

245A.03 WHO MUST BE LICENSED.

Subdivision 1. **License required.** Unless licensed by the commissioner, an individual, corporation, partnership, voluntary association, other organization, or controlling individual must not:

- (1) operate a residential or a nonresidential program;
- (2) receive a child or adult for care, supervision, or placement in foster care or adoption;
- (3) help plan the placement of a child or adult in foster care or adoption or engage in placement activities as defined in section 259.21, subdivision 9, in this state, whether or not the adoption occurs in this state; or
- (4) advertise a residential or nonresidential program.

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

- (1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;
- (2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;
- (3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, a developmental disability, a functional impairment, or a physical disability;
- (4) sheltered workshops or work activity programs that are certified by the commissioner of employment and economic development;
- (5) programs operated by a public school for children 33 months or older;
- (6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;
- (7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;
- (8) board and lodge facilities licensed by the commissioner of health that do not provide children's residential services under Minnesota Rules, chapter 2960, mental health or chemical dependency treatment;
- (9) homes providing programs for persons placed by a county or a licensed agency for legal adoption, unless the adoption is not completed within two years;
- (10) programs licensed by the commissioner of corrections;
- (11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;
- (12) programs operated by a school as defined in section 120A.22, subdivision 4; YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as defined in section 315.51, whose primary purpose is to provide child care or services to school-age children;

- (13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;
- (14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or a developmental disability;
- (15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;
- (16) residential programs for persons with mental illness, that are located in hospitals;
- (17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;
- (18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;
- (19) mental health outpatient services for adults with mental illness or children with emotional disturbance;
- (20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;
- (21) unrelated individuals who provide out-of-home respite care services to persons with developmental disabilities from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;
- (22) respite care services provided as a home and community-based service to a person with a developmental disability, in the person's primary residence;
- (23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;
- (24) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;
- (25) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults;
- (26) chemical dependency or substance abuse treatment activities of licensed professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart 15, when the treatment activities are not paid for by the consolidated chemical dependency treatment fund;
- (27) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:
- (i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and
 - (ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service; or
- (28) a program serving only children who are age 33 months or older, that is operated by a nonpublic school, for no more than four hours per day per child, with no more than 20 children at any one time, and that is accredited by:

(i) an accrediting agency that is formally recognized by the commissioner of education as a nonpublic school accrediting organization; or

(ii) an accrediting agency that requires background studies and that receives and investigates complaints about the services provided.

A program that asserts its exemption from licensure under item (ii) shall, upon request from the commissioner, provide the commissioner with documentation from the accrediting agency that verifies: that the accreditation is current; that the accrediting agency investigates complaints about services; and that the accrediting agency's standards require background studies on all people providing direct contact services.

(b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

(c) Nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Subd. 2a. Foster care by an individual who is related to a child; license required. Notwithstanding subdivision 2, clause (1), in order to provide foster care for a child, an individual who is related to the child, other than a parent, or legal guardian, must be licensed by the commissioner except as provided by section 245A.035.

Subd. 2b. Exception. The provision in subdivision 2, clause (2), does not apply to:

(1) a child care provider who as an applicant for licensure or as a license holder has received a license denial under section 245A.05, a conditional license under section 245A.06, or a sanction under section 245A.07 from the commissioner that has not been reversed on appeal; or

(2) a child care provider, or a child care provider who has a household member who, as a result of a licensing process, has a disqualification under this chapter that has not been set aside by the commissioner.

Subd. 3. Unlicensed programs. (a) It is a misdemeanor for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a residential or nonresidential program without a license and in willful disregard of this chapter unless the program is excluded from licensure under subdivision 2.

(b) The commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program, if an individual, corporation, partnership, voluntary association, other organization, or controlling individual has:

(1) failed to apply for a license after receiving notice that a license is required or continues to operate without a license after receiving notice that a license is required;

(2) continued to operate without a license after the license has been revoked or suspended under section 245A.07, and the commissioner has issued a final order affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or

(3) continued to operate without a license after the license has been temporarily suspended under section 245A.07.

The county attorney and the attorney general have a duty to cooperate with the commissioner.

Subd. 4. Excluded child care programs; right to seek licensure. Nothing in this section shall prohibit a child care program that is excluded from licensure under subdivision 2, clause (2), or under Laws 1997, chapter 248, section 46, as amended by Laws 1997, First Special Session chapter 5, section 10, from seeking a license under this chapter. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for licensed family day care.

Subd. 5. Excluded housing with services programs; right to seek licensure. Nothing in this section shall prohibit a housing with services program that is excluded from licensure under subdivision 2, clause (25), from seeking a license under this chapter. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for licensed adult foster care.

Subd. 6. Right to seek certification. Nothing in this section shall prohibit a residential program licensed by the commissioner of corrections to serve children, that is excluded from licensure under subdivision 2, clause (10), from seeking certification from the commissioner of human services under this chapter for program services for which certification standards have been adopted.

Subd. 7. Licensing moratorium. (a) The commissioner shall not issue an initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter for a physical location that will not be the primary residence of the license holder for the entire period of licensure. If a license is issued during this moratorium, and the license holder changes the license holder's primary residence away from the physical location of the foster care license, the commissioner shall revoke the license according to section 245A.07. Exceptions to the moratorium include:

- (1) foster care settings that are required to be registered under chapter 144D;
- (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, and determined to be needed by the commissioner under paragraph (b);
- (3) new foster care licenses determined to be needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center, or restructuring of state-operated services that limits the capacity of state-operated facilities;
- (4) new foster care licenses determined to be needed by the commissioner under paragraph (b) for persons requiring hospital level care; or
- (5) new foster care licenses determined to be needed by the commissioner for the transition of people from personal care assistance to the home and community-based services.

(b) The commissioner shall determine the need for newly licensed foster care homes as defined under this subdivision. As part of the determination, the commissioner shall consider the availability of foster care capacity in the area in which the licensee seeks to operate, and the recommendation of the local county board. The determination by the commissioner must be final. A determination of need is not required for a change in ownership at the same address.

(c) Residential settings that would otherwise be subject to the moratorium established in paragraph (a), that are in the process of receiving an adult or child foster care license as of July 1, 2009, shall be allowed to continue to complete the process of receiving an adult or child foster care license. For this paragraph, all of the following conditions must be met to be considered in the process of receiving an adult or child foster care license:

- (1) participants have made decisions to move into the residential setting, including documentation in each participant's care plan;
- (2) the provider has purchased housing or has made a financial investment in the property;
- (3) the lead agency has approved the plans, including costs for the residential setting for each individual;
- (4) the completion of the licensing process, including all necessary inspections, is the only remaining component prior to being able to provide services; and
- (5) the needs of the individuals cannot be met within the existing capacity in that county.

To qualify for the process under this paragraph, the lead agency must submit documentation to the commissioner by August 1, 2009, that all of the above criteria are met.

(d) The commissioner shall study the effects of the license moratorium under this subdivision and shall report back to the legislature by January 15, 2011. This study shall include, but is not limited to the following:

- (1) the overall capacity and utilization of foster care beds where the physical location is not the primary residence of the license holder prior to and after implementation of the moratorium;
- (2) the overall capacity and utilization of foster care beds where the physical location is the primary residence of the license holder prior to and after implementation of the moratorium; and
- (3) the number of licensed and occupied ICF/MR beds prior to and after implementation of the moratorium.

(e) When a foster care recipient moves out of a foster home that is not the primary residence of the license holder according to section 256B.49, subdivision 15, paragraph (f), the county shall immediately inform the Department of Human Services Licensing Division, and the department shall immediately decrease the licensed capacity for the home. A decreased licensed capacity according to this paragraph is not subject to appeal under this chapter.

Subd. 8. Excluded providers seeking licensure. Nothing in this section shall prohibit a program that is excluded from licensure under subdivision 2, paragraph (a), clause (28), from seeking licensure. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for child care center licensure.

Subd. 9. Permitted services by an individual who is related. Notwithstanding subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a person receiving supported living services may provide licensed services to that person if:

- (1) the person who receives supported living services received these services in a residential site on July 1, 2005;

(2) the services under clause (1) were provided in a corporate foster care setting for adults and were funded by the developmental disabilities home and community-based services waiver defined in section 256B.092;

(3) the individual who is related obtains and maintains both a license under chapter 245B and an adult foster care license under Minnesota Rules, parts 9555.5105 to 9555.6265; and

(4) the individual who is related is not the guardian of the person receiving supported living services.

History: 1987 c 333 s 3; 1988 c 411 s 2; 1989 c 282 art 2 s 66-68; 1990 c 568 art 2 s 41; 1991 c 265 art 9 s 63; 1992 c 499 art 3 s 12; 1992 c 513 art 9 s 9; 1993 c 338 s 3,4; 1993 c 339 s 5; 1994 c 483 s 1; 1994 c 598 s 1,2; 1994 c 631 s 3,4,31; 1995 c 158 s 3; 1995 c 207 art 2 s 5; 1Sp1995 c 3 art 16 s 13; 1997 c 113 s 16; 1997 c 248 s 9; 1998 c 397 art 11 s 3; 1998 c 406 art 1 s 4,37; 1998 c 407 art 6 s 3,4; art 9 s 4; 2000 c 327 s 1,2,6; 1Sp2001 c 9 art 14 s 7-9; 2002 c 375 art 1 s 7; 2002 c 379 art 1 s 113; 2003 c 130 s 12; 2004 c 288 art 1 s 8,9; 2005 c 56 s 1; 1Sp2005 c 4 art 1 s 5,6; 2007 c 112 s 3; 2009 c 79 art 8 s 8; 2009 c 86 art 1 s 89; 2009 c 142 art 2 s 12,13; 2009 c 173 art 1 s 43; 2010 c 329 art 1 s 2,3; 2010 c 352 art 1 s 4,5; 2011 c 86 s 4; 1Sp2011 c 9 art 7 s 1