



Minnesota Department of **Human Services**

Integrated Licensure Background and Recommendations

**Minnesota Department of Health and Minnesota
Department of Human Services**
Report to the Minnesota Legislature 2014

February 2014



Minnesota Department of **Health**



Minnesota Department of **Human Services**

February 21, 2014

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Honorable Chairs:

Laws of Minnesota 2013, Chapter 108, Article 11, Section 31, requires the Minnesota Department of Health (MDH) Compliance Monitoring Division and the Department of Human Services (DHS) Licensing Division to jointly develop an integrated licensing system for providers of both home care services and home and community-based services. MDH and DHS submit to the Legislature our joint recommendations and proposed legislative changes to implement the integrated licensing system by this letter and attachments.

The attached recommendations outline the tenets of our proposed integrated licensing framework. Integrated licensing creates a new model for regulation that allows a broader scope of service delivery under one license instead of creating a new license with a limited scope of service delivery. It is imperative that we work together across state agencies to continuously assess our regulatory activities to identify opportunities for enhancing efficiencies and effectiveness in regulation while protecting the vulnerable adults and children who receive services from providers that we regulate. Our joint recommendations for a new Integrated Licensing designation are a foundational step in our work to move towards this broader goal.

As leaders of MDH and DHS, we realize that the attached initial recommendations are a small step towards more effective and efficient regulatory oversight by the state.

The Departments of Health and Human Services are committed to continuing to carry forward the theme which underlays the impetus for Integrated Licensure. In addition to Integrated Licensing, we have developed a structure for our agencies to continue to jointly discuss and develop regulatory recommendations that will promote more efficient and effective regulatory oversight and further our goal of protecting the health, safety and rights of consumers.

This is a time of change both for Minnesota as a state but also as a nation as we move forward with changes under the Affordable Care Act. Legislative support for these initial changes is needed to help us continue to remain effective in our vital protection roles. Your support and encouragement to our agencies to continue our work together affirms that we are moving in the right direction.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward P. Ehlinger". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward P. Ehlinger, M.D., M.S.P.H.
Commissioner
P.O. Box 64975
St. Paul, MN 55164-0975

Sincerely,

A handwritten signature in black ink, appearing to read "Lucinda Jesson". The signature is cursive and elegant, with a long horizontal stroke at the end.

Lucinda Jesson
Commissioner

Integrated Licensure Background and Recommendations to 2014 Legislature

Introduction

Minnesota Laws 2013, Chapter 108, Article 11 Section 31, authorized the licensing divisions of the Minnesota Departments of Health and Human Services to jointly develop an “integrated licensing system” for providers of both home care services licensed under Minnesota Statutes, Chapter 144A and home and community based services (HCBS) licensed under Minnesota Statutes, Chapter 245D. This document provides background and other information relating the proposed legislation. It also identifies recommendations and plans to continue the agencies’ work towards regulatory integration and collaboration.

Goal – Protecting Consumer Health, Safety, and Rights

The purpose of all government regulation is to protect the public by enforcing minimum standards set for the regulated field. All regulation has some common key components such as: setting minimum licensure requirements; conducting inspections and audits; enforcing laws including prohibited conduct; investigating complaints; taking enforcement actions; communicating to regulated parties and consumers; and providing due process rights concerning action taken by the regulatory agency.

The role of the Minnesota Department of Health Compliance Monitoring and Department of Human Services Licensing Divisions as regulators is to protect the safety, health, well-being and rights of the public who receive services from health and human services licensed providers. Establishing licensure requirements that are clear for both providers and consumers leads to improved compliance by providers and result in better outcomes for consumers of those services.

Background

In February of 2012, MDH Compliance Monitoring and DHS Licensing submitted a report and recommendations to the legislature (*Evaluation of Health and Human Services Regulatory Responsibilities February 2012*). In this report the two agencies recommended a number of options to enhance efficiency and effectiveness in the administration of regulatory functions across the two agencies. These recommendations included that

the two licensing divisions continue the ongoing collaboration, update and revise websites and information relating to licensure of providers and promoted continued cross training of licensing staff in the two agencies. In 2012, the legislature approved funding to continue the analysis started in this report. That report prepared by the Office of Minnesota Management and Budget entitled *Options for Administering Health and Human Services Regulations* was issued in August 2013. This report acknowledged the effectiveness of the existing collaboration of the two licensing divisions and fully supported the continuation of the collaborative work.

The continued discussions between the agencies and the collaboration led to the finding that with the implementation of the DHS 245D licensing standards beginning January 1, 2014 a small number of MDH licensed home care providers would be required to also obtain the DHS 245D license if they wanted to continue to provide previously unlicensed home and community-based services (HCBS). For Example: *A home care provider is providing Comprehensive Home Care Services to a client such as Nursing or Occupational Therapy services. The client is eligible for services under the Brain Injury Waiver. One of the services defined in the Brain Injury Waiver is “night supervision”. If the same home care provider wanted to provide and receive payment for the “night supervision” service they would need to obtain a 245D license and would be subject to the 245D standards.*

In 2013, the two agencies brought to the legislature the recommendation, which was passed into law, that for an interim basis, a licensed home care provider can provide home and community-based services governed by 245D without needing to obtain the 245D license as long as they meet the 245D-HCBS requirements. The legislation also directed the two agencies to develop an integrated licensing system. (see Attachment 1)

In preparing the recommendations for an “integrated licensing system” the staff have conducted a review and analysis of statutory language applicable to both license types as well as other requirements such as Department of Human Services Health Care Administration Provider Enrollment, Department of Human Services Continuing Care Administration and the federal requirements from the U.S. DHHS Center for Medicare and Medicaid Services. The analysis included input from stakeholders including

providers and from staff at the counties. As a result of this process, we are making the following recommendations for integrated licensing and other related activities.

Recommendations

1. Creation of Integrated License-Home and Community Based Services (HCBS) Designation for Home Care Providers.

The Integrated Licensing System is a new model of regulation for our two agencies. While the names, “home care services” and “home and community based services” (HCBS) may sound like similar services they are, in fact, different services. Additionally, HCBS services licensed under 245D are provided to individuals and most are paid for by one of the state’s Medicaid HCBS Waivers. They are limited to individuals who meet specific care and service needs and the majority of those individuals are already covered under Medicaid.

Prior to implementation by DHS of the 245D licensing standards most of the developmental disabilities services were licensed under chapter 245B and the remaining services did not require licensure. A CMS issued Corrective Action Order led to the development by DHS of the waiver provider standards which served as the basis of the 245D license. The HCBS services that now require licensure include Basic and Intensive Supports and Services. Basic Supports and Services are providing assistance and supervision and include respite, personal supports, night supervision, and 24 hour emergency assistance services. Intensive Supports and Services are providing training, habilitation or rehabilitation along with assistance and supervision and includes intervention support, in home support, day services, employment services and residential support services. The licensure standards under 245D are a combination of licensing standards and Medicaid payment standards.

Home care providers have been licensed by MDH since the 1990’s. Home Care Providers can provide a range of health care and health-related services to individuals of any age and can range from complex health care services to providing assistance with activities of daily living such as bathing, toileting, etc. Home Care Providers may receive payment for these services through private pay, health insurance, long-term care insurance, Medicaid or Medicare. While many home care providers choose not to

provide both home care and HCBS services now licensed under 245D, a small subset of providers do choose to provide a broader set of services to their clients

While the services provided are not the same, many of the regulatory requirements in chapters 245D and 144A are similar. Under the proposed Integrated Licensing System model a Home Care Provider licensed under Chapter 144A that chooses to provide one or more of the Basic Supports and Services that require licensure under Chapter 245D may obtain the Integrated License-HCBS Designation. The designation will allow them to provide the Basic Supports and Services and identifies the requirements of Chapter 245D that they will need to comply with in addition to compliance with the home care licensing regulations.

Table 1 - Licensing and Designation Descriptions

Home Care Provider	HCBS Designation	245D Provider
<p><u>Basic Home Care Services</u> Assistance with dressing, self-feeding, oral hygiene, hair care, grooming, toileting and bathing, providing standby assistance, providing verbal and visual reminders to the client to perform regularly scheduled medications and treatments, preparing modified diets, and assisting with laundry, housekeeping, meal preparation, shopping or household chores along with at least one of the above services.</p>	<p>A Basic or Comprehensive Home Care Provider is able to provide the</p>	<p><u>Basic Supports and Services</u> Provide the level of assistance, supervision and care that is necessary to ensure health and safety of persons including: respite; companion; person support; 24 hour emergency assistance; night supervision; and homemaker.</p>
<p><u>Comprehensive Home Care Services</u> Any Basic services and the services of nurse, physical therapist, respiratory therapists, occupational therapist, speech-language pathologist, dietitian or nutritionist or social worker; tasks delegated to unlicensed personnel by a registered nurse or other licensed health professional within their scope of practice; medication management services; hands-on assistance with transfers and mobility; assisting clients with eating when the client has complicated eating problems; and other complex or specialty health care services.</p>	<p><u>245D Basic Supports and Services</u> under this Designation.</p>	<p><u>Intensive Support and Services</u> Provide assistance, supervision and care necessary to protect the health and safety of the person and services directed toward training, habilitation or rehabilitation and include: intervention services (behavioral supports, crisis respite, specialist services); in-home supports (in-home family support and supported living services, independent living services, semi-independent living services); residential supports; day services and supported employment services.</p>

A home care provider with an Integrated License-HCBS Designation will allow a consumer to utilize the same provider to provide Basic HCBS services they may be eligible for under one of the Medicaid Waivers. A provider who is serving clients who need both types of services can better integrate service delivery while still preserving

the integrity of the Medicaid payment standards. Integrated Licensing also provides for a consistency in rights and protections that are necessary as part of our state's compliance with Supreme Court's decision in *Olmstead v. L.C.*, Minnesota's *Olmstead Plan* and the *Jenson Settlement Agreement*. The Integrated Licensing System allows a provider who chooses to obtain this designation to have a broader scope of practice while still protecting the client's rights.

Examples of Client Benefits of Integrated License

A client is receiving Comprehensive Home Care Services for health care needs as the result of a serious health incident or accident. That client at some point becomes eligible to receive services under the Brain Injury Waiver. The client has a relationship already with the staff of the Home Care Provider and would like to receive some of the services they qualify for on the Brain Injury Waiver from the same staff. The Home Care Provider has the Integrated License-HCBS Designation and is competent to provide the service that the client wants. The client could then choose to get the waiver service from the Home Care Provider or could choose another provider.

2. Implementing the Integrated License-HCBS Designation effective July 1, 2015.

Both state agencies are currently implementing new licensure regulations for this set of providers. Both MDH and DHS began implementation of waiver standards under 245D and home care licensing changes beginning on January 1, 2014. We have developed an interim integrated license system that allows a current home care provider to provide 245D services without obtaining a 245D license. In the coming months, our agencies will be closely monitoring implementation to determine if we need to realign our recommendations. We also plan to continue to work on identifying recommendations for additions to the Integrated Licensing System.

3. Providers who obtain the designation will be required to pay a supplemental fee along with their home care license fee based on their revenue from provision of HCBS.

MDH will need to conduct additional work to ensure those providers with the HCBS Designation are complying with required components of 245D. To ensure that there are adequate resources for this work we propose that a home care provider who seeks this designation initially pay an application fee of \$155 for the designation. The provider

will also pay an annual supplemental fee upon renewal based on revenue generated from 245D services (HCBS services) provided.

This recommendation is, however, just one small piece of the work that is going on between the two agencies. The leadership from MDH and DHS have developed a mechanism that will be used on an ongoing basis to address regulatory issues. This mechanism is the Interagency Regulatory Framework. The Framework sets a process by which various program and policy considerations in either agency can be reviewed to determine regulatory impact. With executive level support from both agencies, this Framework process is being utilized to address several areas that relate to regulation such as review of proposed new HCBS service categories and development of processes to improve how our agencies respond to complaints in settings that may be regulated by multiple entities. The agencies will use the Interagency Regulatory Framework Steering Team to direct action on specific issues and to focus cross-agency resources and expertise in coordinated ways to protect vulnerable people. Some of the current activities are to:

- Develop a communication protocol for informing each other and additional agencies when a complaint or concern is brought to DHS or MDH regarding a vulnerable person;
- Engage other state agencies and the broader public in a public awareness campaign around abuse and harm;
- Expand discussions to include counties, since they also have responsibilities in case management, placement, and approving payment for services;
- Work collaboratively to prepare legislation for 2015 that will address the need for regulations which better manage services for persons with cognitive and/or memory problems in certain settings; and
- Continue to review and expand integrated licensing.

As stated earlier, utilizing an Integrated Licensing System is a new model for regulation. This integrated licensing designation is a very small step towards more effective and efficient regulatory oversight by the state. We know that there are many other issues that impact our ability as a state in effectively regulate providers of health and other services.

4. The Interagency Regulatory Framework and the themes that underlay the impetus for Integrated Licensure should continue to be utilized as the mechanism to review and develop recommendations to address regulatory issues going forward.

The agencies have identified a number of areas where they hope to focus their ongoing collaborative work to promote threshold standards for protection and services provided to all individuals receiving services, regardless of whether services are funded through public or private dollars. One of the critical areas of continued discussion relates to the standards for waiver providers in Chapter 245D that are payment-related standards, standards which are controlled by language in the various waivers as submitted by DHS and approved by CMS. While many services are funded by public dollars, including Medicare, Medicaid and Medicaid waivers, some services are funded solely through private sources. The DHS Office of Inspector General (OIG) has been working to facilitate more effective enforcement of public funding standards to increase program accountability, compliance and integrity. All individuals receiving services should be afforded the same level of protections; however, the question remains to what extent all services should be required to meet the same standards as those funded with public dollars. Another consideration is that public funding standards vary from each other and private funding standards have their own standards. Further, funding standards are tied to the services paid for. General licensing standards are set for services not necessarily paid for by any public funding source or paid for by one public source and not another. These issues are a part of future discussions and analyses that will help the state create a strong foundation for how we regulate human services and health care services going forward.

There are many other areas of focus for our interagency collaboration work as well. Some of those include:

- Responding jointly to CMS directives, working together on CMS requirements for and responding to CMS or other corrective actions;
- Collaboration on submission of applications to CMS or other federal agencies;
- Working in collaboration to meet CMS Assurances for HCBS Waivers;
- Monitoring and planning for the changes relating to Affordable Care Act, such as integration of physical and mental health services and more coordination of care;

- Identifying and recognizing the uniqueness of service needs across different populations - needs of elderly, children, youth and adults with disabilities, mental health services and physical health care services and how it relates to regulation;
- Ongoing work related to regulatory impacts that are related to implementation of the State Olmstead Plan and the Jensen Settlement;
- Clarifying the role of licensure and its relationship to the state's goals of improved quality of providers, of quality of the state systems and improved outcomes for consumers;
- Strategic planning on areas of common interest that affect regulation such as access to services, coordination of care, having trained and competent providers, promoting healthy living;
- Sharing legislative recommendations and jointly working to support legislative changes and proposals;
- Reducing regulatory complexity and striving for increased provider compliance with payment and licensing standards that do not conflict, protect the public, and are not too onerous for the providers;
- Analyzing consumer risk and provider liability as we implement person-centered plans under Olmstead and Jensen settlement; and
- Monitoring of areas of non-compliance with standards and determining how to improve compliance.

In our work together, we will be monitoring the changes that affect health and human services regulation such as state and federal policy relating to Medicaid, the Affordable Care Act, implementation of the State Olmstead Plan and Jensen Settlement. Overall, and regardless of any of these changes, we must always keep in mind our overarching goal is to continue to protect the health, safety and rights of consumers of services and supports.

Conclusion

There are many changes occurring both at a Federal and State level. It is imperative that we as a state continue to work together. Leadership in MDH and DHS support the integration efforts and have been engaging in many activities over the past two years to further enhance regulatory efforts and avoid policy conflicts.

Attachment 1

2013 SESSION LAWS, CHAPTER 108, Article 11

Sec. 31. INTEGRATED LICENSING SYSTEM FOR HOME CARE AND HOME AND COMMUNITY-BASED SERVICES.

(a) The Department of Health Compliance Monitoring Division and the Department of Human Services Licensing Division shall jointly develop an integrated licensing system for providers of both home care services subject to licensure under Minnesota Statutes, chapter 144A, and for home and community-based services subject to licensure under Minnesota Statutes, chapter 245D. The integrated licensing system shall:

(1) require only one license of any provider of services under Minnesota Statutes, sections 144A.43 to 144A.482, and 245D.03, subdivision 1;

(2) promote quality services that recognize a person's individual needs and protect the person's health, safety, rights, and well-being;

(3) promote provider accountability through application requirements, compliance inspections, investigations, and enforcement actions;

(4) reference other applicable requirements in existing state and federal laws, including the federal Affordable Care Act;

(5) establish internal procedures to facilitate ongoing communications between the agencies, and with providers and services recipients about the regulatory activities;

(6) create a link between the agency Web sites so that providers and the public can access the same information regardless of which Web site is accessed initially; and

(7) collect data on identified outcome measures as necessary for the agencies to report to the Centers for Medicare and Medicaid Services.

(b) The joint recommendations for legislative changes to implement the integrated licensing system are due to the legislature by February 15, 2014.

(c) Before implementation of the integrated licensing system, providers licensed as home care providers under Minnesota Statutes, chapter 144A, may also provide home and community-based services subject to licensure under Minnesota Statutes, chapter 245D, without obtaining a home and community-based services license under Minnesota Statutes, chapter 245D. During this time, the conditions under clauses (1) to (3) shall apply to these providers:

(1) the provider must comply with all requirements under Minnesota Statutes, chapter 245D, for services otherwise subject to licensure under Minnesota Statutes, chapter 245D;

(2) a violation of requirements under Minnesota Statutes, chapter 245D, may be enforced by the Department of Health under the enforcement authority set forth in Minnesota Statutes, section 144A.475; and

(3) the Department of Health will provide information to the Department of Human Services about each provider licensed under this section, including the provider's license application, licensing documents, inspections, information about complaints received, and investigations conducted for possible violations of Minnesota Statutes, chapter 245D.

Attachment 2.

INTEGRATED LICENSURE AMENDMENT 2/14/14

1 **[144A.484] INTEGRATED LICENSURE; HOME AND COMMUNITY-BASED SERVICES**
2 **DESIGNATION.**

3 Subdivision 1. **Integrated licensing established.** (a) From January 1, 2014, to June 30, 2015, the
4 commissioner of health shall enforce the home and community-based services standards under chapter
5 245D for those providers who also have a home care license pursuant to chapter 144A as required under
6 Minnesota Laws 2013, chapter 108, article 11, section 31 and article 8, section 60.

7 (b) Beginning July 1, 2015, a home care provider applicant or license holder may apply to the
8 commissioner of health for a home and community-based services designation for the provision of basic
9 home and community-based services identified under section 245D.03, subdivision 1, paragraph (b).
10 The designation allows the license holder to provide basic home and community-based services that
11 would otherwise require licensure under chapter 245D, under the license holder's home care license
12 governed by sections 144A.43 through 144A.481.

13 Subd. 2. **Application for home and community-based services designation.** An application for a
14 home and community-based services designation must be made on the forms and in the manner
15 prescribed by the commissioner. The commissioner shall provide the applicant with instruction for
16 completing the application and provide information about the requirements of other state agencies that
17 affect the applicant. Application for the home and community-based designation is subject to the
18 requirements under section 144A.473.

19 Subd. 3. **Home and community-based services designation fees.** A home care provider
20 applicant or licensee applying for the home and community-based services designation or renewal of a
21 home and community-based services designation must submit a fee as identified in the amount specified
22 in subdivision 8 of this section.

Attachment 2.

INTEGRATED LICENSURE AMENDMENT 2/14/14

1 Subd. 4. **Applicability of home and community-based services requirements.** A home care
2 provider with a home and community-based services designation must comply with the requirements for
3 home care services governed by this chapter. For the provision of basic home and community-based
4 services the home care provider must comply with the following home and community-based services
5 licensing requirements:

6 (1) Person Centered Planning requirements in section 245D.07

7 (2) Protections in section 245D.06

8 (3) Emergency Restraints in section 245D.061

9 (4) Service Recipient Rights in section 245D.04, subdivision 3, paragraph (a), clauses 5, 7, 8, 12,
10 and 13 and paragraph(b)

11 A home care provider with the Integrated License-HCBS Designation may utilize a Bill of Rights which
12 incorporates the Service Recipient Rights in section 245D, subdivision 3, paragraph(a), clauses 5,7, 8,
13 12, and 13 and paragraph (b) with the Home Care Bill of Rights in section 144A. 44.

14 Subd. 5. **Monitoring and enforcement.** (a) The commissioner shall monitor for compliance with
15 the home and community-based service requirements identified in subdivision 5, in accordance with this
16 section and any agreements by the commissioners of health and human services. (b) The commissioner
17 will enforce compliance with applicable home and community-based services licensing requirements as
18 follows:

19 (1) The commissioner may deny a home and community-based services designation in accordance
20 with section 144A.473 or 144A.475; and

21 (2) If the commissioner finds that the applicant or license holder has failed to comply with the
22 applicable home and community-based services designation requirements the commissioner may issue:

23 (i) A correction order in accordance with section 144A.474;

Attachment 2.

INTEGRATED LICENSURE AMENDMENT

2/14/14

1 (ii) An order of conditional license in accordance with section 144A.475;

2 (iii) A sanction in accordance with section 144A.475, or

3 (iv) any combination of (i) through (iii).

4 Subd.6 . **Appeals.** A home care provider applicant that has been denied a temporary license will
5 also be denied their application for the home and community-based services designation. The applicant
6 may request reconsideration in accordance with section 144A.473, subdivision 3. A licensed home care
7 provider whose application for a home and community-based designation has been denied or whose
8 designation has been suspended or revoked, may appeal the denial, suspension, revocation or refusal to
9 renew a home and community based designation in accordance with section 144A.475. A license holder
10 may request reconsideration of a correction order in accordance with section 144A.474, subdivision 12.

11 **Subd 7. Agreements.** The commissioners of health and human services shall enter into any agreements
12 necessary to implement this section.

13 **Subd. 8. Fees; home and community based services designation.**

14 The initial fee for a basic home and community based services designation is \$155. A home care
15 provider who is seeking to renew the provider's home and community based services designation must
16 pay an annual nonrefundable fee with the annual home care license fee according to the following
17 schedule and based on revenues from the home and community based services:

<u>Provider Annual Revenue from HCBS</u>	<u>HCBS Designation</u>
<u>greater than \$1,500,000</u>	<u>\$320</u>
<u>greater than \$1,275,000 and no more than \$1,500,000</u>	<u>\$300</u>
<u>greater than \$1,100,000 and no more than \$1,275,000</u>	<u>\$280</u>
<u>greater than \$950,000 and no more than \$1,100,000</u>	<u>\$260</u>

Attachment 2.

INTEGRATED LICENSURE AMENDMENT 2/14/14

<u>greater than \$850,000 and no more than \$950,000</u>	<u>\$240</u>
<u>greater than \$750,000 and no more than \$850,000</u>	<u>\$220</u>
<u>greater than \$650,000 and no more than \$750,000</u>	<u>\$200</u>
<u>greater than \$550,000 and no more than \$650,000</u>	<u>\$180</u>
<u>greater than \$450,000 and no more than \$550,000</u>	<u>\$160</u>
<u>greater than \$350,000 and no more than \$450,000</u>	<u>\$140</u>
<u>greater than \$250,000 and no more than \$350,000</u>	<u>\$120</u>
<u>greater than \$100,000 and no more than \$250,000</u>	<u>\$100</u>
<u>greater than \$50,000 and no more than \$100,000</u>	<u>\$80</u>
<u>greater than \$25,000 and no more than \$50,000</u>	<u>\$60</u>
<u>no more than \$25,000</u>	<u>\$40</u>

1 Fees and penalties collected under this section shall be deposited in the state treasury and credited to the state
2 government special revenue fund.

3 Subdivisions 2 through 8 are effective July 1, 2015.

4 **Minnesota Statute 256B.04**

5 Subd. 21. **Provider enrollment.** (a) If the commissioner or the Centers for Medicare and Medicaid
6 Services determines that a provider is designated "high-risk," the commissioner may withhold payment
7 from providers within that category upon initial enrollment for a 90-day period. The withholding for
8 each provider must begin on the date of the first submission of a claim.

9 (b) An enrolled provider that is also licensed by the commissioner under chapter 245A or that is
10 licensed by the Minnesota Department of health under chapter 144A and has a HCBS designation on the
11 home care license must designate an individual as the entity's compliance officer. The compliance
12 officer must:

13