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## State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1992

02/25/2014 Authored by Dehn, R.; Sundin; Isaacson; Clark; Huntley and others

The bill was read for the first time and referred to the Committee on Housing Finance and Policy

03/12/2014 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Policy

03/20/2014 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; establishing an exception process to the requirements  
1.3 for home and community-based waiver housing programs; amending Minnesota  
1.4 Statutes 2013 Supplement, section 256B.492.

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

1.6 Section 1. Minnesota Statutes 2013 Supplement, section 256B.492, is amended to read:

1.7 **256B.492 HOME AND COMMUNITY-BASED SETTINGS FOR PEOPLE**  
1.8 **WITH DISABILITIES.**

1.9 Subdivision 1. Home and community-based waivers. (a) Individuals receiving  
1.10 services under a home and community-based waiver under section 256B.092 or 256B.49  
1.11 may receive services in the following settings:

1.12 (1) an individual's own home or family home;

1.13 (2) a licensed adult foster care or child foster care setting of up to five people; and

1.14 (3) community living settings as defined in section 256B.49, subdivision 23, where

1.15 individuals with disabilities who are receiving services under a home and community-based

1.16 waiver may reside in all of the units in a building of four or fewer units, and no more than

1.17 the greater of four or 25 percent of the units in a multifamily building of more than four

1.18 units, unless required by the Housing Opportunities for Persons with AIDS Program.

1.19 (b) The settings in paragraph (a) must not:

1.20 (1) be located in a building that is a publicly or privately operated facility that  
1.21 provides institutional treatment or custodial care;

1.22 (2) be located in a building on the grounds of or adjacent to a public or private  
1.23 institution;

(3) be a housing complex designed expressly around an individual's diagnosis or disability, unless required by the Housing Opportunities for Persons with AIDS Program;

(4) be segregated based on a disability, either physically or because of setting characteristics, from the larger community; and

(5) have the qualities of an institution which include, but are not limited to: regimented meal and sleep times, limitations on visitors, and lack of privacy. Restrictions agreed to and documented in the person's individual service plan shall not result in a residence having the qualities of an institution as long as the restrictions for the person are not imposed upon others in the same residence and are the least restrictive alternative, imposed for the shortest possible time to meet the person's needs.

(c) The provisions of paragraphs (a) and (b) do not apply to any setting in which individuals receive services under a home and community-based waiver as of July 1, 2012, and the setting does not meet the criteria of this section.

(d) Notwithstanding paragraph (c), a program in Hennepin County established as part of a Hennepin County demonstration project is qualified for the exception allowed under paragraph (c).

(e) The commissioner shall submit an amendment to the waiver plan no later than December 31, 2012.

**Subd. 2. Exceptions for home and community-based waiver housing programs.**

(a) Beginning no later than January 2015, based on the consultation with interested stakeholders as specified in subdivision 3, the commissioner shall accept and process applications for exceptions to subdivision 1 based on the criteria in this subdivision.

(b) An owner, operator, or developer of a community living setting may apply to the commissioner for the granting of an exception from the requirement in subdivision 1, paragraph (a), clause (3), that individuals receiving services under a home and community-based waiver under section 256B.092 or 256B.49 may only reside in all of the units in a building of four or fewer units, and no more than the greater of four or 25 percent of the units in a multifamily building of more than four units and from the requirement in subdivision 1, paragraph (b), clause (3), that a setting cannot be a housing complex designed expressly around an individual's diagnosis or disability. Such an exception from the requirements in subdivision 1, paragraphs (a), clause (3), and (b), clause (3), may be granted when the organization requesting the exception submits to the commissioner an application providing the information requested in subdivision 2, paragraph (c). The exception shall require that housing costs be separated from service costs and allow the client to choose the vendor who provides personal services under the client's waiver.

(c) A community living setting application for an exemption must provide the following information and affirmations:

(1) affirms the community living setting materially meets all the requirements for home and community-based settings in paragraph (b) other than clause (3);

(2) explains the scope and necessity of the exception, including documentation of the characteristics of the population to be served and the demand for the number of units the applicant anticipates will be occupied by individuals receiving services under a home and community-based waiver in the proposed setting;

(3) explains how the community living setting supports all individuals receiving services under a home and community-based waiver in choosing the setting from among other options and the availability of those other options in the community for the specific population the program proposes to serve, and outlines the proposed rents and service costs, if any, of services to be provided by the applicant and addresses the cost-effectiveness of the model proposed; and

(4) includes a quality assurance plan affirming that the organization requesting the exception:

(i) supports or develops scattered-site alternatives to the setting for which the exception is requested;

(ii) supports the transition of individuals receiving services under a home and community-based waiver to the most integrated setting appropriate to the individual's needs;

(iii) has a history of meeting recognized quality standards for the population it serves or is targeting, or that it will meet recognized quality standards;

(iv) provides and facilitates for tenants receiving services under a home and community-based waiver unlimited access to the community, including opportunities to interact with nonstaff people without disabilities, appropriate to the individual's needs; and

(v) supports a safe and healthy environment for all individuals living in the setting.

(d) In assessing whether to grant the applicant's exception request, the commissioner shall:

(1) evaluate all of the assertions in the application, verify the assertions are accurate, and ensure that the application is complete;

(2) consult with all divisions in the Department of Human Services relevant to the specific populations being served by the applicant and the Minnesota Housing Finance Agency;

4.1 (3) within 30 days of receiving the application notify the city, county, and local press  
4.2 of the 14-day public comment period to consider community input on the application,  
4.3 including input from tenants, potential tenants, and other interested stakeholders;

4.4 (4) within 60 days of receiving the application issue an approval, conditional  
4.5 approval, or denial of the exception sought; and

4.6 (5) accept and process applications from settings throughout the calendar year.

4.7 If conditional approval is granted under this section, the commissioner must specify  
4.8 the reasons for conditional approval of the exception and allow the applicant 30 days  
4.9 to amend the application and issue a renewed decision within 15 days of receiving the  
4.10 amended application. If the commissioner denies an exception under this section, the  
4.11 commissioner must specify reasons for denial of the exception.

4.12 (e) If the applicant's exception is approved, the setting must inform the commissioner  
4.13 of any material changes that occur in the conditions that warranted the approved exception.  
4.14 Failure to advise the commissioner within 60 days of the material changes may result in  
4.15 revocation of the exception. Upon a determination by the commissioner that a material  
4.16 modification has been made, the exception may be suspended and the setting shall have 90  
4.17 days to correct modifications resulting in the suspension. After an applicant's exception is  
4.18 approved, any material change in the population to be served or the services to be offered  
4.19 must be submitted to the commissioner who shall decide if it is consistent with the basis  
4.20 on which the exception was granted or if another exception request needs to be submitted.

4.21 (f) If an exception is approved and later revoked, no tenant shall be displaced as a  
4.22 result of this revocation until a relocation plan has been implemented that provides for an  
4.23 acceptable alternative placement.

4.24 (g) Notwithstanding the above provision, no organization that meets the requirements  
4.25 under subdivision 1 shall be required to apply for an exception described in subdivision 2.

4.26 Subd. 3. **Public input on exception process.** The commissioner shall consult  
4.27 with interested stakeholders to develop a plan for implementing the exceptions process  
4.28 described in subdivision 2. The implementation plan for the applications shall be based  
4.29 upon the criteria in subdivision 2 and any other information necessary to manage the  
4.30 exceptions process. The commissioner must consult with representatives from each  
4.31 relevant division of the Department of Human Services, The Coalition for Choice in  
4.32 Housing, NAMI, The Arc Minnesota, Mental Health Association of Minnesota, Minnesota  
4.33 Disability Law Center, and other provider organizations, counties, disability advocates,  
4.34 and individuals with disabilities or family members of an individual with disabilities.