

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 2234**

(SENATE AUTHORS: NIENOW)

DATE	D-PG	OFFICIAL STATUS
03/05/2012	4105	Introduction and first reading Referred to Health and Human Services
03/08/2012		Comm report: To pass as amended Second reading

A bill for an act

1.1 relating to human services; amending continuing care policy provisions; making
1.2 changes to disability services and licensing provisions; establishing home and
1.3 community-based services standards; establishing payment methodologies;
1.4 requiring a report; amending Minnesota Statutes 2010, sections 245A.03,
1.5 subdivision 2; 245A.041, by adding subdivisions; 245A.085; 245B.02,
1.6 subdivision 10, by adding a subdivision; 245B.04, subdivisions 1, 2, 3; 245B.05,
1.7 subdivision 1; 245B.06, subdivision 2; 245B.07, subdivisions 5, 9, 10, by
1.8 adding a subdivision; 252.40; 252.41, subdivision 3; 252.42; 252.43; 252.44;
1.9 252.45; 252.451, subdivisions 2, 5; 252.46, subdivision 1a; 256B.0916,
1.10 subdivision 2; 256B.49, subdivision 17; 256B.4912; 256B.501, subdivision
1.11 4b; 256B.5013, subdivision 1; Minnesota Statutes 2011 Supplement, section
1.12 256B.49, subdivision 16a; proposing coding for new law in Minnesota Statutes,
1.13 chapters 245A; 256B; proposing coding for new law as Minnesota Statutes,
1.14 chapter 245D; repealing Minnesota Statutes 2010, sections 252.46, subdivisions
1.15 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21; 256B.501, subdivision 8.
1.16

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

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

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

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

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

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

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

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

2.4 (6) nonresidential programs primarily for children that provide care or supervision
2.5 for periods of less than three hours a day while the child's parent or legal guardian is in
2.6 the same building as the nonresidential program or present within another building that is
2.7 directly contiguous to the building in which the nonresidential program is located;

2.8 (7) nursing homes or hospitals licensed by the commissioner of health except as
2.9 specified under section 245A.02;

2.10 (8) board and lodge facilities licensed by the commissioner of health that do not
2.11 provide children's residential services under Minnesota Rules, chapter 2960, mental health
2.12 or chemical dependency treatment;

2.13 (9) homes providing programs for persons placed by a county or a licensed agency
2.14 for legal adoption, unless the adoption is not completed within two years;

2.15 (10) programs licensed by the commissioner of corrections;

2.16 (11) recreation programs for children or adults that are operated or approved by a
2.17 park and recreation board whose primary purpose is to provide social and recreational
2.18 activities;

2.19 (12) programs operated by a school as defined in section 120A.22, subdivision 4;
2.20 YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as
2.21 defined in section 315.51, whose primary purpose is to provide child care or services to
2.22 school-age children;

2.23 (13) Head Start nonresidential programs which operate for less than 45 days in
2.24 each calendar year;

2.25 (14) noncertified boarding care homes unless they provide services for five or more
2.26 persons whose primary diagnosis is mental illness or a developmental disability;

2.27 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and
2.28 art programs, and nonresidential programs for children provided for a cumulative total of
2.29 less than 30 days in any 12-month period;

2.30 (16) residential programs for persons with mental illness, that are located in hospitals;

2.31 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or
2.32 the congregate care of children by a church, congregation, or religious society during the
2.33 period used by the church, congregation, or religious society for its regular worship;

2.34 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
2.35 4630;

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3.1 (19) mental health outpatient services for adults with mental illness or children
3.2 with emotional disturbance;

3.3 (20) residential programs serving school-age children whose sole purpose is cultural
3.4 or educational exchange, until the commissioner adopts appropriate rules;

3.5 (21) unrelated individuals who provide out-of-home respite care services to persons
3.6 with developmental disabilities from a single related family for no more than 90 days in a
3.7 12-month period and the respite care services are for the temporary relief of the person's
3.8 family or legal representative;

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

3.11 (23) community support services programs as defined in section 245.462, subdivision
3.12 6, and family community support services as defined in section 245.4871, subdivision 17;

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

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

3.17 (26) chemical dependency or substance abuse treatment activities of licensed
3.18 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
3.19 15, when the treatment activities are not paid for by the consolidated chemical dependency
3.20 treatment fund;

3.21 (27) consumer-directed community support service funded under the Medicaid
3.22 waiver for persons with developmental disabilities when the individual who provided
3.23 the service is:

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

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

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

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

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

3.35 A program that asserts its exemption from licensure under item (ii) shall, upon
3.36 request from the commissioner, provide the commissioner with documentation from the

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4.1 accrediting agency that verifies: that the accreditation is current; that the accrediting
4.2 agency investigates complaints about services; and that the accrediting agency's standards
4.3 require background studies on all people providing direct contact services.

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

4.8 (c) Except for the home and community-based services identified in section
4.9 245D.03, subdivision 1, nothing in this chapter shall be construed to require licensure for
4.10 any services provided and funded according to an approved federal waiver plan where
4.11 licensure is specifically identified as not being a condition for the services and funding.

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

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

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

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

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

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

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

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

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

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

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

5.7 (2) the license holder must ensure that the use of electronic record keeping does not
5.8 limit the commissioner's access to records as specified under section 245A.04, subdivision
5.9 5;

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

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

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

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

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

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

5.21 Sec. 4. Minnesota Statutes 2010, section 245A.085, is amended to read:

5.22 **245A.085 CONSOLIDATION OF HEARINGS; RECONSIDERATION.**

5.23 Hearings authorized under this chapter, chapter 245C, and sections 256.045,
5.24 256B.04, 626.556, and 626.557, shall be consolidated if feasible and in accordance with
5.25 other applicable statutes and rules. Reconsideration under sections 245C.28; 626.556,
5.26 subdivision 10i; and 626.557, subdivision 9d, shall also be consolidated if feasible.

5.27 Sec. 5. **[245A.042] HOME AND COMMUNITY-BASED SERVICES;**
5.28 **ADDITIONAL STANDARDS AND PROCEDURES.**

5.29 Subdivision 1. **Standards governing the provision of home and community-based**
5.30 **services.** Residential and nonresidential programs for persons with disabilities or
5.31 age 65 and older must obtain a license according to this chapter to provide home and
5.32 community-based services defined in the federal waiver plans governed by United States
5.33 Code, title 42, sections 1396 et seq., or the state's alternative care program according to
5.34 section 256B.0913, and identified in section 245D.03, subdivision 1. As a condition

6.1 of licensure, an applicant or license holder must demonstrate and maintain verification
6.2 of compliance with:

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

6.4 (2) applicable health care program requirements under Minnesota Rules, parts
6.5 9505.0170 to 9505.0475 and 9505.2160 to 9505.2245; and

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

6.8 Subd. 2. **Applicant and license holder training.** (a) An applicant or license holder
6.9 that is not enrolled as a Minnesota health care program home and community-based
6.10 services waiver provider at the time of application must ensure that at least one controlling
6.11 individual completes a onetime training on the requirements for providing home services,
6.12 as prescribed by the commissioner, before a license is issued.

6.13 (b) Within 30 days of completing the training, the applicant or license holder
6.14 must ensure that the controlling individual provides a copy and an explanation of the
6.15 information and materials received from the training to all other controlling individuals.

6.16 Subd. 3. **Implementation.** Implementation of licensure of home and
6.17 community-based services according to this section will be phased in upon receipt of an
6.18 appropriation to the Department of Human Services sufficient to cover the costs to support
6.19 necessary licensing functions.

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

6.22 Subd. 8a. **Emergency.** "Emergency" means any fires, severe weather, natural
6.23 disasters, power failures, or other events that threaten the immediate health and safety of a
6.24 person receiving services that require emergency evacuation, moving to an emergency
6.25 shelter, or temporary closure or relocation of the program to another facility or service site.

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

6.27 Subd. 10. **Incident.** "Incident" means any of the following:

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

6.29 (2) a consumer's death;

6.30 (3) any medical emergencies, unexpected serious illnesses, or ~~accidents~~ significant
6.31 unexpected changes in illnesses or medical conditions of a person that require physician
6.32 treatment or hospitalization;

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

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

7.4 ~~(6)~~ (5) physical aggression by a consumer against another consumer that causes
7.5 physical pain, injury, or persistent emotional distress, including, but not limited to, hitting,
7.6 slapping, kicking, scratching, pinching, biting, pushing, and spitting;

7.7 ~~(7)~~ (6) any sexual activity between consumers involving force or coercion as defined
7.8 under section 609.341, subdivisions 3 and 14; or

7.9 ~~(8)~~ (7) a report of child or vulnerable adult maltreatment under section 626.556 or
7.10 626.557.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.13 (2) access records and recorded information;

8.14 (3) be free from maltreatment;

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

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

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

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

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

8.26 ~~(5)~~ (9) voice grievances, know the contact persons responsible for addressing
8.27 problems and how to contact those persons;

8.28 ~~(6)~~ (10) any procedures for grievance or complaint resolution and the right to appeal
8.29 under section 256.045;

8.30 ~~(7)~~ (11) know the name and address of the state, county, or advocacy agency to
8.31 contact for additional information or assistance;

8.32 ~~(8)~~ (12) assert these rights personally, or have them asserted by the consumer's
8.33 family or legal representative, without retaliation;

8.34 ~~(9)~~ (13) give or withhold written informed consent to participate in any research or
8.35 experimental treatment;

9.1 ~~(10)~~ (14) have daily, private access to and use of a non-coin-operated telephone for
9.2 local calls and long-distance calls made collect or paid for by the resident;

9.3 ~~(11)~~ (15) receive and send, without interference, uncensored, unopened mail or
9.4 electronic correspondence or communication;

9.5 ~~(12)~~ (16) marital privacy for visits with the consumer's spouse and, if both are
9.6 residents of the site, the right to share a bedroom and bed;

9.7 ~~(13)~~ (17) associate with other persons of the consumer's choice;

9.8 ~~(14)~~ (18) personal privacy; and

9.9 ~~(15)~~ (19) engage in chosen activities.

9.10 (b) Restriction of a person's protection-related rights under paragraph (a), clauses
9.11 (13) to (15), is allowed only if determined necessary to ensure the health, safety,
9.12 and well-being of the person by the support team, the person or the person's legal
9.13 representative, and the case manager. The need for any restriction must be fully
9.14 documented in an assessment of the person's vulnerability and risk of maltreatment
9.15 related to the exercise of these rights by the person. Written informed consent for the
9.16 restriction of a protection-related right must be obtained from the person or the person's
9.17 legal representative according to paragraph (c).

9.18 (c) Written informed consent for the restriction of a protection-related right obtained
9.19 from the person or the person's legal representative must:

9.20 (1) specify the nature of the limitation and the conditions and timelines under which
9.21 the limitation will be removed and the right fully restored; and

9.22 (2) explain that:

9.23 (i) consent may be withdrawn at any time and the restriction will be discontinued
9.24 upon withdrawal of consent;

9.25 (ii) consent is time-limited and automatically expires annually after the date on
9.26 which consent was given; and

9.27 (iii) upon expiration, written informed consent must be obtained again in order for
9.28 the restriction to continue.

9.29 The person or the person's legal representative must be provided a copy of the
9.30 signed informed consent form.

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

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

9.33 (1) ensure that services are provided in a safe and hazard-free environment when the
9.34 license holder is the owner, lessor, or tenant of the service site. All other license holders

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10.1 shall inform the consumer or the consumer's legal representative and case manager about
10.2 any environmental safety concerns in writing;

10.3 (2) lock doors only to protect the safety of consumers and not as a substitute for staff
10.4 supervision or interactions with consumers. If doors are locked to protect a person's
10.5 safety, the license holder must justify and document how this determination was made
10.6 in consultation with the person or the person's legal representative and how access will
10.7 otherwise be provided to the person and all other affected persons receiving services;

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

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

10.12 Sec. 12. Minnesota Statutes 2010, section 245B.06, subdivision 2, is amended to read:

10.13 Subd. 2. **Risk management plan.** (a) The license holder must develop, document
10.14 ~~in writing~~, and implement a risk management plan that meets the requirements of this
10.15 subdivision. License holders licensed under this chapter are exempt from sections
10.16 245A.65, subdivision 2, and 626.557, subdivision 14, if the requirements of this
10.17 subdivision are met.

10.18 (b) The risk management plan must identify areas in which the consumer is
10.19 vulnerable, based on an assessment, at a minimum, of the following areas:

10.20 (1) an adult consumer's susceptibility to physical, emotional, and sexual abuse as
10.21 defined in section 626.5572, subdivision 2, and financial exploitation as defined in section
10.22 626.5572, subdivision 9; a minor consumer's susceptibility to sexual and physical abuse as
10.23 defined in section 626.556, subdivision 2; and a consumer's susceptibility to self-abuse,
10.24 regardless of age;

10.25 (2) the consumer's ability to manage health needs, considering the consumer's:

10.26 (i) physical disabilities or sensory impairments and the ability to obtain and use
10.27 assistance, assistive technology, adaptive aids, or equipment;

10.28 ~~allergies; sensory impairments~~ (ii) ability to avoid allergens and manage allergic
10.29 reactions;

10.30 (iii) ability to manage seizures;

10.31 (iv) ability to follow diet and nutritional guidelines or orders;

10.32 (v) ability to eat without assistance and swallow without choking;

10.33 ~~need for medications~~ (vi) ability to self-administer and manage medication or
10.34 treatment orders;

10.35 ~~and~~ (vii) ability to obtain routine medical treatment; and

- 11.1 (viii) ability to respond to and report changes in physical and mental well-being;
11.2 (3) the consumer's personal safety needs skills, considering the consumer's ability to:
11.3 (i) take reasonable safety precautions to prevent accidents that could result in falls,
11.4 burns, or injury;
11.5 ~~community survival skills; water survival skills~~ (ii) prevent becoming lost or seeking
11.6 help if lost when in the community;
11.7 (iii) follow street safety rules;
11.8 (iv) use public transportation;
11.9 (v) drive or ride in a vehicle;
11.10 (vi) follow water survival skills sufficient to avoid drowning or near drowning;
11.11 ~~ability to~~ (vii) seek assistance with or provide medical care self-administer basic
11.12 first aid; and
11.13 ~~access to~~ (viii) safely handle or avoid toxic substances or dangerous items;
11.14 (4) ~~environmental issues~~ the environments, considering the consumer's ability to:
11.15 (i) recognize and respond to hazardous conditions in the program's location in a
11.16 particular neighborhood or community where the program is located or where services
11.17 are provided;
11.18 ~~the type of~~ (ii) move safely throughout the building or on the grounds and terrain
11.19 surrounding the building; and
11.20 ~~the consumer's ability to~~ (iii) respond to weather-related conditions, including
11.21 dressings appropriately for the weather or seeking shelter;
11.22 (iv) open locked doors; to evacuate a room or building in an emergency; and
11.23 (v) remain alone in any environment; and
11.24 (5) the consumer's behavior, including when the license holder knows that the
11.25 consumer has committed a violent crime or engages in behaviors that may increase
11.26 the likelihood of physical aggression between consumers, or sexual activity between
11.27 ~~consumers~~ involving force or coercion, as defined under section 245B.02, subdivision 10,
11.28 clauses (6) and (7), between consumers, or towards others. Under this clause, a license
11.29 holder knows of a consumer's history of criminal misconduct, physical aggression, or
11.30 sexual activity involving force or coercion, if the license holder receives such information
11.31 from a law enforcement authority, through a medical record prepared by a health care
11.32 provider, or the license holder's ongoing assessments of the consumer.
11.33 (c) When assessing a consumer's vulnerability, the license holder must consider only
11.34 the consumer's skills and abilities, independent of staffing patterns, supervision plans, the
11.35 environment, or other situational elements. License holders jointly providing services

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12.1 to a consumer shall coordinate and use the resulting assessment of risk areas for the
12.2 development of each license holder's risk management or the shared risk management plan.

12.3 ~~(d) License holders jointly providing services to a consumer shall coordinate and~~
12.4 ~~use the resulting assessment of risk areas for the development of each license holder's~~
12.5 ~~risk management or the shared risk management plan. The license holder's holder must~~
12.6 develop a plan must include that identifies the specific actions a staff person will take and
12.7 measures that will be taken to protect the consumer and minimize risks for the identified
12.8 vulnerability areas within the scope of the licensed services. The specific actions must:

12.9 (1) include the proactive measures being taken to reduce or minimize the risk,
12.10 training being provided to the consumer to develop skills or abilities to avoid or respond
12.11 to the risk as independently as possible, or a detailed description of actions a staff person
12.12 will take when intervention is needed; and

12.13 (2) be developed according to the requirements of subdivision 1, paragraph (b).
12.14 When the assessment indicates that the consumer is vulnerable but does not need specific
12.15 risk reduction measures, the risk management plan shall document and justify this
12.16 determination. The plan must identify recommendations made to the case manager when
12.17 the consumer is vulnerable to risks outside the scope or control of the licensed services.

12.18 (e) Prior to or upon initiating services, a license holder must develop an initial risk
12.19 management plan that is, at a minimum, verbally approved by the consumer or consumer's
12.20 legal representative and case manager. The license holder must document the date the
12.21 license holder receives the consumer's or consumer's legal representative's and case
12.22 manager's verbal approval of the initial plan.

12.23 (f) As part of the meeting held within 45 days of initiating service, as required
12.24 under section 245B.06, subdivision 4, the license holder must review the initial risk
12.25 management plan for accuracy and revise the plan if necessary. The license holder must
12.26 give the consumer or consumer's legal representative and case manager an opportunity to
12.27 participate in this plan review. If the license holder revises the plan, or if the consumer or
12.28 consumer's legal representative and case manager have not previously signed and dated
12.29 the plan, the license holder must obtain dated signatures to document the plan's approval.

12.30 (g) After plan approval, the license holder must review the plan at least annually and
12.31 update the plan based on the individual consumer's needs and changes to the environment.
12.32 The license holder must give the consumer or consumer's legal representative and case
12.33 manager an opportunity to participate in the ongoing plan development. The license holder
12.34 shall obtain dated signatures from the consumer or consumer's legal representative and
12.35 case manager to document completion of the annual review and approval of plan changes.

S.F. No. 2234, as introduced - 87th Legislative Session (2011-2012) [12-3991]

13.1 Sec. 13. Minnesota Statutes 2010, section 245B.07, subdivision 5, is amended to read:

13.2 Subd. 5. **Staff orientation.** (a) Within 60 days of hiring staff who provide direct
13.3 service, the license holder must provide 30 hours of staff orientation. Direct care staff
13.4 must complete 15 of the 30 hours orientation before providing any unsupervised direct
13.5 service to a consumer. If the staff person has received orientation training from a license
13.6 holder licensed under this chapter, or provides semi-independent living services only, the
13.7 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may
13.8 be reduced to 15 hours if the staff person has previously received orientation training from
13.9 a license holder licensed under this chapter.

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

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

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

13.17 (3) staff responsibilities related to emergency procedures;

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

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

13.24 (6) medication administration as it applies to the individual consumer, from a
13.25 training curriculum developed by a health services professional described in section
13.26 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding
13.27 health care needs, then medication administration taught by a health services professional.
13.28 Staff may administer medications only after they demonstrate the ability, as defined in the
13.29 license holder's medication administration policy and procedures. Once a consumer with
13.30 overriding health care needs is admitted, staff will be provided with remedial training as
13.31 deemed necessary by the license holder and the health professional to meet the needs of
13.32 that consumer.

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

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

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

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

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

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

14.8 Sec. 14. Minnesota Statutes 2010, section 245B.07, is amended by adding a
14.9 subdivision to read:

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

14.14 Sec. 15. Minnesota Statutes 2010, section 245B.07, subdivision 9, is amended to read:

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

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

14.18 (2) inform consumers or the consumer's legal representatives of the written policies
14.19 and procedures in this chapter upon service initiation. Copies of policies and procedures
14.20 affecting a consumer's rights under section 245D.04 must be provided upon service
14.21 initiation. Copies of all other policies and procedures must be available to consumers
14.22 or the consumer's legal representatives, case managers, the county where services are
14.23 located, and the commissioner upon request;

14.24 (3) provide all consumers or the consumers' legal representatives and case managers
14.25 a copy of the revised policies and procedures and explanation of the revisions to policies
14.26 and procedures that affect consumers' service-related or protection-related rights under
14.27 section 245B.04 and maltreatment reporting policies and procedures. Unless there is
14.28 reasonable cause, the license holder must provide this notice at least 30 days before
14.29 implementing the revised policy and procedure. The license holder must document the
14.30 reason for not providing the notice at least 30 days before implementing the revisions;

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

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

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

15.6 Sec. 16. Minnesota Statutes 2010, section 245B.07, subdivision 10, is amended to read:

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

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

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

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

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

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

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

15.25 (1) borrow money from a consumer;

15.26 (2) purchase personal items from a consumer;

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

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

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

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

16.1 Sec. 17. [245D.01] CITATION.

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

16.4 Sec. 18. [245D.02] DEFINITIONS.

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

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

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

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

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

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

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

16.18 Subd. 8. **Emergency.** "Emergency" means any fires, severe weather, natural
16.19 disasters, power failures, or other events that threaten the immediate health and safety of a
16.20 person receiving services, that require emergency evacuation, moving to an emergency
16.21 shelter, or temporary closure or relocation of the program to another facility or service site.

16.22 Subd. 9. **Health services.** "Health services" means any service or treatment
16.23 consistent with the health needs of the person, such as medication administration and
16.24 monitoring, medical, dental, nutritional, health monitoring, wellness education, and
16.25 exercise.

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

16.33 Subd. 11. **Incident.** "Incident" means any of the following:

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

16.35 (2) a person's death;

17.1 (3) any medical emergencies, unexpected serious illnesses, or significant unexpected
17.2 changes in illnesses or medical conditions of a person that require physician treatment
17.3 or hospitalization;

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

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

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

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

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

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

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

17.21 Subd. 15. **License holder.** "License holder" has the meaning given in section
17.22 245A.02, subdivision 9.

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

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

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

17.30 (2) preparing the medication for administration or setting up medications for
17.31 self-administration by the person;

17.32 (3) administering the medication to the person or providing assistance to the person
17.33 for self-administration;

17.34 (4) completing medication documentation and charting, including documenting the
17.35 administration of the medication or the reason for not administering the medication; and

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

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

18.7 (1) bringing to the person and opening a container of previously set up medications
18.8 and emptying the container into the person's hand or opening and giving the medications
18.9 in the original container to the person, or bringing to the person liquids or food to
18.10 accompany the medication; or

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

18.13 Subd. 19. **Medication management.** "Medication management" means the
18.14 provision of any of the following:

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

18.16 (2) medication setup;

18.17 (3) medication administration;

18.18 (4) medication storage and security;

18.19 (5) medication documentation and charting;

18.20 (6) verification and monitoring of effectiveness of systems to ensure safety;

18.21 (7) medication handling and administration;

18.22 (8) coordination of medication refills;

18.23 (9) handling changes to prescriptions and implementation of those changes;

18.24 (10) communicating with the pharmacy; or

18.25 (11) coordination and communication with prescriber.

18.26 Subd. 20. **Over-the-counter drug.** "Over-the-counter drug" means a drug that
18.27 is not required by federal law to bear the statement "Caution: Federal law prohibits
18.28 dispensing without prescription."

18.29 Subd. 21. **Person.** "Person" has the meaning given in section 245A.02, subdivision
18.30 11.

18.31 Subd. 22. **Person with a disability.** "Person with a disability" means a person
18.32 determined to have a disability by the commissioner's state medical review team as
18.33 identified in section 256B.055, subdivision 7, the Social Security Administration, or
18.34 the person is determined to have a developmental disability as defined in Minnesota
18.35 Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section
18.36 252.27, subdivision 1a.

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

19.5 Subd. 24. **Prescription drug.** "Prescription drug" has the meaning given in section
19.6 151.01, subdivision 17.

19.7 Subd. 25. **Program.** "Program" means either the nonresidential or residential
19.8 program as defined in section 245A.02, subdivisions 10 and 14.

19.9 Subd. 26. **Psychotropic medication.** "Psychotropic medication" means any
19.10 medication prescribed to treat mental illness and associated behaviors or to control or alter
19.11 behavior. The major classes of psychotropic medication are antipsychotic (neuroleptic),
19.12 antidepressant, antianxiety, antimania, stimulant, and sedative or hypnotic. Other
19.13 miscellaneous medications are considered to be a psychotropic medication when they are
19.14 specifically prescribed to treat a mental illness or to control or alter behavior.

19.15 Subd. 27. **Restraint.** "Restraint" means manual restraint as defined in Minnesota
19.16 Rules, part 9525.2710, subpart 22, and mechanical restraint as defined in Minnesota
19.17 Rules, part 9525.2710, subpart 23.

19.18 Subd. 28. **Seclusion.** "Seclusion" has the meaning given in Minnesota Rules, part
19.19 9525.2710, subpart 32.

19.20 Subd. 29. **Service.** "Service" means care, training, supervision, counseling,
19.21 consultation, or medication assistance assigned to the license holder in the service plan.

19.22 Subd. 30. **Service plan.** "Service plan" means the individual service plan or
19.23 individual care plan identified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49,
19.24 or successor provisions, and includes any support plans or service needs identified as a
19.25 result of long-term care consultation, or a support team meeting, or assigned to a license
19.26 holder through an authorized service agreement.

19.27 Subd. 31. **Service site.** "Service site" means the location where the service is
19.28 provided to the person, including but not limited to, a facility licensed according to chapter
19.29 245A; a location where the license holder is the owner, lessor, or tenant; a person's own
19.30 home; or a community-based location.

19.31 Subd. 32. **Staff.** "Staff" means an employee who will have direct contact with a
19.32 person served by the facility, agency, or program.

19.33 Subd. 33. **Support team.** "Support team" means the service planning team
19.34 identified in section 256B.49, subdivision 15, or the interdisciplinary team identified in
19.35 Minnesota Rules, part 9525.0004, subpart 14.

20.1 Subd. 34. **Unit of government.** "Unit of government" means every city, county,
20.2 town, school district, other political subdivisions of the state, and any agency of the state
20.3 or the United States, and includes any instrumentality of a unit of government.

20.4 Subd. 35. **Volunteer.** "Volunteer" means an individual who, under the direction of
20.5 the license holder, provides direct services without pay to a person served by the license
20.6 holder.

20.7 Sec. 19. [245D.03] **APPLICABILITY AND EFFECT.**

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

20.12 (1) housing access coordination as defined under the current DD waiver plan or
20.13 successor plans;

20.14 (2) respite services as defined under the current CADI waiver plan or successor plans
20.15 excluding providers serving only one family;

20.16 (3) behavioral programming as defined under the current BI waiver plan or successor
20.17 plans;

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

20.20 (5) companion services as defined under the current BI and EW waiver plans or
20.21 successor plans, except companion services provided under the Corporation for National
20.22 and Community Services Senior Companion Program established under the Domestic
20.23 Volunteer Service Act of 1973, Public Law 98-288 and excluding providers serving only
20.24 one family;

20.25 (6) personal support as defined under the current DD waiver plan or successor plans
20.26 excluding providers serving only one family;

20.27 (7) 24-hour emergency assistance, on-call and personal emergency response as
20.28 defined under the current CADI and DD waiver plans or successor plans;

20.29 (8) night supervision services as defined under the current BI waiver;

20.30 (9) homemaker services as defined under the current CADI waiver plan or successor
20.31 plans, excluding providers licensed by the Department of Health under chapter 144A,
20.32 those providers providing cleaning services only, and providers serving only one family;

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

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

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

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

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

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

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

21.16 (d) A license holder identified in subdivision 1, clauses (1), (2), (5), and (9), is
21.17 exempt from compliance with sections 245A.65, subdivision 2, paragraph (a), and
21.18 626.557, subdivision 14, paragraph (b).

21.19 (e) A license holder providing structured day, prevocational, or supported
21.20 employment services under this chapter and day training and habilitation or supported
21.21 employment services licensed under chapter 245B within the same program is exempt
21.22 from compliance with this chapter, when the license holder notifies the commissioner in
21.23 writing that the requirements under chapter 245B will be met for all persons receiving
21.24 services from the program. For the purposes of this paragraph, if the license holder has
21.25 obtained approval from the commissioner for an alternative inspection status according to
21.26 section 245B.031, that approval will apply to all persons receiving services in the program.

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

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

21.34 (b) When a staff person begins providing direct service under one or more licenses
21.35 held by the same license holder, other than the license for which staff orientation was
21.36 initially provided according to section 245D.09, subdivision 4, the license holder is

22.1 exempt from those staff orientation requirements; except the staff person must review each
22.2 person's service plan and medication administration procedures in accordance with section
22.3 245D.09, subdivision 4, paragraph (c), if not previously reviewed by the staff person.

22.4 Sec. 20. **[245D.04] SERVICE RECIPIENT RIGHTS.**

22.5 Subdivision 1. License holder responsibility for individual rights of persons
22.6 served by the program. The license holder must:

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

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

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

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

22.17 Subd. 2. Service-related rights. A person's service-related rights include the right
22.18 to:

22.19 (1) participate in the development and evaluation of the services provided to the
22.20 person;

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

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

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

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

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

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

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

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

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

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

23.10 (3) be free from maltreatment;

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

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

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

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

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

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

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

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

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

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

23.31 (14) personal privacy; and

23.32 (15) engage in chosen activities.

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

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

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

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

24.8 (c) Restriction of a person's protection-related rights under paragraphs (a), clauses
24.9 (13) and (14), and (b) is allowed only if determined necessary to ensure the health,
24.10 safety, and well-being of the person by the support team, the person or the person's
24.11 legal representative, and the case manager. The need for any restriction must be fully
24.12 documented in an assessment of the person's vulnerability and risk of maltreatment
24.13 related to the exercise of these rights by the person. Written informed consent for the
24.14 restriction of a protection-related right must be obtained from the person or the person's
24.15 legal representative according to paragraph (d).

24.16 (d) Written informed consent for the restriction of a protection-related right obtained
24.17 from the person or the person's legal representative must:

24.18 (1) specify the nature of the limitation and the conditions and timelines under which
24.19 the limitation will be removed and the right fully restored; and

24.20 (2) explain that:

24.21 (i) consent may be withdrawn at any time and the restriction will be discontinued
24.22 upon withdrawal of consent;

24.23 (ii) consent is time-limited and automatically expires annually after the date on
24.24 which consent was given; and

24.25 (iii) upon expiration, written informed consent must be obtained again in order for
24.26 the restriction to continue.

24.27 The person or the person's legal representative must be provided a copy of the signed
24.28 informed consent form.

24.29 Sec. 21. **[245D.05] HEALTH SERVICES.**

24.30 Subdivision 1. **Health needs.** The license holder is responsible for providing health
24.31 services assigned in the service plan and consistent with the person's health needs. The
24.32 license holder is responsible for promptly notifying the person or the person's legal
24.33 representative and the case manager of changes in a person's health needs affecting
24.34 assigned health services, when discovered by the license holder, unless the license holder
24.35 has reason to know the change has already been reported. The license holder must

25.1 document when the notice is provided. When assigned in the service plan, the license
25.2 holder is required to maintain documentation on how the person's health needs will be
25.3 met, including a description of the procedures the license holder will follow in order to:

25.4 (1) provide medication administration, medication assistance, or medication
25.5 management according to the requirements of this section;

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

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

25.9 or

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

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

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

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

25.20 (3) the medication or treatment will be administered under administration procedures
25.21 established for the person in consultation with a licensed health professional. Written
25.22 instruction from the person's physician may constitute the medication administration
25.23 procedures. A prescription label or the prescriber's order for the prescription is sufficient
25.24 to constitute written instructions from the prescriber. A licensed health professional may
25.25 delegate medication administration procedures.

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

25.28 (1) the information on the prescription label or the prescriber's order;

25.29 (2) information on any discomforts, risks, or other side effects that are reasonable
25.30 to expect;

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

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

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

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

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

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

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

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

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

26.17 Subd. 4. **Reporting medication and treatment issues.** The following medication
26.18 administration issues must be reported to the person or the person's legal representative
26.19 and case manager as they occur or following timelines established in the person's service
26.20 plan or as requested in writing by the person or the person's legal representative, or the
26.21 case manager:

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

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

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

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

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

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

26.34 (3) there is an agreement signed by the license holder, the prescriber, and the person
26.35 or the person's legal representative, specifying what injections may be given, when,

27.1 how, and that the prescriber must retain responsibility for the license holder's giving the
27.2 injections. A copy of the agreement must be placed in the person's service recipient record.

27.3 Sec. 22. **[245D.06] PROTECTION STANDARDS.**

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

27.7 (b) The license holder must maintain information about and report incidents to
27.8 the person's legal representative and case manager within 24 hours of an incident
27.9 occurring while services are being provided, or within 24 hours of discovery or receipt of
27.10 information that an incident occurred, unless the license holder has reason to know that
27.11 the incident has already been reported. An incident of suspected or alleged maltreatment
27.12 must be reported as required under paragraph (d), and an incident of serious injury or
27.13 death must be reported as required under paragraph (e).

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

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

27.22 (e) Within 24 hours of the occurrence, or within 24 hours of receipt of the
27.23 information, the license holder must report the death or serious injury of the person to
27.24 the legal representative, if any, and case manager, the Department of Human Services
27.25 Licensing Division, and the Office of Ombudsman for Mental Health and Developmental
27.26 Disabilities as required under section 245.94, subdivision 2a.

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

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

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

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

27.34 (ii) doors are locked only to protect the safety of a person receiving services and
27.35 not as a substitute for staff supervision or interactions with a person who is receiving

28.1 services. If doors are locked to protect a person's safety, the license holder must justify and
28.2 document how this determination was made in consultation with the person or person's
28.3 legal representative, and how access will otherwise be provided to the person and all other
28.4 affected persons receiving services; and

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

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

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

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

28.14 (5) follow sanitary practices for infection control and to prevent communicable
28.15 diseases.

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

28.21 Subd. 4. **Funds and property.** (a) Whenever the license holder assists a person
28.22 with the safekeeping of funds or other property according to section 245A.04, subdivision
28.23 13, the license holder must have written authorization to do so from the person and the
28.24 case manager.

28.25 (b) A license holder or staff person may not accept powers-of-attorney from a
28.26 person receiving services from the license holder for any purpose, and may not accept an
28.27 appointment as guardian or conservator of a person receiving services from the license
28.28 holder. This does not apply to license holders that are Minnesota counties or other units
28.29 of government.

28.30 Subd. 5. **Prohibitions.** The license holder is prohibited from using psychotropic
28.31 medication, restraints, or seclusion as a substitute for adequate staffing, as punishment,
28.32 or for staff convenience.

28.33 Sec. 23. **[245D.07] SERVICE NEEDS.**

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

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

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

29.10 Sec. 24. **[245D.08] RECORD REQUIREMENTS.**

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

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

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

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

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

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

29.22 (2) the name, address, telephone number of an emergency contact, the case manager,
29.23 and family members or others as identified by the person or case manager;

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

29.27 (4) health information, including medical history and allergies; and when the license
29.28 holder is assigned responsibility for meeting the person's health needs according to section
29.29 245D.05:

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

29.31 (ii) medication administration procedures;

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

29.35 (iv) a medical appointment schedule;

30.1 (5) the person's current service plan or that portion of the plan assigned to the
30.2 license holder. When a person's case manager does not provide a current service plan,
30.3 the license holder must make a written request to the case manager to provide a copy of
30.4 the service plan and inform the person of the right to a current service plan and the right
30.5 to appeal under section 256.045;

30.6 (6) a record of other license holders serving the person when the person's service
30.7 plan identifies the need for coordination between the license holders, that includes a
30.8 contact person and telephone numbers, services being provided, and names of staff
30.9 responsible for coordination;

30.10 (7) documentation of orientation to the service recipient rights according to section
30.11 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to
30.12 section 245A.65, subdivision 1, paragraph (c);

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

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

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

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

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

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

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

30.26 (2) the person's case manager;

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

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

30.31 Subd. 4. **Personnel records.** The license holder must maintain a personnel record
30.32 of each employee, direct service volunteer, and subcontractor to document and verify staff
30.33 qualifications, orientation, and training. For the purposes of this subdivision, the terms
30.34 "staff" or "staff person" mean paid employee, direct service volunteer, or subcontractor.

30.35 The personnel record must include:

31.1 (1) the staff person's date of hire, completed application, a position description
31.2 signed by the staff person, documentation that the staff person meets the position
31.3 requirements as determined by the license holder, the date of first supervised direct contact
31.4 with a person served by the program, and the date of first unsupervised direct contact with
31.5 a person served by the program;

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

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

31.11 Sec. 25. **[245D.09] STAFFING STANDARDS.**

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

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

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

31.26 (1) education and experience qualifications, including a valid degree and transcript,
31.27 or a current license, registration, or certification, when a degree or licensure, registration,
31.28 or certification is required;

31.29 (2) completion of required orientation and training, including completion of
31.30 continuing education required to maintain professional licensure, registration, or
31.31 certification requirements; and

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

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

32.3 Subd. 4. **Orientation.** (a) Except for a license holder who does not supervise any
32.4 direct service staff, within 90 days of hiring direct service staff, the license holder must
32.5 provide and ensure completion of orientation that combines supervised on-the-job training
32.6 with review of and instruction on the following:

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

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

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

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

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

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

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

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

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

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

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

32.34 (1) the person's service plan as it relates to the responsibilities assigned to the license
32.35 holder, and when applicable, the person's individual abuse prevention plan according to

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33.1 section 245A.65, to achieve an understanding of the person as a unique individual, and
33.2 how to implement those plans; and

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

33.5 Unlicensed staff may administer medications only after successful completion of a
33.6 medication administration training, from a training curriculum developed by a registered
33.7 nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse
33.8 practitioner, physician's assistant, or physician incorporating an observed skill assessment
33.9 conducted by the trainer to ensure staff demonstrate the ability to safely and correctly
33.10 follow medication procedures. Medication administration must be taught by a registered
33.11 nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse
33.12 practitioner, physician's assistant, or physician, if at the time of service initiation or any
33.13 time thereafter, the person has or develops a health care condition that affects the service
33.14 options available to the person because the condition requires:

33.15 (i) specialized or intensive medical or nursing supervision;

33.16 (ii) nonmedical service providers to adapt their services to accommodate the health
33.17 and safety needs of the person; and

33.18 (iii) necessary training in order to meet the health service needs of the person as
33.19 determined by the person's physician.

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

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

33.26 (1) topics related to the general health, safety, and service needs of the population
33.27 served by the license holder; and

33.28 (2) other areas identified by the license holder or in the person's current service plan.

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

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

33.35 Subd. 6. **Subcontractors.** If the license holder uses a subcontractor to perform
33.36 services licensed under this chapter on their behalf, the license holder must ensure that the

34.1 subcontractor meets and maintains compliance with all requirements under this chapter
34.2 that apply to the services to be provided.

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

34.6 Sec. 26. **[245D.10] POLICIES AND PROCEDURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35.1 (iii) identifies the complaint resolution, including any corrective action; and
35.2 (7) requires that the complaint summary and resolution notice be maintained in the
35.3 service recipient record.

35.4 **Subd. 3. Service suspension and service termination.** (a) The license holder must
35.5 establish policies and procedures for temporary service suspension and service termination
35.6 that promote continuity of care and service coordination with the person and the case
35.7 manager, and with other licensed caregivers, if any, who also provide support to the person.

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

35.9 (1) the license holder must notify the person and case manager in writing of the
35.10 intended termination or temporary service suspension, and the person's right to seek a
35.11 temporary order staying the termination of service according to the procedures in section
35.12 256.045, subdivision 4a, or 6, paragraph (c);

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

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

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

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

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

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

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

35.35 (b) The license holder must inform the person and case manager of the policies and
35.36 procedures affecting a person's rights under section 245D.04, and provide copies of those

36.1 policies and procedures, within 24 hours of service initiation, or if requested by the person,
36.2 the orientation may take place within 72 hours.

36.3 (c) The license holder must provide a written notice at least 30 days before
36.4 implementing any revised policies and procedures affecting a person's rights under section
36.5 245D.04. The notice must explain the revision that was made and include a copy of
36.6 the revised policy and procedure. The license holder must document the reason for not
36.7 providing the notice at least 30 days before implementing the revisions.

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

36.11 Sec. 27. Minnesota Statutes 2010, section 252.40, is amended to read:

36.12 **252.40 SERVICE PRINCIPLES AND RATE-SETTING PROCEDURES.**

36.13 (a) Sections 252.40 to 252.46 apply to day training and habilitation services for
36.14 adults with developmental disabilities when the services are authorized to be funded by a
36.15 county and provided under a contract between a county board and a vendor as defined
36.16 in section 252.41. Nothing in sections 252.40 to 252.46 absolves intermediate care
36.17 facilities for persons with developmental disabilities of the responsibility for providing
36.18 active treatment and habilitation under federal regulations with which those facilities must
36.19 comply to be certified by the Minnesota Department of Health.

36.20 (b) This section expires January 1, 2013.

36.21 Sec. 28. Minnesota Statutes 2010, section 252.41, subdivision 3, is amended to read:

36.22 Subd. 3. **Day training and habilitation services for adults with developmental**
36.23 **disabilities.** "Day training and habilitation services for adults with developmental
36.24 disabilities" means services that:

36.25 (1) include supervision, training, assistance, and supported employment,
36.26 work-related activities, or other community-integrated activities designed and
36.27 implemented in accordance with the individual service and individual habilitation plans
36.28 required under Minnesota Rules, parts 9525.0015 to 9525.0165, to help an adult reach
36.29 and maintain the highest possible level of independence, productivity, and integration
36.30 into the community; and

36.31 (2) are provided ~~under contract with the county where the services are delivered~~
36.32 by a vendor licensed under sections 245A.01 to 245A.16 and 252.28, subdivision 2, to
36.33 provide day training and habilitation services.

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37.1 Day training and habilitation services reimbursable under this section do not include
37.2 special education and related services as defined in the Education of the Individuals with
37.3 Disabilities Act, United States Code, title 20, chapter 33, section 1401, clauses (6) and
37.4 (17), or vocational services funded under section 110 of the Rehabilitation Act of 1973,
37.5 United States Code, title 29, section 720, as amended.

37.6 **EFFECTIVE DATE.** This section is effective January 1, 2013.

37.7 Sec. 29. Minnesota Statutes 2010, section 252.42, is amended to read:

37.8 **252.42 SERVICE PRINCIPLES.**

37.9 The design and delivery of services eligible for reimbursement ~~under the rates~~
37.10 ~~established in section 252.46~~ should reflect the following principles:

37.11 (1) services must suit a person's chronological age and be provided in the least
37.12 restrictive environment possible, consistent with the needs identified in the person's
37.13 individual service and individual habilitation plans under Minnesota Rules, parts
37.14 9525.0015 to 9525.0165;

37.15 (2) a person with a developmental disability whose individual service and individual
37.16 habilitation plans authorize employment or employment-related activities shall be given
37.17 the opportunity to participate in employment and employment-related activities in which
37.18 nondisabled persons participate;

37.19 (3) a person with a developmental disability participating in work shall be paid
37.20 wages commensurate with the rate for comparable work and productivity except as
37.21 regional centers are governed by section 246.151;

37.22 (4) a person with a developmental disability shall receive services which include
37.23 services offered in settings used by the general public and designed to increase the person's
37.24 active participation in ordinary community activities;

37.25 (5) a person with a developmental disability shall participate in the patterns,
37.26 conditions, and rhythms of everyday living and working that are consistent with the norms
37.27 of the mainstream of society.

37.28 **EFFECTIVE DATE.** This section is effective January 1, 2013.

37.29 Sec. 30. Minnesota Statutes 2010, section 252.43, is amended to read:

37.30 **252.43 COMMISSIONER'S DUTIES.**

37.31 The commissioner shall supervise county boards' provision of day training and
37.32 habilitation services to adults with developmental disabilities. The commissioner shall:

37.33 (1) determine the need for day training and habilitation services under section 252.28;

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38.1 (2) ~~approve payment rates established by a county under section 252.46, subdivision~~
38.2 ~~2~~ implement the payment rates under section 256B.4913. The payment rates will
38.3 supersede rates established in county contracts for recipients receiving day training and
38.4 habilitation funded through Medicaid;

38.5 (3) adopt rules for the administration and provision of day training and habilitation
38.6 services under sections ~~252.40 to 252.46~~ 252.41 to 252.46 and sections 245A.01 to
38.7 245A.16 and 252.28, subdivision 2;

38.8 (4) enter into interagency agreements necessary to ensure effective coordination and
38.9 provision of day training and habilitation services;

38.10 (5) monitor and evaluate the costs and effectiveness of day training and habilitation
38.11 services; and

38.12 (6) provide information and technical help to county boards and vendors in their
38.13 administration and provision of day training and habilitation services.

38.14 **EFFECTIVE DATE.** This section is effective January 1, 2013.

38.15 Sec. 31. Minnesota Statutes 2010, section 252.44, is amended to read:

38.16 **252.44 COUNTY BOARD RESPONSIBILITIES.**

38.17 (a) When the need for day training and habilitation services in a county has been
38.18 determined under section 252.28, the board of commissioners for that county shall:

38.19 (1) authorize the delivery of services according to the individual service and
38.20 habilitation plans required as part of the county's provision of case management services
38.21 under Minnesota Rules, parts 9525.0015 to 9525.0165. For calendar years for which
38.22 section 252.46, subdivisions 2 to 10, apply, the county board shall not authorize a change
38.23 in service days from the number of days authorized for the previous calendar year unless
38.24 there is documentation for the change in the individual service plan. An increase in service
38.25 days must also be supported by documentation that the goals and objectives assigned to the
38.26 vendor cannot be met more economically and effectively by other available community
38.27 services and that without the additional days of service the individual service plan could
38.28 not be implemented in a manner consistent with the service principles in section 252.42;

38.29 (2) contract with licensed vendors, as specified in paragraph (b), under sections
38.30 256E.12 and 256B.092 and rules adopted under those sections;

38.31 (3) ensure that transportation is provided or arranged by the vendor in the most
38.32 efficient and reasonable way possible; and

38.33 (4) ~~set~~ apply payment rates under section ~~252.46~~ 256B.4913;

38.34 (5) monitor and evaluate the cost and effectiveness of the services; and

39.1 (6) reimburse vendors for the provision of authorized services according to the rates,
39.2 procedures, and regulations governing reimbursement.

39.3 (b) With all vendors ~~except regional centers~~, the contract must include the approved
39.4 payment rates under section 256B.4913, the projected budget for the contract period,
39.5 and any actual expenditures of previous and current contract periods. ~~With all vendors,~~
39.6 ~~including regional centers~~; The contract must also include the amount, availability, and
39.7 components of day training and habilitation services to be provided, the performance
39.8 standards governing service provision and evaluation, and the time period in which the
39.9 contract is effective.

39.10 **EFFECTIVE DATE.** This section is effective January 1, 2013.

39.11 Sec. 32. Minnesota Statutes 2010, section 252.45, is amended to read:

39.12 **252.45 VENDOR'S DUTIES.**

39.13 A ~~vendor's responsibility~~ vendor enrolled through the process established by the
39.14 commissioner is responsible under clauses (1), ~~(2), and (3)~~ to (4). This responsibility
39.15 extends only to the provision of services that are reimbursable under state and federal
39.16 law. A vendor ~~under contract with a county board to provide~~ providing day training and
39.17 habilitation services shall:

39.18 (1) provide the amount and type of services authorized in the individual service plan
39.19 under Minnesota Rules, parts 9525.0015 to 9525.0165;

39.20 (2) design the services to achieve the outcomes assigned to the vendor in the
39.21 individual service plan;

39.22 (3) provide or arrange for transportation of persons receiving services to and from
39.23 service sites; and

39.24 (4) enter into agreements with community-based intermediate care facilities for
39.25 persons with developmental disabilities to ensure compliance with applicable federal
39.26 regulations; ~~and~~.

39.27 ~~(5) comply with state and federal law.~~

39.28 **EFFECTIVE DATE.** This section is effective January 1, 2013.

39.29 Sec. 33. Minnesota Statutes 2010, section 252.451, subdivision 2, is amended to read:

39.30 Subd. 2. **Vendor participation and reimbursement.** Notwithstanding requirements
39.31 in chapter 245A, and sections 252.28, ~~252.40 to 252.46~~ 252.41 to 252.46, and 256B.501,
39.32 vendors of day training and habilitation services may enter into written agreements with

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40.1 qualified businesses to provide additional training and supervision needed by individuals
40.2 to maintain their employment.

40.3 **EFFECTIVE DATE.** This section is effective January 1, 2013.

40.4 Sec. 34. Minnesota Statutes 2010, section 252.451, subdivision 5, is amended to read:

40.5 Subd. 5. **Vendor payment.** (a) For purposes of this section, ~~the vendor shall bill and~~
40.6 ~~the commissioner shall reimburse the vendor for full-day or partial-day services to a client~~
40.7 ~~that would otherwise have been paid to the vendor for providing direct services, provided~~
40.8 ~~that both of the following criteria are met:~~

40.9 ~~(1) the vendor provides services and payments to the qualified business that enable~~
40.10 ~~the business to perform support and supervision services for the client that the vendor~~
40.11 ~~would otherwise need to perform; and~~

40.12 ~~(2) the client for whom a rate will be billed will receive full-day or partial-day~~
40.13 ~~services from the vendor and the rate to be paid the vendor will allow the client to work~~
40.14 ~~with this support and supervision at the qualified business instead of receiving these~~
40.15 ~~services from the vendor. vendors of day training and habilitation services that enter into~~
40.16 agreements with qualified businesses shall reimburse the qualified business according to
40.17 the terms of their written agreement as defined in subdivision 3, clause (5), items (i)
40.18 and (ii).

40.19 (b) Medical assistance reimbursement of services provided to persons receiving
40.20 day training and habilitation services under this section is subject to the limitations on
40.21 reimbursement for vocational services under federal law and regulation.

40.22 **EFFECTIVE DATE.** This section is effective January 1, 2013.

40.23 Sec. 35. Minnesota Statutes 2010, section 252.46, subdivision 1a, is amended to read:

40.24 Subd. 1a. **Day training and habilitation rates.** The commissioner shall establish a
40.25 statewide rate-setting methodology for all day training and habilitation services as defined
40.26 in section 256B.4913. The ~~rate-setting payment~~ methodology must abide by the principles
40.27 of transparency and equitability across the state. The methodology must involve a uniform
40.28 process of structuring rates for each service and must promote quality and participant
40.29 choice under section 256B.4913.

40.30 **EFFECTIVE DATE.** This section is effective January 1, 2013.

40.31 Sec. 36. Minnesota Statutes 2010, section 256B.0916, subdivision 2, is amended to
40.32 read:

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41.1 Subd. 2. **Distribution of funds; partnerships.** (a) Beginning with fiscal year 2000,
41.2 the commissioner shall distribute all funding available for home and community-based
41.3 waiver services for persons with developmental disabilities to individual counties or to
41.4 groups of counties that form partnerships to jointly plan, administer, and authorize funding
41.5 for eligible individuals. The commissioner shall encourage counties to form partnerships
41.6 that have a sufficient number of recipients and funding to adequately manage the risk
41.7 and maximize use of available resources.

41.8 (b) Counties must submit a request for funds and a plan for administering the
41.9 program as required by the commissioner. The plan must identify the number of clients to
41.10 be served, their ages, and their priority listing based on:

41.11 (1) requirements in Minnesota Rules, part 9525.1880; and

41.12 (2) statewide priorities identified in section 256B.092, subdivision 12.

41.13 The plan must also identify changes made to improve services to eligible persons and to
41.14 improve program management.

41.15 (c) In allocating resources to counties, priority must be given to groups of counties
41.16 that form partnerships to jointly plan, administer, and authorize funding for eligible
41.17 individuals and to counties determined by the commissioner to have sufficient waiver
41.18 capacity to maximize resource use.

41.19 (d) Within 30 days after receiving the county request for funds and plans, the
41.20 commissioner shall provide a written response to the plan that includes the level of
41.21 resources available to serve additional persons.

41.22 (e) Counties are eligible to receive medical assistance administrative reimbursement
41.23 for administrative costs under criteria established by the commissioner.

41.24 (f) Beginning January 1, 2013, the commissioner shall implement, within the
41.25 allocation methodologies for each home and community-based waiver under this section,
41.26 a procedure to adjust for the impact on waiver allocations of changes in payment and
41.27 waiver service usage under section 256B.4913. In the aggregate, the procedure may not
41.28 increase or decrease the amount of waiver funds available for allocation to counties or
41.29 tribes under this section.

41.30 Sec. 37. Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 16a,
41.31 is amended to read:

41.32 Subd. 16a. **Medical assistance reimbursement.** ~~(a) The commissioner shall~~
41.33 ~~seek federal approval for medical assistance reimbursement of independent living skills~~
41.34 ~~services, foster care waiver service, supported employment, prevocational service, and~~
41.35 ~~structured day service under the home and community-based waiver for persons with a~~

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42.1 ~~traumatic brain injury, the community alternatives for disabled individuals waivers, and~~
42.2 ~~the community alternative care waivers.~~

42.3 ~~(b) Medical reimbursement shall be made only when the provider demonstrates~~
42.4 ~~evidence of its capacity to meet basic health, safety, and protection standards through~~
42.5 ~~the following methods:~~

42.6 ~~(1) for independent living skills services, supported employment, prevocational~~
42.7 ~~service, and structured day service through one of the methods in paragraphs (c) and~~
42.8 ~~(d); and~~

42.9 ~~(2) for foster care waiver services through the method in paragraph (c).~~

42.10 ~~(c) The provider is licensed to provide services under chapter 245B and agrees~~
42.11 ~~to apply these standards to services funded through the traumatic brain injury,~~
42.12 ~~community alternatives for disabled persons, or community alternative care home and~~
42.13 ~~community-based waivers.~~

42.14 ~~(d) The commissioner shall certify that the provider has policies and procedures~~
42.15 ~~governing the following:~~

42.16 ~~(1) protection of the consumer's rights and privacy;~~

42.17 ~~(2) risk assessment and planning;~~

42.18 ~~(3) record keeping and reporting of incidents and emergencies with documentation~~
42.19 ~~of corrective action if needed;~~

42.20 ~~(4) service outcomes, regular reviews of progress, and periodic reports;~~

42.21 ~~(5) complaint and grievance procedures;~~

42.22 ~~(6) service termination or suspension;~~

42.23 ~~(7) necessary training and supervision of direct care staff that includes:~~

42.24 ~~(i) documentation in personnel files of 20 hours of orientation training in providing~~
42.25 ~~training related to service provision;~~

42.26 ~~(ii) training in recognizing the symptoms and effects of certain disabilities, health~~
42.27 ~~conditions, and positive behavioral supports and interventions;~~

42.28 ~~(iii) a minimum of five hours of related training annually; and~~

42.29 ~~(iv) when applicable:~~

42.30 ~~(A) safe medication administration;~~

42.31 ~~(B) proper handling of consumer funds; and~~

42.32 ~~(C) compliance with prohibitions and standards developed by the commissioner to~~
42.33 ~~satisfy federal requirements regarding the use of restraints and restrictive interventions.~~

42.34 ~~The commissioner shall review at least biennially that each service provider's policies~~
42.35 ~~and procedures governing basic health, safety, and protection of rights continue to meet~~
42.36 ~~minimum standards.~~

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43.1 ~~(e) The commissioner shall seek federal approval for Medicaid reimbursement~~
43.2 ~~of foster care services under the home and community-based waiver for persons with~~
43.3 ~~a traumatic brain injury, the community alternatives for disabled individuals waiver,~~
43.4 ~~and community alternative care waiver when the provider demonstrates evidence of~~
43.5 ~~its capacity to meet basic health, safety, and protection standards. The commissioner~~
43.6 ~~shall verify that the adult foster care provider is licensed under Minnesota Rules, parts~~
43.7 ~~9555.5105 to 9555.6265; that the child foster care provider is licensed as a family foster~~
43.8 ~~care or a foster care residence under Minnesota Rules, parts 2960.3000 to 2960.3340, and~~
43.9 ~~certify that the provider has policies and procedures that govern:~~

43.10 ~~(1) compliance with prohibitions and standards developed by the commissioner to~~
43.11 ~~meet federal requirements regarding the use of restraints and restrictive interventions;~~

43.12 ~~(2) documentation of service needs and outcomes, regular reviews of progress,~~
43.13 ~~and periodic reports; and~~

43.14 ~~(3) safe medication management and administration.~~

43.15 ~~The commissioner shall review at least biennially that each service provider's policies and~~
43.16 ~~procedures governing basic health, safety, and protection of rights standards continue to~~
43.17 ~~meet minimum standards.~~

43.18 ~~(f)~~ The commissioner shall seek federal waiver approval for Medicaid reimbursement
43.19 of family adult day services under all disability waivers. After the waiver is granted, the
43.20 commissioner shall include family adult day services in the common services menu that
43.21 is currently under development.

43.22 Sec. 38. Minnesota Statutes 2010, section 256B.49, subdivision 17, is amended to read:

43.23 Subd. 17. **Cost of services and supports.** (a) The commissioner shall ensure
43.24 that the average per capita expenditures estimated in any fiscal year for home and
43.25 community-based waiver recipients does not exceed the average per capita expenditures
43.26 that would have been made to provide institutional services for recipients in the absence
43.27 of the waiver.

43.28 (b) The commissioner shall implement on January 1, 2002, one or more aggregate,
43.29 need-based methods for allocating to local agencies the home and community-based
43.30 waived service resources available to support recipients with disabilities in need of
43.31 the level of care provided in a nursing facility or a hospital. The commissioner shall
43.32 allocate resources to single counties and county partnerships in a manner that reflects
43.33 consideration of:

43.34 (1) an incentive-based payment process for achieving outcomes;

43.35 (2) the need for a state-level risk pool;

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44.1 (3) the need for retention of management responsibility at the state agency level; and
44.2 (4) a phase-in strategy as appropriate.

44.3 (c) Until the allocation methods described in paragraph (b) are implemented, the
44.4 annual allowable reimbursement level of home and community-based waiver services
44.5 shall be the greater of:

44.6 (1) the statewide average payment amount which the recipient is assigned under the
44.7 waiver reimbursement system in place on June 30, 2001, modified by the percentage of
44.8 any provider rate increase appropriated for home and community-based services; or

44.9 (2) an amount approved by the commissioner based on the recipient's extraordinary
44.10 needs that cannot be met within the current allowable reimbursement level. The
44.11 increased reimbursement level must be necessary to allow the recipient to be discharged
44.12 from an institution or to prevent imminent placement in an institution. The additional
44.13 reimbursement may be used to secure environmental modifications; assistive technology
44.14 and equipment; and increased costs for supervision, training, and support services
44.15 necessary to address the recipient's extraordinary needs. The commissioner may approve
44.16 an increased reimbursement level for up to one year of the recipient's relocation from an
44.17 institution or up to six months of a determination that a current waiver recipient is at
44.18 imminent risk of being placed in an institution.

44.19 (d) Beginning July 1, 2001, medically necessary private duty nursing services will be
44.20 authorized under this section as complex and regular care according to sections 256B.0651
44.21 to 256B.0656 and 256B.0659. The rate established by the commissioner for registered
44.22 nurse or licensed practical nurse services under any home and community-based waiver as
44.23 of January 1, 2001, shall not be reduced.

44.24 (e) Notwithstanding section 252.28, subdivision 3, paragraph (d), if the 2009
44.25 legislature adopts a rate reduction that impacts payment to providers of adult foster care
44.26 services, the commissioner may issue adult foster care licenses that permit a capacity of
44.27 five adults. The application for a five-bed license must meet the requirements of section
44.28 245A.11, subdivision 2a. Prior to admission of the fifth recipient of adult foster care
44.29 services, the county must negotiate a revised per diem rate for room and board and waiver
44.30 services that reflects the legislated rate reduction and results in an overall average per
44.31 diem reduction for all foster care recipients in that home. The revised per diem must allow
44.32 the provider to maintain, as much as possible, the level of services or enhanced services
44.33 provided in the residence, while mitigating the losses of the legislated rate reduction.

44.34 (f) Beginning January 1, 2013, the commissioner shall implement, within the
44.35 allocation methodologies for each home and community-based waiver under this section,
44.36 a procedure to adjust for the impact on waiver allocations of changes in payment and

45.1 waiver service usage under section 256B.4913. In the aggregate, the procedure may not
45.2 increase or decrease the amount of waiver funds available for allocation to counties or
45.3 tribes under this section.

45.4 Sec. 39. Minnesota Statutes 2010, section 256B.4912, is amended to read:

45.5 **256B.4912 HOME AND COMMUNITY-BASED WAIVERS; PROVIDERS**
45.6 **AND PAYMENT.**

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

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

45.12 (2) regular reviews of provider qualifications, and including requests of proof of
45.13 documentation; and

45.14 (3) processes to gather the necessary information to determine provider
45.15 qualifications.

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

45.22 Subd. 2. ~~Rate-setting~~ **Payment methodologies.** The commissioner shall establish
45.23 statewide ~~rate-setting~~ payment methodologies that meet federal waiver requirements
45.24 for home and community-based waiver services for individuals with disabilities. The
45.25 ~~rate-setting~~ payment methodologies must abide by the principles of transparency and
45.26 equitability across the state. The methodologies must involve a uniform process of
45.27 structuring rates for each service and must promote quality and participant choice.

45.28 **Subd. 3. Payment requirements.** The payment-setting methodologies established
45.29 under this section shall accommodate:

45.30 (1) direct care staffing wages;

45.31 (2) staffing patterns;

45.32 (3) program-related expenses;

45.33 (4) general and administrative expenses; and

45.34 (5) consideration of recipient intensity.

46.1 Subd. 4. **Payment rate criteria.** (a) The payment structures and methodologies
46.2 under this section shall reflect the payment rate criteria in paragraphs (b) and (c).

46.3 (b) Payment rates must be based on reasonable costs that are ordinary, necessary,
46.4 and related to delivery of authorized client services.

46.5 (c) The commissioner must not reimburse:

46.6 (1) unauthorized service delivery;

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

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

46.9 (4) extended employment services under Minnesota Rules, parts 3300.2005 to
46.10 3300.3100, or vocational rehabilitation services provided under the federal Rehabilitation
46.11 Act, as amended, Title I, section 110, or Title VI-C, and not through use of medical
46.12 assistance or county social service funds; or

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

46.16 Subd. 5. **County and tribal provider contract elimination.** County and tribal
46.17 contracts with providers of home and community-based waiver services provided under
46.18 sections 256B.0913, 256B.0915, 256B.092, and 256B.49 are eliminated effective January
46.19 1, 2013, or when the commissioner receives authority for the collection of fees for home
46.20 and community-based waiver services under section 245A.10, subdivisions 3, paragraph
46.21 (b), and 4, paragraph (g), whichever is later.

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

46.26 Subd. 7. **Applicant and license holder training.** An applicant or license holder
46.27 that is not enrolled as a Minnesota health care program home and community-based
46.28 services waiver provider at the time of application must ensure that at least one controlling
46.29 individual completes a onetime training on the requirements for providing home and
46.30 community-based services from a qualified source as determined by the commissioner,
46.31 before a license is issued.

46.32 **EFFECTIVE DATE.** This section is effective July 1, 2012, except that subdivision
46.33 6 is effective January 1, 2013, or when the commissioner receives an appropriation or
46.34 authorization for the collection of fees under section 245A.10, subdivisions 3, paragraph
46.35 (b), and 4, paragraph (g), whichever is later.

47.1 Sec. 40. [256B.4913] PAYMENT METHODOLOGIES.

47.2 Subdivision 1. Application. The payment methodologies in this section apply to
47.3 home and community-based services waivers under sections 256B.092 and 256B.49,
47.4 except that where the particular waiver limits the type, scope, or extent of service
47.5 provided, the commissioner may not provide that service to an individual subject to that
47.6 service restriction under this methodology.

47.7 Subd. 2. Definitions. (a) For purposes of this section, the following terms have the
47.8 meanings given them, unless the context clearly indicates otherwise.

47.9 (b) "Commissioner" means the commissioner of human services.

47.10 (c) "Payment" means reimbursement to an eligible provider for services provided to
47.11 a qualified individual based on an approved service authorization.

47.12 Subd. 3. Applicable services. Applicable services are those authorized under the
47.13 state's home and community-based services waivers under sections 256B.092 and 256B.49
47.14 including as defined in the federally approved home and community-based services plan:

47.15 (1) adult day care or family adult day services;

47.16 (2) behavioral programming;

47.17 (3) customized living;

47.18 (4) day treatment and habilitation;

47.19 (5) housing access coordination;

47.20 (6) independent living services;

47.21 (7) in-home family supports;

47.22 (8) night supervision;

47.23 (9) personal support;

47.24 (10) prevocational services;

47.25 (11) residential care services;

47.26 (12) respite services;

47.27 (13) structured day services;

47.28 (14) supported employment services;

47.29 (15) supported living services;

47.30 (16) transportation services; and

47.31 (17) other services as approved by the federal government in the state home and
47.32 community-based services plan.

47.33 Subd. 4. Uniform payment methodology. The commissioner shall determine
47.34 representative personnel and program-related components to meet the individualized
47.35 service plan for individuals with disabilities as funded under the state plan for home and
47.36 community-based services under sections 256B.092 and 256B.49. The commissioner shall

48.1 use those representative components, along with individualized assessment information,
48.2 to determine the amount payable to a provider under this section.

48.3 Subd. 5. **Payments for individualized unit-based services.** (a) Payments for
48.4 services priced on a partial hour or hourly unit basis and provided to an individual outside
48.5 of any day or residential service plan must be calculated as follows unless the services are
48.6 authorized separately under subdivisions 6 and 7:

48.7 (1) Determine the number of units of service used.

48.8 (2) Determine the direct staff wages. The personnel hourly wage rate must be
48.9 based on the 2009 Bureau of Labor Statistics Minnesota-specific rates or rates derived
48.10 by the commissioner as provided in paragraph (b). This is the direct care rate except
48.11 for customizations for certain individuals.

48.12 (3) For an individual requiring customization under subdivision 8, add the
48.13 customization rate provided in subdivision 8 to the result of step (2). This is the
48.14 customized direct care rate.

48.15 (4) Take the direct care rate under step (2) or step (3) and increase this amount by the
48.16 employee and program-related expense factor of 102.7 percent.

48.17 (5) Take the rate under step (4) and add \$20 per day for daily respite room and board
48.18 as authorized and provided. This is the payment rate.

48.19 (6) Multiply the result of step (5) by step (1) to establish the payment amount.

48.20 (b) If the commissioner derives rates for personnel hourly wages under this
48.21 paragraph, the commissioner must use the following Direct Care Job Classifications with
48.22 the Bureau of Labor Statistics job classes. These classes must be aligned with services
48.23 provided under the home and community-based waiver:

48.24 (1) adult companion;

48.25 (2) behavior program analyst;

48.26 (3) behavior program professional;

48.27 (4) behavior program specialist;

48.28 (5) housing access coordinator;

48.29 (6) in-home family support;

48.30 (7) independent living skills direct service;

48.31 (8) independent living skills professional;

48.32 (9) night supervision;

48.33 (10) personal support;

48.34 (11) respite hourly;

48.35 (12) supported employment job coach;

48.36 (13) supported employment job developer;

49.1 (14) supportive living services;

49.2 (15) extra transportation attendant;

49.3 (16) registered nurse;

49.4 (17) licensed practical nurse;

49.5 (18) direct primary care;

49.6 (19) asleep overnight; and

49.7 (20) supervisor.

49.8 (c) The commissioner shall revise the wage rates under paragraph (a), clause (2),
49.9 in the manner provided in subdivision 10.

49.10 Subd. 6. **Payments for day programs.** (a) Payments for services with day programs
49.11 including adult day care, day treatment and habilitation, prevocational services, and
49.12 structured day services must be calculated as follows unless the services are authorized
49.13 separately under subdivisions 5 and 7:

49.14 (1) Determine the number of units of service used.

49.15 (2) Determine the direct staff wages. The personnel hourly wage rate must be
49.16 based on the 2009 Bureau of Labor Statistics Minnesota-specific rates or rates derived
49.17 by the commissioner as provided in paragraph (b). This is the direct care rate except
49.18 for customizations for certain individuals.

49.19 (3) For an individual requiring customization under subdivision 8, add the
49.20 customization rate provided in subdivision 8 to the result of step (2). This is the
49.21 customized direct care rate.

49.22 (4) Take the direct care rate under step (2) or step (3) and increase this amount by
49.23 the employee and program-related expense factor of 108.8 percent, with consideration of
49.24 staffing to meet individual needs and utilization.

49.25 (5) To the result of step (4) add the facility reasonable use rate of \$8.30 per week,
49.26 with consideration of staffing ratios to meet individual needs and utilization.

49.27 (6) To the result of step (5) add reimbursement for meals authorized and provided in
49.28 conjunction with adult day care services. This is the payment rate.

49.29 (7) Multiply the result of step (6) by step (1) to establish the payment amount.

49.30 (b) If the commissioner derives rates for personnel hourly wages under this
49.31 paragraph, the commissioner must use the following Direct Care Job Classification with
49.32 Bureau of Labor Standards job classes. These classes must be aligned with services
49.33 provided under the home and community-based services waiver:

49.34 (1) registered nurse;

49.35 (2) licensed practical nurse; and

49.36 (3) direct primary care.

50.1 (c) The commissioner shall revise the wage rates under paragraph (a), clause (2),
50.2 in the manner provided in subdivision 10.

50.3 Subd. 7. **Payments for residential services.** (a) Payments for services in residential
50.4 settings including supported living services, foster care, residential care, customized
50.5 living, and 24-hour customized living subject to limitation to settings registered or
50.6 licensed for five or fewer individuals must be calculated as follows unless the services are
50.7 authorized separately under subdivisions 5 and 6:

50.8 (1) Determine the number of units of service used.

50.9 (2) Determine the direct staff wages. The personnel hourly wage rate must be
50.10 based on the 2009 Bureau of Labor Statistics Minnesota-specific rates or rates derived
50.11 by the commissioner as provided in paragraph (b). This is the direct care rate except
50.12 for customizations for certain individuals.

50.13 (3) For an individual requiring customization under subdivision 8, add the
50.14 customization rate provided in subdivision 8 to the result of step (2). This is the
50.15 customized direct care rate.

50.16 (4) Except for a family foster care setting subject to step (5), take the direct care cost
50.17 under step (2) or step (3) and increase this amount by the employee and program-related
50.18 expense factor of 61.8 percent.

50.19 (5) For family foster care settings, take the direct care cost under step (2) or step
50.20 (3) and increase this amount by the employee and program-related expense factor of
50.21 38.3 percent.

50.22 (6) To the result of step (4) or step (5) add a value of \$2,179 per year adjusted to
50.23 a weekly unit.

50.24 (7) To the result of step (6) add individual waiver transportation, if provided, at
50.25 \$1,680 or \$4,290 annually if customized for full size adapted transportation. This is the
50.26 payment rate.

50.27 (8) Multiply the result of step (7) by step (1) to establish the payment amount.

50.28 (b) If the commissioner derives rates for personnel hourly wages under this
50.29 paragraph, the commissioner must use the following Direct Care Job Classifications with
50.30 the Bureau of Labor Statistics job classes. These classes must be aligned with services
50.31 provided under the home and community-based waiver:

50.32 (1) licensed practical nurse;

50.33 (2) registered nurse;

50.34 (3) direct primary care;

50.35 (4) asleep overnight; and

50.36 (5) supervisor.

51.1 (c) The commissioner shall revise the wage rates under paragraph (a), clause (2),
51.2 in the manner provided in subdivision 10.

51.3 (d) For customized living settings registered for six or more, the commissioner
51.4 shall use results from the customized living tool to determine the customized living
51.5 payment to be used beginning January 1, 2013. The commissioner shall provide notice
51.6 of that payment rate under subdivision 10. By January 15, 2014, the commissioner shall
51.7 provide an evaluation of the implications of the rate on service provision to the legislative
51.8 committees with jurisdiction over human services.

51.9 **Subd. 8. Customization of rates for individuals.** (a) For persons determined to
51.10 have higher needs based on assessment of medical, mental health, or behavior issues, or as
51.11 being deaf/hard-of-hearing, the direct care costs in subdivisions 5 to 7 must be increased
51.12 by an adjustment factor prior to calculating the price under the respective subdivision.

51.13 (b) The customization rate with respect to medical, mental health, and behavior
51.14 issues shall be \$2.38 per authorized hour for clients who meet the respective criteria as
51.15 determined by the commissioner.

51.16 (c) The customization rate with respect to deaf/hard-of-hearing persons shall be \$9.70
51.17 per hour for clients who meet the respective criteria as determined by the commissioner.

51.18 **Subd. 9. Payments for transportation.** (a) Transportation payments must be
51.19 calculated according to clauses (1) to (5).

51.20 (1) Determine the number of individual and shared trips authorized.

51.21 (2) Determine the distance and whether the individual requires a lift.

51.22 (3) For a shared trip payment take the constant trip value of \$2.52 and add a distance
51.23 rate amount of payment of:

51.24 (i) 50 cents per mile for five miles for distances within ten miles;

51.25 (ii) 50 cents per mile for 15.5 miles for distances more than ten and up to 20 miles;

51.26 (iii) 50 cents per mile for 35.5 miles for distances more than 20 and up to 50 miles;

51.27 and

51.28 (iv) 50 cents per mile for 51 miles for distances more than 50 miles.

51.29 (4) For individual trip payments, take the constant trip value of \$2.52 and add
51.30 one-sixth of the distance rate payment amounts provided for in paragraph (a), clause (3).

51.31 (5) For a trip payment requiring a lift, add 93 cents per mile to the distance rate
51.32 calculation in paragraph (a), clauses (3) and (4).

51.33 (b) The commissioner shall require that the purchase of transportation services be
51.34 cost-effective and be limited to market rates where the transportation mode is generally
51.35 available and accessible.

52.1 Subd. 10. **Updating or changing payment values.** (a) The commissioner shall
52.2 develop and implement uniform procedures to refine terms and update or adjust values
52.3 used to calculate payment rates in this section. For calendar year 2013, the commissioner
52.4 shall use the values, terms, and procedures provided in this section.

52.5 (b) The commissioner must update the factors and values described in this section
52.6 on January 1 of every second year subsequent to January 1, 2013, and provide notice
52.7 of the update by October 1 of that year.

52.8 (c) A commissioner's notice must be made available October 1 of each year starting
52.9 October 1, 2012, and shall contain information detailing: calculation values including
52.10 derived wage rates and related employee and administrative factors; service utilization;
52.11 county and tribal allocation changes and, in even-numbered years, information on
52.12 adjustments to be made to calculation values and the timing of those adjustments.

52.13 (d) By November 1, 2012, the commissioner shall report to the legislative
52.14 committees with jurisdiction over disability waiver policy and budget on the operation
52.15 and management of the disability waiver rates-setting system, the results of the service
52.16 utilization research under subdivision 11, paragraph (a), and the implications of those
52.17 results for providers, provider types and applicable services, counties and tribes, and
52.18 individuals with disabilities. With respect to the procedure developed under subdivision
52.19 11, paragraph (b), the report shall include a description of the procedure and the expected
52.20 impact of the procedure on payments to providers individually and grouped by the
52.21 applicable services listed in subdivision 3.

52.22 Subd. 11. **Waiver rates management system.** (a) The rates management system
52.23 tool shall be used to determine the rate for an individual eligible under section 256B.092 or
52.24 256B.49. Beginning February 2012, the system shall be used as a guide for research into
52.25 service utilization in calendar year 2012. Effective January 1, 2013, the system must be
52.26 used to determine payment rates for home and community-based services and shall be the
52.27 basis for authorizing services except as provided under paragraphs (b) to (e). Paragraphs
52.28 (b) to (e) apply to payments made in calendar years 2013 and 2014.

52.29 (b) By October 1, 2012, the commissioner shall develop a procedure for uniformly
52.30 adjusting individualized payment rates, subject to accommodation under this section, to
52.31 allow for higher or lower reimbursements for providers when equivalent individualized
52.32 rates in effect as of October 1, 2012, with respect to the service, are more than five percent
52.33 higher or lower than the payments provided under section 256B.4913.

52.34 (c) For payment rates in effect for 2013 and 2014, if the payment rates established
52.35 under section 256B.4913 are within five percent of the historic individual rate for

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53.1 calendar year 2013 and subsequently calendar year 2014, the payment rate shall be the
53.2 authorization rate.

53.3 (d) For payment rates in effect for 2013 and 2014, when a historic rate is above the
53.4 five percent range of the payment rates established under section 256B.4913, the county
53.5 or tribe shall reduce the payment to providers as follows:

53.6 (1) if a provider's individualized rate in 2013 exceeds the historic rate by ten percent
53.7 or more, the payment must be reduced by five percentage points; or

53.8 (2) if a provider's individualized rate in 2013 exceeds the historic rate by at least five
53.9 percent but not more than ten percent, the payment must be reduced so that the difference
53.10 equals five percent.

53.11 (e) For payment rates in effect for 2013 and 2014, when a historic rate is below the
53.12 five percent range of the payment rates established under section 256B.4913, the county or
53.13 tribe shall increase the payment to providers as follows:

53.14 (1) if a provider's individualized rate in 2013 is lower than the historic rate by ten
53.15 percent or more, the payment must be increased by five percentage points; or

53.16 (2) if a provider's individualized rate in 2013 is lower than the historic rate by at
53.17 least five points but not more than ten points, the payment must be increased so that
53.18 the difference equals five percent.

53.19 (f) For calendar year 2015, all payment rates established under section 256B.4913
53.20 shall be the authorization rates.

53.21 Subd. 12. **Exceptions.** In a format prescribed by the commissioner, lead agencies
53.22 must identify individuals with exceptional needs that cannot be met under the disability
53.23 waiver rate system. The commissioner shall use that information to evaluate and, if
53.24 necessary, design an alternative payment structure for those individuals.

53.25 Subd. 13. **Shared service limits.** The commissioner retains authority to limit the
53.26 number of people that share waiver and day services. Individualized payment structures
53.27 and methodologies established by the commissioner under section 256B.4912 must reflect
53.28 the option to share services within the limits established by the commissioner.

53.29 Subd. 14. **Payment implementation.** Upon implementation of the payment
53.30 methodologies under this section, those payment rates supersede rates established in
53.31 county contracts for recipients receiving waiver services under sections 256B.092 and
53.32 256B.49.

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

53.34 Sec. 41. Minnesota Statutes 2010, section 256B.501, subdivision 4b, is amended to
53.35 read:

54.1 Subd. 4b. **Waiver rates and group residential housing rates.** (a) The average
54.2 daily reimbursement rates established by the commissioner for waived services shall
54.3 be adjusted to include the additional costs of services eligible for waiver funding under
54.4 title XIX of the Social Security Act and for which there is no group residential housing
54.5 payment available as a result of the payment limitations set forth in section 256I.05,
54.6 subdivision 10. The adjustment to the waiver rates shall be based on county reports of
54.7 service costs that are no longer eligible for group residential housing payments. No
54.8 adjustment shall be made for any amount of reported payments that prior to July 1, 1992,
54.9 exceeded the group residential housing rate limits established in section 256I.05 and were
54.10 reimbursed through county funds.

54.11 (b) This subdivision expires January 1, 2013.

54.12 Sec. 42. Minnesota Statutes 2010, section 256B.5013, subdivision 1, is amended to
54.13 read:

54.14 Subdivision 1. **Variable rate adjustments.** (a) For rate years beginning on or after
54.15 October 1, 2000, when there is a documented increase in the needs of a current ICF/MR
54.16 recipient, the county of financial responsibility may recommend a variable rate to enable
54.17 the facility to meet the individual's increased needs. ~~Variable rate adjustments made under~~
54.18 ~~this subdivision replace payments for persons with special needs under section 256B.501,~~
54.19 ~~subdivision 8, and payments for persons with special needs for crisis intervention services~~
54.20 ~~under section 256B.501, subdivision 8a.~~ Effective July 1, 2003, facilities with a base rate
54.21 above the 50th percentile of the statewide average reimbursement rate for a Class A
54.22 facility or Class B facility, whichever matches the facility licensure, are not eligible for a
54.23 variable rate adjustment. Variable rate adjustments may not exceed a 12-month period,
54.24 except when approved for purposes established in paragraph (b), clause (1). Variable rate
54.25 adjustments approved solely on the basis of changes on a developmental disabilities
54.26 screening document will end June 30, 2002.

54.27 (b) A variable rate may be recommended by the county of financial responsibility
54.28 for increased needs in the following situations:

54.29 (1) a need for resources due to an individual's full or partial retirement from
54.30 participation in a day training and habilitation service when the individual: (i) has reached
54.31 the age of 65 or has a change in health condition that makes it difficult for the person
54.32 to participate in day training and habilitation services over an extended period of time
54.33 because it is medically contraindicated; and (ii) has expressed a desire for change through
54.34 the developmental disability screening process under section 256B.092;

55.1 (2) a need for additional resources for intensive short-term programming which is
55.2 necessary prior to an individual's discharge to a less restrictive, more integrated setting;

55.3 (3) a demonstrated medical need that significantly impacts the type or amount of
55.4 services needed by the individual; or

55.5 (4) a demonstrated behavioral need that significantly impacts the type or amount of
55.6 services needed by the individual.

55.7 (c) The county of financial responsibility must justify the purpose, the projected
55.8 length of time, and the additional funding needed for the facility to meet the needs of
55.9 the individual.

55.10 (d) The facility shall provide an annual report to the county case manager on
55.11 the use of the variable rate funds and the status of the individual on whose behalf the
55.12 funds were approved. The county case manager will forward the facility's report with a
55.13 recommendation to the commissioner to approve or disapprove a continuation of the
55.14 variable rate.

55.15 (e) Funds made available through the variable rate process that are not used by
55.16 the facility to meet the needs of the individual for whom they were approved shall be
55.17 returned to the state.

55.18 **Sec. 43. REVISOR'S INSTRUCTION.**

55.19 In Minnesota Statutes, sections 245B.02, 245B.06, 252.40, 252.41, 256B.038,
55.20 256B.0918, 256B.5015, 256B.765, and 604A.33, the revisor of statutes shall delete
55.21 "sections 252.40 to 252.46" and replace it with "sections 252.41 to 252.46."

55.22 **EFFECTIVE DATE.** This section is effective January 1, 2013.

55.23 **Sec. 44. REPEALER.**

55.24 Minnesota Statutes 2010, sections 252.46, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
55.25 11, 16, 17, 18, 19, 20, and 21; and 256B.501, subdivision 8, are repealed.

55.26 **EFFECTIVE DATE.** This section is effective January 1, 2013.