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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2925

01/31/2022 Authored by Moller, Albright and Hanson, J., The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; providing for home and community-based services,
1.3 expanded access to shared services, appeals of service terminations for persons
1.4 living in own-home settings, and support coordination training; appropriating
1.5 money; amending Minnesota Statutes 2020, sections 245D.10, subdivision 3a;
1.6 256.045, subdivision 3; 256B.4912, by adding a subdivision.

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

1.8 Section 1. Minnesota Statutes 2020, section 245D.10, subdivision 3a, is amended to read:

1.9 Subd. 3a. Service termination. (a) The license holder must establish policies and
1.10 procedures for service termination that promote continuity of care and service coordination
1.11 with the person and the case manager and with other licensed caregivers, if any, who also
1.12 provide support to the person. The policy must include the requirements specified in
1.13 paragraphs (b) to (f).

1.14 (b) The license holder must permit each person to remain in the program or to continue
1.15 receiving services and must not terminate services unless:

1.16 (1) the termination is necessary for the person's welfare and the facility provider cannot
1.17 meet the person's needs;

1.18 (2) the safety of the person or others in the program is endangered and positive support
1.19 strategies were attempted and have not achieved and effectively maintained safety for the
1.20 person or others;

1.21 (3) the health of the person or others in the program would otherwise be endangered;

1.22 (4) the program provider has not been paid for services;

2.1 (5) the ~~program~~ provider ceases to operate;

2.2 (6) the person has been terminated by the lead agency from waiver eligibility; or

2.3 (7) for state-operated community-based services, the person no longer demonstrates
2.4 complex behavioral needs that cannot be met by private community-based providers
2.5 identified in section 252.50, subdivision 5, paragraph (a), clause (1).

2.6 (c) Prior to giving notice of service termination, the license holder must document actions
2.7 taken to minimize or eliminate the need for termination. Action taken by the license holder
2.8 must include, at a minimum:

2.9 (1) consultation with the person's support team or expanded support team to identify
2.10 and resolve issues leading to issuance of the termination notice;

2.11 (2) a request to the case manager for intervention services identified in section 245D.03,
2.12 subdivision 1, paragraph (c), clause (1), or other professional consultation or intervention
2.13 services to support the person in the program. This requirement does not apply to notices
2.14 of service termination issued under paragraph (b), clauses (4) and (7); and

2.15 (3) for state-operated community-based services terminating services under paragraph
2.16 (b), clause (7), the state-operated community-based services must engage in consultation
2.17 with the person's support team or expanded support team to:

2.18 (i) identify that the person no longer demonstrates complex behavioral needs that cannot
2.19 be met by private community-based providers identified in section 252.50, subdivision 5,
2.20 paragraph (a), clause (1);

2.21 (ii) provide notice of intent to issue a termination of services to the lead agency when a
2.22 finding has been made that a person no longer demonstrates complex behavioral needs that
2.23 cannot be met by private community-based providers identified in section 252.50, subdivision
2.24 5, paragraph (a), clause (1);

2.25 (iii) assist the lead agency and case manager in developing a person-centered transition
2.26 plan to a private community-based provider to ensure continuity of care; and

2.27 (iv) coordinate with the lead agency to ensure the private community-based service
2.28 provider is able to meet the person's needs and criteria established in a person's
2.29 person-centered transition plan.

2.30 If, based on the best interests of the person, the circumstances at the time of the notice were
2.31 such that the license holder was unable to take the action specified in clauses (1) and (2),

3.1 the license holder must document the specific circumstances and the reason for being unable
3.2 to do so.

3.3 (d) The notice of service termination must meet the following requirements:

3.4 (1) the license holder must notify the person or the person's legal representative and the
3.5 case manager in writing of the intended service termination. If the service termination is
3.6 from residential supports and services as defined in section 245D.03, subdivision 1, paragraph
3.7 (c), clause (3), the license holder must also notify the commissioner in writing; and

3.8 (2) the notice must include:

3.9 (i) the reason for the action;

3.10 (ii) except for a service termination under paragraph (b), clause (5), a summary of actions
3.11 taken to minimize or eliminate the need for service termination or temporary service
3.12 suspension as required under paragraph (c), and why these measures failed to prevent the
3.13 termination or suspension;

3.14 (iii) the person's right to appeal the termination of services under section 256.045,
3.15 subdivision 3, paragraph (a); and

3.16 (iv) the person's right to seek a temporary order staying the termination of services
3.17 according to the procedures in section 256.045, subdivision 4a or 6, paragraph (c).

3.18 (e) Notice of the proposed termination of service, including those situations that began
3.19 with a temporary service suspension, must be given at least 90 days prior to termination of
3.20 services under paragraph (b), clause (7), 60 days prior to termination when a license holder
3.21 is providing intensive supports and services identified in section 245D.03, subdivision 1,
3.22 paragraph (c), and 30 days prior to termination for all other services licensed under this
3.23 chapter. This notice may be given in conjunction with a notice of temporary service
3.24 suspension under subdivision 3.

3.25 (f) During the service termination notice period, the license holder must:

3.26 (1) work with the support team or expanded support team to develop reasonable
3.27 alternatives to protect the person and others and to support continuity of care;

3.28 (2) provide information requested by the person or case manager; and

3.29 (3) maintain information about the service termination, including the written notice of
3.30 intended service termination, in the service recipient record.

3.31 (g) For notices issued under paragraph (b), clause (7), the lead agency shall provide
3.32 notice to the commissioner and state-operated services at least 30 days before the conclusion

4.1 of the 90-day termination period, if an appropriate alternative provider cannot be secured.
4.2 Upon receipt of this notice, the commissioner and state-operated services shall reassess
4.3 whether a private community-based service can meet the person's needs. If the commissioner
4.4 determines that a private provider can meet the person's needs, state-operated services shall,
4.5 if necessary, extend notice of service termination until placement can be made. If the
4.6 commissioner determines that a private provider cannot meet the person's needs,
4.7 state-operated services shall rescind the notice of service termination and re-engage with
4.8 the lead agency in service planning for the person.

4.9 (h) For state-operated community-based services, the license holder shall prioritize the
4.10 capacity created within the existing service site by the termination of services under paragraph
4.11 (b), clause (7), to serve persons described in section 252.50, subdivision 5, paragraph (a),
4.12 clause (1).

4.13 Sec. 2. Minnesota Statutes 2020, section 256.045, subdivision 3, is amended to read:

4.14 Subd. 3. **State agency hearings.** (a) State agency hearings are available for the following:

4.15 (1) any person applying for, receiving or having received public assistance, medical
4.16 care, or a program of social services granted by the state agency or a county agency or the
4.17 federal Food and Nutrition Act whose application for assistance is denied, not acted upon
4.18 with reasonable promptness, or whose assistance is suspended, reduced, terminated, or
4.19 claimed to have been incorrectly paid;

4.20 (2) any patient or relative aggrieved by an order of the commissioner under section
4.21 252.27;

4.22 (3) a party aggrieved by a ruling of a prepaid health plan;

4.23 (4) except as provided under chapter 245C, any individual or facility determined by a
4.24 lead investigative agency to have maltreated a vulnerable adult under section 626.557 after
4.25 they have exercised their right to administrative reconsideration under section 626.557;

4.26 (5) any person whose claim for foster care payment according to a placement of the
4.27 child resulting from a child protection assessment under chapter 260E is denied or not acted
4.28 upon with reasonable promptness, regardless of funding source;

4.29 (6) any person to whom a right of appeal according to this section is given by other
4.30 provision of law;

4.31 (7) an applicant aggrieved by an adverse decision to an application for a hardship waiver
4.32 under section 256B.15;

5.1 (8) an applicant aggrieved by an adverse decision to an application or redetermination
5.2 for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

5.3 (9) except as provided under chapter 245A, an individual or facility determined to have
5.4 maltreated a minor under chapter 260E, after the individual or facility has exercised the
5.5 right to administrative reconsideration under chapter 260E;

5.6 (10) except as provided under chapter 245C, an individual disqualified under sections
5.7 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23,
5.8 on the basis of serious or recurring maltreatment; a preponderance of the evidence that the
5.9 individual has committed an act or acts that meet the definition of any of the crimes listed
5.10 in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section
5.11 260E.06, subdivision 1, or 626.557, subdivision 3. Hearings regarding a maltreatment
5.12 determination under clause (4) or (9) and a disqualification under this clause in which the
5.13 basis for a disqualification is serious or recurring maltreatment, shall be consolidated into
5.14 a single fair hearing. In such cases, the scope of review by the human services judge shall
5.15 include both the maltreatment determination and the disqualification. The failure to exercise
5.16 the right to an administrative reconsideration shall not be a bar to a hearing under this section
5.17 if federal law provides an individual the right to a hearing to dispute a finding of
5.18 maltreatment;

5.19 (11) any person with an outstanding debt resulting from receipt of public assistance,
5.20 medical care, or the federal Food and Nutrition Act who is contesting a setoff claim by the
5.21 Department of Human Services or a county agency. The scope of the appeal is the validity
5.22 of the claimant agency's intention to request a setoff of a refund under chapter 270A against
5.23 the debt;

5.24 (12) a person issued a notice of service termination under section 245D.10, subdivision
5.25 3a, from by a licensed provider of any residential supports and or services as defined listed
5.26 in section 245D.03, subdivision 1, paragraph paragraphs (b) and (c), clause (3), that is not
5.27 otherwise subject to appeal under subdivision 4a;

5.28 (13) an individual disability waiver recipient based on a denial of a request for a rate
5.29 exception under section 256B.4914; or

5.30 (14) a person issued a notice of service termination under section 245A.11, subdivision
5.31 11, that is not otherwise subject to appeal under subdivision 4a.

5.32 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10),
5.33 is the only administrative appeal to the final agency determination specifically, including
5.34 a challenge to the accuracy and completeness of data under section 13.04. Hearings requested

6.1 under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or
6.2 after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged
6.3 to have maltreated a resident prior to October 1, 1995, shall be held as a contested case
6.4 proceeding under the provisions of chapter 14. Hearings requested under paragraph (a),
6.5 clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A
6.6 hearing for an individual or facility under paragraph (a), clauses (4), (9), and (10), is only
6.7 available when there is no district court action pending. If such action is filed in district
6.8 court while an administrative review is pending that arises out of some or all of the events
6.9 or circumstances on which the appeal is based, the administrative review must be suspended
6.10 until the judicial actions are completed. If the district court proceedings are completed,
6.11 dismissed, or overturned, the matter may be considered in an administrative hearing.

6.12 (c) For purposes of this section, bargaining unit grievance procedures are not an
6.13 administrative appeal.

6.14 (d) The scope of hearings involving claims to foster care payments under paragraph (a),
6.15 clause (5), shall be limited to the issue of whether the county is legally responsible for a
6.16 child's placement under court order or voluntary placement agreement and, if so, the correct
6.17 amount of foster care payment to be made on the child's behalf and shall not include review
6.18 of the propriety of the county's child protection determination or child placement decision.

6.19 (e) The scope of hearings under paragraph (a), clauses (12) and (14), shall be limited to
6.20 whether the proposed termination of services is authorized under section 245D.10,
6.21 subdivision 3a, paragraph (b), or 245A.11, subdivision 11, and whether the requirements
6.22 of section 245D.10, subdivision 3a, paragraphs (c) to (e), or 245A.11, subdivision 2a,
6.23 paragraphs (d) to (f), were met. If the appeal includes a request for a temporary stay of
6.24 termination of services, the scope of the hearing shall also include whether the case
6.25 management provider has finalized arrangements for a residential facility, a program, or
6.26 services that will meet the assessed needs of the recipient by the effective date of the service
6.27 termination.

6.28 (f) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor
6.29 under contract with a county agency to provide social services is not a party and may not
6.30 request a hearing under this section, except if assisting a recipient as provided in subdivision
6.31 4.

6.32 (g) An applicant or recipient is not entitled to receive social services beyond the services
6.33 prescribed under chapter 256M or other social services the person is eligible for under state
6.34 law.

7.1 (h) The commissioner may summarily affirm the county or state agency's proposed
 7.2 action without a hearing when the sole issue is an automatic change due to a change in state
 7.3 or federal law.

7.4 (i) Unless federal or Minnesota law specifies a different time frame in which to file an
 7.5 appeal, an individual or organization specified in this section may contest the specified
 7.6 action, decision, or final disposition before the state agency by submitting a written request
 7.7 for a hearing to the state agency within 30 days after receiving written notice of the action,
 7.8 decision, or final disposition, or within 90 days of such written notice if the applicant,
 7.9 recipient, patient, or relative shows good cause, as defined in section 256.0451, subdivision
 7.10 13, why the request was not submitted within the 30-day time limit. The individual filing
 7.11 the appeal has the burden of proving good cause by a preponderance of the evidence.

7.12 Sec. 3. Minnesota Statutes 2020, section 256B.4912, is amended by adding a subdivision
 7.13 to read:

7.14 Subd. 16. Shared services. (a) Medical assistance payments for shared services under
 7.15 the home and community-based services waivers authorized under sections 256B.0913,
 7.16 256B.092, and 256B.49 and chapter 256S are limited to this subdivision.

7.17 (b) For purposes of this subdivision, "shared services" means services provided at the
 7.18 same time by the same direct care worker for individuals who have entered into an agreement
 7.19 to share home and community-based services.

7.20 (c) Shared services may include the following services as outlined in the coordinated
 7.21 service and support plan and shared services agreement:

7.22 (1) chore services;

7.23 (2) extended home care services;

7.24 (3) homemaker services;

7.25 (4) individualized home supports;

7.26 (5) integrated community supports;

7.27 (6) night supervision services; and

7.28 (7) other supports as deemed appropriate based on the individuals' coordinated service
 7.29 and support plans and shared services agreement.

7.30 (d) Shared services may not include:

7.31 (1) services for more than three individuals provided by one worker at one time;

8.1 (2) use of more than one worker for the shared services; and

8.2 (3) a child care program licensed under chapter 245A or operated by a local school
8.3 district or private school.

8.4 (e) The individuals or, as needed, the individuals' representatives must develop the plan
8.5 for shared services when developing or amending the coordinated service and support plan
8.6 and must follow the coordinated service and support plan process for approval of the plan
8.7 by the lead agency. The plan for shared services in a coordinated service and support plan
8.8 must include the intention to utilize shared services based on individuals' needs and
8.9 preferences.

8.10 (f) Individuals whose coordinated service and support plans include an intent to utilize
8.11 shared services must jointly develop, with the support of the individuals' representatives as
8.12 needed, a shared services agreement. This agreement must include:

8.13 (1) the names of the individuals receiving shared services;

8.14 (2) the individuals' representatives, if identified in their coordinated service and support
8.15 plans, and their duties;

8.16 (3) the names of the case managers;

8.17 (4) the services provider;

8.18 (5) the shared services that must be provided;

8.19 (6) the schedule for shared services;

8.20 (7) the location where shared services must be provided;

8.21 (8) the training specific to each individual served;

8.22 (9) the training specific to providing shared services to the individuals identified in the
8.23 agreement;

8.24 (10) instructions to follow all required documentation for time and services provided;

8.25 (11) a contingency plan for each individual served that determines how services will be
8.26 provided and billed for when a person who shares services with the individual is absent due
8.27 to illness or other circumstances;

8.28 (12) signatures of all parties involved in the shared services; and

8.29 (13) an agreement by each individual who is sharing services on the number of shared
8.30 hours for services provided.

9.1 (g) An individual or an individual's representative may withdraw from participating in
 9.2 a shared services agreement at any time.

9.3 (h) The lead agency for each individual must authorize the use of the shared services
 9.4 option based on the criteria that the shared service is appropriate to meet the needs, health,
 9.5 and safety of each individual for whom the lead agency provides case management or care
 9.6 coordination.

9.7 (i) This subdivision must not be construed to reduce the total authorized budget for an
 9.8 individual.

9.9 (j) No later than September 30, 2022, the commissioner of human services must:

9.10 (1) submit an amendment to the Centers for Medicare and Medicaid Services for the
 9.11 home and community-based services waivers authorized under sections 256B.0913,
 9.12 256B.092, and 256B.49 and chapter 256S to allow for shared services under the home and
 9.13 community-based services waivers; and

9.14 (2) with stakeholder input, develop guidance for shared services. Guidance must include:

9.15 (i) recommendations for negotiating payment for one-to-two and one-to-three services;
 9.16 and

9.17 (ii) a template of the shared services agreement.

9.18 **Sec. 4. APPROPRIATION; SUPPORT COORDINATION TRAINING.**

9.19 (a) \$736,000 in fiscal year 2023 is appropriated from the general fund to the commissioner
 9.20 of human services to develop and implement a curriculum and training plan to ensure all
 9.21 lead agency assessors and case managers have the knowledge and skills necessary to fulfill
 9.22 support planning and coordination responsibilities for people who use home and
 9.23 community-based disability services waivers authorized under Minnesota Statutes, sections
 9.24 256B.0913, 256B.092, and 256B.49 and chapter 256S, and live in own-home settings.
 9.25 Training and competency evaluations must be completed annually by all staff responsible
 9.26 for case management as described in Minnesota Statutes, sections 256B.092, subdivision
 9.27 1a, paragraph (f), and 256B.49, subdivision 13, paragraph (e).

9.28 (b) The base for this appropriation is \$377,000 in fiscal year 2024 and \$377,000 in fiscal
 9.29 year 2025 only.