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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 1938

03/01/2017 Authored by Baker and Loeffler
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/20/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

- 1.1 A bill for an act
- 1.2 relating to human services; modifying provisions governing chemical and mental
- 1.3 health services; amending Minnesota Statutes 2016, sections 245A.03, subdivision
- 1.4 2; 254A.03, subdivision 3; 254A.08, subdivision 2; 254B.01, by adding a
- 1.5 subdivision; 254B.03, subdivision 2; 254B.05, subdivisions 1, 5.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2016, section 245A.03, subdivision 2, 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 individual
- 1.10 who is related unless the residential program is a child foster care placement made by a
- 1.11 local social services agency or a licensed child-placing agency, except as provided in
- 1.12 subdivision 2a;
- 1.13 (2) nonresidential programs that are provided by an unrelated individual to persons from
- 1.14 a single related family;
- 1.15 (3) residential or nonresidential programs that are provided to adults who do not abuse
- 1.16 chemicals or who do not have a chemical dependency, a mental illness, a developmental
- 1.17 disability, a functional impairment, or a physical disability;
- 1.18 (4) sheltered workshops or work activity programs that are certified by the commissioner
- 1.19 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 for
- 1.22 periods of less than three hours a day while the child's parent or legal guardian is in the

2.1 same building as the nonresidential program or present within another building that is
2.2 directly contiguous to the building in which the nonresidential program is located;

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

2.5 (8) board and lodge facilities licensed by the commissioner of health that do not provide
2.6 children's residential services under Minnesota Rules, chapter 2960, mental health or chemical
2.7 dependency treatment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) a program operated by a nonprofit organization incorporated in Minnesota or another state that serves youth in kindergarten through grade 12; provides structured, supervised youth development activities; and has learning opportunities take place before or after school, on weekends, or during the summer or other seasonal breaks in the school calendar.

A program exempt under this clause is not eligible for child care assistance under chapter 119B. A program exempt under this clause must:

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

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

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

(28) a county that is an eligible vendor under section 254B.05 to provide care coordination and comprehensive assessment services; or

(29) a recovery community organization that is an eligible vendor under section 254B.05 to provide peer recovery support services.

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

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

Sec. 2. Minnesota Statutes 2016, section 254A.03, subdivision 3, is amended to read:

Subd. 3. **Rules for chemical dependency care.** (a) The commissioner of human services shall establish by rule criteria to be used in determining the appropriate level of chemical dependency care for each recipient of public assistance seeking treatment for alcohol or other drug dependency and abuse problems.

(b) Notwithstanding the criteria in Minnesota Rules, parts 9530.6600 to 9530.6655, upon federal approval of comprehensive assessment as a Medicaid benefit, an eligible vendor of comprehensive assessments under section 254A.19 may determine and approve the appropriate level of substance use disorder treatment for a recipient of public assistance who is seeking treatment. The commissioner shall develop and implement a utilization review process for publicly funded treatment placements to monitor and review the clinical appropriateness and timeliness of all publicly funded placements in treatment.

(c) The process for determining an individual's financial eligibility for the consolidated chemical dependency treatment fund or determining an individual's enrollment in or eligibility for a publicly subsidized health plan is not affected by the individual's choice to access a comprehensive assessment by a vendor for approval of treatment.

Sec. 3. Minnesota Statutes 2016, section 254A.08, subdivision 2, is amended to read:

Subd. 2. **Program requirements.** For the purpose of this section, a detoxification program means a social rehabilitation program licensed by the commissioner under Minnesota Rules, parts 9530.6510 to 9530.6590, and established for the purpose of facilitating access into care and treatment by detoxifying and evaluating the person and providing entrance into a comprehensive program. Evaluation of the person shall include verification by a professional, after preliminary examination, that the person is intoxicated or has symptoms of chemical dependency and appears to be in imminent danger of harming self or others. A detoxification program shall have available the services of a licensed physician for medical emergencies and routine medical surveillance. A detoxification program licensed by the Department of Human Services to serve both adults and minors at the same site must provide for separate sleeping areas for adults and minors.

Sec. 4. Minnesota Statutes 2016, section 254B.01, is amended by adding a subdivision to read:

Subd. 8. **Recovery community organization.** "Recovery community organization" means an independent organization led and governed by representatives of local communities of recovery. A recovery community organization mobilizes resources within and outside of the recovery community to increase the prevalence and quality of long-term recovery from alcohol and other drug addiction. Recovery community organizations provide peer-based recovery support activities such as training of recovery peers. Recovery community organizations provide mentorship and ongoing support to individuals dealing with a substance use disorder and connect them with resources that can support each person's

6.1 recovery. A recovery community organization also promotes a recovery-focused orientation
6.2 in community education and outreach programming and organizes recovery-focused policy
6.3 advocacy activities to foster healthy communities and reduce the stigma of substance use
6.4 disorder.

6.5 Sec. 5. Minnesota Statutes 2016, section 254B.03, subdivision 2, is amended to read:

6.6 Subd. 2. **Chemical dependency fund payment.** (a) Payment from the chemical
6.7 dependency fund is limited to payments for services other than detoxification services
6.8 licensed under Minnesota Rules, parts 9530.6405 to 9530.6505, that, if located outside of
6.9 federally recognized tribal lands, would be required to be licensed by the commissioner as
6.10 a chemical dependency treatment or rehabilitation program under sections 245A.01 to
6.11 245A.16, and services other than detoxification provided in another state that would be
6.12 required to be licensed as a chemical dependency program if the program were in the state.
6.13 Out of state vendors must also provide the commissioner with assurances that the program
6.14 complies substantially with state licensing requirements and possesses all licenses and
6.15 certifications required by the host state to provide chemical dependency treatment. Except
6.16 for chemical dependency transitional rehabilitation programs, vendors receiving payments
6.17 from the chemical dependency fund must not require co-payment from a recipient of benefits
6.18 for services provided under this subdivision. Payment from the chemical dependency fund
6.19 shall be made for necessary room and board costs provided by vendors certified according
6.20 to section 254B.05, or in a community hospital licensed by the commissioner of health
6.21 according to sections 144.50 to 144.56 to a client who is:

6.22 (1) determined to meet the criteria for placement in a residential chemical dependency
6.23 treatment program according to rules adopted under section 254A.03, subdivision 3; and

6.24 (2) concurrently receiving a chemical dependency treatment service in a program licensed
6.25 by the commissioner and reimbursed by the chemical dependency fund.

6.26 (b) A county may, from its own resources, provide chemical dependency services for
6.27 which state payments are not made. A county may elect to use the same invoice procedures
6.28 and obtain the same state payment services as are used for chemical dependency services
6.29 for which state payments are made under this section if county payments are made to the
6.30 state in advance of state payments to vendors. When a county uses the state system for
6.31 payment, the commissioner shall make monthly billings to the county using the most recent
6.32 available information to determine the anticipated services for which payments will be made
6.33 in the coming month. Adjustment of any overestimate or underestimate based on actual

expenditures shall be made by the state agency by adjusting the estimate for any succeeding month.

(c) The commissioner shall coordinate chemical dependency services and determine whether there is a need for any proposed expansion of chemical dependency treatment services. The commissioner shall deny vendor certification to any provider that has not received prior approval from the commissioner for the creation of new programs or the expansion of existing program capacity. The commissioner shall consider the provider's capacity to obtain clients from outside the state based on plans, agreements, and previous utilization history, when determining the need for new treatment services.

Sec. 6. Minnesota Statutes 2016, section 254B.05, subdivision 1, is amended to read:

Subdivision 1. **Licensure required.** (a) Programs licensed by the commissioner are eligible vendors. Hospitals may apply for and receive licenses to be eligible vendors, notwithstanding the provisions of section 245A.03. American Indian programs that provide chemical dependency primary treatment, extended care, transitional residence, or outpatient treatment services, and are licensed by tribal government are eligible vendors. Detoxification programs are not eligible vendors. Programs that are not licensed as a chemical dependency residential or nonresidential treatment program by the commissioner or by tribal government or do not meet the requirements of subdivisions 1a and 1b are not eligible vendors.

(b) Upon federal approval, a licensed professional in private practice as defined in Minnesota Rules, part 9530.6405, subpart 15, is an eligible vendor of comprehensive assessments and individual substance use disorder treatment services.

(c) Upon federal approval, a county is an eligible vendor for comprehensive assessment services when the service is provided by a licensed professional in private practice as defined in Minnesota Rules, part 9530.6405, subpart 15. Upon federal approval, a county is an eligible vendor of care coordination services when provided by an individual who meets certification requirements identified by the commissioner.

(d) Upon federal approval, a recovery community organization that meets certification requirements identified by the commissioner is an eligible vendor of peer support services provided one-to-one by an individual in recovery from substance use disorder.

(e) A detoxification program licensed under Minnesota Rules, parts 9530.6510 to 9530.6590, is not an eligible vendor. A program that is not licensed as a chemical dependency residential or nonresidential treatment or withdrawal management program by the

8.1 commissioner or by tribal government or does not meet the requirements of subdivisions
8.2 1a and 1b is not an eligible vendor.

8.3 Sec. 7. Minnesota Statutes 2016, section 254B.05, subdivision 5, is amended to read:

8.4 Subd. 5. **Rate requirements.** (a) The commissioner shall establish rates for chemical
8.5 dependency services and service enhancements funded under this chapter.

8.6 (b) Eligible chemical dependency treatment services include:

8.7 (1) outpatient treatment services that are licensed according to Minnesota Rules, parts
8.8 9530.6405 to 9530.6480, or applicable tribal license;

8.9 (2) comprehensive assessment services, on July 1, 2018, or upon federal approval,
8.10 whichever is later;

8.11 (3) care coordination services, on July 1, 2018, or upon federal approval, whichever is
8.12 later;

8.13 (4) peer recovery support services, on July 1, 2018, or upon federal approval, whichever
8.14 is later;

8.15 (5) withdrawal management services provided according to chapter 245F, on July 1,
8.16 2019, or upon federal approval, whichever is later;

8.17 ~~(2)~~ (6) medication-assisted therapy services that are licensed according to Minnesota
8.18 Rules, parts 9530.6405 to 9530.6480 and 9530.6500, or applicable tribal license;

8.19 ~~(3)~~ (7) medication-assisted therapy plus enhanced treatment services that meet the
8.20 requirements of clause ~~(2)~~ (6) and provide nine hours of clinical services each week;

8.21 ~~(4)~~ (8) high, medium, and low intensity residential treatment services that are licensed
8.22 according to Minnesota Rules, parts 9530.6405 to 9530.6480 and 9530.6505, or applicable
8.23 tribal license which provide, respectively, 30, 15, and five hours of clinical services each
8.24 week;

8.25 ~~(5)~~ (9) hospital-based treatment services that are licensed according to Minnesota Rules,
8.26 parts 9530.6405 to 9530.6480, or applicable tribal license and licensed as a hospital under
8.27 sections 144.50 to 144.56;

8.28 ~~(6)~~ (10) adolescent treatment programs that are licensed as outpatient treatment programs
8.29 according to Minnesota Rules, parts 9530.6405 to 9530.6485, or as residential treatment
8.30 programs according to Minnesota Rules, parts 2960.0010 to 2960.0220, and 2960.0430 to
8.31 2960.0490, or applicable tribal license;

~~(7)~~ (11) high-intensity residential treatment services that are licensed according to Minnesota Rules, parts 9530.6405 to 9530.6480 and 9530.6505, or applicable tribal license, which provide 30 hours of clinical services each week provided by a state-operated vendor or to clients who have been civilly committed to the commissioner, present the most complex and difficult care needs, and are a potential threat to the community; and

~~(8)~~ (12) room and board facilities that meet the requirements of subdivision 1a.

(c) The commissioner shall establish higher rates for programs that meet the requirements of paragraph (b) and one of the following additional requirements:

(1) programs that serve parents with their children if the program:

(i) provides on-site child care during the hours of treatment activity that:

(A) is licensed under chapter 245A as a child care center under Minnesota Rules, chapter 9503; or

(B) meets the licensure exclusion criteria of section 245A.03, subdivision 2, paragraph (a), clause (6), and meets the requirements under Minnesota Rules, part 9530.6490, subpart 4; or

(ii) arranges for off-site child care during hours of treatment activity at a facility that is licensed under chapter 245A as:

(A) a child care center under Minnesota Rules, chapter 9503; or

(B) a family child care home under Minnesota Rules, chapter 9502;

(2) culturally specific programs as defined in section 254B.01, subdivision 4a, or programs or subprograms serving special populations, if the program or subprogram meets the following requirements:

(i) is designed to address the unique needs of individuals who share a common language, racial, ethnic, or social background;

(ii) is governed with significant input from individuals of that specific background; and

(iii) employs individuals to provide individual or group therapy, at least 50 percent of whom are of that specific background, except when the common social background of the individuals served is a traumatic brain injury or cognitive disability and the program employs treatment staff who have the necessary professional training, as approved by the commissioner, to serve clients with the specific disabilities that the program is designed to serve;

(3) programs that offer medical services delivered by appropriately credentialed health care staff in an amount equal to two hours per client per week if the medical needs of the client and the nature and provision of any medical services provided are documented in the client file; and

(4) programs that offer services to individuals with co-occurring mental health and chemical dependency problems if:

(i) the program meets the co-occurring requirements in Minnesota Rules, part 9530.6495;

(ii) 25 percent of the counseling staff are licensed mental health professionals, as defined in section 245.462, subdivision 18, clauses (1) to (6), or are students or licensing candidates under the supervision of a licensed alcohol and drug counselor supervisor and licensed mental health professional, except that no more than 50 percent of the mental health staff may be students or licensing candidates with time documented to be directly related to provisions of co-occurring services;

(iii) clients scoring positive on a standardized mental health screen receive a mental health diagnostic assessment within ten days of admission;

(iv) the program has standards for multidisciplinary case review that include a monthly review for each client that, at a minimum, includes a licensed mental health professional and licensed alcohol and drug counselor, and their involvement in the review is documented;

(v) family education is offered that addresses mental health and substance abuse disorders and the interaction between the two; and

(vi) co-occurring counseling staff shall receive eight hours of co-occurring disorder training annually.

(d) In order to be eligible for a higher rate under paragraph (c), clause (1), a program that provides arrangements for off-site child care must maintain current documentation at the chemical dependency facility of the child care provider's current licensure to provide child care services. Programs that provide child care according to paragraph (c), clause (1), must be deemed in compliance with the licensing requirements in Minnesota Rules, part 9530.6490.

(e) Adolescent residential programs that meet the requirements of Minnesota Rules, parts 2960.0430 to 2960.0490 and 2960.0580 to 2960.0690, are exempt from the requirements in paragraph (c), clause (4), items (i) to (iv).

(f) Subject to federal approval, chemical dependency services that are otherwise covered as direct face-to-face services may be provided via two-way interactive video. The use of

- 11.1 two-way interactive video must be medically appropriate to the condition and needs of the
- 11.2 person being served. Reimbursement shall be at the same rates and under the same conditions
- 11.3 that would otherwise apply to direct face-to-face services. The interactive video equipment
- 11.4 and connection must comply with Medicare standards in effect at the time the service is
- 11.5 provided.