

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 359

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DATE	D-PG	OFFICIAL STATUS
01/26/2017	393	Introduction and first reading Referred to Human Services Reform Finance and Policy
02/22/2017	684	Comm report: To pass and re-referred to Judiciary and Public Safety Finance and Policy
03/08/2017	1172a	Comm report: To pass as amended
	1180	Second reading
05/11/2017	4509a	Special Order: Amended
	4509	Third reading Passed
05/21/2017	5702	Returned from House with amendment
	5703	Senate concurred and repassed bill
	5703	Third reading Presentment date 05/26/17 Governor's action Approval 05/30/17 Secretary of State Chapter 90 05/30/17
	26106	Effective date Sec. 1-14, 16-24 05/31/17; Sec. 15 08/01/17

1.1 A bill for an act

1.2 relating to human services; modifying certain adult foster care licensing provisions;

1.3 adding individualized home supports to home and community-based services;

1.4 modifying home and community-based services setting requirements and licensing

1.5 requirements; modifying planning and case management requirements under certain

1.6 home and community-based services waivers; modifying child foster care

1.7 background studies; amending Minnesota Statutes 2016, sections 245A.11,

1.8 subdivision 2a; 245C.03, subdivision 1; 245C.04, subdivision 1; 245C.05,

1.9 subdivision 2a; 245C.10, subdivision 9; 245C.17, subdivisions 5, 6; 245C.21,

1.10 subdivision 1a; 245C.23, subdivision 2; 245D.03, subdivision 1; 245D.04,

1.11 subdivision 3; 245D.071, subdivision 3; 245D.09, subdivisions 4, 5a; 245D.11,

1.12 subdivision 4; 245D.24, subdivision 3; 256B.0911, subdivision 3a; 256B.092,

1.13 subdivision 1a; 256B.49, subdivision 13; 256B.4913, by adding a subdivision;

1.14 256B.4914, subdivisions 3, 5, 8, 16.

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

1.16 Section 1. Minnesota Statutes 2016, section 245A.11, subdivision 2a, is amended to read:

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

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

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

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

1.21 roomers and boarders, according to paragraphs (b) to (f).

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

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

1.24 developmental disability.

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

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

2.1 variance complies with section 245A.04, subdivision 9, and approval of the variance is
2.2 recommended by the county in which the licensed facility is located.

2.3 (d) The commissioner may grant variances to paragraph (b) to allow the use of an
2.4 additional bed, up to five, for emergency crisis services for a person with serious and
2.5 persistent mental illness or a developmental disability, regardless of age, if the variance
2.6 complies with section 245A.04, subdivision 9, and approval of the variance is recommended
2.7 by the county in which the licensed facility is located.

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

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

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

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

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

2.28 (f) The commissioner may issue an adult foster care or community residential setting
2.29 license with a capacity of five adults if the fifth bed does not increase the overall statewide
2.30 capacity of licensed adult foster care or community residential setting beds in homes that
2.31 are not the primary residence of the license holder, as identified in a plan submitted to the
2.32 commissioner by the county, when the capacity is recommended by the county licensing
2.33 agency of the county in which the facility is located and if the recommendation verifies
2.34 that:

3.1 (1) the facility meets the physical environment requirements in the adult foster care
3.2 licensing rule;

3.3 (2) the five-bed living arrangement is specified for each resident in the resident's:

3.4 (i) individualized plan of care;

3.5 (ii) individual service plan under section 256B.092, subdivision 1b, if required; or

3.6 (iii) individual resident placement agreement under Minnesota Rules, part 9555.5105,
3.7 subpart 19, if required;

3.8 (3) the license holder obtains written and signed informed consent from each resident
3.9 or resident's legal representative documenting the resident's informed choice to remain
3.10 living in the home and that the resident's refusal to consent would not have resulted in
3.11 service termination; and

3.12 (4) the facility was licensed for adult foster care before March 1, 2011.

3.13 (g) The commissioner shall not issue a new adult foster care license under paragraph (f)
3.14 after June 30, ~~2017~~ 2019. The commissioner shall allow a facility with an adult foster care
3.15 license issued under paragraph (f) before June 30, ~~2017~~ 2019, to continue with a capacity
3.16 of five adults if the license holder continues to comply with the requirements in paragraph
3.17 (f).

3.18 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.19 Sec. 2. Minnesota Statutes 2016, section 245C.03, subdivision 1, is amended to read:

3.20 Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background
3.21 study on:

3.22 (1) the person or persons applying for a license;

3.23 (2) an individual age 13 and over living in the household where the licensed program
3.24 will be provided who is not receiving licensed services from the program;

3.25 (3) current or prospective employees or contractors of the applicant who will have direct
3.26 contact with persons served by the facility, agency, or program;

3.27 (4) volunteers or student volunteers who will have direct contact with persons served
3.28 by the program to provide program services if the contact is not under the continuous, direct
3.29 supervision by an individual listed in clause (1) or (3);

3.30 (5) an individual age ten to 12 living in the household where the licensed services will
3.31 be provided when the commissioner has reasonable cause;

4.1 (6) an individual who, without providing direct contact services at a licensed program,
 4.2 may have unsupervised access to children or vulnerable adults receiving services from a
 4.3 program, when the commissioner has reasonable cause; and

4.4 (7) all managerial officials as defined under section 245A.02, subdivision 5a.

4.5 (b) For ~~family~~ child foster care ~~settings~~ when the license holder resides in the home
 4.6 where foster care services are provided, a short-term substitute caregiver providing direct
 4.7 contact services for a child for less than 72 hours of continuous care is not required to receive
 4.8 a background study under this chapter.

4.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.10 Sec. 3. Minnesota Statutes 2016, section 245C.04, subdivision 1, is amended to read:

4.11 Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background
 4.12 study of an individual required to be studied under section 245C.03, subdivision 1, at least
 4.13 upon application for initial license for all license types.

4.14 (b) The commissioner shall conduct a background study of an individual required to be
 4.15 studied under section 245C.03, subdivision 1, at reapplication for a license for family child
 4.16 care.

4.17 (c) The commissioner is not required to conduct a study of an individual at the time of
 4.18 reapplication for a license if the individual's background study was completed by the
 4.19 commissioner of human services and the following conditions are met:

4.20 (1) a study of the individual was conducted either at the time of initial licensure or when
 4.21 the individual became affiliated with the license holder;

4.22 (2) the individual has been continuously affiliated with the license holder since the last
 4.23 study was conducted; and

4.24 (3) the last study of the individual was conducted on or after October 1, 1995.

4.25 (d) The commissioner of human services shall conduct a background study of an
 4.26 individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6),
 4.27 who is newly affiliated with a child foster care license holder.:

4.28 (1) the county or private agency shall collect and forward to the commissioner the
 4.29 information required under section 245C.05, subdivisions 1 and 5-, when the child foster
 4.30 care applicant or license holder resides in the home where child foster care services are
 4.31 provided;

5.1 (2) the child foster care license holder or applicant shall collect and forward to the
5.2 commissioner the information required under section 245C.05, subdivisions 1 and 5, when
5.3 the applicant or license holder does not reside in the home where child foster care services
5.4 are provided; and

5.5 (3) the background study conducted by the commissioner of human services under this
5.6 paragraph must include a review of the information required under section 245C.08,
5.7 subdivisions 1, 3, and 4.

5.8 (e) The commissioner shall conduct a background study of an individual specified under
5.9 section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated
5.10 with an adult foster care or family adult day services license holder: (1) the county shall
5.11 collect and forward to the commissioner the information required under section 245C.05,
5.12 subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for
5.13 background studies conducted by the commissioner for all family adult day services and
5.14 for adult foster care when the adult foster care license holder resides in the adult foster care
5.15 residence; (2) the license holder shall collect and forward to the commissioner the information
5.16 required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs
5.17 (a) and (b), for background studies conducted by the commissioner for adult foster care
5.18 when the license holder does not reside in the adult foster care residence; and (3) the
5.19 background study conducted by the commissioner under this paragraph must include a
5.20 review of the information required under section 245C.08, subdivision 1, paragraph (a),
5.21 and subdivisions 3 and 4.

5.22 (f) Applicants for licensure, license holders, and other entities as provided in this chapter
5.23 must submit completed background study requests to the commissioner using the electronic
5.24 system known as NETStudy before individuals specified in section 245C.03, subdivision
5.25 1, begin positions allowing direct contact in any licensed program.

5.26 (g) For an individual who is not on the entity's active roster, the entity must initiate a
5.27 new background study through NETStudy when:

5.28 (1) an individual returns to a position requiring a background study following an absence
5.29 of 120 or more consecutive days; or

5.30 (2) a program that discontinued providing licensed direct contact services for 120 or
5.31 more consecutive days begins to provide direct contact licensed services again.

5.32 The license holder shall maintain a copy of the notification provided to the commissioner
5.33 under this paragraph in the program's files. If the individual's disqualification was previously
5.34 set aside for the license holder's program and the new background study results in no new

6.1 information that indicates the individual may pose a risk of harm to persons receiving
6.2 services from the license holder, the previous set-aside shall remain in effect.

6.3 (h) For purposes of this section, a physician licensed under chapter 147 is considered to
6.4 be continuously affiliated upon the license holder's receipt from the commissioner of health
6.5 or human services of the physician's background study results.

6.6 (i) For purposes of family child care, a substitute caregiver must receive repeat
6.7 background studies at the time of each license renewal.

6.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.9 Sec. 4. Minnesota Statutes 2016, section 245C.05, subdivision 2a, is amended to read:

6.10 Subd. 2a. **County or private agency.** For background studies related to child foster care
6.11 when the applicant or license holder resides in the home where child foster care services
6.12 are provided, county and private agencies must collect the information under subdivision
6.13 1 and forward it to the commissioner.

6.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.15 Sec. 5. Minnesota Statutes 2016, section 245C.10, subdivision 9, is amended to read:

6.16 Subd. 9. **Human services licensed programs.** The commissioner shall recover the cost
6.17 of background studies required under section 245C.03, subdivision 1, for all programs that
6.18 are licensed by the commissioner, except child foster care when the applicant or license
6.19 holder resides in the home where child foster care services are provided, and family child
6.20 care, through a fee of no more than \$20 per study charged to the license holder. The fees
6.21 collected under this subdivision are appropriated to the commissioner for the purpose of
6.22 conducting background studies.

6.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.24 Sec. 6. Minnesota Statutes 2016, section 245C.17, subdivision 5, is amended to read:

6.25 Subd. 5. **Notice to county or private agency.** For studies on individuals related to a
6.26 license to provide child foster care when the applicant or license holder resides in the home
6.27 where child foster care services are provided, the commissioner shall also provide a notice
6.28 of the background study results to the county or private agency that initiated the background
6.29 study.

6.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.1 Sec. 7. Minnesota Statutes 2016, section 245C.17, subdivision 6, is amended to read:

7.2 Subd. 6. **Notice to county agency.** For studies on individuals related to a license to
7.3 provide adult foster care when the applicant or license holder resides in the adult foster care
7.4 residence and family adult day services, the commissioner shall also provide a notice of the
7.5 background study results to the county agency that initiated the background study.

7.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.7 Sec. 8. Minnesota Statutes 2016, section 245C.21, subdivision 1a, is amended to read:

7.8 Subd. 1a. **Submission of reconsideration request.** (a) For disqualifications related to
7.9 studies conducted by county agencies for family child care, and for disqualifications related
7.10 to studies conducted by the commissioner for child foster care, adult foster care, and family
7.11 adult day services when the applicant or license holder resides in the home where services
7.12 are provided, the individual shall submit the request for reconsideration to the county agency
7.13 that initiated the background study.

7.14 (b) For disqualifications related to studies conducted by the commissioner for child
7.15 foster care providers monitored by private licensing agencies under section 245A.16, the
7.16 individual shall submit the request for reconsideration to the private agency that initiated
7.17 the background study.

7.18 (c) A reconsideration request shall be submitted within 30 days of the individual's receipt
7.19 of the disqualification notice or the time frames specified in subdivision 2, whichever time
7.20 frame is shorter.

7.21 (d) The county or private agency shall forward the individual's request for reconsideration
7.22 and provide the commissioner with a recommendation whether to set aside the individual's
7.23 disqualification.

7.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.25 Sec. 9. Minnesota Statutes 2016, section 245C.23, subdivision 2, is amended to read:

7.26 Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The
7.27 commissioner shall notify the license holder of the disqualification and order the license
7.28 holder to immediately remove the individual from any position allowing direct contact with
7.29 persons receiving services from the license holder if:

7.30 (1) the individual studied does not submit a timely request for reconsideration under
7.31 section 245C.21;

8.1 (2) the individual submits a timely request for reconsideration, but the commissioner
8.2 does not set aside the disqualification for that license holder under section 245C.22, unless
8.3 the individual has a right to request a hearing under section 245C.27, 245C.28, or 256.045;

8.4 (3) an individual who has a right to request a hearing under sections 245C.27 and 256.045,
8.5 or 245C.28 and chapter 14 for a disqualification that has not been set aside, does not request
8.6 a hearing within the specified time; or

8.7 (4) an individual submitted a timely request for a hearing under sections 245C.27 and
8.8 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the
8.9 disqualification under section 245A.08, subdivision 5, or 256.045.

8.10 (b) If the commissioner does not set aside the disqualification under section 245C.22,
8.11 and the license holder was previously ordered under section 245C.17 to immediately remove
8.12 the disqualified individual from direct contact with persons receiving services or to ensure
8.13 that the individual is under continuous, direct supervision when providing direct contact
8.14 services, the order remains in effect pending the outcome of a hearing under sections 245C.27
8.15 and 256.045, or 245C.28 and chapter 14.

8.16 (c) If the commissioner does not set aside the disqualification under section 245C.22,
8.17 and the license holder was not previously ordered under section 245C.17 to immediately
8.18 remove the disqualified individual from direct contact with persons receiving services or
8.19 to ensure that the individual is under continuous direct supervision when providing direct
8.20 contact services, the commissioner shall order the individual to remain under continuous
8.21 direct supervision pending the outcome of a hearing under sections 245C.27 and 256.045,
8.22 or 245C.28 and chapter 14.

8.23 (d) For background studies related to child foster care when the applicant or license
8.24 holder resides in the home where services are provided, the commissioner shall also notify
8.25 the county or private agency that initiated the study of the results of the reconsideration.

8.26 (e) For background studies related to adult foster care programs when the applicant or
8.27 license holder resides in the home where services are provided and family adult day services,
8.28 the commissioner shall also notify the county that initiated the study of the results of the
8.29 reconsideration.

8.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.31 Sec. 10. Minnesota Statutes 2016, section 245D.03, subdivision 1, is amended to read:

8.32 Subdivision 1. **Applicability.** (a) The commissioner shall regulate the provision of home
8.33 and community-based services to persons with disabilities and persons age 65 and older

9.1 pursuant to this chapter. The licensing standards in this chapter govern the provision of
9.2 basic support services and intensive support services.

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

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

9.16 (2) adult companion services as defined under the brain injury, community access for
9.17 disability inclusion, and elderly waiver plans, excluding adult companion services provided
9.18 under the Corporation for National and Community Services Senior Companion Program
9.19 established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;

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

9.21 (4) 24-hour emergency assistance, personal emergency response as defined under the
9.22 community access for disability inclusion and developmental disability waiver plans;

9.23 (5) night supervision services as defined under the brain injury waiver plan; and

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

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

9.31 (1) intervention services, including:

9.32 (i) behavioral support services as defined under the brain injury and community access
9.33 for disability inclusion waiver plans;

10.1 (ii) in-home or out-of-home crisis respite services as defined under the developmental
10.2 disability waiver plan; and

10.3 (iii) specialist services as defined under the current developmental disability waiver
10.4 plan;

10.5 (2) in-home support services, including:

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

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

10.10 (iii) semi-independent living services; and

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

10.13 (3) residential supports and services, including:

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

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

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

10.23 (4) day services, including:

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

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

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

10.29 (5) supported employment as defined under the brain injury, developmental disability,
10.30 and community access for disability inclusion waiver plans.

10.31 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.1 Sec. 11. Minnesota Statutes 2016, section 245D.04, subdivision 3, is amended to read:

11.2 Subd. 3. **Protection-related rights.** (a) A person's protection-related rights include the
11.3 right to:

11.4 (1) have personal, financial, service, health, and medical information kept private, and
11.5 be advised of disclosure of this information by the license holder;

11.6 (2) access records and recorded information about the person in accordance with
11.7 applicable state and federal law, regulation, or rule;

11.8 (3) be free from maltreatment;

11.9 (4) be free from restraint, time out, seclusion, restrictive intervention, or other prohibited
11.10 procedure identified in section 245D.06, subdivision 5, or successor provisions, except for:

11.11 (i) emergency use of manual restraint to protect the person from imminent danger to self
11.12 or others according to the requirements in section 245D.061 or successor provisions; or (ii)
11.13 the use of safety interventions as part of a positive support transition plan under section
11.14 245D.06, subdivision 8, or successor provisions;

11.15 (5) receive services in a clean and safe environment when the license holder is the owner,
11.16 lessor, or tenant of the service site;

11.17 (6) be treated with courtesy and respect and receive respectful treatment of the person's
11.18 property;

11.19 (7) reasonable observance of cultural and ethnic practice and religion;

11.20 (8) be free from bias and harassment regarding race, gender, age, disability, spirituality,
11.21 and sexual orientation;

11.22 (9) be informed of and use the license holder's grievance policy and procedures, including
11.23 knowing how to contact persons responsible for addressing problems and to appeal under
11.24 section 256.045;

11.25 (10) know the name, telephone number, and the Web site, e-mail, and street addresses
11.26 of protection and advocacy services, including the appropriate state-appointed ombudsman,
11.27 and a brief description of how to file a complaint with these offices;

11.28 (11) assert these rights personally, or have them asserted by the person's family,
11.29 authorized representative, or legal representative, without retaliation;

11.30 (12) give or withhold written informed consent to participate in any research or
11.31 experimental treatment;

- 12.1 (13) associate with other persons of the person's choice;
- 12.2 (14) personal privacy, including the right to use the lock on the person's bedroom or unit
- 12.3 door; and
- 12.4 (15) engage in chosen activities; and
- 12.5 (16) access to the person's personal possessions at any time, including financial resources.
- 12.6 (b) For a person residing in a residential site licensed according to chapter 245A, or
- 12.7 where the license holder is the owner, lessor, or tenant of the residential service site,
- 12.8 protection-related rights also include the right to:
- 12.9 (1) have daily, private access to and use of a non-coin-operated telephone for local calls
- 12.10 and long-distance calls made collect or paid for by the person;
- 12.11 (2) receive and send, without interference, uncensored, unopened mail or electronic
- 12.12 correspondence or communication;
- 12.13 (3) have use of and free access to common areas in the residence and the freedom to
- 12.14 come and go from the residence at will; and
- 12.15 (4) choose the person's visitors and time of visits and have privacy for visits with the
- 12.16 person's spouse, next of kin, legal counsel, religious ~~advisor~~ adviser, or others, in accordance
- 12.17 with section 363A.09 of the Human Rights Act, including privacy in the person's bedroom;
- 12.18 (5) have freedom and support to access food and potable water at any time;
- 12.19 (6) have the freedom to furnish and decorate the person's bedroom or living unit;
- 12.20 (7) a setting that is clean and free from accumulation of dirt, grease, garbage, peeling
- 12.21 paint, mold, vermin, and insects;
- 12.22 (8) a setting that is free from hazards that threaten the person's health or safety; and
- 12.23 (9) a setting that meets the definition of a dwelling unit within a residential occupancy
- 12.24 as defined in the State Fire Code.
- 12.25 (c) Restriction of a person's rights under paragraph (a), clauses (13) to ~~(15)~~ (16), or
- 12.26 paragraph (b) is allowed only if determined necessary to ensure the health, safety, and
- 12.27 well-being of the person. Any restriction of those rights must be documented in the person's
- 12.28 coordinated service and support plan or coordinated service and support plan addendum.
- 12.29 The restriction must be implemented in the least restrictive alternative manner necessary
- 12.30 to protect the person and provide support to reduce or eliminate the need for the restriction

13.1 in the most integrated setting and inclusive manner. The documentation must include the
 13.2 following information:

13.3 (1) the justification for the restriction based on an assessment of the person's vulnerability
 13.4 related to exercising the right without restriction;

13.5 (2) the objective measures set as conditions for ending the restriction;

13.6 (3) a schedule for reviewing the need for the restriction based on the conditions for
 13.7 ending the restriction to occur semiannually from the date of initial approval, at a minimum,
 13.8 or more frequently if requested by the person, the person's legal representative, if any, and
 13.9 case manager; and

13.10 (4) signed and dated approval for the restriction from the person, or the person's legal
 13.11 representative, if any. A restriction may be implemented only when the required approval
 13.12 has been obtained. Approval may be withdrawn at any time. If approval is withdrawn, the
 13.13 right must be immediately and fully restored.

13.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

13.15 Sec. 12. Minnesota Statutes 2016, section 245D.071, subdivision 3, is amended to read:

13.16 Subd. 3. **Assessment and initial service planning.** (a) Within 15 days of service initiation
 13.17 the license holder must complete a preliminary coordinated service and support plan
 13.18 addendum based on the coordinated service and support plan.

13.19 (b) Within the scope of services, the license holder must, at a minimum, complete
 13.20 assessments in the following areas before the 45-day planning meeting:

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

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

13.28 (3) the person's ability to self-manage symptoms or behavior that may otherwise result
 13.29 in an incident as defined in section 245D.02, subdivision 11, clauses (4) to (7), suspension
 13.30 or termination of services by the license holder, or other symptoms or behaviors that may
 13.31 jeopardize the health and welfare of the person or others.

14.1 Assessments must produce information about the person that describes the person's overall
14.2 strengths, functional skills and abilities, and behaviors or symptoms. Assessments must be
14.3 based on the person's status within the last 12 months at the time of service initiation.
14.4 Assessments based on older information must be documented and justified. Assessments
14.5 must be conducted annually at a minimum or within 30 days of a written request from the
14.6 person or the person's legal representative or case manager. The results must be reviewed
14.7 by the support team or expanded support team as part of a service plan review.

14.8 (c) Within 45 days of service initiation, the license holder must meet with the person,
14.9 the person's legal representative, the case manager, and other members of the support team
14.10 or expanded support team to determine the following based on information obtained from
14.11 the assessments identified in paragraph (b), the person's identified needs in the coordinated
14.12 service and support plan, and the requirements in subdivision 4 and section 245D.07,
14.13 subdivision 1a:

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

14.16 (2) the person's desired outcomes and the supports necessary to accomplish the person's
14.17 desired outcomes;

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

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

14.22 (5) how services must be coordinated across other providers licensed under this chapter
14.23 serving the person and members of the support team or expanded support team to ensure
14.24 continuity of care and coordination of services for the person.

14.25 (d) A discussion of how technology might be used to meet the person's desired outcomes
14.26 must be included in the 45-day planning meeting. The coordinated service and support plan
14.27 or support plan addendum must include a summary of this discussion. The summary must
14.28 include a statement regarding any decision that is made regarding the use of technology
14.29 and a description of any further research that needs to be completed before a decision
14.30 regarding the use of technology can be made. Nothing in this paragraph requires that the
14.31 coordinated service and support plan include the use of technology for the provision of
14.32 services.

14.33 **EFFECTIVE DATE.** This section is effective the day following final enactment.

15.1 Sec. 13. Minnesota Statutes 2016, section 245D.09, subdivision 4, is amended to read:

15.2 Subd. 4. **Orientation to program requirements.** Except for a license holder who does
15.3 not supervise any direct support staff, within 60 calendar days of hire, unless stated otherwise,
15.4 the license holder must provide and ensure completion of ~~ten hours of orientation~~ sufficient
15.5 to create staff competency for direct support staff ~~providing basic services and 30 hours of~~
15.6 ~~orientation for direct support staff providing intensive services~~ that combines supervised
15.7 on-the-job training with review of and instruction in the following areas:

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

15.9 (i) responding to and reporting incidents as required under section 245D.06, subdivision
15.10 1; and

15.11 (ii) following safety practices established by the license holder and as required in section
15.12 245D.06, subdivision 2;

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

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

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

15.21 (5) sections 245A.65, 245A.66, 626.556, and 626.557, governing maltreatment reporting
15.22 and service planning for children and vulnerable adults, and staff responsibilities related to
15.23 protecting persons from maltreatment and reporting maltreatment. This orientation must be
15.24 provided within 72 hours of first providing direct contact services and annually thereafter
15.25 according to section 245A.65, subdivision 3;

15.26 (6) the principles of person-centered service planning and delivery as identified in section
15.27 245D.07, subdivision 1a, and how they apply to direct support service provided by the staff
15.28 person;

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

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

16.4 (9) basic first aid; and

16.5 (10) other topics as determined necessary in the person's coordinated service and support
 16.6 plan by the case manager or other areas identified by the license holder.

16.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.8 Sec. 14. Minnesota Statutes 2016, section 245D.09, subdivision 5a, is amended to read:

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

16.13 Orientation or training received by the staff person from sources other than the license
 16.14 holder in the same subjects as identified in subdivision 4 may count toward the orientation
 16.15 and annual training requirements if received in the 12-month period before the staff person's
 16.16 date of hire. The license holder must maintain documentation of the training received from
 16.17 other sources and of each staff person's competency in the required area according to the
 16.18 requirements in subdivision 3.

16.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.20 Sec. 15. Minnesota Statutes 2016, section 245D.11, subdivision 4, is amended to read:

16.21 Subd. 4. **Admission criteria.** The license holder must establish policies and procedures
 16.22 that promote continuity of care by ensuring that admission or service initiation criteria:

16.23 (1) is consistent with the service-related rights identified in section 245D.04, subdivisions
 16.24 2, clauses (4) to (7), and 3, clause (8);

16.25 (2) identifies the criteria to be applied in determining whether the license holder can
 16.26 develop services to meet the needs specified in the person's coordinated service and support
 16.27 plan;

16.28 (3) requires a license holder providing services in a health care facility to comply with
 16.29 the requirements in section 243.166, subdivision 4b, to provide notification to residents
 16.30 when a registered predatory offender is admitted into the program or to a potential admission
 16.31 when the facility was already serving a registered predatory offender. For purposes of this

17.1 clause, "health care facility" means a facility licensed by the commissioner as a residential
 17.2 facility under chapter 245A to provide adult foster care or residential services to persons
 17.3 with disabilities; ~~and~~

17.4 (4) requires that when a person or the person's legal representative requests services
 17.5 from the license holder, a refusal to admit the person must be based on an evaluation of the
 17.6 person's assessed needs and the license holder's lack of capacity to meet the needs of the
 17.7 person. The license holder must not refuse to admit a person based solely on the type of
 17.8 residential services the person is receiving, or solely on the person's severity of disability,
 17.9 orthopedic or neurological handicaps, sight or hearing impairments, lack of communication
 17.10 skills, physical disabilities, toilet habits, behavioral disorders, or past failure to make progress.
 17.11 Documentation of the basis for refusal must be provided to the person or the person's legal
 17.12 representative and case manager upon request; and

17.13 (5) requires the person or the person's legal representative and license holder to sign and
 17.14 date the residency agreement when the license holder provides foster care or supported
 17.15 living services under section 245D.03, subdivision 1, paragraph (c), clause (3), item (i) or
 17.16 (ii), to a person living in community residential settings defined in section 245D.02,
 17.17 subdivision 4a; an adult foster home defined in Minnesota Rules, part 9555.5105, subpart
 17.18 5; or a foster family home defined in Minnesota Rules, part 9560.0521, subpart 12. The
 17.19 residency agreement must include service termination requirements specified in section
 17.20 245D.10, subdivision 3a, paragraphs (b) to (f). The residency agreement must be reviewed
 17.21 annually, dated, and signed by the person or the person's legal representative and license
 17.22 holder.

17.23 Sec. 16. Minnesota Statutes 2016, section 245D.24, subdivision 3, is amended to read:

17.24 Subd. 3. **Bedrooms.** (a) ~~People~~ Each person receiving services must have a choice of
 17.25 roommate and must mutually consent, in writing, to sharing a bedroom with one another.
 17.26 No more than two people receiving services may share one bedroom.

17.27 (b) A single occupancy bedroom must have at least 80 square feet of floor space with a
 17.28 7-1/2 foot ceiling. A double occupancy room must have at least 120 square feet of floor
 17.29 space with a 7-1/2 foot ceiling. Bedrooms must be separated from halls, corridors, and other
 17.30 habitable rooms by floor-to-ceiling walls containing no openings except doorways and must
 17.31 not serve as a corridor to another room used in daily living.

17.32 (c) A person's personal possessions and items for the person's own use are the only items
 17.33 permitted to be stored in a person's bedroom.

18.1 (d) Unless otherwise documented through assessment as a safety concern for the person,
18.2 each person must be provided with the following furnishings:

18.3 (1) a separate bed of proper size and height for the convenience and comfort of the
18.4 person, with a clean mattress in good repair;

18.5 (2) clean bedding appropriate for the season for each person;

18.6 (3) an individual cabinet, or dresser, shelves, and a closet, for storage of personal
18.7 possessions and clothing; and

18.8 (4) a mirror for grooming.

18.9 (e) When possible, a person must be allowed to have items of furniture that the person
18.10 personally owns in the bedroom, unless doing so would interfere with safety precautions,
18.11 violate a building or fire code, or interfere with another person's use of the bedroom. A
18.12 person may choose not to have a cabinet, dresser, shelves, or a mirror in the bedroom, as
18.13 otherwise required under paragraph (d), clause (3) or (4). A person may choose to use a
18.14 mattress other than an innerspring mattress and may choose not to have the mattress on a
18.15 mattress frame or support. If a person chooses not to have a piece of required furniture, the
18.16 license holder must document this choice and is not required to provide the item. If a person
18.17 chooses to use a mattress other than an innerspring mattress or chooses not to have a mattress
18.18 frame or support, the license holder must document this choice and allow the alternative
18.19 desired by the person.

18.20 (f) A person must be allowed to bring personal possessions into the bedroom and other
18.21 designated storage space, if such space is available, in the residence. The person must be
18.22 allowed to accumulate possessions to the extent the residence is able to accommodate them,
18.23 unless doing so is contraindicated for the person's physical or mental health, would interfere
18.24 with safety precautions or another person's use of the bedroom, or would violate a building
18.25 or fire code. The license holder must allow for locked storage of personal items. Any
18.26 restriction on the possession or locked storage of personal items, including requiring a
18.27 person to use a lock provided by the license holder, must comply with section 245D.04,
18.28 subdivision 3, paragraph (c), and allow the person to be present if and when the license
18.29 holder opens the lock.

18.30 (g) A person must be allowed to lock the person's bedroom door. The license holder
18.31 must document and assess the physical plant and the environment, and the population served,
18.32 and identify the risk factors that require using locked doors, and the specific action taken
18.33 to minimize the safety risk to a person receiving services at the site.

19.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

19.2 Sec. 17. Minnesota Statutes 2016, section 256B.0911, subdivision 3a, is amended to read:

19.3 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment, services
19.4 planning, or other assistance intended to support community-based living, including persons
19.5 who need assessment in order to determine waiver or alternative care program eligibility,
19.6 must be visited by a long-term care consultation team within 20 calendar days after the date
19.7 on which an assessment was requested or recommended. Upon statewide implementation
19.8 of subdivisions 2b, 2c, and 5, this requirement also applies to an assessment of a person
19.9 requesting personal care assistance services and home care nursing. The commissioner shall
19.10 provide at least a 90-day notice to lead agencies prior to the effective date of this requirement.
19.11 Face-to-face assessments must be conducted according to paragraphs (b) to (i).

19.12 (b) Upon implementation of subdivisions 2b, 2c, and 5, lead agencies shall use certified
19.13 assessors to conduct the assessment. For a person with complex health care needs, a public
19.14 health or registered nurse from the team must be consulted.

19.15 (c) The MnCHOICES assessment provided by the commissioner to lead agencies must
19.16 be used to complete a comprehensive, person-centered assessment. The assessment must
19.17 include the health, psychological, functional, environmental, and social needs of the
19.18 individual necessary to develop a community support plan that meets the individual's needs
19.19 and preferences.

19.20 (d) The assessment must be conducted in a face-to-face interview with the person being
19.21 assessed and the person's legal representative. At the request of the person, other individuals
19.22 may participate in the assessment to provide information on the needs, strengths, and
19.23 preferences of the person necessary to develop a community support plan that ensures the
19.24 person's health and safety. Except for legal representatives or family members invited by
19.25 the person, persons participating in the assessment may not be a provider of service or have
19.26 any financial interest in the provision of services. For persons who are to be assessed for
19.27 elderly waiver customized living services under section 256B.0915, with the permission of
19.28 the person being assessed or the person's designated or legal representative, the client's
19.29 current or proposed provider of services may submit a copy of the provider's nursing
19.30 assessment or written report outlining its recommendations regarding the client's care needs.
19.31 The person conducting the assessment must notify the provider of the date by which this
19.32 information is to be submitted. This information shall be provided to the person conducting
19.33 the assessment prior to the assessment. For a person who is to be assessed for waiver services
19.34 under section 256B.092 or 256B.49, with the permission of the person being assessed or

20.1 the person's designated legal representative, the person's current provider of services may
20.2 submit a written report outlining recommendations regarding the person's care needs prepared
20.3 by a direct service employee with at least 20 hours of service to that client. The person
20.4 conducting the assessment or reassessment must notify the provider of the date by which
20.5 this information is to be submitted. This information shall be provided to the person
20.6 conducting the assessment and the person or the person's legal representative, and must be
20.7 considered prior to the finalization of the assessment or reassessment.

20.8 (e) The person or the person's legal representative must be provided with a written
20.9 community support plan within 40 calendar days of the assessment visit, regardless of
20.10 whether the individual is eligible for Minnesota health care programs. The written community
20.11 support plan must include:

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

20.13 (2) the individual's options and choices to meet identified needs, including all available
20.14 options for case management services and providers, including service provided in a
20.15 non-disability-specific setting;

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

20.18 (4) referral information; and

20.19 (5) informal caregiver supports, if applicable.

20.20 For a person determined eligible for state plan home care under subdivision 1a, paragraph
20.21 (b), clause (1), the person or person's representative must also receive a copy of the home
20.22 care service plan developed by the certified assessor.

20.23 (f) A person may request assistance in identifying community supports without
20.24 participating in a complete assessment. Upon a request for assistance identifying community
20.25 support, the person must be transferred or referred to long-term care options counseling
20.26 services available under sections 256.975, subdivision 7, and 256.01, subdivision 24, for
20.27 telephone assistance and follow up.

20.28 (g) The person has the right to make the final decision between institutional placement
20.29 and community placement after the recommendations have been provided, except as provided
20.30 in section 256.975, subdivision 7a, paragraph (d).

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

21.1 (1) written recommendations for community-based services and consumer-directed
21.2 options;

21.3 (2) documentation that the most cost-effective alternatives available were offered to the
21.4 individual. For purposes of this clause, "cost-effective" means community services and
21.5 living arrangements that cost the same as or less than institutional care. For an individual
21.6 found to meet eligibility criteria for home and community-based service programs under
21.7 section 256B.0915 or 256B.49, "cost-effectiveness" has the meaning found in the federally
21.8 approved waiver plan for each program;

21.9 (3) the need for and purpose of preadmission screening conducted by long-term care
21.10 options counselors according to section 256.975, subdivisions 7a to 7c, if the person selects
21.11 nursing facility placement. If the individual selects nursing facility placement, the lead
21.12 agency shall forward information needed to complete the level of care determinations and
21.13 screening for developmental disability and mental illness collected during the assessment
21.14 to the long-term care options counselor using forms provided by the commissioner;

21.15 (4) the role of long-term care consultation assessment and support planning in eligibility
21.16 determination for waiver and alternative care programs, and state plan home care, case
21.17 management, and other services as defined in subdivision 1a, paragraphs (a), clause (6),
21.18 and (b);

21.19 (5) information about Minnesota health care programs;

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

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

21.23 (8) the certified assessor's decision regarding the person's need for institutional level of
21.24 care as determined under criteria established in subdivision 4e and the certified assessor's
21.25 decision regarding eligibility for all services and programs as defined in subdivision 1a,
21.26 paragraphs (a), clause (6), and (b); and

21.27 (9) the person's right to appeal the certified assessor's decision regarding eligibility for
21.28 all services and programs as defined in subdivision 1a, paragraphs (a), clauses (6), (7), and
21.29 (8), and (b), and incorporating the decision regarding the need for institutional level of care
21.30 or the lead agency's final decisions regarding public programs eligibility according to section
21.31 256.045, subdivision 3.

21.32 (i) Face-to-face assessment completed as part of eligibility determination for the
21.33 alternative care, elderly waiver, community access for disability inclusion, community

22.1 alternative care, and brain injury waiver programs under sections 256B.0913, 256B.0915,
 22.2 and 256B.49 is valid to establish service eligibility for no more than 60 calendar days after
 22.3 the date of assessment.

22.4 (j) The effective eligibility start date for programs in paragraph (i) can never be prior to
 22.5 the date of assessment. If an assessment was completed more than 60 days before the
 22.6 effective waiver or alternative care program eligibility start date, assessment and support
 22.7 plan information must be updated and documented in the department's Medicaid Management
 22.8 Information System (MMIS). Notwithstanding retroactive medical assistance coverage of
 22.9 state plan services, the effective date of eligibility for programs included in paragraph (i)
 22.10 cannot be prior to the date the most recent updated assessment is completed.

22.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.12 Sec. 18. Minnesota Statutes 2016, section 256B.092, subdivision 1a, is amended to read:

22.13 Subd. 1a. **Case management services.** (a) Each recipient of a home and community-based
 22.14 waiver shall be provided case management services by qualified vendors as described in
 22.15 the federally approved waiver application.

22.16 (b) Case management service activities provided to or arranged for a person include:

22.17 (1) development of the coordinated service and support plan under subdivision 1b;

22.18 (2) informing the individual or the individual's legal guardian or conservator, or parent
 22.19 if the person is a minor, of service options;

22.20 (3) consulting with relevant medical experts or service providers;

22.21 (4) assisting the person in the identification of potential providers, including services
 22.22 provided in a non-disability-specific setting;

22.23 (5) assisting the person to access services and assisting in appeals under section 256.045;

22.24 (6) coordination of services, if coordination is not provided by another service provider;

22.25 (7) evaluation and monitoring of the services identified in the coordinated service and
 22.26 support plan, which must incorporate at least one annual face-to-face visit by the case
 22.27 manager with each person; and

22.28 (8) reviewing coordinated service and support plans and providing the lead agency with
 22.29 recommendations for service authorization based upon the individual's needs identified in
 22.30 the coordinated service and support plan.

23.1 (c) Case management service activities that are provided to the person with a
23.2 developmental disability shall be provided directly by county agencies or under contract.
23.3 Case management services must be provided by a public or private agency that is enrolled
23.4 as a medical assistance provider determined by the commissioner to meet all of the
23.5 requirements in the approved federal waiver plans. Case management services must not be
23.6 provided to a recipient by a private agency that has a financial interest in the provision of
23.7 any other services included in the recipient's coordinated service and support plan. For
23.8 purposes of this section, "private agency" means any agency that is not identified as a lead
23.9 agency under section 256B.0911, subdivision 1a, paragraph (e).

23.10 (d) Case managers are responsible for service provisions listed in paragraphs (a) and
23.11 (b). Case managers shall collaborate with consumers, families, legal representatives, and
23.12 relevant medical experts and service providers in the development and annual review of the
23.13 coordinated service and support plan and habilitation plan.

23.14 (e) For persons who need a positive support transition plan as required in chapter 245D,
23.15 the case manager shall participate in the development and ongoing evaluation of the plan
23.16 with the expanded support team. At least quarterly, the case manager, in consultation with
23.17 the expanded support team, shall evaluate the effectiveness of the plan based on progress
23.18 evaluation data submitted by the licensed provider to the case manager. The evaluation must
23.19 identify whether the plan has been developed and implemented in a manner to achieve the
23.20 following within the required timelines:

23.21 (1) phasing out the use of prohibited procedures;

23.22 (2) acquisition of skills needed to eliminate the prohibited procedures within the plan's
23.23 timeline; and

23.24 (3) accomplishment of identified outcomes.

23.25 If adequate progress is not being made, the case manager shall consult with the person's
23.26 expanded support team to identify needed modifications and whether additional professional
23.27 support is required to provide consultation.

23.28 (f) The Department of Human Services shall offer ongoing education in case management
23.29 to case managers. Case managers shall receive no less than ten hours of case management
23.30 education and disability-related training each year.

23.31 **EFFECTIVE DATE.** This section is effective the day following final enactment.

24.1 Sec. 19. Minnesota Statutes 2016, section 256B.49, subdivision 13, is amended to read:

24.2 Subd. 13. **Case management.** (a) Each recipient of a home and community-based waiver
24.3 shall be provided case management services by qualified vendors as described in the federally
24.4 approved waiver application. The case management service activities provided must include:

24.5 (1) finalizing the written coordinated service and support plan within ten working days
24.6 after the case manager receives the plan from the certified assessor;

24.7 (2) informing the recipient or the recipient's legal guardian or conservator of service
24.8 options;

24.9 (3) assisting the recipient in the identification of potential service providers and available
24.10 options for case management service and providers, including services provided in a
24.11 non-disability-specific setting;

24.12 (4) assisting the recipient to access services and assisting with appeals under section
24.13 256.045; and

24.14 (5) coordinating, evaluating, and monitoring of the services identified in the service
24.15 plan.

24.16 (b) The case manager may delegate certain aspects of the case management service
24.17 activities to another individual provided there is oversight by the case manager. The case
24.18 manager may not delegate those aspects which require professional judgment including:

24.19 (1) finalizing the coordinated service and support plan;

24.20 (2) ongoing assessment and monitoring of the person's needs and adequacy of the
24.21 approved coordinated service and support plan; and

24.22 (3) adjustments to the coordinated service and support plan.

24.23 (c) Case management services must be provided by a public or private agency that is
24.24 enrolled as a medical assistance provider determined by the commissioner to meet all of
24.25 the requirements in the approved federal waiver plans. Case management services must not
24.26 be provided to a recipient by a private agency that has any financial interest in the provision
24.27 of any other services included in the recipient's coordinated service and support plan. For
24.28 purposes of this section, "private agency" means any agency that is not identified as a lead
24.29 agency under section 256B.0911, subdivision 1a, paragraph (e).

24.30 (d) For persons who need a positive support transition plan as required in chapter 245D,
24.31 the case manager shall participate in the development and ongoing evaluation of the plan
24.32 with the expanded support team. At least quarterly, the case manager, in consultation with

25.1 the expanded support team, shall evaluate the effectiveness of the plan based on progress
 25.2 evaluation data submitted by the licensed provider to the case manager. The evaluation must
 25.3 identify whether the plan has been developed and implemented in a manner to achieve the
 25.4 following within the required timelines:

25.5 (1) phasing out the use of prohibited procedures;

25.6 (2) acquisition of skills needed to eliminate the prohibited procedures within the plan's
 25.7 timeline; and

25.8 (3) accomplishment of identified outcomes.

25.9 If adequate progress is not being made, the case manager shall consult with the person's
 25.10 expanded support team to identify needed modifications and whether additional professional
 25.11 support is required to provide consultation.

25.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

25.13 Sec. 20. Minnesota Statutes 2016, section 256B.4913, is amended by adding a subdivision
 25.14 to read:

25.15 **Subd. 7. New services.** A service added to section 256B.4914 after January 1, 2014, is
 25.16 not subject to rate stabilization adjustment in this section.

25.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

25.18 Sec. 21. Minnesota Statutes 2016, section 256B.4914, subdivision 3, is amended to read:

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

25.23 (1) 24-hour customized living;

25.24 (2) adult day care;

25.25 (3) adult day care bath;

25.26 (4) behavioral programming;

25.27 (5) companion services;

25.28 (6) customized living;

25.29 (7) day training and habilitation;

- 26.1 (8) housing access coordination;
- 26.2 (9) independent living skills;
- 26.3 (10) in-home family support;
- 26.4 (11) night supervision;
- 26.5 (12) personal support;
- 26.6 (13) prevocational services;
- 26.7 (14) residential care services;
- 26.8 (15) residential support services;
- 26.9 (16) respite services;
- 26.10 (17) structured day services;
- 26.11 (18) supported employment services;
- 26.12 (19) supported living services;
- 26.13 (20) transportation services; ~~and~~
- 26.14 (21) individualized home supports; and
- 26.15 (22) other services as approved by the federal government in the state home and
- 26.16 community-based services plan.

26.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

26.18 Sec. 22. Minnesota Statutes 2016, section 256B.4914, subdivision 5, is amended to read:

26.19 Subd. 5. **Base wage index and standard component values.** (a) The base wage index

26.20 is established to determine staffing costs associated with providing services to individuals

26.21 receiving home and community-based services. For purposes of developing and calculating

26.22 the proposed base wage, Minnesota-specific wages taken from job descriptions and standard

26.23 occupational classification (SOC) codes from the Bureau of Labor Statistics as defined in

26.24 the most recent edition of the Occupational Handbook must be used. The base wage index

26.25 must be calculated as follows:

26.26 (1) for residential direct care staff, the sum of:

26.27 (i) 15 percent of the subtotal of 50 percent of the median wage for personal and home

26.28 health aide (SOC code 39-9021); 30 percent of the median wage for nursing aide (SOC

27.1 code 31-1012); and 20 percent of the median wage for social and human services aide (SOC
27.2 code 21-1093); and

27.3 (ii) 85 percent of the subtotal of 20 percent of the median wage for home health aide
27.4 (SOC code 31-1011); 20 percent of the median wage for personal and home health aide
27.5 (SOC code 39-9021); 20 percent of the median wage for nursing aide (SOC code 31-1012);
27.6 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 20
27.7 percent of the median wage for social and human services aide (SOC code 21-1093);

27.8 (2) for day services, 20 percent of the median wage for nursing aide (SOC code 31-1012);
27.9 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 60
27.10 percent of the median wage for social and human services aide (SOC code 21-1093);

27.11 (3) for residential asleep-overnight staff, the wage will be \$7.66 per hour, except in a
27.12 family foster care setting, the wage is \$2.80 per hour;

27.13 (4) for behavior program analyst staff, 100 percent of the median wage for mental health
27.14 counselors (SOC code 21-1014);

27.15 (5) for behavior program professional staff, 100 percent of the median wage for clinical
27.16 counseling and school psychologist (SOC code 19-3031);

27.17 (6) for behavior program specialist staff, 100 percent of the median wage for psychiatric
27.18 technicians (SOC code 29-2053);

27.19 (7) for supportive living services staff, 20 percent of the median wage for nursing aide
27.20 (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code
27.21 29-2053); and 60 percent of the median wage for social and human services aide (SOC code
27.22 21-1093);

27.23 (8) for housing access coordination staff, 50 percent of the median wage for community
27.24 and social services specialist (SOC code 21-1099); and 50 percent of the median wage for
27.25 social and human services aide (SOC code 21-1093);

27.26 (9) for in-home family support staff, 20 percent of the median wage for nursing aide
27.27 (SOC code 31-1012); 30 percent of the median wage for community social service specialist
27.28 (SOC code 21-1099); 40 percent of the median wage for social and human services aide
27.29 (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC
27.30 code 29-2053);

27.31 (10) for independent living skills staff, 40 percent of the median wage for community
27.32 social service specialist (SOC code 21-1099); 50 percent of the median wage for social and

28.1 human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric
 28.2 technician (SOC code 29-2053);

28.3 (11) for individualized home supports services staff, 40 percent of the median wage for
 28.4 community social service specialist (SOC code 21-1099); 50 percent of the median wage
 28.5 for social and human services aide (SOC code 21-1093); and ten percent of the median
 28.6 wage for psychiatric technician (SOC code 29-2053);

28.7 (12) for supported employment staff, 20 percent of the median wage for nursing aide
 28.8 (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code
 28.9 29-2053); and 60 percent of the median wage for social and human services aide (SOC code
 28.10 21-1093);

28.11 ~~(12)~~ (13) for adult companion staff, 50 percent of the median wage for personal and
 28.12 home care aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides,
 28.13 orderlies, and attendants (SOC code 31-1012);

28.14 ~~(13)~~ (14) for night supervision staff, 20 percent of the median wage for home health
 28.15 aide (SOC code 31-1011); 20 percent of the median wage for personal and home health
 28.16 aide (SOC code 39-9021); 20 percent of the median wage for nursing aide (SOC code
 28.17 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053);
 28.18 and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

28.19 ~~(14)~~ (15) for respite staff, 50 percent of the median wage for personal and home care
 28.20 aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides, orderlies,
 28.21 and attendants (SOC code 31-1012);

28.22 ~~(15)~~ (16) for personal support staff, 50 percent of the median wage for personal and
 28.23 home care aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides,
 28.24 orderlies, and attendants (SOC code 31-1012);

28.25 ~~(16)~~ (17) for supervisory staff, the basic wage is \$17.43 per hour with exception of the
 28.26 supervisor of behavior analyst and behavior specialists, which must be \$30.75 per hour;

28.27 ~~(17)~~ (18) for registered nurse, the basic wage is \$30.82 per hour; and

28.28 ~~(18)~~ (19) for licensed practical nurse, the basic wage is \$18.64 per hour.

28.29 (b) Component values for residential support services are:

28.30 (1) supervisory span of control ratio: 11 percent;

28.31 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;

28.32 (3) employee-related cost ratio: 23.6 percent;

- 29.1 (4) general administrative support ratio: 13.25 percent;
- 29.2 (5) program-related expense ratio: 1.3 percent; and
- 29.3 (6) absence and utilization factor ratio: 3.9 percent.
- 29.4 (c) Component values for family foster care are:
- 29.5 (1) supervisory span of control ratio: 11 percent;
- 29.6 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 29.7 (3) employee-related cost ratio: 23.6 percent;
- 29.8 (4) general administrative support ratio: 3.3 percent;
- 29.9 (5) program-related expense ratio: 1.3 percent; and
- 29.10 (6) absence factor: 1.7 percent.
- 29.11 (d) Component values for day services for all services are:
- 29.12 (1) supervisory span of control ratio: 11 percent;
- 29.13 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 29.14 (3) employee-related cost ratio: 23.6 percent;
- 29.15 (4) program plan support ratio: 5.6 percent;
- 29.16 (5) client programming and support ratio: ten percent;
- 29.17 (6) general administrative support ratio: 13.25 percent;
- 29.18 (7) program-related expense ratio: 1.8 percent; and
- 29.19 (8) absence and utilization factor ratio: 3.9 percent.
- 29.20 (e) Component values for unit-based services with programming are:
- 29.21 (1) supervisory span of control ratio: 11 percent;
- 29.22 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 29.23 (3) employee-related cost ratio: 23.6 percent;
- 29.24 (4) program plan supports ratio: 3.1 percent;
- 29.25 (5) client programming and supports ratio: 8.6 percent;
- 29.26 (6) general administrative support ratio: 13.25 percent;
- 29.27 (7) program-related expense ratio: 6.1 percent; and

- 30.1 (8) absence and utilization factor ratio: 3.9 percent.
- 30.2 (f) Component values for unit-based services without programming except respite are:
- 30.3 (1) supervisory span of control ratio: 11 percent;
- 30.4 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 30.5 (3) employee-related cost ratio: 23.6 percent;
- 30.6 (4) program plan support ratio: 3.1 percent;
- 30.7 (5) client programming and support ratio: 8.6 percent;
- 30.8 (6) general administrative support ratio: 13.25 percent;
- 30.9 (7) program-related expense ratio: 6.1 percent; and
- 30.10 (8) absence and utilization factor ratio: 3.9 percent.
- 30.11 (g) Component values for unit-based services without programming for respite are:
- 30.12 (1) supervisory span of control ratio: 11 percent;
- 30.13 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 30.14 (3) employee-related cost ratio: 23.6 percent;
- 30.15 (4) general administrative support ratio: 13.25 percent;
- 30.16 (5) program-related expense ratio: 6.1 percent; and
- 30.17 (6) absence and utilization factor ratio: 3.9 percent.
- 30.18 (h) On July 1, 2017, the commissioner shall update the base wage index in paragraph
- 30.19 (a) based on the wage data by standard occupational code (SOC) from the Bureau of Labor
- 30.20 Statistics available on December 31, 2016. The commissioner shall publish these updated
- 30.21 values and load them into the rate management system. This adjustment occurs every five
- 30.22 years. For adjustments in 2021 and beyond, the commissioner shall use the data available
- 30.23 on December 31 of the calendar year five years prior.
- 30.24 (i) On July 1, 2017, the commissioner shall update the framework components in
- 30.25 paragraphs (b) to (g); subdivision 6, clauses (8) and (9); and subdivision 7, clauses (16) and
- 30.26 (17), for changes in the Consumer Price Index. The commissioner will adjust these values
- 30.27 higher or lower by the percentage change in the Consumer Price Index-All Items, United
- 30.28 States city average (CPI-U) from January 1, 2014, to January 1, 2017. The commissioner
- 30.29 shall publish these updated values and load them into the rate management system. This
- 30.30 adjustment occurs every five years. For adjustments in 2021 and beyond, the commissioner

31.1 shall use the data available on January 1 of the calendar year four years prior and January
31.2 1 of the current calendar year.

31.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

31.4 Sec. 23. Minnesota Statutes 2016, section 256B.4914, subdivision 8, is amended to read:

31.5 Subd. 8. **Payments for unit-based services with programming.** Payments for unit-based
31.6 services with programming, including behavior programming, housing access coordination,
31.7 in-home family support, independent living skills training, individualized home supports,
31.8 hourly supported living services, and supported employment provided to an individual
31.9 outside of any day or residential service plan must be calculated as follows, unless the
31.10 services are authorized separately under subdivision 6 or 7:

31.11 (1) determine the number of units of service to meet a recipient's needs;

31.12 (2) personnel hourly wage rate must be based on the 2009 Bureau of Labor Statistics
31.13 Minnesota-specific rates or rates derived by the commissioner as provided in subdivision
31.14 5;

31.15 (3) for a recipient requiring customization for deaf and hard-of-hearing language
31.16 accessibility under subdivision 12, add the customization rate provided in subdivision 12
31.17 to the result of clause (2). This is defined as the customized direct-care rate;

31.18 (4) multiply the number of direct staff hours by the appropriate staff wage in subdivision
31.19 5, paragraph (a), or the customized direct-care rate;

31.20 (5) multiply the number of direct staff hours by the product of the supervision span of
31.21 control ratio in subdivision 5, paragraph (e), clause (1), and the appropriate supervision
31.22 wage in subdivision 5, paragraph (a), clause (16);

31.23 (6) combine the results of clauses (4) and (5), and multiply the result by one plus the
31.24 employee vacation, sick, and training allowance ratio in subdivision 5, paragraph (e), clause
31.25 (2). This is defined as the direct staffing rate;

31.26 (7) for program plan support, multiply the result of clause (6) by one plus the program
31.27 plan supports ratio in subdivision 5, paragraph (e), clause (4);

31.28 (8) for employee-related expenses, multiply the result of clause (7) by one plus the
31.29 employee-related cost ratio in subdivision 5, paragraph (e), clause (3);

31.30 (9) for client programming and supports, multiply the result of clause (8) by one plus
31.31 the client programming and supports ratio in subdivision 5, paragraph (e), clause (5);

32.1 (10) this is the subtotal rate;

32.2 (11) sum the standard general and administrative rate, the program-related expense ratio,
32.3 and the absence and utilization factor ratio;

32.4 (12) divide the result of clause (10) by one minus the result of clause (11). This is the
32.5 total payment amount;

32.6 (13) for supported employment provided in a shared manner, divide the total payment
32.7 amount in clause (12) by the number of service recipients, not to exceed three. For
32.8 independent living skills training and individualized home supports provided in a shared
32.9 manner, divide the total payment amount in clause (12) by the number of service recipients,
32.10 not to exceed two; and

32.11 (14) adjust the result of clause (13) by a factor to be determined by the commissioner
32.12 to adjust for regional differences in the cost of providing services.

32.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

32.14 Sec. 24. Minnesota Statutes 2016, section 256B.4914, subdivision 16, is amended to read:

32.15 Subd. 16. **Budget neutrality adjustments.** (a) The commissioner shall use the following
32.16 adjustments to the rate generated by the framework to assure budget neutrality until the rate
32.17 information is available to implement paragraph (b). The rate generated by the framework
32.18 shall be multiplied by the appropriate factor, as designated below:

32.19 (1) for residential services: 1.003;

32.20 (2) for day services: 1.000;

32.21 (3) for unit-based services with programming: 0.941; and

32.22 (4) for unit-based services without programming: 0.796.

32.23 (b) Within 12 months of January 1, 2014, the commissioner shall compare estimated
32.24 spending for all home and community-based waiver services under the new payment rates
32.25 defined in subdivisions 6 to 9 with estimated spending for the same recipients and services
32.26 under the rates in effect on July 1, 2013. This comparison must distinguish spending under
32.27 each of subdivisions 6, 7, 8, and 9. The comparison must be based on actual recipients and
32.28 services for one or more service months after the new rates have gone into effect. The
32.29 commissioner shall consult with the commissioner of management and budget on this
32.30 analysis to ensure budget neutrality. If estimated spending under the new rates for services
32.31 under one or more subdivisions differs in this comparison by 0.3 percent or more, the
32.32 commissioner shall assure aggregate budget neutrality across all service areas by adjusting

33.1 the budget neutrality factor in paragraph (a) in each subdivision so that total estimated
33.2 spending for each subdivision under the new rates matches estimated spending under the
33.3 rates in effect on July 1, 2013.

33.4 (c) A service rate developed using values in subdivision 5, paragraph (a), clause (11),
33.5 is not subject to budget neutrality adjustments.

33.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.