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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1888

02/28/2019 Authored by Morrison, Albright, Schultz and Pierson
The bill was read for the first time and referred to the Committee on Health and Human Services Policy
03/14/2019 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

A bill for an act

relating to human services; modifying requirements for psychiatric residential treatment facilities and intensive treatment in foster care; appropriating money; amending Minnesota Statutes 2018, sections 125A.515, subdivisions 1, 3, 4, 5, 7, 8; 256B.0625, subdivision 45a; 256B.0941, subdivision 3; 256B.0946; Laws 2017, First Special Session chapter 6, article 8, sections 71; 72.

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

Section 1. Minnesota Statutes 2018, section 125A.515, subdivision 1, is amended to read:

Subdivision 1. **Approval of on-site education programs.** The commissioner shall approve on-site education programs for placement of children and youth in residential facilities including detention centers, before being licensed by the Department of Human Services or the Department of Corrections. Education programs in these facilities shall conform to state and federal education laws including the Individuals with Disabilities Education Act (IDEA). This section applies only to placements in children's residential facilities and psychiatric residential treatment facilities, as defined in section 256B.0625, subdivision 45a, licensed by the Department of Human Services or the Department of Corrections. For purposes of this section, "on-site education program" means the educational services provided directly on the grounds of the children's residential facility or psychiatric residential treatment facility to children and youth placed for care and treatment.

Sec. 2. Minnesota Statutes 2018, section 125A.515, subdivision 3, is amended to read:

Subd. 3. **Responsibilities for providing education.** (a) The district in which the children's residential facility or psychiatric residential treatment facility is located must provide education services, including special education if eligible, to all students placed in a facility.

(b) For education programs operated by the Department of Corrections, the providing district shall be the Department of Corrections. For students remanded to the commissioner of corrections, the providing and resident district shall be the Department of Corrections.

Sec. 3. Minnesota Statutes 2018, section 125A.515, subdivision 4, is amended to read:

Subd. 4. **Education services required.** (a) Education services must be provided to a student beginning within three business days after the student enters the children's residential facility or psychiatric residential treatment facility. The first four days of the student's placement may be used to screen the student for educational and safety issues.

(b) If the student does not meet the eligibility criteria for special education, regular education services must be provided to that student.

Sec. 4. Minnesota Statutes 2018, section 125A.515, subdivision 5, is amended to read:

Subd. 5. **Education programs for students placed in children's residential facilities.** (a) When a student is placed in a children's residential facility or psychiatric residential treatment facility under this section that has an on-site education program, the providing district, upon notice from the children's residential facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's transcript, and for students with disabilities, the most recent individualized education program (IEP) and evaluation report. The resident district must send a facsimile copy to the providing district within two business days of receiving the request.

(b) If a student placed under this section has been identified as having a disability and has an individualized education program in the resident district:

(1) the providing agency must conduct an individualized education program meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education program goals and objectives and to determine if additional evaluations are necessary; and

(2) at least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education program meeting:

(i) the person or agency placing the student;

(ii) the resident district;

(iii) the appropriate teachers and related services staff from the providing district;

(iv) appropriate staff from the children's residential facility or psychiatric residential treatment facility;

(v) the parents or legal guardians of the student; and

(vi) when appropriate, the student.

(c) For a student who has not been identified as a student with a disability, a screening must be conducted by the providing districts as soon as possible to determine the student's educational and behavioral needs and must include a review of the student's educational records.

Sec. 5. Minnesota Statutes 2018, section 125A.515, subdivision 7, is amended to read:

Subd. 7. **Minimum educational services required.** When a student is placed in a children's residential facility or psychiatric residential treatment facility under this section, at a minimum, the providing district is responsible for:

(1) the education necessary, including summer school services, for a student who is not performing at grade level as indicated in the education record or IEP; and

(2) a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers, requires an alteration in the length of the school day.

Sec. 6. Minnesota Statutes 2018, section 125A.515, subdivision 8, is amended to read:

Subd. 8. **Placement, services, and due process.** When a student's treatment and educational needs allow, education shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between the student's parents or legal guardians and the treatment and education staff. When applicable, educational placement decisions must be made by the IEP team of the providing district. Educational services shall be provided in conformance with the least restrictive environment principle of the Individuals with Disabilities Education Act. The providing district and children's residential facility or psychiatric residential treatment facility shall cooperatively develop discipline and behavior management procedures to be used in emergency situations that comply with the Minnesota Pupil Fair Dismissal Act and other relevant state and federal laws and regulations.

Sec. 7. Minnesota Statutes 2018, section 256B.0625, subdivision 45a, is amended to read:

Subd. 45a. **Psychiatric residential treatment facility services for persons younger than 21 years of age.** (a) Medical assistance covers psychiatric residential treatment facility services, according to section 256B.0941, for persons younger than 21 years of age. Individuals who reach age 21 at the time they are receiving services are eligible to continue receiving services until they no longer require services or until they reach age 22, whichever occurs first.

(b) For purposes of this subdivision, "psychiatric residential treatment facility" means a facility other than a hospital that provides psychiatric services, as described in Code of Federal Regulations, title 42, sections 441.151 to 441.182, to individuals under age 21 in an inpatient setting.

(c) The commissioner shall ~~enroll up to 150 certified psychiatric residential treatment facility services beds at up to six sites. The commissioner shall select psychiatric residential treatment facility services providers through a request for proposals process. Providers of state-operated services may respond to the request for proposals.~~ invite letters of intent from existing children's residential mental health facilities or psychiatric residential treatment facility services providers that intend to develop increased psychiatric residential treatment facility capacity. Each letter of intent shall describe the need for psychiatric residential treatment facility services, specific services that would be provided, the proposed residential capacity, and a description of the physical site of the proposed services. The commissioner shall respond to each letter of intent within 30 days and provide technical assistance to facilitate psychiatric residential treatment facility services development.

(d) The commissioner shall establish a request for proposals process to distribute grant funding for start-up costs associated with the development of psychiatric residential treatment facility services.

Sec. 8. Minnesota Statutes 2018, section 256B.0941, subdivision 3, is amended to read:

Subd. 3. **Per diem rate.** (a) The commissioner shall establish ~~a statewide~~ one per diem rate per provider for psychiatric residential treatment facility services for individuals 21 years of age or younger. The rate for a provider must not exceed the rate charged by that provider for the same service to other payers. Payment must not be made to more than one entity for each individual for services provided under this section on a given day. The commissioner shall set rates prospectively for the annual rate period. The commissioner shall require providers to submit annual cost reports on a uniform cost reporting form and

shall use submitted cost reports to inform the rate-setting process. The cost reporting shall be done according to federal requirements for Medicare cost reports.

(b) The following are included in the rate:

(1) costs necessary for licensure and accreditation, meeting all staffing standards for participation, meeting all service standards for participation, meeting all requirements for active treatment, maintaining medical records, conducting utilization review, meeting inspection of care, and discharge planning. The direct services costs must be determined using the actual cost of salaries, benefits, payroll taxes, and training of direct services staff and service-related transportation; and

(2) payment for room and board provided by facilities meeting all accreditation and licensing requirements for participation.

(c) A facility may submit a claim for payment outside of the per diem for professional services arranged by and provided at the facility by an appropriately licensed professional who is enrolled as a provider with Minnesota health care programs. Arranged services must be billed by the facility on a separate claim, and the facility shall be responsible for payment to the provider. These services must be included in the individual plan of care and are subject to prior authorization by the state's medical review agent.

(d) Medicaid shall reimburse for concurrent services as approved by the commissioner to support continuity of care and successful discharge from the facility. "Concurrent services" means services provided by another entity or provider while the individual is admitted to a psychiatric residential treatment facility. Payment for concurrent services may be limited and these services are subject to prior authorization by the state's medical review agent. Concurrent services may include targeted case management, assertive community treatment, clinical care consultation, team consultation, and treatment planning.

(e) Payment rates under this subdivision shall not include the costs of providing the following services:

(1) educational services;

(2) acute medical care or specialty services for other medical conditions;

(3) dental services; and

(4) pharmacy drug costs.

(f) For purposes of this section, "actual cost" means costs that are allowable, allocable, reasonable, and consistent with federal reimbursement requirements in Code of Federal

Regulations, title 48, chapter 1, part 31, relating to for-profit entities, and the Office of Management and Budget Circular Number A-122, relating to nonprofit entities.

Sec. 9. Minnesota Statutes 2018, section 256B.0946, is amended to read:

256B.0946 INTENSIVE TREATMENT IN FOSTER CARE AND IN-HOME CARE.

Subdivision 1. **Required covered service components.** (a) Effective May 23, 2013, and subject to federal approval, medical assistance covers medically necessary intensive treatment services described under paragraph (b) that are provided by a provider entity eligible under subdivision 3 to a client eligible under subdivision 2 who is placed in a foster home licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, ~~or~~ placed in a foster home licensed under the regulations established by a federally recognized Minnesota tribe, or remains in the client's family home but requires intensive mental health services to prevent placement in a residential facility or hospital and whose primary need for treatment is not due to imminent risk of harm to self and others that requires 24-hour supervision.

(b) Intensive treatment services to children with mental illness ~~residing in foster family settings~~ that comprise specific required service components provided in clauses (1) to (5) are reimbursed by medical assistance when they meet the following standards:

(1) psychotherapy provided by a mental health professional as defined in Minnesota Rules, part 9505.0371, subpart 5, item A, or a clinical trainee, as defined in Minnesota Rules, part 9505.0371, subpart 5, item C;

(2) crisis assistance provided according to standards for children's therapeutic services and supports in section 256B.0943;

(3) individual, family, and group psychoeducation services, defined in subdivision 1a, paragraph ~~(q)~~ (r), provided by a mental health professional or a clinical trainee;

(4) clinical care consultation, as defined in subdivision 1a, and provided by a mental health professional or a clinical trainee; and

(5) service delivery payment requirements as provided under subdivision 4.

Subd. 1a. **Definitions.** For the purposes of this section, the following terms have the meanings given them.

(a) "Clinical care consultation" means communication from a treating clinician to other providers working with the same client to inform, inquire, and instruct regarding the client's symptoms, strategies for effective engagement, care and intervention needs, and treatment expectations across service settings, including but not limited to the client's school, social

services, day care, probation, home, primary care, medication prescribers, disabilities services, and other mental health providers and to direct and coordinate clinical service components provided to the client and family.

(b) "Clinical supervision" means the documented time a clinical supervisor and supervisee spend together to discuss the supervisee's work, to review individual client cases, and for the supervisee's professional development. It includes the documented oversight and supervision responsibility for planning, implementation, and evaluation of services for a client's mental health treatment.

(c) "Clinical supervisor" means the mental health professional who is responsible for clinical supervision.

(d) "Clinical trainee" has the meaning given in Minnesota Rules, part 9505.0371, subpart 5, item C;

(e) "Crisis assistance" has the meaning given in section 245.4871, subdivision 9a, including the development of a plan that addresses prevention and intervention strategies to be used in a potential crisis, but does not include actual crisis intervention.

(f) "Culturally appropriate" means providing mental health services in a manner that incorporates the child's cultural influences, as defined in Minnesota Rules, part 9505.0370, subpart 9, into interventions as a way to maximize resiliency factors and utilize cultural strengths and resources to promote overall wellness.

(g) "Culture" means the distinct ways of living and understanding the world that are used by a group of people and are transmitted from one generation to another or adopted by an individual.

(h) "Diagnostic assessment" has the meaning given in Minnesota Rules, part 9505.0370, subpart 11.

(i) "Family" means a person who is identified by the client or the client's parent or guardian as being important to the client's mental health treatment. Family may include, but is not limited to, parents, foster parents, children, spouse, committed partners, former spouses, persons related by blood or adoption, persons who are a part of the client's permanency plan, or persons who are presently residing together as a family unit.

(j) "Foster care" has the meaning given in section 260C.007, subdivision 18.

(k) "Foster family setting" means the foster home in which the license holder resides.

(l) "In-home care" means care received while the client resides in the client's family home, rather than in an out-of-home placement.

~~(l)~~ (m) "Individual treatment plan" has the meaning given in Minnesota Rules, part 9505.0370, subpart 15.

~~(m)~~ (n) "Mental health practitioner" has the meaning given in section 245.462, subdivision 17, and a mental health practitioner working as a clinical trainee according to Minnesota Rules, part 9505.0371, subpart 5, item C.

~~(n)~~ (o) "Mental health professional" has the meaning given in Minnesota Rules, part 9505.0370, subpart 18.

~~(o)~~ (p) "Mental illness" has the meaning given in Minnesota Rules, part 9505.0370, subpart 20.

~~(p)~~ (q) "Parent" has the meaning given in section 260C.007, subdivision 25.

~~(q)~~ (r) "Psychoeducation services" means information or demonstration provided to an individual, family, or group to explain, educate, and support the individual, family, or group in understanding a child's symptoms of mental illness, the impact on the child's development, and needed components of treatment and skill development so that the individual, family, or group can help the child to prevent relapse, prevent the acquisition of comorbid disorders, and achieve optimal mental health and long-term resilience.

~~(r)~~ (s) "Psychotherapy" has the meaning given in Minnesota Rules, part 9505.0370, subpart 27.

~~(s)~~ (t) "Team consultation and treatment planning" means the coordination of treatment plans and consultation among providers in a group concerning the treatment needs of the child, including disseminating the child's treatment service schedule to all members of the service team. Team members must include all mental health professionals working with the child, a parent, the child unless the team lead or parent deem it clinically inappropriate, and at least two of the following: an individualized education program case manager; probation agent; children's mental health case manager; child welfare worker, including adoption or guardianship worker; primary care provider; foster parent; and any other member of the child's service team.

Subd. 2. **Determination of client eligibility.** An eligible recipient is an individual, from birth through age 20, who is currently placed in a foster home licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or who remains in the individual's family home but requires intensive mental health services to prevent placement in a residential facility or

hospital, and has received a diagnostic assessment and an evaluation of level of care needed, as defined in paragraphs (a) and (b).

(a) The diagnostic assessment must:

(1) meet criteria described in Minnesota Rules, part 9505.0372, subpart 1, and be conducted by a mental health professional or a clinical trainee;

(2) determine whether or not a child meets the criteria for mental illness, as defined in Minnesota Rules, part 9505.0370, subpart 20;

(3) document that intensive treatment services are medically necessary within a foster family setting to ameliorate identified symptoms and functional impairments;

(4) be performed within 180 days before the start of service; and

(5) be completed as either a standard or extended diagnostic assessment annually to determine continued eligibility for the service.

(b) The evaluation of level of care must be conducted by the placing county, tribe, or case manager in conjunction with the diagnostic assessment as described by Minnesota Rules, part 9505.0372, subpart 1, item B, using a validated tool approved by the commissioner of human services and not subject to the rulemaking process, consistent with section 245.4885, subdivision 1, paragraph (d), the result of which evaluation demonstrates that the child requires intensive intervention without 24-hour medical monitoring. The commissioner shall update the list of approved level of care tools annually and publish on the department's website.

Subd. 3. **Eligible mental health services providers.** (a) Eligible providers for intensive children's mental health services in a foster family or in-home care setting must be certified by the state and have a service provision contract with a county board or a reservation tribal council and must be able to demonstrate the ability to provide all of the services required in this section.

(b) For purposes of this section, a provider agency must be:

(1) a county-operated entity certified by the state;

(2) an Indian Health Services facility operated by a tribe or tribal organization under funding authorized by United States Code, title 25, sections 450f to 450n, or title 3 of the Indian Self-Determination Act, Public Law 93-638, section 638 (facilities or providers); or

(3) a noncounty entity.

(c) Certified providers that do not meet the service delivery standards required in this section shall be subject to a decertification process.

(d) For the purposes of this section, all services delivered to a client must be provided by a mental health professional or a clinical trainee.

Subd. 4. **Service delivery payment requirements.** (a) To be eligible for payment under this section, a provider must develop and practice written policies and procedures for intensive treatment ~~in foster care~~, consistent with subdivision 1, paragraph (b), and comply with the following requirements in paragraphs (b) to (n).

(b) A qualified clinical supervisor, as defined in and performing in compliance with Minnesota Rules, part 9505.0371, subpart 5, item D, must supervise the treatment and provision of services described in this section.

(c) Each client receiving treatment services must receive an extended diagnostic assessment, as described in Minnesota Rules, part 9505.0372, subpart 1, item C, within 30 days of enrollment in this service unless the client has a previous extended diagnostic assessment that the client, parent, and mental health professional agree still accurately describes the client's current mental health functioning.

(d) Each previous and current mental health, school, and physical health treatment provider must be contacted to request documentation of treatment and assessments that the eligible client has received. This information must be reviewed and incorporated into the diagnostic assessment and team consultation and treatment planning review process.

(e) Each client receiving treatment must be assessed for a trauma history, and the client's treatment plan must document how the results of the assessment will be incorporated into treatment.

(f) Each client receiving treatment services must have an individual treatment plan that is reviewed, evaluated, and signed every 90 days using the team consultation and treatment planning process, as defined in subdivision 1a, paragraph ~~(s)~~ (t).

(g) Care consultation, as defined in subdivision 1a, paragraph (a), must be provided in accordance with the client's individual treatment plan.

(h) Each client must have a crisis assistance plan within ten days of initiating services and must have access to clinical phone support 24 hours per day, seven days per week, during the course of treatment. The crisis plan must demonstrate coordination with the local or regional mobile crisis intervention team.

(i) Services must be delivered and documented at least three days per week, equaling at least six hours of treatment per week, unless reduced units of service are specified on the treatment plan as part of transition or on a discharge plan to another service or level of care. Documentation must comply with Minnesota Rules, parts 9505.2175 and 9505.2197.

(j) Location of service delivery must be in the client's home, day care setting, school, or other community-based setting that is specified on the client's individualized treatment plan.

(k) Treatment must be developmentally and culturally appropriate for the client.

(l) Services must be delivered in continual collaboration and consultation with the client's medical providers and, in particular, with prescribers of psychotropic medications, including those prescribed on an off-label basis. Members of the service team must be aware of the medication regimen and potential side effects.

(m) Parents, siblings, foster parents, and members of the child's permanency plan, if applicable, must be involved in treatment and service delivery unless otherwise noted in the treatment plan.

(n) Transition planning for the child must be conducted starting with the first treatment plan and must be addressed throughout treatment to support the child's permanency plan, if applicable, and postdischarge mental health service needs.

Subd. 5. **Service authorization.** The commissioner will administer authorizations for services under this section in compliance with section 256B.0625, subdivision 25.

Subd. 6. **Excluded services.** (a) Services in clauses (1) to (7) are not covered under this section and are not eligible for medical assistance payment as components of intensive treatment in foster care or in-home care services, but may be billed separately:

(1) inpatient psychiatric hospital treatment;

(2) mental health targeted case management;

(3) partial hospitalization;

(4) medication management;

(5) children's mental health day treatment services;

(6) crisis response services under section 256B.0944; and

(7) transportation.

(b) Children receiving intensive treatment in foster care and in-home care services are not eligible for medical assistance reimbursement for the following services while receiving intensive treatment ~~in foster care~~:

(1) psychotherapy and skills training components of children's therapeutic services and supports under section 256B.0625, subdivision 35b;

(2) mental health behavioral aide services as defined in section 256B.0943, subdivision 1, paragraph (m);

(3) home and community-based waiver services;

(4) mental health residential treatment; and

(5) room and board costs as defined in section 256I.03, subdivision 6.

Subd. 7. **Medical assistance payment and rate setting.** The commissioner shall establish a single daily per-client encounter rate for intensive treatment in foster care and in-home care services. The rate must be constructed to cover only eligible services delivered to an eligible recipient by an eligible provider, as prescribed in subdivision 1, paragraph (b).

Sec. 10. Laws 2017, First Special Session chapter 6, article 8, section 71, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective for services provided on July 1, 2017, through ~~April 30, 2019, and expires May 1, 2019~~ June 30, 2021, and expires July 1, 2021.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 11. Laws 2017, First Special Session chapter 6, article 8, section 72, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective for services provided on July 1, 2017, through ~~April 30, 2019, and expires May 1, 2019~~ June 30, 2021, and expires July 1, 2021.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 12. **APPROPRIATION; PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY START-UP GRANTS.**

$..... in fiscal year 2020 and $..... in fiscal year 2021 are appropriated from the general fund to the commissioner of human services for grants to providers that have previously been approved by the commissioner of human services to provide psychiatric residential treatment facility services to initiate additional psychiatric residential treatment facility

services or increase psychiatric residential treatment facility capacity. Grant funds may be used for consulting services, Health Insurance Portability and Accountability Act (HIPAA) compliance, training for staff and clients, program site renovations, administrative costs, and therapeutic services, including evidence-based and culturally appropriate curricula.