Minnesota Department of Human Services

Bulletin

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DATE

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OF INTEREST TO

Lead agencies

Social services supervisors and staff

Public health supervisors and staff

Mental Health Supervisors and staff

Case managers

Other interested parties

ACTION/DUE DATE

Please read the bulletin and prepare for implementation.

EXPIRATION DATE

February 11, 2018

Lead Agency Requirements for Person-Centered Principles and Practices – Part 1

TOPIC

Lead agency requirements for person-centered principles and practices for people who receive publicly funded services in Minnesota.

PURPOSE

To provide a comprehensive introduction to the requirements for person-centered principles and practices, as required by federal and state rule, state statute, Minnesota's Olmstead Plan, and a court settlement agreement.

CONTACT

Send questions to DSD.ResponseCenter@state.mn.us

SIGNED

CHARLES E. JOHNSON
Deputy Commissioner
Minnesota Department of Human Services

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Why "person-centered"?

The use of person-centered principles and practices is a way of assuring that people with disabilities have the same rights and responsibilities as other people, including having control over their lives, making their own choices, and contributing to the community in a way that makes sense for the person.

Minnesota's services and supports system must ensure that people have the opportunity for meaningful choice and self-determination, and that their civil and legal rights are affirmed and respected. This is not only a Minnesota vision; having a person-centered system where people are able to make informed choices is a requirement of several state and federal authorities, which will be discussed in this bulletin.

II. What does "person-centered" mean?

As Minnesota requires lead agencies and providers to deliver services to people with disabilities in a person-centered way, it is important, first, to clarify what that means. To be person-centered is to:

- Treat each person with dignity and respect
- Build on his or her strengths and talents
- Help him or her connect with his or her community and develop relationships
- Listen to and act on his or her communication to you
- Make a sincere effort overall to understand him or her as a unique person

Being person-centered often is associated with person-centered planning and the organizational processes that support it. To be person-centered, however, is a much broader concept. Case managers, service coordinators, providers and others who provide access to, implement, and monitor services have many opportunities to be person-centered and use person-centered practices.

DHS, as well as many case managers, providers, advocates, family members and other stakeholders, have discussed and engaged in person-centered planning for decades in Minnesota. However, we recognize – and people who use services tell us – we must improve our practices to build a culture that offers and supports real choice and community inclusion. In recent years, DHS has provided training and other information on person-centered principles and practices to encourage a whole-person approach toward every interaction with people who receive services.

Person-centered practices are based on five key areas, and therefore, services for and interactions with people should be judged by their ability to help people:

- Share ordinary places and activities
- Make choices

- Contribute
- Be treated with respect and have a valued social role
- Grow in relationships.[1]

II. Bulletin and communication series

New federal, state and court-ordered requirements, related to person-centered principles, practices and planning, require us to go beyond our previous work and current requirements.

This is the first in a series of several bulletins we will issue on the topic. Future bulletins in this series will provide information about:

- What it means to be person-centered
- The elements and requirements of person-centered practices
- How to meet the new requirements
- Opportunities for training on person-centered practices

Currently, DHS is developing policy, guidance and other resources for lead agencies, providers, advocates, people who receive services, their family and community members. This set of resources will guide stakeholders through the new requirements and their respective roles in the implementation process. This bulletin is an overview of the principles and regulations that will direct us.

III. Sources of person-centered requirements

The requirements to implement person-centered planning come from multiple sources, including federal rules and requirements, state rules, state statute and a court-settlement agreement. This section of the bulletin will provide general information about each of these sources and include links for additional information.

We provide more details about what is included under some of the various authorities in the attachments at the end of this document.

In the next couple of months, DHS will issue policy and guidance that will include the requirements from the multiple sources discussed here.

[1] O'Brien J. (1989) What's worth working for? Leadership for Better Quality Human Services. Syracuse NY. The Center on Human Policy, Syracuse University for the Research and Training Center on Community Living and the University of Minnesota Institute on Community Integration.

A. Minnesota's Olmstead Plan

Minnesota's Olmstead Plan, which was approved by the U.S. District Court on September 29, 2015, describes a set of key activities the state must do to ensure all Minnesotans with disabilities live, learn, work and enjoy life in the most integrated setting of their choosing.

Person-centered practices are the foundation of the topic areas and goals identified in the Olmstead Plan. The Olmstead Plan also includes a specific section with measurable goals and strategies on person-centered planning. The person-centered planning goals in the Olmstead Plan focus on the following areas:

- Plans for people who use disability home and community-based waiver services will meet required protocols. We will base protocols on the principles of person-centered planning and informed choice.
- People with disabilities will exercise informed choice to make or have input into both major and everyday life decisions. They always will be in charge of their services and supports.

The Olmstead Plan website includes additional information about the Olmstead Plan, the Olmstead Subcabinet, and the Olmstead Implementation Office. Attachment A of this document includes the core values and principles of person-centered planning.

B. Jensen Settlement Agreement

The Jensen Settlement Agreement is the result of a lawsuit, which three families of people who received services in the Minnesota Extended Treatment Options (METO) program filed in July 2009 against DHS and the State of Minnesota. Later, the lawsuit expanded to include all people served at METO between July 1, 1997, and May 1, 2011, thus creating a class-action lawsuit.

The lawsuit alleged the program unlawfully used restraint and seclusion and violated the rights of the individuals. On December 5, 2011, the U.S. District Court for the District of Minnesota adopted the settlement agreement.

As part of the Jensen Settlement, DHS agreed to a number of activities, including to ensure that class members would have:

- A current, up-to-date person-centered plan
- Informed choice about where they live and services they receive

For more information on the agreement, see the Jensen Settlement page on the DHS website.

C. CMS home and community-based services (HCBS) rule

The Centers for Medicare & Medicaid Services (CMS) issued an HCBS rule on January 16, 2014, that includes criteria for person-centered planning processes and individual person-

centered plans. The rule applies to people who receive services through all HCBS waivers and other HCBS state-plan services funded through Medical Assistance. In Minnesota, the rule applies to the following services and programs:

- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)
- Community First Services and Supports (CFSS) (once the service is available)

The HCBS rule includes specific person-centered requirements for the planning process, creating service plans and reviewing plans. They require that:

- The person who receives supports must direct the planning process, which can include people who the person chooses to participate in the process
- The plan must identify the goals and preferences the person chooses
- The planning process and the plan helps the person achieve the outcomes he or she chooses in the most integrated community setting. This ensures that the delivery of services reflect the person's choices and preferences, and positively contribute to the health and welfare of the person.

The CMS website includes rule language, fact sheets and additional resources, but go to Attachment B for a list of the specific rule requirements regarding the person-centered planning process, service plans and review process.

D. Licensing standards required by 245D

Minnesota Statutes, Chapter 245D established licensing standards that ensure and protect the health, safety and rights of people who receive services. These provider requirements apply to the majority of services delivered through the home and community-based services waivers for people with disabilities (i.e., BI, CAC, CADI and DD) and some services provided through EW.

Licensing standards for providers include person-centered planning requirements as they relate to service delivery. The provider works with the person to develop and implement the plan the provider receives from the lead agency (county, tribe or managed care organization) case manager.

Chapter 245D statutory language focuses on requirements for home and community-based services providers. Providers must provide services in:

- Response to the person's identified needs, interests, preferences and desired outcomes as specified in the person's plan
- A manner consistent with the principles of person-centered service planning and delivery, self-determination and providing the most integrated setting and inclusive service delivery options.

The Minnesota Office of the Revisor of Statutes has the complete 245D statutory language, but go to Attachment C for the specific 245D language that relates to person-centered planning and service delivery.

E. Positive supports rule

With the implementation of Minnesota Statute 245D in January of 2014, and the positive supports Minnesota Rule 9544 in August 2015, all providers must use positive supports in place of restrictive interventions. The rule prohibits the use of punitive practices and procedures, such as seclusion and restraint.

On August 31, 2015, a new rule governing positive support strategies and restrictive interventions went into effect in Minnesota. The new rule is called the "positive supports rule." It applies to:

- Organizations that provide services and supports licensed under 245D to people with disabilities and people older than 65
- Other providers licensed under Minnesota Statute, Chapter 245A, when they serve people with developmental disabilities.

The rule was required as a term of the Jensen Settlement Agreement. It has specific criteria for the use of positive support strategies, which are meant to increase the person's quality of life and allow him or her to live in the most integrated setting in the community. These strength-based strategies teach new skills and focus on improving a person's experience in his or her environment. This rule includes approved procedures, prohibited procedures and provider responsibilities.

The positive supports rule outlines requirements for service providers, including:

- Incorporating the principles of person-centeredness into the services provided
- Evaluating with the person, at least every six months, whether the services support the person's preferences, daily needs and activities, and the accomplishment of the person's goals.

Minnesota Rule 9544 is the complete positive supports-rule language, but go to Attachment D for rule language that is specific to person-centered principles.

IV. When a person has a legal guardian

Sometimes, people with disabilities have legal guardian who make decisions for them. As we consider all of the aspects of person-centered requirements, this is an area that often needs clarification.

When a person has a legal guardian, the guardian's authority to make decisions on behalf of the person often is limited by the court-issued guardianship documents, which state the roles and responsibilities of the guardian. In the areas where it is the guardian's responsibility to make decisions on behalf of the person, that guardian should — whenever

possible — support the choices of the person. Unless specifically stated in the guardianship documents, the person retains decision-making authority.

This balance requires careful consideration of what is important **to** the person — meaning what really matters — from his or her perspective with what is important **for** the person. "Important for" is about the help or support he or she needs to stay healthy, safe and well.

Whether or not a person has a legal guardian, he or she can choose to have a representative or spokesperson speak on his or her behalf during any planning meetings or conversations. This ensures that his or her opinion is shared whenever he or she feels it necessary.

V. Additional trainings and information

During the next few months, DHS will issue a series of bulletins and policy manual updates with information about how to implement person-centered planning and practice requirements. It is important to note that person-centered practices are the foundation for positive supports, which is why we often cover the topics together in trainings and resources.

One newer resource for information is the Support Planning Professionals Learning Community, which began November 4, 2015. This learning community provides an opportunity for support planning professionals to learn about person-centered practices and how to put them to use in their everyday work. We will announce future sessions as they are available.

In the meantime, you can find archived presentations, recordings and handouts of other DHS trainings (including the Positive Support Community of Practice archive) on the Disability Services Division training website.

VI. Other resources

DHS and our partners have developed a number of resources to help with the transition to person-centered service delivery, including the:

- University of Minnesota Institute on Community Integration (ICI) site, which has dedicated information and training on person-centered planning and practices
- DHS Positive Supports Community of Practice webpage, which has information on training and technical assistance opportunities along as resources on positive supports.
- College of Direct Support site, which offers online courses designed for agency administrators, managed care organizations, people with disabilities, their families, providers and state officials. You can purchase courses as either an organization or individual.

Americans with Disabilities Act (ADA) advisory

This information is available in accessible formats for people with disabilities by calling 651-431-4300, toll free at 866-267-7655 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.

VII. Attachments

Attachment A: Minnesota's Olmstead Plan

The following is the statement of core values and the principles of person-centered planning from Minnesota's Olmstead Plan (PDF).

Person-centered planning embraces the following values and principles:

- People (with an authorized representative, if applicable) direct their own services and supports when desired.
- The quality of a person's life including preferences, strengths, skills, relationships, opportunity and contribution is the focal point of the plan.
- The individual who is the focus of the plan (or that person's authorized representative) chooses the people who are involved in creating the context of the plan.
- Discovery of what is important to and for the person is not limited to what is currently available within the system or from professionals.
- People are provided sufficient information, support and experiences to make informed choices that are meaningful to them and to balance and take responsibility for risks associated with choices.
- Services, treatments, interventions and supports honor what is important to people (e.g., their goals and aspirations for a life, overall quality of life) and promote dignity, respect, interdependence, mastery and competence.
- Plans include sufficient proactive support and organization to prevent unnecessary life disruption and/or loss especially during transition periods or crisis recovery.
- Community presence, participation and connection are expected and supported through the use of natural relationships and community connections in all aspects of the plan to assist in ending isolation, disconnection and disenfranchisement of the individuals.
- The process is based on mutually respectful partnerships that empower the person who is the focus of the plan and is respectful of his or her important relationships and goals.
- The context of a person's unique life circumstances including culture, ethnicity, language, religion, gender and sexual orientation and all aspects of the person's individuality are acknowledged when expressed and embraced, and valued in the planning process.

Attachment B: CMS HCBS rule language

The following is language from the federal home and community-based services (HCBS) final rule:

Person-centered planning process

a) Based on the independent assessment required in 42 C.F.R. § 441.720, the State must develop (or approve, if the plan is developed by others) a written service plan jointly with the individual (including, for purposes of this paragraph, the individual and the individual's authorized representative if applicable). The person-centered planning process is driven by the individual. The process:

(1) Includes people chosen by the individual;

(2) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(3) Is timely and occurs at times and locations of convenience to the individual;

(4) Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 42 C.F.R. § 435.905(b) of this chapter;

(5) Includes strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants;

(6) Offers choices to the individual regarding the services and supports the individual receives and from whom;

(7) Includes a method for the individual to request updates to the plan, as needed;

(8) Records the alternative home and community-based settings that were considered by the individual.

The person-centered service plan

(b) The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State plan HCBS benefit, the written plan must:

(1) Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and

receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

(2) Reflect the individual's strengths and preferences;

(3) Reflect clinical and support needs as identified through an assessment of functional need;

(4) Include individually identified goals and desired outcomes;

(5) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of State plan HCBS;

(6) Reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed;

(7) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 42 C.F.R. § 435.905(b) of this chapter;

(8) Identify the individual and/or entity responsible for monitoring the plan;

(9) Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation;

(10) Be distributed to the individual and other people involved in the plan;

(11) Include those services, the purchase or control of which the individual elects to self-direct, meeting the requirements of 42 C.F.R. § 441.740;

(12) Prevent the provision of unnecessary or inappropriate services and support.

(13) Document that any modification of the additional conditions, under 42 C.F.R. §441.710(a)(1)(vi)(A) through (D) of this chapter, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(i) Identify a specific and individualized assessed need;

(ii) Document the positive interventions and supports used prior to any modifications to the person-centered service plan;

(iii) Document less intrusive methods of meeting the need that have been tried but did not work;

(iv) Include a clear description of the condition that is directly proportionate to the specific assessed need;

(v) Include a regular collection and review of data to measure the ongoing effectiveness of the modification;

(vi) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(vii) Include informed consent of the individual; and

(viii) Include an assurance that the interventions and supports will cause no harm to the individual.

Reviewing the person-centered service plan

(c) The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required in 42 C.F.R. § 441.720 at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

Attachment C: Minnesota's licensing standards and 245D requirements

The following is statutory language from Minn. Stat. § 245D.07.

245d.07 Service planning and delivery

Subd. 1a. Person-centered planning and service delivery.

(a) The license holder must provide services in response to the person's identified needs, interests, preferences, and desired outcomes as specified in the coordinated service and support plan and the coordinated service and support plan addendum, and in compliance with the requirements of this chapter. License holders providing intensive support services must also provide outcome-based services according to the requirements in Minnesota Statues section 245D.071.

(b) Services must be provided in a manner that supports the person's preferences, daily needs, and activities and accomplishment of the person's personal goals and service outcomes, consistent with the principles of:

(1) person-centered service planning and delivery that:

(i) identifies and supports what is important to the person as well as what is important for the person, including preferences for when, how, and by whom direct support service is provided;

(ii) uses that information to identify outcomes the person desires; and

(iii) respects each person's history, dignity, and cultural background.

(2) self-determination that supports and provides:

(i) opportunities for the development and exercise of functional and age-appropriate skills, decision making and choice, personal advocacy, and communication; and

(ii) the affirmation and protection of each person's civil and legal rights.

(3) providing the most integrated setting and inclusive service delivery that supports, promotes, and allows:

(i) inclusion and participation in the person's community as desired by the person in a manner that enables the person to interact with nondisabled persons to the fullest extent possible and supports the person in developing and maintaining a role as a valued community member;

(ii) opportunities for self-sufficiency as well as developing and maintaining social relationships and natural supports; and

(iii) a balance between risk and opportunity, meaning the least restrictive supports or interventions necessary are provided in the most integrated settings in the most inclusive manner possible to support the person to engage in activities of the person's own choosing that may otherwise present a risk to the person's health, safety, or rights.

Attachment D: Minnesota's positive supports rule

The following is language from Minn. Rules 9544.0030.

9544.0030 Positive support strategies and person-centered planning.

Subpart. 3. Person-centered principles.

The license holder must incorporate principles of person-centeredness in services it provides to a person. At least every six months, the license holder must evaluate with the person whether the services support the person's individual preferences, daily needs and activities, and the accomplishment of the person's goals in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph (b), and whether the person-centered planning process complies with Code of Federal Regulations, title 42, section 441.725, paragraph (a)(1)-(4). Based upon the results of the evaluation, the license holder must determine whether changes are needed to enhance person-centeredness for the person, and, if so, make appropriate changes.