



Positive Support Community of Practice

245D Rights & Rights Restrictions

December 9, 2014

245D.04, subdivision 1

License Holder Responsibility

- Provide a written notice of the rights and explain these rights
 - 5 working days of service initiation
 - Annually
- Reasonable accommodations
 - Other formats or languages
- Maintain documentation
- Ensure exercise and protection of these rights

245D.04, subdivision 2

Service-Related Rights

A person's service-related rights include right to:

- Participate in development & evaluation of services
- Services & supports provided in a manner that respects and takes into consideration the person's preferences
- Refuse or terminate services
 - Be informed of the consequences

245D.04, subdivision 2

Service-Related Rights

- Know, in advance, limits to the services, including LH's knowledge, skill, ability
- Know conditions and terms of service provision, including admission criteria, temporary service suspension, service termination
- Coordinated transfer to ensure continuity of care
- Know service charges, regardless of payer, notified of charges

245D.04, subdivision 2

Service-Related Rights

- Know, in advance, whether services are covered by others, be told of any charges the person or other private party may have to pay
- Receive services from an individual
 - Competent and trained,
 - Professionally certified or licensed, as required
 - Meets additional qualifications as identified in CSSP or CSSP addendum

245D.04, subdivision 3

Protection-Related Rights

A person's service-related rights include right to:

- Personal, financial, service, health & medical information kept private
 - Advised of disclosure
- Access records and recorded information
- Free from maltreatment

245D.04, subdivision 3

Protection-Related Rights

- Free from
 - Restraint
 - Time out
 - Seclusion
 - Restrictive intervention
 - Other prohibited procedure, 245D.06, subd. 5
 - Except for EUMR, 245D.061
 - Safety interventions as part of a PSTP, 245D.06, subd. 8

245D.04, subdivision 3

Protection-Related Rights

- Receive services in a clean and safe environment
- Treated with courtesy and respect and receive respectful treatment of the person's property
- Reasonable observance of cultural and ethnic practice and religion
- Free from bias and harassment regarding race, gender, age, disability, spirituality, sexual orientation

245D.04, subdivision 3

Protection-Related Rights

- Informed of and use grievance policy & procedures
- Know contact information of protection and advocacy services, including state-appointed ombudsman
- Assert rights without retaliation
 - Personally or by others
- Give or withhold written informed consent
 - Research or experimental treatment

245D.04, subdivision 3

Protection-Related Rights

- Associate with other persons of the person's choice
- Personal privacy
- Engage in chosen activities

245D.04, subdivision 3

Protection-Related Rights

- Protection-related rights in a residential setting
 - Daily, private access to and use of a non-coin operated phone
 - Receive & send, without interference, uncensored unopened mail, email, or communication
 - Use of and free access to common areas in the residence
 - Privacy for visits

245D.04, subdivision 3

Protection-Related Rights Restrictions

- Some rights may be restricted
 - Associate with other person, personal privacy, engage in chosen activities
 - Phone, mail, common areas, privacy for visits
- ONLY if determined necessary to ensure the health, safety, and well-being of the person
- MUST be implemented in least restrictive alternative manner necessary to protect the person and provide support to reduce or eliminate the need for the restriction in the most integrated setting and inclusive manner.

245D.04, subdivision 3

Protection-Related Rights Restrictions

The license holder is responsible for documenting any rights restriction, including:

- Justification for the restriction
 - Based on an assessment of the person's vulnerability related to exercising the right without restriction;
- Objective measures set as conditions for ending the restriction

245D.04, subdivision 3

Protection-Related Rights Restrictions

Documentation continued

- Scheduled for reviewing the need for the restriction based on conditions for ending the restriction
 - Semiannually, minimally, or more frequently as requested
- Signed and dated approval from person, or LR
 - Implemented only upon approval
 - May be withdrawn at any time
 - If withdrawn, right must be immediately restored

245D.06, subdivision 2

Environment and Safety

- Toxic substances or dangerous items are inaccessible to persons at a service site
 - Only to protect the safety of person receiving services
 - When a known safety threat exists
 - Not as a substitute for staff supervision or interactions with a person

245D.06, subdivision 2

Environment and Safety

- If toxic substances or dangerous items are made inaccessible
 - Document assessment of physical plant, its environment, its population identifying the risk factors that require the action
 - Statement of specific measure to be taken to minimize the safety risk to persons and to restore accessibility to all persons

245D.22, subdivision 2

Hazards and Toxic Substances

When the license holder is the owner or lessor of the service site

- Chemicals, detergents, other hazardous or toxic substances must not be stored with food products *or in any way that poses a hazard to persons receiving services.*

245D.06, subdivision 5

Prohibited Procedures

- License holders are prohibited from using
 - Chemical restraints
 - Mechanical restraints
 - Manual restraints
 - Time out
 - Seclusion
 - Any other aversive or deprivation procedure
 - As a substitute for adequate staffing, for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, or for staff convenience

245D.06, subdivision 6

Restricted Procedures

- License holders are allowed to implement restricted procedures, including:
 - Permitted actions & procedures, 245D.06, subd 7
 - PSTP, 245D.06, subd. 8
 - EUMR, 245D.061

245D.06, subdivision 6

Restricted Procedures

Restricted procedures must NOT

- Constitute child or adult maltreatment, abuse, neglect
- Violate a person's rights, 245D.04
- Restrict normal access
 - Nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, necessary clothing, or any protection requested by state/federal standards/regulations
- Deny the person visitation or ordinary contact
 - Legal counsel, legal representative, or next of kin
- Be used for staff convenience, punishment, substitute for adequate staffing, or as a consequence for refusal to participate in treatment or services
- Use prone restraint
- Apply back or chest pressure
- Be implemented in a manner that is contraindicated for any of the person's known medical or psychological limitations

Please keep in mind

- The CSSP and the CSSP addendum may direct the services a license holder is providing but they cannot direct the license holder to violate a person's rights or to not follow statutory requirements when rights are restricted.

QUESTION IDEAS

Placeholder for discussion

Contact Us

- DHS Licensing

HCBS Unit

245D Help Desk 651-431-6624

DHS.245DLicenseHelp@state.mn.us

- DHS Disability Services Division

PositiveSupports@state.mn.us