

CHAPTER 245B

STANDARDS GOVERNING SERVICES TO MENTALLY
RETARDED

245B.01 Rule consolidation.
245B.02 Definitions.
245B.03 Applicability and effect.
245B.04 Consumer rights.

245B.05 Consumer protection standards.
245B.06 Service standards.
245B.07 Management standards.
245B.08 New regulatory strategies.

245B.01 RULE CONSOLIDATION.

This chapter establishes new methods to ensure the quality of services to persons with mental retardation or related conditions, and streamlines and simplifies regulation of services and supports for persons with mental retardation or related conditions. Sections 245B.02 to 245B.07 establishes new standards that eliminate duplication and overlap of regulatory requirements by consolidating and replacing rule parts from four program rules. Section 245B.08 authorizes the commissioner of human services to develop and use new regulatory strategies to maintain compliance with the streamlined requirements.

History: 1997 c 248 s 35

245B.02 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them.

Subd. 2. **Applicant.** "Applicant" has the meaning given in section 245A.02, subdivision 3.

Subd. 3. **Case manager.** "Case manager" means the individual designated by the county board under rules of the commissioner to provide case management services as delineated in section 256B.092 or successor provisions.

Subd. 4. **Consumer.** "Consumer" means a person who has been determined eligible to receive and is receiving services or support for persons with mental retardation or related conditions.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the department of human services or the commissioner's designated representative.

Subd. 6. **Day training and habilitation services for adults with mental retardation or related conditions.** "Day training and habilitation services for adults with mental retardation or related conditions" has the meaning given in sections 252.40 to 252.46.

Subd. 7. **Department.** "Department" means the department of human services.

Subd. 8. **Direct service.** "Direct service" means, for a consumer receiving residential-based services, day training and habilitation services, or respite care services, one or more of the following: supervision, assistance, or training.

Subd. 9. **Health services.** "Health services" means any service or treatment consistent with the health needs of the consumer, such as medication administration and monitoring, medical, dental, nutritional, health monitoring, wellness education, and exercise.

Subd. 10. **Incident.** "Incident" means any serious injury as determined by section 245.91, subdivision 6; accident; reports of a child or vulnerable adult maltreatment; circumstances that involve a law enforcement agency; or a consumer's death.

Subd. 11. **Individual service plan.** "Individual service plan" has the meaning given in section 256B.092 or successor provisions.

Subd. 12. **Individual who is related.** "Individual who is related" has the meaning given in section 245A.02, subdivision 13.

Subd. 13. **Intermediate care facility for persons with mental retardation or related conditions or ICF/MR.** "Intermediate care facility" for persons with mental retardation or related conditions or ICF/MR means a residential program licensed to provide services to persons with mental retardation or related conditions under section 252.28 and chapter 245A and a physical facility licensed as a supervised living facility under chapter 144, which to

gether are certified by the department of health as an intermediate care facility for persons with mental retardation or related conditions.

Subd. 14. **Least restrictive environment.** "Least restrictive environment" means an environment where services:

- (1) are delivered with minimum limitation, intrusion, disruption, or departure from typical patterns of living available to persons without disabilities;
- (2) do not subject the consumer or others to unnecessary risks to health or safety; and
- (3) maximize the consumer's level of independence, productivity, and inclusion in the community.

Subd. 15. **Legal representative.** "Legal representative" means the parent or parents of a consumer who is under 18 years of age or a guardian, conservator, or guardian ad litem authorized by the court, or other legally authorized representative to make decisions about services for a consumer.

Subd. 16. **License.** "License" has the meaning given in section 245A.02, subdivision 8.

Subd. 17. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 18. **Person with mental retardation or a related condition.** "Person with mental retardation or a related condition" means a person who has been diagnosed under section 256B.092 as having substantial limitations in present functioning, manifested as significantly subaverage intellectual functioning, existing concurrently with demonstrated deficits in adaptive behavior, and who manifests these conditions before the person's 22nd birthday. A person with a related condition means a person who meets the diagnostic definition under section 252.27, subdivision 1a.

Subd. 19. **Psychotropic medication use checklist.** "Psychotropic medication use checklist" means the psychotropic medication monitoring checklist and manual used to govern the administration of psychotropic medications. The commissioner may revise or update the psychotropic medication use checklist to comply with legal requirements or to meet professional standards or guidelines in the area of developmental disabilities. For purposes of this chapter, psychotropic medication means any medication prescribed to treat mental illness and associated behaviors or to control or alter behavior. The major classes of psychotropic medication are antipsychotic (neuroleptic), antidepressant, antianxiety, antimania, stimulant, and sedative or hypnotic. Other miscellaneous medications are considered to be a psychotropic medication when they are specifically prescribed to treat a mental illness or to control or alter behavior.

Subd. 20. **Residential-based habilitation.** "Residential-based habilitation" means care, supervision, and training provided primarily in the consumer's own home or place of residence but also including community-integrated activities following the individual service plan. Residential habilitation services are provided in coordination with the provision of day training and habilitation services for those persons receiving day training and habilitation services under sections 252.40 to 252.46.

Subd. 21. **Respite care.** "Respite care" has the meaning given in section 245A.02, subdivision 15.

Subd. 22. **Service.** "Service" means care, supervision, activities, or training designed to achieve the outcomes assigned to the license holder.

Subd. 23. **Semi-independent living services or SILS** "Semi-independent living services" or "SILS" has the meaning given in section 252.275.

Subd. 24. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides direct services without pay to consumers served by the license holder.

History: 1997 c 248 s 36

245B.03 APPLICABILITY AND EFFECT.

Subdivision 1. **Applicability.** The standards in this chapter govern services to persons with mental retardation or related conditions receiving services from license holders provid-

ing residential-based habilitation; day training and habilitation services for adults; semi-independent living services; residential programs that serve more than four consumers, including intermediate care facilities for persons with mental retardation; and respite care provided outside the consumer's home for more than four consumers at the same time at a single site.

Subd. 2. Relationship to other standards governing services for persons with mental retardation or related conditions. (a) ICFs/MR are exempt from:

- (1) section 245B.04;
- (2) section 245B.06, subdivisions 4 and 6; and
- (3) section 245B.07, subdivisions 4, paragraphs (b) and (c); 7; and 8, paragraphs (1), clause (iv), and (2).

(b) License holders also licensed under chapter 144 as a supervised living facility are exempt from section 245B.04.

(c) Residential service sites controlled by license holders licensed under chapter 245B for home and community-based waived services for four or fewer adults are exempt from compliance with Minnesota Rules, parts 9543.0040, subpart 2, item C; 9555.5505; 9555.5515, items B and G; 9555.5605; 9555.5705; 9555.6125, subparts 3, item C, subitem (2), and 4 to 6; 9555.6185; 9555.6225, subpart 8; 9555.6245; 9555.6255; and 9555.6265. The commissioner may approve alternative methods of providing overnight supervision using the process and criteria for granting a variance in section 245A.04, subdivision 9. This chapter does not apply to foster care homes that do not provide residential habilitation services funded under the home and community-based waiver programs defined in section 256B.092.

(d) The commissioner may exempt license holders from applicable standards of this chapter when the license holder meets the standards under section 245A.09, subdivision 7. License holders that are accredited by an independent accreditation body shall continue to be licensed under this chapter.

(e) License holders governed by sections 245B.02 to 245B.07 must also meet the licensure requirements in chapter 245A.

(f) Nothing in this chapter prohibits license holders from concurrently serving consumers with and without mental retardation or related conditions provided this chapter's standards are met as well as other relevant standards.

(g) The documentation that sections 245B.02 to 245B.07 require of the license holder meets the individual program plan required in section 256B.092 or successor provisions.

History: 1997 c 248 s 37

245B.04 CONSUMER RIGHTS.

Subdivision 1. License holder's responsibility for consumers' rights. The license holder must:

(1) provide the consumer or the consumer's legal representative a copy of the consumer's rights on the day that services are initiated and an explanation of the rights in subdivisions 2 and 3 within five working days of service initiation. Reasonable accommodations shall be made by the license holder to provide this information in other formats as needed to facilitate understanding of the rights by the consumer and the consumer's legal representative, if any;

(2) document the consumer's or the consumer's legal representative's receipt of a copy of the rights and an explanation of the rights; and

(3) ensure the exercise and protection of the consumer's rights in the services provided by the license holder and authorized in the individual service plan.

Subd. 2. Service-related rights. A consumer's service-related rights include the right to:

(1) refuse or terminate services and be informed of the consequences of refusing or terminating services;

(2) know, in advance, limits to the services available from the license holder;

(3) know conditions and terms governing the provision of services, including those related to initiation and termination;

(4) know what the charges are for services, regardless of who will be paying for the services, and be notified of changes in those charges;

(5) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the consumer or other private party may have to pay; and

(6) receive licensed services from individuals who are competent and trained, who have professional certification or licensure, as required, and who meet additional qualifications identified in the individual service plan.

Subd. 3. Protection-related rights. The consumer's protection-related rights include the right to:

(1) have personal, financial, services, and medical information kept private, and be advised of the license holder's policies and procedures regarding disclosure of such information;

(2) access records and recorded information;

(3) be free from maltreatment;

(4) be treated with courtesy and respect for the consumer's individuality, mode of communication, and culture, and receive respectful treatment of the consumer's property;

(5) voice grievances, know the contact persons responsible for addressing problems and how to contact those persons;

(6) any procedures for grievance or complaint resolution and the right to appeal under section 256.045;

(7) know the name and address of the state, county, or advocacy agency to contact for additional information or assistance;

(8) assert these rights personally, or have them asserted by the consumer's family or legal representative, without retaliation;

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

(10) have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the resident;

(11) receive and send uncensored, unopened mail;

(12) marital privacy for visits with the consumer's spouse and, if both are residents of the site, the right to share a bedroom and bed;

(13) associate with other persons of the consumer's choice;

(14) personal privacy; and

(15) engage in chosen activities.

History: 1997 c 248 s 38

245B.05 CONSUMER PROTECTION STANDARDS.

Subdivision 1. Environment. The license holder must:

(1) ensure that services are provided in a safe and hazard-free environment when the license holder is the owner, lessor, or tenant of the service site. All other license holders shall inform the consumer or the consumer's legal representative and case manager about any environmental safety concerns in writing;

(2) lock doors only to protect the safety of consumers and not as a substitute for staff supervision or interactions with consumers;

(3) follow procedures that minimize the consumer's health risk from communicable diseases; and

(4) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition.

Subd. 2. Licensed capacity for facility-based day training and habilitation services. Licensed capacity of day training and habilitation service sites must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of consumers receiving services. Primary space does not include

hallways, stairways, closets, utility areas, bathrooms, kitchens, and floor areas beneath stationary equipment. A minimum of 40 square feet of primary space must be available for each consumer who is engaged in a day training and habilitation activity at the site for which the licensed capacity must be determined.

Subd. 3. Residential service sites for more than four consumers; four-bed ICFs/MR. Residential service sites licensed to serve more than four consumers and four-bed ICFs/MR must meet the fire protection provisions of either the Residential Board and Care Occupancies Chapter or the Health Care Occupancies Chapter of the Life Safety Code (LSC), National Fire Protection Association, 1985 edition, or its successors. Sites meeting the definition of a residential board and care occupancy for 16 or less beds must have the emergency evacuation capability of residents evaluated in accordance with Appendix F of the LSC or its successors, except for those sites that meet the LSC Health Care Occupancies Chapter or its successors.

Subd. 4. Meeting fire and safety codes. An applicant or license holder under sections 245A.01 to 245A.16 must document compliance with applicable building codes, fire and safety codes, health rules, and zoning ordinances, or document that an appropriate waiver has been granted.

Subd. 5. Consumer health. The license holder is responsible for meeting the health service needs assigned to the license holder in the individual service plan and for bringing health needs as discovered by the license holder promptly to the attention of the consumer, the consumer's legal representative, and the case manager. The license holder is required to maintain documentation on how the consumer's health needs will be met, including a description of procedures the license holder will follow for the consumer regarding medication monitoring and administration and seizure monitoring, if needed. The medication administration procedures are those procedures necessary to implement medication and treatment orders issued by appropriately licensed professionals, and must be established in consultation with a registered nurse, nurse practitioner, physician's assistant, or medical doctor.

Subd. 6. First aid. When the license holder is providing direct service and supervision to a consumer who requires a 24-hour plan of care and receives services at a site licensed under this chapter, the license holder must have available a staff person trained in first aid, and, if needed under section 245B.07, subdivision 6, paragraph (d), cardiopulmonary resuscitation from a qualified source, as determined by the commissioner.

Subd. 7. Reporting incidents and emergencies. The license holder must report the following incidents to the consumer's legal representative, caregiver, and case manager within 24 hours of the occurrence, or within 24 hours of receipt of the information:

- (1) the death of a consumer;
- (2) any medical emergencies, unexpected serious illnesses, or accidents that require physician treatment or hospitalization;
- (3) a consumer's unauthorized absence; or
- (4) any fires and incidents involving a law enforcement agency.

Death or serious injury of the consumer must also be reported to the commissioner and the ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

History: 1997 c 248 s 39

245B.06 SERVICE STANDARDS.

Subdivision 1. Outcome-based services. (a) The license holder must provide outcome-based services in response to the consumer's identified needs as specified in the individual service plan.

(b) Services must be based on the needs and preferences of the consumer and the consumer's personal goals and be consistent with the principles of least restrictive environment, self-determination, and consistent with:

- (1) the recognition of each consumer's history, dignity, and cultural background;
- (2) the affirmation and protection of each consumer's civil and legal rights;
- (3) the provision of services and supports for each consumer which:

- (i) promote community inclusion and self-sufficiency;
 - (ii) provide services in the least restrictive environment;
 - (iii) promote social relationships, natural supports, and participation in community life;
 - (iv) allow for a balance between safety and opportunities; and
 - (v) provide opportunities for the development and exercise of age-appropriate skills, decision making and choice, personal advocacy, and communication; and
- (4) the provision of services and supports for families which address the needs of the consumer in the context of the family and support family self-sufficiency.

(c) The license holder must make available to the consumer opportunities to participate in the community, functional skill development, reduced dependency on care providers, and opportunities for development of decision-making skills. "Outcome" means the behavior, action, or status attained by the consumer that can be observed, measured, and can be determined reliable and valid. Outcomes are the equivalent of the long-range goals and short-term goals referenced in section 256B.092, and any rules promulgated under that section.

Subd. 2. Risk management plan. The license holder must develop and document in writing a risk management plan that incorporates the individual abuse prevention plan as required in chapter 245C. License holders jointly providing services to a consumer shall coordinate and use the resulting assessment of risk areas for the development of this plan. Upon initiation of services, the license holder will have in place an initial risk management plan that identifies areas in which the consumer is vulnerable, including health, safety, and environmental issues and the supports the provider will have in place to protect the consumer and to minimize these risks. The plan must be changed based on the needs of the individual consumer and reviewed at least annually.

Subd. 3. Assessments. (a) The license holder shall assess and reassess the consumer within stated time lines and assessment areas specified in the individual service plan or as requested in writing by the case manager.

(b) For each area of assessment requested, the license holder must provide a written summary, analysis, and recommendations for use in the development of the individual service plan.

(c) All assessments must include information about the consumer that is descriptive of:

(1) the consumer's strengths and functional skills; and

(2) the level of support and supervision the consumer needs to achieve the outcomes in subdivision 1.

Subd. 4. Supports and methods. The license holder, in coordination with other service providers, shall meet with the consumer, the consumer's legal representative, case manager, and other members of the interdisciplinary team within 45 days of service initiation. Within ten working days after the meeting, the license holder shall develop and document in writing:

(1) the methods that will be used to support the individual or accomplish the outcomes in subdivision 1, including information about physical and social environments, the equipment and materials required, and techniques that are consistent with the consumer's communication mode and learning style specified as the license holder's responsibility in the individual service plan;

(2) the projected starting date for service supports and the criteria for identifying when the desired outcome has been achieved and when the service supports need to be reviewed; and

(3) the names of the staff, staff position, or contractors responsible for implementing each outcome.

Subd. 5. Progress reviews. The license holder must participate in progress review meetings following stated time lines established in the consumer's individual service plan or as requested in writing by the consumer, the consumer's legal representative, or the case manager, at a minimum of once a year. The license holder must summarize the progress toward achieving the desired outcomes and make recommendations in a written report sent to the consumer or the consumer's legal representative and case manager prior to the review meeting. For consumers under public guardianship, the license holder is required to provide

quarterly written progress review reports to the consumer, designated family member, and case manager.

Subd. 6. Reports. The license holder shall provide written reports regarding the consumer's status as requested by the consumer, or the consumer's legal representative and case manager.

Subd. 7. Staffing requirements. The license holder must provide supervision to ensure the health, safety, and protection of rights of each consumer and to be able to implement each consumer's individual service plan. Day training and habilitation programs must meet the minimum staffing requirements as specified in sections 252.40 to 252.46 and rules promulgated under those sections.

Subd. 8. Leaving the residence. As specified in each consumer's individual service plan, each consumer requiring a 24-hour plan of care must leave the residence to participate in regular education, employment, or community activities. License holders, providing services to consumers living in a licensed site, shall ensure that they are prepared to care for consumers whenever they are at the residence during the day because of illness, work schedules, or other reasons.

Subd. 9. Day training and habilitation service days. Day training and habilitation services must meet a minimum of 195 available service days.

Subd. 10. Prohibition. Psychotropic medication and the use of aversive and deprivation procedures, as referenced in section 245.825 and rules promulgated under that section, cannot be used as a substitute for adequate staffing, as punishment, or for staff convenience.

History: 1997 c 248 s 40

245B.07 MANAGEMENT STANDARDS.

Subdivision 1. Consumer data file. The license holder must maintain the following information for each consumer:

(1) identifying information that includes date of birth, medications, legal representative, history, medical, and other individual-specific information, and names and telephone numbers of contacts;

(2) consumer health information, including individual medication administration and monitoring information;

(3) the consumer's individual service plan. When a consumer's case manager does not provide a current individual service plan, the license holder shall make a written request to the case manager to provide a copy of the individual service plan and inform the consumer or the consumer's legal representative of the right to an individual service plan and the right to appeal under section 256.045;

(4) copies of assessments, analyses, summaries, and recommendations;

(5) progress review reports;

(6) incident and emergency reports involving the consumer;

(7) discharge summary, when applicable;

(8) record of other license holders serving the consumer that includes a contact person and telephone numbers, services being provided, services that require coordination between two license holders, and name of staff responsible for coordination; and

(9) incidents involving verbal and physical aggression between consumers and self-abuse affecting the consumer.

Subd. 2. Access to records. The license holder must ensure that the following people have access to the information in subdivision 1:

(1) the consumer, the consumer's legal representative, and anyone properly authorized by the consumer or legal representative;

(2) the consumer's case manager;

(3) staff providing direct services to the consumer unless the information is not relevant to carrying out the individual service plan; and

(4) the county adult foster care licenser, when services are also licensed as an adult foster home. Adult foster home means a licensed residence operated by an operator who, for

financial gain or otherwise, provides 24-hour foster care to no more than four functionally impaired residents.

Subd. 3. Retention of consumer's records. The license holder must retain the records required for consumers for at least three years following termination of services.

Subd. 4. Staff qualifications. (a) The license holder must ensure that staff is competent through training, experience, and education to meet the consumer's needs and additional requirements as written in the individual service plan. Staff qualifications must be documented. Staff under 18 years of age may not perform overnight duties or administer medication.

(b) Delivery and evaluation of services provided by the license holder to a consumer must be coordinated by a designated person. The designated person or coordinator must minimally have a four-year degree in a field related to service provision, and one year work experience with consumers with mental retardation or related conditions, a two-year degree in a field related to service provision, and two years of work experience with consumers with mental retardation or related conditions, or a diploma in community-based developmental disability services from an accredited post-secondary institution and two years of work experience with consumers with mental retardation or related conditions. The coordinator must provide supervision, support, and evaluation of activities that include:

(1) oversight of the license holder's responsibilities designated in the individual service plan;

(2) instruction and assistance to staff implementing the individual service plan areas;

(3) evaluation of the effectiveness of service delivery, methodologies, and progress on consumer outcomes based on the condition set for objective change; and

(4) review of incident and emergency reports, identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences.

(c) The coordinator is responsible for taking the action necessary to facilitate the accomplishment of the outcomes for each consumer as specified in the consumer's individual service plan.

(d) The license holder must provide for adequate supervision of direct care staff to ensure implementation of the individual service plan.

Subd. 5. Staff orientation. (a) Within 60 days of hiring staff who provide direct service, the license holder must provide 30 hours of staff orientation. Direct care staff must complete 15 of the 30 hours orientation before providing any unsupervised direct service to a consumer. If the staff person has received orientation training from a license holder licensed under this chapter, or provides semi-independent living services only, the 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may be reduced to 15 hours if the staff person has previously received orientation training from a license holder licensed under this chapter.

(b) The 30 hours of orientation must combine supervised on-the-job training with coverage of the following material:

(1) review of the consumer's service plans and risk management plan to achieve an understanding of the consumer as a unique individual;

(2) review and instruction on the license holder's policies and procedures, including their location and access;

(3) emergency procedures;

(4) explanation of specific job functions, including implementing objectives from the consumer's individual service plan;

(5) explanation of responsibilities related to chapter 245C; sections 626.556 and 626.557, governing maltreatment reporting and service planning for children and vulnerable adults; and section 245.825, governing use of aversive and deprivation procedures;

(6) medication administration as it applies to the individual consumer, from a training curriculum developed by a health services professional described in section 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding health care needs, then medication administration taught by a health services professional. Once a consumer

with overriding health care needs is admitted, staff will be provided with remedial training as deemed necessary by the license holder and the health professional to meet the needs of that consumer.

For purposes of this section, overriding health care needs means a health care condition that affects the service options available to the consumer because the condition requires:

- (i) specialized or intensive medical or nursing supervision; and
 - (ii) nonmedical service providers to adapt their services to accommodate the health and safety needs of the consumer;
 - (7) consumer rights; and
 - (8) other topics necessary as determined by the consumer's individual service plan or other areas identified by the license holder.
- (c) The license holder must document each employee's orientation received.

Subd. 6. Staff training. (a) The license holder shall ensure that direct service staff annually complete hours of training equal to two percent of the number of hours the staff person worked or one percent for license holders providing semi-independent living services. If direct service staff has received training from a license holder licensed under a program rule identified in this chapter or completed course work regarding disability-related issues from a post-secondary educational institute, that training may also count toward training requirements for other services and for other license holders.

(b) The license holder must document the training completed by each employee.

(c) Training shall address staff competencies necessary to address the consumer needs as identified in the consumer's individual service plan and ensure consumer health, safety, and protection of rights. Training may also include other areas identified by the license holder.

(d) For consumers requiring a 24-hour plan of care, the license holder shall provide training in cardiopulmonary resuscitation, from a qualified source determined by the commissioner, if the consumer's health needs as determined by the consumer's physician indicate trained staff would be necessary to the consumer.

Subd. 7. Volunteers. The license holder must ensure that volunteers who provide direct services to consumers receive the training and orientation necessary to fulfill their responsibilities.

Subd. 8. Policies and procedures. The license holder must develop and implement the policies and procedures in paragraphs (1) to (3).

(1) policies and procedures that promote consumer health and safety by ensuring:

(i) consumer safety in emergency situations as identified in section 245B.05, subdivision 7;

(ii) consumer health through sanitary practices;

(iii) safe transportation, when the license holder is responsible for transportation of consumers, with provisions for handling emergency situations;

(iv) a system of recordkeeping for both individuals and the organization, for review of incidents and emergencies, and corrective action if needed;

(v) a plan for responding to and reporting all emergencies, including deaths, medical emergencies, illnesses, accidents, missing consumers, fires, severe weather and natural disasters, bomb threats, and other threats;

(vi) safe medication administration as identified in section 245B.05, subdivision 5;

(vii) psychotropic medication monitoring when the consumer is prescribed a psychotropic medication, including the use of the psychotropic medication use checklist. If the responsibility for implementing the psychotropic medication use checklist has not been assigned in the individual service plan and the consumer lives in a licensed site, the residential license holder shall be designated; and

(viii) criteria for admission or service initiation developed by the license holder;

(2) policies and procedures that protect consumer rights and privacy by ensuring:

(i) consumer data privacy, in compliance with the Minnesota Data Practices Act, chapter 13; and

(ii) that complaint procedures provide consumers with a simple process to bring grievances and consumers receive a response to the grievance within a reasonable time period. The license holder must provide a copy of the program's grievance procedure and time lines for addressing grievances. The program's grievance procedure must permit consumers served by the program and the authorized representatives to bring a grievance to the highest level of authority in the program; and

(3) policies and procedures that promote continuity and quality of consumer supports by ensuring:

(i) continuity of care and service coordination, including provisions for service termination, temporary service suspension, and efforts made by the license holder to coordinate services with other vendors who also provide support to the consumer. The policy must include the following requirements:

(A) the license holder must notify the consumer or consumer's legal representative and the consumer's case manager in writing of the intended termination or temporary service suspension and the consumer's right to seek a temporary order staying the termination or suspension of service according to the procedures in section 256.045, subdivision 4a or subdivision 6, paragraph (c);

(B) notice of the proposed termination of services must be given at least 60 days before the proposed termination is to become effective, unless services are temporarily suspended according to the license holder's written temporary service suspension procedures, in which case notice must be given as soon as possible;

(C) the license holder must provide information requested by the consumer or consumer's legal representative or case manager when services are temporarily suspended or upon notice of termination;

(D) use of temporary service suspension procedures are restricted to situations in which the consumer's behavior causes immediate and serious danger to the health and safety of the individual or others;

(E) prior to giving notice of service termination or temporary service suspension, the license holder must document actions taken to minimize or eliminate the need for service termination or temporary service suspension; and

(F) during the period of temporary service suspension, the license holder will work with the appropriate county agency to develop reasonable alternatives to protect the individual and others; and

(ii) quality services measured through a program evaluation process including regular evaluations of consumer satisfaction and sharing the results of the evaluations with the consumers and legal representatives.

Subd. 9. Availability of current written policies and procedures. The license holder shall:

(1) review and update, as needed, the written policies and procedures in this subdivision and inform all consumers or the consumer's legal representatives, case managers, and employees of the revised policies and procedures when they affect the service provision;

(2) inform consumers or the consumer's legal representatives of the written policies and procedures in this subdivision upon service initiation. Copies must be available to consumers or the consumer's legal representatives, case managers, the county where services are located, and the commissioner upon request; and

(3) document and maintain relevant information related to the policies and procedures in this subdivision.

Subd. 10. Consumer funds. (a) The license holder must ensure that consumers retain the use and availability of personal funds or property unless restrictions are justified in the consumer's individual service plan.

(b) The license holder must ensure separation of resident funds from funds of the license holder, the residential program, or program staff.

(c) Whenever the license holder assists a consumer with the safekeeping of funds or other property, the license holder must:

(1) document receipt and disbursement of the consumer's funds or the property, and include the signature of the consumer, conservator, or payee;

(2) provide a statement at least quarterly itemizing receipts and disbursements of resident funds or other property; and

(3) return to the consumer upon the consumer's request, funds and property in the license holder's possession subject to restrictions in the consumer's individual service plan, as soon as possible, but no later than three working days after the date of the request.

(d) License holders and program staff must not:

(1) borrow money from a consumer;

(2) purchase personal items from a consumer;

(3) sell merchandise or personal services to a consumer;

(4) require a resident to purchase items for which the license holder is eligible for reimbursement; or

(5) use resident funds in a manner that would violate section 256B.04, or any rules promulgated under that section.

Subd. 11. Travel time to and from a day training and habilitation site. Except in unusual circumstances, the license holder must not transport a consumer receiving services for longer than one hour per one-way trip.

Subd. 12. Separate license required for separate sites. The license holder shall apply for separate licenses for each day training and habilitation service site owned or leased by the license holder at which persons receiving services and the provider's employees who provide training and habilitation services are present for a cumulative total of more than 30 days within any 12-month period, and for each residential service site.

Subd. 13. Variance. The commissioner may grant a variance to any of the requirements in sections 245B.02 to 245B.07 except section 245B.07, subdivision 8(1)(vii), or provisions governing data practices and information rights of consumers if the conditions in section 245A.04, subdivision 9 are met. Upon the request of the license holder, the commissioner shall continue variances from the standards in this chapter previously granted under Minnesota Rules that are repealed as a result of this chapter. The commissioner may approve variances for a license holder on a program, geographic, or organizational basis.

History: 1997 c 248 s 41

245B.08 NEW REGULATORY STRATEGIES.

Subdivision 1. Alternative methods of determining compliance. (a) In addition to methods specified in chapter 245A, the commissioner may use alternative methods and new regulatory strategies to determine compliance with this section. The commissioner may use sampling techniques to ensure compliance with this section. Notwithstanding section 245A.09, subdivision 7, paragraph (d), the commissioner may also extend periods of licensure, not to exceed five years, for license holders who have demonstrated substantial and consistent compliance with sections 245B.02 to 245B.07 and have consistently maintained the health and safety of consumers and have demonstrated by alternative methods in paragraph (b) that they meet or exceed the requirements of this section. For purposes of this section, "substantial and consistent compliance" means that during the current licensing period:

(1) the license holder's license has not been made conditional, suspended, or revoked;

(2) there have been no substantiated allegations of maltreatment against the license holder;

(3) there have been no program deficiencies that have been identified that would jeopardize the health or safety of consumers being served; and

(4) the license holder is in substantial compliance with the other requirements of chapter 245A and other applicable laws and rules.

(b) To determine the length of a license, the commissioner shall consider:

(1) information from affected consumers, and the license holder's responsiveness to consumers' concerns and recommendations;

(2) self assessments and peer reviews of the standards of this section, corrective actions taken by the license holder, and sharing the results of the inspections with consumers, the consumers' families, and others, as requested;

(3) length of accreditation by an independent accreditation body, if applicable;

(4) information from the county where the license holder is located; and

(5) information from the license holder demonstrating performance that meets or exceeds the minimum standards of this chapter.

(c) The commissioner may reduce the length of the license if the license holder fails to meet the criteria in paragraph (a) and the conditions specified in paragraph (b).

Subd. 2. Additional measures. The commissioner may require the license holder to implement additional measures on a time-limited basis to ensure the health and safety of consumers when the health and safety of consumers has been determined to be at risk as determined by substantiated incidents of maltreatment under sections 626.556 and 626.557. The license holder may request reconsideration of the actions taken by the commissioner under this subdivision according to section 245A.06.

Subd. 3. Sanctions available. Nothing in this subdivision shall be construed to limit the commissioner's authority to suspend, revoke, or make conditional at any time a license under section 245A.07; make correction orders and require fines for failure to comply with applicable laws or rules under section 245A.06; or deny an application for license under section 245A.05.

Subd. 4. Efficient application. The commissioner shall establish application procedures for license holders licensed under this chapter to reduce the need to submit duplicative material.

Subd. 5. Information. The commissioner shall make information available to consumers and interested others regarding the licensing status of a license holder.

Subd. 6. Implementation. The commissioner shall seek advice from parties affected by the implementation of this chapter.

Subd. 7. Deem status. The commissioner may exempt a license holder from duplicative standards if the license holder is already licensed under chapter 245A.

History: 1997 c 248 s 42