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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3671

03/29/2016 Authored by Albright and Vogel

The bill was read for the first time and referred to the Committee on Aging and Long-Term Care Policy

1.1 A bill for an act
1.2 relating to human services; requiring providers of residential care services to meet
1.3 the home and community-based services standards; amending Minnesota Statutes
1.4 2015 Supplement, sections 245A.03, subdivision 2; 245D.03, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2015 Supplement, section 245A.03, subdivision 2,
1.7 is amended to read:

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

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

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

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

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

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

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

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

2.3 (8) board and lodge facilities licensed by the commissioner of health that do not
2.4 provide children's residential services under Minnesota Rules, chapter 2960, mental health
2.5 or chemical dependency treatment, or residential care services as defined under the
2.6 community alternatives for disabled individuals, brain injury, and elderly waiver plans
2.7 provided in a board and lodging establishment that is registered to provide supportive or
2.8 health supervision services under section 157.17;

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

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

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

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

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

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

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

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

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

2.29 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
2.30 4630;

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

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

2.35 (21) community support services programs as defined in section 245.462, subdivision
2.36 6, and family community support services as defined in section 245.4871, subdivision 17;

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

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

3.5 (24) chemical dependency or substance abuse treatment activities of licensed
3.6 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
3.7 15, when the treatment activities are not paid for by the consolidated chemical dependency
3.8 treatment fund;

3.9 (25) consumer-directed community support service funded under the Medicaid
3.10 waiver for persons with developmental disabilities when the individual who provided
3.11 the service is:

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

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

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

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

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

3.23 A program that asserts its exemption from licensure under item (ii) shall, upon
3.24 request from the commissioner, provide the commissioner with documentation from the
3.25 accrediting agency that verifies: that the accreditation is current; that the accrediting
3.26 agency investigates complaints about services; and that the accrediting agency's standards
3.27 require background studies on all people providing direct contact services; or

3.28 (27) a program operated by a nonprofit organization incorporated in Minnesota or
3.29 another state that serves youth in kindergarten through grade 12; provides structured,
3.30 supervised youth development activities; and has learning opportunities take place before
3.31 or after school, on weekends, or during the summer or other seasonal breaks in the school
3.32 calendar. A program exempt under this clause is not eligible for child care assistance
3.33 under chapter 119B. A program exempt under this clause must:

3.34 (i) have a director or supervisor on site who is responsible for overseeing written
3.35 policies relating to the management and control of the daily activities of the program,
3.36 ensuring the health and safety of program participants, and supervising staff and volunteers;

4.1 (ii) have obtained written consent from a parent or legal guardian for each youth
4.2 participating in activities at the site; and

4.3 (iii) have provided written notice to a parent or legal guardian for each youth at the
4.4 site that the program is not licensed or supervised by the state of Minnesota and is not
4.5 eligible to receive child care assistance payments.

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

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

4.14 **EFFECTIVE DATE.** This section is effective upon federal approval. The
4.15 commissioner of human services shall notify the revisor of statutes when federal approval
4.16 is obtained.

4.17 Sec. 2. Minnesota Statutes 2015 Supplement, section 245D.03, subdivision 1, is
4.18 amended to read:

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

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

4.27 (1) in-home and out-of-home respite care services as defined in section 245A.02,
4.28 subdivision 15, and under the brain injury, community alternative care, community access
4.29 for disability inclusion, developmental disability, and elderly waiver plans, excluding
4.30 out-of-home respite care provided to children in a family child foster care home licensed
4.31 under Minnesota Rules, parts 2960.3000 to 2960.3100, when the child foster care license
4.32 holder complies with the requirements under section 245D.06, subdivisions 5, 6, 7, and
4.33 8, or successor provisions; and section 245D.061 or successor provisions, which must
4.34 be stipulated in the statement of intended use required under Minnesota Rules, part
4.35 2960.3000, subpart 4;

5.1 (2) adult companion services as defined under the brain injury, community access for
5.2 disability inclusion, and elderly waiver plans, excluding adult companion services provided
5.3 under the Corporation for National and Community Services Senior Companion Program
5.4 established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;

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

5.6 (4) 24-hour emergency assistance, personal emergency response as defined under
5.7 the community access for disability inclusion and developmental disability waiver plans;

5.8 (5) night supervision services as defined under the brain injury waiver plan; and

5.9 (6) homemaker services as defined under the community access for disability
5.10 inclusion, brain injury, community alternative care, developmental disability, and elderly
5.11 waiver plans, excluding providers licensed by the Department of Health under chapter
5.12 144A and those providers providing cleaning services only.

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

5.17 (1) intervention services, including:

5.18 (i) behavioral support services as defined under the brain injury and community
5.19 access for disability inclusion waiver plans;

5.20 (ii) in-home or out-of-home crisis respite services as defined under the developmental
5.21 disability waiver plan; and

5.22 (iii) specialist services as defined under the current developmental disability waiver
5.23 plan;

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

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

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

5.29 (iii) semi-independent living services;

5.30 (3) residential supports and services, including:

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

5.34 (ii) foster care services as defined in the brain injury, community alternative care,
5.35 and community access for disability inclusion waiver plans provided in a family or

6.1 corporate child foster care residence, a family adult foster care residence, or a community
6.2 residential setting; ~~and~~

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

6.5 (iv) residential care services as defined under the community alternatives for
6.6 disabled individuals, brain injury, and elderly waiver plans provided in a board and
6.7 lodging establishment that is registered to provide supportive or health supervision
6.8 services under section 157.17;

6.9 (4) day services, including:

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

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

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

6.15 (5) supported employment as defined under the brain injury, developmental
6.16 disability, and community access for disability inclusion waiver plans.

6.17 **EFFECTIVE DATE.** This section is effective upon federal approval. The
6.18 commissioner of human services shall notify the revisor of statutes when federal approval
6.19 is obtained.

6.20 Sec. 3. **DIRECTION TO THE COMMISSIONER; SUBMISSION OF WAIVER**
6.21 **AMENDMENTS.**

6.22 The commissioner of human services shall submit necessary waiver amendments
6.23 to the Centers for Medicare and Medicaid Services to add the licensing standards under
6.24 Minnesota Statutes, chapter 245D, to the provider qualifications for residential care
6.25 services. The commissioner shall submit the necessary waiver amendments by October
6.26 1, 2016.

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

6.28 Sec. 4. **DIRECTION TO THE COMMISSIONER; CONTINUATION OF**
6.29 **RESIDENTIAL CARE SERVICES.**

6.30 (a) The commissioner of human services shall not end or discontinue new
6.31 authorizations for residential care services under the brain injury, community alternatives
6.32 for disabled individuals, and elderly waivers, unless federal approval of the waiver

7.1 amendment adding licensure under Minnesota Statutes, chapter 245D, to the provider
7.2 qualifications for residential care services is denied.

7.3 (b) Upon federal approval of the waiver amendment adding licensure under
7.4 Minnesota Statutes, chapter 245D, to the provider qualifications for residential care
7.5 services, the commissioner of human services shall continue to authorize and continue
7.6 to allow residential care as a service under the brain injury, community alternatives
7.7 for disabled individuals, and elderly waivers. Nothing in this section requires the
7.8 commissioner of human services to authorize or allow the provision of residential
7.9 care services after March 17, 2019, in any setting that fails to meet the home and
7.10 community-based setting requirements.

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