



Minnesota Department of **Human Services**

**Rule 40 Advisory Committee Meeting  
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December 10, 2012, 9:00-3:30  
Hiway Federal Credit Union conference room**

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Minnesota Department of **Human Services**

**Rule 40 Advisory Committee**  
**Hiway Federal Credit Union conference room**  
**840 Westminster Road, St. Paul, MN**  
**December 10, 2012**  
**Agenda**

- |  |                                    |
|--|------------------------------------|
| I. Opening (9:00-9:15)   | Gail Dekker                        |
| A. Refreshments  |                                    |
| B. Introductions   |                                    |
| C. Agenda review and handouts  |                                    |
| II. Update and next steps (9:15-9:30)  | Alex Bartolic                      |
| III. Survey results (Handout 8)  | Dr. James Leibert and Dean Ritzman |
| IV. Review Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40 (Handout 2) | Committee                          |
| V. BREAK (10:30-10:45)   |                                    |
| VI. Continue review of committee recommendations   | Committee                          |
| VII. LUNCH (12:00-12:45)   |                                    |
| VIII. Report from the appointed court monitor<br>Regarding memo and referenced emails (Handouts 3-5)             | David Ferleger                     |
| IX. Introduce 245D draft language (Handouts 6-7)   | Katherine Finlayson                |
| X. BREAK (2:00-2:15)   |                                    |
| A. Refreshments  |                                    |
| XI. Continue 245D draft language   | Committee                          |
| XII. Closing (no later than 3:20-3:30)   | Gail Dekker                        |
| A. Thank you, thank you, thank you!  |                                    |

November 25, 2012

TO: Shamus O'Meara  
Michael Tessneer

FROM: David Ferleger

SUBJECT: Rule 40 Process and Recommendation

DHS is to institute a modernization of the Rule 40 under Section X.C. of the Settlement Agreement. I thought it might be useful to offer a few comments.

*Michael, would you please provide this memo to all the members of the Rule 40 Committee, and confirm that you have done so? Also include the two emails referenced in the next paragraph.*

I write with regard to the exchange between the two of you: Mike's email for DHS of November 9, 2012 and Shamus' email of November 21. My comments are not intended to interfere with the exchange of views, questions or demands reflected in those emails.

The key to the Committee's work is the mandate in the Settlement Agreement; the Committee is:  
to study, review and advise the Department on how to modernize Rule 40 to reflect current best practices, including, but not limited to the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the "most integrated setting" and "person centered planning, and development of an 'Olmstead Plan'" consistent with the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

Note that the settlement emphasizes *Olmstead* consistency, placement planning, and use of positive supports. It appears that the settlement intends here (as it does elsewhere in the document) to require a movement away from restrictive procedures, such as restraints and seclusion. The settlement also appears to expect that the Rule 40 Committee will be cognizant of the *Olmstead* Plan issues and content. I would expect that the Committee's product(s) will reflect the settlement's mandate.

I do not intend here to offer an opinion on the email exchange regarding format and process (e.g., who is responsible for narrative, legislative drafting, and what feedback will take place). It does seem from the language of the settlement that the Committee's responsibility to "study, review and advise" extends at least to the

some level of involvement in reacting to draft legislation (if there is legislation) and/or regulations.

I do not know from Mike's email precisely the Committee's timeline or intended product. I do see in DHS's 2d Status Report of last week that a) the Rule 40 sub-committees have issued recommendations, b) DHS is drafting summary documents for Committee review, and c) DHS "will be drafting legislation to modify state statute 245D (licensing Act for HCBS Waiver) that will incorporate Committee recommendations."

Perhaps my understanding (or the status report) is incomplete. The Status Report's statements do not allude to the full mandate of the settlement agreement, noted above, nor do they refer to a product including "modernization" of Rule 40, Minnesota Rules, parts 9525.2700 to 9525.2810. I will expect to be informed of the precise modernization of Rule 40 to be adopted, as well as of any associated actions to be accomplished in the process. Also, the Status Report does not establish any dates for completion of any of the tasks listed under "Next Steps."

I hope these comments are helpful. I will put Rule 40 on our January, 2013 parties' meeting agenda.

Cc: Amy Akbay  
Steven Alpert  
Scott Ikeda  
Annie Santos  
Colleen Wieck  
Kay Hendrikson

**Mike's email for DHS sent to Shamus November 9, 2012:**

Shamus, Annie,

Thank you for your comments regarding the Rule 40 advisory committee recommendation. I would like to address each of your points that you raised in your email dated October 30, 2012.

The Department is intending to provide a narrative overview of the advisory committee's recommendations. The narrative format will include:

- The advisory committee's recommendation;
- Explicit notations showing its consistency with the Jensen settlement agreement; and
- Notations of gaps, if any, in the recommendation.

The narrative summary of recommendations will be used with the advisory committee to confirm the department's understanding of the committee's recommendation is accurate and complete. We will strongly consider your suggested language.

The department will continue to draft statute and rule language that reflects the advisory committee's recommendation and the Jensen settlement agreement. This is consistent with the Department's legislative and rule making process. The statute language will be at a higher level than the draft presented at the October advisory committee meeting. The draft of statute language will be presented to the advisory committee to confirm the department has accurately understood its recommendation. Presenting the advisory committee's recommendation in a statutory language format is consistent with the effort being made by the Department in a number of Advisory Committee processes to:

- assist committee members in understanding how their recommendation translates into statutory language, and
- help the department by allowing it to consider meaningful feedback from the advisory committee members in preparation for the legislative session

At the October advisory committee meeting, other committee members expressed their wish for change to the ordering of sections much like you described in your email. We agree that it is important to focus on what we want to happen, and that we do not need as much detail in the statute, given the plan to have a rule and policy manual. As part of the committee process, we have heard the feedback of the membership, and, as communicated at the advisory committee meeting, will implement those requested changes along with many other requests made at the meeting.

The advisory Committee has recommended and the Department intends to proceed with the development of a manual that will supplement the new standards.

The detailed implementation plan has not been translated into an operational piece so we do not know at this time what, if any, licensing options will be utilized. As you know, the advisory committee has made a recommendation on implementation based on the work of the implementation work group. The committee's recommendation includes, among other things, a phased implementation such as provider-by-provider or some other delayed approach. The advisory committee recognizes the tremendous amount of work and training necessary for a successful change.

The department will continue its process of gathering input from the advisory committee, presenting proposals, and getting feedback from the committee as details form. Of course, you, along with the other committee members, will have the opportunity to review, comment and make final recommendations.

It will be helpful to know if this information is sufficient or if you have additional concerns or questions by 11-16-12.

Thank You

Mike Tessneer

**Shamus' email sent to DHS November 21, 2012:**

Mike:

Thank you for this response. While it is helpful, it mainly addresses possible steps DHS may undertake once it receives the Rule 40 Committee's recommendations. It does not respond to our several concerns articulated in prior e-mails related to the Rule 40 Committee's work and recommendations, and whether DHS will implement our recommendations. We have asked on several occasions that DHS review our past emails on Rule 40 and whether they will be supported in the Rule 40 Committee process. We again reiterate all of our requests and positions.

We do not believe the Rule 40 Committee should be drafting the legislation. Instead, it should be providing DHS with narrative recommendations consistent with its charge under the Settlement Agreement, which provides that the Committee shall "study, review and advise the DHS on how to modernize Rule 40 to reflect current best practices..." Settlement Agreement Section X.C. We are concerned that DHS is engaged in drafting legislation, and doing so without the Committee having finalized and submitted its final recommendations to DHS. DHS and the State of Minnesota, as parties to the Settlement Agreement, should be directing the DHS employees leading the Rule 40 Committee to act consistent with the Settlement Agreement, including directing that the Rule 40 Committee's recommendations be in narrative format and leaving any legislation drafting with the qualified individuals within the revisor's office. Please advise if DHS will issue such a directive and if not please provide the reason for the DHS position.

You also refer to a policy manual. We believe any policy manual should focus on Positive Behavioral Supports and not on restrictive procedures. Please advise of the specific issues to be included in the Policy Manual, and please provide a copy of the manual.

In addition, the licensing statute, Minnesota Statutes 245A, should include a prohibition on restraints that will apply to all providers, regardless of where or to whom services are provided. Please advise of the DHS position in this regard.

The Rule 40 Committee recommendations should also include a focus on the operational aspects of a revised Rule 40 consistent with best practices to include appropriate licensing to accomplish the items addressed.

Please provide a timeline for the remainder of the Rule 40 Committee's work including a date when its recommendations will be finalized to submit to DHS. This was also previously requested.

The Settlement Class expressly preserves, and does not waive, all rights and positions.

Thank you.

**Shamus P. O'Meara**  
**[spo@johnson-condon.com](mailto:spo@johnson-condon.com)**  
**direct:** 952.806.0438

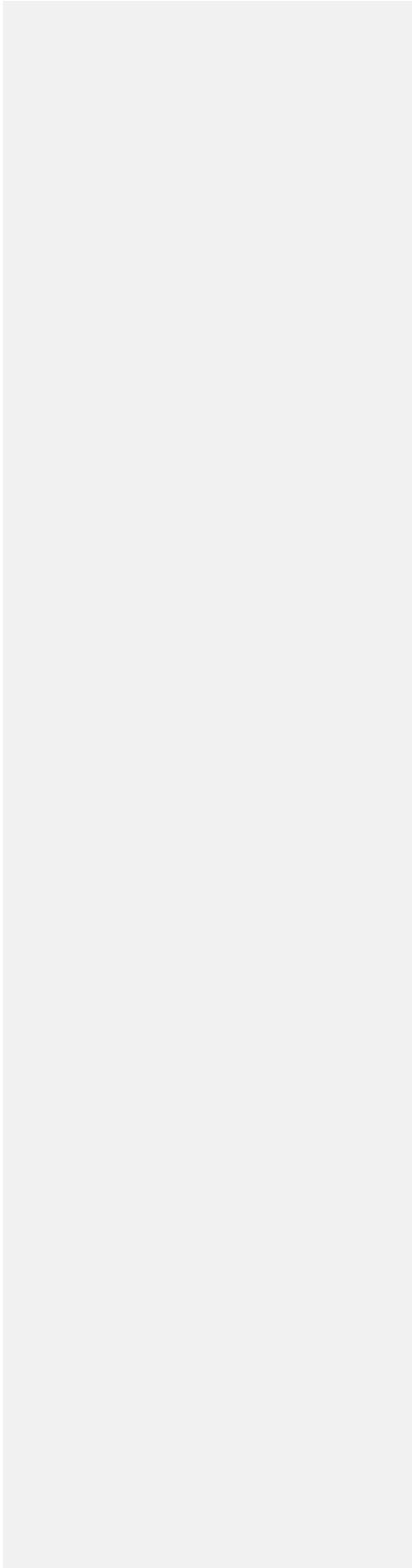


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Shamus P. O'Meara



**245. 825 ~~AVERSIVE AND DEPRIVATION PROCEDURES~~ POSITIVE SUPPORT STRATEGIES AND EMERGENCY USE OF MANUAL RESTRAINT; ~~LICENSED FACILITIES AND SERVICES.~~**

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**Subdivision 1. ~~Rules governing positive support strategies and emergency use of manual restraint~~ ~~aversive and deprivation procedures.~~**

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The commissioner of human services shall ~~by October, 1983,~~ within 24 months of implementation of Minnesota Statutes, chapter 245D, promulgate rules governing the use of positive support strategies and emergency use of manual restraint ~~aversive and deprivation procedures in all licensed facilities and licensed services programs licensed under chapter 245D serving persons with developmental disabilities, as defined in section 252.27, subdivision 1a.~~ No provision of these rules shall encourage or require the use of aversive and deprivation procedures. The rules shall prohibit: ~~(1) the application of certain aversive and deprivation procedures in facilities except for the emergency use of manual restraint, except as authorized and monitored by the commissioner;~~ ~~(2) the use of aversive and deprivation procedures that restrict the consumers' normal access to nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, and necessary clothing;~~ and ~~(3) the use of faradic shock without a court order. The rule shall further specify that consumers may not be denied ordinary access to legal counsel and next of kin. In addition, the rule may specify other prohibited practices and the specific conditions under which permitted practices are to be carried out. For any persons receiving faradic shock, a plan to reduce and eliminate the use of faradic shock shall be in effect upon implementation of the procedure.~~

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**Subd. 1a.**

~~[Repealed, 1999 c 86 art 2 s 6]~~

**Subd. 1b. ~~Review and approval.~~**

~~Notwithstanding the provisions of Minnesota Rules, parts 9525.2700 to 9525.2810, the commissioner may designate the county case manager to authorize the use of controlled procedures as defined in Minnesota Rules, parts 9525.2710, subpart 9, and 9525.2740, subparts 1 and 2, after review and approval by the interdisciplinary team and the internal review committee as required in Minnesota Rules, part 9525.2750, subparts 1a and 2. Use of controlled procedures must be reported to the commissioner in accordance with the requirements of Minnesota Rules, part 9525.2750, subpart 2a.~~

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**Chapter 245D Home and Community-Based Services Standards – DRAFT PROPOSAL  
Dec 10 2012 Rule 40 Advisory Committee Review**

- 245D.01 CITATION.
- 245D.02 DEFINITIONS.
- 245D.03 APPLICABILITY AND EFFECT.
- 245D.031 LICENSURE REQUIREMENTS.
- 245D.04 SERVICE RECIPIENT RIGHTS.
- 245D.05 HEALTH SERVICES.
- 245D.051 HEALTH SERVICES; PSYCHOTROPIC MEDICATION MONITORING.
- 245D.06 PROTECTION STANDARDS.
- 245D.061 PROTECTION STANDARDS; EMERGENCY USE OF MANUAL RESTRAINTS.
- 245D.07 SERVICE PLANNING AND DELIVERY.
- 245D.071 SERVICE PLANNING AND DELIVERY; COMPREHENSIVE SUPPORT SERVICES.
- 245D.08 PROGRAM COORDINATION AND OVERSIGHT.
- 245D.09 STAFFING STANDARDS.
- 245D.091 STAFFING STANDARDS; INTERVENTION SERVICES.
- 245D.10 RECORD REQUIREMENTS.
- 245D.11 POLICIES AND PROCEDURES.
- 245D.111 POLICIES AND PROCEDURES; COMPREHENSIVE SUPPORT SERVICES.

**FACILITY STANDARDS**

- 245D.20 FACILITY LICENSURE REQUIREMENTS AND APPLICATION PROCESS.
- 245D.21 FACILITY SANITATION AND HEALTH.

**COMMUNITY RESIDENTIAL SETTINGS**

- 245D.30 COMMUNITY RESIDENTIAL SETTINGS;  
SATELLITE LICENSURE REQUIREMENTS AND APPLICATION PROCESS.
- 245D.31 COMMUNITY RESIDENTIAL SETTINGS; PHYSICAL PLANT AND ENVIRONMENT.
- 245D.32 COMMUNITY RESIDENTIAL SETTINGS; FOOD AND WATER.
- 245D.33 COMMUNITY RESIDENTIAL SETTINGS; SANITATION AND HEALTH.

**DAY SERVICES FACILITIES**

- 245D.40 DAY SERVICES FACILITIES; SATELLITE LICENSURE REQUIREMENTS AND APPLICATION PROCESS.
- 245D.41 DAY SERVICES FACILITIES; PHYSICAL PLANT AND SPACE REQUIREMENTS.
- 245D.42 DAY SERVICES FACILITIES; HEALTH AND SAFETY REQUIREMENTS.
- 245D.43 DAY SERVICES FACILITIES; STAFF RATIO AND FACILITY COVERAGE.

**ALTERNATIVE LICENSING INSPECTIONS**

- 245D.50 ALTERNATIVE LICENSING INSPECTIONS.

**CERTIFICATION STANDARDS**

- 245D.60 ADULT MENTAL HEALTH CERTIFICATION.

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**245D.01 CITATION.**

This chapter may be cited as the "Home and Community-Based Services Standards" or "HCBS Standards."

**245D.02 DEFINITIONS.**

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

Subd. 2. **Annual and annually.** "Annual" and "annually" have the meaning given in section 245A.02, subdivision 2b.

Subd. 3. **Case manager.** "Case manager" means the individual designated to provide waiver case management services, care coordination, or long-term care consultation, as specified in sections 256B.0913, 256B.0915, 256B.092, and 256B.49, or successor provisions.

Subd. 4. **Certification.** "Certification" means the commissioner's written authorization for a license holder to provide specialized services based on certification standards in section 245D.60. The term "certification" and its derivatives have the same meaning and may be substituted for the term "licensure" and its derivatives in this chapter and chapter 245A.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subd. 6. **Community residential setting.** "Community residential setting" means a residential program as identified in section 245A.11, where the license holder is the owner, lessor, or tenant of the facility licensed according to this chapter and the license holder does not reside in the facility and is not the primary caregiver.

Subd. 7. **Coordinated service and support plan.** "Coordinated service and support plan" has the meaning given in section 256B.0913, subdivision 8; section 256B.0915, subdivision 6; section 256B.092, subdivision 1b; and section 256B.49, subdivision 15; or successor provisions.

Subd. 8. **Coordinated service and support plan addendum or CSSP addendum.** "Coordinated service and support plan addendum" or "CSSP addendum" means the documentation that this chapter requires of the license holder for each person receiving services.

Subd. 9. **Corporate foster care.** "Corporate foster care" means a child foster care home licensed according to Minnesota Rules, parts 2960.0010 to 2960.3340, or an adult foster care home licensed according to Minnesota Rules, parts 9555.5105 to 9555.6265, where the license holder does not live in the home and is not the primary caregiver.

Subd. 10. **Cultural competence or culturally competent.** "Cultural competence" or "culturally competent" means the ability and the will to respond to the unique needs of a person that arise from the person's culture and the ability to use the person's culture as a resource or tool to assist with the intervention and help meet the person's needs.

**Comment [FK1]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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Subd. 11. Day services facility. "Day services facility" means a facility licensed according to this chapter at which persons receive day services from the license holder's direct support staff for a cumulative total of more than 30 days within any 12-month period and the license holder is the owner, lessor, or tenant of the facility.

Subd. 12. **Department.** "Department" means the Department of Human Services.

Subd. 13. **Direct contact.** "Direct contact" has the meaning given in section 245C.02, subdivision 11, and is used interchangeably with the term "direct support service."

Subd. 14. Direct support staff or staff. "Direct support staff" or "staff" means employees, of the license holder who have direct contact with persons served by the program and includes temporary staff or subcontractors regardless of employer, providing program services for hire under the control of the license holder who have direct contact with persons served by the program.

Subd. 15. **Drug.** "Drug" has the meaning given in section 151.01, subdivision 5.

Subd. 16. **Emergency.** "Emergency" means any event that affects the ordinary daily operation of the program including, but not limited to, fires, severe weather, natural disasters, power failures, or other events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site for more than 24 hours.

Subd. 17. Emergency use of manual restraint. "Emergency use of manual restraint" means using a manual restraint when a person's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Property damage, verbal aggression, or a person's refusal to receive or participate in treatment or programming, on their own do not constitute an emergency.

**Comment [FK2]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

Subd. 18. Family foster care. "Family foster care" means a child foster care home licensed according to Minnesota Rules, parts 2960.0010 to 2960.3340, or an adult foster care home licensed according to Minnesota Rules, parts 9555.5105 to 9555.6265, where the license holder lives in the home and is the primary caregiver.

Subd. 19. **Health services.** "Health services" means any service or treatment consistent with the physical and mental health needs of the person, such as medication administration and monitoring, medical, dental, nutritional, health monitoring, wellness education, and exercise.

Subd. 20. **Home and community-based services.** "Home and community-based services" means the services subject to the provisions of this chapter identified in section 245D.03, subdivision 1, and as defined in:

(1) the federal waiver plans governed by United States Code, title 42, sections 1396 et seq., ~~or the state's alternative care program according to section 256B.0913,~~ including the brain injury (BI) waiver plan, the community alternative care (CAC) waiver plan, the community alternatives for disabled individuals (CADI) waiver plan, the developmental disability (DD) waiver plan, the elderly waiver (EW) plan, or successor plans respective to each waiver; or

(2) the alternative care (AC) program under in section 256B.0913.

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Subd. 21. Incident. "Incident" means an occurrence ~~which involves a person and that affects~~ requires the program to make a response that is not a part of the program's the ordinary provision of services to a that person, and includes:

**Comment [FK3]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

(1) serious injury of a person as determined by section 245.91, subdivision 6;

(2) a person's death;

(3) any medical emergency, unexpected serious illness, or significant unexpected change in an illness or medical condition, ~~or the mental health status of a person, that requires calling the program to call 911 or a mental health crisis intervention team,~~ physician treatment, or hospitalization;

(4) any mental health crisis that requires the program to call 911 or a mental health crisis intervention team;

(5) an act or situation involving a person that requires the program to call 911, law enforcement, or the fire department;

(6) a person's unauthorized or unexplained absence from a program;

(7) ~~physical or verbal aggression conduct~~ by a person receiving services against another person receiving services ~~that causes physical pain, injury, or persistent emotional distress, including, but not limited to hitting, slapping, kicking, scratching, pinching, biting, pushing, and spitting that:~~

(i) is so severe, pervasive, or objectively offensive that it substantially interferes with a person's opportunities to participate in or receive service or support;

(ii) places the person in actual and reasonable fear of harm;

(iii) places the person in actual and reasonable fear of damage to property of the person; or

(iv) substantially disrupts the orderly operation of the program.

(8) any sexual activity between persons receiving services involving force or coercion as defined under section 609.341, subdivisions 3 and 14; ~~or~~

(9) any emergency use of manual restraint as identified in section 245D.061; or

(10) a report of alleged or suspected child or vulnerable adult maltreatment under section 626.556 or 626.557.

**Comment [FK4]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

Subd. 22. Intermediate care facility for persons with developmental disabilities or ICF/DD. "Intermediate care facility for persons with developmental disabilities" or "ICF/DD" means a residential program licensed to serve four or more persons with developmental disabilities under section 252.28 and chapter 245A and licensed as a supervised living facility under chapter 144, which together are certified by the Department of Health as an intermediate care facility for persons with developmental disabilities.

Subd. 23. Least restrictive alternative. "Least restrictive alternative" means the alternative method for providing supports and services that is the least intrusive and most normalized given the level of supervision and

**Comment [FK5]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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protection required for the person. This level of supervision and protection allows risk taking to the extent that there is no reasonable likelihood that serious harm will happen to the person or others.

Subd. 24. Legal representative. "Legal representative" means the parent of a person who is under 18 years of age, a court-appointed guardian, or other representative with legal authority to make decisions about services for a person. A person who is a competent adult may authorize another competent adult to represent their rights as allowed in section 245D.04, subdivision 3, paragraph (a), clause (11), when the person provides written informed consent for a release of information.

Subd. 25. License. "License" has the meaning given in section 245A.02, subdivision 8.

Subd. 26. Licensed health professional. "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 27. License holder. "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 28. Medication. "Medication" means a prescription drug or over-the-counter drug. ~~For purposes of this chapter, "medication" includes dietary supplements.~~

~~Subd. 17. Medication administration.~~ "Medication administration" means performing the following set of tasks to ensure a person takes both prescription and over the counter medications and treatments according to orders issued by appropriately licensed professionals, and includes the following:

- (1) checking the person's medication record;
- (2) preparing the medication for administration;
- (3) administering the medication to the person;
- (4) documenting the administration of the medication or the reason for not administering the medication;

and

(5) reporting to the prescriber or a nurse any concerns about the medication, including side effects, adverse reactions, effectiveness, or the person's refusal to take the medication or the person's self-administration of the medication.

~~Subd. 18. Medication assistance.~~ "Medication assistance" means providing verbal or visual reminders to take regularly scheduled medication, which includes either of the following:

(1) bringing to the person and opening a container of previously set up medications and emptying the container into the person's hand or opening and giving the medications in the original container to the person, or bringing to the person liquids or food to accompany the medication; or

(2) providing verbal or visual reminders to perform regularly scheduled treatments and exercises.

~~Subd. 19. Medication management.~~ "Medication management" means the provision of any of the following:

(1) medication related services to a person;

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~~(2) medication setup;~~

~~(3) medication administration;~~

~~(4) medication storage and security;~~

~~(5) medication documentation and charting;~~

~~(6) verification and monitoring of effectiveness of systems to ensure safe medication handling and administration;~~

~~(7) coordination of medication refills;~~

~~(8) handling changes to prescriptions and implementation of those changes;~~

~~(9) communicating with the pharmacy; or~~

~~(10) coordination and communication with prescriber.~~

For the purposes of this chapter, medication management does not mean "medication therapy management services" as identified in section 256B.0625, subdivision 13h.

**Subd. 29. Mental health crisis intervention team.** "Mental health crisis intervention team" means a mental health crisis response providers as identified in section 256B.0624, subdivision 2, paragraph (d), for adults, and in section 256B.0944, subdivision 1, paragraph (d), for children.

**Comment [FK6]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 30. Over-the-counter drug.** "Over-the-counter drug" means a drug that is not required by federal law to bear the statement "Caution: Federal law prohibits dispensing without prescription."

**Subd. 31. Outcome.** "Outcome" means the behavior, action, or status attained by the person that can be observed, measured, and can be determined reliable and valid.

**Comment [FK7]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 32. Person.** "Person" has the meaning given in section 245A.02, subdivision 1.

**Subd. 33. Person with a disability.** "Person with a disability" means a person determined to have a disability by the commissioner's state medical review team as identified in section 256B.055, subdivision 7, the Social Security Administration, or 333.11the person is determined to have a developmental disability as defined in Minnesota Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section 252.27, subdivision 1a.

**Subd. 34. Physician.** "Physician" means a person who is licensed under chapter 147.

**Subd. 35. Prescriber.** "Prescriber" means a licensed practitioner as defined in section 151.01, subdivision 23, person who is authorized under sections 148.235; 151.01, subdivision 23; and 151.37 to prescribe drugs. For the purposes of this chapter, the term "prescriber" is used interchangeably with "physician."

**Subd. 36. Prescription drug.** "Prescription drug" has the meaning given in section 151.01, subdivision 16.

**Subd. 37. Program.** "Program" means a nonresidential or residential program as defined in section 245A.02, subdivisions 10 and 14.

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**Subd. 38. Psychotropic medication.** "Psychotropic medication" means any medication prescribed to treat the symptoms of mental illness that affect thought processes, mood, sleep, or behavior. The major classes of psychotropic medication are antipsychotic (neuroleptic), antidepressant, antianxiety, mood stabilizers, anticonvulsants, and stimulants and nonstimulants for the treatment of attention deficit/hyperactivity disorder. 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.

**Comment [FK8]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 39. Restraint.** "Restraint" means physical or mechanical limiting of the free and normal movement of body or limbs.

**Comment [FK9]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 40. Seclusion.** "Seclusion" means ~~separating a person from others in a way that prevents social contact and prevents the person from leaving the situation if he or she chooses~~ the placement of a person alone in a room from which exit is prohibited by a staff person or a mechanism such as a lock, or a device or an object positioned to hold the door closed or otherwise prevent the person from leaving the room.

**Comment [FK10]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 41. Self-determination.** "Self-determination" means the person ~~or the person's legal representative,~~ makes his or her own decisions, plans his or her own future, determines how money is spent for his or her supports and takes responsibility for the decision he or she makes. If a person has a legal representative, the legal representative's decision making authority is limited to the scope of authority granted by the court or allowed in the document authorizing the legal representative to act.

**Comment [FK11]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Subd. 42. Service.** "Service" means care, training, supervision, counseling, consultation, or medication assistance assigned to the license holder in the coordinated service and support plan.

**Subd. 36. Service plan.** "Service plan" means ~~the individual service plan or individual care plan identified in sections 256B.0913, 256B.0915, 256B.092, subdivision 1e, and 256B.49, or successor provisions, and includes any support plans or service needs identified as a result of long-term care consultation, or a support team meeting that includes the participation of the person, the person's legal representative, and case manager, or assigned to a license holder through an authorized service agreement.~~

**Subd. 43. Service site.** "Service site" means the location where the service is provided to the person, including but not limited to, a facility licensed according to chapter 245A; a location where the license holder is the owner, lessor, or tenant; a person's own home; or a community-based location.

**Subd. 33. Staff.** "Staff" means ~~an employee who will have direct contact with a person served by the facility, agency, or program.~~

**Subd. 44. Supervised living facility.** "Supervised living facility" has the meaning given in Minnesota Rules, part 4665.0100, subpart 10.

**Subd. 45. Supervision.** "Supervision" means:

(1) oversight by a direct support staff as specified in the person's coordinated service and support plan and awareness of the person's needs and activities;

**Comment [FK12]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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(2) responding to situations that present a serious risk to the health, safety, or rights of the person while services are being provided; and

(3) the presence of a direct support staff at a service site while services are being provided, unless a determination has been made and documented in the person’s coordinated service and support plan that the person does not require the presence of a direct support staff while services are being provided.

For the purposes of this definition, “while services are being provided,” means any period of time during which the license holder will seek reimbursement for services.

Subd. 46. **Support team.** "Support team" means the service planning team identified in section 256B.49, subdivision 15, or the interdisciplinary team identified in Minnesota Rules, part 9525.0004, subpart 14.

Subd. 47. **Time out.** “Time out” means removing a person involuntarily from an ongoing activity to a room, either locked or unlocked, or otherwise separating a person from others in a way that prevents social contact and prevents the person from leaving the situation if he or she chooses.

**Comment [FK13]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

Subd. 35. **Unit of government.** "Unit of government" means every city, county, town, school district, other political subdivisions of the state, and any agency of the state or the United States, and includes any instrumentality of a unit of government.

Subd. 48. **Treatment.** “Treatment” means the provision of care, other than medications, ordered or prescribed by a licensed health professional provided to a person to cure, rehabilitate, or ease symptoms.

**Comment [FK14]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

Subd. 49. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides direct support services without pay to a person served by the license holder.

**245D.03 APPLICABILITY AND EFFECT.**

Subdivision 1. **Applicability.** (a) The commissioner must regulate the provision of home and community-based services to persons with disabilities and persons age 65 and older pursuant to this chapter. Programs or services identified in section 245A.03, subdivision 2, are excluded from licensure. The licensing standards in this chapter govern the provision of ~~the following~~ basic support services and comprehensive support services.

(1) Basic support services provide the level of assistance, supervision, and care that is necessary to ensure the health and safety of the person and do not include services that are specifically directed toward the training, habilitation, or rehabilitation of the person.

(2) Intensive support services provide assistance, supervision, and care that is necessary to ensure the health and safety of the person and services specifically directed toward the training, habilitation, or rehabilitation of the person.

~~(1) housing access coordination as defined under the current BI, CAD, and DD waiver plans or successor plans;~~

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(2) ~~respite services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans when the provider is an individual who is not an employee of a residential or nonresidential program licensed by the Department of Human Services or the Department of Health that is otherwise providing the respite service;~~

~~(3) behavioral programming as defined under the current BI and CADI waiver plans or successor plans;~~

~~(4) specialist services as defined under the current DD waiver plan or successor plans;~~

~~(5) companion services as defined under the current BI, CADI, and EW waiver plans or successor plans, excluding companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;~~

~~(6) personal support as defined under the current DD waiver plan or successor plans;~~

~~(7) 24-hour emergency assistance, on-call and personal emergency response as defined under the current CADI and DD waiver plans or successor plans;~~

~~(8) night supervision services as defined under the current BI waiver plan or successor plans;~~

~~(9) homemaker services as defined under the current CADI, BI, CAC, DD, and EW waiver plans or successor plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only;~~

~~(10) independent living skills training as defined under the current BI and CADI waiver plans or successor plans;~~

~~(11) prevocational services as defined under the current BI and CADI waiver plans or successor plans;~~

~~(12) structured day services as defined under the current BI waiver plan or successor plans; or~~

~~(13) supported employment as defined under the current BI and CADI waiver plans or successor plans.~~

(b) Basic support services include:

(1) in-home and out-of-home respite care services as defined in section 245A.02, subdivision 15, and under the BI, CAC, CADI, DD, and EW waiver plans;

(2) companion services as defined under the BI, CADI, and EW waiver plans, excluding companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;

(3) personal support as defined under the DD waiver plan;

(4) 24-hour emergency assistance, personal emergency response as defined under the CADI and DD waiver plans;

(5) night supervision services as defined under the BI waiver plan;

(6) homemaker services as defined under the CADI, BI, CAC, DD, and EW waiver plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only;

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(c) Intensive support services include:

(1) Intervention services, including:

(i) behavioral support services as defined under the BI and CADI waiver plans;

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

(iii) specialist services as defined under the current DD waiver plan; and

(2) In-home support services, including:

(i) in-home family support and supported living services as defined under the DD waiver plan;

(ii) independent living services training as defined under the BI and CADI waiver plans; and

(iii) semi-independent living services as defined under section 252.275;

(3) Residential supports and services, including:

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

(ii) foster care services as defined in the BI, CAC, and CADI waiver plans provided in a family or corporate child foster care residence, a family adult foster care residence, or a community residential setting;

(iii) residential services provided in a supervised living facility that is certified by the Department of Health as an ICF/DD;

(4) Day services, including:

(i) structured day services as defined under the BI waiver plan;

(ii) day training and habilitation services under section 252.40 to 252.46, and as defined under the DD waiver plan; and

(iii) prevocational services as defined under the BI and CADI waiver plans.

(5) Supported employment as defined under the BI, DD, and CADI waiver plans.

Subd. 2. **Relationship to other standards governing home and community-based services.** (a) A license holder governed by this chapter is also subject to the licensure requirements under chapter 245A.

(b) A license holder concurrently providing child foster care services licensed according to Minnesota Rules, chapter 2960, to the same person receiving a service licensed under this chapter is exempt from section 245D.04, as it applies to the person. A corporate or family child foster care site controlled by a license holder and providing services governed by this chapter is exempt from compliance with section 245D.04, and Minnesota Rules, part 2960.0710. These exemptions apply to foster care homes where at least one resident is receiving services licensed

**Comment [FK15]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

**Comment [FK16]:** EXEMPTION OF COMPLIANCE WITH 245D SERVICE RECIPIENTS RIGHTS; INSTEAD 2960.0050 RESIDENT RIGHTS AND BASIC SERVICES APPLY

**Comment [FK17]:** EXEMPTION FROM COMPLIANCE WITH THE RESTRICTIVE PROCEDURES CERTIFICATION REQUIREMENTS; INSTEAD THE 245D STANDARDS APPLY

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according to this chapter. This chapter does not apply to corporate or family child foster care homes that do not provide services licensed under this chapter.

(c) A family adult foster care site controlled by a license holder and providing services governed by this chapter is exempt from compliance with Minnesota Rules, parts 9555.6185; 9555.6225, subpart 8; 9555.6235, item C; 9555.6245; 9555.6255, subpart 2, items A to D; 9555.6265. These exemptions apply to family adult foster care homes where at least one resident is receiving residential services licensed according to this chapter. This chapter does not apply to family adult foster care homes that do not provide services licensed under this chapter.

**Comment [FK18]:** INSTEAD, THE 245D STANDARDS APPLY

(d) A license holder providing services licensed according to this chapter in a supervised living facility is exempt from compliance with sections 245D.04; 245D.05, subdivision 3; and 245D.06, subdivision 2, clauses (1), (4), and (5).

**Comment [FK19]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE; INSTEAD SLF LICENSE REQUIREMENTS APPLY

(e) A license holder providing residential services to persons in an ICF/DD is exempt from compliance with sections 245D.04; 245D.05, subdivision 2; 245D.06, subdivision 2, clauses (4), and (5); section 245D.071, subdivisions 4 and 5; 245D.08, subdivision 2; section 245D.09, subdivision 8; section 245D.11, subdivision 2; and section 245D.111, subdivision 3.

**Comment [FK20]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE; INSTEAD ICF/DD STANDARDS APPLY

(f) A license holder ~~concurrently providing home care homemaker~~ services licensed according to this chapter and registered according to ~~sections 144A.43 to 144A.49 chapter 144A~~ to the same person receiving home management services licensed under this chapter is exempt from compliance with section 245D.04, as it applies to the person.

(e) Notwithstanding section 245D.06, subdivision 5, a license holder providing structured day, prevocational, or supported employment services under this chapter and day training and habilitation or supported employment services licensed under chapter 245B within the same program is exempt from compliance with this chapter, when the license holder notifies the commissioner in writing that the requirements under chapter 245B will be met for all persons receiving these services from the program. For the purposes of this paragraph, if the license holder has obtained approval from the commissioner for an alternative inspection status according to section 245B.031, that approval will apply to all persons receiving services in the program.

(g) Nothing in this chapter prohibits license holders from concurrently serving persons with or without disabilities or people who or are not age 65 and older, provided this chapter's standards are met as well as other relevant standards.

(h) The documentation required under sections 245D.07 and 245D.071 meet the individual program plan requirements identified in section 256B.092 or successor provisions.

Subd. 3. **Variance.** (a) If the conditions in section 245A.04, subdivision 9, are met, the commissioner may grant a variance to any of the requirements in this chapter, except sections 245D.04, ~~and 245D.10, subdivision 4,~~ ~~paragraph (b)~~ 245D.06, subdivision 4, and 245D.061, subdivision 3, or provisions governing data practices and information rights of persons.

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(b) A variance for the use of alternate overnight supervision granted according to section 245A.11, subdivision 7, will remain subject to the terms and conditions and the effective period, for a community residential setting licensed according to this chapter that had been licensed as a corporate adult foster care home according to rule parts 9555.5105 to 9555.6265, at the time the variance was granted.

(c) All other variances granted according section 245A.04, subdivision 9, for programs previously licensed according to chapter 245B or rule parts 9555. 5105 to 9555.6265, expire upon implementation of this chapter unless the license holder requests the variance to be continued. A license holder may request continuation between August 1, 2013 and November 30, 2013. A license holder may request a new variance according to paragraph (a).

~~Subd. 4. License holders with multiple 245D licenses. (a) When a person changes service from one license to a different license held by the same license holder, the license holder is exempt from the requirements in section 245D.10, subdivision 4, paragraph (b).~~

~~(b) When a staff person begins providing direct service under one or more licenses held by the same license holder, other than the license for which staff orientation was initially provided according to section 245D.09, subdivision 4, the license holder is exempt from those staff orientation requirements; except the staff person must review each person's service plan and medication administration procedures in accordance with section 245D.09, subdivision 4, paragraph (c), if not previously reviewed by the staff person.~~

**245D.031 LICENSURE REQUIREMENTS.**

Subdivision 1. Registering the license. Within 30 days of licensure the license holder must register their license online using the MinnesotaHelp provider portal. The registration ensures that information about the license holder's agency and services will be available to persons seeking services and county agencies where services are provided. The license holder must ensure that current information is maintained. If the information required in subdivision 2 changes the license holder must update the information within 30 days of the change.

Subd. 2. Information required for registration. The license holder must, at a minimum, provide the following information:

- (1) a description of the target population to be served with consideration of at least the following characteristics of the persons: cultural background, gender, age, disability or medical condition, and legal status;
- (2) the primary support and service needs of persons to be served, that the license holder will meet in the licensed program or service;
- (3) the license holder's expertise and qualifications to provide the services noted in the program description;
- (4) a description of the specific extent and limitations of the program, including the county or counties where services will be provided;
- (5) a description of how the license holder will involve the person's cultural or ethnic community to ensure culturally appropriate care; and

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(6) a description of those services provided directly by the license holder or the license holders direct support staff and those services to be provided by subcontractors, including but not limited to transportation services.

Subd. 3. Program certification. An applicant or a license holder may apply for program certification as identified in section 245D.60.

**245D.04 SERVICE RECIPIENT RIGHTS.**

Subdivision 1. **License holder responsibility for individual rights of persons served by the program.** The license holder must:

- (1) provide each person or each person's legal representative with a written notice that identifies the service recipient rights in subdivisions 2 and 3, and an explanation of those rights within five working days of service initiation and annually thereafter;
- (2) make reasonable accommodations to provide this information in other formats or languages as needed to facilitate understanding of the rights by the person and the person's legal representative, if any;
- (3) maintain documentation of the person's or the person's legal representative's receipt of a copy and an explanation of the rights; and
- (4) ensure the exercise and protection of the person's rights in the services provided by the license holder and as authorized in the coordinated service and support plan.

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

- (1) participate in the development and evaluation of the services provided to the person;
- (2) have services and supports identified in the coordinated service and support plan and the CSSP addendum provided in a manner that respects and takes into consideration the person's preferences according to the requirements in sections 245D.07 245D.071;
- (3) refuse or terminate services and be informed of the consequences of refusing or terminating services;
- (4) know, in advance, limits to the services available from the license holder, including the license holder's knowledge, skill, and ability to meet the person's service and support needs based on the information required in section 245D.031, subdivision 2;
- (5) know conditions and terms governing the provision of services, including the license holder's admission criteria and policies and procedures related to temporary service suspension and service termination;
- (6) a coordinated transfer to ensure continuity of care when there will be a change in the provider;
- (7) know what the charges are for services, regardless of who will be paying for the services, and be notified of changes in those charges;
- (8) know, in advance, whether services are covered by insurance, government funding, or other sources, and be told of any charges the person or other private party may have to pay; ~~and~~

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(9) receive services from an individual who is competent and trained, who has professional certification or licensure, as required, and who meets additional qualifications identified in the person's coordinated service and support plan or CSSP addendum; and

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(10) to request that specific direct support staff do or do not provide services and supports to the person. If requested, the license holder must develop a plan with input from the person or the person's legal representative, to provide alternative staff within 10 working days of the request, or to document reason for not making the change within the required time and how the request will otherwise be addressed.

**Comment [FK24]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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

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

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

(3) be free from maltreatment;

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(4) be free from restraint, time out, or seclusion, except for emergency use of manual restraint to protect the person from imminent danger to self or others according to the requirements in section 245D.06;

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

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

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

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

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

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

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

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

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

(14) personal privacy; and

(15) engage in chosen activities.

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(b) For a person residing in a residential site licensed according to chapter 245A, or where the license holder is the owner, lessor, or tenant of the residential service site, protection-related rights also include the right to:

(1) 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 person;

(2) receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication;

(3) have use of and free access to common areas in the residence; and

(4) privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor, or others, in accordance with section 363A.09 of the Human Rights Act, including privacy in the person's bedroom.

(c) Restriction of a person's rights under subdivision 2, clause 10; or this subdivision, paragraph (a), clauses (13) to (15), or paragraph (b), is allowed only if determined necessary to ensure the health, safety, and well-being of the person. Any restriction of these rights must be documented in the coordinated service and support plan for the person. The restriction must be implemented in the least restrictive alternative manner necessary to protect the person and provide support to reduce or eliminate the need for the restriction in the most integrated setting and inclusive manner. The documentation must include the following information:

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

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

(3) a schedule for reviewing the need for the restriction based on the conditions for ending the restriction to occur semi-annually, at a minimum, every three months for persons who do not have a legal representative and annually for persons who do have a legal representative from the date of initial approval, at a minimum, or more frequently if requested by the person, the person's legal representative, if any, and case manager; and

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

**245D.05 HEALTH SERVICES.**

Subdivision 1. **Health needs.** (a) The license holder is responsible for providing ~~health~~ services assigned in the coordinated service and support plan ~~and~~ consistent with the person's health needs. The license holder is responsible for promptly notifying ~~the person or the person's legal representative, if any,~~ and the case manager of changes in a person's physical and mental health needs affecting ~~assigned health services~~ needs assigned to the license holder in the coordinated service and support or identified in the CSSP addendum, when discovered by the license holder, unless the license holder has reason to know the change has already been reported. The license holder must document when the notice is provided.

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(b) ~~When assigned in the service plan, If responsibility for meeting the person's health service needs has been assigned to the license holder in the coordinated service and support plan,~~ the license holder is required to maintain documentation on how the person's health needs will be met, including a description of the procedures the license holder will follow in order to:

(1) provide medication ~~administration assistance or medication assistance administration~~, or medication management according to this chapter;

(2) monitor health conditions according to written instructions from ~~the person's physician or~~ a licensed health professional;

(3) assist with or coordinate medical, dental, and other health service appointments; or

(4) use medical equipment, devices, or adaptive aides or technology safely and correctly according to written instructions from ~~the person's physician or~~ a licensed health professional.

Subd. 2. **Medication assistance.** If responsibility for medication assistance is assigned to the license holder in the coordinated service and support plan, or is included in the CSSP addendum, the license holder must ensure that the requirements of subdivision 3, paragraph (b), have been met when staff provides medication assistance to enable a person to self-administer medication when the person is capable of directing the person's own care, or when the person's legal representative is present and able to direct care for the person. Medication assistance means providing verbal or visual reminders to take regularly scheduled medication, which includes either of the following:

(1) bringing to the person and opening a container of previously set up medications emptying the container into the person's hand or opening and giving the medications in the original container to the person;

(2) bringing to the person liquids or food to accompany the medication; or

(3) providing verbal or visual reminders to perform regularly scheduled treatments and exercises.

Subd. 3. **Medication administration.** (a) If responsibility for medication administration is assigned to the license holder in the coordinated service and support plan, or is included in the CSSP addendum, the license holder must implement the following medication administration procedures to ensure a person takes medications and treatments as prescribed:

(1) checking the person's medication record;

(2) preparing the medication as necessary;

(3) administering the medication or treatment to the person;

(4) documenting the administration of the medication or treatment or the reason for not administering the medication or treatment; and

(5) reporting to the prescriber or a nurse any concerns about the medication or treatment, including side effects, adverse reactions, effectiveness, or the person's refusal to take the medication or treatment.

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(b) The license holder must ensure that the following criteria have been met before ~~staff that is not a licensed health professional administers~~ administering medication or treatment:

(1) the license holder obtained written authorization ~~has been obtained~~ from the person or the person's legal representative to administer medication or treatment ~~orders and obtains reauthorization annually as needed.~~ If the person or the person's legal representative refuses to authorize the license holder to administer medication the medication must not be administered. The refusal to authorize medication administration must be reported to the prescriber as expeditiously as possible; and

(2) the staff person responsible for administering the medication or treatment has completed medication administration training according to section 245D.09, subdivision 4, paragraph ~~(e)~~ (b), clauses (2), and as applicable to the person, (3); and

(3) For a license holder providing intensive support services, the medication or treatment will be administered ~~under~~ according to the license holder's medication administration policy and procedures established for the person under section 245D111, subdivision 2, clause (3). For a license holder providing basic support services, ~~Written or electronically recorded~~ instruction from the ~~person's physician prescriber,~~ may constitute the medication administration procedures. A prescription label or the prescriber's written or electronically recorded order for the prescription is sufficient to constitute written instructions from the prescriber.

(c) The license holder must ensure the following information is documented in the person's medication administration record:

(1) the information on the current prescription label or the prescriber's current written or electronically recorded order or prescription that includes the person's name, description of the medication or treatment to be provided, and the frequency and other information needed to ~~directions for~~ safely and correctly administering the medication or treatment to ensure effectiveness;

(2) information on any discomforts, risks, or other side effects that are reasonable to expect, and any contraindications to its use. The information must be readily available ~~onsite~~ to all staff administering the medication;

(3) the possible consequences if the medication or treatment is not taken or administered as directed;

(4) ~~instruction from the prescriber on when and to whom to report the following:~~ notation on

~~(i) if the medication or treatment is not administered as prescribed, whether by error by the staff or the person or by refusal by the person; and~~

~~(ii) the occurrence of possible adverse reactions to the medication or treatment;~~

~~(5) notation of any occurrence of medication or treatment not being administered as prescribed, whether by error by the staff or the person or by refusal by the person, or of adverse reactions, and when and to whom the report was made; and~~

~~(6) (5) notation of when a medication or treatment is started, administered, changed, or discontinued~~

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~~(d) The license holder must ensure that the information maintained in the medication administration record is current and is regularly reviewed with when the person or the person's legal representative and the staff administering the medication to identify presents with symptoms or other issues that may be related to the medication or treatment or to medication administration issues or errors, or at a minimum, annually. At a minimum, the review must be conducted every three months or more often if requested by the person or the person's legal representative. Based on the review, the license holder must develop and implement a plan to correct medication administration issues or errors. If issues or concerns are identified related to the medication itself, the license holder must report those as required under subdivision 4~~

~~Subd. 3. **Medication assistance.** The license holder must ensure that the requirements of subdivision 3, paragraph (b), have been met when staff provides assistance to enable a person to self-administer medication when the person is capable of directing the person's own care, or when the person's legal representative is present and able to direct care for the person.~~

~~Subd. 4. **Reporting medication and treatment issues.** The following medication administration issues must be reported to the person or the person's legal representative and case manager as they occur, or following timelines established in the person's service plan or as requested in writing by the person or the person's legal representative, or the case manager:~~

~~(1) any reports made to the person's physician or prescriber required under subdivision 2, paragraph (b), clause (4);~~

~~(2) a person's refusal or failure to take medication or treatment as prescribed; or~~

~~(3) concerns about a person's self-administration of medication.~~

**Subd. 4. Injectable medications.** Injectable medications may be administered according to a prescriber's order and written instructions when one of the following conditions has been met:

(1) a registered nurse or licensed practical nurse will administer the subcutaneous or intramuscular injection;

(2) a supervising registered nurse with a physician's order has delegated the administration of subcutaneous injectable medication to an unlicensed staff member and has provided the necessary training; or

(3) there is an agreement signed by the license holder, the prescriber, and the person or the person's legal representative, specifying what subcutaneous injections may be given, when, how, and that the prescriber must retain responsibility for the license holder's giving the injections. A copy of the agreement must be placed in the person's service recipient record.

Only licensed health professionals are allowed to administer psychotropic medications by injection.

**245D.051 PSYCHOTROPIC MEDICATION USE AND MONITORING.**

**Subdivision 1. Conditions for psychotropic medication administration.** (a) When a person is prescribed a psychotropic medication and the license holder has been assigned responsibility for administration of the

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medication in the person's coordinated service and support plan or the CSSP addendum, the license holder must ensure that the following requirements are met.

(1) Use of the medication must be included in the person's coordinated service and support plan or in the CSSP addendum and based on a prescriber's current written or electronically recorded prescription.

(2) The license holder must develop, implement and maintain the following documentation in the person's service recipient record:

(i) a description of the target symptoms that the psychotropic medication is to alleviate; and

(ii) documentation methods the license holder will use to monitor and measure changes in the target symptoms that are to be alleviated by the psychotropic medication if required by the prescriber. The license holder must collect and report on medication and symptom related data as instructed by the prescriber.

For the purposes of this section, "target symptom" refers to any perceptible diagnostic criteria for a mental disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revision (DSM-IV-TR) or successive editions that has been identified for alleviation.

(b) If a person is prescribed a psychotropic medication and monitoring the use of the psychotropic medication has not been assigned in the coordinated service and support plan, and the person lives in a licensed residential site, the residential license holder is designated to monitor the psychotropic medication.

Subd. 2. Refusal to authorize routine administration of psychotropic medication. If the person or the person's legal representative, refuses to authorize the administration of a psychotropic medication as ordered by the prescriber, the license holder must follow the requirement in subdivision 245D.05, subdivision 3, paragraph b), clause (1), and the following conditions apply:

(1) After reporting the refusal to the prescriber, the license holder must follow any directives or orders given by the prescriber.

(2) A court order must be obtained to override the refusal.

(3) Refusal to authorize administration of a specific psychotropic medication is not grounds for service termination and does not constitute an emergency. A decision to terminate services must be reached in compliance with section 245D.11, subdivision 3.

**245D.06 PROTECTION STANDARDS.**

Subdivision 1. Incident response and reporting. (a) The license holder must respond to all incidents under section 245D.02, subdivision 2, that occur while providing services to protect the health and safety of and minimize risk of harm to the person. Responses to incidents involving the emergency use of manual restraints must comply with the requirements in section 245D.061.

(b) The license holder must maintain information about and report incidents to the person's legal representative or designated emergency contact and case manager within 24 hours of an incident occurring while services are being provided, or within 24 hours of discovery or receipt of information that an incident occurred,

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unless the license holder has reason to know that the incident has already been reported, or as otherwise directed in a person's coordinated service and support plan. An incident of suspected or alleged maltreatment must be reported as required under paragraph (d), and an incident of serious injury or death must be reported as required under paragraph (e).

(c) When the incident involves more than one person, the license holder must not disclose personally identifiable information about any other person when making the report to each person and case manager unless the license holder has the consent of the person.

(d) Within 24 hours of reporting maltreatment as required under section 626.556 or 626.557, the license holder must inform the case manager of the report unless there is reason to believe that the case manager is involved in the suspected maltreatment. The license holder must disclose the nature of the activity or occurrence reported and the agency that received the report.

(e) The license holder must report the death or serious injury of the person ~~to the legal representative, if any, and case manager, as required in paragraph (b) and to~~ the Department of Human Services Licensing Division, and the Office of Ombudsman for Mental Health and Developmental Disabilities as required under section 245.94, subdivision 2a, within 24 hours of the death, or receipt of information that the death occurred unless the license holder has reason to know that the death has already been reported.

(1) The license holder must conduct ~~a~~ an internal review of incident reports of deaths and serious injuries, that were not reported by the program as alleged or suspected maltreatment, for identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences.

(2) The review must include an evaluation of whether related policies and procedures were followed, whether the policies and procedures were adequate, whether there is a need for additional staff training, whether the reported event is similar to past events with the persons or the services involved, and whether there is a need for corrective action by the license holder to protect the health and safety of persons receiving services. Based on the results of this review, the license holder must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by staff or the license holder, if any.

(g) The license holder must report the emergency use of manual restraint of a person as required in paragraph (b), and to the Department of Human Services Licensing Division within 24 hours of the occurrence. The license holder must conduct a an internal review of all incident reports of emergency uses of manual restraints according to the requirements in section 245D.061.

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Subd. 2. **Environment and safety.** The license holder must:

(1) ensure the following when the license holder is the owner, lessor, or tenant of ~~the~~ an unlicensed service site:

(i) the service site is a safe and hazard-free environment;

(ii) ~~doors are locked or~~ toxic substances or dangerous items are normally inaccessible to persons served by the program ~~are stored in locked cabinets, drawers, or containers~~ only to protect the safety of a person receiving

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services and not as a substitute for staff supervision or interactions with a person who is receiving services. If ~~doors are locked or~~ toxic substances or dangerous items ~~normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers~~ are made inaccessible, the license holder must ~~justify and document how this determination was made in consultation with the person or person's legal representative, and how access will otherwise be provided to the person and all other affected persons receiving services;~~ and document an assessment of the physical plant, its environment, and its population identifying the risk factors which require toxic substances or dangerous items to be inaccessible and a statement of specific measures to be taken to minimize the safety risk to persons receiving services;

(iii) doors are locked from the inside to prevent a person from exiting only when necessary to protect the safety of a person receiving services and not as a substitute for staff supervision or interactions with the person. If doors are locked from the inside the license holder must document an assessment of the physical plant, the environment and the population served, identifying the risk factors which require the use of locked doors, and a statement of specific measures to be taken to minimize the safety risk to persons receiving services at the service site; and

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(iv) a staff person is available on site who is trained in basic first aid and, when required in a person's service plan coordinated service and support plan, cardiopulmonary resuscitation, whenever persons are present and staff are required to be at the site to provide direct service. The training must include in-person instruction, hands-on practice, and an observed skills assessment under the direct supervision of a certified instructor;

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(2) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition when used to provide services;

(3) follow procedures to ensure safe transportation, handling, and transfers of the person and any equipment used by the person, when the license holder is responsible for transportation of a person or a person's equipment;

(4) be prepared for emergencies and follow emergency response procedures to ensure the person's safety in an emergency; and

(5) follow universal precautions and sanitary practices, including hand washing, for infection prevention and control and to prevent communicable diseases.

Subd. 3. **Compliance with fire and safety codes.** When services are provided at ~~a~~ an unlicensed service site ~~licensed according to chapter 245A or~~ where the license holder is the owner, lessor, or tenant of the service site, the license holder 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. 4. **Funds and property.** (a) Whenever the license holder assists a person with the safekeeping of funds or other property according to section 245A.04, subdivision 3, the license holder must ~~have~~ obtain written authorization to do so from the person or the person's legal representative and the case manager. Authorization must be obtained within five working days of service initiation and renewed annually thereafter. At the time initial

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authorization is obtained the license holder must survey, document, and implement the preferences of the person or the person's legal representative, and the case manager for frequency of receiving a statement that itemizes receipts and disbursements of funds or other property. The license holder must document changes to these preferences when they are requested.

(b) A license holder or staff person may not accept powers-of-attorney from a person receiving services from the license holder for any purpose, ~~and may not accept an appointment as guardian or conservator of a person receiving services from the license holder.~~ This does not apply to license holders that are Minnesota counties or other units of government or to staff persons employed by license holders who were acting as ~~power of attorney, guardian, or conservator~~ attorney-in-fact for specific individuals prior to ~~enactment~~ implementation of this ~~section~~ chapter. The license holder must maintain documentation of the power-of-attorney, ~~guardianship, or conservatorship~~ in the service recipient record.

(c) Upon the transfer or death of a person, any funds or other property of the person must be surrendered to the person or the person's legal representative, or given to the executor or administrator of the estate in exchange for an itemized receipt.

**Subd. 5. Prohibitions.** (a) The license holder is prohibited from using ~~psychotropic~~ any medication as a substitute for adequate staffing or for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, for staff convenience, or for any reason other than as prescribed. Any such use constitutes chemical restraint and is prohibited. For the purpose of this subdivision "chemical restraint" means the administration of a drug or medication to control the person's behavior or restrict the person's freedom of movement and is not a standard treatment of dosage for the person's medical or psychological condition.

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(b) The license holder is prohibited from using any adaptive equipment or safety devices as a substitute for adequate staffing or for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, for staff convenience, or for any reason other than as ordered by a licensed health professional. Any such use constitutes a "mechanical restraint practice" and is prohibited. For the purpose of this subdivision "mechanical restraint practice" means the use of any adaptive equipment or safety device to control the person's behavior or restrict the person's freedom of movement and not as ordered by a licensed health professional. Mechanical restraint practices include, but are not limited to, the use of bed rails or similar devices on a bed to prevent the person from getting out of bed, chairs that prevent a person from rising, or placing a person in a wheelchair so close to a wall that the wall prevents the person from rising. Wrist bands or devices on clothing that trigger electronic alarms to warn staff that a person is leaving a room or area do not, in and of themselves, restrict freedom of movement and should not be considered restraints.

(b) The license holder is prohibited from using restraints, time out, or seclusion under any circumstance, ~~unless the commissioner has approved a variance request from the license holder that allows for the emergency use of restraints and seclusion according to terms and conditions approved in the variance. Applicants and license holders who have reason to believe they may be serving an individual who will need emergency use of restraints or seclusion, may request a variance on the application or reapplication, and the commissioner must automatically~~

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review the request for a variance as part of the application or reapplication process. License holders may also request the variance any time after issuance of a license. In the event a license holder uses restraint or seclusion for any reason without first obtaining a variance as required, the license holder must report the unauthorized use of restraint or seclusion to the commissioner within 24 hours of the occurrence and request the required variance except for emergency use of manual restraints according to the requirements in section 245D.061.

**245D.061 PROTECTION STANDARDS; EMERGENCY USE OF MANUAL RESTRAINTS.**

Subdivision 1 Standards for emergency use of manual restraints. (a) The license holder must ensure that emergency use of manual restraints complies with the requirements of this chapter and the license holder's policy and procedures as required under section 245D.11, subdivision 4.

(b) Between the date of implementation of this chapter and time lines established by the commissioner, any existing plans for persons allowing the use restraints, time out, or seclusion, or other controlled procedures identified in Minnesota Rules, part 9525. 2740, must be phased out of use and the license holder must come into compliance with the requirements of this chapter and any successor rule to rule parts 9525.2700 to 9525.2810. The license holder must develop and implement positive support strategies necessary to replace any current programmatic use of controlled procedures not allowed under this chapter.

Subd. 2. Definitions. (a) The terms used in this section have the meaning given them in this subdivision.

(b) "Manual restraint" means physical intervention intended to hold a person immobile or limit a person's voluntary movement by using body contact as the only source of physical restraint.

(c) "Mechanical restraint" means the use of devices, materials, or equipment attached or adjacent to the person's body, or the use of practices, which restrict freedom of movement, normal access to one's body or body parts, or limits a person's voluntary movement or holds a person immobile as an intervention precipitated by a person's behavior. The term does apply to mechanical restraint used to prevent injury with persons who engage in self-injurious behaviors, such as head-banging, gouging, or other actions resulting in tissue damage that have caused or could cause medical problems resulting from the self-injury.

Subd. 3. Conditions for emergency use of manual restraint. Emergency use of manual restraint must meet the following conditions:

(1) immediate intervention is needed to protect the person or others from imminent risk of physical harm; and

(2) manual restraint is the least restrictive intervention possible to eliminate the immediate risk of harm and effectively achieve safety in the situation after positive behavioral supports and less restrictive interventions have been tried and failed.

Subd. 4. Permitted techniques. (a) Use of physical contact as therapeutic conduct as defined in section 626.5772, subdivision 20, or as an instructional technique is permitted and is not subject to the requirements of this section when such use is addressed in each person's CSSP addendum and the conditions in paragraph (b) have been met, physical contact is permitted:

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**Comment [FK37]:** THIS IS PLACEHOLDER LANGUAGE ONLY AT THIS TIME. DHS IS FURTHER DEVELOPING IMPLEMENTATION REQUIREMENTS.

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(1) holding a person, with no resistance from that person, to calm or comfort the person;

(2) to protect a person known to be at risk of injury due to frequent falls as a result of a medical condition;

(3) to position a person with physical disabilities in a manner specified in the person's coordinated service and support plan;

(4) to allow a licensed health care professional to safely conduct a medical examination or to provide medical treatment ordered by a licensed health care professional to a person necessary to promote healing or recovery from an acute, meaning short term, medical condition;

(5) to facilitate the person's completion of a task or response when the person does not resist or the person's resistance is minimal in intensity and duration;

(6) briefly blocking or redirecting a person's limbs or body without holding the person or limiting the person's movement to interrupt the person's behavior that may result in injury to self or others; or

(7) to assist in the safe evacuation of a person in the event of an emergency or to redirect a person who is at imminent risk of harm in a dangerous situation.

(b) Any use of restraints identified in paragraph (a) must use the least restrictive alternative possible to meet the need of the person. Any use of restraint allowed under paragraph (a), clauses (4) or (7), requires the development of a plan for the person in compliance with sections 245D.07 and 245D.071, to reduce or eliminate the use of and need for restraint.

**Subd. 5. Restrictions when implementing emergency use of manual restraint.** (a) Emergency use of manual restraint procedures must not:

(1) be implemented with a child in a manner that constitutes sexual abuse, neglect, physical abuse, or mental injury, as defined under Minnesota Statutes section 626.556, subdivision 2;

(2) be implemented with an adult in a manner that constitutes abuse or neglect as defined in section Minnesota Statutes 626.5572, subdivisions 2 and 17;

(3) be implemented in a manner that violates a person's rights and protections identified in section 245D.04;  
or

(4) restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, necessary clothing, or to any protection required by state licensing standards and federal regulations governing the program;

(5) deny the person visitation or ordinary contact with legal counsel, legal representative, or next of kin;

(6) be used as a substitute for adequate staffing, for the convenience of staff, as punishment, or as a consequence if person refuses to participate in the treatment or services provided by the program; or

(7) use prone restraint. For the purposes of the section, "prone restraints" means, use of manual restraint that places a person in a face-down position. This does not include brief physical holding of a person who, during

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an emergency use of manual restraint, rolls into a prone, or supine or face-up position, and the person is restored to a standing, sitting, or side-lying position as quickly as possible. Applying back or chest pressure while a person is in the prone or supine position is prohibited.

Subd. 6. **Monitoring emergency use of manual restraint.** The license holder shall monitor a person's health and safety during an emergency use of a manual restraint. Staff monitoring the procedure must not be the staff implementing the procedure when possible. The license holder shall complete a monitoring form, approved by the commissioner, for each incident involving the emergency use of a manual restraint.

Subd. 7. **Reporting emergency use of manual restraint incident.** (a) The license holder must report each incident involving the emergency use of manual restraint in compliance with section 245D.06, subdivision 1, paragraph (g). At a minimum, the incident report must include the following information:

(1) all staff and persons receiving services who were involved in the incident leading up to the emergency use of manual restraint;

(2) a description of the physical and social environment, including who was present, before and during the incident leading up to the emergency use of manual restraint;

(3) a description of what less restrictive alternative measures were attempted to deescalate to the incident and maintain safety before the manual restraint was implemented that identifies when, how, and how long the alternative measures were attempted before manual restraint was implemented;

(4) a description of the mental, physical, and emotional condition of the person, staff, and others involved in the restraint during and following the manual restraint;

(5) whether there was any injury to the person or others before or as a result of the use of manual restraint;

(6) whether there was an attempt to debrief the with staff, and if not contraindicated, with the person who was restrained, following the incident and the outcome of the debriefing. If the debriefing was not conducted at the time the incident report was made the report should identify whether a debriefing is planned.

(b) For the purposes of this subdivision an incident of emergency use of manual restraint is a single incident when the following conditions have been met:

(1) after implementing the manual restraint staff attempt to release the person at the moment staff believe the person's conduct no longer poses an imminent risk of physical harm to self or others and less restrictive strategies can be implemented to maintain safety;

(2) upon the attempt to release the restraint, the person's behavior immediately reescalates; and

(3) staff must immediately reimplement the restraint in order to maintain safety.

Subd. 8. **Internal review of emergency use of manual restraint.** Within five working days of the emergency use of manual restraints the license holder must complete an internal review of each report of emergency use of manual restraint. The review must include an evaluation of whether:

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(1) positive support strategies need to be developed or revised for the person;

(2) related policies and procedures were followed;

(3) the policies and procedures were adequate;

(4) there is a need for additional staff training;

(4) the reported event is similar to past events with the persons, staff, or the services involved;

(5) there is a need for corrective action by the license holder to protect the health and safety of persons.

(b) Based on the results of the internal review, the license holder must:

(1) develop, document, and implement a corrective action plan for the program designed to correct current lapses and prevent future lapses in performance by individuals or the license holder, if any; and

(2) discuss with the person and the person's support team whether changes are necessary to the person's individual CSSP addendum or to how services and supports are provided to the person to reduce or eliminate future occurrences of emergency use of manual restraint. If the changes are determined to be necessary the license holder must develop, document, and implement the changes as part of the person's CSSP addendum.

Subd. 9. **Positive support strategies.** The license holder must consult with the support team following the emergency use of manual restraints to:

(1) discuss the incident reported in subdivision 7 to define the antecedent or event that gave rise to the behavior resulting in the manual restraint and identify the perceived function the behavior served; and

(2) determine whether positive support strategies for the person need to be developed or revised in the CSSP addendum to positively and effectively help the person maintain stability and so as to reduce or eliminate future occurrences requiring manual restraint.

**245D.07 SERVICE NEEDS-PLANNING AND DELIVERY.**

Subdivision 1. **Person-centered planning and service delivery.** (a) The license holder **must provide outcome-based services in response to the person's identified needs and desired outcomes** as specified in the coordinated service and support plan, the CSSP addendum, and in compliance with the requirements of this chapter.

(b) Services must be provided in manner that supports the person's daily needs and activities and accomplishment of the person's personal goals and service outcomes, consistent with the principles of:

(1) **person centered service planning and delivery** that identifies and supports:

(i) **what is important to the person as well as what is important for the person;**

(ii) **using that information to identify outcomes the person desires; and**

(ii) **respecting each person's history, dignity, and cultural background; and**

(2) **self-determination** that supports and provides:

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(i) opportunities for the development and exercise of functional and age-appropriate skills, decision making and choice, personal advocacy, and communication; and

(ii) the affirmation and protection of each person's civil and legal rights;

(3) **most integrated setting and inclusive service delivery** that supports, promotes, and allows:

(i) inclusion and participation in the person's community as desired by the person in a manner that enables the person to interact with non-disabled persons to the fullest extent possible and supports the person in developing and maintaining a role as a valued community member,

(ii) opportunities for self-sufficiency as well as developing and maintaining social relationships and natural supports; and

(iii) a balance between risk and opportunity, meaning the least restrictive supports or interventions necessary are provided in the most integrated settings in the most inclusive manner possible to support the person to engage in activities of their own choosing that may otherwise present a risk to the person's health, safety, or rights.

Subd. 2. **Provision of services.** At a minimum, The the license holder must provide services as specified in the coordinated service and support plan and assigned to the license holder. The provision of services must comply with the requirements of this chapter and the federal waiver plans.

Subd. 3. **Service planning.** (a) The license holder must participate in support team meetings related to the person following stated timelines established in the person's coordinated service and support plan or as requested by the support team, the person, or the person's legal representative.

Subd. 4. Reports. The license holder must provide written reports regarding the person's progress or status as requested by the person, the person's legal representative, the case manager, or the team.

**245D.071 SERVICE PLANNING AND DELIVERY; INTENSIVE SUPPORT SERVICES.**

Subdivision 1. Service planning and delivery requirements for intensive support services. A license holder providing intensive support services identified in section 245D.03, subdivision 2, paragraph (c), must comply with the requirements in section 245D.07 and this section.

Subd. 2. Abuse prevention. (a) The license holder must develop, document, and implement an abuse prevention plan according to section 245A.65, subdivision 2.

Subd. 3. Service planning and assessment. (a) **The license holder must meet with the person and the person's legal representative, if any, and the case manager to assess and determine the following based on the person's coordinated service and support plan and the requirements in section 245D.07, subdivision 1:**

(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; and

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(4) whether the current service setting is the **most integrated setting** available and appropriate for the person.

(b) The information obtained from the service planning meeting must be used by the license holder to develop service outcomes and supports according to the requirements in subdivision 4, and to fulfill the duties assigned to the license holder in the coordinated service and support plan and to coordinate services with other providers licensed under this chapter when applicable to ensure continuity of care across providers. **The assessments must result in information about the person that is descriptive of the person's overall strengths, functional skills and abilities, and behaviors or symptoms.**

(c) **Within the scope of services, the license holder must assess the following areas:**

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

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

(3) **the person's ability to self-manage behavior** that may otherwise result in an incident as defined in section 245D.02, subdivision 20, clauses (4) to (7), suspension or termination of services by the license holder, or other behaviors that may jeopardize the health and safety of the person or others.

(d) When the person has been assessed as needing support in any of the assessed areas, the license holder must develop methods to support the person and accomplish outcomes as required in subdivision 4.

(e) The service planning meeting and assessment must be completed within 45 days of service initiation.

(f) The assessment must be signed and dated by the person or the person's legal preventative, if any, and case manager, within 30 days when it is completed.

**Subd. 4. Service outcomes and supports in the CSSP addendum.** (a) Service outcomes and supports identified in subdivision 3, must be developed according to the requirements in section 245D.07, subdivision 1. The outcomes and supports are part of the CSSP addendum.

(b) Service outcomes and supports must be documented within 60 days of service initiation. The license holder, must document the supports and methods developed under paragraph (a). The documentation must include:

(1) the methods or actions that will be used support the person and to accomplish the service outcomes, including information about:

(i) any changes or modifications to the physical and social environments necessary when the service supports are provided;

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(ii) any equipment and materials required; and

(iii) techniques that are consistent with the person's communication mode and learning style;

(2) the measureable and observable criteria for identifying when the desired outcome has been achieved and how data will be collected;

(3) the projected starting date for implementing the supports and methods and the date by which progress towards accomplishing the outcomes will be reviewed and evaluated; and

(4) the names of the staff or position responsible for implementing the supports and methods.

Subd. 5. **Progress reviews.** (a) The license holder must give the person or the person's legal representative and case manager an opportunity to participate in the ongoing review and development of the methods used to support the person and accomplish outcomes identified in subdivision 3. The license holder, in coordination with other providers licensed under this chapter, must meet with the person, the person's legal representative, and case manager, and participate in progress review meetings following stated time lines established in the person's coordinated service and support plan or within 30 days of when requested in writing by the person, the person's legal representative, or the case manager, at a minimum of once a year.

(b) The license holder must summarize the person's 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 written report sent to the person or the person's legal representative and case manager five working days prior to the review meeting, unless the person, the person's legal representative, or the case manager request to receive the report at the time of the meeting.

(c) Within 10 working days of the progress review meeting 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 CSSP addendum.

**~~245D.08 RECORD REQUIREMENTS.~~**

**~~Subdivision 1. Record-keeping systems.~~** The license holder must ensure that the content and format of service recipient, personnel, and program records are uniform, legible, and in compliance with the requirements of this chapter.

**~~Subd. 2. Service recipient record.~~** (a) The license holder must:

~~(1) maintain a record of current services provided to each person on the premises where the services are provided or coordinated; and~~

~~(2) protect service recipient records against loss, tampering, or unauthorized disclosure in compliance with sections 13.01 to 13.10 and 13.46.~~

~~(b) The license holder must maintain the following information for each person:~~

~~(1) identifying information, including the person's name, date of birth, address, and telephone number;~~

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(2) the name, address, and telephone number of the person's legal representative, if any, an emergency contact, the case manager, and family members or others as identified by the person or case manager;

(3) service information, including service initiation information, verification of the person's eligibility for services, and documentation verifying that services have been provided as identified in the service plan according to paragraph (a);

(4) health information, including medical history and allergies, and when the license holder is assigned responsibility for meeting the person's health needs according to section 245D.05:

(i) current orders for medication, treatments, or medical equipment;

(ii) medication administration procedures;

(iii) a medication administration record documenting the implementation of the medication administration procedures, including any agreements for administration of injectable medications by the license holder; and

(iv) a medical appointment schedule;

(5) the person's current service plan or that portion of the plan assigned to the license holder. When a person's case manager does not provide a current service plan, the license holder must make a written request to the case manager to provide a copy of the service plan and inform the person of the right to a current service plan and the right to appeal under section 256.045;

(6) a record of other service providers serving the person when the person's service plan identifies the need for coordination between the service providers that includes a contact person and telephone numbers, services being provided, and names of staff responsible for coordination;

(7) documentation of orientation to the service recipient rights according to section 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to section 245A.65, subdivision 1, paragraph (c);

(8) copies of authorizations to handle a person's funds according to section 245D.06, subdivision 4, paragraph (a);

(9) documentation of complaints received and grievance resolution;

(10) incident reports required under section 245D.06, subdivision 1;

(11) copies of written reports regarding the person's status when requested according to section 245D.07, subdivision 3; and

(12) discharge summary, including service termination notice and related documentation, when applicable.

**Subd. 3. Access to service recipient records.** The license holder must ensure that the following people have access to the information in subdivision 1 in accordance with applicable state and federal law, regulation, or rule:

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

(2) the person's case manager;

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~~(3) staff providing services to the person unless the information is not relevant to carrying out the service plan; and~~

~~(4) the county adult foster care licensur, when services are also licensed as adult foster care.~~

**Subd. 4. Personnel records.** The license holder must maintain a personnel record of each employee, direct service volunteer, and subcontractor to document and verify staff qualifications, orientation, and training. For the purposes of this subdivision, the terms "staff" and "staff person" mean paid employee, direct service volunteer, or subcontractor. The personnel record must include:

~~(1) the staff person's date of hire, completed application, a position description signed by the staff person, documentation that the staff person meets the position requirements as determined by the license holder, the date of first supervised direct contact with a person served by the program, and the date of first unsupervised direct contact with a person served by the program;~~

~~(2) documentation of staff qualifications, orientation, training, and performance evaluations as required under section 245D.09, subdivisions 3, 4, and 5, including the date the training was completed, the number of hours per subject area, and the name and qualifications of the trainer or instructor; and~~

~~(3) a completed background study as required under chapter 245C.~~

**245D.08 PROGRAM COORDINATION, EVALUATION, AND OVERSIGHT.**

**Subdivision 1. Program coordination and evaluation.** The license holder is responsible for:

(1) coordination of service delivery and evaluation for each person served by the program as identified in subdivision 2; and

(2) program management and oversight that includes evaluation of the program quality and program improvement for services provided by the license holder as identified in subdivision 3.

The same person may perform both functions if the work and education qualifications are met in subdivisions 2 and 3.

**Subd. 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. 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 CSSP 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;

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

(b) The license holder must ensure that the designated coordinator is competent to perform the required duties identified in paragraph (a) through education and training in human services and disability related fields, and work experience in providing direct care services and supports to persons with disabilities. The designated coordinator must have the skills and ability necessary to develop effective plans and to design and use data systems to measure effectiveness of services and supports. The license holder must verify and document competence according to the requirements in section 245D.09, subdivision 3.

The designated coordinator must minimally have:

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

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

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

**Subd. 3. Program management and oversight.** (a) The license holder must designate a managerial staff person or persons to provide program management and oversight of the services provided by the license holder. The designated manager is responsible for the following:

(1) maintaining a current understanding of the licensing requirements sufficient to ensure compliance throughout the program as identified in section 245A.04, subdivision 1, paragraph (e), and when applicable as identified in section 256B.04, subdivision 21, paragraph (b);

(2) ensuring the duties of the designated coordinator are fulfilled according to the requirements in subdivision 2;

(3) ensuring the program implements corrective action identified as necessary by the program following review of incident and emergency reports according to the requirements in section 245D.111, subdivision 2, clause (8). An internal review of incident reports of alleged or suspected maltreatment must be conducted according to the requirements in section 245A.65, subdivision 1, paragraph (b);

(4) evaluation of satisfaction of persons served by the program, the person's legal representative, if any, and the case manager, with the service delivery and progress towards accomplishing outcomes identified in sections 245D.07 and 245D.071, and ensuring and protecting each person's rights as identified in section 245D.04;

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(5) ensuring staff competency requirements are met according to the requirements in section 245D.09, subdivision 3, and ensuring staff orientation and training is provided according to the requirements in section 245D.09, subdivisions 4 and 5; and

(6) ensuring corrective action is taken when ordered by the commissioner and that the terms and condition of the license and any variances are met; and

(7) evaluating the information identified in clauses (1) to (6) to develop, document, and implement ongoing program improvements.

(b) The designated manager must be competent to perform the duties as required and must minimally meet the education and training requirements identified in subdivision 2, paragraph (b), and have a minimum of three years of supervisory level experience in a program providing direct support services to persons with disabilities or persons age 65 and older.

**245D.09 STAFFING STANDARDS.**

Subdivision 1. **Staffing requirements.** The license holder must provide the level of direct service support staff sufficient supervision, assistance, and training necessary:

(1) to ensure the health, safety, and protection of rights of each person; and

(2) to be able to implement the responsibilities assigned to the license holder in each person's coordinated service and support plan, or identified in the CSSP addendum, according to the requirements of this chapter.

Subd. 2. **Supervision of staff having direct contact.** Except for a license holder who ~~are~~ is the sole direct service support staff, the license holder must provide adequate supervision of staff providing direct service support to ensure the health, safety, and protection of rights of each person and implementation of the responsibilities assigned to the license holder in each person's ~~service plan~~ coordinated service and support plan.

Subd. 3. **Staff qualifications.** (a) The license holder must ensure that staff providing direct support, or staff who have responsibilities related to supervising or managing the provision of direct support service, is competent as demonstrated through skills and knowledge training, experience, and education to meet the person's needs and additional requirements as written in the coordinated service and support plan, or when otherwise required by the case manager or the federal waiver plan. The license holder must verify and maintain evidence of staff competency, including documentation of:

(1) education and experience qualifications relevant to the job responsibilities assigned to the staff and the needs of the general population of persons served by the program, including a valid degree and transcript, or a current license, registration, or certification, when a degree or licensure, registration, or certification is required by this chapter or in the coordinated service and support plan;

(2) completion of required demonstrated competency in the orientation and training areas required under this chapter, including and when applicable, completion of continuing education required to maintain professional

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licensure, registration, or certification requirements. Competency in these areas is determined by the license holder through knowledge testing and observed skill assessment conducted by the trainer or instructor;

(3) except for a license holder who is the sole direct service support staff, periodic performance evaluations completed by the license holder of the direct service support staff person's ability to perform the job functions based on direct observation.

(b) Staff under 18 years of age may not perform overnight duties or administer medication.

Subd. 4. **Orientation training.** (a) Except for a license holder who does not supervise any direct service support staff, ~~within 90 days of hiring direct service staff,~~ the license holder must provide and ensure completion of orientation to direct support staff that combines supervised on-the-job training with review of and instruction ~~on~~ in the following areas within 60 days of hire, unless stated otherwise:

(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 ~~under section 245D.04,~~ 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, 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) what constitutes use of restraints, seclusion, and psychotropic medications, and staff responsibilities related to the prohibitions of their use; and~~

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

(7) 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.

~~(b) License holders who provide direct service themselves must complete the orientation required in paragraph (a), clauses (3) to (7).~~

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(b) Before providing having unsupervised direct service to contact with a person served by the program, or for whom the staff person has not previously provided direct service support, or any time the plans or procedures identified in clauses (1) ~~and (2)~~ to (4) are revised, the staff person must review and receive instruction on the following as it relates to the staff person's job functions for that person:

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(1) the person's coordinated service and support plan as it relates to the responsibilities assigned to the license holder, and when applicable, the person's abuse prevention plan ~~according to section 245A.65,~~ to achieve and demonstrate an understanding of the person as a unique individual, and how to implement those plans; ~~and~~

(2) medication administration procedures established for the person when medication administration is assigned to the license holder according to section 245D.05, subdivision 1, paragraph (b). Unlicensed staff may administer medications only after successful completion of a medication administration training, from a training curriculum developed by a registered nurse, clinical nurse specialist in psychiatric and mental health nursing, certified nurse practitioner, physician's assistant, or physician. The training curriculum must incorporating incorporate an observed skill assessment conducted by the trainer to ensure staff demonstrate the ability to safely and correctly follow medication procedures.

Medication administration must be taught by a registered nurse, clinical nurse specialist, certified nurse practitioner, physician's assistant, or physician, if at the time of service initiation or any time thereafter, the person has or develops a health care condition that affects the service options available to the person 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 person; and

~~(iii) necessary training in order to meet the health service needs of the person as determined by the person's physician.~~

(3) safe and correct operation of medical equipment used by the person to sustain life, including but not limited to ventilators, feeding tubes, or endotracheal tubes. The training must be provided by a licensed health care professional or a manufacturer's representative and incorporate an observed skill assessment to ensure staff demonstrate the ability to safely and correctly operate the equipment according to the treatment orders and the manufacturer's instructions; and

(4) what constitutes use of restraints, time out and seclusion, including chemical restraint, and staff responsibilities related to the prohibitions of their use according to the requirements in section 245D.06, subdivision 5, why such procedures are not effective for reducing or eliminating undesired behavior and why they are not safe, and the safe and correct use of manual restraint on an emergency basis according to the requirements in section 245D.061.

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In the event of an emergency service initiation the license holder must ensure the training required in this paragraph occurs within 72 hours of the direct support staff person first having unsupervised contact with the

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person receiving services. The license holder must document the reason for the unplanned or emergency service initiation and maintain the documentation in the person's service recipient record.

(c) License holders who provide direct support services themselves must complete the orientation required in paragraph (a), clauses (3) to (7).

Subd. 5. **Annual Training.** ~~(a)~~ A license holder must provide annual training to direct service support staff on the topics identified in subdivision 4, paragraph (a), clauses (3) to ~~(6)~~ (8). Training on relevant topics received from sources other than the license holder may count toward training requirements.

~~(b) A license holder providing behavioral programming, specialist services, personal support, 24-hour emergency assistance, night supervision, independent living skills, structured day, prevocational, or supported employment services, must provide a minimum of eight hours of annual training to direct service staff that addresses:~~

~~(1) topics related to the general health, safety, and service needs of the population served by the license holder; and~~

~~(2) other areas identified by the license holder or in the person's current service plan.~~

~~Training on relevant topics received from sources other than the license holder may count toward training requirements.~~

~~(c) When the license holder is the owner, lessor, or tenant of the service site and whenever a person receiving services is present at the site, the license holder must have a staff person available on site who is trained in basic first aid and, when required in a person's service plan, cardiopulmonary resuscitation.~~

Subd. 6. **Alternative sources of training.** Orientation or training received by the staff person from sources other than the license holder in the same subjects as identified in subdivision 4, paragraph (a), may count towards the orientation and annual training requirements if received in the 12 month period before the staff person's date of hire. The license holder must maintain documentation of the training received from other sources and of each staff person's competency in the required area according to the requirements in subdivision 3.

Subd. 7. Subcontractors and temporary staff. If the license holder uses a subcontractor or temporary staff to perform services licensed under this chapter on their behalf, the license holder must ensure that the subcontractor or temporary staff meets and maintains compliance with all requirements under this chapter that apply to the services to be provided, including training, orientation, and supervision necessary to fulfill their responsibilities. The license holder must ensure that a background study has been completed according to the requirements in section 245C.03, subdivision 1, and section 245C.04. Subcontractors and temporary staff hired by the license holder must meet the Minnesota licensing requirements applicable to the disciplines in which they are providing services. The license holder must maintain documentation that the applicable requirements have been met.

Subd. 8. Volunteers. The license holder must ensure that volunteers who provide direct support services to persons served by the program receive the training, orientation, and supervision necessary to fulfill their responsibilities. The license holder must ensure that a background study has been completed according to the

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requirements in section 245C.03, subdivision 1, and section 245C.04. The license holder must maintain documentation that the applicable requirements have been met.

Subd. 9. Staff orientation and training plan. The license holder must develop a staff orientation and training plan documenting when and how compliance with subdivisions 4 and 5 will be met.

**245D.091 STAFFING STANDARDS; INTERVENTION SERVICES**

Subdivision 1. Intervention services; licensure requirements. An individual meeting the staff qualification requirements of this section who is an employee of a program licensed according to this chapter and providing behavioral support services, specialist services, or crisis respite services is not required to hold a separate license under this chapter. An individual meeting the staff qualifications of this section who is not providing these services as an employee of program licensed according to this chapter must obtain a license according to this chapter.

Subd. 2. Behavior professional qualifications. Behavior professionals must have competencies in areas related to:

- (1) ethical considerations;
- (2) functional assessment;
- (3) functional analysis;
- (4) measurement of behavior and interpretation of data;
- (5) selecting intervention outcomes and strategies;
- (6) behavior reduction/elimination strategies that promote least restrictive approved alternatives;
- (7) data collection;
- (8) staff and caregiver training;
- (9) support plan monitoring;
- (10) co-occurring mental disorders or neuro-cognitive disorder;
- (11) demonstrated expertise with populations being served; and
- (12) must meet at least one of the following requirements and be a:

(i) psychologist licensed under sections 148.88 to 148.98, who has stated to the Board of Psychology competencies in the above identified areas;

(ii) clinical social worker licensed as an independent clinical social worker under chapter 148D, or a person with a master's degree in social work from an accredited college or university, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the areas identified in clauses (1) to (11);

(iii) physician licensed under chapter 147 and certified by the American Board of Psychiatry and Neurology or eligible for board certification in psychiatry with competencies in the areas identified in clauses (1) to (11);

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BEHAVIORAL PROGRAMMING  
SPECIALIST SERVICES  
CRISIS RESPITE SERVICES

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(iv) licensed professional clinical counselor licensed under MN Statute, sections 148B.29 to 148B.39 with at least 4000 hours of post-master's supervised experience in the delivery of clinical services who has demonstrated competencies in the areas identified in clauses (1) to (11);

(v) person with a master's degree from an accredited college or university in one of the behavioral sciences or related fields, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services with demonstrated competencies in the areas identified in clauses (1) to (11); or

(vi) registered nurse who is licensed under sections 148.171 to 148.285; and who is certified as a clinical specialist or as a nurse practitioner in adult or family psychiatric and mental health nursing by a national nurse certification organization; or who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services

**Subd. 3. Behavior analyst qualifications.** A behavior analyst must meet the following qualifications:

(1) have obtained a baccalaureate degree, master's degree or a PhD in a social services discipline; or

(2) meet the qualifications of a Mental Health Practitioner as defined in section 245.462, subdivision 17.

(3) in addition, the behavior analyst must have:

(i) four years of supervised experience working with individuals who exhibit challenging behaviors as well as co-occurring mental disorders or neuro-cognitive disorder;

(ii) 10 hours of instruction in functional assessment and functional analysis;

(iii) 20 hours of instruction in the understanding of the function of behavior;

(iv) 10 hours of instruction on design of positive practices behavior support strategies;

(v) 20 hours of instruction on the use of behavior reduction approved strategies used only in combination with behavior positive practices strategies; and

(vi) a determination by a behavior professional to have the training and prerequisite skills required to provided positive practice strategies as well as behavior reduction approved/permitted intervention to the person who receives behavioral support; and

(4) be under the direct supervision of a behavior professional.

**Subd. 4. Behavior specialist qualifications.** A behavior analyst must meet the following qualifications:

(1) have an associate's degree in a social services discipline; or

(2) two years of supervised experience working with individuals who exhibit challenging behaviors as well as co-occurring mental disorders or neuro-cognitive disorder; and

(3) must have received:

(i) a minimum of four hours of training in functional assessment;

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(ii) 20 hours of instruction in the understanding of the function of behavior;

(iii) 10 hours of instruction on design of positive practices behavioral support strategies; and

(iv) a determination by a behavior professional to have the training and prerequisite skills required to provide positive practices strategies as well as behavior reduction approved intervention to the person who receives behavioral support; and

(4) be under the direct supervision of a behavior professional.

Subd. 5. **Specialist services qualifications.** An individual providing specialist services must meet the following requirements:

(1) the specific experience and skills required of the specialist to meet the needs of the person identified by the person's service planning team; and

(2) the qualifications of the specialist identified in the person's coordinated service and support plan.

**245D.10 RECORD REQUIREMENTS.**

Subdivision 1. **Record-keeping systems.** The license holder must ensure that the content and format of service recipient, personnel, and program records are uniform, legible, and according to the requirements of this chapter.

Subd. 2. **Admission and discharge register.** The license holder must keep a written or electronic register, listing in chronological order the dates and names of all persons served by the program who have been admitted, discharged, or transferred, including service terminations initiated by the license holder and deaths.

Subd. 3. **Service recipient record.** (a) The license holder must:

(1) maintain a record of current services provided to each person on the premises where the services are provided or coordinated. When the services are provided in a licensed facility the records must be maintained at the facility, otherwise the records must be maintained at the license holder's program office.

(2) protect service recipient records against loss, tampering, or unauthorized disclosure according to the requirements in sections 13.01 to 13.10 and 13.46.

(b) The license holder must maintain the following information for each person:

(1) an admission form signed by the person or the person's legal representative that includes:

(i) identifying information, including the person's name, date of birth, address, and telephone number;

(ii) the name, address, and telephone number of the person's legal representative, if any, ~~as~~ a primary emergency contact, the case manager, and family members or others as identified by the person or case manager;

(2) service information, including service initiation information, verification of the person's eligibility for services, and documentation verifying that services have been provided as identified in the coordinated service and support plan according to paragraph (a), and date of admission or readmission;

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(3) health information, including medical history, special dietary needs, and allergies; and when the license holder is assigned responsibility for meeting the person's health service needs according to section 245D.05:

(i) current orders for medication, treatments, or medical equipment and a signed authorization from the person or the person's legal representative to administer or assist in administering the medication or treatments, if applicable;

(ii) a signed statement authorizing the license holder to act in a medical emergency when the person's legal representative, if any, cannot be reached or is delayed in arriving;

(iii) medication administration procedures;

(iv) a medication administration record documenting the implementation of the medication administration procedures, the medication administration record reviews, and including any agreements for administration of injectable medications by the license holder according to the requirements in section 245D.05; and

(v) a medical appointment schedule when the license holder is assigned responsibility for assisting with medical appointments;

(4) the person's current coordinated service and support plan or that portion of the plan assigned to the license holder;

(5) copies of the individual abuse prevention plan and assessments as required under section 245D.071, subdivisions 2 and 3;

(6) a record of other service providers serving the person when the person's coordinated service and support plan identifies the need for coordination between the service providers, that includes a contact person and telephone numbers, services being provided, and names of staff responsible for coordination;

(7) documentation of orientation to the service recipient rights according to section 245D.04, subdivision 1, and maltreatment reporting policies and procedures according to section 245A.65, subdivision 1, paragraph (c);

(8) copies of authorizations to handle a person's funds, according to section 245D.06, subdivision 4, paragraph (a);

(9) documentation of complaints received and grievance resolution;

(10) incident reports involving the person, required under section 245D.06, subdivision 1;

(11) copies of written reports regarding the person's status when requested according to section 245D.07, subdivision 4, progress review reports as required under 245D.071, subdivision 5, progress or daily log notes that are recorded by the program, and reports received from other agencies involved in providing services or care to the person; and

(12) discharge summary, including service termination notice and related documentation, when applicable.

Subd. 4. Access to service recipient records. The license holder must ensure that the following people have access to the information in subdivision 1 in accordance with applicable state and federal law, regulation, or rule:

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**Comment [FK52]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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

(2) the person's case manager;

(3) staff providing services to the person unless the information is not relevant to carrying out the coordinated service and support plan; and

(4) the county child or adult foster care licensur, when services are also licensed as child or adult foster care.

**Subd. 5. Personnel records.** The license holder must maintain a personnel record of each employee to document and verify staff qualifications, orientation, and training. The personnel record must include:

(1) the employee's date of hire, completed application, an acknowledgement signed by the employee that job duties were reviewed with the employee and the employee understands those duties, and documentation that the employee meets the position requirements as determined by the license holder. For employees hired after implementation of this chapter, the license holder must maintain documentation in the personnel record or elsewhere, sufficient to determine the date of the employee's first supervised direct contact with a person served by the program, and the date of first unsupervised direct contact with a person served by the program.

(2) documentation of staff qualifications, orientation, training, and performance evaluations as required under section 245D.09, subdivisions 3 to 5, including the date the training was completed, the number of hours per subject area, and the name of the trainer or instructor; and

(3) a completed background study as required under chapter 245C.

**245D.11 POLICIES AND PROCEDURES.**

**Subdivision 1. Policy and procedure requirements.** The A license holder providing either basic or intensive supports and services must establish, enforce, and maintain policies and procedures as required in this section, chapter 245A, and other applicable state and federal laws and regulation governing the provision of home and community based services licensed according to this chapter.

**Subd. 2. Grievances.** The license holder must establish policies and procedures that promote service recipient rights by provide providing a simple complaint process for persons served by the program and their authorized representatives to bring a grievance that:

(1) provides staff assistance with the complaint process when requested, and the addresses and telephone numbers of outside agencies to assist the person;

(2) allows the person to bring the complaint to the highest level of authority in the program if the grievance cannot be resolved by other staff members, and that provides the name, address, and telephone number of that person;

(3) requires the license holder to promptly respond to all complaints affecting a person's health and safety. For all other complaints the license holder must provide an initial response within 14 calendar days of receipt of the complaint. All complaints must be resolved within 30 calendar days of receipt or the license holder must document the reason for the delay and a plan for resolution;

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(4) requires a complaint review that includes an evaluation of whether:

(i) related policies and procedures were followed and adequate;

(ii) there is a need for additional staff training;

(iii) the complaint is similar to past complaints with the persons, staff, or services involved; and

(iv) there is a need for corrective action by the license holder to protect the health and safety of persons receiving services;

(5) based on the review in clause (4), requires the license holder to develop, document, and implement a corrective action plan, designed to correct current lapses and prevent future lapses in performance by staff or the license holder, if any;

(6) provides a written summary of the complaint and a notice of the complaint resolution to the person and case manager, that:

(i) identifies the nature of the complaint and the date it was received;

(ii) includes the results of the complaint review;

(iii) identifies the complaint resolution, including any corrective action; and

(7) requires that the complaint summary and resolution notice be maintained in the service recipient record.

**Subd. 3. Service suspension and service termination.** ~~(a)~~ The license holder must establish policies and procedures that promote service recipients rights by providing for temporary service suspension, ~~and~~ service termination that promote continuity of care and service coordination with the person and the case manager, and with other licensed caregivers, if any, who also provide support to the person.

~~(b)~~ The policy must include the following requirements:

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

(2) notice of the proposed termination of services, including those situations that began with a temporary service suspension, must be given to the person at least 60 days before the proposed termination is to become effective when a license holder is providing ~~independent living skills training, structured day, prevocational or supported employment services~~ intensive supports and services identified in section 245D.03, subdivision 2, paragraph (c), ~~to the person~~, and 30 days prior to termination for all other services licensed under this chapter;

(3) the license holder must provide information requested by the person or case manager when services are temporarily suspended or upon notice of termination;

(4) 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 suspension or termination;

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(5) during the temporary service suspension or service termination notice period, the license holder will work with the appropriate county agency to develop reasonable alternatives to protect the person and others;

(6) the license holder must maintain information about the service suspension or termination, including the written termination notice, in the service recipient record; and

(7) the license holder must restrict temporary service suspension to situations in which the person's behavior causes immediate and serious danger to the health and safety of the person or others.

Subd. 4. Emergency use of manual restraints. The license holder must establish policies and procedures that promote service recipient rights and protects health and safety during the emergency use of manual restraints. The policy and procedures must comply with the requirements in section 245D.061, and must specify the following:

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(1) a description of the positive support strategies and techniques staff must use to attempt to de-escalate a person's behavior before it poses an imminent risk of physical harm to self or others;

(2) a description of the types of manual restraints the license holder allows staff to use on an emergency basis, if any. If the license holder will not allow the use manual restraint under section 245D.061, the policy and procedure must identify the alternative measures the license holder will require staff to use when a person's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety;

(2) instructions for safe and correct implementation of the allowed manual restraint procedures;

(3) the training staff must complete and the timelines for completion, before they may implement an emergency use of manual restraint. In addition to the training on this policy and procedure and the orientation and annual training required in section 245D.09, subdivision 4, the training for emergency use of manual restraint must incorporate the following subjects:

(i) alternatives to manual restraint procedures, including techniques to identify events and environmental factors that may escalate behavior;

(ii) de-escalation methods, positive strategies, and how to avoid power struggles;

(iii) simulated experiences of administering and receiving manual restraint procedures allowed by the license holder on an emergency basis;

(v) how to properly identify thresholds for implementing and ceasing restrictive procedures;

(vi) how to recognize, monitor, and respond to the person's physical signs of distress, including positional asphyxia; and

(vii) the physiological and psychological impact on the person and the staff when restrictive procedures are used;

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(4) the procedures and forms to be used to monitor the emergency use of manual restraints, including what must be monitored and the frequency of monitoring per each incident of emergency use of manual restraint, and the person or position who is responsible for monitoring the use;

(5) the instructions, forms, and timelines required for completing and submitting an incident report by the person or persons who implemented the manual restraint; and

(6) the procedures and time lines for conducting the internal review, and the person or position responsible for completing the internal review and who is responsible to ensure that corrective action is taken or the person's CSSP addendum is revised, when determined necessary.

Subd. 5. Availability of current written policies and procedures. (a) The license holder must review and update, as needed, the written policies and procedures required under this chapter.

(b) The license holder must inform the person and case manager of the policies and procedures affecting a person's rights under section 245D.04, and provide copies of those policies and procedures, within five working days of service initiation.

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(1) For license holders providing basic services and supports only this includes the:

(i) grievance policy and procedure required under subdivision 2; and

(ii) service suspension and termination policy and procedure required under subdivision 3;

(2) For all other license holders this includes the policies and procedures in clause (1) and the following:

(i) the emergency use of manual restraints policy and procedure required under subdivision 4; and

(ii) data privacy under section 245D.111, subdivision 3.

(c) The license holder must provide a written notice at least 30 days before implementing any revised policies and procedures affecting a person's rights under section 245D.04. The notice must explain the revision that was made and include a copy of the revised policy and procedure. The license holder must document the reason for not providing the notice at least 30 days before implementing the revisions.

(d) Before implementing revisions to required policies and procedures the license holder must inform all employees of the revisions and provide training on implementation of the revised policies and procedures.

**245D.111 POLICIES AND PROCEDURES; INTENSIVE SUPPORT SERVICES.**

Subdivision 1. Policy and procedure requirements; intensive support. A license holder providing intensive supports and services as identified in section 245D.03, subdivision 2, paragraph (c), must establish, enforce, and maintain policies and procedures as required in this section.

Subd. 2. Health and safety. The license holder must establish policies and procedures that promote health and safety by ensuring:

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(1) use of universal precautions and sanitary practices in compliance with section 245D.06, subdivision 2, clause (5);

(2) if the license holder operates a residential program, health service coordination and care according to the requirements in section 245D.05, subdivision 1;

(3) safe medication assistance and administration according to the requirements in sections 245D.05, subdivisions (2) to (4), and 245D.051, that are established in consultation with a registered nurse, nurse practitioner, physician's assistant, or medical doctor and require completion of medication administration training according to the requirements in section 245D.09, subdivision 4, paragraph (b), clause (2), in addition to the following:

(i) medication-related services to a person;

(ii) medication setup;

(iii) medication administration;

(iv) medication storage and security;

(v) medication documentation and charting;

(vi) verification and monitoring of effectiveness of systems to ensure safe medication handling and administration;

(vii) coordination of medication refills;

(viii) handling changes to prescriptions and implementation of those changes;

(ix) communicating with the pharmacy; or

(x) coordination and communication with prescriber.

(4) safe transportation, when the license holder is responsible for transportation of persons, with provisions for handling emergency situations according to the requirements in section 245D.06, subdivision 2, clauses (2) to (4);

(5) a plan for ensuring the safety of persons served by the program in emergencies as defined in section 245D.02, subdivision 16, and procedures for staff to report emergencies to the license holder. A license holder with a community residential setting or a day service facility license must ensure the policy and procedures comply with the requirements in section 245D.21, subdivision 4;

(6) a plan for responding to all incidents as defined in section 245D.02, subdivision 21; and reporting all incidents required to be reported according to section 245D.06, subdivision 1, the plan must:

(i) provide the contact information of a source of emergency medical care and transportation; and

(ii) require staff to first call 911 when the staff believes a medical emergency may be life-threatening, or to call the mental health crisis intervention team when the person is experiencing a mental health crisis;

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(7) a procedure for the review of incidents and emergencies to identify trends or patterns, and corrective action if needed; and a record keeping system of record keeping for the incident and emergency reports and a summary of the reviews that includes maintaining a written summary of each incident in an incident report file that indicates: The license holder must conduct a review of incident reports, for identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences.

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(i) the name of the person or persons involved in the incident. It is not necessary to identify all persons affected by or involved in an emergency unless the emergency resulted in an incident;

(ii) the date, time, and location of the incident or emergency;

(iii) a description of the incident or emergency;

(iv) a description of the response to the incident or emergency and whether a person's individual service and support plan or risk management plan, or program policies and procedures, were implemented as applicable; and

(v) the name of the staff person or persons who responded to the incident or emergency; and

(vi) the determination of whether corrective action is necessary based on the results of the review.

**Subd. 3. Data privacy.** The license holder must establish policies and procedures that promote service recipient rights by ensuring data privacy according to the requirements in:

(1) the Government Data Practices Act, section 13.46; and all other applicable Minnesota laws and rules, in handling all data related to the services provided; and

(2) the Health Insurance Portability and Accountability Act (HIPAA), to the extent that the license holder performs a function or activity involving the use of protected health information as defined under the code of federal regulations, title 45, section 164.501, including, but not limited to, providing health care services; health care claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; practice management; repricing; or otherwise provided by the code of federal regulations, title 45, section 160.103, the license holder must comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, code of federal regulations, title 45, parts 160 to 164, and all applicable requirements.

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

(1) is consistent with the license holder's registration information identified according to the requirements in section 245D.031, subdivision 2 and with the service-related rights identified in section 245D.04, subdivisions 2, clauses (4) to (7), and subdivision 3, clause (8);

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

(3) requires a license holder providing services in a health care facility to comply with the requirements in section 243.166, subdivision 4b, to provide notification to residents when a registered predatory offender is

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admitted into the program or to a potential admission when the facility was already serving a registered predatory offender. For the purposes of this clause, “health care facility” means a facility licensed by the commissioner as a residential facility under chapter 245A to provide adult foster care or residential services to persons with disabilities;

(4) requires that the license holder must not refuse to admit a person based solely on the basis of the type of residential services a person is receiving or solely on the basis of the person's severity of disability, orthopedic or neurological handicaps, sight or hearing impairments, lack of communication skills, physical disabilities, toilet habits, behavioral disorders, or past failure to make progress; and

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(5) requires that when a person or the person's legal representative requests services from the license holder, a refusal to admit the person must be based on an evaluation of the person's assessed needs and the license holder's lack of capacity to meet the needs of the person. Documentation of the basis for refusal must be provided to the person or the person's legal representative and case manager upon request.

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**245D.20 FACILITY LICENSURE REQUIREMENTS AND APPLICATION PROCESS.**

Subdivision 1. **Community residential settings and day service facilities.** For the purposes of this section “facility” means both a community residential setting and day service facility and the physical plant.

Subd. 2. **Inspections and code compliance.** (a) Physical plants must comply with applicable state and local fire, health, building, and zoning codes.

(b) The facility must be inspected by a fire marshal or their delegate within 12 months before initial licensure to verify that it meets the applicable occupancy requirements as defined in the Minnesota State Fire Code and that the facility complies with the fire safety standards for that occupancy code contained in the Minnesota State Fire Code.

(1) The fire marshal inspection of a community residential setting must verify the residence is a dwelling unit within a residential occupancy as defined in section 9.117 of the Minnesota Uniform Fire Code. A home safety checklist, approved by the commissioner, must be completed for a community residential setting by the license holder and the commissioner before the satellite license is reissued.

(2) The facility shall be inspected according to the facility capacity specified on the initial application form.

(3) If the commissioner has reasonable cause to believe that a potentially hazardous condition may be present or the licensed capacity is increased, the commissioner shall request a subsequent inspection and written report by a fire marshal to verify the absence of hazard.

(4) Any condition cited by a fire marshal, building official, or health authority as hazardous or creating an immediate danger of fire or threat to health and safety must be corrected before a license is issued by the department, and for community residential settings, before a license is reissued.

(c) The facility must maintain in a permanent file the reports of health, fire, and other safety inspections.

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(d) The facility's plumbing, ventilation, heating, cooling, lighting, and other fixtures and equipment, including elevators or food service, if provided, must conform to applicable health, sanitation, and safety codes and regulations.

**245D.21 FACILITY SANITATION AND HEALTH.**

Subdivision 1. **General Maintenance.** The license holder must maintain the interior and exterior of buildings, structures, or enclosures used by the facility, including walls, floors, ceilings, registers, fixtures, equipment, and furnishings, in good repair and in a sanitary and safe condition. The facility must be clean and free from accumulations of dirt, grease, garbage, peeling paint, mold, vermin, and insects. The license holder must correct building and equipment deterioration, safety hazards, and unsanitary conditions.

Subd. 2. **Hazards and toxic substances.** The license holder must ensure that service sites owned or leased by the license holder are free from hazards that would threaten the health or safety of a person receiving services by ensuring the requirements in clauses (1) to (7) are met.

(1) Chemicals, detergents, and other hazardous or toxic substances must not be stored with food products or in any way that poses a hazard to persons receiving services.

(2) The license holder must install handrails and nonslip surfaces on interior and exterior runways, stairways, and ramps according to the applicable building code.

(3) If there are elevators in the facility, the license holder must have elevators inspected each year. The date of the inspection, any repairs needed, and the date the necessary repairs were made must be documented.

(4) The license holder must keep stairways, ramps, and corridors free of obstructions.

(5) Outside property must be free from debris and safety hazards. Exterior stairs and walkways must be kept free of ice and snow.

(6) Heating, ventilation, and air conditioning units, and other hot surfaces and moving parts of machinery must be shielded or enclosed.

(7) Use of dangerous items or equipment by persons served by the program must be allowed in accordance with their risk management plans.

Subd. 3. **Storage and disposal of medication.** Schedule II controlled substances in the facility that are named in Minnesota Statutes, section 152.02, subdivision 3, must be stored in a locked storage area permitting access only by persons and staff authorized to administer the medication. This must be incorporated into the license holder's medication administration policy and procedures required under section 245D.111, subdivision 2, clause (3). Medications will be disposed of according to the Environmental Protection Agency recommendations.

Subd. 4. **First aid.** (a) A staff person trained in first aid and, when required in a person's service plan coordinated service and support plan, cardiopulmonary resuscitation, in compliance with section 245D.06, subdivision 2, clause (1), item (iv).

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(b) A facility must have first aid kits readily available for use by, and that meets the needs of, persons receiving services and staff. At a minimum, the first aid kit must be equipped with accessible first aid supplies including bandages, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, mild liquid soap, adhesive tape, and first aid manual.

Subd. 4. **Emergencies.** The license holder must have a written plan for responding to emergencies as defined in section 245D.02, subdivision 16, to ensure the safety of persons served in the facility.

(1) The license holder must maintain a log of quarterly fire drills is on file in the facility.

(2) The emergency response plan must be readily available to staff and persons receiving services.

(3) Each person must be informed of a designated area within the facility where the person should go to for emergency shelter during severe weather and the designated assembly points outside the facility.

(4) The license holder must maintain emergency contact information for persons served at the facility that can be readily accessed in an emergency.

(b) The plan must include:

(1) procedures for emergency evacuation and emergency sheltering, including:

(i) how to report a fire or other emergency;

(ii) procedures to notify, relocate, and evacuate occupants, including use of adaptive procedures or equipment to assist with the safe evacuation of persons with physical or sensory disabilities;

(iii) instructions on closing off the fire area, using fire extinguishers, and activating and responding to alarm systems;

(2) a floor plan that identifies:

(i) the location of fire extinguishers;

(ii) the location of audible or visual alarm systems, including but not limited to, manual fire alarm boxes, smoke detectors, fire alarm enunciators and controls, sprinkler systems;

(iii) identification of exits, primary and secondary evacuation routes, and accessible egress routes, if any;

(iv) the location of emergency shelter within the facility;

(3) a site plan that identifies:

(i) designated assembly points outside the facility;

(ii) the locations of fire hydrants; and

(iii) the routes of fire department access;

(4) the responsibilities each staff person will assume in case of emergency; and

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(5) procedures for conducting quarterly drills each year and recording the dates of in the file of emergency plans;

(6) procedures for relocation or service suspension when services are interrupted for more than 24 hours;  
and

(7) A community residential setting license holder's plan must include provisions for the following:

(i) substitute caregiver who meets the qualifications under this chapter, to provide care during emergencies;  
and

(ii) in buildings with three or more dwelling units, enclosed exit stairs must be indicated. There must be an emergency escape plan for each resident.

Subd. 5. **Emergency equipment.** The facility must have a flashlight and a portable radio or television set that do not require electricity and can be used if a power failure occurs.

Subd. 6. **Telephone and posted numbers.** A facility must have a noncoin operated telephone that is readily accessible. A list of emergency numbers must be posted in a prominent location. When an area has a 911 number or a mental health crisis intervention team number, both numbers must be posted and the emergency number listed must be 911. In areas of the state without a 911 number, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center. The names and phone numbers of each person's representative, physician, and dentist must be readily available.

**245D.30 COMMUNITY RESIDENTIAL SETTINGS; SATELLITE LICENSURE REQUIREMENTS AND APPLICATION PROCESS.**

Subdivision 1. **Separate satellite license required for separate sites.** A license holder providing residential support services must obtain a separate satellite license for each community residential setting located at separate addresses when the community residential settings are to be operated by the same license holder. For purposes of this chapter, a community residential setting is a satellite of the home and community based services license.

Community residential settings are permitted single family use homes. After a license has been issued the commissioner shall notify the local municipality where the residence is located of the approved license.

Subd. 2. **Notification to local agency.** The license holder must notify the local agency within 24 hours of the onset of changes in a residence resulting from construction, remodeling, or damages requiring repairs that require a building permit and/or may affect a licensing requirement in this chapter.

Subd. 3. **Alternate overnight supervision.** A license holder granted an alternate overnight supervision technology adult foster care license according to section 245A.11, subdivision 7a, that converts to a community residential setting satellite license according to this chapter will retain that designation.

**245D.31 COMMUNITY RESIDENTIAL SETTINGS; PHYSICAL PLANT AND ENVIRONMENT.**

Subdivision 1. **Occupancy.** The residence must meet the definition of a dwelling unit in a residential occupancy.

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Subd. 2. Common area requirements. The living area must be provided with an adequate number of furnishings for the usual functions of daily living and social activities. The dining area is furnished to accommodate meals shared by all persons living in the residence. These furnishings must be in good repair and functional to meet the daily needs of the persons living in the residence.

Subd.3. Bedrooms. (a) People receiving services must mutually consent, in writing, to sharing a bedroom with one another. No more than two people receiving services may share one bedroom.

(b) Bedrooms must meet the criteria as follows:

(1) a single occupancy bedroom must have at least 80 square feet of floor space with a seven foot-six inch ceiling. A double occupancy room must have at least 120 square feet of floor space with a seven foot-six inch ceiling;

(2) bedrooms must be separated from halls, corridors, and other habitable rooms by floor to ceiling walls containing no openings except doorways and must not serve as a corridor to another room used in daily living; and

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

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

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

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

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

(4) a mirror for grooming.

When possible, a person must be allowed to have items of furniture that he or she personally owns in the bedroom, unless doing so would interfere with safety precautions, violate a building or fire code, or another person's use of the bedroom. A person may choose to not have a cabinet, dresser, shelves, or a mirror in the bedroom, as otherwise required under clauses (3) or (4). In which case the license holder must document this choice and is not required to provide the item.

(d) A person must be allowed to bring personal possessions into the bedroom and other designated storage space, if such space is available, in the residence. The license holder must provide a lock to allow for locked storage of personal items. The person must be allowed to accumulate possessions to the extent the residence is able to accommodate them, unless doing so is contraindicated for person's physical or mental health, would interfere with safety precautions, another person's use of the bedroom, or violate a building or fire code. Any restriction on the possession or locked storage of personal must comply with section 245D.04, subdivision 3, paragraph (c). Any

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restriction of locked storage of personal items must require the person to be present if and when the license holder opens the lock.

**245D.32 COMMUNITY RESIDENTIAL SETTINGS; FOOD AND WATER.**

Subdivision 1. **Water.** Potable water from privately owned wells must be tested annually by a Minnesota Health Department certified laboratory for coliform bacteria and nitrate nitrogens to verify safety. The health authority may require retesting and corrective measures if results exceed state water standards in Minnesota Rules, chapter 4720 or in the event of a flooding or incident which may put the well at risk of contamination. To prevent scalding, the water temperature at faucets must not exceed 120 degrees Fahrenheit.

Subd. 2. **Food.** Food served must meet any special dietary needs of a person as prescribed by the person's physician or dietitian. Three nutritionally balanced meals a day must be served or made available to persons, and nutritious snacks must be available between meals.

Subd. 3. **Food safety.** Food must be obtained, handled, and properly stored to prevent contamination, spoilage, or a threat to the health of a person.

**245D.33 COMMUNITY RESIDENTIAL SETTINGS; SANITATION AND HEALTH.**

Subdivision 1. **Goods provided by the license holder.** Individual clean bed linens appropriate for the season and the person's comfort, towels, and wash cloths must be available for each person. Usual or customary goods for the operation of a residence which are communally used by all persons receiving services living in the residence will be provided by the license holder including: household items for meal preparation, cleaning supplies to maintain the cleanliness of the residence, window coverings on windows for privacy, toilet paper, and hand soap.

Subd. 2. **Personal items.** Personal health and hygiene items must be stored in a safe and sanitary manner.

Subd. 3. **Pets and service animals.** Pets and service animals housed within the residence must be immunized and maintained in good health as required by local ordinances and state law. The license holder must ensure that the person and the person's representative is notified before admission of the presence of pets in the residence.

Subd. 4. **Smoking in the residence.** License holders must comply with the requirements of the Minnesota Clean Indoor Air Act, sections 144.411 to 144.417, when smoking is permitted in the residence.

Subd. 5. **Weapons.** Weapons and ammunition must be stored separately in locked areas that are inaccessible to a person receiving services. For the purposes of this subdivision "weapons" means firearms and other instruments or devices designed for and capable of producing bodily harm.

**245D.40 DAY SERVICES FACILITIES; SATELLITE LICENSURE REQUIREMENTS AND APPLICATION PROCESS**

Subdivision 1. **Separate satellite license required for separate satellite sites.** The license holder providing day services must apply for a separate license for each facility-based service site when the license holder is the owner, lessor, or tenant of the service site at which persons receive day services and the license holder's employees who provide day services are present for a cumulative total of more than 30 days within any 12-month

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period. For purposes of this chapter, a day services facility license is a satellite license of the day services program. A day services program may operate multiple licensed day service facilities in one or more counties in the state.

**245D.41 DAY SERVICES FACILITIES; PHYSICAL PLANT AND SPACE REQUIREMENTS.**

Subdivision 1. Facility capacity and useable space requirements. (a) The facility capacity of each day service facility must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of all persons receiving services at the facility, not just the licensed services. The facility capacity must specify the maximum number of persons that may receive services onsite at any one time.

(b) When a facility is located in a multifunctional organization, the facility may share common space with the multifunctional organization if the required available primary space for use by persons receiving day services is maintained while the facility is operating. The license holder must comply at all times with all applicable fire and safety codes under section 245A.04, subdivision 2a and adequate supervision requirements under section 245D.43 for all persons receiving day services.

(c) A day services facility must have a minimum of 40 square feet of primary space available for each person and each staff person or employee who is present at the site at any one time. Primary space does not include:

(1) common areas, meaning hallways, stairways, closets, utility areas, bathrooms, and kitchens;

(2) floor areas beneath stationary equipment; or

(3) any space occupied by persons associated with the multifunctional organization while persons receiving day services are using common space.

Subd. 2. Individual personal articles. Each person must be provided space in a closet, cabinet, on a shelf, or a coat hook for storage of personal items for the person's own use while receiving services at the facility, unless doing so would interfere with safety precautions, another person's work space, or violate a building or fire code.

**245D.42 DAY SERVICE FACILITIES; HEALTH AND SAFETY REQUIREMENTS.**

Subdivision 1. Refrigeration. If the license holder provides refrigeration at service sites owned or leased by the license holder for storing perishable foods and perishable portions of bag lunches, whether the foods are supplied by the license holder or the persons receiving services, the refrigeration must have a temperature of 40 degrees Fahrenheit or less.

Subd. 2. Drinking water. Drinking water must be available to all persons receiving services. If a person is unable to request or obtain drinking water, it must be provided according to that person's individual needs. Drinking water must be provided in single service containers or from drinking fountains accessible to all persons.

Subd. 3. Individuals who become ill during the day. There must be an area in which a person receiving services can rest if the person becomes ill during the day and the person does not live in a licensed residential site and the person requires supervision and there is not a caretaker immediately available. Supervision must be provided until the caretaker arrives to bring the person home.

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Subd. 4. **Safety procedures.** The license holder must establish general written safety procedures that include criteria for selecting, training, and supervising persons who work with hazardous machinery, tools, or substances. Safety procedures specific to each person's activities must be explained and be available in writing to all staff members and persons receiving services.

**245D.43 DAY SERVICE FACULTIES; STAFF RATIO AND FACILITY COVERAGE.**

Subdivision 1. **Scope.** This section applies only to facility-based day services.

Subd. 2. **Factors.** (a) The number of direct support service staff members that a license holder must have on duty at the facility at a given time to meet the minimum staffing requirements established in this section varies according to:

- (1) the number of persons who are enrolled and receiving direct support services at that given time;
- (2) the staff ratio requirement established under subdivision 3 for each of the persons who is present; and
- (3) whether the conditions described in subdivision 8 exist and warrant additional staffing beyond the number determined to be needed under subdivision 7.

(b) The commissioner must consider the factors in paragraph (a) in determining a license holder's compliance with the staffing requirements and must further consider whether the staff ratio requirement established under subdivision 3 for each person receiving services accurately reflects the person's need for staff time.

Subd. 3. **Staff ratio requirement for each person receiving services.** The case manager, in consultation with the interdisciplinary team must determine at least once each year which of the ratios in subdivisions 4, 5, and 6 is appropriate for each person receiving services on the basis of the characteristics described in subdivisions 4, 5, and 6. The ratio assigned each person and the documentation of how the ratio was arrived at must be kept in each person's individual service plan. Documentation must include an assessment of the person with respect to the characteristics in subdivisions 4, 5, and 6 recorded on a standard assessment form required by the commissioner.

Subd. 4. **Person requiring staff ratio of one to four.** A person who has one or more of the following characteristics must be assigned a staff ratio requirement of one to four:

- (1) on a daily basis the person requires total care and monitoring or constant hand-over-hand physical guidance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating, or is not capable of taking appropriate action for self-preservation under emergency conditions; or
- (2) the person assaults others, is self-injurious, or manifests severe dysfunctional behaviors at a documented level of frequency, intensity, or duration requiring frequent daily ongoing intervention and monitoring as established in an approved behavior management program.

Subd. 5. **Person requiring staff ratio of one to eight.** A person who has all of the following characteristics must be assigned a staff ratio requirement of one to eight:

- (1) the person does not meet the requirements in subdivision 4; and

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(2) on a daily basis the person requires verbal prompts or spot checks and minimal or no physical assistance to successfully complete at least four of the following activities: toileting, communicating basic needs, eating, ambulating, or taking appropriate action for self-preservation under emergency conditions.

Subd. 6. **Person requiring staff ratio of one to six.** A person who does not have any of the characteristics described in subdivision 4 or 5 must be assigned a staff ratio requirement of one to six.

Subd. 7. **Determining number of direct support service staff required.** The minimum number of direct support service staff members required at any one time to meet the combined staff ratio requirements of the persons present at that time can be determined by following the steps:

(1) assign each person in attendance the three-digit decimal below that corresponds to the staff ratio requirement assigned to that person. A staff ratio requirement of one to four equals 0.250. A staff ratio requirement of one to eight equals 0.125. A staff ratio requirement of one to six equals 0.166. A staff ratio requirement of one to ten equals 0.100;

(2) add all of the three-digit decimals (one three-digit decimal for every person in attendance) assigned in clause (1);

(3) when the sum in clause (2) falls between two whole numbers, round off the sum to the larger of the two whole numbers; and

(4) the larger of the two whole numbers in clause (3) equals the number of direct support service staff members needed to meet the staff ratio requirements of the persons in attendance.

Subd. 8. **Staff to be included in calculating minimum staffing requirement.** Only direct support staff must be counted as staff members in calculating the staff to participant ratio.

(1) A volunteer may be counted as a direct support staff in calculating the staff to participant ratio if the volunteer meets the same standards and requirements as paid staff.

(2) No person receiving services must be counted as or be substituted for a staff member in calculating the staff to participant ratio.

Subd. 9. **Conditions requiring additional direct support staff.** The license holder must increase the number of direct support staff members present at any one time beyond the number arrived at in subdivision 4 if necessary when any one or combination of the following circumstances can be documented by the commissioner as existing:

(1) the health and safety needs of the persons receiving services cannot be met by the number of staff members available under the staffing pattern in effect even though the number has been accurately calculated under subdivision 7; or

(2) the person's behavior frequently presents an immediate danger to self or others.

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Subd. 10. **Supervision requirements.** (a) At no time must one direct support staff member be assigned responsibility for supervision and training of more than ten persons receiving supervision and training, except as otherwise stated in each person's risk management plan.

(b) In the temporary absence of the director or a supervisor, a direct support staff member must be designated to supervise the center.

Subd. 11. **Multifunctional programs.** A multifunctional program may count other employees of the organization besides direct support staff of the day service facility in calculating the staff to participant ratio if the employee is assigned to the day services facility for a specified amount of time during which the employee is not assigned to another organization or program.

**245D.50 ALTERNATIVE LICENSING INSPECTIONS.**

Subdivision 1. **Eligibility for an alternative licensing inspection.** A license holder providing day services licensed under this chapter, with a qualifying accreditation and meeting the eligibility criteria in clauses (1) and (2), may request approval for an alternative licensing inspection. Approval is granted for individual eligible licensed programs or facilities controlled by the license holder.

(1) The program has had at least one inspection by the commissioner following issuance of the initial license. For programs operating a day services facility, each facility must have had at least one onsite by the commissioner following issuance of the initial license.

(2) The program was in and has maintained "substantial and consistent compliance" at the time of the last licensing inspection and during the current licensing period. For the purposes of this section "substantial and consistent compliance" means:

(i) the license holder's license was not made conditional, suspended, or revoked;

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

(iii) there were no program deficiencies that identified that would jeopardize the health, safety, or rights of persons being served; and

(iv) the license holder maintained substantial compliance with the other requirements of chapters 245A and 245C and other applicable laws and rules.

Subd. 2. **Qualifying accreditation.** The commissioner will accept the following as qualifying accreditations:

(1) A three-year accreditation from the Commission on Rehabilitation Facilities (CARF).

Subd. 3. **Request for approval of an alternative inspection status.** (a) The initial request for an alternative inspection must be made in the manner prescribed by the commissioner. A single request may be submitted for all services and facilities operated by the program licensed according to this chapter and controlled by the license holder. Based on the request and the accompanying materials, the commissioner may approve an alternative inspection status.

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(b) The initial request for approval from a CARF accredited program must include the following materials:

(1) a copy of the license holder's most recent application to the CARF for accreditation;

(2) the most recent notification from CARF to the license holder of the accreditation decision and the survey. All program services and facilities licensed under this chapter that are included in the request must be included in CARF's onsite survey and awarded three-year accreditation in order to be eligible for an alternative inspection status;

(3) the quality improvement plan submitted to CARF by the license holder within 90 days following notification of the accreditation outcome of the most recent survey, outlining actions that have been or will be taken in response to the areas for improvement identified in the report; and

(4) the annual conformance to quality report submitted to CARF by the license holder on the accreditation anniversary date in each of the years following the award.

(b) Approval will be granted for all program services and facilities controlled by the license holder that meet the eligibility criteria identified in subdivision 1, and included in the request for approval as required in paragraph (a). The commissioner will notify the license holder in writing that the request for an alternative inspection status has been approved. Approval will be granted until the end of the qualifying accreditation period.

(c) The license holder must submit a written request for approval to be renewed one month before the end of the current approval period. The license holder must complete submission of all required materials in paragraph (a), clause (2), following the end of the current qualifying accreditation period. If the license holder does not submit a request to renew approval as required the commissioner will conduct a licensing inspection.

**Subd. 4. Programs approved for alternative licensing inspection; deemed compliance licensing requirements.** (a) A program or service licensed under this chapter and approved for alternative licensing inspection under this section is required to maintain compliance with all licensing standards from which they are not exempt under subdivision 3, paragraph (a).

(b) License holders approved for alternative licensing inspection under this section must be deemed to be in compliance with all nonexempt statutes, and the commissioner must not perform routine licensing inspections.

(c) Upon receipt of a complaint regarding the services of a license holder approved for alternative licensing inspection under this section, the commissioner must investigate the complaint and may take any action as provided under section 245A.06 or 245A.07.

**Subd. 5. Investigations of alleged or suspected maltreatment.** Nothing in this section changes the commissioner's responsibilities to investigate alleged or suspected maltreatment of a minor under section 626.556 or a vulnerable adult under section 626.557.

**Subd. 6. Termination or denial of subsequent approval.** Following approval of an alternative licensing inspection, the commissioner may terminate or deny subsequent approval of an alternative licensing inspection if the commissioner determines that any of the conditions in clauses (1) or (2) have occurred after approval.

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(1) the license holder has not maintained the qualifying accreditation;

(2) the commissioner has substantiated maltreatment for which the license holder or facility is determined to be responsible during the qualifying accreditation period; and

(3) during the qualifying accreditation period, the license holder has been issued an order for conditional license, a fine, suspension, or license revocation that has not been reversed upon appeal. 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. 8. Appeals. The commissioner's decision that the conditions for approval for an alternative licensing inspection have not been met is final and not subject to appeal under the provisions of chapter 14.

**245D.60 ADULT MENTAL HEALTH CERTIFICATION STANDARDS**

(a) The commissioner of human services shall issue a mental health certification for services licensed under this chapter, when a license holder is determined to have met the requirements under paragraph (b). This certification is voluntary for license holders. The certification shall be printed on the license, and identified on the commissioner's public Web site.

(b) The requirements for certification are:

(1) all staff have received at least seven hours of annual training covering all of the following topics:

(i) mental health diagnoses;

(ii) mental health crisis response and de-escalation techniques;

(iii) recovery from mental illness;

(iv) treatment options including evidence-based practices;

(v) medications and their side effects;

(vi) co-occurring substance abuse and health conditions; and

(vii) community resources;

(2) a mental health professional, as defined in section 245.462, subdivision 18, or a mental health practitioner as defined in section 245.462, subdivision 17, is available for consultation and assistance;

(3) there is a plan and protocol in place to address a mental health crisis; and

(4) each person's individual service and support plan identifies who is providing clinical services and their contact information, and includes an individual crisis prevention and management plan developed with the person.

(c) License holders seeking certification under this section must request this certification on forms and in the manner prescribed by the commissioner.

**Comment [FK66]:** OF INTEREST TO / BASED ON RECOMMENDATION FROM RULE 40 ADVISORY COMMITTEE

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(d) If the commissioner finds that the license holder has failed to comply with the certification requirements under paragraph (b) the commissioner may issue a correction order and an order of conditional license in accordance with section 245A.06 or may issue a sanction in accordance with section 245A.07, including and up to removal of the certification.

(e) A denial of the certification or the removal of the certification based on a determination that the requirements under paragraph (b) have not been met not subject to appeal. A license holder that has been denied a certification or that has had a certification removed may again request certification when the license holder is in compliance with the requirements of paragraph (b).

## **RULE 40 DATA REQUEST RESULTS**

### *Sample*

Disability Services Division sent out a data request to all **7,864** providers of residential services. The intent of this data request was to obtain a census of residential service providers concerning Rule 40.

Four hundred and forty-nine providers responded to the data request out of the **7,864** providers for a response rate of **5.7%**.

Two thousand nine hundred and ninety-one residential households are represented by this sample.

This sample represents nine thousand two hundred and eighty-seven individuals that receive residentially-based services from the responding providers. This represents **5.7%** of the population of individuals who receive residentially-based services.

**NOTE** – The sample responses must be viewed as a self-selected sample and therefore **not** generalizable to the entire population of providers of residentially-based services.

### *Results*

For those that responded to the data request, almost ten percent (9.9%) of the people they served have a written individualized behavior management plan that uses restrictive aversive/deprivation procedures.

For those that responded to the data request, slightly more than two and one-half percent (2.6%) regularly require emergency/crisis use of restrictive aversive/deprivation procedures at least once per month or more.

For those that responded to the data request, almost twelve and one-half percent (12.4%) received some form of restrictive aversive/deprivation procedure. (Note: the numbers do not add up to 12.5% due to rounding)

### *Conclusions and Next Steps*

The scope of the issue is better understood but only for those who responded to the data request. Any attempt to generalize to the entire population is tenuous at best.

There are more efficient and cost effective methods of obtaining the data required to generate state-wide estimates. Using a probability technique (simple random sample), less than four hundred individuals would have been required to estimate the state-wide use of restrictive aversive/deprivation procedures both programmatic and crisis at a 95% confidence level +/-5%.

A real-time data collection tool should be developed to collect data on the use of restrictive aversive/deprivation procedures. This would collect the data necessary for monitoring and analysis of the use of restrictive aversive/deprivation procedures.