

A bill for an act

relating to human services; modifying programs and licensure provisions for services to persons with disabilities; allowing alternate overnight supervision technology; making changes to home and community-based waived services; requiring reports; amending Minnesota Statutes 2008, sections 245A.10, subdivisions 2, 3; 245A.11, by adding a subdivision; 245A.16, subdivisions 1, 3; 245C.04, subdivision 1; 245C.05, subdivision 4; 245C.08, subdivision 2; 245C.10, by adding a subdivision; 245C.17, by adding a subdivision; 245C.20; 245C.21, subdivision 1a; 245C.23, subdivision 2; 256B.5011, subdivision 2; 256B.5013, subdivision 1; 256D.44, subdivision 5; repealing Minnesota Statutes 2008, section 256B.5013, subdivision 5; Minnesota Rules, part 9555.6125, subpart 4, item B.

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

Section 1. Minnesota Statutes 2008, section 245A.10, subdivision 2, is amended to read:

Subd. 2. **County fees for background studies and licensing inspections.** (a) For purposes of family and group family child care licensing under this chapter, a county agency may charge a fee to an applicant or license holder to recover the actual cost of background studies, but in any case not to exceed \$100 annually. A county agency may also charge a license fee to an applicant or license holder not to exceed \$50 for a one-year license or \$100 for a two-year license.

(b) A county agency may charge a fee to a legal nonlicensed child care provider or applicant for authorization to recover the actual cost of background studies completed under section 119B.125, but in any case not to exceed \$100 annually.

(c) Counties may elect to reduce or waive the fees in paragraph (a) or (b):

(1) in cases of financial hardship;

(2) if the county has a shortage of providers in the county's area;

(3) for new providers; or

(4) for providers who have attained at least 16 hours of training before seeking initial licensure.

(d) Counties may allow providers to pay the applicant fees in paragraph (a) or (b) on an installment basis for up to one year. If the provider is receiving child care assistance payments from the state, the provider may have the fees under paragraph (a) or (b) deducted from the child care assistance payments for up to one year and the state shall reimburse the county for the county fees collected in this manner.

(e) For purposes of adult foster care and child foster care licensing under this chapter, a county agency may charge a fee to a corporate applicant or corporate license holder to recover ~~the actual cost of background studies. A county agency may also charge a fee to a corporate applicant or corporate license holder to recover~~ the actual cost of licensing inspections, not to exceed \$500 annually.

(f) Counties may elect to reduce or waive the fees in paragraph (e) under the following circumstances:

(1) in cases of financial hardship;

(2) if the county has a shortage of providers in the county's area; or

(3) for new providers.

Sec. 2. Minnesota Statutes 2008, section 245A.10, subdivision 3, is amended to read:

Subd. 3. **Application fee for initial license or certification.** (a) For fees required under subdivision 1, an applicant for an initial license or certification issued by the commissioner shall submit a \$500 application fee with each new application required under this subdivision. The application fee shall not be prorated, is nonrefundable, and is in lieu of the annual license or certification fee that expires on December 31. The commissioner shall not process an application until the application fee is paid.

(b) Except as provided in clauses (1) to (3), an applicant shall apply for a license to provide services at a specific location.

(1) For a license to provide waived services to persons with developmental disabilities or related conditions, an applicant shall submit an application for each county in which the waived services will be provided. Upon licensure, the license holder may provide services to persons in that county plus no more than three persons at any one time in each of up to ten additional counties. A license holder in one county may not provide services under the home and community-based waiver for persons with developmental disabilities to more than three people in a second county without holding a separate license for that second county. Applicants or licensees providing services under this clause to

not more than three persons remain subject to the inspection fees established in section 245A.10, subdivision 2, for each location.

(2) For a license to provide semi-independent living services to persons with developmental disabilities or related conditions, an applicant shall submit a single application to provide services statewide.

(3) For a license to provide independent living assistance for youth under section 245A.22, an applicant shall submit a single application to provide services statewide.

Sec. 3. Minnesota Statutes 2008, section 245A.11, is amended by adding a subdivision to read:

Subd. 8. Alternate overnight supervision technology; adult foster care license.

(a) The commissioner may grant an applicant or license holder an adult foster care license for a residence that does not have a caregiver in the residence during normal sleeping hours as required under Minnesota Rules, part 9555.5105, subpart 37, item B, but uses monitoring technology to alert the license holder when an incident occurs that may jeopardize the health, safety, or rights of a foster care recipient. The applicant or license holder must comply with all other requirements under Minnesota Rules, parts 9555.5105 to 9555.6265, and the requirements under this subdivision. The license printed by the commissioner must state in bold and large font:

(1) that staff are not present on-site overnight; and

(2) the telephone number of the county's common entry point for making reports of suspected maltreatment of vulnerable adults under section 626.557, subdivision 9.

(b) Applications for a license under this section must be submitted directly to the Department of Human Services licensing division. The licensing division must immediately notify the host county and lead county contract agency and the host county licensing agency. The licensing division must collaborate with the county licensing agency in the review of the application and the licensing of the program.

(c) Before a license is issued by the commissioner, and for the duration of the license, the applicant or license holder must establish, maintain, and document the implementation of written policies and procedures addressing the requirements in paragraphs (c) to (f).

(d) The applicant or license holder must have policies and procedures that:

(1) establish characteristics of target populations that will be admitted into the home and characteristics of populations that will not be accepted into the home;

(2) explain the discharge process when a foster care recipient requires overnight supervision or other services that cannot be provided by the license holder due to the limited hours that the license holder is on-site;

(3) describe the types of events to which the program will respond with a physical presence when those events occur in the home during time when staff are not on-site, and how the license holder's response plan meets the requirements in clause (1) or (2);

(4) establish a process for documenting a review of the implementation and effectiveness of the response protocol for the response required under clause (1) or (2).

The documentation must include:

(i) a description of the triggering incident;

(ii) the date and time of the triggering incident;

(iii) the time of the response or responses under clause (1) or (2);

(iv) whether the response met the resident's needs;

(v) whether the existing policies and response protocols were followed; and

(vi) whether the existing policies and protocols are adequate or need modification.

When no physical presence response is completed for a three-month period, the license holder's written policies and procedures must require a physical presence response drill be to conducted for which the effectiveness of the response protocol under clause (1) or (2), will be reviewed and documented as required under this clause; and

(5) establish that emergency and nonemergency phone numbers are posted in a prominent location in a common area of the home where they can be easily observed by a person responding to an incident who is not otherwise affiliated with the home.

(e) The license holder must document and include in the license application which response alternative under clause (1) or (2) is in place for responding to situations that present a serious risk to the health, safety, or rights of people receiving foster care services in the home:

(1) response alternative (1) requires only the technology to provide an electronic notification or alert to the license holder that an event is underway that requires a response. Under this alternative, no more than ten minutes will pass before the license holder will be physically present on-site to respond to the situation; or

(2) response alternative (2) requires the electronic notification and alert system under alternative (1), but more than ten minutes may pass before the license holder is present on-site to respond to the situation. Under alternative (2), all of the following conditions are met:

(i) the license holder has a written description of the interactive technological applications that will assist the licenser holder in communicating with and assessing the needs related to care, health, and safety of the foster care recipients. This interactive technology must permit the license holder to remotely assess the well being of the foster care recipient without requiring the initiation or participation by the foster care recipient.

Requiring the foster care recipient to initiate a telephone call or answer a telephone call does not meet this requirement;

(ii) the license holder documents how the remote license holder is qualified and capable of meeting the needs of the foster care recipients and assessing foster care recipients' needs during the absence of the license holder on-site;

(iii) the license holder maintains written procedures to dispatch emergency response personnel to the site in the event of an identified emergency; and

(iv) each foster care recipient's individualized plan of care, individual service plan under section 256B.092, subdivision 1b, if required, or individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the maximum response time, which may be greater than ten minutes, for the license holder to be on-site for that foster care recipient.

(f) All placement agreements, individual service agreements, and plans applicable to the foster care recipient must clearly state that the adult foster care license category is a program without the presence of a caregiver in the residence during normal sleeping hours; the protocols in place for responding to situations that present a serious risk to health, safety, or rights of foster care recipients under paragraph (d), clause (1) or (2); and a signed informed consent from each foster care recipient or the person's legal representative documenting the person's or legal representative's agreement with placement in the program. If electronic monitoring technology is used in the home, the informed consent form must also explain the following:

(1) how any electronic monitoring is incorporated into the alternative supervision system;

(2) the backup system for any electronic monitoring in times of electrical outages or other equipment malfunctions;

(3) how the license holder is trained on the use of the technology;

(4) the event types and license holder response times established under paragraph (d);

(5) how the license holder protects the foster care recipient's privacy related to electronic monitoring and related to any electronically recorded data generated by the monitoring system. The consent form must explain where and how the electronically recorded data is stored, with whom it will be shared, and how long it is retained; and

(6) the risks and benefits of the alternative overnight supervision system.

The written explanations under clauses (1) to (6) may be accomplished through cross-references to other policies and procedures as long as they are explained to the person giving consent, and the person giving consent is offered a copy.

(g) Nothing in this section requires the applicant or license holder to develop or maintain separate or duplicative policies, procedures, documentation, consent forms, or individual plans that may be required for other licensing standards, if the requirements of this section are incorporated into those documents.

(h) The commissioner may grant variances to the requirements of this section according to section 245A.04, subdivision 9.

(i) For the purposes of paragraphs (b) to (h), "license holder" has the meaning under section 245A.02, subdivision 9, and additionally includes all staff, volunteers, and contractors affiliated with the license holder.

Sec. 4. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 and background studies for ~~adult foster care~~, family adult day services, and family child care, under chapter 245C; to recommend denial of applicants under section 245A.05; to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;

(2) adult foster care maximum capacity;

(3) adult foster care minimum age requirement;

(4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment; and

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

(b) County agencies must report information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances

granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner.

(c) For family day care programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(d) For family adult day services programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(e) A license issued under this section may be issued for up to two years.

Sec. 5. Minnesota Statutes 2008, section 245A.16, subdivision 3, is amended to read:

Subd. 3. **Recommendations to commissioner.** The county or private agency shall not make recommendations to the commissioner regarding licensure without first conducting an inspection, and for ~~adult foster care~~, family adult day services, and family child care, a background study of the applicant under chapter 245C. The county or private agency must forward its recommendation to the commissioner regarding the appropriate licensing action within 20 working days of receipt of a completed application.

Sec. 6. Minnesota Statutes 2008, 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 ~~adult foster care~~, family adult day services, and 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 license. 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). 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 license holder. 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). 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.

~~(g)~~ (i) 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. 7. Minnesota Statutes 2008, section 245C.05, subdivision 4, is amended to read:

Subd. 4. **Electronic transmission.** For background studies conducted by the Department of Human Services, the commissioner shall implement a system for the electronic transmission of:

- (1) background study information to the commissioner;
- (2) background study results to the license holder; ~~and~~
- (3) background study results to county and private agencies for background studies conducted by the commissioner for child foster care; and
- (4) background study results to county agencies for background studies conducted by the commissioner for adult foster care.

Sec. 8. Minnesota Statutes 2008, section 245C.08, subdivision 2, is amended to read:

Subd. 2. **Background studies conducted by a county agency.** (a) For a background study conducted by a county agency for ~~adult foster care~~, family adult day services, and family child care services, the commissioner shall review:

- (1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;
- (2) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and
- (3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Sec. 9. Minnesota Statutes 2008, section 245C.10, is amended by adding a subdivision to read:

Subd. 5. **Adult foster care services.** The commissioner shall recover the cost of background studies required under section 245C.03, subdivision 1, for the purposes

10.1 of adult foster care licensing, through a fee of no more than \$20 per study charged to
10.2 the license holder. The fees collected under this subdivision are appropriated to the
10.3 commissioner for the purpose of conducting background studies.

10.4 Sec. 10. Minnesota Statutes 2008, section 245C.17, is amended by adding a
10.5 subdivision to read:

10.6 Subd. 6. **Notice to county agency.** For studies on individuals related to a license to
10.7 provide adult foster care, the commissioner shall also provide a notice of the background
10.8 study results to the county agency that initiated the background study.

10.9 Sec. 11. Minnesota Statutes 2008, section 245C.20, is amended to read:

10.10 **245C.20 LICENSE HOLDER RECORD KEEPING.**

10.11 A licensed program shall document the date the program initiates a background
10.12 study under this chapter in the program's personnel files. When a background study is
10.13 completed under this chapter, a licensed program shall maintain a notice that the study
10.14 was undertaken and completed in the program's personnel files. Except when background
10.15 studies are initiated through the commissioner's online system, if a licensed program
10.16 has not received a response from the commissioner under section 245C.17 within 45
10.17 days of initiation of the background study request, the licensed program must contact the
10.18 ~~commissioner~~ human services licensing division to inquire about the status of the study. If
10.19 a license holder initiates a background study under the commissioner's online system, but
10.20 the background study subject's name does not appear in the list of active or recent studies
10.21 initiated by that license holder, the license holder must either contact the human services
10.22 licensing division or resubmit the background study information online for that individual.

10.23 Sec. 12. Minnesota Statutes 2008, section 245C.21, subdivision 1a, is amended to read:

10.24 Subd. 1a. **Submission of reconsideration request to county or private agency.**

10.25 (a) For disqualifications related to studies conducted by county agencies for family child
10.26 care and family adult day services, and for disqualifications related to studies conducted
10.27 by the commissioner for child foster care and adult foster care, the individual shall
10.28 submit the request for reconsideration to the county ~~or private~~ agency that initiated the
10.29 background study.

10.30 (b) For disqualifications related to studies conducted by the commissioner for child
10.31 foster care, the individual shall submit the request for reconsideration to the private agency
10.32 that initiated the background study.

11.1 (c) A reconsideration request shall be submitted within 30 days of the individual's
11.2 receipt of the disqualification notice or the time frames specified in subdivision 2,
11.3 whichever time frame is shorter.

11.4 ~~(c)~~ (d) The county or private agency shall forward the individual's request for
11.5 reconsideration and provide the commissioner with a recommendation whether to set aside
11.6 the individual's disqualification.

11.7 Sec. 13. Minnesota Statutes 2008, section 245C.23, subdivision 2, is amended to read:

11.8 Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The
11.9 commissioner shall notify the license holder of the disqualification and order the license
11.10 holder to immediately remove the individual from any position allowing direct contact
11.11 with persons receiving services from the license holder if:

11.12 (1) the individual studied does not submit a timely request for reconsideration
11.13 under section 245C.21;

11.14 (2) the individual submits a timely request for reconsideration, but the commissioner
11.15 does not set aside the disqualification for that license holder under section 245C.22;

11.16 (3) an individual who has a right to request a hearing under sections 245C.27 and
11.17 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does
11.18 not request a hearing within the specified time; or

11.19 (4) an individual submitted a timely request for a hearing under sections 245C.27
11.20 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the
11.21 disqualification under section 245A.08, subdivision 5, or 256.045.

11.22 (b) If the commissioner does not set aside the disqualification under section 245C.22,
11.23 and the license holder was previously ordered under section 245C.17 to immediately
11.24 remove the disqualified individual from direct contact with persons receiving services or
11.25 to ensure that the individual is under continuous, direct supervision when providing direct
11.26 contact services, the order remains in effect pending the outcome of a hearing under
11.27 sections 245C.27 and 256.045, or 245C.28 and chapter 14.

11.28 (c) For background studies related to child foster care, the commissioner shall
11.29 also notify the county or private agency that initiated the study of the results of the
11.30 reconsideration.

11.31 (d) For background studies related to adult foster care, the commissioner shall also
11.32 notify the county that initiated the study of the results of the reconsideration.

11.33 Sec. 14. Minnesota Statutes 2008, section 256B.5011, subdivision 2, is amended to
11.34 read:

Subd. 2. **Contract provisions.** (a) The service contract with each intermediate care facility must include provisions for:

(1) modifying payments when significant changes occur in the needs of the consumers;

~~(2) the establishment and use of a quality improvement plan. Using criteria and options for performance measures developed by the commissioner, each intermediate care facility must identify a minimum of one performance measure on which to focus its efforts for quality improvement during the contract period;~~

~~(3)~~ appropriate and necessary statistical information required by the commissioner;

~~(4)~~ (3) annual aggregate facility financial information; and

~~(5)~~ (4) additional requirements for intermediate care facilities not meeting the standards set forth in the service contract.

(b) The commissioner of human services and the commissioner of health, in consultation with representatives from counties, advocacy organizations, and the provider community, shall review the consolidated standards under chapter 245B and the supervised living facility rule under Minnesota Rules, chapter 4665, to determine what provisions in Minnesota Rules, chapter 4665, may be waived by the commissioner of health for intermediate care facilities in order to enable facilities to implement the performance measures in their contract and provide quality services to residents without a duplication of or increase in regulatory requirements.

Sec. 15. Minnesota Statutes 2008, section 256B.5013, subdivision 1, is amended to read:

Subdivision 1. **Variable rate adjustments.** (a) For rate years beginning on or after October 1, 2000, when there is a documented increase in the needs of a current ICF/MR recipient, the county of financial responsibility may recommend a variable rate to enable the facility to meet the individual's increased needs. Variable rate adjustments made under this subdivision replace payments for persons with special needs under section 256B.501, subdivision 8, and payments for persons with special needs for crisis intervention services under section 256B.501, subdivision 8a. Effective July 1, 2003, facilities with a base rate above the 50th percentile of the statewide average reimbursement rate for a Class A facility or Class B facility, whichever matches the facility licensure, are not eligible for a variable rate adjustment. Variable rate adjustments may not exceed a 12-month period, except when approved for purposes established in paragraph (b), clause (1). Variable rate adjustments approved solely on the basis of changes on a developmental disabilities screening document will end June 30, 2002.

(b) A variable rate may be recommended by the county of financial responsibility for increased needs in the following situations:

(1) a need for resources due to an individual's full or partial retirement from participation in a day training and habilitation service when the individual: (i) has reached the age of 65 or has a change in health condition that makes it difficult for the person to participate in day training and habilitation services over an extended period of time because it is medically contraindicated; and (ii) has expressed a desire for change through the developmental disability screening process under section 256B.092;

(2) a need for additional resources for intensive short-term programming which is necessary prior to an individual's discharge to a less restrictive, more integrated setting;

(3) a demonstrated medical need that significantly impacts the type or amount of services needed by the individual; or

(4) a demonstrated behavioral need that significantly impacts the type or amount of services needed by the individual.

(c) The county of financial responsibility must justify the purpose, the projected length of time, and the additional funding needed for the facility to meet the needs of the individual.

~~(d) The facility shall provide a quarterly report to the county case manager on the use of the variable rate funds and the status of the individual on whose behalf the funds were approved. The county case manager will forward the facility's report with a recommendation to the commissioner to approve or disapprove a continuation of the variable rate.~~

~~(e)~~ Funds made available through the variable rate process that are not used by the facility to meet the needs of the individual for whom they were approved shall be returned to the state.

Sec. 16. Minnesota Statutes 2008, 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

14.1 States Department of Agriculture. The types of diets and the percentages of the thrifty
14.2 food plan that are covered are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

14.24 (d) The county agency shall continue to pay a monthly allowance of \$68 for
14.25 restaurant meals for a person who was receiving a restaurant meal allowance on June 1,
14.26 1990, and who eats two or more meals in a restaurant daily. The allowance must continue
14.27 until the person has not received Minnesota supplemental aid for one full calendar month
14.28 or until the person's living arrangement changes and the person no longer meets the criteria
14.29 for the restaurant meal allowance, whichever occurs first.

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

14.35 (f)(1) Notwithstanding the language in this subdivision, an amount equal to the
14.36 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 community-based waiver recipients living in their own home or rented or leased apartment which is not owned, operated, or controlled by a provider of service not related by blood or marriage.

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

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

(g) Notwithstanding this subdivision, recipients of home and community-based services may relocate to services without 24-hour supervision and receive the equivalent of the recipient's group residential housing allocation in Minnesota supplemental assistance shelter needy funding if the cost of the services and housing is equal to or less than provided to the recipient in home and community-based services and the relocation is the recipient's choice and is approved by the recipient or guardian.

(h) To access housing and services as provided in paragraph (g), the recipient may choose housing that may or may not be owned, operated, or controlled by the recipient's service provider.

(i) The provisions in paragraphs (g) and (h) are effective to June 30, 2011. The commissioner shall assess the development of publicly owned housing, other housing alternatives, and whether a public equity housing fund may be established that would maintain the state's interest, to the extent paid from group residential housing and Minnesota supplemental aid shelter needy funds in provider-owned housing so that when sold, the state would recover its share for a public equity fund to be used for future public needs under this chapter. The commissioner shall report findings and recommendations to

16.1 the legislative committees and budget divisions with jurisdiction over health and human
16.2 services policy and financing by January 15, 2012.

16.3 (j) In selecting prospective services needed by recipients for whom home and
16.4 community-based services have been authorized, the recipient and the recipient's guardian
16.5 shall first consider alternatives to home and community-based services. Minnesota
16.6 supplemental aid shelter needy funding for recipients who utilize Minnesota supplemental
16.7 aid shelter needy funding as provided in this section shall remain permanent unless the
16.8 recipient with the recipient's guardian later chooses to access home and community-based
16.9 services.

16.10 Sec. 17. **ESTABLISHING A SINGLE SET OF STANDARDS.**

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

- 16.18 (1) enable optimum consumer choice;
16.19 (2) be consumer-driven;
16.20 (3) link services to individual needs and life goals;
16.21 (4) be based on quality assurance and individual outcomes;
16.22 (5) utilize the people closest to the recipient, who may include family, friends, and
16.23 health and service providers, in conjunction with the recipient's risk management plan to
16.24 assist the recipient or the recipient's guardian in making decisions that meet the recipient's
16.25 needs in a cost-effective manner and assure the recipient's health and safety;
16.26 (6) utilize person-centered planning; and
16.27 (7) maximize federal financial participation.

16.28 (b) The commissioner may consult with existing stakeholder groups convened under
16.29 the commissioner's authority, including the home and community-based expert services
16.30 panel established by the commissioner in 2008, to meet all or some of the requirements
16.31 of this section.

16.32 (c) The commissioner shall provide the reports and plans required by this section to
16.33 the legislative committees and budget divisions with jurisdiction over health and human
16.34 services policy and finance by January 15, 2012.

Sec. 18. **COMMON SERVICE MENU FOR HOME AND COMMUNITY-BASED
WAIVER PROGRAMS.**

The commissioner of human services shall confer with representatives of recipients, advocacy groups, counties, providers, and health plans to develop and update a common service menu for home and community-based waiver programs. The commissioner may consult with existing stakeholder groups convened under the commissioner's authority to meet all or some of the requirements of this section.

Sec. 19. **INTERMEDIATE CARE FACILITIES FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES REPORT.**

The commissioner of human services shall consult with providers and advocates of intermediate care facilities for persons with developmental disabilities to monitor progress made in response to the commissioner's December 15, 2008, report to the legislature regarding intermediate care facilities for persons with developmental disabilities.

Sec. 20. **HOUSING OPTIONS.**

The commissioner of human services, in consultation with the commissioner of administration and the Minnesota Housing Finance Agency, and representatives of counties, residents' advocacy groups, consumers of housing services, and provider agencies shall explore ways to maximize the availability and affordability of housing choices available to persons with disabilities or who need care assistance due to other health challenges. A goal shall also be to minimize state physical plant costs in order to serve more persons with appropriate program and care support. Consideration shall be given to:

- (1) improved access to rent subsidies;
- (2) use of cooperatives, land trusts, and other limited equity ownership models;
- (3) the desirability of the state acquiring an ownership interest or promoting the use of publicly owned housing;
- (4) promoting more choices in the market for accessible housing that meets the needs of persons with physical challenges; and
- (5) what consumer ownership models, if any, are appropriate.

The commissioner shall provide a written report on the findings of the evaluation of housing options to the chairs and ranking minority members of the house of representatives and senate standing committees with jurisdiction over health and human services policy and funding by December 15, 2010.

18.1 Sec. 21. **REPEALER.**
18.2 Minnesota Statutes 2008, section 256B.5013, subdivision 5, and Minnesota Rules,
18.3 part 9555.6125, subpart 4, item B, are repealed.

APPENDIX
Repealed Minnesota Statutes: H1110-1

256B.5013 PAYMENT RATE ADJUSTMENTS.

Subd. 5. **Required occupancy data.** Facilities shall maintain monthly occupancy bed use data by client and report this data monthly in a format determined by the commissioner.