



Home and Community-Based Services: Implementation Plan for 2019 Legislative Changes

Office of Inspector General, Licensing Division

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Introduction

The 2019 Legislature changed several laws that impact home and community-based services. Many of the changes update or clarify licensing requirements.

Each section of this Implementation Plan contains:

- the actual text of the law, including the changes made during the 2019 legislative session
- an overview of each new or changed requirement
- what the change means for providers and
- how licensors will monitor for compliance (if applicable).

Key

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

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

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

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

Throughout this document, we use the following acronyms:

- BI for the Brain Injury waiver
- CAC for the Community Alternative Care waiver
- CADI for the Community Access for Disability Inclusion waiver
- DD for the Developmental Disabilities waiver
- EW for the Elderly waiver
- HCBS for home and community-based services.

Service plan review and evaluation

Section 245D.071, Subd. 5.

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

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

The remaining paragraphs were re-lettered due to the insertion of paragraph (b), but were otherwise unchanged.

Overview: During their annual meeting, license holders must discuss with a person, and their legal representative and case manager how technology might be used to meet a person's desired outcomes. Please note that the changes to Paragraph (a) rephrase the current requirements without changing them. (Effective: July 1, 2019)

What do providers need to do?

Providers must discuss how technology could be used to meet a person's desired outcomes during their annual meeting with the person, their legal representative and case manager. However, this does not mean that technology must be used to provide services.

Providers may use an updated [Progress Review Meeting Summary](#) to document this discussion. The summary must indicate if a decision about the use of technology was made and if any more information needs to be gathered before a decision is made.

How will licensors monitor for compliance?

During licensing reviews, licensors will confirm that providers discussed the use of technology during annual meetings and documented the discussions in the coordinated service and support plan addendum. Licensors will also review the documentation for a decision about the use of technology and an indication of whether more information is needed to make a decision.

Annual training

Section 245D.09, Subd. 5.

Annual training. A license holder must provide annual training to direct support staff on the topics identified in subdivision 4, clauses (3) to (10). If the direct support staff has a first aid certification, annual training under subdivision 4, clause (9), is not required as long as the certification remains current. A license holder must provide a minimum of 24 hours of annual training to direct service staff providing intensive services and having fewer than five years of documented experience and 12 hours of annual training to direct service staff providing intensive services and having five or more years of documented experience in topics described in subdivisions 4 and 4a, paragraphs (a) to (f). Training on relevant topics received from sources other than the license holder may count toward training requirements. A license holder must provide a minimum of 12 hours of annual training to direct service staff providing basic services and having fewer than five years of documented experience and six hours of annual training to direct service staff providing basic services and having five or more years of documented experience.

Overview: There will no longer be a requirement for a minimum number of hours of annual training for direct service staff providing intensive or basic services. However, direct service staff providing intensive or basic services still need to complete annual training on the same topics that are currently required. Orientation and annual training requirements for the Positive Supports Rule have not changed. (Effective: July 1, 2019)

What do providers need to do?

Providers do not need to provide a minimum number of hours of annual training to direct service staff who provide intensive or basic services. Direct service staff providing intensive or basic services still need to complete annual training on the same topics required in section 245D.09, subdivision 5 which are listed on the [Staff Annual Training Record](#).

Staff still need to complete the same number of orientation and annual training hours required by the Positive Supports Rule, [Minnesota Rules, part 9544.0090](#).

The requirement to document staff training has not changed. Providers must document staff training according to [Minnesota Statutes, section 245D.095, subdivision 5](#), including the date the training was completed, the number of hours per subject area, and the name of the trainer or instructor.

New definition of *residential program* for chapter 245D

Section 245A.02, Subd. 14.

Residential program. (a) Except as provided in paragraph (b), "residential program" means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment outside a person's own home, including a program in an intermediate care facility for four or more persons with developmental disabilities; and chemical dependency or chemical abuse programs that are located in a hospital or nursing home and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Residential programs include home and community-based services for persons with disabilities or persons age 65 and older that are provided in or outside of a person's own home under chapter 245D.

(b) For a residential program under chapter 245D, "residential program" means a single or multifamily dwelling that is under the control, either directly or indirectly, of the service provider licensed under chapter 245D and in which at least one person receives services under chapter 245D, including residential supports and services under section 245D.03, subdivision 1, paragraph (c), clause (3); out-of-home crisis respite services under section 245D.03, subdivision 1, paragraph (c), clause (1), item (ii); and out-of-home respite services under section 245D.03, subdivision 1, paragraph (b), clause (1). A residential program does not include out-of-home respite services when a case manager has determined that an unlicensed site meets the assessed needs of the person. A residential program also does not include multifamily dwellings where persons receive integrated community supports, even if authorization to provide these supports is granted under chapter 245D and approved in the federal waiver.

Overview: The new law clarifies the definition of *residential program* for the purposes of HCBS provided under chapter 245D to spell out when a provider needs a residential setting license.

(Effective: Jan. 1, 2020)

What do providers need to do?

If a program meets the following conditions, it must be licensed as a residential setting:

- Is located in a single or multifamily dwelling
- Is either directly or indirectly under the control of a 245D service provider and
- Provides 245D services to at least one person in the residence, including residential supports and services, out-of-home crisis respite services, or out-of-home respite services.

The following do not need a residential setting license:

- Out-of-home respite services when a case manager has determined that a person's needs can be met at an unlicensed site
- Multifamily dwellings where people receive integrated community supports, even if these supports are authorized under chapter 245D and approved in the federal waiver.

More intensive support services must follow intensive support planning and delivery standards

Section 245D.071, Subd. 1.

Requirements for intensive support services. Except for services identified in section 245D.03, subdivision 1, paragraph (c), clauses (1) and (2), item (ii), a license holder providing intensive support services identified in section 245D.03, subdivision 1, paragraph (c), must comply with the requirements in this section and section 245D.07, subdivisions 1, 1a, and 3. Services identified in section 245D.03, subdivision 1, paragraph (c), clauses (1) and (2), item (ii), must comply with the requirements in section 245D.07, subdivision 2.

Overview: The law changes the exception for service planning and delivery.

Service planning and delivery for in-home family support, in-home supported living services and semi-independent living services (SILS) must now be provided following the standards of intensive support services.

The exception to allow for service planning and delivery to be provided following the standards for basic support services continues for behavioral support services, positive support services, in-home or out-of-home crisis respite, specialist services, and independent living services training (ILS). (Effective: May 31, 2019) – day following final enactment

What do providers need to do?

For people currently receiving services who are impacted by this change, at the time of their annual service plan review, providers must follow the standards in section 245D.071. If a person does not have an established annual service plan review, the provider should establish a date for an annual meeting to occur no later than December 31, 2019 and follow the standards in section 245D.071.

People who began receiving services on or after May 31, 2019, must receive service planning and delivery according to the legislative change.

How will licensors monitor for compliance?

During licensing reviews, licensors will confirm through service recipient record reviews that the service planning and delivery standards are being met.

Positive support professional qualifications

Section 245D.091, Subd. 2.

Behavior Positive support professional qualifications. A ~~behavior~~ positive support professional providing ~~behavioral~~ positive support services as identified in section 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the following areas as required under the brain injury ~~and~~, community access for disability inclusion, community alternative care, and developmental disabilities waiver plans or successor plans:

- (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 and 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 neurocognitive disorder;
- (11) demonstrated expertise with populations being served; and
- (12) must 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);
 - (iv) licensed professional clinical counselor licensed under sections 148B.29 to 148B.39 with at least 4,000 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) person with a master's degree or PhD in one of the behavioral sciences or related fields with demonstrated expertise in positive support services, as determined by the person's needs as outlined in the person's community support plan; or

(vii) 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.

Overview: The law modifies the title and qualifications for staff—replacing “behavior support professionals” with “positive support professionals.” It adds the CAC and DD waivers to the list of waivers for which positive support professionals can provide services. (Effective: July 1, 2019)

What do providers need to do?

Providers should update the position title from “*behavior* support professional” to “*positive* support professional.” Positive support professionals can provide services for the CAC and DD waivers.

A person with a master’s degree or PhD in behavioral science or a related field with demonstrated expertise in positive support services can now qualify as a positive support professional. To be hired as a positive support professional, an individual must also be able to meet the needs of the clients they are serving.

Positive support analyst qualifications

Section 245D.091, Subd. 3.

Behavior Positive support analyst qualifications. (a) A ~~behavioral~~ behavior positive support analyst providing ~~behavioral~~ positive support services as identified in section 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the following areas as required under the brain injury ~~and~~, community access for disability inclusion, community alternative care, and developmental disabilities waiver plans or successor plans:

- (1) have obtained a baccalaureate degree, master's degree, or PhD in a social services discipline; ~~or~~
- (2) meet the qualifications of a mental health practitioner as defined in section 245.462, subdivision 17; ~~or~~
- (3) be a board-certified behavior analyst or board-certified assistant behavior analyst by the Behavior Analyst Certification Board, Incorporated.

(b) In addition, a ~~behavioral~~ behavior positive support analyst must:

(1) have four years of supervised experience ~~working with individuals who exhibit challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder~~ conducting functional behavior assessments and designing, implementing, and evaluating effectiveness of positive practices behavior support strategies for people who exhibit challenging behaviors as well as co-occurring mental disorders and neurocognitive disorder;

(2) have received ~~ten hours of instruction in functional assessment and functional analysis; training prior to hire or within 90 calendar days of hire that includes:~~

- (i) ten hours of instruction in functional assessment and functional analysis;
- (ii) 20 hours of instruction in the understanding of the function of behavior;
- (iii) ten hours of instruction on design of positive practices behavior support strategies;
- (iv) 20 hours of instruction preparing written intervention strategies, designing data collection protocols, training other staff to implement positive practice strategies, summarizing and reporting program evaluation data, analyzing program evaluation data to identify design flaws in behavioral interventions or failures in implementation fidelity, and recommending enhancements based on evaluation data; and
- (v) eight hours of instruction on principles of person-centered thinking;

~~(3) have received 20 hours of instruction in the understanding of the function of behavior;~~

~~(4) have received ten hours of instruction on design of positive practices behavior support strategies;~~

~~(5) have received 20 hours of instruction on the use of behavior reduction approved strategies used only in combination with behavior positive practices strategies;~~

~~(6) (3) be determined by a behavior positive support professional to have the training and prerequisite skills required to provide positive practice strategies as well as behavior reduction approved and permitted intervention to the person who receives behavioral positive support; and~~

~~(7) (4) be under the direct supervision of a behavior positive support professional.~~

(c) Meeting the qualifications for a positive support professional under subdivision 2 shall substitute for meeting the qualifications listed in paragraph (b).

Overview: The law modifies the title and qualifications for staff—replacing “behavior support analysts” with “positive support analysts.” It adds the CAC and DD waivers to the list of waivers for which positive support analysts can provide services. (Effective: July 1, 2019)

What do providers need to do?

Providers should update the position title from “*behavior* support analyst” to “*positive* support analyst.” Positive support analysts can provide services for the CAC and DD waivers.

A behavior analyst or assistant behavior analyst who is board certified by the Behavior Analyst Certification Board, Inc. can now qualify as a positive support analyst.

Positive support analysts need to complete the same initial training as before, with a few exceptions:

- Positive support analysts’ four years of supervised experience must now be in conducting functional behavior assessments and designing, implementing, and evaluating the effectiveness of positive practices behavior support strategies for people who exhibit challenging behaviors as well as co-occurring mental disorders and neurocognitive disorder.
- Positive support analysts no longer need to complete 20 hours of training on the use of behavior reduction approved strategies used in combination with behavior positive practices strategies. Instead, prior to hire or within 90 calendar days of hire, positive support analysts must complete 20 hours of instruction on preparing written intervention strategies, designing data collection protocols, training other staff to implement positive practice strategies, summarizing and reporting program evaluation data, analyzing program evaluation data to identify design flaws in behavioral interventions or failures in implementation fidelity, and recommending enhancements based on evaluation data.
- Prior to hire or within 90 calendar days of hire, positive support analysts must also complete 8 hours of instruction on principles of person-centered thinking.

Individuals who qualify as positive support professionals do not need to complete the supervised experience and orientation training mentioned above to do the work of a positive support analyst.

Positive support specialist qualifications

Section 245D.091, Subd. 4.

Behavior Positive support specialist qualifications. (a) A ~~behavior~~ positive support specialist providing ~~behavioral~~ positive support services as identified in section 245D.03, subdivision 1, paragraph (c), clause (1), item (i), must have competencies in the following areas as required under the brain injury ~~and~~, community access for disability inclusion, community alternative care, and developmental disabilities waiver plans or successor plans:

- (1) have an associate's degree in a social services discipline; or
- (2) have two years of supervised experience working with individuals who exhibit challenging behaviors as well as co-occurring mental disorders or neurocognitive disorder.

(b) In addition, a behavior specialist must:

- (1) have received training prior to hire or within 90 calendar days of hire that includes:
 - (i) a minimum of four hours of training in functional assessment;
 - ~~(2) have received~~ (ii) 20 hours of instruction in the understanding of the function of behavior;
 - ~~(3) have received~~ (iii) ten hours of instruction on design of positive practices behavioral support strategies; and
 - (iv) eight hours of instruction on principles of person-centered thinking;
- ~~(4) (2)~~ be determined by a behavior positive support 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 positive support; and
- ~~(5) (3)~~ be under the direct supervision of a behavior positive support professional.

(c) Meeting the qualifications for a positive support professional under subdivision 2 shall substitute for meeting the qualifications listed in paragraphs (a) and (b).

Overview: The law modifies the title and qualifications for staff—replacing “behavior support specialists” with “positive support specialists.” It adds the CAC and DD waivers to the list of waivers for which positive support specialists can provide services. (Effective: July 1, 2019)

What do providers need to do?

Providers should update the position title from “*behavior specialist*” to “*positive support specialist*.”

Providers need to ensure that positive support specialists complete the same initial training prior to hire or within 90 calendar days of hire, with the addition of eight hours of instruction on principles of person-centered thinking.

Individuals who qualify as positive support professionals do not need to meet the specialist qualifications to do the work of a positive support specialist.

Changes that will take effect upon federal approval

Integrated community supports setting's capacity report

Once DHS receives federal approval, it will start requiring license holders who provide integrated community supports to submit a setting's capacity report. This capacity report will allow DHS to ensure that integrated community supports locations meet HCBS requirements.

The law specifies that only one license holder may deliver integrated community supports at the address of a multifamily housing building.

License holders who provide integrated community supports will need to submit the report using DHS' form and submission process. (DHS will notify license holders about this form and submission process after the department receives federal approval.) The report will include:

- The address of the multifamily housing building where the license holder delivers integrated community supports and owns, leases, or has a direct or indirect financial relationship with the property owner
- The total number of living units in the multifamily housing building where integrated community supports are delivered
- The total number of living units in the multifamily housing building and
- The percentage of living units that are controlled by the license holder where integrated community supports are delivered—the number of units where integrated community supports are delivered divided by the total number of living units in the building.

New waiver services to chapter 245D applicability

DHS is seeking federal approval to add new waiver services and extend existing services to additional waivers. In anticipation that DHS will receive federal approval, the new law updates the applicability section of chapter 245D. The changes to the waiver services will take effect on Jan. 1, 2021 or upon federal approval, whichever is later.

In the table on the next page, an "x" indicates that a service is provided under the current waiver plan. New services that will likely receive federal approval are shown in italics. The word *expected* indicates a new or current service is expected to be added to a waiver plan.

Service	BI	CAC	CADI	DD	EW
Basic support services					
In-home and out-of-home respite	x	x	x	x	x
Adult companion services	x	expected	x		x
Personal support				x	
24- hour emergency assistance, personal emergency response			x	x	
Night supervision services	x	expected	expected	expected	
Homemaker services	x	x	x	x	x
Individual community living support					
<i>Individualized home supports services</i>	expected	expected	expected	expected	
Intensive support services					
Positive support services	x	expected	x	expected	
In-home or out-of-home crisis respite services	expected	expected	expected	x	
Specialist services	expected	expected	expected	x	
In-home family support and supported living services				x	
Independent living services training	x		x		
Semi-independent living services					
<i>Individualized home support with training services</i>	expected	expected	expected	expected	
<i>Individualized home support with family training services</i>	expected	expected	expected	expected	
Supported living services				x	
Foster care services	x	x	x		
<i>Community residential services</i>	expected	expected	expected	expected	
<i>Family residential services</i>	expected	expected	expected	expected	
Residential services (4+ people with developmental disabilities in a supervised living facility)					
Structured day services	x				
<i>Day services</i>	expected	expected	expected	expected	
Day training and habilitation services				x	
Prevocational services	x	expected	x	expected	
Employment exploration services	x	x	x	x	
Employment development services	x	x	x	x	
Employment support services	x	x	x	x	
<i>Integrated community support*</i>	expected	expected	expected	expected	

*Will be added to the BI and CADI waivers beginning on Jan. 1, 2021, and the CAC and DD waivers on Jan. 1, 2023

Additional information

Adult day services licensing reviews

DHS received funding to hire two additional licensors for adult day services. This will allow DHS to provide licensing reviews every two years rather than every four years.

Alternative sources of training

DHS will no longer preapprove trainings or approve alternative online trainings or competency-based assessments. Providers need to approve all trainings and competency-based assessments themselves.

HCBS billing and service documentation requirements

Effective July 1, 2019, there are new documentation requirements for billing DHS. The provider is eligible for reimbursement only if:

- The service is provided under a federally approved waiver plan.
- The service is provided on days and times specified on the operating license.
- Providers maintain and collect documentation that is in English and legible.
- For services reimbursed at an hourly or minute-based rate, the provider documents:
 - The date of the documentation
 - The day, month and year the service was provided
 - The start and stop times with a.m. and p.m. designations (except for case management services)
 - Service name or description
 - The name, signature and title of the person providing the service. If the service is provided by more than one staff, the provider may designate one staff member responsible.
- The provider has documentation that staff have reviewed the following statement: “It is a federal crime to provide materially false information on service billings for medical assistance or services provided under a federally approved waiver plan as authorized under Minnesota Statutes, sections 256B.0913, 256B.0915, 256B.092 and 256B.49.”

DHS may recover payment if these criteria are not met.

Waiver services documentation and billing requirements

Three types of home and community-based services (HCBS) have new documentation and billing requirements. These services include: waiver transportation, equipment and supply items, and adult day.

Waiver transportation services

Effective July 1, 2019, a waiver transportation service cannot be covered by:

- Medical transportation under the Medicaid state plan or

- A component of another waiver service.

Additionally, alongside the HCBS documentation requirements outlined above, providers must:

- Maintain odometer and other records to distinguish an individual trip with a specific vehicle and driver
- Maintain documentation demonstrating the vehicle and driver meet the nonemergency medical transportation service standards in M.S. 256B.0625, subdivision 17.

Equipment and supply documentation requirements

Effective July 1, 2019, an equipment and supply services provider must provide documentation that shows:

- The recipient's assessed need for the service
- The reason why the equipment is not covered by Medicaid
- The cost, quantity, type, and brand of the equipment or supply and whether it has been rented or purchased and
- The shipping invoice or documentation proving the date of delivery to the recipient, or receipt if purchased by the recipient.

Adult day service documentation and billing requirements

Effective Aug. 1, 2019, adult day service providers must provide documentation that shows:

- A needs assessment and current plan of care
- Attendance records including the date of attendance with the day, month, year and pickup and drop-off time in hours and minutes with a.m. and p.m. designations
- Monthly and quarterly program requirements
- Name and qualification of each registered physical therapist, registered nurse and registered dietitian who provides services and
- Location of the service (if alternate location, must provide: address, length of time, and list of participants).

If a provider exceeds its licensed capacity, DHS must recover all Minnesota Health Care Program (including Medical Assistance) payments for that date of service.

Limits on receiving public funds

Effective immediately, an existing law that prohibits a person or provider who has been excluded from a DHS program from becoming a provider in another DHS program was strengthened by:

- Giving DHS additional authority to remove a provider who is excluded from one DHS program from all DHS programs (Previous authority was to prohibit entry to a program, but did not address those already participating in more than one DHS program.)
- Clarifying a provider excluded under this law includes any entity or individual receiving payment from a program administered by DHS

- Modifying the definitions of who is excluded (e.g. a provider or individual who has had a license revoked or suspended) and
- Expanding the list of possible sanctions covered by this law.