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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3941

02/19/2024 Authored by Curran, Baker, Keeler, Virnig, Fischer and others
The bill was read for the first time and referred to the Committee on Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying home and community-based services
1.3 standards; amending Minnesota Statutes 2022, sections 245D.071, subdivisions
1.4 3, 4; 245D.081, subdivisions 2, 3; 245D.09, subdivisions 3, 4.

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

1.6 Section 1. Minnesota Statutes 2022, section 245D.071, subdivision 3, is amended to read:

1.7 Subd. 3. Assessment and initial service planning. (a) Within 15 days of service initiation
1.8 the license holder must complete a preliminary support plan addendum based on the support
1.9 plan.

1.10 (b) Within the scope of services, the license holder must, at a minimum, complete
1.11 assessments in the following areas before ~~the 45-day planning meeting~~ providing 45 days
1.12 of service or within 60 calendar days of service initiation, whichever is shorter:

1.13 (1) the person's ability to self-manage health and medical needs to maintain or improve
1.14 physical, mental, and emotional well-being, including, when applicable, allergies, seizures,
1.15 choking, special dietary needs, chronic medical conditions, self-administration of medication
1.16 or treatment orders, preventative screening, and medical and dental appointments;

1.17 (2) the person's ability to self-manage personal safety to avoid injury or accident in the
1.18 service setting, including, when applicable, risk of falling, mobility, regulating water
1.19 temperature, community survival skills, water safety skills, and sensory disabilities; and

1.20 (3) the person's ability to self-manage symptoms or behavior that may otherwise result
1.21 in an incident as defined in section 245D.02, subdivision 11, clauses (4) to (7), suspension

2.1 or termination of services by the license holder, or other symptoms or behaviors that may
2.2 jeopardize the health and welfare of the person or others.

2.3 Assessments must produce information about the person that describes the person's overall
2.4 strengths, functional skills and abilities, and behaviors or symptoms. Assessments must be
2.5 based on the person's status within the last 12 months at the time of service initiation.

2.6 Assessments based on older information must be documented and justified. Assessments
2.7 must be conducted annually at a minimum or within 30 days of a written request from the
2.8 person or the person's legal representative or case manager. The results must be reviewed
2.9 by the support team or expanded support team as part of a service plan review.

2.10 (c) Before providing 45 days of service or within 60 calendar days of service initiation,
2.11 whichever is shorter, the license holder must meet with the person, the person's legal
2.12 representative, the case manager, other members of the support team or expanded support
2.13 team, and other people as identified by the person or the person's legal representative to
2.14 determine the following based on information obtained from the assessments identified in
2.15 paragraph (b), the person's identified needs in the support plan, and the requirements in
2.16 subdivision 4 and section 245D.07, subdivision 1a:

2.17 (1) the scope of the services to be provided to support the person's daily needs and
2.18 activities;

2.19 (2) the person's desired outcomes and the supports necessary to accomplish the person's
2.20 desired outcomes;

2.21 (3) the person's preferences for how services and supports are provided, including how
2.22 the provider will support the person to have control of the person's schedule;

2.23 (4) whether the current service setting is the most integrated setting available and
2.24 appropriate for the person;

2.25 (5) opportunities to develop and maintain essential and life-enriching skills, abilities,
2.26 strengths, interests, and preferences;

2.27 (6) opportunities for community access, participation, and inclusion in preferred
2.28 community activities;

2.29 (7) opportunities to develop and strengthen personal relationships with other persons of
2.30 the person's choice in the community;

2.31 (8) opportunities to seek competitive employment and work at competitively paying
2.32 jobs in the community; and

3.1 (9) how services must be coordinated across other providers licensed under this chapter
3.2 serving the person and members of the support team or expanded support team to ensure
3.3 continuity of care and coordination of services for the person.

3.4 (d) A discussion of how technology might be used to meet the person's desired outcomes
3.5 must be included in the ~~45-day~~ initial planning meeting. The support plan or support plan
3.6 addendum must include a summary of this discussion. The summary must include a statement
3.7 regarding any decision that is made regarding the use of technology and a description of
3.8 any further research that needs to be completed before a decision regarding the use of
3.9 technology can be made. Nothing in this paragraph requires that the support plan include
3.10 the use of technology for the provision of services.

3.11 Sec. 2. Minnesota Statutes 2022, section 245D.071, subdivision 4, is amended to read:

3.12 Subd. 4. **Service outcomes and supports.** (a) Within ten working days of the ~~45-day~~
3.13 initial planning meeting, the license holder must develop a service plan that documents the
3.14 service outcomes and supports based on the assessments completed under subdivision 3
3.15 and the requirements in section 245D.07, subdivision 1a. The outcomes and supports must
3.16 be included in the support plan addendum.

3.17 (b) The license holder must document the supports and methods to be implemented to
3.18 support the person and accomplish outcomes related to acquiring, retaining, or improving
3.19 skills and physical, mental, and emotional health and well-being. The documentation must
3.20 include:

3.21 (1) the methods or actions that will be used to support the person and to accomplish the
3.22 service outcomes, including information about:

3.23 (i) any changes or modifications to the physical and social environments necessary when
3.24 the service supports are provided;

3.25 (ii) any equipment and materials required; and

3.26 (iii) techniques that are consistent with the person's communication mode and learning
3.27 style;

3.28 (2) the measurable and observable criteria for identifying when the desired outcome has
3.29 been achieved and how data will be collected;

3.30 (3) the projected starting date for implementing the supports and methods and the date
3.31 by which progress towards accomplishing the outcomes will be reviewed and evaluated;
3.32 and

4.1 (4) the names of the staff or position responsible for implementing the supports and
4.2 methods.

4.3 (c) Within 20 working days of the ~~45-day~~ initial planning meeting, the license holder
4.4 must submit to and obtain dated signatures from the person or the person's legal representative
4.5 and case manager to document completion and approval of the assessment and support plan
4.6 addendum. If, within ten working days of the submission of the assessment or support plan
4.7 addendum, the person or the person's legal representative or case manager has not signed
4.8 and returned to the license holder the assessment and support plan addendum or has not
4.9 proposed written modifications to the license holder's submission, the submission is deemed
4.10 approved and the assessment and support plan addendum become effective and remain in
4.11 effect until the legal representative or case manager submits a written request to revise the
4.12 assessment or support plan addendum.

4.13 Sec. 3. Minnesota Statutes 2022, section 245D.081, subdivision 2, is amended to read:

4.14 Subd. 2. **Coordination and evaluation of individual service delivery.** (a) Delivery
4.15 and evaluation of services provided by the license holder must be coordinated by a designated
4.16 staff person. Except as provided in clause (3), the designated coordinator must provide
4.17 supervision, support, and evaluation of activities that include:

4.18 (1) oversight of the license holder's responsibilities assigned in the person's support plan
4.19 and the support plan addendum;

4.20 (2) taking the action necessary to facilitate the accomplishment of the outcomes according
4.21 to the requirements in section 245D.07;

4.22 (3) instruction and assistance to direct support staff implementing the support plan and
4.23 the service outcomes, including direct observation of service delivery sufficient to assess
4.24 staff competency. The designated coordinator may delegate the direct observation and
4.25 competency assessment of the service delivery activities of direct support staff to an
4.26 individual whom the designated coordinator has previously deemed competent in those
4.27 activities; and

4.28 (4) evaluation of the effectiveness of service delivery, methodologies, and progress on
4.29 the person's outcomes based on the measurable and observable criteria for identifying when
4.30 the desired outcome has been achieved according to the requirements in section 245D.07.

4.31 (b) The license holder must ensure that the designated coordinator is competent to
4.32 perform the required duties identified in paragraph (a) through education, training, and work
4.33 experience relevant to the primary disability of persons served by the license holder and

5.1 the individual persons for whom the designated coordinator is responsible. The designated
 5.2 coordinator must have the skills and ability necessary to develop effective plans and to
 5.3 design and use data systems to measure effectiveness of services and supports. The license
 5.4 holder must verify and document competence according to the requirements in section
 5.5 245D.09, subdivision 3. The designated coordinator must minimally have:

5.6 (1) a baccalaureate degree ~~in a field related to human services~~, and one year of full-time
 5.7 work experience providing direct care services to persons with disabilities or persons age
 5.8 65 and older;

5.9 (2) an associate degree ~~in a field related to human services~~, and two years of full-time
 5.10 work experience providing direct care services to persons with disabilities or persons age
 5.11 65 and older;

5.12 (3) a diploma ~~in a field related to human services~~ from an accredited postsecondary
 5.13 institution and three years of full-time work experience providing direct care services to
 5.14 persons with disabilities or persons age 65 and older; or

5.15 (4) a minimum of 50 hours of education and training related to human services and
 5.16 disabilities; and

5.17 (5) four years of ~~full-time work~~ experience providing direct care services to persons
 5.18 with disabilities or persons age 65 and older ~~under the supervision of a staff person who~~
 5.19 ~~meets the qualifications identified in clauses (1) to (3).~~

5.20 Sec. 4. Minnesota Statutes 2022, section 245D.081, subdivision 3, is amended to read:

5.21 Subd. 3. **Program management and oversight.** (a) The license holder must designate
 5.22 a managerial staff person or persons to provide program management and oversight of the
 5.23 services provided by the license holder. The designated manager is responsible for the
 5.24 following:

5.25 (1) maintaining a current understanding of the licensing requirements sufficient to ensure
 5.26 compliance throughout the program as identified in section 245A.04, subdivision 1, paragraph
 5.27 (e), and when applicable, as identified in section 256B.04, subdivision 21, paragraph (g);

5.28 (2) ensuring the duties of the designated coordinator are fulfilled according to the
 5.29 requirements in subdivision 2;

5.30 (3) ensuring the program implements corrective action identified as necessary by the
 5.31 program following review of incident and emergency reports according to the requirements
 5.32 in section 245D.11, subdivision 2, clause (7). An internal review of incident reports of

6.1 alleged or suspected maltreatment must be conducted according to the requirements in
6.2 section 245A.65, subdivision 1, paragraph (b);

6.3 (4) evaluation of satisfaction of persons served by the program, the person's legal
6.4 representative, if any, and the case manager, with the service delivery and progress toward
6.5 accomplishing outcomes identified in sections 245D.07 and 245D.071, and ensuring and
6.6 protecting each person's rights as identified in section 245D.04;

6.7 (5) ensuring staff competency requirements are met according to the requirements in
6.8 section 245D.09, subdivision 3, and ensuring staff orientation and training is provided
6.9 according to the requirements in section 245D.09, subdivisions 4, 4a, and 5;

6.10 (6) ensuring corrective action is taken when ordered by the commissioner and that the
6.11 terms and conditions of the license and any variances are met; and

6.12 (7) evaluating the information identified in clauses (1) to (6) to develop, document, and
6.13 implement ongoing program improvements.

6.14 (b) The designated manager must be competent to perform the duties as required and
6.15 must minimally meet the education and training requirements identified in subdivision 2,
6.16 paragraph (b), and have a minimum of three years of supervisory level experience ~~in a~~
6.17 ~~program providing direct support services to persons with disabilities or persons age 65 and~~
6.18 ~~older.~~

6.19 Sec. 5. Minnesota Statutes 2022, section 245D.09, subdivision 3, is amended to read:

6.20 Subd. 3. **Staff qualifications.** (a) The license holder must ensure that staff providing
6.21 direct support, or staff who have responsibilities related to supervising or managing the
6.22 provision of direct support service, are competent as demonstrated through skills and
6.23 knowledge training, experience, and education relevant to the primary disability of the
6.24 person and to meet the person's needs and additional requirements as written in the support
6.25 plan or support plan addendum, or when otherwise required by the case manager or the
6.26 federal waiver plan. The license holder must verify and maintain evidence of staff
6.27 competency, including documentation of:

6.28 (1) education and experience qualifications relevant to the job responsibilities assigned
6.29 to the staff and to the primary disability of persons served by the program, including a valid
6.30 degree and transcript, or a current license, registration, or certification, when a degree or
6.31 licensure, registration, or certification is required by this chapter or in the support plan or
6.32 support plan addendum;

7.1 (2) demonstrated competency in the orientation and training areas required under this
 7.2 chapter, and when applicable, completion of continuing education required to maintain
 7.3 professional licensure, registration, or certification requirements. Competency in these areas
 7.4 is determined by the license holder through knowledge testing or observed skill assessment
 7.5 conducted by the trainer or instructor or by an individual who has been previously deemed
 7.6 competent by the trainer or instructor in the area being assessed; and

7.7 (3) except for a license holder who is the sole direct support staff, periodic performance
 7.8 evaluations completed by the license holder of the direct support staff person's ability to
 7.9 perform the job functions based on direct observation.

7.10 (b) Staff under 18 years of age may not perform overnight duties ~~or administer~~
 7.11 ~~medication.~~

7.12 Sec. 6. Minnesota Statutes 2022, section 245D.09, subdivision 4, is amended to read:

7.13 Subd. 4. **Orientation to program requirements.** Except for a license holder who does
 7.14 not supervise any direct support staff, within 60 calendar days of hire, unless stated otherwise,
 7.15 the license holder must provide and ensure completion of orientation sufficient to create
 7.16 staff competency for direct support staff that combines supervised on-the-job training with
 7.17 review of and instruction in the following areas:

7.18 (1) the job description and how to complete specific job functions, including:

7.19 (i) responding to and reporting incidents as required under section 245D.06, subdivision
 7.20 1; and

7.21 (ii) following safety practices established by the license holder and as required in section
 7.22 245D.06, subdivision 2;

7.23 (2) the license holder's current policies and procedures required under this chapter,
 7.24 including their location and access, and staff responsibilities related to implementation of
 7.25 those policies and procedures;

7.26 (3) data privacy requirements according to sections 13.01 to 13.10 and 13.46, the federal
 7.27 Health Insurance Portability and Accountability Act of 1996 (HIPAA), and staff
 7.28 responsibilities related to complying with data privacy practices;

7.29 (4) the service recipient rights and staff responsibilities related to ensuring the exercise
 7.30 and protection of those rights according to the requirements in section 245D.04;

7.31 (5) sections 245A.65, 245A.66, and 626.557 and chapter 260E governing maltreatment
 7.32 reporting and service planning for children and vulnerable adults, and staff responsibilities

8.1 related to protecting persons from maltreatment and reporting maltreatment. This orientation
8.2 must be provided within 72 hours of first providing direct contact services and annually
8.3 thereafter according to section 245A.65, subdivision 3;

8.4 (6) the principles of person-centered service planning and delivery as identified in section
8.5 245D.07, subdivision 1a, and how they apply to direct support service provided by the staff
8.6 person;

8.7 ~~(7) the safe and correct use of manual restraint on an emergency basis according to the~~
8.8 ~~requirements in section 245D.061 or successor provisions, and what constitutes the use of~~
8.9 ~~restraints, time out, and seclusion, including chemical restraint;~~

8.10 ~~(8) staff responsibilities related to prohibited procedures under section 245D.06,~~
8.11 ~~subdivision 5, or successor provisions, why such procedures are not effective for reducing~~
8.12 ~~or eliminating symptoms or undesired behavior, and why such procedures are not safe;~~

8.13 ~~(9)~~ (7) basic first aid;

8.14 ~~(10)~~ (8) strategies to minimize the risk of sexual violence, including concepts of healthy
8.15 relationships, consent, and bodily autonomy of people with disabilities; and

8.16 ~~(11)~~ (9) other topics as determined necessary in the person's support plan by the case
8.17 manager or other areas identified by the license holder.