



Licensed Home and Community-Based Services: Implementation Plan for 2020 Legislative Changes

Office of Inspector General, Licensing Division

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Introduction

The 2020 Legislature changed several laws that impact licensing requirements for home and community-based services (HCBS). Many of the changes update or clarify licensing requirements.

Each section of this Implementation Plan contains:

- the actual text of the law, including the changes made by the Legislature in 2020 as of the date of this document
- an overview of each new or changed requirement, and
- what the change means for providers.

Key

The actual text of the laws and how they were changed are shown in the shaded box at the beginning of each section of this plan. Here is how to read those sections:

Plain text is unchanged – it was the law before and continues to be the law.

Stricken text (~~like this~~) is used on words that are being removed from the law.

Underlined text (like this) is used for words that are being added to the law.

Throughout this document, we use the following acronyms:

- DHS for the Minnesota Department of Human Services
- HCBS for home and community-based services
- CRS for community residential setting
- CSSP for coordinated service and support plan

Assessment and initial service planning

245D.071, subdivision 3, **Assessment and initial service planning.**

Paragraphs a and b (no changes)

(c) ~~Within~~ Before providing 45 days of service initiation or within 60 calendar days of service initiation, whichever is shorter, the license holder must meet with the person, the person's legal representative, the case manager, ~~and~~ other members of the support team or expanded support team, and other people as identified by the person or the person's legal representative to determine the following based on information obtained from the assessments identified in paragraph (b), the person's identified needs in the coordinated service and support plan, and the requirements in subdivision 4 and section 245D.07, subdivision 1a:

- (1) the scope of the services to be provided to support the person's daily needs and activities;
- (2) the person's desired outcomes and the supports necessary to accomplish the person's desired outcomes;
- (3) the person's preferences for how services and supports are provided, including how the provider will support the person to have control of the person's schedule;
- (4) whether the current service setting is the most integrated setting available and appropriate for the person; and
- (5) opportunities to develop and maintain essential and life-enriching skills, abilities, strengths, interests, and preferences;
- (6) opportunities for community access, participation, and inclusion in preferred community activities;
- (7) opportunities to develop and strengthen personal relationships with other persons of the person's choice in the community;
- (8) opportunities to seek competitive employment and work at competitively paying jobs in the community; and
- ~~(5)~~ (9) how services must be coordinated across other providers licensed under this chapter serving the person and members of the support team or expanded support team to ensure continuity of care and coordination of services for the person.

Paragraph d (no changes)

Overview

Three main changes were made in the area of assessment and initial services planning.

- (1) The period of assessment and initial service planning has been extended for some people;
- (2) The meeting must include people identified by the person or the person's legal representative. This is in addition to those who are already required: the person, the person's legal representative, the case manager, and other members of the support team or expanded support team.
- (3) During the meeting, additional information must be discussed:
 - opportunities to develop and maintain essential and life-enriching skills, abilities, strengths, interests, and preferences;
 - opportunities for community access, participation, and inclusion in preferred community activities;
 - opportunities to develop and strengthen personal relationships with other persons of the person's choice in the community; and
 - opportunities to seek competitive employment and work at competitively paying jobs in the community.

What do providers need to do?

For individuals admitted on or after August 1, 2020, before providing 45 days of service or within 60 calendar days of service initiation, whichever is shorter, providers must meet with:

- the person;
- the person's legal representative;
- the case manager;
- other members of the support team or expanded support team; and
- other people as identified by the person or the person's legal representative.

In addition to the current requirements, the following information must be determined during the meeting based on information obtained from the assessments and the person's identified needs, interests, preferences, and desired outcomes as specified in the CSSP and CSSP addendum:

- opportunities to develop and maintain essential and life-enriching skills, abilities, strengths, interests, and preferences;
- opportunities for community access, participation, and inclusion in preferred community activities;
- opportunities to develop and strengthen personal relationships with other persons of the person's choice in the community; and
- opportunities to seek competitive employment and work at competitively paying jobs in the community.

Providers may use an updated [45-Day Meeting Summary](#) to document these requirements.

Service plan review and evaluation

Section 245D.071, subdivision 5, **Service plan review and evaluation.**

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

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

(c) At least once per year, the license holder, in coordination with the person's support team or expanded support team, must meet with a person receiving residential supports and services, the person's legal representative, the case manager, and other people as identified by the person or the person's legal representative to discuss options for transitioning out of a community setting controlled by a provider and into a setting not controlled by a provider.

(d) The coordinated service and support plan addendum must include a summary of the discussion required in paragraph (c). The summary must include a statement about any decision made regarding transitioning out of a provider-controlled setting and a description of any further research or education that must be completed before a decision regarding transitioning out of a provider-controlled setting can be made.

(e) At least once per year, the license holder, in coordination with the person's support team or expanded support team, must meet with a person receiving day services, the person's legal representative, the case manager, and other people as identified by the person or the person's legal representative to discuss options for transitioning to an employment service described in section 245D.03, subdivision 1, paragraph (c), clauses (5) to (7).

(f) The coordinated service and support plan addendum must include a summary of the discussion required in paragraph (e). The summary must include a statement about any decision made concerning transition to an employment service and a description of any further research or education that must be completed before a decision regarding transitioning to an employment service can be made.

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

~~(d)~~ (h) The license holder must send the coordinated service and support plan addendum to the person, the person's legal representative, and the case manager by mail within ten working days of the progress review meeting. Within ten working days of the mailing of the coordinated service and support plan addendum, the license holder must obtain dated signatures from the person or the person's legal representative and the case manager to document approval of any changes to the coordinated service and support plan addendum.

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

Overview

Two main changes were made in the area of service plan review and evaluation.

(1) The discussions and meetings must include people identified by the person or the person's legal representative. This is in addition to those who are already required: the person, the person's legal representative, the case manager, and other members of the support team or expanded support team.

(2) At least once a year, additional information must be discussed:

- when the person is receiving residential supports and services, discuss options for transitioning out of a community setting controlled by a provider and into a setting not controlled by a provider;
- when a person is receiving day services, discuss options for transitioning to employment exploration, employment development, or employment support services.

What do providers need to do?

Beginning August 1, 2020, providers, in coordination with the person's support team or expanded support team, must give the following people an opportunity to participate in the ongoing review and development of the service plan and must meet with them at least once per year, or within 30 days of a written request by the person, the person's legal representative, or the case manager:

- the person
- the person's legal representative;
- the case manager; and
- other people as identified by the person or the person's legal representative.

In addition to current requirements, providers must address the following at least once per year, beginning at the next annual meeting of the person's support team:

- when the person is receiving residential supports and services, discuss options for transitioning out of a community setting controlled by a provider and into a setting not controlled by a provider;
- when a person is receiving day services, discuss options for transitioning to an employment exploration, employment development, and employment support services.

Providers must include a summary of these discussions, including statements about any decisions made and descriptions of any further research or education that must be completed before decisions can be made, in the person's CSSP addendum.

Providers may use an updated [Progress Review Report for Intensive Services](#) to document these requirements.

Coordination and evaluation of individual service delivery

Section 245D.081, subdivision 2, **Coordination and evaluation of individual service delivery.**

(a) Delivery and evaluation of services provided by the license holder must be coordinated by a designated staff person. Except as provided in clause (3), the designated coordinator must provide supervision, support, and evaluation of activities that include:

- (1) oversight of the license holder's responsibilities assigned in the person's coordinated service and support plan and the coordinated service and support plan addendum;
- (2) taking the action necessary to facilitate the accomplishment of the outcomes according to the requirements in section 245D.07;
- (3) instruction and assistance to direct support staff implementing the coordinated service and support plan and the service outcomes, including direct observation of service delivery sufficient to assess staff competency. The designated coordinator may delegate the direct observation and competency assessment of the service delivery activities of direct support staff to an individual whom the designated coordinator has previously deemed competent in those activities; and
- (4) evaluation of the effectiveness of service delivery, methodologies, and progress on the person's outcomes based on the measurable and observable criteria for identifying when the desired outcome has been achieved according to the requirements in section 245D.07.

Paragraph b (no changes)

Overview

The designated coordinator may deem another individual competent to perform the direct observation and competency assessment of the service delivery activities of direct support staff.

What do providers need to do?

This is an optional requirement for providers that allows a train-the-trainer approach to one of the responsibilities assigned to the designated coordinator. Beginning August 1, 2020, a designated coordinator may delegate their responsibility to directly observe the service delivery activities of a staff person. The delegated person must observe the staff person's activities to assess if the staff person is competent to complete the tasks without supervision in the future. The designated coordinator may not delegate this responsibility to another person unless that person has been previously deemed competent by the designated coordinator in the service delivery activities.

Definition of sexual violence

Section 245D.02, is amended by adding a subdivision:

Subd. 32a. Sexual violence.

"Sexual violence" means the use of sexual actions or words that are unwanted or harmful to another person.

Overview

The definition of sexual violence has been added.

What do providers need to do?

Providers should reference this definition of sexual violence when developing a curriculum to meet the orientation and annual training requirements in section 245D.09, subdivision 4, clause (10), 245D.09, subdivision 4a, paragraph (h), and 245D.09, subdivision 5.

Orientation to program requirements

Section 245D.09, subdivision 4, **Orientation to program requirements.**

Except for a license holder who does not supervise any direct support staff, within 60 calendar days of hire, unless stated otherwise, the license holder must provide and ensure completion of orientation sufficient to create staff competency for direct support staff that combines supervised on-the-job training with review of and instruction in the following areas:

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

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

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

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

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

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

(5) sections 245A.65, 245A.66, ~~626.556~~, and 626.557 and chapter 260E, governing maltreatment reporting and service planning for children and vulnerable adults, and staff responsibilities related to protecting persons from maltreatment and reporting maltreatment. This orientation must be provided within 72 hours of first providing direct contact services and annually thereafter according to section 245A.65, subdivision 3;

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

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

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

(9) basic first aid; and

(10) strategies to minimize the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities; and

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

Overview

Within 60 calendar days of hire, license holders must provide training to direct support staff on minimizing the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities.

What do providers need to do?

For staff hired on or after August 1, 2020, providers must provide direct support staff an additional orientation training topic: strategies to minimize the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities. Along with other orientation training, this training must occur within 60 days of hire. All required orientation topics are listed on the [Staff Orientation Record](#).

NOTE: Section 245D.09, subdivision 4a, paragraph (h) was also updated so that newly licensed providers who provide direct support must also receive this training.

Annual training

Section 245D.09, subdivision 5, **Annual training.**

A license holder must provide annual training to direct support staff on the topics identified in subdivision 4, clauses (3) to ~~(10)~~ (11). If the direct support staff has a first aid certification, annual training under subdivision 4, clause (9), is not required as long as the certification remains current.

Overview

License holders must provide annual training to direct support staff on minimizing the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities.

What do providers need to do?

Beginning on August 1, 2020, annual training must include an additional topic: strategies to minimize the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities. Annual training on this topic must be completed by July 31, 2021, and on an annual basis thereafter. All required annual training topics are listed on the [Staff Annual Training Record](#).

Community residential setting capacity

Section 245A.11, subdivision 2a, **Adult foster care and community residential setting license capacity.**

Paragraphs a – e (no changes)

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

- (1) the facility meets the physical environment requirements in the adult foster care licensing rule;
- (2) the five-bed living arrangement is specified for each resident in the resident's:
 - (i) individualized plan of care;
 - (ii) individual service plan under section 256.092, subdivision 1b, if required; or
 - (iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required;
- (3) the license holder obtains written and signed informed consent from each resident or resident's legal representative documenting the resident's informed choice to remain living in the home and that the resident's refusal to consent would not have resulted in service termination; and
- (4) the facility was licensed for adult foster care before March 1, ~~2014~~ 2016.

(g) The commissioner shall not issue a new adult foster care license under paragraph (f) after ~~June 30~~ December 31, 2019 2020. The commissioner shall allow a facility with an adult foster care license issued under paragraph (f) before ~~June 30~~ December 31, 2019 2020, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (f).

Overview

License holders may submit a request to their county licenser to increase the maximum capacity of a licensed corporate adult foster care (AFC) or community residential setting (CRS) from four to five beds. Capacity increases that are issued before December 31, 2020 will be allowed to continue to operate at the increased capacity.

What do providers need to do?

Corporate adult foster care or community residential setting license holders who want to increase their capacity should contact their county adult foster care or community residential setting licensor to discuss making this request. The request must meet all the requirements in section 245A.11, subdivision 2a, paragraph (f). The county licensor will provide the required forms to the license holder. The license holder must complete the forms, attach all documentation, and return the documents to the county licensor for review.

Additional information

Maltreatment of Minors Act

As of August 1, 2020, the location of the Maltreatment of Minors Act is changing from Minnesota Statutes, section 626.556 to Minnesota Statutes, chapter 260E. This does not change any reporting or training requirements for HCBS. DHS will update its website and forms to reflect this new statutory citation.

A person's rights

Section 245D.04, subdivision 3, clause (13) was amended to read that a person's protection-related rights include the right to "associate with other persons of the person's choice, in the community." License holders must ensure persons receiving services have the right to choose who, how, and where they associate with people of their choice.

Advanced practice registered nurse

An advanced practice registered nurse (APRN) was added as an alternative to a physician in the following sections. This change is effective August 1, 2020. See [Minnesota Session Laws - 2020, Regular Session, Chapter 115, Article 4, Section 79](#), for the full text of the law.

Advanced practice registered nurse was added to the following areas:

- 245D.02, subdivision 11 – modified definition of incident
- 245D.11, subdivision 2 – modified safe medication assistance and administration policy consultation
- 245D.22, subdivision 7 – modified posted telephone numbers in a CRS
- 245D.25, subdivision 2 – modified who may prescribe a special diet
- 245C.02, subdivision 18 – modified definition of serious maltreatment.

Sample policies and forms

The following [sample policies and forms](#) were updated to include the changes in these areas:

- 45 Day Meeting Summary
- HCBS Service Recipient Rights Packet
- Notice of Service Termination
- Progress Review Report for Intensive Support Services
- Quality Management Evaluation and Program Improvement
- Service Admission Checklist for Intensive Services
- Support Team Meeting Summary
- Staff Orientation Record
- Staff Annual Training Record