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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3206

02/13/2020 Authored by Acomb, Cantrell, Albright, Edelson and O'Neill  
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act  
1.2 relating to human services; extending the corporate adult foster care moratorium  
1.3 exception for a fifth bed until 2024; modifying timelines for intensive support  
1.4 service planning; permitting delegation of competency evaluations of direct support  
1.5 staff; amending Minnesota Statutes 2018, sections 245A.11, subdivision 2a;  
1.6 245D.071, subdivision 3; 245D.081, subdivision 2.

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

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

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

1.10 The commissioner shall issue adult foster care and community residential setting licenses  
1.11 with a maximum licensed capacity of four beds, including nonstaff roomers and boarders,  
1.12 except that the commissioner may issue a license with a capacity of five beds, including  
1.13 roomers and boarders, according to paragraphs (b) to (g).

1.14 (b) The license holder may have a maximum license capacity of five if all persons in  
1.15 care are age 55 or over and do not have a serious and persistent mental illness or a  
1.16 developmental disability.

1.17 (c) The commissioner may grant variances to paragraph (b) to allow a facility with a  
1.18 licensed capacity of up to five persons to admit an individual under the age of 55 if the  
1.19 variance complies with section 245A.04, subdivision 9, and approval of the variance is  
1.20 recommended by the county in which the licensed facility is located.

1.21 (d) The commissioner may grant variances to paragraph (a) to allow the use of an  
1.22 additional bed, up to five, for emergency crisis services for a person with serious and  
1.23 persistent mental illness or a developmental disability, regardless of age, if the variance

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

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

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

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

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

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

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

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

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

2.33 (i) individualized plan of care;

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

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

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

3.8 (4) the facility was licensed for adult foster care before March 1, ~~2011~~ 2016.

3.9 (g) The commissioner shall not issue a new adult foster care license under paragraph (f)  
3.10 after June 30, ~~2019~~ 2024. The commissioner shall allow a facility with an adult foster care  
3.11 license issued under paragraph (f) before June 30, ~~2019~~ 2024, to continue with a capacity  
3.12 of five adults if the license holder continues to comply with the requirements in paragraph  
3.13 (f).

3.14 Sec. 2. Minnesota Statutes 2018, section 245D.071, subdivision 3, is amended to read:

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

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

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

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

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

3.31 Assessments must produce information about the person that describes the person's overall  
3.32 strengths, functional skills and abilities, and behaviors or symptoms. Assessments must be

4.1 based on the person's status within the last 12 months at the time of service initiation.  
4.2 Assessments based on older information must be documented and justified. Assessments  
4.3 must be conducted annually at a minimum or within 30 days of a written request from the  
4.4 person or the person's legal representative or case manager. The results must be reviewed  
4.5 by the support team or expanded support team as part of a service plan review.

4.6 (c) ~~Within~~ Before providing 45 days of service ~~initiation~~ or within 90 calendar days,  
4.7 whichever is shorter, the license holder must meet with the person, the person's legal  
4.8 representative, the case manager, and other members of the support team or expanded  
4.9 support team as identified by the person or the person's legal representative to determine  
4.10 the following based on information obtained from the assessments identified in paragraph  
4.11 (b), the person's identified needs in the coordinated service and support plan, and the  
4.12 requirements in subdivision 4 and section 245D.07, subdivision 1a:

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

4.15 (2) the person's desired outcomes and the supports necessary to accomplish the person's  
4.16 desired outcomes;

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

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

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

4.24 (d) A discussion of how technology might be used to meet the person's desired outcomes  
4.25 must be included in the 45-day planning meeting. The coordinated service and support plan  
4.26 or support plan addendum must include a summary of this discussion. The summary must  
4.27 include a statement regarding any decision that is made regarding the use of technology  
4.28 and a description of any further research that needs to be completed before a decision  
4.29 regarding the use of technology can be made. Nothing in this paragraph requires that the  
4.30 coordinated service and support plan include the use of technology for the provision of  
4.31 services.

5.1 Sec. 3. Minnesota Statutes 2018, section 245D.081, subdivision 2, is amended to read:

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

5.6 (1) oversight of the license holder's responsibilities assigned in the person's coordinated  
5.7 service and support plan and the coordinated service and support plan addendum;

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

5.10 (3) instruction and assistance to direct support staff implementing the coordinated service  
5.11 and support plan and the service outcomes, including direct observation of service delivery  
5.12 sufficient to assess staff competency. The designated coordinator may delegate the direct  
5.13 observation and assessment of the service delivery activities of direct support staff to an  
5.14 individual whom the designated coordinator has previously deemed competent in those  
5.15 activities; and

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

5.19 (b) The license holder must ensure that the designated coordinator is competent to  
5.20 perform the required duties identified in paragraph (a) through education, training, and work  
5.21 experience relevant to the primary disability of persons served by the license holder and  
5.22 the individual persons for whom the designated coordinator is responsible. The designated  
5.23 coordinator must have the skills and ability necessary to develop effective plans and to  
5.24 design and use data systems to measure effectiveness of services and supports. The license  
5.25 holder must verify and document competence according to the requirements in section  
5.26 245D.09, subdivision 3. The designated coordinator must minimally have:

5.27 (1) a baccalaureate degree in a field related to human services, and one year of full-time  
5.28 work experience providing direct care services to persons with disabilities or persons age  
5.29 65 and older;

5.30 (2) an associate degree in a field related to human services, and two years of full-time  
5.31 work experience providing direct care services to persons with disabilities or persons age  
5.32 65 and older;

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

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

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