|  |
| --- |
| **Minnesota Department of Human Services – Positive Supports Bill LEGISLATIVE BACKGROUND INFORMATION 2016** |

**S.F. 2474 (Sheran) H.F. 3170 (Pierson) Revisor #: 16-4626**

**Background on the Human Services Positive Supports Rule:**

The 2013 and 2014 Legislature authorized DHS to adopt rules to govern the use of positive support strategies, and ensure the applicability of chapter 245D prohibitions and limits on the emergency use of manual restraint and on the use of restrictive interventions. The new rule provides guidance and detailed interpretation of Minnesota Statutes, Chapter 245D, which applies to home and community based services, and also extends the applicability of many of its provisions to all DHS licensees when serving a person with a developmental disability or related condition. The rule assures that providers use person-centered principles and positive support strategies in the provision of services. The rule also places limits on the use of restrictive interventions and details reporting and training requirements.

**The bill – Positive Supports Rule**

**PROBLEM**: Minnesota adopted Minnesota Rules, Chapter 9544, governing Positive Support Strategies and Restrictive Interventions on August 31st, 2015. According to Minnesota rulemaking process, a cost evaluation was conducted to determine the projected cost of complying with the rule in the first year for small businesses (fewer than 50 full time employees). DHS determined that the cost to small businesses in the first year would not exceed the $25,000 threshold which would allow small businesses to claim temporary exemption from the rule. However, the administrative judge who approved the rule for adoption, disagreed with the cost assessment. As a result, small businesses intended to be governed by the rule, an estimated 90% of 22,000 licensees, are eligible to be exempt from the rule. The Governor has used his waiver authority to temporarily waive the statute requiring that small businesses be eligible for exemption, but that waiver will expire August, 31, 2016.

This rule is an integral part of the commitments DHS has made in the state’s Olmstead Plan. Promulgation of this rule was also required as part of the Jensen Settlement Agreement, and widespread exemptions would undermine the fulfillment of that agreement, and may result in court sanctions.

**PROPOSAL**: This proposal provides legislative approval for Minnesota Rules, Chapter 9544, governing Positive Support Strategies and Restrictive Interventions. Legislative approval will allow the rule to remain in full effect, removing small businesses’ eligibility to be exempt from compliance with the rule and applying the rule to all DHS licensees who serve a person with a developmental disability or related condition, as intended.