

1.1 moves to amend H.F. No. 2911 as follows:

1.2 Page 1, after line 7, insert:

1.3 "Section 1. Minnesota Statutes 2017 Supplement, section 245A.03, subdivision 7, is
1.4 amended to read:

1.5 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an initial license
1.6 for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult
1.7 foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter
1.8 for a physical location that will not be the primary residence of the license holder for the
1.9 entire period of licensure. If a license is issued during this moratorium, and the license
1.10 holder changes the license holder's primary residence away from the physical location of
1.11 the foster care license, the commissioner shall revoke the license according to section
1.12 245A.07. The commissioner shall not issue an initial license for a community residential
1.13 setting licensed under chapter 245D. When approving an exception under this paragraph,
1.14 the commissioner shall consider the resource need determination process in paragraph (h),
1.15 the availability of foster care licensed beds in the geographic area in which the licensee
1.16 seeks to operate, the results of a person's choices during their annual assessment and service
1.17 plan review, and the recommendation of the local county board. The determination by the
1.18 commissioner is final and not subject to appeal. Exceptions to the moratorium include:

1.19 (1) foster care settings that are required to be registered under chapter 144D;

1.20 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, or
1.21 community residential setting licenses replacing adult foster care licenses in existence on
1.22 December 31, 2013, and determined to be needed by the commissioner under paragraph
1.23 (b);

1.24 (3) new foster care licenses or community residential setting licenses determined to be
1.25 needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/DD,

2.1 or regional treatment center; restructuring of state-operated services that limits the capacity
2.2 of state-operated facilities; or allowing movement to the community for people who no
2.3 longer require the level of care provided in state-operated facilities as provided under section
2.4 256B.092, subdivision 13, or 256B.49, subdivision 24;

2.5 (4) new foster care licenses or community residential setting licenses determined to be
2.6 needed by the commissioner under paragraph (b) for persons requiring hospital level care;

2.7 (5) new foster care licenses or community residential setting licenses determined to be
2.8 needed by the commissioner for the transition of people from personal care assistance to
2.9 the home and community-based services;

2.10 (6) new foster care licenses or community residential setting licenses determined to be
2.11 needed by the commissioner for the transition of people from the residential care waiver
2.12 services to foster care services. This exception applies only when:

2.13 (i) the person's case manager provided the person with information about the choice of
2.14 service, service provider, and location of service to help the person make an informed choice;
2.15 and

2.16 (ii) the person's foster care services are less than or equal to the cost of the person's
2.17 services delivered in the residential care waiver service setting as determined by the lead
2.18 agency; ~~or~~

2.19 (7) new foster care licenses or community residential setting licenses for people receiving
2.20 services under chapter 245D and residing in an unlicensed setting before May 1, 2017, and
2.21 for which a license is required. This exception does not apply to people living in their own
2.22 home. For purposes of this clause, there is a presumption that a foster care or community
2.23 residential setting license is required for services provided to three or more people in a
2.24 dwelling unit when the setting is controlled by the provider. A license holder subject to this
2.25 exception may rebut the presumption that a license is required by seeking a reconsideration
2.26 of the commissioner's determination. The commissioner's disposition of a request for
2.27 reconsideration is final and not subject to appeal under chapter 14. The exception is available
2.28 until June 30, ~~2018~~ 2019. This exception is available when:

2.29 (i) the person's case manager provided the person with information about the choice of
2.30 service, service provider, and location of service, including in the person's home, to help
2.31 the person make an informed choice; and

3.1 (ii) the person's services provided in the licensed foster care or community residential
3.2 setting are less than or equal to the cost of the person's services delivered in the unlicensed
3.3 setting as determined by the lead agency; or

3.4 (8) a vacancy in a setting granted an exception under clause (7), may receive an exception
3.5 created by a person receiving services under chapter 245D and residing in the unlicensed
3.6 setting between January 1, 2017, and May 1, 2017, for which a vacancy occurs between
3.7 January 1, 2017, and the date of the exception request. This exception is available when the
3.8 lead agency provides documentation to the commissioner on the eligibility criteria being
3.9 met. This exception is available until June 30, 2019.

3.10 (b) The commissioner shall determine the need for newly licensed foster care homes or
3.11 community residential settings as defined under this subdivision. As part of the determination,
3.12 the commissioner shall consider the availability of foster care capacity in the area in which
3.13 the licensee seeks to operate, and the recommendation of the local county board. The
3.14 determination by the commissioner must be final. A determination of need is not required
3.15 for a change in ownership at the same address.

3.16 (c) When an adult resident served by the program moves out of a foster home that is not
3.17 the primary residence of the license holder according to section 256B.49, subdivision 15,
3.18 paragraph (f), or the adult community residential setting, the county shall immediately
3.19 inform the Department of Human Services Licensing Division. The department may decrease
3.20 the statewide licensed capacity for adult foster care settings.

3.21 (d) Residential settings that would otherwise be subject to the decreased license capacity
3.22 established in paragraph (c) shall be exempt if the license holder's beds are occupied by
3.23 residents whose primary diagnosis is mental illness and the license holder is certified under
3.24 the requirements in subdivision 6a or section 245D.33.

3.25 (e) A resource need determination process, managed at the state level, using the available
3.26 reports required by section 144A.351, and other data and information shall be used to
3.27 determine where the reduced capacity determined under section 256B.493 will be
3.28 implemented. The commissioner shall consult with the stakeholders described in section
3.29 144A.351, and employ a variety of methods to improve the state's capacity to meet the
3.30 informed decisions of those people who want to move out of corporate foster care or
3.31 community residential settings, long-term service needs within budgetary limits, including
3.32 seeking proposals from service providers or lead agencies to change service type, capacity,
3.33 or location to improve services, increase the independence of residents, and better meet

4.1 needs identified by the long-term services and supports reports and statewide data and
4.2 information.

4.3 (f) At the time of application and reapplication for licensure, the applicant and the license
4.4 holder that are subject to the moratorium or an exclusion established in paragraph (a) are
4.5 required to inform the commissioner whether the physical location where the foster care
4.6 will be provided is or will be the primary residence of the license holder for the entire period
4.7 of licensure. If the primary residence of the applicant or license holder changes, the applicant
4.8 or license holder must notify the commissioner immediately. The commissioner shall print
4.9 on the foster care license certificate whether or not the physical location is the primary
4.10 residence of the license holder.

4.11 (g) License holders of foster care homes identified under paragraph (f) that are not the
4.12 primary residence of the license holder and that also provide services in the foster care home
4.13 that are covered by a federally approved home and community-based services waiver, as
4.14 authorized under section 256B.0915, 256B.092, or 256B.49, must inform the human services
4.15 licensing division that the license holder provides or intends to provide these waiver-funded
4.16 services.

4.17 (h) The commissioner may adjust capacity to address needs identified in section
4.18 144A.351. Under this authority, the commissioner may approve new licensed settings or
4.19 delicense existing settings. Delicensing of settings will be accomplished through a process
4.20 identified in section 256B.493. Annually, by August 1, the commissioner shall provide
4.21 information and data on capacity of licensed long-term services and supports, actions taken
4.22 under the subdivision to manage statewide long-term services and supports resources, and
4.23 any recommendations for change to the legislative committees with jurisdiction over the
4.24 health and human services budget.

4.25 (i) The commissioner must notify a license holder when its corporate foster care or
4.26 community residential setting licensed beds are reduced under this section. The notice of
4.27 reduction of licensed beds must be in writing and delivered to the license holder by certified
4.28 mail or personal service. The notice must state why the licensed beds are reduced and must
4.29 inform the license holder of its right to request reconsideration by the commissioner. The
4.30 license holder's request for reconsideration must be in writing. If mailed, the request for
4.31 reconsideration must be postmarked and sent to the commissioner within 20 calendar days
4.32 after the license holder's receipt of the notice of reduction of licensed beds. If a request for
4.33 reconsideration is made by personal service, it must be received by the commissioner within
4.34 20 calendar days after the license holder's receipt of the notice of reduction of licensed beds.

5.1 (j) The commissioner shall not issue an initial license for children's residential treatment
5.2 services licensed under Minnesota Rules, parts 2960.0580 to 2960.0700, under this chapter
5.3 for a program that Centers for Medicare and Medicaid Services would consider an institution
5.4 for mental diseases. Facilities that serve only private pay clients are exempt from the
5.5 moratorium described in this paragraph. The commissioner has the authority to manage
5.6 existing statewide capacity for children's residential treatment services subject to the
5.7 moratorium under this paragraph and may issue an initial license for such facilities if the
5.8 initial license would not increase the statewide capacity for children's residential treatment
5.9 services subject to the moratorium under this paragraph."

5.10 Page 3, line 8, delete "2021" and insert "2016"

5.11 Page 3, after line 13, insert:

5.12 "Sec. 3. Minnesota Statutes 2017 Supplement, section 245D.03, subdivision 1, is amended
5.13 to read:

5.14 Subdivision 1. **Applicability.** (a) The commissioner shall regulate the provision of home
5.15 and community-based services to persons with disabilities and persons age 65 and older
5.16 pursuant to this chapter. The licensing standards in this chapter govern the provision of
5.17 basic support services and intensive support services.

5.18 (b) Basic support services provide the level of assistance, supervision, and care that is
5.19 necessary to ensure the health and welfare of the person and do not include services that
5.20 are specifically directed toward the training, treatment, habilitation, or rehabilitation of the
5.21 person. Basic support services include:

5.22 (1) in-home and out-of-home respite care services as defined in section 245A.02,
5.23 subdivision 15, and under the brain injury, community alternative care, community access
5.24 for disability inclusion, developmental disability, and elderly waiver plans, excluding
5.25 out-of-home respite care provided to children in a family child foster care home licensed
5.26 under Minnesota Rules, parts 2960.3000 to 2960.3100, when the child foster care license
5.27 holder complies with the requirements under section 245D.06, subdivisions 5, 6, 7, and 8,
5.28 or successor provisions; and section 245D.061 or successor provisions, which must be
5.29 stipulated in the statement of intended use required under Minnesota Rules, part 2960.3000,
5.30 subpart 4;

5.31 (2) adult companion services as defined under the brain injury, community access for
5.32 disability inclusion, community alternative care, and elderly waiver plans, excluding adult
5.33 companion services provided under the Corporation for National and Community Services

6.1 Senior Companion Program established under the Domestic Volunteer Service Act of 1973,
6.2 Public Law 98-288;

6.3 (3) personal support as defined under the developmental disability waiver plan;

6.4 (4) 24-hour emergency assistance, personal emergency response as defined under the
6.5 community access for disability inclusion and developmental disability waiver plans;

6.6 (5) night supervision services as defined under the brain injury, community access for
6.7 disability inclusion, community alternative care, and developmental disability waiver plan
6.8 plans;

6.9 (6) homemaker services as defined under the community access for disability inclusion,
6.10 brain injury, community alternative care, developmental disability, and elderly waiver plans,
6.11 excluding providers licensed by the Department of Health under chapter 144A and those
6.12 providers providing cleaning services only; and

6.13 (7) individual community living support under section 256B.0915, subdivision 3j.

6.14 (c) Intensive support services provide assistance, supervision, and care that is necessary
6.15 to ensure the health and welfare of the person and services specifically directed toward the
6.16 training, habilitation, or rehabilitation of the person. Intensive support services include:

6.17 (1) intervention services, including:

6.18 (i) ~~behavioral~~ positive support services as defined under the brain injury ~~and~~, community
6.19 access for disability inclusion, community alternative care, and developmental disability
6.20 waiver plans;

6.21 (ii) in-home or out-of-home crisis respite services as defined under the brain injury,
6.22 community access for disability inclusion, community alternative care, and developmental
6.23 disability waiver plan plans; and

6.24 (iii) specialist services as defined under the current brain injury, community access for
6.25 disability inclusion, community alternative care, and developmental disability waiver plan
6.26 plans;

6.27 (2) in-home support services, including:

6.28 (i) in-home family support and supported living services as defined under the
6.29 developmental disability waiver plan;

6.30 (ii) independent living services training as defined under the brain injury and community
6.31 access for disability inclusion waiver plans;

7.1 (iii) semi-independent living services; and

7.2 (iv) individualized home supports services as defined under the brain injury, community
7.3 alternative care, and community access for disability inclusion waiver plans;

7.4 (3) residential supports and services, including:

7.5 (i) supported living services as defined under the developmental disability waiver plan
7.6 provided in a family or corporate child foster care residence, a family adult foster care
7.7 residence, a community residential setting, or a supervised living facility;

7.8 (ii) foster care services as defined in the brain injury, community alternative care, and
7.9 community access for disability inclusion waiver plans provided in a family or corporate
7.10 child foster care residence, a family adult foster care residence, or a community residential
7.11 setting; and

7.12 (iii) residential services provided to more than four persons with developmental
7.13 disabilities in a supervised living facility, including ICFs/DD;

7.14 (4) day services, including:

7.15 (i) structured day services as defined under the brain injury waiver plan;

7.16 (ii) day training and habilitation services under sections 252.41 to 252.46, and as defined
7.17 under the developmental disability waiver plan; and

7.18 (iii) prevocational services as defined under the brain injury and community access for
7.19 disability inclusion waiver plans; and

7.20 (5) employment exploration services as defined under the brain injury, community
7.21 alternative care, community access for disability inclusion, and developmental disability
7.22 waiver plans;

7.23 (6) employment development services as defined under the brain injury, community
7.24 alternative care, community access for disability inclusion, and developmental disability
7.25 waiver plans; and

7.26 (7) employment support services as defined under the brain injury, community alternative
7.27 care, community access for disability inclusion, and developmental disability waiver plans."

7.28 Page 4, delete section 3, and insert:

7.29 "Sec. 5. Minnesota Statutes 2016, section 245D.091, subdivision 2, is amended to read:

7.30 Subd. 2. ~~Behavior~~ **Positive support professional qualifications.** A ~~behavior~~ positive
7.31 support professional providing ~~behavioral~~ positive support services as identified in section

8.1 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the
8.2 following areas as required under the brain injury ~~and~~ community access for disability
8.3 inclusion, community alternative care, and developmental disability waiver plans or successor
8.4 plans:

8.5 (1) ethical considerations;

8.6 (2) functional assessment;

8.7 (3) functional analysis;

8.8 (4) measurement of behavior and interpretation of data;

8.9 (5) selecting intervention outcomes and strategies;

8.10 (6) behavior reduction and elimination strategies that promote least restrictive approved
8.11 alternatives;

8.12 (7) data collection;

8.13 (8) staff and caregiver training;

8.14 (9) support plan monitoring;

8.15 (10) co-occurring mental disorders or neurocognitive disorder;

8.16 (11) demonstrated expertise with populations being served; and

8.17 (12) must be a:

8.18 (i) psychologist licensed under sections 148.88 to 148.98, who has stated to the Board
8.19 of Psychology competencies in the above identified areas;

8.20 (ii) clinical social worker licensed as an independent clinical social worker under chapter
8.21 148D, or a person with a master's degree in social work from an accredited college or
8.22 university, with at least 4,000 hours of post-master's supervised experience in the delivery
8.23 of clinical services in the areas identified in clauses (1) to (11);

8.24 (iii) physician licensed under chapter 147 and certified by the American Board of
8.25 Psychiatry and Neurology or eligible for board certification in psychiatry with competencies
8.26 in the areas identified in clauses (1) to (11);

8.27 (iv) licensed professional clinical counselor licensed under sections 148B.29 to 148B.39
8.28 with at least 4,000 hours of post-master's supervised experience in the delivery of clinical
8.29 services who has demonstrated competencies in the areas identified in clauses (1) to (11);

9.1 (v) person with a master's degree from an accredited college or university in one of the
 9.2 behavioral sciences or related fields, with at least 4,000 hours of post-master's supervised
 9.3 experience in the delivery of clinical services with demonstrated competencies in the areas
 9.4 identified in clauses (1) to (11); ~~or~~

9.5 (vi) person with a master's degree or PhD in one of the behavioral sciences or related
 9.6 field with demonstrated expertise in positive support services, as determined by the person's
 9.7 case manager based on the person's needs as outlined in the person's community support
 9.8 plan; or

9.9 (vii) registered nurse who is licensed under sections 148.171 to 148.285, and who is
 9.10 certified as a clinical specialist or as a nurse practitioner in adult or family psychiatric and
 9.11 mental health nursing by a national nurse certification organization, or who has a master's
 9.12 degree in nursing or one of the behavioral sciences or related fields from an accredited
 9.13 college or university or its equivalent, with at least 4,000 hours of post-master's supervised
 9.14 experience in the delivery of clinical services."

9.15 Page 6, delete section 4, and insert:

9.16 "Sec. 6. Minnesota Statutes 2016, section 245D.091, subdivision 3, is amended to read:

9.17 Subd. 3. ~~Behavior~~ **Positive support analyst qualifications.** (a) A ~~behavior~~ positive
 9.18 support analyst providing behavioral positive support services as identified in section
 9.19 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the
 9.20 following areas as required under the brain injury ~~and~~, community access for disability
 9.21 inclusion, community alternative care, and developmental disability waiver plans or successor
 9.22 plans:

9.23 (1) have obtained a baccalaureate degree, master's degree, or PhD in a social services
 9.24 discipline; ~~or~~

9.25 (2) meet the qualifications of a mental health practitioner as defined in section 245.462,
 9.26 subdivision 17; or

9.27 (3) be a board certified behavior analyst or board certified assistant behavior analyst by
 9.28 the Behavior Analyst Certification Board, Incorporated.

9.29 (b) In addition, a ~~behavior~~ positive support analyst must:

9.30 (1) have four years of supervised experience ~~working with individuals who exhibit~~
 9.31 ~~challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder~~
 9.32 conducting functional behavior assessments and designing, implementing, and evaluating

10.1 effectiveness of positive practices behavior support strategies for people who exhibit
 10.2 challenging behaviors as well as co-occurring mental disorders and neuro-cognitive disorder;

10.3 ~~(2) have received ten hours of instruction in functional assessment and functional analysis;~~
 10.4 training prior to hire or within 90 calendar days of hire that includes:

10.5 (i) ten hours of instruction in functional assessment and functional analysis;

10.6 (ii) 20 hours of instruction in the understanding of the function of behavior;

10.7 (iii) ten hours of instruction on design of positive practices behavior support strategies;

10.8 (iv) 20 hours of instruction preparing written intervention strategies, designing data
 10.9 collection protocols, training other staff to implement positive practice strategies,
 10.10 summarizing and reporting program evaluation data, analyzing program evaluation data to
 10.11 identify design flaws in behavioral interventions or failures in implementation fidelity and
 10.12 recommending enhancements based on evaluation data; and

10.13 (v) eight hours of instruction on principles of person-centered thinking;

10.14 ~~(3) have received 20 hours of instruction in the understanding of the function of behavior;~~

10.15 ~~(4) have received ten hours of instruction on design of positive practices behavior support~~
 10.16 ~~strategies;~~

10.17 ~~(5) have received 20 hours of instruction on the use of behavior reduction approved~~
 10.18 ~~strategies used only in combination with behavior positive practices strategies;~~

10.19 ~~(6)~~ (3) be determined by a ~~behavior~~ positive support professional to have the training
 10.20 and prerequisite skills required to provide positive practice strategies as well as behavior
 10.21 reduction approved and permitted intervention to the person who receives ~~behavioral~~ positive
 10.22 support; and

10.23 ~~(7)~~ (4) be under the direct supervision of a ~~behavior~~ positive support professional.

10.24 (c) Meeting the qualifications for a positive support professional under subdivision 2
 10.25 shall substitute for meeting the qualifications listed in paragraph (b)."

10.26 Page 7, delete section 5, and insert:

10.27 "Sec. 7. Minnesota Statutes 2016, section 245D.091, subdivision 4, is amended to read:

10.28 Subd. 4. **Behavior Positive support specialist qualifications.** (a) A ~~behavior~~ positive
 10.29 support specialist providing ~~behavioral~~ positive support services as identified in section
 10.30 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the
 10.31 following areas as required under the brain injury ~~and~~ ₂ community access for disability

11.1 inclusion, community alternative care, and developmental disability waiver plans or successor
11.2 plans:

11.3 (1) have an associate's degree in a social services discipline; or

11.4 (2) have two years of supervised experience working with individuals who exhibit
11.5 challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder.

11.6 (b) In addition, a behavior specialist must:

11.7 (1) have received training prior to hire or within 90 calendar days of hire that includes:

11.8 (i) a minimum of four hours of training in functional assessment;

11.9 ~~(2) have received~~ (ii) 20 hours of instruction in the understanding of the function of
11.10 behavior;

11.11 ~~(3) have received~~ (iii) ten hours of instruction on design of positive practices behavioral
11.12 support strategies; and

11.13 (iv) eight hours of instruction on principles of person-centered thinking;

11.14 ~~(4)~~ (2) be determined by a behavior positive support professional to have the training
11.15 and prerequisite skills required to provide positive practices strategies as well as behavior
11.16 reduction approved intervention to the person who receives behavioral positive support;
11.17 and

11.18 ~~(5)~~ (3) be under the direct supervision of a behavior positive support professional.

11.19 (c) Meeting the qualifications for a positive support professional under subdivision 2
11.20 shall substitute for meeting the qualifications listed in paragraphs (a) and (b).

11.21 Sec. 8. Minnesota Statutes 2017 Supplement, section 256B.4914, subdivision 3, is amended
11.22 to read:

11.23 Subd. 3. **Applicable services.** Applicable services are those authorized under the state's
11.24 home and community-based services waivers under sections 256B.092 and 256B.49,
11.25 including the following, as defined in the federally approved home and community-based
11.26 services plan:

11.27 (1) 24-hour customized living;

11.28 (2) adult day care;

11.29 (3) adult day care bath;

11.30 (4) ~~behavioral programming;~~

- 12.1 ~~(5)~~ companion services;
- 12.2 ~~(6)~~ (5) customized living;
- 12.3 ~~(7)~~ (6) day training and habilitation;
- 12.4 (7) employment development services;
- 12.5 (8) employment exploration services;
- 12.6 (9) employment support services;
- 12.7 ~~(8)~~ (10) housing access coordination;
- 12.8 ~~(9)~~ (11) independent living skills;
- 12.9 (12) independent living skills specialist services;
- 12.10 (13) individualized home supports;
- 12.11 ~~(10)~~ (14) in-home family support;
- 12.12 ~~(11)~~ (15) night supervision;
- 12.13 ~~(12)~~ (16) personal support;
- 12.14 (17) positive support service;
- 12.15 ~~(13)~~ (18) prevocational services;
- 12.16 ~~(14)~~ (19) residential care services;
- 12.17 ~~(15)~~ (20) residential support services;
- 12.18 ~~(16)~~ (21) respite services;
- 12.19 ~~(17)~~ (22) structured day services;
- 12.20 ~~(18)~~ (23) supported employment services;
- 12.21 ~~(19)~~ (24) supported living services;
- 12.22 ~~(20)~~ (25) transportation services;
- 12.23 ~~(21)~~ individualized home supports;
- 12.24 ~~(22)~~ independent living skills specialist services;
- 12.25 ~~(23)~~ employment exploration services;
- 12.26 ~~(24)~~ employment development services;
- 12.27 ~~(25)~~ employment support services; and

- 13.1 (26) other services as approved by the federal government in the state home and
- 13.2 community-based services plan."
- 13.3 Renumber the sections in sequence and correct the internal references
- 13.4 Amend the title accordingly