



ARRM

*ARRM leads the advancement of
community-based services that
support people with disabilities in
their pursuit of meaningful lives.*

1185 N. CONCORD ST.
SUITE NUMBER 424
SOUTH SAINT PAUL
MINNESOTA 55075

TEL 651.291.1086
TOLL 800.551.2211
FAX 651.293.9389
WEB ARR.M.ORG

BLUEPRINT FOR REFORM SECTION DESCRIPTIONS

January 6, 2012

SECTION 1. BUILDING CODES

EXPLANATION: Some cities are misusing the ADA to require commercial building codes (e.g. fully accessible bathrooms) in all group homes, whether they are needed or not. This can dramatically increase costs and actually has the impact of limiting residential services to people with disabilities as the added cost can keep providers from repairing, remodeling or building group homes and thus inhibit peoples' right to live where they choose. The imposition of these unnecessary standards is intentionally or unintentionally a way to limit group homes in a community.

WHAT THE SECTION DOES: Group homes licensed for six or fewer persons are zoned as single family residential. This section applies the same single family residential classification to the State Building Code. Additional needed requirements, like accessible bathrooms, will continue to be governed under current law and rule.

SECTION 2. RESPITE SERVICES AND FIVE BED ALLOWANCE

EXPLANATIONS and WHAT THIS SECTION DOES:

- **Respite:** Some group home residents routinely leave the home – for example, every weekend to stay with mom and dad – while staffing levels must remain the same. This section expands the allowance to provide needed respite services during these routine times to people with developmental disabilities and mental illness. The section provides common sense requirements, like not using the resident's bedroom and notification of the other residents.
- **Five bed:** With shrinking revenue, escalating costs and increasing wait lists it is no longer feasible to maintain current expectations for services. This applies to maintaining the “magic number” of four. We must use economics of scale as one tool to address this confluence of need and resources.

This section continues the five-bed allowance passed in 2009, but sunsetted in June 2011. Since then a moratorium on additional foster care beds went into effect – effectively fixing the number of group home beds. This option allows providers to consolidate existing facilities into five bed units. ARRM members are already using this option and seeing savings, but many are hesitant due to their uncertain legal status going forward.

SECTION 3: MONITORING TECHNOLOGY VARIANCE.

EXPLANATION: This cost effective and more responsive alternative to sleep staff was agreed to by stakeholders and adopted by the 2009 legislature. Providers may secure an alternative license that allows for the use of various kinds of monitoring technology to provide overnight supervision. Currently even insignificant licensing actions (such as the wrong date on a form) can prevent approval of a variance.

WHAT THE SECTION DOES: The section clarifies what level of licensing action would preclude a provider from getting a variance to provide alternative overnight supervision, such as monitoring technology.

SECTION 4: ALTERNATIVE OVERNIGHT SUPERVISION TECHNOLOGY; ADULT FOSTER CARE LICENSE

EXPLANATION: It now often takes over a year for DHS to approve or deny an alternative license to use monitoring technology in lieu of overnight sleep staff.

WHAT THIS SECTION DOES: The section requires DHS to publish the criteria that must be met to approve and that applications must be approved or denied within 60 days. If it is denied, the applicant would get a written explanation of the criteria that weren't satisfied to obtain an alternative license to use monitoring technology.

SECTION 5: DUPLICATIVE RULES GOVERNING SOME CORPORATE FOSTER CARE HOMES.

EXPLANATION: Some corporate foster care homes with five or six residents are regulated by both the Supervised Living Facility (SLF) Rule under the Dept. of Health and the consolidated standards under Section 245B.

WHAT THIS SECTION DOES: This narrows regulation to 245B, which governs other corporate foster care homes.

SECTION 6. RECIPIENTS' SERVICES TO BE DEFINED BY THEIR SUPPORT TEAMS.

EXPLANATION: Currently people with developmental disabilities have Interdisciplinary Teams, referred to as IDTs. This is an outdated concept that dates back to the days of

institutional placement. Individuals with other disabilities may or may not have people who provide support in decisions regarding their lives. In addition, teams are sometimes limited in their ability to make decisions in areas that they most likely know best, such as the balance of consumer choice and risk and the evaluation of the quality of services.

WHAT THIS SECTION DOES: This section establishes that all individuals who receive services under the community residential setting license – the license that would replace the current Adult Foster Care and 245B licenses – would have a support team to help them make decisions regarding services. It specifically gives final decisions on issues of choice and vulnerability to the teams, the people who know the individual the best, rather than a regulatory agency. This section also assures the involvement of team members in evaluating the quality of services provided and requires that Region 10 staff be consulted regarding the establishment of a system to evaluate services provided under the community support license.

SECTIONS 7 & 9: PROVIDER PENALTIES

EXPLANATION: When the Office of Inspector General (OIG) audited two providers they found that the counties had not completed annual Individual Services Plans (ISPs) as required by law – even though the providers had asked for the annual plans in writing. DHS then fined the providers for something the counties didn't do.

WHAT THIS SECTION DOES: This section says that providers can't be sanctioned when the county doesn't keep ISPs current after being reminded in writing by the provider. It also requires that when changes to an individual's services are agreed to, they become an addendum to that person's ISP.

SECTION 8: BACKGROUND STUDIES

EXPLANATION: Providers often have to conduct additional background studies for the same individual because they work in both licensed and unlicensed services for the same company.

WHAT THIS SECTION DOES: This section allows individuals from both licensed and unlicensed services to complete an initial background study with no requirement for additional annual studies as long as the individual has no break in service of greater than 90 days and provides a minimum of 40 hours per year of direct contact under a licensed program.

SECTION 10. INCENTIVES TO VOLUNTARILY CLOSE CORPORATE FOSTER CARE HOMES

EXPLANATION: When an individual moves out of corporate foster care to other community settings, the corporate foster care provider must often adjust its business model and array of services – such as consolidating people in various group homes to stay in the block. To facilitate

people exercising their choice of other community services, providers need fiscal tools similar to people moving from a nursing facility to HCBS.

WHAT THIS SECTION DOES: This section provides for short term incentive payments – similar to the nursing home model – to facilitate moves from corporate foster care to other community settings, resulting in long term system savings after the incentive payment expires. ARRM’s “placeholder” language is intended as a basis for refinement with DHS and other stakeholders.

SECTION 11. OPENING UP SHELTER NEEDY

EXPLANATION: Access to housing funding is one of the biggest barriers in enabling people to move out of corporate foster care into other community settings. Group Residential Housing (GRH) pays for room and board in corporate foster care, but cannot be used in conjunction with unlicensed services. In 2009 and 2010 the legislature adopted allowance, with strict limitations, for individuals to utilize shelter needy funding for their new housing – with the service and housing provider being the same entity. (Shelter needy funding is virtually the same amount as GRH.)

WHAT THIS SECTION DOES: This section loosens those limitations with a new requirement that the lease be transferred from the service/housing provider to the recipient within two years.

SECTION 12. GRH (GROUP RESIDENTIAL HOUSING)

EXPLANATION: As people who require accessible housing seek to move out of corporate foster care, their choices are limited by the state’s scarcity of accessible housing. At the same time, current corporate foster care providers have a ready stock of accessible homes that could be utilized by people to receive services from the provider of their choice. And some individuals may choose to stay in their current house for the short or long term, making the use of GRH as a bridge to other housing.

WHAT THIS SECTION DOES: In the event that these former corporate foster care homes are converted for use by individuals and shelter needy funding is not available to them, this section allows for the utilization of GRH funding – with the understanding that the provider transfer the lease to the recipient within two years.

SECTION 13. BUILDING CODES

EXPLANATION and WHAT THIS SECTION DOES: This applies the residential standards for remodeling group homes for the same reasoning as Section 1, which applies residential – rather than commercial – standards to building group homes.

SECTION 14. CONSUMER CHOICE AND RISK

EXPLANATION:

1. Risk associated with consumer choice is another significant barrier for people to exercise maximum life choices relative to their individual abilities and limitations.
2. Providers now assume most of the risk for consumers who want unsupervised alone time and have been adequately prepared for such time. Nonetheless, a cloud of potential provider liability inhibits some people's freedom and ability to choose.
3. As people move toward controlling their own housing they now often rely on their service providers to assume financial liability if they lose a roommate and his/her contribution to housing payments
4. These types of risk are the 700 pound gorillas that inhibit people from being afforded a fuller extent of their civil rights and liberties. These issues can only be resolved through focused work among the affected and concerned stakeholders.
5. Stakeholders agree that the issue of risk must be addressed to allow real life choices.

WHAT THIS SECTION DOES: Because the issues of risk and choice is complicated with people having their own individual vulnerabilities and various special interests having their own perspectives pertaining to choice and risk, this section establishes a commission of stakeholders to make recommendations to the 2013 legislature.

SECTION 15. PROVIDER INITIATED PILOTS / INNOVATION COMMISSION

EXPLANATION: The current procedures to allow providers to innovate with services that are more focused on individuals and cost savings, but don't fit within the prescribed requirements of current service systems, lack uniformity and are not widely known.

Innovation cannot be defined from the top down and occurs "in the trenches." To facilitate bottom-up innovation we need a clearly understood process to enable the private sector – people and providers – to be laboratories for meaningful change.

WHAT THIS SECTION DOES: This section establishes an Innovation Commission out side of DHS to evaluate provider and county proposals to undertake budget neutral or less costly innovative services based on recipients' individual needs with specific quality outcomes. The commission would make recommendations to the commissioner as two-year pilots. Successful pilots could be made permanent. Pilots that don't meet their objectives could be modified or ended without penalizing the pilot's provider or service recipients.

SECTION 16. ICF/DD DUPLICATIVE STANDARDS

EXPLANATION: ICFs/DD are regulated under two similar rules: Supervised Living Facilities (SLF Rule in MDH) and 245B (in DHS).

WHAT THIS SECTION DOES: This provision calls for recommendations to eliminate redundant and outdated regulations.

SECTION 17. UNDER ONE ROOF AND SIDE-BY-SIDE ALLOWANCES

EXPLANATION: There are limitations on how many people living in one “living setting” can receive services through the HCBS waiver. There are also limitations on the ability to provide some residential services to people on the waiver who live in settings that are adjacent to other settings where services are provided. The definition of “living settings” is not always clear. Many times explanations regarding the limitations on size and location indicate that these are based on federal requirements or limitations.

WHAT THIS SECTION DOES: This section would assure that there are no limitations to size and location that are more restrictive than those prescribed in federal regulation.

SECTION 18. ILS BILLING

EXPLANATION: Billing for Independent Living Services (ILS) in the CADI and BI waivers must now be in 15 minute increments, which does not allow for the flexibility in providing supports that occurs in the DD waiver.

WHAT THIS SECTION DOES: This section requires an amendment to the waiver plan for CADI and BI to allow for both 15 minute and daily billing for Independent Living Services.

SECTION 19. OVERNIGHT SUPERVISION

EXPLANATION: The adult foster care rule requires “the presence of a caregiver in the residence during normal sleeping hours.” Consumers often go about their days in the community without direct supervision when determined in her or his individual service plan, but are required under the rule to have a caregiver – often sleep staff – present at night.

WHAT THIS SECTION DOES: This section repeals the requirement to have caregivers in the residence at night. Section 6 of this bill would vest the decision to require overnight supervision with the recipient’s support team.

Provisions to be carried in the DHS licensing and policy bills that were agreed to last session, but not adopted

1. **Host county notification:** This section will change “host county concurrence” to “host county notification” for all waivers. The current system of having the county that has financial responsibility needing to get concurrence from the county the recipient receives services doesn’t apply to all waivers and is confusing. DHS’s proposal to simply have the host county being notified makes sense and will help recipients to live where they want.
2. **Repeat background study requirement:** This section will include language that changes the period of time an employee may be absent from providing services without requiring a new background study from 45 to 90 days. (A good example is a college student on vacation from school.) It will also remove the ambiguous requirement of “providing the commissioner notice” with the simpler-to-document process of “initiate a new background study” through the online system.
3. **Unlicensed home and community based services providers of services:** This section will allow providers of both licensed and unlicensed services that require background studies to initiate just one background study for all their services. Moreover, if the provider uses this process, there is no break in service of more than 90 days, and the person provides at least 40 hours of direct service per year, the studies for the unlicensed services no longer need to be repeated annually.
4. **Probation officer and correction agents' duties:** This section will contain some clean-up language regarding requirements for probation officers and corrections agents for notification to the commissioner of individuals’ convictions. Because the earlier change will allow an individual be away from work for 90 days before a new background study is done (rather than the current 45 days), this section is intended to address those people who may be convicted of new crimes during their absence - by requiring the notice to the commissioner if the convicted individual has been affiliated with a participating provider in the previous year, rather than just at the time of the conviction.
5. **Repeat background study requirement:** This section will include language that changes the period of time an employee may be absent from providing services without requiring a new background study from 45 to 90 days. (A good example is a college student on vacation from school.)
6. **Unlicensed home and community based services providers of services:** This section will allow individuals from both licensed and unlicensed services to complete an initial background study with no requirement for additional annual studies as long as the individual has no break in service of greater than 90 days and provides a minimum of 40 hours per year of direct contact under a licensed program.
7. **Probation officer and correction agents' duties.** This section will contain some clean-up language regarding requirements for probation officers and corrections agents for notification of the commissioner of individuals’ convictions.
8. **Disqualification notices:** This section will provide clarification on notices when an individual’s disqualification is set aside.

9. **Set asides:** This section will clarify the scope of set asides of disqualifications.