Adult Foster Care Policy Changes

Chapter 216
SF 1675/1967
Department of Human Services Policy Bill
Effective Date: Various

Bill Summary:

Sections 4, 36 - Extends the timeline when providers can receive an adult foster care license with a 5-bed capacity to June 30, 2014 (However, since Chapter 247—the budget bill—says June 30, 2016, and since the budget bill passed after Chapter 216, the timeline will be extended to June 30, 2016) and requires DHS to submit amendments to CMS for payment.

Sections 3, 5, 24, 35 – The commissioner is required to identify if the physical location of the foster care setting is the primary residence of the license holder. Makes the community residential settings license a component of the quality outcome standards recommendations so the department can track the settings where foster care is provided for purposes of monitoring the moratorium on corporate foster care licenses. Customized living services are excluded from quality outcome standards because they are regulated by the Minnesota Department of Health. These changes will allow the Department of Human Services to have jurisdiction over the development of the Quality Outcome Standards.

The language of the bill is included below:

Sec. 3. Minnesota Statutes 2011 Supplement, section 245A.03, subdivision 7, is amended to read:
Subd. 7. Licensing moratorium. (a) The commissioner shall not issue an initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter for a physical location that will not be the primary residence of the license holder for the entire period of licensure. If a license is issued during this moratorium, and the license holder changes the license holder's primary residence away from the physical location of the foster care license, the commissioner shall revoke the license according to section 245A.07. Exceptions to the moratorium include:
(1) foster care settings that are required to be registered under chapter 144D;
(2) foster care licenses replacing foster care licenses in existence on May 15, 2009, and determined to be needed by the commissioner under paragraph (b);
(3) new foster care licenses determined to be needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center, or restructuring of state-operated services that limits the capacity of state-operated facilities;
(4) new foster care licenses determined to be needed by the commissioner under
paragraph (b) for persons requiring hospital level care; or
(5) new foster care licenses determined to be needed by the commissioner for the
transition of people from personal care assistance to the home and community-based
services.
(b) The commissioner shall determine the need for newly licensed foster care homes
as defined under this subdivision. As part of the determination, the commissioner
shall consider the availability of foster care capacity in the area in which the licensee
seeks to operate, and the recommendation of the local county board. The
determination by the commissioner must be final. A determination of need is not
required for a change in ownership at the same address.
(c) Residential settings that would otherwise be subject to the moratorium
established in paragraph (a), that are in the process of receiving an adult or child
foster care license as of July 1, 2009, shall be allowed to continue to complete the
process of receiving an adult or child foster care license. For this paragraph, all of
the following conditions must be met to be considered in the process of receiving an
adult or child foster care license:
(1) participants have made decisions to move into the residential setting, including
documentation in each participant’s care plan;
(2) the provider has purchased housing or has made a financial investment in the
property;
(3) the lead agency has approved the plans, including costs for the residential setting
for each individual;
(4) the completion of the licensing process, including all necessary inspections, is
the only remaining component prior to being able to provide services; and
(5) the needs of the individuals cannot be met within the existing capacity in that
county.
To qualify for the process under this paragraph, the lead agency must submit
documentation to the commissioner by August 1, 2009, that all of the above criteria
are met.
(d) The commissioner shall study the effects of the license moratorium under this
subdivision and shall report back to the legislature by January 15, 2011. This study
shall include, but is not limited to the following:
(1) the overall capacity and utilization of foster care beds where the physical location
is not the primary residence of the license holder prior to and after implementation
of the moratorium;
(2) the overall capacity and utilization of foster care beds where the physical
location is the primary residence of the license holder prior to and after
implementation of the moratorium; and
(3) the number of licensed and occupied ICF/MR beds prior to and after
implementation of the moratorium.
(e) When a foster care recipient moves out of a foster home that is not the
primary residence of the license holder according to section 256B.49, subdivision 15,
paragraph (f), the county shall immediately inform the Department of Human
Services Licensing Division, and the department shall immediately decrease the
licensed capacity for the home. A decreased licensed capacity according to this
paragraph is not subject to appeal under this chapter.
(e) At the time of application and reapplication for licensure, the applicant and the license holder that are subject to the moratorium or an exclusion established in paragraph (a) are required to inform the commissioner whether the physical location where the foster care will be provided is or will be the primary residence of the license holder for the entire period of licensure. If the primary residence of the applicant or license holder changes, the applicant or license holder must notify the commissioner immediately. The commissioner shall print on the foster care license certificate whether or not the physical location is the primary residence of the license holder.

(f) License holders of foster care homes identified under paragraph (e) that are not the primary residence of the license holder and that also provide services in the foster care home that are covered by a federally approved home and community-based services waiver, as authorized under section 256B.0915, 256B.092, or 256B.49 must inform the human services licensing division that the license holder provides or intends to provide these waiver-funded services. These license holders must be considered registered under section 256B.092, subdivision 11, paragraph (c), and this registration status must be identified on their license certificates.

Sec. 4. Minnesota Statutes 2010, section 245A.11, subdivision 2a, is amended to read:
Subd. 2a. **Adult foster care license capacity.** (a) The commissioner shall issue adult foster care licenses with a maximum licensed capacity of four beds, including nonstaff roomers and boarders, except that the commissioner may issue a license with a capacity of five beds, including roomers and boarders, according to paragraphs (b) to (f).

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

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

(d) The commissioner may grant variances to paragraph (b) to allow the use of a fifth bed for emergency crisis services for a person with serious and persistent mental illness or a developmental disability, regardless of age, if the variance complies with section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

(e) If the 2009 legislature adopts a rate reduction that impacts providers of adult foster care services, the commissioner may issue an adult foster care license with a capacity of five adults if the fifth bed does not increase the overall statewide capacity of licensed adult foster care beds in homes that are not the primary residence of the license holder, over the licensed capacity in such homes on July 1, 2009, as identified in a plan submitted to the commissioner by the county, when the capacity is recommended by the county licensing agency of the county in which the facility is located and if the recommendation verifies that:
(1) the facility meets the physical environment requirements in the adult foster care licensing rule;
(2) the five-bed living arrangement is specified for each resident in the resident's:
   (i) individualized plan of care;
   (ii) individual service plan under section 256B.092, subdivision 1b, if required; or
   (iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required;
(3) the license holder obtains written and signed informed consent from each resident or resident's legal representative documenting the resident's informed choice to living in the home and that the resident's refusal to consent would not have resulted in service termination; and
(4) the facility was licensed for adult foster care before March 1, 2009.
(f) The commissioner shall not issue a new adult foster care license under paragraph (e) after June 30, 2011. The commissioner shall allow a facility with an adult foster care license issued under paragraph (e) before June 30, 2011, to continue with a capacity of five adults if the license holder continues to comply with the requirements in paragraph (e).

Sec. 5. Minnesota Statutes 2010, section 245A.11, subdivision 8, is amended to read:
Subd. 8. Community residential setting license. (a) The commissioner shall establish provider standards for residential support services that integrate service standards and the residential setting under one license. The commissioner shall propose statutory language and an implementation plan for licensing requirements for residential support services to the legislature by January 15, 2011, as a component of the quality outcome standards recommendations required by Laws 2010, chapter 352, article 1, section 24.
(b) Providers licensed under chapter 245B, and providing, contracting, or arranging for services in settings licensed as adult foster care under Minnesota Rules, parts 9555.5105 to 9555.6265, or child foster care under Minnesota Rules, parts 2960.3000 to 2960.3340; and meeting the provisions of section 256B.092, subdivision 11, paragraph (b), must be required to obtain a community residential setting license.

Sec. 24. Minnesota Statutes 2010, section 256B.092, subdivision 11, is amended to read:
Subd. 11. Residential support services. (a) Upon federal approval, there is established a new service called residential support that is available on the community alternative care, community alternatives for disabled individuals, developmental disabilities, and traumatic brain injury waivers. Existing waiver service descriptions must be modified to the extent necessary to ensure there is no duplication between other services. Residential support services must be provided by vendors licensed as a community residential setting as defined in section 245A.11, subdivision 8.
(b) Residential support services must meet the following criteria:
(1) providers of residential support services must own or control the residential site;
(2) the residential site must not be the primary residence of the license holder;
(3) the residential site must have a designated program supervisor responsible for program oversight, development, and implementation of policies and procedures; (4) the provider of residential support services must provide supervision, training, and assistance as described in the person's community support plan; and (5) the provider of residential support services must meet the requirements of licensure and additional requirements of the person's community support plan. 

(c) Providers of residential support services that meet the definition in paragraph (a) must be registered using a process determined by the commissioner beginning July 1, 2009. Providers licensed to provide child foster care under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, and that meet the requirements in section 245A.03, subdivision 7, paragraph (e), are considered registered under this section.

Sec. 35. Laws 2009, chapter 79, article 8, section 81, as amended by Laws 2010, chapter 352, article 1, section 24, is amended to read:

Sec. 81. ESTABLISHING A SINGLE SET OF STANDARDS.

(a) The commissioner of human services shall consult with disability service providers, advocates, counties, and consumer families to develop a single set of standards, to be referred to as "quality outcome standards," governing services for people with disabilities receiving services under the home and community-based waiver services program, with the exception of customized living services because the service license is under the jurisdiction of the Department of Health, to replace all or portions of existing laws and rules including, but not limited to, data practices, licensure of facilities and providers, background studies, reporting of maltreatment of minors, reporting of maltreatment of vulnerable adults, and the psychotropic medication checklist. The standards must:

(1) enable optimum consumer choice; (2) be consumer driven; (3) link services to individual needs and life goals; (4) be based on quality assurance and individual outcomes; (5) utilize the people closest to the recipient, who may include family, friends, and health and service providers, in conjunction with the recipient's risk management plan to assist the recipient or the recipient's guardian in making decisions that meet the recipient's needs in a cost-effective manner and assure the recipient's health and safety; (6) utilize person-centered planning; and (7) maximize federal financial participation.

(b) The commissioner may consult with existing stakeholder groups convened under the commissioner's authority, including the home and community-based expert services panel established by the commissioner in 2008, to meet all or some of the requirements of this section.

(c) The commissioner shall provide the reports and plans required by this section to the legislative committees and budget divisions with jurisdiction over health and human services policy and finance by January 15, 2012.
Sec. 36. **DISABILITY HOME AND COMMUNITY-BASED WAIVER REQUEST.**
By December 1, 2012, the commissioner shall request all federal approvals and waiver amendments to the disability home and community-based waivers to allow properly licensed adult foster care homes to provide residential services for up to five individuals.

**EFFECTIVE DATE.** This section is effective July 1, 2012.

**Implications:**

There are changes to corporate adult foster care and adult foster care. There is an interest by lawmakers, the Department of Human Services, and some advocates to move from a corporate foster care structure in Minnesota to more of a community based service settings options for consumers. Some of these changes will require federal approval.