upon the consumer's request, funds and property in the
13.29 license holder's possession subject to restrictions in the consumer's individual service plan,
13.30 as soon as possible, but no later than three working days after the date of the request.

13.31 (d) License holders and program staff must not:

13.32 (1) borrow money from a consumer;

13.33 (2) purchase personal items from a consumer;

13.34 (3) sell merchandise or personal services to a consumer;

14.1 (4) require a consumer to purchase items for which the license holder is eligible for
 14.2 reimbursement; ~~or~~

14.3 (5) use consumer funds in a manner that would violate section 256B.04, or any
 14.4 rules promulgated under that section; or

14.5 (6) accept powers-of-attorney from a person receiving services from the license
 14.6 holder for any purpose, and may not accept an appointment as guardian or conservator of
 14.7 a person receiving services from the license holder. This does not apply to license holders
 14.8 that are Minnesota counties or other units of government.

14.9 Sec. 16. **[245D.01] CITATION.**

14.10 This chapter may be cited as the "Home and Community-Based Services Standards"
 14.11 or "HCBS Standards."

14.12 Sec. 17. **[245D.02] DEFINITIONS.**

14.13 Subdivision 1. **Scope.** The terms used in this chapter have the meanings given
 14.14 them in this section.

14.15 Subd. 2. **Annual and annually.** "Annual" and "annually" have the meaning given
 14.16 in section 245A.02, subdivision 2b.

14.17 Subd. 3. **Case manager.** "Case manager" means the individual designated
 14.18 to provide waiver case management services, care coordination, or long-term care
 14.19 consultation, as specified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49,
 14.20 or successor provisions.

14.21 Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the
 14.22 Department of Human Services or the commissioner's designated representative.

14.23 Subd. 5. **Department.** "Department" means the Department of Human Services.

14.24 Subd. 6. **Direct contact.** "Direct contact" has the meaning given in section 245C.02,
 14.25 subdivision 11, and is used interchangeably with the term "direct service."

14.26 Subd. 7. **Drug.** "Drug" has the meaning given in section 151.01, subdivision 5.

14.27 Subd. 8. **Emergency.** "Emergency" means any event that affects the ordinary
 14.28 daily operation of the program including, but not limited to, fires, severe weather, natural
 14.29 disasters, power failures, or other events that threaten the immediate health and safety of
 14.30 a person receiving services and that require calling 911, emergency evacuation, moving
 14.31 to an emergency shelter, or temporary closure or relocation of the program to another
 14.32 facility or service site.

14.33 Subd. 9. **Health services.** "Health services" means any service or treatment
 14.34 consistent with the physical and mental health needs of the person, such as medication

15.1 administration and monitoring, medical, dental, nutritional, health monitoring, wellness
15.2 education, and exercise.

15.3 Subd. 10. **Home and community-based services.** "Home and community-based
15.4 services" means the services subject to the provisions of this chapter and defined in the
15.5 federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the
15.6 state's alternative care program according to section 256B.0913, including the brain injury
15.7 (BI) waiver, the community alternative care (CAC) waiver, the community alternatives
15.8 for disabled individuals (CADI) waiver, the developmental disability (DD) waiver, the
15.9 elderly waiver (EW), and the alternative care (AC) program.

15.10 Subd. 11. **Incident.** "Incident" means an occurrence that affects the ordinary
15.11 provision of services to a person and includes any of the following:

15.12 (1) serious injury as determined by section 245.91, subdivision 6;

15.13 (2) a person's death;

15.14 (3) any medical emergency, unexpected serious illness, or significant unexpected
15.15 change in an illness or medical condition, or the mental health status of a person that
15.16 requires calling 911 or a mental health crisis intervention team, physician treatment,
15.17 or hospitalization;

15.18 (4) a person's unauthorized or unexplained absence from a program;

15.19 (5) physical aggression by a person receiving services against another person
15.20 receiving services that causes physical pain, injury, or persistent emotional distress,
15.21 including, but not limited to, hitting, slapping, kicking, scratching, pinching, biting,
15.22 pushing, and spitting;

15.23 (6) any sexual activity between persons receiving services involving force or
15.24 coercion as defined under section 609.341, subdivisions 3 and 14; or

15.25 (7) a report of alleged or suspected child or vulnerable adult maltreatment under
15.26 section 626.556 or 626.557.

15.27 Subd. 12. **Legal representative.** "Legal representative" means the parent of a
15.28 person who is under 18 years of age, a court-appointed guardian, or other representative
15.29 with legal authority to make decisions about services for a person.

15.30 Subd. 13. **License.** "License" has the meaning given in section 245A.02,
15.31 subdivision 8.

15.32 Subd. 14. **Licensed health professional.** "Licensed health professional" means a
15.33 person licensed in Minnesota to practice those professions described in section 214.01,
15.34 subdivision 2.

15.35 Subd. 15. **License holder.** "License holder" has the meaning given in section
15.36 245A.02, subdivision 9.

16.1 Subd. 16. **Medication.** "Medication" means a prescription drug or over-the-counter
16.2 drug. For purposes of this chapter, "medication" includes dietary supplements.

16.3 Subd. 17. **Medication administration.** "Medication administration" means
16.4 performing the following set of tasks to ensure a person takes both prescription and
16.5 over-the-counter medications and treatments according to orders issued by appropriately
16.6 licensed professionals, and includes the following:

16.7 (1) checking the person's medication record;

16.8 (2) preparing the medication for administration;

16.9 (3) administering the medication to the person;

16.10 (4) documenting the administration of the medication or the reason for not
16.11 administering the medication; and

16.12 (5) reporting to the prescriber or a nurse any concerns about the medication,
16.13 including side effects, adverse reactions, effectiveness, or the person's refusal to take the
16.14 medication or the person's self-administration of the medication.

16.15 Subd. 18. **Medication assistance.** "Medication assistance" means providing verbal
16.16 or visual reminders to take regularly scheduled medication, which includes either of
16.17 the following:

16.18 (1) bringing to the person and opening a container of previously set up medications
16.19 and emptying the container into the person's hand or opening and giving the medications
16.20 in the original container to the person, or bringing to the person liquids or food to
16.21 accompany the medication; or

16.22 (2) providing verbal or visual reminders to perform regularly scheduled treatments
16.23 and exercises.

16.24 Subd. 19. **Medication management.** "Medication management" means the
16.25 provision of any of the following:

16.26 (1) medication-related services to a person;

16.27 (2) medication setup;

16.28 (3) medication administration;

16.29 (4) medication storage and security;

16.30 (5) medication documentation and charting;

16.31 (6) verification and monitoring of effectiveness of systems to ensure safe medication
16.32 handling and administration;

16.33 (7) coordination of medication refills;

16.34 (8) handling changes to prescriptions and implementation of those changes;

16.35 (9) communicating with the pharmacy; or

16.36 (10) coordination and communication with prescriber.

17.1 For the purposes of this chapter, medication management does not mean "medication
17.2 therapy management services" as identified in section 256B.0625, subdivision 13h.

17.3 Subd. 20. **Mental health crisis intervention team.** "Mental health crisis
17.4 intervention team" means mental health crisis response providers as identified in section
17.5 256B.0624, subdivision 2, paragraph (d), for adults, and in section 256B.0944, subdivision
17.6 1, paragraph (d), for children.

17.7 Subd. 21. **Over-the-counter drug.** "Over-the-counter drug" means a drug that
17.8 is not required by federal law to bear the statement "Caution: Federal law prohibits
17.9 dispensing without prescription."

17.10 Subd. 22. **Person.** "Person" has the meaning given in section 245A.02, subdivision
17.11 11.

17.12 Subd. 23. **Person with a disability.** "Person with a disability" means a person
17.13 determined to have a disability by the commissioner's state medical review team as
17.14 identified in section 256B.055, subdivision 7, the Social Security Administration, or
17.15 the person is determined to have a developmental disability as defined in Minnesota
17.16 Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section
17.17 252.27, subdivision 1a.

17.18 Subd. 24. **Prescriber.** "Prescriber" means a licensed practitioner as defined in
17.19 section 151.01, subdivision 23, who is authorized under section 151.37 to prescribe
17.20 drugs. For the purposes of this chapter, the term "prescriber" is used interchangeably
17.21 with "physician."

17.22 Subd. 25. **Prescription drug.** "Prescription drug" has the meaning given in section
17.23 151.01, subdivision 17.

17.24 Subd. 26. **Program.** "Program" means either the nonresidential or residential
17.25 program as defined in section 245A.02, subdivisions 10 and 14.

17.26 Subd. 27. **Psychotropic medication.** "Psychotropic medication" means any
17.27 medication prescribed to treat the symptoms of mental illness that affect thought processes,
17.28 mood, sleep, or behavior. The major classes of psychotropic medication are antipsychotic
17.29 (neuroleptic), antidepressant, antianxiety, mood stabilizers, anticonvulsants, and
17.30 stimulants and nonstimulants for the treatment of attention deficit/hyperactivity disorder.
17.31 Other miscellaneous medications are considered to be a psychotropic medication when
17.32 they are specifically prescribed to treat a mental illness or to control or alter behavior.

17.33 Subd. 28. **Restraint.** "Restraint" means physical or mechanical limiting of the free
17.34 and normal movement of body or limbs.

18.1 Subd. 29. **Seclusion.** "Seclusion" means separating a person from others in a way
18.2 that prevents social contact and prevents the person from leaving the situation if he or she
18.3 chooses.

18.4 Subd. 30. **Service.** "Service" means care, training, supervision, counseling,
18.5 consultation, or medication assistance assigned to the license holder in the service plan.

18.6 Subd. 31. **Service plan.** "Service plan" means the individual service plan or
18.7 individual care plan identified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49,
18.8 or successor provisions, and includes any support plans or service needs identified as
18.9 a result of long-term care consultation, or a support team meeting that includes the
18.10 participation of the person, the person's legal representative, and case manager, or assigned
18.11 to a license holder through an authorized service agreement.

18.12 Subd. 32. **Service site.** "Service site" means the location where the service is
18.13 provided to the person, including but not limited to, a facility licensed according to chapter
18.14 245A; a location where the license holder is the owner, lessor, or tenant; a person's own
18.15 home; or a community-based location.

18.16 Subd. 33. **Staff.** "Staff" means an employee who will have direct contact with a
18.17 person served by the facility, agency, or program.

18.18 Subd. 34. **Support team.** "Support team" means the service planning team
18.19 identified in section 256B.49, subdivision 15, or the interdisciplinary team identified in
18.20 Minnesota Rules, part 9525.0004, subpart 14.

18.21 Subd. 35. **Unit of government.** "Unit of government" means every city, county,
18.22 town, school district, other political subdivisions of the state, and any agency of the state
18.23 or the United States, and includes any instrumentality of a unit of government.

18.24 Subd. 36. **Volunteer.** "Volunteer" means an individual who, under the direction of
18.25 the license holder, provides direct services without pay to a person served by the license
18.26 holder.

18.27 **Sec. 18. [245D.03] APPLICABILITY AND EFFECT.**

18.28 Subdivision 1. **Applicability.** The commissioner shall regulate the provision of
18.29 home and community-based services to persons with disabilities and persons age 65 and
18.30 older pursuant to this chapter. The licensing standards in this chapter govern the provision
18.31 of the following services:

18.32 (1) housing access coordination as defined under the current BI, CADI, and DD
18.33 waiver plans or successor plans;

18.34 (2) respite services as defined under the current CADI, BI, CAC, DD, and EW
18.35 waiver plans or successor plans when the provider is an individual who is not an employee

19.1 of a residential or nonresidential program licensed by the Department of Human Services
19.2 or the Department of Health that is otherwise providing the respite service;

19.3 (3) behavioral programming as defined under the current BI and CADI waiver
19.4 plans or successor plans;

19.5 (4) specialist services as defined under the current DD waiver plan or successor
19.6 plans;

19.7 (5) companion services as defined under the current BI, CADI, and EW waiver
19.8 plans or successor plans, excluding companion services provided under the Corporation
19.9 for National and Community Services Senior Companion Program established under the
19.10 Domestic Volunteer Service Act of 1973, Public Law 98-288;

19.11 (6) personal support as defined under the current DD waiver plan or successor plans;

19.12 (7) 24-hour emergency assistance, on-call and personal emergency response as
19.13 defined under the current CADI and DD waiver plans or successor plans;

19.14 (8) night supervision services as defined under the current BI waiver plan or
19.15 successor plans;

19.16 (9) homemaker services as defined under the current CADI, BI, CAC, DD, and EW
19.17 waiver plans or successor plans, excluding providers licensed by the Department of Health
19.18 under chapter 144A and those providers providing cleaning services only;

19.19 (10) independent living skills training as defined under the current BI and CADI
19.20 waiver plans or successor plans;

19.21 (11) prevocational services as defined under the current BI and CADI waiver plans
19.22 or successor plans;

19.23 (12) structured day services as defined under the current BI waiver plan or successor
19.24 plans; or

19.25 (13) supported employment as defined under the current BI and CADI waiver plans
19.26 or successor plans.

19.27 **Subd. 2. Relationship to other standards governing home and community-based**
19.28 **services. (a) A license holder governed by this chapter is also subject to the licensure**
19.29 **requirements under chapter 245A.**

19.30 (b) A license holder concurrently providing child foster care services licensed
19.31 according to Minnesota Rules, chapter 2960, to the same person receiving a service
19.32 licensed under this chapter is exempt from section 245D.04, as it applies to the person.

19.33 (c) A license holder concurrently providing home care services registered according
19.34 to sections 144A.43 to 144A.49 to the same person receiving home management services
19.35 licensed under this chapter is exempt from section 245D.04, as it applies to the person.

20.1 (d) A license holder identified in subdivision 1, clauses (1), (5), and (9), is exempt
20.2 from compliance with sections 245A.65, subdivision 2, paragraph (a), and 626.557,
20.3 subdivision 14, paragraph (b).

20.4 (e) Notwithstanding section 245D.06, subdivision 5, a license holder providing
20.5 structured day, prevocational, or supported employment services under this chapter and
20.6 day training and habilitation or supported employment services licensed under chapter
20.7 245B within the same program is exempt from compliance with this chapter, when
20.8 the license holder notifies the commissioner in writing that the requirements under
20.9 chapter 245B will be met for all persons receiving these services from the program. For
20.10 the purposes of this paragraph, if the license holder has obtained approval from the
20.11 commissioner for an alternative inspection status according to section 245B.031, that
20.12 approval will apply to all persons receiving services in the program.

20.13 Subd. 3. **Variance.** If the conditions in section 245A.04, subdivision 9, are met,
20.14 the commissioner may grant a variance to any of the requirements in this chapter, except
20.15 sections 245D.04, and 245D.10, subdivision 4, paragraph (b), or provisions governing
20.16 data practices and information rights of persons.

20.17 Subd. 4. **License holders with multiple 245D licenses.** (a) When a person changes
20.18 service from one license to a different license held by the same license holder, the license
20.19 holder is exempt from the requirements in section 245D.10, subdivision 4, paragraph (b).

20.20 (b) When a staff person begins providing direct service under one or more licenses
20.21 held by the same license holder, other than the license for which staff orientation was
20.22 initially provided according to section 245D.09, subdivision 4, the license holder is
20.23 exempt from those staff orientation requirements; except the staff person must review each
20.24 person's service plan and medication administration procedures in accordance with section
20.25 245D.09, subdivision 4, paragraph (c), if not previously reviewed by the staff person.

20.26 Sec. 19. **[245D.04] SERVICE RECIPIENT RIGHTS.**

20.27 Subdivision 1. **License holder responsibility for individual rights of persons**
20.28 **served by the program.** The license holder must:

20.29 (1) provide each person or each person's legal representative with a written notice
20.30 that identifies the service recipient rights in subdivisions 2 and 3, and an explanation of
20.31 those rights within five working days of service initiation and annually thereafter;

20.32 (2) make reasonable accommodations to provide this information in other formats
20.33 or languages as needed to facilitate understanding of the rights by the person and the
20.34 person's legal representative, if any;

21.1 (3) maintain documentation of the person's or the person's legal representative's
21.2 receipt of a copy and an explanation of the rights; and

21.3 (4) ensure the exercise and protection of the person's rights in the services provided
21.4 by the license holder and as authorized in the service plan.

21.5 Subd. 2. **Service-related rights.** A person's service-related rights include the right
21.6 to:

21.7 (1) participate in the development and evaluation of the services provided to the
21.8 person;

21.9 (2) have services identified in the service plan provided in a manner that respects
21.10 and takes into consideration the person's preferences;

21.11 (3) refuse or terminate services and be informed of the consequences of refusing
21.12 or terminating services;

21.13 (4) know, in advance, limits to the services available from the license holder;

21.14 (5) know conditions and terms governing the provision of services, including the
21.15 license holder's policies and procedures related to temporary service suspension and
21.16 service termination;

21.17 (6) know what the charges are for services, regardless of who will be paying for the
21.18 services, and be notified of changes in those charges;

21.19 (7) know, in advance, whether services are covered by insurance, government
21.20 funding, or other sources, and be told of any charges the person or other private party
21.21 may have to pay; and

21.22 (8) receive services from an individual who is competent and trained, who has
21.23 professional certification or licensure, as required, and who meets additional qualifications
21.24 identified in the person's service plan.

21.25 Subd. 3. **Protection-related rights.** (a) A person's protection-related rights include
21.26 the right to:

21.27 (1) have personal, financial, service, health, and medical information kept private,
21.28 and be advised of disclosure of this information by the license holder;

21.29 (2) access records and recorded information about the person in accordance with
21.30 applicable state and federal law, regulation, or rule;

21.31 (3) be free from maltreatment;

21.32 (4) be free from restraint or seclusion used for a purpose other than to protect the
21.33 person from imminent danger to self or others;

21.34 (5) receive services in a clean and safe environment when the license holder is the
21.35 owner, lessor, or tenant of the service site;

22.1 (6) be treated with courtesy and respect and receive respectful treatment of the
22.2 person's property;

22.3 (7) reasonable observance of cultural and ethnic practice and religion;

22.4 (8) be free from bias and harassment regarding race, gender, age, disability,
22.5 spirituality, and sexual orientation;

22.6 (9) be informed of and use the license holder's grievance policy and procedures,
22.7 including knowing how to contact persons responsible for addressing problems and to
22.8 appeal under section 256.045;

22.9 (10) know the name, telephone number, and the Web site, e-mail, and street
22.10 addresses of protection and advocacy services, including the appropriate state-appointed
22.11 ombudsman, and a brief description of how to file a complaint with these offices;

22.12 (11) assert these rights personally, or have them asserted by the person's family,
22.13 authorized representative, or legal representative, without retaliation;

22.14 (12) give or withhold written informed consent to participate in any research or
22.15 experimental treatment;

22.16 (13) associate with other persons of the person's choice;

22.17 (14) personal privacy; and

22.18 (15) engage in chosen activities.

22.19 (b) For a person residing in a residential site licensed according to chapter 245A,
22.20 or where the license holder is the owner, lessor, or tenant of the residential service site,
22.21 protection-related rights also include the right to:

22.22 (1) have daily, private access to and use of a non-coin-operated telephone for local
22.23 calls and long-distance calls made collect or paid for by the person;

22.24 (2) receive and send, without interference, uncensored, unopened mail or electronic
22.25 correspondence or communication; and

22.26 (3) privacy for visits with the person's spouse, next of kin, legal counsel, religious
22.27 advisor, or others, in accordance with section 363A.09 of the Human Rights Act, including
22.28 privacy in the person's bedroom.

22.29 (c) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or
22.30 paragraph (b) is allowed only if determined necessary to ensure the health, safety, and
22.31 well-being of the person. Any restriction of those rights must be documented in the service
22.32 plan for the person and must include the following information:

22.33 (1) the justification for the restriction based on an assessment of the person's
22.34 vulnerability related to exercising the right without restriction;

22.35 (2) the objective measures set as conditions for ending the restriction;

23.1 (3) a schedule for reviewing the need for the restriction based on the conditions for
 23.2 ending the restriction to occur, at a minimum, every three months for persons who do not
 23.3 have a legal representative and annually for persons who do have a legal representative
 23.4 from the date of initial approval; and

23.5 (4) signed and dated approval for the restriction from the person, or the person's
 23.6 legal representative, if any. A restriction may be implemented only when the required
 23.7 approval has been obtained. Approval may be withdrawn at any time. If approval is
 23.8 withdrawn, the right must be immediately and fully restored.

23.9 Sec. 20. **[245D.05] HEALTH SERVICES.**

23.10 Subdivision 1. **Health needs.** (a) The license holder is responsible for providing
 23.11 health services assigned in the service plan and consistent with the person's health needs.
 23.12 The license holder is responsible for promptly notifying the person or the person's legal
 23.13 representative and the case manager of changes in a person's physical and mental health
 23.14 needs affecting assigned health services, when discovered by the license holder, unless
 23.15 the license holder has reason to know the change has already been reported. The license
 23.16 holder must document when the notice is provided.

23.17 (b) When assigned in the service plan, the license holder is required to maintain
 23.18 documentation on how the person's health needs will be met, including a description of
 23.19 the procedures the license holder will follow in order to:

23.20 (1) provide medication administration, medication assistance, or medication
 23.21 management according to this chapter;

23.22 (2) monitor health conditions according to written instructions from the person's
 23.23 physician or a licensed health professional;

23.24 (3) assist with or coordinate medical, dental, and other health service appointments;
 23.25 or

23.26 (4) use medical equipment, devices, or adaptive aides or technology safely and
 23.27 correctly according to written instructions from the person's physician or a licensed
 23.28 health professional.

23.29 Subd. 2. **Medication administration.** (a) The license holder must ensure that the
 23.30 following criteria have been met before staff that is not a licensed health professional
 23.31 administers medication or treatment:

23.32 (1) written authorization has been obtained from the person or the person's legal
 23.33 representative to administer medication or treatment orders;

23.34 (2) the staff person has completed medication administration training according to
 23.35 section 245D.09, subdivision 4, paragraph (c), clause (2); and

24.1 (3) the medication or treatment will be administered under administration procedures
24.2 established for the person in consultation with a licensed health professional. Written
24.3 instruction from the person's physician may constitute the medication administration
24.4 procedures. A prescription label or the prescriber's order for the prescription is sufficient
24.5 to constitute written instructions from the prescriber. A licensed health professional may
24.6 delegate medication administration procedures.

24.7 (b) The license holder must ensure the following information is documented in the
24.8 person's medication administration record:

24.9 (1) the information on the prescription label or the prescriber's order that includes
24.10 directions for safely and correctly administering the medication to ensure effectiveness;

24.11 (2) information on any discomforts, risks, or other side effects that are reasonable to
24.12 expect, and any contraindications to its use;

24.13 (3) the possible consequences if the medication or treatment is not taken or
24.14 administered as directed;

24.15 (4) instruction from the prescriber on when and to whom to report the following:

24.16 (i) if the medication or treatment is not administered as prescribed, whether by error
24.17 by the staff or the person or by refusal by the person; and

24.18 (ii) the occurrence of possible adverse reactions to the medication or treatment;

24.19 (5) notation of any occurrence of medication not being administered as prescribed or
24.20 of adverse reactions, and when and to whom the report was made; and

24.21 (6) notation of when a medication or treatment is started, changed, or discontinued.

24.22 (c) The license holder must ensure that the information maintained in the medication
24.23 administration record is current and is regularly reviewed with the person or the person's
24.24 legal representative and the staff administering the medication to identify medication
24.25 administration issues or errors. At a minimum, the review must be conducted every three
24.26 months or more often if requested by the person or the person's legal representative.

24.27 Based on the review, the license holder must develop and implement a plan to correct
24.28 medication administration issues or errors. If issues or concerns are identified related to
24.29 the medication itself, the license holder must report those as required under subdivision 4.

24.30 Subd. 3. **Medication assistance.** The license holder must ensure that the
24.31 requirements of subdivision 2, paragraph (a), have been met when staff provides assistance
24.32 to enable a person to self-administer medication when the person is capable of directing
24.33 the person's own care, or when the person's legal representative is present and able to
24.34 direct care for the person.

24.35 Subd. 4. **Reporting medication and treatment issues.** The following medication
24.36 administration issues must be reported to the person or the person's legal representative

25.1 and case manager as they occur or following timelines established in the person's service
25.2 plan or as requested in writing by the person or the person's legal representative, or the
25.3 case manager:

25.4 (1) any reports made to the person's physician or prescriber required under
25.5 subdivision 2, paragraph (b), clause (4);

25.6 (2) a person's refusal or failure to take medication or treatment as prescribed; or

25.7 (3) concerns about a person's self-administration of medication.

25.8 Subd. 5. **Injectable medications.** Injectable medications may be administered
25.9 according to a prescriber's order and written instructions when one of the following
25.10 conditions has been met:

25.11 (1) a registered nurse or licensed practical nurse will administer the subcutaneous or
25.12 intramuscular injection;

25.13 (2) a supervising registered nurse with a physician's order has delegated the
25.14 administration of subcutaneous injectable medication to an unlicensed staff member
25.15 and has provided the necessary training; or

25.16 (3) there is an agreement signed by the license holder, the prescriber, and the person
25.17 or the person's legal representative, specifying what subcutaneous injections may be
25.18 given, when, how, and that the prescriber must retain responsibility for the license
25.19 holder's giving the injections. A copy of the agreement must be placed in the person's
25.20 service recipient record.

25.21 Only licensed health professionals are allowed to administer psychotropic
25.22 medications by injection.

25.23 **Sec. 21. [245D.06] PROTECTION STANDARDS.**

25.24 Subdivision 1. **Incident response and reporting.** (a) The license holder must
25.25 respond to all incidents under section 245D.02, subdivision 11, that occur while providing
25.26 services to protect the health and safety of and minimize risk of harm to the person.

25.27 (b) The license holder must maintain information about and report incidents to the
25.28 person's legal representative or designated emergency contact and case manager within 24
25.29 hours of an incident occurring while services are being provided, or within 24 hours of
25.30 discovery or receipt of information that an incident occurred, unless the license holder has
25.31 reason to know that the incident has already been reported. An incident of suspected or
25.32 alleged maltreatment must be reported as required under paragraph (d), and an incident of
25.33 serious injury or death must be reported as required under paragraph (e).

26.1 (c) When the incident involves more than one person, the license holder must not
26.2 disclose personally identifiable information about any other person when making the report
26.3 to each person and case manager unless the license holder has the consent of the person.

26.4 (d) Within 24 hours of reporting maltreatment as required under section 626.556
26.5 or 626.557, the license holder must inform the case manager of the report unless there is
26.6 reason to believe that the case manager is involved in the suspected maltreatment. The
26.7 license holder must disclose the nature of the activity or occurrence reported and the
26.8 agency that received the report.

26.9 (e) Within 24 hours of the occurrence, or within 24 hours of receipt of the
26.10 information, the license holder must report the death or serious injury of the person to
26.11 the legal representative, if any, and case manager, the Department of Human Services
26.12 Licensing Division, and the Office of Ombudsman for Mental Health and Developmental
26.13 Disabilities as required under section 245.94, subdivision 2a, within 24 hours of the death,
26.14 discovery of the death, or receipt of information that the death occurred unless the license
26.15 holder has reason to know that the death has already been reported.

26.16 (f) The license holder must conduct a review of incident reports, for identification
26.17 of incident patterns, and implementation of corrective action as necessary to reduce
26.18 occurrences.

26.19 Subd. 2. **Environment and safety.** The license holder must:

26.20 (1) ensure the following when the license holder is the owner, lessor, or tenant
26.21 of the service site:

26.22 (i) the service site is a safe and hazard-free environment;

26.23 (ii) doors are locked or toxic substances or dangerous items normally accessible
26.24 to persons served by the program are stored in locked cabinets, drawers, or containers
26.25 only to protect the safety of a person receiving services and not as a substitute for staff
26.26 supervision or interactions with a person who is receiving services. If doors are locked or
26.27 toxic substances or dangerous items normally accessible to persons served by the program
26.28 are stored in locked cabinets, drawers, or containers, the license holder must justify and
26.29 document how this determination was made in consultation with the person or person's
26.30 legal representative, and how access will otherwise be provided to the person and all other
26.31 affected persons receiving services; and

26.32 (iii) a staff person is available on site who is trained in basic first aid whenever
26.33 persons are present and staff are required to be at the site to provide direct service;

26.34 (2) maintain equipment, vehicles, supplies, and materials owned or leased by the
26.35 license holder in good condition when used to provide services;

27.1 (3) follow procedures to ensure safe transportation, handling, and transfers of the
27.2 person and any equipment used by the person, when the license holder is responsible for
27.3 transportation of a person or a person's equipment;

27.4 (4) be prepared for emergencies and follow emergency response procedures to
27.5 ensure the person's safety in an emergency; and

27.6 (5) follow sanitary practices for infection control and to prevent communicable
27.7 diseases.

27.8 Subd. 3. **Compliance with fire and safety codes.** When services are provided at a
27.9 service site licensed according to chapter 245A or where the license holder is the owner,
27.10 lessor, or tenant of the service site, the license holder must document compliance with
27.11 applicable building codes, fire and safety codes, health rules, and zoning ordinances, or
27.12 document that an appropriate waiver has been granted.

27.13 Subd. 4. **Funds and property.** (a) Whenever the license holder assists a person
27.14 with the safekeeping of funds or other property according to section 245A.04, subdivision
27.15 13, the license holder must have written authorization to do so from the person and the
27.16 case manager.

27.17 (b) A license holder or staff person may not accept powers-of-attorney from a
27.18 person receiving services from the license holder for any purpose, and may not accept an
27.19 appointment as guardian or conservator of a person receiving services from the license
27.20 holder. This does not apply to license holders that are Minnesota counties or other units
27.21 of government or to staff persons employed by license holders who were acting as
27.22 power-of-attorney, guardian, or conservator for specific individuals prior to enactment of
27.23 this section. The license holder must maintain documentation of the power-of-attorney,
27.24 guardianship, or conservatorship in the service recipient record.

27.25 Subd. 5. **Prohibitions.** The license holder is prohibited from using psychotropic
27.26 medication as a substitute for adequate staffing, as punishment, for staff convenience,
27.27 or for any reason other than as prescribed. The license holder is prohibited from using
27.28 restraints or seclusion under any circumstance, unless the commissioner has approved a
27.29 variance request from the license holder that allows for the emergency use of restraints
27.30 and seclusion according to terms and conditions approved in the variance.

27.31 Sec. 22. **[245D.07] SERVICE NEEDS.**

27.32 Subdivision 1. **Provision of services.** The license holder must provide services as
27.33 specified in the service plan and assigned to the license holder. The provision of services
27.34 must comply with the requirements of this chapter and the federal waiver plans.

28.1 Subd. 2. **Service planning.** The license holder must participate in support team
28.2 meetings related to the person following stated timelines established in the person's service
28.3 plan or as requested by the support team, the person, or the person's legal representative.

28.4 Subd. 3. **Reports.** The license holder must provide written reports regarding the
28.5 person's progress or status as requested by the person, the person's legal representative, the
28.6 case manager, or the team.

28.7 Sec. 23. **[245D.08] RECORD REQUIREMENTS.**

28.8 Subdivision 1. **Record-keeping systems.** The license holder must ensure that the
28.9 content and format of service recipient, personnel, and program records are uniform,
28.10 legible, and in compliance with the requirements of this chapter.

28.11 Subd. 2. **Service recipient record.** (a) The license holder must:

28.12 (1) maintain a record of current services provided to each person on the premises
28.13 where the services are provided or coordinated; and

28.14 (2) protect service recipient records against loss, tampering, or unauthorized
28.15 disclosure in compliance with sections 13.01 to 13.10 and 13.46.

28.16 (b) The license holder must maintain the following information for each person:

28.17 (1) identifying information, including the person's name, date of birth, address, and
28.18 telephone number;

28.19 (2) the name, address, and telephone number of the person's legal representative, if
28.20 any, an emergency contact, the case manager, and family members or others as identified
28.21 by the person or case manager;

28.22 (3) service information, including service initiation information, verification of the
28.23 person's eligibility for services, and documentation verifying that services have been
28.24 provided as identified in the service plan according to paragraph (a);

28.25 (4) health information, including medical history and allergies; and when the license
28.26 holder is assigned responsibility for meeting the person's health needs according to section
28.27 245D.05:

28.28 (i) current orders for medication, treatments, or medical equipment;

28.29 (ii) medication administration procedures;

28.30 (iii) a medication administration record documenting the implementation of the
28.31 medication administration procedures, including any agreements for administration of
28.32 injectable medications by the license holder; and

28.33 (iv) a medical appointment schedule;

28.34 (5) the person's current service plan or that portion of the plan assigned to the
28.35 license holder. When a person's case manager does not provide a current service plan,

29.1 the license holder must make a written request to the case manager to provide a copy of
 29.2 the service plan and inform the person of the right to a current service plan and the right
 29.3 to appeal under section 256.045;

29.4 (6) a record of other service providers serving the person when the person's service
 29.5 plan identifies the need for coordination between the service providers, that includes
 29.6 a contact person and telephone numbers, services being provided, and names of staff
 29.7 responsible for coordination;

29.8 (7) documentation of orientation to the service recipient rights according to section
 29.9 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to
 29.10 section 245A.65, subdivision 1, paragraph (c);

29.11 (8) copies of authorizations to handle a person's funds, according to section 245D.06,
 29.12 subdivision 4, paragraph (a);

29.13 (9) documentation of complaints received and grievance resolution;

29.14 (10) incident reports required under section 245D.06, subdivision 1;

29.15 (11) copies of written reports regarding the person's status when requested according
 29.16 to section 245D.07, subdivision 3; and

29.17 (12) discharge summary, including service termination notice and related
 29.18 documentation, when applicable.

29.19 Subd. 3. **Access to service recipient records.** The license holder must ensure that
 29.20 the following people have access to the information in subdivision 1 in accordance with
 29.21 applicable state and federal law, regulation, or rule:

29.22 (1) the person, the person's legal representative, and anyone properly authorized
 29.23 by the person;

29.24 (2) the person's case manager;

29.25 (3) staff providing services to the person unless the information is not relevant to
 29.26 carrying out the service plan; and

29.27 (4) the county adult foster care licenser, when services are also licensed as adult
 29.28 foster care.

29.29 Subd. 4. **Personnel records.** The license holder must maintain a personnel record
 29.30 of each employee, direct service volunteer, and subcontractor to document and verify staff
 29.31 qualifications, orientation, and training. For the purposes of this subdivision, the terms
 29.32 "staff" or "staff person" mean paid employee, direct service volunteer, or subcontractor.
 29.33 The personnel record must include:

29.34 (1) the staff person's date of hire, completed application, a position description
 29.35 signed by the staff person, documentation that the staff person meets the position
 29.36 requirements as determined by the license holder, the date of first supervised direct contact

30.1 with a person served by the program, and the date of first unsupervised direct contact with
30.2 a person served by the program;

30.3 (2) documentation of staff qualifications, orientation, training, and performance
30.4 evaluations as required under section 245D.09, subdivisions 3, 4, and 5, including the
30.5 date the training was completed, the number of hours per subject area, and the name and
30.6 qualifications of the trainer or instructor; and

30.7 (3) a completed background study as required under chapter 245C.

30.8 Sec. 24. **[245D.09] STAFFING STANDARDS.**

30.9 Subdivision 1. **Staffing requirements.** The license holder must provide direct
30.10 service staff sufficient to ensure the health, safety, and protection of rights of each person
30.11 and to be able to implement the responsibilities assigned to the license holder in each
30.12 person's service plan.

30.13 Subd. 2. **Supervision of staff having direct contact.** Except for a license holder
30.14 who are the sole direct service staff, the license holder must provide adequate supervision
30.15 of staff providing direct service to ensure the health, safety, and protection of rights of
30.16 each person and implementation of the responsibilities assigned to the license holder in
30.17 each person's service plan.

30.18 Subd. 3. **Staff qualifications.** (a) The license holder must ensure that staff is
30.19 competent through training, experience, and education to meet the person's needs and
30.20 additional requirements as written in the service plan, or when otherwise required by the
30.21 case manager or the federal waiver plan. The license holder must verify and maintain
30.22 evidence of staff competency, including documentation of:

30.23 (1) education and experience qualifications, including a valid degree and transcript,
30.24 or a current license, registration, or certification, when a degree or licensure, registration,
30.25 or certification is required;

30.26 (2) completion of required orientation and training, including completion of
30.27 continuing education required to maintain professional licensure, registration, or
30.28 certification requirements; and

30.29 (3) except for a license holder who is the sole direct service staff, performance
30.30 evaluations completed by the license holder of the direct service staff person's ability to
30.31 perform the job functions based on direct observation.

30.32 (b) Staff under 18 years of age may not perform overnight duties or administer
30.33 medication.

30.34 Subd. 4. **Orientation.** (a) Except for a license holder who does not supervise any
30.35 direct service staff, within 90 days of hiring direct service staff, the license holder must

31.1 provide and ensure completion of orientation that combines supervised on-the-job training
31.2 with review of and instruction on the following:

31.3 (1) the job description and how to complete specific job functions, including:

31.4 (i) responding to and reporting incidents as required under section 245D.06,
31.5 subdivision 1; and

31.6 (ii) following safety practices established by the license holder and as required in
31.7 section 245D.06, subdivision 2;

31.8 (2) the license holder's current policies and procedures required under this chapter,
31.9 including their location and access, and staff responsibilities related to implementation
31.10 of those policies and procedures;

31.11 (3) data privacy requirements according to sections 13.01 to 13.10 and 13.46, the
31.12 federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and staff
31.13 responsibilities related to complying with data privacy practices;

31.14 (4) the service recipient rights under section 245D.04, and staff responsibilities
31.15 related to ensuring the exercise and protection of those rights;

31.16 (5) sections 245A.65; 245A.66, 626.556, and 626.557, governing maltreatment
31.17 reporting and service planning for children and vulnerable adults, and staff responsibilities
31.18 related to protecting persons from maltreatment and reporting maltreatment;

31.19 (6) what constitutes use of restraints, seclusion, and psychotropic medications, and
31.20 staff responsibilities related to the prohibitions of their use; and

31.21 (7) other topics as determined necessary in the person's service plan by the case
31.22 manager or other areas identified by the license holder.

31.23 (b) License holders who provide direct service themselves must complete the
31.24 orientation required in paragraph (a), clauses (3) to (7).

31.25 (c) Before providing unsupervised direct service to a person served by the program,
31.26 or for whom the staff person has not previously provided direct service, or any time the
31.27 plans or procedures identified in clauses (1) and (2) are revised, the staff person must
31.28 review and receive instruction on the following as it relates to the staff person's job
31.29 functions for that person:

31.30 (1) the person's service plan as it relates to the responsibilities assigned to the license
31.31 holder, and when applicable, the person's individual abuse prevention plan according to
31.32 section 245A.65, to achieve an understanding of the person as a unique individual, and
31.33 how to implement those plans; and

31.34 (2) medication administration procedures established for the person when assigned
31.35 to the license holder according to section 245D.05, subdivision 1, paragraph (b).

31.36 Unlicensed staff may administer medications only after successful completion of a

32.1 medication administration training, from a training curriculum developed by a registered
32.2 nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse
32.3 practitioner, physician's assistant, or physician incorporating an observed skill assessment
32.4 conducted by the trainer to ensure staff demonstrate the ability to safely and correctly
32.5 follow medication procedures. Medication administration must be taught by a registered
32.6 nurse, clinical nurse specialist, certified nurse practitioner, physician's assistant, or
32.7 physician, if at the time of service initiation or any time thereafter, the person has or
32.8 develops a health care condition that affects the service options available to the person
32.9 because the condition requires:

- 32.10 (i) specialized or intensive medical or nursing supervision;
32.11 (ii) nonmedical service providers to adapt their services to accommodate the health
32.12 and safety needs of the person; and
32.13 (iii) necessary training in order to meet the health service needs of the person as
32.14 determined by the person's physician.

32.15 Subd. 5. **Training.** (a) A license holder must provide annual training to direct
32.16 service staff on the topics identified in subdivision 4, paragraph (a), clauses (3) to (6).

32.17 (b) A license holder providing behavioral programming, specialist services, personal
32.18 support, 24-hour emergency assistance, night supervision, independent living skills,
32.19 structured day, prevocational, or supported employment services must provide a minimum
32.20 of eight hours of annual training to direct service staff that addresses:

- 32.21 (1) topics related to the general health, safety, and service needs of the population
32.22 served by the license holder; and
32.23 (2) other areas identified by the license holder or in the person's current service plan.

32.24 Training on relevant topics received from sources other than the license holder
32.25 may count toward training requirements.

32.26 (c) When the license holder is the owner, lessor, or tenant of the service site and
32.27 whenever a person receiving services is present at the site, the license holder must have
32.28 a staff person available on site who is trained in basic first aid and, when required in a
32.29 person's service plan, cardiopulmonary resuscitation.

32.30 Subd. 6. **Subcontractors.** If the license holder uses a subcontractor to perform
32.31 services licensed under this chapter on their behalf, the license holder must ensure that the
32.32 subcontractor meets and maintains compliance with all requirements under this chapter
32.33 that apply to the services to be provided.

32.34 Subd. 7. **Volunteers.** The license holder must ensure that volunteers who provide
32.35 direct services to persons served by the program receive the training, orientation, and
32.36 supervision necessary to fulfill their responsibilities.

33.1 Sec. 25. **[245D.10] POLICIES AND PROCEDURES.**

33.2 **Subdivision 1. Policy and procedure requirements.** The license holder must
33.3 establish, enforce, and maintain policies and procedures as required in this chapter.

33.4 **Subd. 2. Grievances.** The license holder must establish policies and procedures that
33.5 provide a simple complaint process for persons served by the program and their authorized
33.6 representatives to bring a grievance that:

33.7 (1) provides staff assistance with the complaint process when requested, and the
33.8 addresses and telephone numbers of outside agencies to assist the person;

33.9 (2) allows the person to bring the complaint to the highest level of authority in the
33.10 program if the grievance cannot be resolved by other staff members, and that provides
33.11 the name, address, and telephone number of that person;

33.12 (3) requires the license holder to promptly respond to all complaints affecting a
33.13 person's health and safety. For all other complaints the license holder must provide an
33.14 initial response within 14 calendar days of receipt of the complaint. All complaints must
33.15 be resolved within 30 calendar days of receipt or the license holder must document the
33.16 reason for the delay and a plan for resolution;

33.17 (4) requires a complaint review that includes an evaluation of whether:

33.18 (i) related policies and procedures were followed and adequate;

33.19 (ii) there is a need for additional staff training;

33.20 (iii) the complaint is similar to past complaints with the persons, staff, or services
33.21 involved; and

33.22 (iv) there is a need for corrective action by the license holder to protect the health
33.23 and safety of persons receiving services;

33.24 (5) based on the review in clause (4), requires the license holder to develop,
33.25 document, and implement a corrective action plan, designed to correct current lapses and
33.26 prevent future lapses in performance by staff or the license holder, if any;

33.27 (6) provides a written summary of the complaint and a notice of the complaint
33.28 resolution to the person and case manager, that:

33.29 (i) identifies the nature of the complaint and the date it was received;

33.30 (ii) includes the results of the complaint review;

33.31 (iii) identifies the complaint resolution, including any corrective action; and

33.32 (7) requires that the complaint summary and resolution notice be maintained in the
33.33 service recipient record.

33.34 **Subd. 3. Service suspension and service termination.** (a) The license holder must
33.35 establish policies and procedures for temporary service suspension and service termination

34.1 that promote continuity of care and service coordination with the person and the case
34.2 manager, and with other licensed caregivers, if any, who also provide support to the person.

34.3 (b) The policy must include the following requirements:

34.4 (1) the license holder must notify the person and case manager in writing of the
34.5 intended termination or temporary service suspension, and the person's right to seek a
34.6 temporary order staying the termination of service according to the procedures in section
34.7 256.045, subdivision 4a, or 6, paragraph (c);

34.8 (2) notice of the proposed termination of services, including those situations
34.9 that began with a temporary service suspension, must be given at least 60 days before
34.10 the proposed termination is to become effective when a license holder is providing
34.11 independent living skills training, structured day, prevocational or supported employment
34.12 services to the person, and 30 days prior to termination for all other services licensed
34.13 under this chapter;

34.14 (3) the license holder must provide information requested by the person or case
34.15 manager when services are temporarily suspended or upon notice of termination;

34.16 (4) prior to giving notice of service termination or temporary service suspension,
34.17 the license holder must document actions taken to minimize or eliminate the need for
34.18 service suspension or termination;

34.19 (5) during the temporary service suspension or service termination notice period,
34.20 the license holder will work with the appropriate county agency to develop reasonable
34.21 alternatives to protect the person and others;

34.22 (6) the license holder must maintain information about the service suspension or
34.23 termination, including the written termination notice, in the service recipient record; and

34.24 (7) the license holder must restrict temporary service suspension to situations in
34.25 which the person's behavior causes immediate and serious danger to the health and safety
34.26 of the person or others.

34.27 Subd. 4. **Availability of current written policies and procedures.** (a) The license
34.28 holder must review and update, as needed, the written policies and procedures required
34.29 under this chapter.

34.30 (b) The license holder must inform the person and case manager of the policies and
34.31 procedures affecting a person's rights under section 245D.04, and provide copies of those
34.32 policies and procedures, within five working days of service initiation.

34.33 (c) The license holder must provide a written notice at least 30 days before
34.34 implementing any revised policies and procedures affecting a person's rights under section
34.35 245D.04. The notice must explain the revision that was made and include a copy of

35.1 the revised policy and procedure. The license holder must document the reason for not
35.2 providing the notice at least 30 days before implementing the revisions.

35.3 (d) Before implementing revisions to required policies and procedures the license
35.4 holder must inform all employees of the revisions and provide training on implementation
35.5 of the revised policies and procedures.

35.6 Sec. 26. Minnesota Statutes 2010, section 256B.4912, is amended to read:

35.7 **256B.4912 HOME AND COMMUNITY-BASED WAIVERS; PROVIDERS**
35.8 **AND PAYMENT.**

35.9 Subdivision 1. **Provider qualifications.** For the home and community-based
35.10 waivers providing services to seniors and individuals with disabilities, the commissioner
35.11 shall establish:

35.12 (1) agreements with enrolled waiver service providers to ensure providers meet
35.13 ~~qualifications defined in the waiver plans~~ Minnesota health care program requirements;

35.14 (2) regular reviews of provider qualifications, and including requests of proof of
35.15 documentation; and

35.16 (3) processes to gather the necessary information to determine provider
35.17 qualifications.

35.18 ~~By July 2010, Beginning July 1, 2012,~~ staff that provide direct contact, as defined
35.19 in section 245C.02, subdivision 11, ~~that are employees of waiver service providers for~~
35.20 services specified in the federally approved waiver plans must meet the requirements
35.21 of chapter 245C prior to providing waiver services and as part of ongoing enrollment.
35.22 Upon federal approval, this requirement must also apply to consumer-directed community
35.23 supports.

35.24 Subd. 2. ~~Rate-setting~~ **Payment methodologies.** (a) The commissioner shall
35.25 establish statewide ~~rate-setting~~ payment methodologies that meet federal waiver
35.26 requirements for home and community-based waiver services for individuals with
35.27 disabilities. The ~~rate-setting~~ payment methodologies must abide by the principles of
35.28 transparency and equitability across the state. The methodologies must involve a uniform
35.29 process of structuring rates for each service and must promote quality and participant
35.30 choice.

35.31 (b) As of January 1, 2012, counties shall not implement changes to established
35.32 processes for rate-setting methodologies for individuals using components of or data
35.33 from research rates.

35.34 Subd. 3. **Payment requirements.** The payment methodologies established under
35.35 this section shall accommodate:

- 36.1 (1) supervision costs;
36.2 (2) staffing patterns;
36.3 (3) program-related expenses;
36.4 (4) general and administrative expenses; and
36.5 (5) consideration of recipient intensity.

36.6 Subd. 4. **Payment rate criteria.** (a) The payment methodologies under this section
36.7 shall reflect the payment rate criteria in paragraphs (b), (c), and (d).

36.8 (b) Payment rates shall reflect the reasonable, ordinary, and necessary costs of
36.9 service delivery.

36.10 (c) Payment rates shall be sufficient to enlist enough providers so that care and
36.11 services are available at least to the extent that such care and services are available to
36.12 the general population in the geographic area as required by section 1902(a)(30)(A) of
36.13 the Social Security Act.

36.14 (d) The commissioner must not reimburse:

36.15 (1) unauthorized service delivery;

36.16 (2) services provided under a receipt of a special grant;

36.17 (3) services provided under contract to a local school district;

36.18 (4) extended employment services under Minnesota Rules, parts 3300.2005 to
36.19 3300.3100, or vocational rehabilitation services provided under the federal Rehabilitation
36.20 Act, as amended, Title I, section 110, or Title VI-C, and not through use of medical
36.21 assistance or county social service funds; or

36.22 (5) services provided to a client by a licensed medical, therapeutic, or rehabilitation
36.23 practitioner or any other vendor of medical care which are billed separately on a
36.24 fee-for-service basis.

36.25 Subd. 5. **County and tribal provider contract elimination.** County and tribal
36.26 contracts with providers of home and community-based waiver services provided under
36.27 sections 256B.0913, 256B.0915, 256B.092, and 256B.49 are eliminated effective January
36.28 1, 2014.

36.29 Subd. 6. **Program standards.** The commissioner of human services must establish
36.30 uniform program standards for services identified in chapter 245D for persons with
36.31 disabilities and people age 65 and older. The commissioner must grant licenses according
36.32 to the provisions of chapter 245A.

36.33 Subd. 7. **Applicant and license holder training.** An applicant or license holder
36.34 that is not enrolled as a Minnesota health care program home and community-based
36.35 services waiver provider at the time of application must ensure that at least one controlling
36.36 individual completes a onetime training on the requirements for providing home and

37.1 community-based services from a qualified source as determined by the commissioner,
37.2 before a provider is enrolled or license is issued.

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

37.4 Sec. 27. **[256B.4913] PAYMENT METHODOLOGY DEVELOPMENT.**

37.5 Subdivision 1. **Research period and rates.** (a) For the purposes of this
37.6 section, "research rate" means a proposed payment rate for the provision of home
37.7 and community-based waived services to meet federal requirements and assess
37.8 the implications of changing resources on the provision of services and "research
37.9 period" means the time period during which the research rate is being assessed by the
37.10 commissioner.

37.11 (b) The commissioner shall determine and publish initial frameworks and values to
37.12 generate research rates for individuals receiving home and community-based services.

37.13 (c) The initial values issued by the commissioner shall ensure projected spending
37.14 for home and community-based services for each service area is equivalent to projected
37.15 spending under current law in the most recent expenditure forecast.

37.16 (d) The initial values issued shall be based on the most updated information and cost
37.17 data available on supervision, employee-related costs, client programming and supports,
37.18 programming planning supports, transportation, administrative overhead, and utilization
37.19 costs. These service areas are:

37.20 (1) residential services, defined as corporate foster care, family foster care, residential
37.21 care, supported living services, customized living, and 24-hour customized living;

37.22 (2) day program services, defined as adult day care, day training and habilitation,
37.23 prevocational services, structured day services, and transportation;

37.24 (3) unit-based services with programming, defined as in-home family support,
37.25 independent living services, supported living services, supported employment, behavior
37.26 programming, and housing access coordination; and

37.27 (4) unit-based services without programming, defined as respite, personal support,
37.28 and night supervision.

37.29 (e) The commissioner shall make available the underlying assessment information,
37.30 without any identifying information, and the statistical modeling used to generate the
37.31 initial research rate and calculate budget neutrality.

37.32 Subd. 2. **Framework values.** (a) The commissioner shall propose legislation with
37.33 the specific payment methodology frameworks, process for calculation, and specific
37.34 values to populate the frameworks by February 15, 2013.

38.1 (b) The commissioner shall provide underlying data and information used to
38.2 formulate the final frameworks and values to the existing stakeholder workgroup by
38.3 January 15, 2013.

38.4 (c) The commissioner shall provide recommendations for the final frameworks
38.5 and values, and the basis for the recommendations to the legislative committees with
38.6 jurisdiction over health and human services finance by February 15, 2013.

38.7 (d) The commissioner shall review the following topics during the research period
38.8 and propose, as necessary, recommendations to address the following research questions:

38.9 (1) underlying differences in the cost to provide services throughout the state;

38.10 (2) a data-driven process for determining labor costs and customizations for staffing
38.11 classifications included in each rate framework based on the services performed;

38.12 (3) the allocation of resources previously established under section 256B.501,
38.13 subdivision 4b;

38.14 (4) further definition and development of unit-based services;

38.15 (5) the impact of splitting the allocation of resources for unit-based services for those
38.16 with programming aspects and those without;

38.17 (6) linking assessment criteria to future assessment processes for determination
38.18 of customizations;

38.19 (7) recognition of cost differences in the use of monitoring technology where it is
38.20 appropriate to substitute for supervision;

38.21 (8) implications for day services of reimbursement based on a unit rate and a daily
38.22 rate;

38.23 (9) a definition of shared and individual staffing for unit-based services;

38.24 (10) the underlying costs of providing transportation associated with day services;

38.25 and

38.26 (11) an exception process for individuals with exceptional needs that cannot be met
38.27 under the initial research rate, and an alternative payment structure for those individuals.

38.28 (e) The commissioner shall develop a comprehensive plan based on information
38.29 gathered during the research period that uses statistically reliable and valid assessment
38.30 data to refine payment methodologies.

38.31 (f) The commissioner shall make recommendations and provide underlying data and
38.32 information used to formulate these research recommendations to the existing stakeholder
38.33 workgroup by January 15, 2013.

38.34 Subd. 3. **Data collection.** (a) The commissioner shall conduct any necessary
38.35 research and gather additional data for the further development and refinement of payment
38.36 methodology components. These include but are not limited to:

39.1 (1) levels of service utilization and patterns of use;

39.2 (2) staffing patterns for each service;

39.3 (3) profile of individual service needs; and

39.4 (4) cost factors involved in providing transportation services.

39.5 (b) The commissioner shall provide this information to the existing stakeholder
39.6 workgroup by January 15, 2013.

39.7 Subd. 4. **Rate stabilization adjustment.** Beginning January 1, 2014, the
39.8 commissioner shall adjust individual rates determined by the new payment methodology
39.9 so that the new rate varies no more than one percent per year from the rate effective
39.10 on December 31 of the prior calendar year. This adjustment is made annually and is
39.11 effective for three calendar years from the date of implementation. This subdivision
39.12 expires January 1, 2017.

39.13 Subd. 5. **Stakeholder consultation.** The commissioner shall continue consultation
39.14 on regular intervals with the existing stakeholder group established as part of the
39.15 rate-setting methodology process to gather input, concerns, data, and exchange ideas for
39.16 the legislative proposals for the new rate payment system and make pertinent information
39.17 available to the public through the department's Web site.

39.18 Subd. 6. **Implementation.** The commissioner may implement changes no
39.19 sooner than January 1, 2014, to payment rates for individuals receiving home and
39.20 community-based waived services after the enactment of legislation that establishes
39.21 specific payment methodology frameworks, processes for rate calculations, and specific
39.22 values to populate the payment methodology frameworks.

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