

HOUSE RESEARCH

Bill Summary

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This bill contains Department of Human Services continuing care policy provisions including establishing statewide home and community-based services provider standards and payment methodologies.

- 1 Exclusion from licensure.** Amends § 245A.03, subd. 2. Makes conforming changes related to the establishment of licensure standards for home and community-based services.
- 2 Record retention; license holder requirements.** Amends § 245A.041, by adding subd. 3. Specifies the records that must be retained by a license holder for review by the commissioner. Requires license holders to maintain all records related to the licensed program for five years from the date the provider ceases to provide services. Requires license holders to notify the commissioner of the location where the licensing records will be stored and the name of the person responsible for maintaining the stored records. Specifies who must maintain records when a license is transferred. Specifies requirements for maintaining records in the event of a contested case.
- 3 Electronic records; license holder use.** Amends § 245A.041, by adding subd. 4. Specifies the requirements that must be met when a license holder uses electronic record keeping or electronic signatures.
- 4 Home and community-based services; additional standards and procedures.** Creates § 245A.042.

Subd. 1. Standards governing the provision of home and community-based services. Requires residential and nonresidential programs for persons with disabilities or age 65 and older to obtain a license to provide home and community-based services through the CAC, CADI, DD, EW, or TBI MA waiver programs or the alternative care program. Requires applicants or license holders to demonstrate and maintain compliance with certain requirements as a condition of licensure.

Subd. 2. Modified application procedures. Modifies application procedures for certain providers seeking 245D licensure

Subd. 3. Implementation. Specifies that implementation of licensure of home and

community-based services will be implemented upon authorization of the commissioner to collect licensing fees. Specifies licenses will be issued on or after January 1, 2013. Specifies implementation of compliance monitoring must be phased in after January 1, 2013.

- 5 **Consolidation of hearings; reconsideration.** Amends § 245A.085. Adds a cross-reference to administrative duties of the state agency related to MA.
- 6 **Emergency.** Amends § 245B.02, by adding subd. 8a. Defines "emergency" for purposes of the services for developmental disabilities statutes.
- 7 **Incident.** Amends § 245B.02, subd. 10. Modifies the definition of "incident."
- 8 **License holder's responsibility for consumer's rights.** Amends § 245B.04, subd. 1. Requires license holders to provide the consumer or the consumer's legal representative with a copy of the consumer's rights annually.
- 9 **Service-related rights.** Amends § 245B.04, subd. 2. Modifies a consumer's service-related rights by providing that the consumer know the license holder's policies and procedures related to initiation and termination.
- 10 **Protection-related rights.** Amends § 245B.04, subd. 3. Modifies the consumer's protection-related rights by adding several more rights to the current list. Allows for restriction of certain rights only if determined necessary to ensure the health, safety, and well-being of the person. Requires the need for any restriction to be fully documented in the service plan. Requires written informed consent for the restriction of a protection-related right and specifies the information that must be included in the service plan. Allows approval for a restriction to be withdrawn at any time.
- 11 **Environment.** Amends § 245B.05, subd. 1. Modifies license holder requirements related to the environment in which services are provided.
- 12 **Staff orientation.** Amends § 245B.07, subd. 5. Modifies license holder requirements related to providing staff orientation to direct service staff.
- 13 **Subcontractors.** Amends § 245B.07, by adding subd. 7a. Requires license holders who use subcontractors to perform licensed services on their behalf to ensure that the subcontractor meets and maintains compliance with all requirements that apply to the services to be provided.
- 14 **Availability of current written policies and procedures.** Amends § 245B.07, subd. 9. Modifies license holder requirements related to written policies and procedures. Requires copies of policies and procedures affecting a consumer's rights to be provided upon service initiation.
- 15 **Consumer funds.** Amends § 245B.07, subd. 10. Prohibits license holders and program staff from accepting powers-of-attorney or appointment as guardian or conservator from a person receiving services from the license holder. Specifies that this prohibition does not apply to license holders that are Minnesota counties or other units of government.
- 16 **Citation.** Creates § 245D.01. Specifies that this chapter may be cited as the "Home and Community-Based Services Standards" or "HCBS Standards."
- 17 **Definitions.** Creates § 245D.02. Establishes definitions of "annual and annually," "case manager," "commissioner," "department," "direct contact," "drug," "emergency," "health services," "home and community-based services," "incident," "legal representative," "license," "licensed health professional," "license holder," "medication," "medication administration," "medication assistance," "medication management," "mental health crisis intervention team," "over-the-counter drug," "person," "person with a disability," "prescriber," "prescription drug," "program," "psychotropic medication," "restraint," "seclusion," "service," "service plan," "service site," "staff," "support team,"

"unit of government," and "volunteer."

18 Applicability and effect. Creates § 245D.03.

Subd. 1. Applicability. Requires the commissioner to regulate the provision of home and community-based services to persons with disabilities and persons age 65 and older pursuant to this chapter. Lists the services governed by the licensing standards in this chapter.

Subd. 2. Relationship to other standards governing home and community-based services. Specifies other standards governing home and community-based services license holders may be required to meet or may be exempt from meeting.

Subd. 3. Variance. Allows the commissioner to grant variances to certain requirements if certain conditions are met.

Subd. 4. License holders with multiple 245D licenses. Exempts license holders from certain requirements when a person changes service from one license to a different license held by the same license holder. Exempts license holders from certain staff orientation requirements under certain conditions.

19 Service recipient rights. Creates § 245D.04.

Subd. 1. License holder responsibility for individual rights of persons served by the program. Specifies license holder requirements related to individual rights of persons served by the program.

Subd. 2. Service-related rights. Specifies a person's service-related rights including the right to participate in the development and evaluation of the services provided to the person and the right to know in advance the limits to the services available from the license holder.

Subd. 3. Protection-related rights. Specifies a person's protection-related rights including the right to be free from maltreatment, be treated with courtesy and respect and receive respectful treatment of personal property, and engage in chosen activities. Specifies protection-related rights for persons residing in a residential site licensed by DHS, or where the license holder is the owner, lessor, or tenant of the residential service site. Allows for restriction of certain rights only if determined necessary to ensure the health, safety, and well-being of the person. Requires the need for any restriction to be fully documented in the service plan. Requires written informed consent for the restriction of a protection-related right and specifies the information that must be documented in the service plan. Allows approval for a restriction to be withdrawn at anytime.

20 Health services. Creates § 245D.05.

Subd. 1. Health needs. Makes the license holder responsible for providing health services assigned in the service plan and consistent with the person's health needs. Requires the license holder to promptly notify specified persons of changes in a person's health needs affecting assigned health services, when discovered by the license holder. Requires license holders to maintain documentation of how the person's health needs will be met.

Subd. 2. Medication administration. Lists criteria license holders must meet before staff that is not a licensed health professional administers medication or treatment. Lists information that must be documented in the person's medication administration record. Specifies requirements license holders must meet related to the medication administration record.

Subd. 3. Medication assistance. Requires license holders to ensure that certain requirements

are met when staff provides assistance to enable a person to self-administer medication when the person is capable of directing the person's own care, or when the person's legal representative is present and able to direct care for the person.

Subd. 4. Reporting medication and treatment issues. Lists medication administration issues that must be reported.

Subd. 5. Injectable medications. Allows injectable medications to be administered according to a prescriber's order and written instructions under certain conditions.

21 Protection standards. Creates § 245D.06.

Subd. 1. Incident response and reporting. Requires the license holder to respond to all incidents that occur while providing services to protect the health and safety of and minimize risk of harm to the person. Requires license holders to maintain information about and report incidents to certain persons within 24 hours of an incident occurring while services are being provided, or within 24 hours of discovery or receipt of information that an incident occurred. Prohibits license holders from disclosing personally identifiable information about any other person when making the report when the incident involves more than one person, unless the license holder has the consent of the person. Requires the license holder to inform the case manager of a report of maltreatment within 24 hours of reporting maltreatment as required under the maltreatment of minors or vulnerable adults statutes. Requires the license holder to report the death or serious injury of the person to certain persons within 24 hours of the occurrence or within 24 hours of receipt of the information. Requires license holders to conduct a review of incident reports for identification of incident patterns and implementation of corrective action as necessary to reduce occurrences.

Subd. 2. Environment and safety. Requires the license holder to meet specified requirements related to the environment in which services are provided.

Subd. 3. Compliance with fire and safety codes. Requires license holders to document compliance with applicable building codes, fire safety codes, health rules, and zoning ordinances, or document that an appropriate waiver has been granted when services are provided at a service site licensed by DHS or where the license holder is the owner, lessor, or tenant of the service site.

Subd. 4. Funds and property. Requires license holders to have written authorization from the person and case manager to assist a person with the safekeeping of funds or property. Prohibits license holders and program staff from accepting powers-of-attorney or appointment as guardian or conservator from a person receiving services from the license holder. Specifies that this prohibition does not apply to license holders that are Minnesota counties or other units of government or to staff persons employed by license holders who were acting as power-of-attorney, guardian, or conservator prior to enactment of this section.

Subd. 5. Prohibitions. Prohibits license holders from using psychotropic medication as a substitute for adequate staffing, as punishment, for staff convenience, or for any reason other than as prescribed. Prohibits license holders from using restraints or seclusion under any circumstance, unless the commissioner has approved a variance request.

22 Service needs. Creates § 245D.07.

Subd. 1. Provision of services. Requires license holders to provide services as specified in the service plan and assigned to the license holder. Requires provision of services to comply with the requirements of this chapter and the federal waiver plans.

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

Subd. 3. Reports. Requires the license holder to provide written reports regarding the person's progress or status as requested by the person, the person's legal representative, the case manager, or the team.

23 Record requirements. Creates § 245D.08.

Subd. 1. Record-keeping systems. Requires the license holder to ensure that the content and format of service recipient, personnel, and program records are uniform, legible, and in compliance with the requirements of this chapter.

Subd. 2. Service recipient record. Lists requirements license holders must meet related to service recipient records. Lists the information the license holder must maintain for each person.

Subd. 3. Access to service recipient records. Requires the license holder to ensure that specified persons have access to records in accordance with applicable state and federal law, regulation, or rule.

Subd. 4. Personnel records. Requires license holders to maintain a personnel record of each employee, direct service volunteer, and subcontractor to document and verify staff qualifications, orientation, and training. Lists the information that must be included in the personnel record.

24 Staffing standards. Creates § 245D.09.

Subd. 1. Staffing requirements. Requires license holders to provide direct service staff sufficient to ensure the health, safety, and protection of rights of each person and to be able to implement the responsibilities assigned to the license holder in each person's service plan.

Subd. 2. Supervision of staff having direct contact. Requires the license holder to provide adequate supervision of staff providing direct service to ensure the health, safety, and protection of rights of each person and implementation of the responsibilities assigned to the license holder in each person's service plan.

Subd. 3. Staff qualifications. Requires license holders to verify and maintain evidence of staff competency. Lists documentation of competency license holders must maintain.

Subd. 4. Orientation. Requires license holders to provide and ensure completion of orientation within 90 days of hiring direct service staff. Lists what must be included in the orientation. Requires license holders who provide direct service themselves to complete the orientation. Lists items on which the staff person must review and receive instruction before providing unsupervised direct service to a person served by the program.

Subd. 5. Training. Requires license holders to provide annual training to direct service staff on specified topics. Requires license holders to have a staff person available on site who is trained in basic first aid and, when required in a person's service plan, cardiopulmonary

resuscitation, when the license holder is the owner, lessor, or tenant of the service site and whenever a person receiving service is present at the site.

Subd. 6. Subcontractors. Requires license holders who use subcontractors to perform licensed services on their behalf to ensure that the subcontractor meets and maintains compliance with all requirements that apply to the services to be provided.

Subd. 7. Volunteers. Requires license holders to ensure that volunteers who provide direct services to persons served by the program receive the training, orientation, and supervision necessary to fulfill their responsibilities.

25 Policies and procedures. Creates § 245D.10.

Subd. 1. Policy and procedure requirements. Requires license holders to establish, enforce, and maintain policies and procedures as required under this chapter.

Subd. 2. Grievances. Requires license holders to establish policies and procedures that provide a simple complaint process for persons served by the program and their authorized representatives to bring a grievance. Lists requirements that must be met in the grievance policies and procedures.

Subd. 3. Service suspension and service termination. Requires license holders to establish policies and procedures for temporary service suspension and service termination that promote continuity of care and service coordination with the person and specified others. Lists requirements the policy must meet.

Subd. 4. Availability of current written policies and procedures. Requires the license holder to review and update, as needed, the written policies and procedures required under this chapter. Requires the license holder to inform the person and case manager of the policies and procedures affecting a person's rights and to provide copies of those policies and procedures within certain timelines. Requires the license holder to provide written notice at least 30 days before implementing any revised policies and procedures affecting a person's rights. Specifies the information that must be contained in the notice. Requires the license holder to inform all employees of revised policies and procedures and to provide training on implementation of the revised policies and procedures.

26 Home and community-based waivers; providers and payment. Amends § 256B.4912.

Subd. 1. Provider qualifications. Modifies the provider qualifications established by the commissioner for the home and community-based waivers providing services to seniors and individuals with disabilities.

Subd. 2. Payment methodologies. Replaces "rate-setting" with "payment." Prohibits counties from implementing changes to established processes for rate-setting methodologies using data from research rates.

Subd. 3. Payment requirements. Lists the items the payment methodologies must accommodate, including supervisory costs, staffing patterns, and recipient intensity.

Subd. 4. Payment rate criteria. Requires payment rates to reflect reasonable costs that are ordinary, necessary, and related to service delivery. Lists services that must not be reimbursed by the commissioner.

Subd. 5. County and tribal provider contract elimination. Eliminates county and tribal contracts with providers of home and community-based waiver services effective January 1, 2014.

Subd. 6. Program standards. Requires the commissioner to establish uniform program standards for services for persons with disabilities and people age 65 and older. Requires the commissioner to grant licenses according to the DHS licensing statutes.

Subd. 7. Applicant and license holder training. Requires one-time training on the requirements of providing home and community-based services from a qualified source as determined by the commissioner before a provider is enrolled or a license is issued for an applicant or license holder that is not enrolled as a home and community-based waiver provider at the time of application.

Makes this section effective the day following final enactment.

27 Payment methodology development. Creates § 256B.4913.

Subd. 1. Research period and rates. Paragraph (a) defines "research rate" and "research period."

Paragraph (b) requires the commissioner to determine and publish initial frameworks and values to generate research rates for individuals receiving home and community-based services.

Paragraph (c) directs the commissioner to ensure projected spending under the initial values issued for each service area is equivalent to projected spending under current law in the most recent expenditure forecast.

Paragraph (d) requires the initial values to be based on the most recent information and cost data available. Lists the service areas.

Paragraph (e) directs the commissioner to make available the underlying assessment information, without any identifying information, and the statistical modeling used to generate the initial research rate and calculate budget neutrality.

Subd. 2. Framework values. Paragraph (a) directs the commissioner to propose legislation with the specific payment methodology frameworks, process for calculation, and specific values to populate the frameworks by February 15, 2013.

Paragraph (b) directs the commissioner to provide underlying data and information used to formulate the initial frameworks and values to the existing stakeholder workgroup by January 15, 2013.

Paragraph (c) directs the commissioner to provide recommendations for the final frameworks and values, and the basis for the recommendations to the legislature by February 15, 2013.

Paragraph (d) directs the commissioner to review specified topics during the research period and propose, as necessary, recommendations to address specified research questions.

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

Paragraph (f) directs the commissioner to make recommendations and provide underlying data and information used to formulate the research recommendations to the existing stakeholder group by January 15, 2013.

Subd. 3. Data collection. Paragraph (a) requires the commissioner to conduct any necessary research and gather additional data for the further development and refinement of payment

methodology components. Lists the payment methodology components.

Paragraph (b) directs the commissioner to provide this information to the existing stakeholder work group by January 15, 2013.

Subd. 4. Rate stabilization adjustment. Beginning January 1, 2014, requires the commissioner to adjust individual rates determined by the new payment methodology so that the new rate varies no more than one percent per year from the rate effective on December 31 of the prior calendar year. Specifies this adjustment is made annually and is effective for three calendar years from the date of implementation. Makes this subdivision expire January 1, 2017.

Subd. 5. Stakeholder consultation. Directs the commissioner to continue consultation on regular intervals with the existing stakeholder group established as part of the rate-setting methodology process.

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

Makes this section effective the day following final enactment.