

(SENATE AUTHORS: FISCHBACH)

DATE	D-PG	OFFICIAL STATUS
03/16/2011	519	Introduction and first reading Referred to Health and Human Services See SF1305, Art. 2, Sec. 25-26 See SF1699, Sec. 8 See SF2093, Art. 4, Sec. 9-11 See SF1675, Art. 16, Sec. 17, 21, 24-25

1.1 A bill for an act
1.2 relating to human services; modifying set-aside requirements in certain
1.3 circumstances; placing requirements on the commissioner when establishing
1.4 rate setting methodology; instructing the commissioner to eliminate duplicative
1.5 and outdated standards; amending Minnesota Statutes 2010, sections 245A.11,
1.6 subdivision 2a; 245B.07, subdivision 1; 245C.04, subdivisions 1, 6; 245C.05,
1.7 subdivision 7; 245C.17, subdivision 2; 245C.22, subdivision 5; 256B.4912,
1.8 subdivision 2; 256D.44, subdivision 5; Laws 2009, chapter 79, article 8, section
1.9 81.

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

1.11 Section 1. Minnesota Statutes 2010, section 245A.11, subdivision 2a, is amended to
1.12 read:

1.13 Subd. 2a. **Adult foster care license capacity.** (a) The commissioner shall issue
1.14 adult foster care licenses with a maximum licensed capacity of four beds, including
1.15 nonstaff roomers and boarders, except that the commissioner may issue a license with a
1.16 capacity of five beds, including roomers and boarders, according to paragraphs (b) to (f).

1.17 (b) An adult foster care license holder may have a maximum license capacity of five
1.18 if all persons in care are age 55 or over and do not have a serious and persistent mental
1.19 illness or a developmental disability.

1.20 (c) The commissioner may grant variances to paragraph (b) to allow a foster care
1.21 provider with a licensed capacity of five persons to admit an individual under the age of 55
1.22 if the variance complies with section 245A.04, subdivision 9, and approval of the variance
1.23 is recommended by the county in which the licensed foster care provider is located.

1.24 (d) The commissioner may grant variances to paragraph (b) to allow the use of a fifth
1.25 bed for emergency crisis services for a person with serious and persistent mental illness
1.26 or a developmental disability, regardless of age, if the variance complies with section

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245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

~~(e) If the 2009 legislature adopts a rate reduction that impacts providers of adult foster care services,~~ The commissioner may issue an adult foster care license with a capacity of five adults if the fifth bed does not increase the overall statewide capacity of licensed adult foster care beds in homes that are not the primary residence of the license holder, over the licensed capacity in such homes on July 1, 2009, as identified in a plan submitted to the commissioner by the county, when the capacity is recommended by the county licensing agency of the county in which the facility is located and if the recommendation verifies that:

(1) the facility meets the physical environment requirements in the adult foster care licensing rule;

(2) the five-bed living arrangement is specified for each resident in the resident's:

(i) individualized plan of care;

(ii) individual service plan under section 256B.092, subdivision 1b, if required; or

(iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required;

(3) the license holder obtains written and signed informed consent from each resident or resident's legal representative documenting the resident's informed choice to living in the home and that the resident's refusal to consent would not have resulted in service termination; and

(4) the facility was licensed for adult foster care before March 1, 2009.

(f) The commissioner shall not issue a new adult foster care license under paragraph (e) after June 30, ~~2011~~ 2013. The commissioner shall allow a facility with an adult foster care license issued under paragraph (e) before June 30, 2011, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (e).

Sec. 2. Minnesota Statutes 2010, section 245B.07, subdivision 1, is amended to read:

Subdivision 1. **Consumer data file.** The license holder must maintain the following information for each consumer:

(1) identifying information that includes date of birth, medications, legal representative, history, medical, and other individual-specific information, and names and telephone numbers of contacts;

(2) consumer health information, including individual medication administration and monitoring information;

(3) the consumer's individual service plan;

(i) when a consumer's case manager does not provide a current individual service plan, the license holder shall make a written request to the case manager to provide a copy of the individual service plan and inform the consumer or the consumer's legal representative of the right to an individual service plan and the right to appeal under section 256.045;

(ii) in the event the case manager fails to provide an individual service plan after a written request from the license holder, the license holder shall not be sanctioned or penalized financially for not having a current individual service plan in the consumer's data file;

(4) copies of assessments, analyses, summaries, and recommendations;

(5) progress review reports;

(6) incidents involving the consumer;

(7) reports required under section 245B.05, subdivision 7;

(8) discharge summary, when applicable;

(9) record of other license holders serving the consumer that includes a contact person and telephone numbers, services being provided, services that require coordination between two license holders, and name of staff responsible for coordination;

(10) information about verbal aggression directed at the consumer by another consumer; and

(11) information about self-abuse.

Sec. 3. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at reapplication for a license for family child care.

(c) The commissioner is not required to conduct a study of an individual at the time of reapplication for a license if the individual's background study was completed by the commissioner of human services for an adult foster care license holder that is also:

(1) registered under chapter 144D; or

(2) licensed to provide home and community-based services to people with disabilities at the foster care location and the license holder does not reside in the foster care residence; and

(3) the following conditions are met:

(i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(iii) the last study of the individual was conducted on or after October 1, 1995.

(d) From July 1, 2007, to June 30, 2009, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03, at the time of reapplication for a child foster care license. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b), and 5, paragraphs (a) and (b). The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(e) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) From January 1, 2010, to December 31, 2012, unless otherwise specified in paragraph (c), the commissioner shall conduct a study of an individual required to be studied under section 245C.03 at the time of reapplication for an adult foster care or family adult day services license: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care or family adult day services residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

(g) The commissioner shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with an adult foster care or family adult day services license holder: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), and subdivisions 3 and 4.

(h) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(i) A license holder must ~~provide the commissioner notice~~ initiate a new background study through the commissioner's online background study system or through a letter mailed to the commissioner when:

(1) an individual returns to a position requiring a background study following an absence of ~~45~~ 90 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for ~~45~~ 90 or more consecutive days begins to provide direct contact licensed services again.

~~The license holder shall maintain a copy of the notification provided to the commissioner under this paragraph in the program's files.~~ If an individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(j) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

Sec. 4. Minnesota Statutes 2010, section 245C.04, subdivision 6, is amended to read:

Subd. 6. **Unlicensed home and community-based waiver providers of service to seniors and individuals with disabilities.** (a) Providers required to initiate background studies under section 256B.4912 must initiate a study before the individual begins in a position allowing direct contact with persons served by the provider.

(b) ~~The commissioner shall conduct~~ Except as provided in paragraph (c), the providers must initiate a background study annually of an individual required to be studied under section 245C.03, subdivision 6.

(c) After an initial background study under this subdivision is initiated on an individual by a provider of both services licensed by the commissioner of human services and the unlicensed services under this subdivision, a repeat annual background study is not required if:

(1) the provider maintains compliance with the requirements of section 245C.07, paragraph (a), regarding one individual with one address and telephone number as the person to receive sensitive background study information for the multiple programs that depend on the same background study, and that the individual who is designated to receive the sensitive background study information is capable of determining, upon the request of the commissioner, whether a background study subject is providing direct contact services in one or more of the provider's programs or services and, if so, at which location or locations; and

(2) the individual who is the subject of the background study provides direct contact services under the provider's licensed program for at least 40 hours per year so the individual will be recognized by a probation officer or corrections agent to prompt a report to the commissioner regarding new criminal history required under section 245C.05, subdivision 7.

Sec. 5. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or corrections agent shall notify the commissioner of an individual's conviction if the individual ~~is~~:

(1) has been affiliated with a program or facility regulated by the Department of Human Services or Department of Health, a facility serving children or youth licensed by the Department of Corrections, or any type of home care agency or provider of personal care assistance services within the preceding year; and

(2) has been convicted of a crime constituting a disqualification under section 245C.14.

(b) For the purpose of this subdivision, "conviction" has the meaning given it in section 609.02, subdivision 5.

(c) The commissioner, in consultation with the commissioner of corrections, shall develop forms and information necessary to implement this subdivision and shall provide the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents.

(d) The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system.

(e) A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this subdivision.

(f) Upon receipt of disqualifying information, the commissioner shall provide the notice required under section 245C.17, as appropriate, to agencies on record as having initiated a background study or making a request for documentation of the background study status of the individual.

(g) This subdivision does not apply to family child care programs.

Sec. 6. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

Subd. 2. **Disqualification notice sent to subject.** (a) If the information in the study indicates the individual is disqualified from direct contact with, or from access to, persons served by the program, the commissioner shall disclose to the individual studied:

(1) the information causing disqualification;

(2) instructions on how to request a reconsideration of the disqualification;

(3) an explanation of any restrictions on the commissioner's discretion to set aside the disqualification under section 245C.24, when applicable to the individual;

(4) a statement that, if the individual's disqualification is set aside under section 245C.24, the applicant, license holder, or other entity that initiated the background study will be provided with the reason for the individual's disqualification, and an explanation about which factors under section 245C.22, subdivision 4, were the basis of the decision to set aside the disqualification will be made available to the license holder upon request without the consent of the background study subject;

~~(4)~~ (5) a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section 245C.30, the individual's identity and the reason for the individual's disqualification will become public data under section 245C.22, subdivision 7, when applicable to the individual;

(6) a statement that when a subsequent background study is initiated on the individual following a set-aside of the individual's disqualification after July 1, 2011, and the commissioner makes a determination under section 245C.22, subdivision 5, paragraph (b), that the previous set-aside applies to the subsequent background study, the application, license holder, or other entity that initiated the background study will be informed in the notice under section 245C.22, subdivision 5, paragraph (c):

(i) of the reason for the individual's disqualification;

(ii) that the individual's disqualification is set aside for that program or agency; and

(iii) that the information about the factors under section 245C.22, subdivision 4, that were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject; and

~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual poses an imminent risk of harm to persons served by the program where the individual will have direct contact with, or access to, people receiving services, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to have direct contact with, or access to, people receiving services, as provided under subdivision 3.

Sec. 7. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. Except as provided in paragraph (b), the commissioner's set-aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, ~~unless otherwise specified in the notice.~~ For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services.

(b) If the commissioner has set aside an individual's disqualification after July 1, 2011, for one or more programs or agencies, and the commissioner is conducting a subsequent background study on the individual, the commissioner shall determine whether the disqualification is set aside for the program or agency that initiated the subsequent

background study. A notice of set-aside under paragraph (c) shall be issued if all of the following criteria are met:

(1) the subsequent background study was initiated in connection with a program licensed or regulated under the same provisions of law and rule for at least one program for which the individual's disqualification was previously set aside by the commissioner;

(2) the individual is not disqualified for an offense specified in section 245C.15, subdivision 1 or 2;

(3) the individual's background study shows no new criminal or maltreatment history since the disqualification was set aside;

(4) the commissioner has received no new information to indicate that the individual may pose a risk of harm to any person served by the program;

(5) the previous set-aside was not limited to a specific person receiving services; and

(6) the commissioner is not otherwise prohibited from setting aside the disqualification.

(c) When the commissioner determines that the set-aside of an individual's disqualification meets the criteria under paragraph (b), the notice of background study results issued under section 245C.17, in addition to the other requirements under section 245C.17, shall include a notice that the disqualification is set aside for the program or agency that initiated the subsequent background study. The notice must inform the individual that the individual may still request reconsideration of the disqualification under section 245C.21 on the basis that the information used to disqualify the individual is incorrect.

Sec. 8. Minnesota Statutes 2010, section 256B.4912, subdivision 2, is amended to read:

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

(b) The commissioner shall consult with stakeholders and recommend the basic methodology framework and implementation principles, and provide draft legislation, to the chairs and ranking minority members of the health and human services policy and finance committees in the house of representatives and the senate by December 15, 2011. The framework and principles shall include, but not be limited to:

(1) a process that counties and providers must follow to ensure clients' continued access to services and provider plans in the event a provider is no longer able to provide services under the new rate structure;

(2) a system that includes a process for needs assessment, needs determination, service design, rate notification, and mistake resolution that is available to clients, families, providers, and counties;

(3) criteria for an exceptions process;

(4) rates that are sensitive to geographical differences and allow for higher reimbursement for clients who have medical and behavior issues;

(5) a clear definition of the rate tool and the processes and systems that determine rates;

(6) the ability for providers to determine spending and services within the rate and subject to limitations in the individual service plan and provider enrollment contract; and

(7) the continuation of a rate methodology stakeholder group through the first two years of implementation.

(c) The commissioner shall issue a report to the house of representatives and senate committees with jurisdiction over health and human services policy and finance two years after implementation of the statewide rate methodology assessing the impact and effectiveness of the new rates.

Sec. 9. Minnesota Statutes 2010, section 256D.44, subdivision 5, is amended to read:

Subd. 5. **Special needs.** In addition to the state standards of assistance established in subdivisions 1 to 4, payments are allowed for the following special needs of recipients of Minnesota supplemental aid who are not residents of a nursing home, a regional treatment center, or a group residential housing facility.

(a) The county agency shall pay a monthly allowance for medically prescribed diets if the cost of those additional dietary needs cannot be met through some other maintenance benefit. The need for special diets or dietary items must be prescribed by a licensed physician. Costs for special diets shall be determined as percentages of the allotment for a one-person household under the thrifty food plan as defined by the United States Department of Agriculture. The types of diets and the percentages of the thrifty food plan that are covered are as follows:

(1) high protein diet, at least 80 grams daily, 25 percent of thrifty food plan;

(2) controlled protein diet, 40 to 60 grams and requires special products, 100 percent of thrifty food plan;

(3) controlled protein diet, less than 40 grams and requires special products, 125 percent of thrifty food plan;

(4) low cholesterol diet, 25 percent of thrifty food plan;

(5) high residue diet, 20 percent of thrifty food plan;

(6) pregnancy and lactation diet, 35 percent of thrifty food plan;

(7) gluten-free diet, 25 percent of thrifty food plan;

(8) lactose-free diet, 25 percent of thrifty food plan;

(9) antidumping diet, 15 percent of thrifty food plan;

(10) hypoglycemic diet, 15 percent of thrifty food plan; or

(11) ketogenic diet, 25 percent of thrifty food plan.

(b) Payment for nonrecurring special needs must be allowed for necessary home repairs or necessary repairs or replacement of household furniture and appliances using the payment standard of the AFDC program in effect on July 16, 1996, for these expenses, as long as other funding sources are not available.

(c) A fee for guardian or conservator service is allowed at a reasonable rate negotiated by the county or approved by the court. This rate shall not exceed five percent of the assistance unit's gross monthly income up to a maximum of \$100 per month. If the guardian or conservator is a member of the county agency staff, no fee is allowed.

(d) The county agency shall continue to pay a monthly allowance of \$68 for restaurant meals for a person who was receiving a restaurant meal allowance on June 1, 1990, and who eats two or more meals in a restaurant daily. The allowance must continue until the person has not received Minnesota supplemental aid for one full calendar month or until the person's living arrangement changes and the person no longer meets the criteria for the restaurant meal allowance, whichever occurs first.

(e) A fee of ten percent of the recipient's gross income or \$25, whichever is less, is allowed for representative payee services provided by an agency that meets the requirements under SSI regulations to charge a fee for representative payee services. This special need is available to all recipients of Minnesota supplemental aid regardless of their living arrangement.

(f)(1) Notwithstanding the language in this subdivision, an amount equal to the maximum allotment authorized by the federal Food Stamp Program for a single individual which is in effect on the first day of July of each year will be added to the standards of assistance established in subdivisions 1 to 4 for adults under the age of 65 who qualify as shelter needy and are: (i) relocating from an institution, or an adult mental health residential treatment program under section 256B.0622; (ii) eligible for the self-directed supports option as defined under section 256B.0657, subdivision 2; or (iii) home and

12.1 community-based waiver recipients living in their own home or rented or leased apartment
12.2 which is not owned, operated, or controlled by a provider of service not related by blood
12.3 or marriage, unless allowed under paragraph (g).

12.4 (2) Notwithstanding subdivision 3, paragraph (c), an individual eligible for the
12.5 shelter needy benefit under this paragraph is considered a household of one. An eligible
12.6 individual who receives this benefit prior to age 65 may continue to receive the benefit
12.7 after the age of 65.

12.8 (3) "Shelter needy" means that the assistance unit incurs monthly shelter costs that
12.9 exceed 40 percent of the assistance unit's gross income before the application of this
12.10 special needs standard. "Gross income" for the purposes of this section is the applicant's
12.11 or recipient's prior month's income as defined in section 256D.35, subdivision 10, or the
12.12 standard specified in subdivision 3, paragraph (a) or (b), whichever is greater. A recipient
12.13 of a federal or state housing subsidy, that limits shelter costs to a percentage of gross
12.14 income, shall not be considered shelter needy for purposes of this paragraph.

12.15 (g) Notwithstanding this subdivision, to access housing and services as provided
12.16 in paragraph (f), the recipient may choose housing that may be owned, operated, or
12.17 controlled by the recipient's service provider. In a multifamily building of more than four
12.18 ~~or more~~ units, the maximum number of apartments at one address that may be used by
12.19 recipients of this program shall be 50 percent of the units in a building. This paragraph
12.20 expires on June 30, ~~2012~~ 2014.

12.21 Sec. 10. Laws 2009, chapter 79, article 8, section 81, is amended to read:

12.22 Sec. 81. **ESTABLISHING A SINGLE SET OF STANDARDS.**

12.23 (a) The commissioner of human services shall consult with disability service
12.24 providers, advocates, counties, and consumer families to develop a single set of standards
12.25 governing services for people with disabilities receiving services under the home and
12.26 community-based waiver services program to replace all or portions of existing laws and
12.27 rules including, but not limited to, data practices, licensure of facilities and providers,
12.28 background studies, reporting of maltreatment of minors, reporting of maltreatment of
12.29 vulnerable adults, and the psychotropic medication checklist. The standards must:

12.30 (1) enable optimum consumer choice;

12.31 (2) be consumer driven;

12.32 (3) link services to individual needs and life goals;

12.33 (4) be based on quality assurance and individual outcomes;

12.34 (5) utilize the people closest to the recipient, who may include family, friends, and
12.35 health and service providers, in conjunction with the recipient's risk management plan to

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- 13.1 assist the recipient or the recipient's guardian in making decisions that meet the recipient's
13.2 needs in a cost-effective manner and assure the recipient's health and safety;
- 13.3 (6) utilize person-centered planning; and
13.4 (7) maximize federal financial participation.
- 13.5 (b) The commissioner may consult with existing stakeholder groups convened under
13.6 the commissioner's authority, including the home and community-based expert services
13.7 panel established by the commissioner in 2008, to meet all or some of the requirements
13.8 of this section.
- 13.9 (c) The commissioner of human services shall consult with the commissioner
13.10 of health and the stakeholders identified in paragraph (a) to consolidate the ICF/MR
13.11 standards in chapter 245B and the standards in Minnesota Rules to eliminate duplication
13.12 and outdated standards.
- 13.13 ~~(c)~~ (d) The commissioner shall provide the reports and plans required by this section
13.14 to the legislative committees and budget divisions with jurisdiction over health and human
13.15 services policy and finance by January 15, 2012.