

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 174

(SENATE AUTHORS: UTKE, Abeler, Relph and Hoffman)		
DATE	D-PG	OFFICIAL STATUS
01/17/2019	101	Introduction and first reading Referred to Human Services Reform Finance and Policy
03/14/2019	934a	Comm report: To pass as amended
	977	Second reading
	4689	Rule 47, returned to Human Services Reform Finance and Policy See First Special Session 2019, SF12, Art. 5, Sec. 11, 13-18, 57

1.1

A bill for an act

1.2

relating to human services; modifying adult foster care and community residential

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setting license capacity; modifying various provisions governing home and

1.4

community-based services; amending Minnesota Statutes 2018, sections 245A.11,

1.5

subdivision 2a; 245D.03, subdivision 1; 245D.071, subdivision 5; 245D.09,

1.6

subdivisions 5, 5a; 245D.091, subdivisions 2, 3, 4; 256B.4914, subdivision 3.

1.7

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

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Section 1. Minnesota Statutes 2018, section 245A.11, subdivision 2a, is amended to read:

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Subd. 2a. **Adult foster care and community residential setting license capacity.** (a)

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The commissioner shall issue adult foster care and community residential setting licenses

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with a maximum licensed capacity of four beds, including nonstaff roomers and boarders,

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except that the commissioner may issue a license with a capacity of five beds, including

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roomers and boarders, according to paragraphs (b) to (g).

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(b) The license holder may have a maximum license capacity of five if all persons in

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care are age 55 or over and do not have a serious and persistent mental illness or a

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developmental disability.

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(c) The commissioner may grant variances to paragraph (b) to allow a facility with a

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licensed capacity of up to five persons to admit an individual under the age of 55 if the

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variance complies with section 245A.04, subdivision 9, and approval of the variance is

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recommended by the county in which the licensed facility is located.

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(d) The commissioner may grant variances to paragraph (a) to allow the use of an

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additional bed, up to five, for emergency crisis services for a person with serious and

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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 facility is located.

(e) The commissioner may grant a variance to paragraph (b) to allow for the use of an additional bed, up to five, for respite services, as defined in section 245A.02, for persons with disabilities, regardless of age, if the variance complies with sections 245A.03, subdivision 7, and 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed facility is located. Respite care may be provided under the following conditions:

(1) staffing ratios cannot be reduced below the approved level for the individuals being served in the home on a permanent basis;

(2) no more than two different individuals can be accepted for respite services in any calendar month and the total respite days may not exceed 120 days per program in any calendar year;

(3) the person receiving respite services must have his or her own bedroom, which could be used for alternative purposes when not used as a respite bedroom, and cannot be the room of another person who lives in the facility; and

(4) individuals living in the facility must be notified when the variance is approved. The provider must give 60 days' notice in writing to the residents and their legal representatives prior to accepting the first respite placement. Notice must be given to residents at least two days prior to service initiation, or as soon as the license holder is able if they receive notice of the need for respite less than two days prior to initiation, each time a respite client will be served, unless the requirement for this notice is waived by the resident or legal guardian.

(f) The commissioner may issue an adult foster care or community residential setting license with a capacity of five adults if the fifth bed does not increase the overall statewide capacity of licensed adult foster care or community residential setting beds in homes that are not the primary residence of the license holder, 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 remain 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, 2014~~ June 30, 2016.

(g) The commissioner shall not issue a new adult foster care license under paragraph (f) after June 30, ~~2019~~ 2022. The commissioner shall allow a facility with an adult foster care license issued under paragraph (f) before June 30, ~~2019~~ 2022, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (f).

Sec. 2. Minnesota Statutes 2018, section 245D.03, subdivision 1, is amended to read:

Subdivision 1. **Applicability.** (a) The commissioner shall regulate the provision of home and community-based services to persons with disabilities and persons age 65 and older pursuant to this chapter. The licensing standards in this chapter govern the provision of basic support services and intensive support services.

(b) Basic support services provide the level of assistance, supervision, and care that is necessary to ensure the health and welfare of the person and do not include services that are specifically directed toward the training, treatment, habilitation, or rehabilitation of the person. Basic support services include:

(1) in-home and out-of-home respite care services as defined in section 245A.02, subdivision 15, and under the brain injury, community alternative care, community access for disability inclusion, developmental ~~disability~~ disabilities, and elderly waiver plans, excluding out-of-home respite care provided to children in a family child foster care home licensed under Minnesota Rules, parts 2960.3000 to 2960.3100, when the child foster care license holder complies with the requirements under section 245D.06, subdivisions 5, 6, 7, and 8, or successor provisions; and section 245D.061 or successor provisions, which must be stipulated in the statement of intended use required under Minnesota Rules, part 2960.3000, subpart 4;

(2) adult companion services as defined under the brain injury, community access for disability inclusion, community alternative care, and elderly waiver plans, excluding adult

companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;

(3) personal support as defined under the developmental ~~disability~~ disabilities waiver plan;

(4) 24-hour emergency assistance, personal emergency response as defined under the community access for disability inclusion and developmental ~~disability~~ disabilities waiver plans;

(5) night supervision services as defined under the brain injury, community access for disability inclusion, community alternative care, and developmental disabilities waiver ~~plan~~ plans;

(6) homemaker services as defined under the community access for disability inclusion, brain injury, community alternative care, developmental ~~disability~~ disabilities, and elderly waiver plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only; and

(7) individual community living support under section 256B.0915, subdivision 3j.

(c) Intensive support services provide assistance, supervision, and care that is necessary to ensure the health and welfare of the person and services specifically directed toward the training, habilitation, or rehabilitation of the person. Intensive support services include:

(1) intervention services, including:

(i) ~~behavioral~~ positive support services as defined under the brain injury and community access for disability inclusion, community alternative care, and developmental disabilities waiver plans;

(ii) in-home or out-of-home crisis respite services as defined under the brain injury, community access for disability inclusion, community alternative care, and developmental ~~disability~~ disabilities waiver ~~plan~~ plans; and

(iii) specialist services as defined under the current brain injury, community access for disability inclusion, community alternative care, and developmental ~~disability~~ disabilities waiver ~~plan~~ plans;

(2) in-home support services, including:

(i) in-home family support and supported living services as defined under the developmental ~~disability~~ disabilities waiver plan;

(ii) independent living services training as defined under the brain injury and community access for disability inclusion waiver plans;

(iii) semi-independent living services; and

(iv) individualized home supports services as defined under the brain injury, community alternative care, and community access for disability inclusion waiver plans;

(3) residential supports and services, including:

(i) supported living services as defined under the developmental ~~disability~~ disabilities waiver plan provided in a family or corporate child foster care residence, a family adult foster care residence, a community residential setting, or a supervised living facility;

(ii) foster care services as defined in the brain injury, community alternative care, and community access for disability inclusion waiver plans provided in a family or corporate child foster care residence, a family adult foster care residence, or a community residential setting; and

(iii) residential services provided to more than four persons with developmental disabilities in a supervised living facility, including ICFs/DD;

(4) day services, including:

(i) structured day services as defined under the brain injury waiver plan;

(ii) day training and habilitation services under sections 252.41 to 252.46, and as defined under the developmental ~~disability~~ disabilities waiver plan; and

(iii) prevocational services as defined under the brain injury and community access for disability inclusion waiver plans; and

(5) employment exploration services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental ~~disability~~ disabilities waiver plans;

(6) employment development services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental ~~disability~~ disabilities waiver plans; and

(7) employment support services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental ~~disability~~ disabilities waiver plans.

Sec. 3. Minnesota Statutes 2018, section 245D.071, subdivision 5, is amended to read:

Subd. 5. **Service plan review and evaluation.** (a) The license holder must give the person or the person's legal representative and case manager an opportunity to participate in the ongoing review and development of the service plan and the methods used to support the person and accomplish outcomes identified in subdivisions 3 and 4. At least once per year, or within 30 days of a written request by the person, the person's legal representative, or the case manager, the license holder, in coordination with the person's support team or expanded support team, must meet with the person, the person's legal representative, and the case manager, and participate in service plan review meetings following stated timelines established in the person's coordinated service and support plan or coordinated service and support plan addendum ~~or within 30 days of a written request by the person, the person's legal representative, or the case manager, at a minimum of once per year.~~ The purpose of the service plan review is to determine whether changes are needed to the service plan based on the assessment information, the license holder's evaluation of progress towards accomplishing outcomes, or other information provided by the support team or expanded support team.

(b) At least once per year, the license holder, in coordination with the person's support team or expanded support team, must meet with the person, the person's legal representative, and the case manager to discuss how technology might be used to meet the person's desired outcomes. The coordinated service and support plan or support plan addendum must include a summary of this discussion. The summary must include a statement regarding any decision made related to the use of technology and a description of any further research that must be completed before a decision regarding the use of technology can be made. Nothing in this paragraph requires the coordinated service and support plan to include the use of technology for the provision of services.

~~(b)~~ (c) The license holder must summarize the person's status and progress toward achieving the identified outcomes and make recommendations and identify the rationale for changing, continuing, or discontinuing implementation of supports and methods identified in subdivision 4 in a report available at the time of the progress review meeting. The report must be sent at least five working days prior to the progress review meeting if requested by the team in the coordinated service and support plan or coordinated service and support plan addendum.

~~(c)~~ (d) The license holder must send the coordinated service and support plan addendum to the person, the person's legal representative, and the case manager by mail within ten working days of the progress review meeting. Within ten working days of the mailing of

the coordinated service and support plan addendum, the license holder must obtain dated signatures from the person or the person's legal representative and the case manager to document approval of any changes to the coordinated service and support plan addendum.

~~(d)~~ (e) If, within ten working days of submitting changes to the coordinated service and support plan and coordinated service and support plan addendum, the person or the person's legal representative or case manager has not signed and returned to the license holder the coordinated service and support plan or coordinated service and support plan addendum or has not proposed written modifications to the license holder's submission, the submission is deemed approved and the coordinated service and support plan addendum becomes effective and remains in effect until the legal representative or case manager submits a written request to revise the coordinated service and support plan addendum.

Sec. 4. Minnesota Statutes 2018, section 245D.09, subdivision 5, is amended to read:

Subd. 5. **Annual training.** A license holder must provide annual training to direct support staff on the topics identified in subdivision 4, clauses (3) to (10). If the direct support staff has a first aid certification, annual training under subdivision 4, clause (9), is not required as long as the certification remains current. ~~A license holder must provide a minimum of 24 hours of annual training to direct service staff providing intensive services and having fewer than five years of documented experience and 12 hours of annual training to direct service staff providing intensive services and having five or more years of documented experience in topics described in subdivisions 4 and 4a, paragraphs (a) to (f). Training on relevant topics received from sources other than the license holder may count toward training requirements. A license holder must provide a minimum of 12 hours of annual training to direct service staff providing basic services and having fewer than five years of documented experience and six hours of annual training to direct service staff providing basic services and having five or more years of documented experience.~~

Sec. 5. Minnesota Statutes 2018, section 245D.09, subdivision 5a, is amended to read:

Subd. 5a. **Alternative sources of training.** ~~The commissioner may approve online training and competency-based assessments in place of a specific number of hours of training in the topics covered in subdivision 4. The commissioner must provide a list of preapproved trainings that do not need approval for each individual license holder.~~

Orientation or training received by the staff person from sources other than the license holder in the same subjects as identified in subdivision 4 may count toward the orientation and annual training requirements if received in the 12-month period before the staff person's

date of hire. The license holder must maintain documentation of the training received from other sources and of each staff person's competency in the required area according to the requirements in subdivision 3.

Sec. 6. Minnesota Statutes 2018, section 245D.091, subdivision 2, is amended to read:

Subd. 2. ~~Behavior~~ **Positive support professional qualifications.** A ~~behavior~~ positive support professional providing ~~behavioral~~ positive support services as identified in section 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the following areas as required under the brain injury ~~and~~ community access for disability inclusion, community alternative care, and developmental disabilities waiver plans or successor plans:

(1) ethical considerations;

(2) functional assessment;

(3) functional analysis;

(4) measurement of behavior and interpretation of data;

(5) selecting intervention outcomes and strategies;

(6) behavior reduction and elimination strategies that promote least restrictive approved alternatives;

(7) data collection;

(8) staff and caregiver training;

(9) support plan monitoring;

(10) co-occurring mental disorders or neurocognitive disorder;

(11) demonstrated expertise with populations being served; and

(12) must be a:

(i) psychologist licensed under sections 148.88 to 148.98, who has stated to the Board of Psychology competencies in the above identified areas;

(ii) clinical social worker licensed as an independent clinical social worker under chapter 148D, or a person with a master's degree in social work from an accredited college or university, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the areas identified in clauses (1) to (11);

(iii) physician licensed under chapter 147 and certified by the American Board of Psychiatry and Neurology or eligible for board certification in psychiatry with competencies in the areas identified in clauses (1) to (11);

(iv) licensed professional clinical counselor licensed under sections 148B.29 to 148B.39 with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services who has demonstrated competencies in the areas identified in clauses (1) to (11);

(v) person with a master's degree from an accredited college or university in one of the behavioral sciences or related fields, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services with demonstrated competencies in the areas identified in clauses (1) to (11); ~~or~~

(vi) person with a master's degree or PhD in one of the behavioral sciences or related fields with demonstrated expertise in positive support services; or

(vii) registered nurse who is licensed under sections 148.171 to 148.285, and who is certified as a clinical specialist or as a nurse practitioner in adult or family psychiatric and mental health nursing by a national nurse certification organization, or who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services.

Sec. 7. Minnesota Statutes 2018, section 245D.091, subdivision 3, is amended to read:

Subd. 3. ~~Behavior~~ **Positive support analyst qualifications.** (a) A ~~behavior~~ positive support analyst providing ~~behavioral~~ positive support services as identified in section 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the following areas as required under the brain injury ~~and~~ community access for disability inclusion, community alternative care, and developmental disabilities waiver plans or successor plans:

(1) have obtained a baccalaureate degree, master's degree, or PhD in a social services discipline; ~~or~~

(2) meet the qualifications of a mental health practitioner as defined in section 245.462, subdivision 17; or

(3) be a board-certified behavior analyst or board-certified assistant behavior analyst by the Behavior Analyst Certification Board, Incorporated.

(b) In addition, a ~~behavior~~ positive support analyst must:

(1) have four years of supervised experience ~~working with individuals who exhibit challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder~~ conducting functional behavior assessments and designing, implementing, and evaluating effectiveness of positive practices behavior support strategies for people who exhibit challenging behaviors as well as co-occurring mental disorders and neurocognitive disorder;

(2) have received ~~ten hours of instruction in functional assessment and functional analysis;~~ training prior to hire or within 90 calendar days of hire that includes:

(i) ten hours of instruction in functional assessment and functional analysis;

(ii) 20 hours of instruction in the understanding of the function of behavior;

(iii) ten hours of instruction on design of positive practices behavior support strategies;

(iv) 20 hours of instruction preparing written intervention strategies, designing data collection protocols, training other staff to implement positive practice strategies, summarizing and reporting program evaluation data, analyzing program evaluation data to identify design flaws in behavioral interventions or failures in implementation fidelity, and recommending enhancements based on evaluation data; and

(v) eight hours of instruction on principles of person-centered thinking;

~~(3) have received 20 hours of instruction in the understanding of the function of behavior;~~

~~(4) have received ten hours of instruction on design of positive practices behavior support strategies;~~

~~(5) have received 20 hours of instruction on the use of behavior reduction approved strategies used only in combination with behavior positive practices strategies;~~

~~(6)~~ (3) be determined by a behavior positive support professional to have the training and prerequisite skills required to provide positive practice strategies as well as behavior reduction approved and permitted intervention to the person who receives behavioral positive support; and

~~(7)~~ (4) be under the direct supervision of a behavior positive support professional.

(c) Meeting the qualifications for a positive support professional under subdivision 2 shall substitute for meeting the qualifications listed in paragraph (b).

Sec. 8. Minnesota Statutes 2018, section 245D.091, subdivision 4, is amended to read:

Subd. 4. **Behavior Positive support specialist qualifications.** (a) A behavior positive support specialist providing behavioral positive support services as identified in section

11.1 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the
11.2 following areas as required under the brain injury ~~and~~₂ community access for disability
11.3 inclusion, community alternative care, and developmental disabilities waiver plans or
11.4 successor plans:

11.5 (1) have an associate's degree in a social services discipline; or

11.6 (2) have two years of supervised experience working with individuals who exhibit
11.7 challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder.

11.8 (b) In addition, a behavior specialist must:

11.9 (1) have received training prior to hire or within 90 calendar days of hire that includes:

11.10 (i) a minimum of four hours of training in functional assessment;

11.11 ~~(2) have received~~ (ii) 20 hours of instruction in the understanding of the function of
11.12 behavior;

11.13 ~~(3) have received~~ (iii) ten hours of instruction on design of positive practices behavioral
11.14 support strategies; and

11.15 (iv) eight hours of instruction on principles of person-centered thinking;

11.16 ~~(4)~~ (2) be determined by a ~~behavior~~ positive support professional to have the training
11.17 and prerequisite skills required to provide positive practices strategies as well as behavior
11.18 reduction approved intervention to the person who receives ~~behavioral~~ positive support;
11.19 and

11.20 ~~(5)~~ (3) be under the direct supervision of a ~~behavior~~ positive support professional.

11.21 (c) Meeting the qualifications for a positive support professional under subdivision 2
11.22 shall substitute for meeting the qualifications listed in paragraphs (a) and (b).

11.23 Sec. 9. Minnesota Statutes 2018, section 256B.4914, subdivision 3, is amended to read:

11.24 Subd. 3. **Applicable services.** Applicable services are those authorized under the state's
11.25 home and community-based services waivers under sections 256B.092 and 256B.49,
11.26 including the following, as defined in the federally approved home and community-based
11.27 services plan:

11.28 (1) 24-hour customized living;

11.29 (2) adult day care;

11.30 (3) adult day care bath;

- 12.1 ~~(4) behavioral programming;~~
- 12.2 ~~(5)~~ (4) companion services;
- 12.3 ~~(6)~~ (5) customized living;
- 12.4 ~~(7)~~ (6) day training and habilitation;
- 12.5 (7) employment development services;
- 12.6 (8) employment exploration services;
- 12.7 (9) employment support services;
- 12.8 ~~(8)~~ (10) housing access coordination;
- 12.9 ~~(9)~~ (11) independent living skills;
- 12.10 (12) independent living skills specialist services;
- 12.11 (13) individualized home supports;
- 12.12 ~~(10)~~ (14) in-home family support;
- 12.13 ~~(11)~~ (15) night supervision;
- 12.14 ~~(12)~~ (16) personal support;
- 12.15 (17) positive support service;
- 12.16 ~~(13)~~ (18) prevocational services;
- 12.17 ~~(14)~~ (19) residential care services;
- 12.18 ~~(15)~~ (20) residential support services;
- 12.19 ~~(16)~~ (21) respite services;
- 12.20 ~~(17)~~ (22) structured day services;
- 12.21 ~~(18)~~ (23) supported employment services;
- 12.22 ~~(19)~~ (24) supported living services;
- 12.23 ~~(20)~~ (25) transportation services; and
- 12.24 ~~(21) individualized home supports;~~
- 12.25 ~~(22) independent living skills specialist services;~~
- 12.26 ~~(23) employment exploration services;~~
- 12.27 ~~(24) employment development services;~~

13.1 ~~(25) employment support services; and~~

13.2 (26) other services as approved by the federal government in the state home and
13.3 community-based services plan.

13.4 Sec. 10. **REVISOR'S INSTRUCTION.**

13.5 The revisor of statutes shall change the term "developmental disability waiver" or similar
13.6 terms to "developmental disabilities waiver" or similar terms wherever they appear in
13.7 Minnesota Statutes. The revisor shall also make technical and other necessary changes to
13.8 sentence structure to preserve the meaning of the text.