A bill for an act

relating to human services; changing capacity requirements for certain residential programs; requiring the commissioner to request federal waivers; amending Minnesota Statutes 2008, sections 245A.11, subdivision 2a; 256B.092, subdivision 5a; 256B.49, subdivision 17.

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

Section 1. Minnesota Statutes 2008, section 245A.11, subdivision 2a, is amended to read:

Subd. 2a. **Adult foster care license capacity.** The commissioner shall issue adult foster care licenses with a maximum licensed capacity of four beds, including nonstaff roomers and boarders, but may issue a license with a capacity of five beds, including roomers and boarders, only according to paragraphs (a) to (e).

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

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

(c) The commissioner may grant variances to paragraph (a) to allow the use of a fifth bed for emergency crisis services for a person with serious and persistent mental illness or a developmental disability, regardless of age, if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(d) ~~Notwithstanding paragraph (a),~~ 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 which 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, ~~2003~~ 2009.

(e) The commissioner shall not issue a new adult foster care license under paragraph (d) after June 30, ~~2005~~ 2011. The commissioner shall allow a facility with an adult foster care license issued under paragraph (d) before June 30, ~~2005~~ 2011, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (d).

Sec. 2. Minnesota Statutes 2008, section 256B.092, subdivision 5a, is amended to read:

Subd. 5a. **Increasing adult foster care capacity to serve five persons.** ~~(a)~~ When ~~an~~ a licensed adult foster care provider increases the capacity of an existing four-bed home ~~licensed to serve four persons~~ and obtains a license to serve a fifth person under this section, the county agency shall ~~reduce the contracted~~ negotiate per diem cost for room and board and the ~~developmental disability~~ waiver services ~~of the existing foster care home by an average of 14 percent for all individuals living in that home. A county agency may average the required per diem rate reductions across several adult foster care homes that expand capacity under this section to achieve the necessary overall per diem reduction~~ with the provider to manage a legislated rate reduction. The revised per diem costs must

demonstrate an overall reduction in the payment to the provider for the persons receiving services affected by the occupancy change.

~~(b) Following the contract changes in paragraph (a), the commissioner shall adjust:~~

~~(1) individual county allocations for developmental disability waivered services by the amount of savings that results from the changes made for developmental disability waiver recipients for whom the county is financially responsible; and~~

~~(2) group residential housing rate payments to the adult foster care home by the amount of savings that results from the changes made.~~

~~(c) Effective July 1, 2003, when a new five-person adult foster care home is licensed under this section, county agencies shall not establish group residential housing room and board rates and developmental disability waiver service rates for the new home that exceed 86 percent of the average per diem room and board and developmental disability waiver services costs of four-person homes serving persons with comparable needs and in the same geographic area. A county agency developing more than one new five-person adult foster care home may average the required per diem rates across the homes to achieve the necessary overall per diem reductions.~~

~~(d) The commissioner shall reduce the individual county allocations for developmental disability waivered services by the savings resulting from the per diem limits on adult foster care recipients for whom the county is financially responsible, and shall limit the group residential housing rate for a new five-person adult foster care home.~~

Sec. 3. Minnesota Statutes 2008, section 256B.49, subdivision 17, is amended to read:

Subd. 17. **Cost of services and supports.** (a) The commissioner shall ensure that the average per capita expenditures estimated in any fiscal year for home and community-based waiver recipients does not exceed the average per capita expenditures that would have been made to provide institutional services for recipients in the absence of the waiver.

(b) The commissioner shall implement on January 1, 2002, one or more aggregate, need-based methods for allocating to local agencies the home and community-based waivered service resources available to support recipients with disabilities in need of the level of care provided in a nursing facility or a hospital. The commissioner shall allocate resources to single counties and county partnerships in a manner that reflects consideration of:

(1) an incentive-based payment process for achieving outcomes;

(2) the need for a state-level risk pool;

(3) the need for retention of management responsibility at the state agency level; and

(4) a phase-in strategy as appropriate.

(c) Until the allocation methods described in paragraph (b) are implemented, the annual allowable reimbursement level of home and community-based waiver services shall be the greater of:

(1) the statewide average payment amount which the recipient is assigned under the waiver reimbursement system in place on June 30, 2001, modified by the percentage of any provider rate increase appropriated for home and community-based services; or

(2) an amount approved by the commissioner based on the recipient's extraordinary needs that cannot be met within the current allowable reimbursement level. The increased reimbursement level must be necessary to allow the recipient to be discharged from an institution or to prevent imminent placement in an institution. The additional reimbursement may be used to secure environmental modifications; assistive technology and equipment; and increased costs for supervision, training, and support services necessary to address the recipient's extraordinary needs. The commissioner may approve an increased reimbursement level for up to one year of the recipient's relocation from an institution or up to six months of a determination that a current waiver recipient is at imminent risk of being placed in an institution.

(d) Beginning July 1, 2001, medically necessary private duty nursing services will be authorized under this section as complex and regular care according to sections 256B.0651 and 256B.0653 to 256B.0656. The rate established by the commissioner for registered nurse or licensed practical nurse services under any home and community-based waiver as of January 1, 2001, shall not be reduced.

(e) When a licensed adult foster care provider seeks to increase the capacity of an existing four-bed home to be licensed to serve a fifth person under section 245A.11, subdivision 2a, the county agency shall negotiate the per diem cost for room and board and the waiver services with the provider to manage a legislatively required rate reduction. The revised per diem costs must demonstrate an overall reduction in the payment to the provider for the persons receiving services affected by the occupancy change.

Sec. 4. **RESIDENTIAL HOME AND COMMUNITY-BASED WAIVERED SERVICES.**

Minnesota Statutes, section 252.28, subdivision 3, paragraph (d), shall not be in effect from July 1, 2009, to June 30, 2011, to allow the commissioner to issue licenses for residential programs with a capacity of five adults under the conditions specified in Minnesota Statutes, section 245A.11, subdivision 2a.

Sec. 5. **WAIVER.**

By December 1, 2009, the commissioner shall request all federal approvals and waiver amendments to the disability home and community-based waivers to allow properly licensed adult foster care homes to provide residential services for up to five individuals.

Sec. 6. **EFFECTIVE DATE.**

Sections 1 to 5 are effective July 1, 2009.