



**DEPARTMENT OF
HUMAN SERVICES**

Minnesota Department of Human Services
Commissioner Emily Piper
540 Cedar Street
St. Paul, Minnesota 55101

March 6, 2017

The Honorable Mary Franson
Minnesota House of Representatives
545 State Office Building
St. Paul, Minnesota 55155-1206

Dear Representative Franson:

During the February 8, 2017, Subcommittee on Childcare Access and Affordability hearing on HF0904, committee members had several questions on the development, adoption, and implementation of the Positive Supports Rule. I am writing to respond to those questions and to reiterate the Department of Human Services' (DHS) position on HF0904.

HF0904 would exempt licensed child care providers from complying with the Positive Supports Rule. As was communicated to you before the February 8 committee hearing, DHS must oppose HF0904. The passage of this legislation would put the State out of compliance with the Jensen Settlement Agreement to modernize the rule that previously governed restraint and seclusion. DHS is required to implement the recommendations of the Rule 40 Advisory Committee, to apply the Positive Supports Rule to all DHS licensed providers, just as Rule 40 governed the use of aversive and deprivation procedures.

The 2013 Minnesota Legislature directed DHS to develop rules governing the use of positive support strategies and to eliminate the use of restrictive interventions programs licensed by DHS. This rule, which came to be known as the Positive Supports Rule (Minn. Rule 9544), took effect just over two years later, on August 31, 2015. The initial authority for the rule applied to providers licensed under Minn. Stat. 245D, which primarily applies to disability services. The 2014 Legislature expanded the scope of the rule to apply to "all facilities and services licensed under chapter 245D, and all licensed facilities and licensed services serving persons with a developmental disability or related condition."

Below is a general timeline of the events that lead to the development and adoption of the Positive Supports Rule:

June 2011	<u>Jensen Settlement Agreement</u>
January 2012	The Advisory Committee to modernize Rule 40 began meeting (continued through July 2013).
2012 session	245D standards enacted during 2012 legislative session.
2013 session	Rule authority enacted for the Positive Supports Rule (<u>MS 245.8251</u>). Original authority applies to 245D licensed providers.

July 2, 2013	Rule 40 Advisory Committee issued <u>final recommendations</u> , including recommendations for the Positive Supports Rule, to apply beyond 245D to all DHS licensed providers serving people with a developmental disability. Child Care Centers were covered under Rule 40.
January 1, 2014	245D takes effect for HCBS providers.
2014 session	Rule authority (<u>MS 245.8251</u>) amended to include all DHS licensed facilities and services serving a person with a developmental disability, in addition to 245D licensed providers.
April 22, 2015	Administrative Law Judge Eric L. Lipman issued his report on the proposed rule. In his report, he disapproved the agency's cost determination under MS 14.127, triggering the provisions of the statute.
June 19, 2015	The Commissioner of Human Services issued an Order Adopting Rules.
June 26, 2015	Governor Dayton issued a one-year <u>Waiver</u> of the application of MS 14.127, subdivision 3, sending notice to the Speaker of the House and the President of the Senate, as required by the statute.
July 7, 2015	The Office of Administrative Hearings filed the adopted rules with the Secretary of State.
August 31, 2015	The Positive Supports Rule (MN Rule 9544) took effect.
2016 session	DHS sought legislation approving the rules pursuant to MN 14.127, subdivision 3.
August 16, 2016	Governor Dayton issued a <u>permanent waiver</u> of the application of MN 14.127, subdivision 3, sending notice to the Speaker of the House and the President of the Senate, as required by the statute

DHS has made a number of resources available to providers, counties, and people receiving services to better understand positive supports and the requirements of the new rule. This includes:

- Launched a website, www.mnpsp.org, containing resources on positive supports, person-centered planning, and guides to Minnesota regulation regarding positive supports;
- Funded a partnership with the University of Minnesota to open the online training available on the College of Direct Supports website to DHS-licensed providers and county and state staff. Through this curriculum, many providers can meet their training needs under 245D and the Positive Supports Rule for free or a reduced cost (depending on size of the provider);
- Created a technical assistance email to specifically address matters related to positive supports (positivesupports@state.mn.us);
- Published a Positive Supports Rule resource manual for DHS-licensed providers; and
- Contracted with the Center for Inclusive Child Care to determine whether training already available to child care providers meets Positive Supports training requirements, and incorporated any additional information, if necessary, to ensure training is complete and embedded into curriculum already used by many child care providers.

Representative May Franson

March 6, 2017

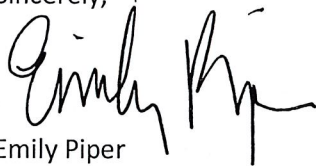
Page 3

DHS has made particular effort to work with the child care provider community, as it is aware that many of the elements of the Positive Supports Rule are new to them, although most child care practice standards are consistent with those in the Positive Supported Rule. We continue to be committed to working with the child care provider community to provide support and resources as this rule is implemented.

We understand that child care providers want to be able to comply with Minnesota rules and statutes and, ultimately, share in everyone's goal of providing safe and nurturing environments for Minnesota's youngest citizens.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Piper". The signature is written in a cursive, flowing style with a large initial "E" and a long, sweeping tail.

Emily Piper
Commissioner