SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1472

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DATE	D-PG	OFFICIAL STATUS
05/22/2011	3260	Introduction and first reading Referred to Health and Human Services

A bill for an act

relating to human services; modifying housing provisions for certain home and community-based service waiver recipients; amending Minnesota Statutes 2010, sections 256B.0911, subdivision 3a, as amended if enacted; 256B.49, subdivision 15, by adding subdivisions; 256I.04, subdivision 2a.

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

Section 1. Minnesota Statutes 2010, section 256B.0911, subdivision 3a, as amended by S.F. No. 760, article 6, section 12, if enacted, is amended to read:

Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment, services planning, or other assistance intended to support community-based living, including persons who need assessment in order to determine waiver or alternative care program eligibility, must be visited by a long-term care consultation team within 20 calendar days after the date on which an assessment was requested or recommended. After January 1, 2011, these requirements also apply to personal care assistance services, private duty nursing, and home health agency services, on timelines established in subdivision 5. Face-to-face assessments must be conducted according to paragraphs (b) to (i).

(b) The county may utilize a team of either the social worker or public health nurse, or both. After January 1, 2011, lead agencies shall use certified assessors to conduct the assessment in a face-to-face interview. The consultation team members must confer regarding the most appropriate care for each individual screened or assessed.

(c) The assessment must be comprehensive and include a person-centered assessment of the health, psychological, functional, environmental, and social needs of referred individuals and provide information necessary to develop a support plan that meets the consumers needs, using an assessment form provided by the commissioner.

(d) The assessment must be conducted in a face-to-face interview with the person being assessed and the person's legal representative, as required by legally executed documents, and other individuals as requested by the person, who can provide information on the needs, strengths, and preferences of the person necessary to develop a support plan that ensures the person's health and safety, but who is not a provider of service or has any financial interest in the provision of services. For persons who are to be assessed for elderly waiver customized living services under section 256B.0915, and with the permission of the person being assessed or the persons' designated or legal representative, the client's current or proposed provider of services may submit a copy of the provider's nursing assessment or written report outlining their recommendations regarding the client's care needs. The person conducting the assessment will notify the provider of the date by which this information is to be submitted. This information shall be provided to the person conducting the assessment prior to the assessment.

(e) The person, or the person's legal representative, must be provided with written recommendations for community-based services, including self-directed options, or institutional care that include documentation that the most cost-effective alternatives available were offered to the individual. For purposes of this requirement, "cost-effective alternatives" means community services and living arrangements that cost the same as or less than institutional care. For persons determined eligible for services defined under subdivision 1a, paragraph (a), clauses (7) to (9), the community support plan must also include the estimated annual and monthly average authorized budget amount for those services.

(f) (1) If the person chooses to use community-based services, the person or the person's legal representative must be provided with a written community support plan, regardless of whether the individual is eligible for Minnesota health care programs. The written community support plan must include:

(i) a summary of assessed needs as defined in paragraphs (c) and (d);

(ii) the individual's options and choices to meet identified needs, including all available options for case management services and providers, and alternatives to residential settings, including, but not limited to, foster care settings that are not the primary residence of the license holder;

(iii) identification of health and safety risks and how those risks will be addressed, including personal risk management strategies;

(iv) referral information; and

(v) informal caregiver supports, if applicable.

(2) For persons determined eligible for services defined under subdivision 1a, paragraph (a), clauses (7) to (10), the community support plan must also include:

(i) identification of individual goals;

(ii) identification of short-term and long-term service outcomes. Short-term service outcomes are defined as achievable within six months;

(iii) a recommended schedule for case management visits. When achievement of short-term service outcomes may affect the amount of service required, the schedule must be at least every six months and must reflect evaluation and progress toward identified short-term service outcomes; and

(iv) the estimated annual and monthly budget amount for services.

(3) In addition, for persons determined eligible for state plan home care under subdivision 1a, paragraph (a), clause (8), the person or person's representative must also receive a copy of the home care service plan developed by a certified assessor.

(4) A person may request assistance in identifying community supports without participating in a complete assessment. Upon a request for assistance identifying community support, the person must be transferred or referred to the services available under sections 256.975, subdivision 7, and 256.01, subdivision 24, for telephone assistance and follow up.

(g) The person has the right to make the final decision between institutional placement and community placement after the recommendations have been provided, except as provided in subdivision 4a, paragraph (c).

(h) The team must give the person receiving assessment or support planning, or the person's legal representative, materials, and forms supplied by the commissioner containing the following information:

(1) the need for and purpose of preadmission screening if the person selects nursing facility placement;

(2) the role of the long-term care consultation assessment and support planning in waiver and alternative care program eligibility determination;

(3) information about Minnesota health care programs;

(4) the person's freedom to accept or reject the recommendations of the team;

(5) the person's right to confidentiality under the Minnesota Government Data Practices Act, chapter 13;

(6) the long-term care consultant's decision regarding the person's need for institutional level of care as determined under criteria established in section 144.0724, subdivision 11, or 256B.092; and

(7) the person's right to appeal the decision regarding the need for nursing facility level of care or the county's final decisions regarding public programs eligibility according to section 256.045, subdivision 3.

(i) Face-to-face assessment completed as part of eligibility determination for the alternative care, elderly waiver, community alternatives for disabled individuals, community alternative care, and traumatic brain injury waiver programs under sections 256B.0915, 256B.0917, and 256B.49 is valid to establish service eligibility for no more than 60 calendar days after the date of assessment. The effective eligibility start date for these programs can never be prior to the date of assessment. If an assessment was completed more than 60 days before the effective waiver or alternative care program eligibility start date, assessment and support plan information must be updated and documented in the department's Medicaid Management Information System (MMIS). The updated assessment may be completed by face-to-face visit, written communication, or telephone as determined by the commissioner to establish statewide consistency. The effective date of program eligibility in this case cannot be prior to the date the updated assessment is completed.

Sec. 2. Minnesota Statutes 2010, section 256B.49, subdivision 15, is amended to read:

Subd. 15. **Individualized service plan.** (a) Each recipient of home and community-based waivered services shall be provided a copy of the written service plan which:

(1) is developed and signed by the recipient within ten working days of the completion of the assessment;

(2) meets the assessed needs of the recipient;

(3) reasonably ensures the health and safety of the recipient;

(4) promotes independence;

(5) allows for services to be provided in the most integrated settings; and

(6) provides for an informed choice, as defined in section 256B.77, subdivision 2, paragraph (p), of service and support providers.

(b) When a county is evaluating denials, reductions, or terminations of home and community-based services under section 256B.49 for an individual, the case manager shall offer to meet with the individual or the individual's guardian in order to discuss the prioritization of service needs within the individualized service plan. The reduction in the authorized services for an individual due to changes in funding for waivered services may not exceed the amount needed to ensure medically necessary services to meet the individual's health, safety, and welfare.

(c) At the time of reassessment, local agency case managers shall assess each recipient of community alternatives for disabled individuals or traumatic brain injury waivered services currently residing in a licensed adult foster home that is not the primary residence of the license holder, or in which the license holder is not the primary caregiver, to determine if that recipient could appropriately be served in an apartment setting. If appropriate for the recipient, the case manger shall offer the recipient, through a person-centered planning process, the option to enter a less restrictive setting and to receive customized living or 24-hour customized living services if necessary and appropriate. In the event that the recipient chooses to transfer from the adult foster home, the vacated bed shall not be filled with another recipient of waiver services or group residential housing. If the adult foster home becomes no longer viable due to these transfers, the county agency, with the assistance of the department, shall facilitate a consolidation of settings or closure. This process shall be completed by June 30, 2012.

Sec. 3. Minnesota Statutes 2010, section 256B.49, is amended by adding a subdivision to read:

Subd. 23. **Living arrangements.** The commissioner shall not place any limit on the number of recipients of home and community-based waivered services receiving customized living or 24-hour customized living services under Section 1915C of the Social Security Act who may reside in a single building, unless specifically prohibited by federal law. Customized living or 24-hour customized living service formerly known as assisted living and assisted living plus, respectively, can be provided to any number of apartments in a residential center for community alternatives for disabled individuals and traumatic brain injury waiver recipients who rent or own distinct units. Notwithstanding any other provision to the contrary, the commissioner shall not deny medical assistance provider enrollment to any otherwise qualified provider of these services.

Sec. 4. Minnesota Statutes 2010, section 256B.49, is amended by adding a subdivision to read:

Subd. 24. **Community-living settings.** "Community-living settings" means:

(1) a single-family home or apartment where the service recipient or their family owns or rents, as demonstrated by a lease agreement, and maintains control over the individual unit;

(2) the individual is not required to receive services;

(3) the individual is not required to have a disability or specific diagnosis to live in the home;

(4) the individual may hire a service provider of their choice;

(5) the individual may determine whether to share their household and with whom; and

(6) the unit includes sleeping, bathing, and cooking areas.

Sec. 5. Minnesota Statutes 2010, section 256I.04, subdivision 2a, is amended to read:

Subd. 2a. **License required.** A county agency may not enter into an agreement with an establishment to provide group residential housing unless:

(1) the establishment is licensed by the Department of Health as a hotel and restaurant; a board and lodging establishment; a residential care home; a boarding care home before March 1, 1985; or a supervised living facility, and the service provider for residents of the facility is licensed under chapter 245A. However, an establishment licensed by the Department of Health to provide lodging need not also be licensed to provide board if meals are being supplied to residents under a contract with a food vendor who is licensed by the Department of Health;

(2) the residence is: (i) licensed by the commissioner of human services under Minnesota Rules, parts 9555.5050 to 9555.6265; (ii) certified by a county human services agency prior to July 1, 1992, using the standards under Minnesota Rules, parts 9555.5050 to 9555.6265; or (iii) a residence licensed by the commissioner under Minnesota Rules, parts 2960.0010 to 2960.0120, with a variance under section 245A.04, subdivision 9;

(3) the establishment is registered under chapter 144D and provides three meals a day, or is an establishment voluntarily registered under section 144D.025 as a supportive housing establishment; or

(4) an establishment voluntarily registered under section 144D.025, other than a supportive housing establishment under clause (3), is not eligible to provide group residential housing, unless the establishment provides housing for persons entering the establishment directly from corporate adult foster homes.

The requirements under clauses (1) to (4) do not apply to establishments exempt from state licensure because they are located on Indian reservations and subject to tribal health and safety requirements.