State of Minnesota

# HOUSE OF REPRESENTATIVES

**NINETY-THIRD SESSION**

**H. F. No. 3495**

02/12/2024 Authored by Fischer, Curran, Kiel and Hill
The bill was read for the first time and referred to the Committee on Human Services Policy

A bill for an act

relating to behavioral health; modifying functional assessment requirements; exempting children's day treatment providers from medication self-administration requirements under certain circumstances; modifying certified mental health clinic staffing standards; modifying intensive residential treatment services and residential crisis stabilization weekly team meeting requirements; requiring the commissioner of human services to establish an initial provider entity application and certification process and recertification process for certain mental health provider types; modifying client eligibility criteria for certain services in children's therapeutic services and supports; removing an excluded service from children's therapeutic services and supports medical assistance payment; modifying intensive nonresidential rehabilitative mental health services team members to include co-occurring disorder specialists; amending Minnesota Statutes 2022, sections 245I.10, subdivision 9; 245I.11, subdivision 1; 245I.20, subdivision 4; 245I.23, subdivision 14; 256B.0943, subdivisions 3, 12; 256B.0947, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 256B.

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

Section 1. Minnesota Statutes 2022, section 245I.10, subdivision 9, is amended to read:

Subd. 9. **Functional assessment; required elements.** (a) When a license holder is completing a functional assessment for an adult client, the license holder must:

(1) complete a functional assessment of the client after completing the client's diagnostic assessment;

(2) use a collaborative process that allows the client and the client's family and other natural supports, the client's referral sources, and the client's providers to provide information about how the client's symptoms of mental illness impact the client's functioning;

(3) if applicable, document the reasons that the license holder did not contact the client's family and other natural supports;

(4) assess and document how the client's symptoms of mental illness impact the client's functioning in the following areas:

(i) the client's mental health symptoms;

(ii) the client's mental health service needs;

(iii) the client's substance use;

(iv) the client's vocational and educational functioning;

(v) the client's social functioning, including the use of leisure time;

(vi) the client's interpersonal functioning, including relationships with the client's family and other natural supports;

(vii) the client's ability to provide self-care and live independently;

(viii) the client's medical and dental health;

(ix) the client's financial assistance needs; and

(x) the client's housing and transportation needs;

~~(5) include a narrative summarizing the client's strengths, resources, and all areas of functional impairment;~~

~~(6)~~ (5) complete the client's functional assessment before the client's initial individual treatment plan unless a service specifies otherwise; and

~~(7)~~ (6) update the client's functional assessment with the client's current functioning whenever there is a significant change in the client's functioning or at least every 180 days, unless a service specifies otherwise.

(b) A license holder may use any available, validated measurement tool, including but not limited to the Daily Living Activities-20, when completing the required elements of a functional assessment under this subdivision.

Sec. 2. Minnesota Statutes 2022, section 245I.11, subdivision 1, is amended to read:

Subdivision 1. **Generally.** If a license holder is licensed as a residential program, stores or administers client medications, or observes clients self-administer medications, the license holder must ensure that a staff person who is a registered nurse or licensed prescriber is responsible for overseeing storage and administration of client medications and observing as a client self-administers medications, including training according to section 245I.05, subdivision 6, and documenting the occurrence according to section 245I.08, subdivision

5. A license holder providing children's day treatment services under section 256B.0943 is exempt from the requirements of this subdivision when serving a child who habitually, as part of the child's activities of daily life, self-administers medication under the oversight of the child's prescriber.

Sec. 3. Minnesota Statutes 2022, section 245I.20, subdivision 4, is amended to read:

Subd. 4. **Minimum staffing standards.** (a) A certification holder's treatment team must consist of at least four mental health professionals. At least two of the mental health professionals must be employed by or under contract with the mental health clinic for a minimum of 35 hours per week each. ~~Each of the two mental health professionals must specialize in a different mental health discipline.~~

(b) The treatment team must include:

(1) a physician qualified as a mental health professional according to section 245I.04, subdivision 2, clause (4), or a nurse qualified as a mental health professional according to section 245I.04, subdivision 2, clause (1); and

(2) a psychologist qualified as a mental health professional according to section 245I.04, subdivision 2, clause (3).

(c) The staff persons fulfilling the requirement in paragraph (b) must provide clinical services at least:

(1) eight hours every two weeks if the mental health clinic has over 25.0 full-time equivalent treatment team members;

(2) eight hours each month if the mental health clinic has 15.1 to 25.0 full-time equivalent treatment team members;

(3) four hours each month if the mental health clinic has 5.1 to 15.0 full-time equivalent treatment team members; or

(4) two hours each month if the mental health clinic has 2.0 to 5.0 full-time equivalent treatment team members or only provides in-home services to clients.

(d) The certification holder must maintain a record that demonstrates compliance with this subdivision.

Sec. 4. Minnesota Statutes 2022, section 245I.23, subdivision 14, is amended to read:

Subd. 14. **Weekly team meetings.** (a) The license holder must hold weekly treatment team meetings ~~and ancillary meetings~~ according to this subdivision~~.~~ and must develop a

plan for communicating reviews of individual treatment plans and individual abuse prevention plans to any treatment team member who is not present at the meeting but who is scheduled to work during that calendar week. The communication plan must include:

(1) the mode or modes of communication with the treatment team member;

(2) how the treatment team member will acknowledge receipt of the communications and affirm that the team member has reviewed and understands the information communicated; and

(3) instructions for the treatment team member to consult with a mental health professional or certified rehabilitation specialist if the treatment team member needs further information.

(b) A mental health professional or certified rehabilitation specialist must ~~hold~~ supervise at least one team meeting each calendar week ~~and be physically present at the team meeting~~. ~~All treatment team members, including treatment team members who work on a part-time or intermittent basis, must participate in a minimum of one team meeting during each calendar week when the treatment team member is working for the license holder~~. The license holder must document all weekly team meetings, including the names of meeting attendees.

~~(c) If a treatment team member cannot participate in a weekly team meeting, the treatment team member must participate in an ancillary meeting. A mental health professional, certified rehabilitation specialist, clinical trainee, or mental health practitioner who participated in the most recent weekly team meeting may lead the ancillary meeting. During the ancillary meeting, the treatment team member leading the ancillary meeting must review the information that was shared at the most recent weekly team meeting, including revisions to client treatment plans and other information that the treatment supervisors exchanged with treatment team members. The license holder must document all ancillary meetings, including the names of meeting attendees.~~

Sec. 5. **[256B.0617] MENTAL HEALTH SERVICES PROVIDER CERTIFICATION.**

(a) The commissioner of human services shall establish an initial provider entity application and certification process and recertification process to determine whether a provider entity has administrative and clinical infrastructures that meet the requirements to be certified. This process shall apply to providers of the following services:

(1) assertive community treatment under section 256B.0622, subdivision 3a;

(2) adult rehabilitative mental health services under section 256B.0623;

(3) mobile crisis team services under section 256B.0624;

(4) children's therapeutic services and supports under section 256B.0943;

(5) children's intensive behavioral health services under section 256B.0946; and

(6) intensive nonresidential rehabilitative mental health services under section 256B.0947.

(b) The commissioner shall recertify a provider entity every three years using the individual provider's certification anniversary or the calendar year end. The commissioner may approve a recertification extension in the interest of sustaining services when a certain date for recertification is identified.

(c) The commissioner shall establish a process for decertification of a provider entity and shall require corrective action, medical assistance repayment, or decertification of a provider entity that no longer meets the requirements in this section or that fails to meet the clinical quality standards or administrative standards provided by the commissioner in the application and certification process.

(d) The commissioner must provide the following to provider entities for the certification, recertification, and decertification processes:

(1) a structured listing of required provider certification criteria;

(2) a formal written letter with a determination of certification, recertification, or decertification signed by the commissioner or the appropriate division director; and

(3) a formal written communication outlining the process for necessary corrective action and follow-up by the commissioner signed by the commissioner or appropriate division director, if applicable.

**EFFECTIVE DATE.** This section is effective July 1, 2024, and the commissioner of human services must implement all requirements of this section by September 1, 2024.

Sec. 6. Minnesota Statutes 2022, section 256B.0943, subdivision 3, is amended to read:

Subd. 3. **Determination of client eligibility.** (a) Based on a client's needs identified in a crisis assessment, a hospital's medical history and presentation examination, or a brief diagnostic assessment under section 245I.10, subdivision 5, a license holder may provide a client with any combination of psychotherapy sessions, group psychotherapy sessions, family psychotherapy sessions, and family psychoeducation sessions. The license holder shall not provide more than ten sessions within a 12-month period without prior authorization.

~~(a)~~ (b) A client's ongoing eligibility to receive children's therapeutic services and supports under this section shall be determined based on a standard diagnostic assessment by a mental health professional or a clinical trainee that is performed within one year before the initial start of service and updated as required under section 245I.10, subdivision 2. The standard diagnostic assessment must:

(1) determine whether a child under age 18 has a diagnosis of emotional disturbance or, if the person is between the ages of 18 and 21, whether the person has a mental illness;

(2) document children's therapeutic services and supports as medically necessary to address an identified disability, functional impairment, and the individual client's needs and goals; and

(3) be used in the development of the individual treatment plan.

~~(b)~~ (c) Notwithstanding paragraph ~~(a)~~ (b), a client may be determined to be eligible for up to five days of day treatment under this section based on a hospital's medical history and presentation examination of the client.

~~(c)~~ (d) Children's therapeutic services and supports include development and rehabilitative services that support a child's developmental treatment needs.

Sec. 7. Minnesota Statutes 2022, section 256B.0943, subdivision 12, is amended to read:

Subd. 12. **Excluded services.** The following services are not eligible for medical assistance payment as children's therapeutic services and supports:

(1) service components of children's therapeutic services and supports simultaneously provided by more than one provider entity unless prior authorization is obtained;

~~(2) treatment by multiple providers within the same agency at the same clock time;~~

~~(3)~~ (2) children's therapeutic services and supports provided in violation of medical assistance policy in Minnesota Rules, part 9505.0220;

~~(4)~~ (3) mental health behavioral aide services provided by a personal care assistant who is not qualified as a mental health behavioral aide and employed by a certified children's therapeutic services and supports provider entity;

~~(5)~~ (4) service components of CTSS that are the responsibility of a residential or program license holder, including foster care providers under the terms of a service agreement or administrative rules governing licensure; and

~~(6)~~ (5) adjunctive activities that may be offered by a provider entity but are not otherwise covered by medical assistance, including:

(i) a service that is primarily recreation oriented or that is provided in a setting that is not medically supervised. This includes sports activities, exercise groups, activities such as craft hours, leisure time, social hours, meal or snack time, trips to community activities, and tours;

(ii) a social or educational service that does not have or cannot reasonably be expected to have a therapeutic outcome related to the client's emotional disturbance;

(iii) prevention or education programs provided to the community; and

(iv) treatment for clients with primary diagnoses of alcohol or other drug abuse.

Sec. 8. Minnesota Statutes 2022, section 256B.0947, subdivision 5, is amended to read:

Subd. 5. **Standards for intensive nonresidential rehabilitative providers.** (a) Services must meet the standards in this section and chapter 245I as required in section 245I.011, subdivision 5.

(b) The treatment team must have specialized training in providing services to the specific age group of youth that the team serves. An individual treatment team must serve youth who are: (1) at least eight years of age or older and under 16 years of age, or (2) at least 14 years of age or older and under 21 years of age.

(c) The treatment team for intensive nonresidential rehabilitative mental health services comprises both permanently employed core team members and client-specific team members as follows:

(1) Based on professional qualifications and client needs, clinically qualified core team members are assigned on a rotating basis as the client's lead worker to coordinate a client's care. The core team must comprise at least four full-time equivalent direct care staff and must minimally include:

(i) a mental health professional who serves as team leader to provide administrative direction and treatment supervision to the team;

(ii) an advanced-practice registered nurse with certification in psychiatric or mental health care or a board-certified child and adolescent psychiatrist, either of which must be credentialed to prescribe medications;

~~(iii) a licensed alcohol and drug counselor who is also trained in mental health interventions; and~~

~~(iv)~~ (iii) a mental health certified peer specialist who is qualified according to section 245I.04, subdivision 10, and is also a former children's mental health consumer~~.~~; and

(iv) a co-occurring disorder specialist who meets the requirements under section 256B.0622, subdivision 7a, paragraph (a), clause (4), who will provide or facilitate the provision of co-occurring disorder treatment to clients.

(2) The core team may also include any of the following:

(i) additional mental health professionals;

(ii) a vocational specialist;

(iii) an educational specialist with knowledge and experience working with youth regarding special education requirements and goals, special education plans, and coordination of educational activities with health care activities;

(iv) a child and adolescent psychiatrist who may be retained on a consultant basis;

(v) a clinical trainee qualified according to section 245I.04, subdivision 6;

(vi) a mental health practitioner qualified according to section 245I.04, subdivision 4;

(vii) a case management service provider, as defined in section 245.4871, subdivision 4;

(viii) a housing access specialist; and

(ix) a family peer specialist as defined in subdivision 2, paragraph (j).

(3) A treatment team may include, in addition to those in clause (1) or (2), ad hoc members not employed by the team who consult on a specific client and who must accept overall clinical direction from the treatment team for the duration of the client's placement with the treatment team and must be paid by the provider agency at the rate for a typical session by that provider with that client or at a rate negotiated with the client-specific member. Client-specific treatment team members may include:

(i) the mental health professional treating the client prior to placement with the treatment team;

(ii) the client's current substance use counselor, if applicable;

(iii) a lead member of the client's individualized education program team or school-based mental health provider, if applicable;

(iv) a representative from the client's health care home or primary care clinic, as needed to ensure integration of medical and behavioral health care;

(v) the client's probation officer or other juvenile justice representative, if applicable; and

(vi) the client's current vocational or employment counselor, if applicable.

(d) The treatment supervisor shall be an active member of the treatment team and shall function as a practicing clinician at least on a part-time basis. The treatment team shall meet with the treatment supervisor at least weekly to discuss recipients' progress and make rapid adjustments to meet recipients' needs. The team meeting must include client-specific case reviews and general treatment discussions among team members. Client-specific case reviews and planning must be documented in the individual client's treatment record.

(e) The staffing ratio must not exceed ten clients to one full-time equivalent treatment team position.

(f) The treatment team shall serve no more than 80 clients at any one time. Should local demand exceed the team's capacity, an additional team must be established rather than exceed this limit.

(g) Nonclinical staff shall have prompt access in person or by telephone to a mental health practitioner, clinical trainee, or mental health professional. The provider shall have the capacity to promptly and appropriately respond to emergent needs and make any necessary staffing adjustments to ensure the health and safety of clients.

(h) The intensive nonresidential rehabilitative mental health services provider shall participate in evaluation of the assertive community treatment for youth (Youth ACT) model as conducted by the commissioner, including the collection and reporting of data and the reporting of performance measures as specified by contract with the commissioner.

(i) A regional treatment team may serve multiple counties.