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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **512**

01/31/2019 Authored by Zerwas

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

- 1.1 A bill for an act
- 1.2 relating to human services; adding an exception to the adult foster care moratorium;
- 1.3 amending Minnesota Statutes 2018, section 245A.03, subdivision 7.
- 1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.5 Section 1. Minnesota Statutes 2018, section 245A.03, subdivision 7, is amended to read:
- 1.6 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an initial license
- 1.7 for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult
- 1.8 foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter
- 1.9 for a physical location that will not be the primary residence of the license holder for the
- 1.10 entire period of licensure. If a license is issued during this moratorium, and the license
- 1.11 holder changes the license holder's primary residence away from the physical location of
- 1.12 the foster care license, the commissioner shall revoke the license according to section
- 1.13 245A.07. The commissioner shall not issue an initial license for a community residential
- 1.14 setting licensed under chapter 245D. When approving an exception under this paragraph,
- 1.15 the commissioner shall consider the resource need determination process in paragraph (h),
- 1.16 the availability of foster care licensed beds in the geographic area in which the licensee
- 1.17 seeks to operate, the results of a person's choices during their annual assessment and service
- 1.18 plan review, and the recommendation of the local county board. The determination by the
- 1.19 commissioner is final and not subject to appeal. Exceptions to the moratorium include:
- 1.20 (1) foster care settings that are required to be registered under chapter 144D;
- 1.21 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, or
- 1.22 community residential setting licenses replacing adult foster care licenses in existence on

2.1 December 31, 2013, and determined to be needed by the commissioner under paragraph
2.2 (b);

2.3 (3) new foster care licenses or community residential setting licenses determined to be
2.4 needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/DD,
2.5 or regional treatment center; restructuring of state-operated services that limits the capacity
2.6 of state-operated facilities; or allowing movement to the community for people who no
2.7 longer require the level of care provided in state-operated facilities as provided under section
2.8 256B.092, subdivision 13, or 256B.49, subdivision 24;

2.9 (4) new foster care licenses or community residential setting licenses determined to be
2.10 needed by the commissioner under paragraph (b) for persons requiring hospital level care;

2.11 (5) new foster care licenses or community residential setting licenses determined to be
2.12 needed by the commissioner for the transition of people from personal care assistance to
2.13 the home and community-based services;

2.14 (6) new foster care licenses or community residential setting licenses determined to be
2.15 needed by the commissioner for the transition of people from the residential care waiver
2.16 services to foster care services. This exception applies only when:

2.17 (i) the person's case manager provided the person with information about the choice of
2.18 service, service provider, and location of service to help the person make an informed choice;
2.19 and

2.20 (ii) the person's foster care services are less than or equal to the cost of the person's
2.21 services delivered in the residential care waiver service setting as determined by the lead
2.22 agency; ~~or~~

2.23 (7) new foster care licenses or community residential setting licenses for people receiving
2.24 services under chapter 245D and residing in an unlicensed setting before May 1, 2017, and
2.25 for which a license is required. This exception does not apply to people living in their own
2.26 home. For purposes of this clause, there is a presumption that a foster care or community
2.27 residential setting license is required for services provided to three or more people in a
2.28 dwelling unit when the setting is controlled by the provider. A license holder subject to this
2.29 exception may rebut the presumption that a license is required by seeking a reconsideration
2.30 of the commissioner's determination. The commissioner's disposition of a request for
2.31 reconsideration is final and not subject to appeal under chapter 14. The exception is available
2.32 until June 30, 2018. This exception is available when:

(i) the person's case manager provided the person with information about the choice of service, service provider, and location of service, including in the person's home, to help the person make an informed choice; and

(ii) the person's services provided in the licensed foster care or community residential setting are less than or equal to the cost of the person's services delivered in the unlicensed setting as determined by the lead agency; or

(8) replacing an adult foster care license in existence prior to 2004 with a license in which the physical location is not the primary residence of the provider. This exception is available until July 1, 2020.

(b) The commissioner shall determine the need for newly licensed foster care homes or community residential settings 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) When an adult resident served by the program 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), or the adult community residential setting, the county shall immediately inform the Department of Human Services Licensing Division. The department may decrease the statewide licensed capacity for adult foster care settings.

(d) Residential settings that would otherwise be subject to the decreased license capacity established in paragraph (c) shall be exempt if the license holder's beds are occupied by residents whose primary diagnosis is mental illness and the license holder is certified under the requirements in subdivision 6a or section 245D.33.

(e) A resource need determination process, managed at the state level, using the available reports required by section 144A.351, and other data and information shall be used to determine where the reduced capacity determined under section 256B.493 will be implemented. The commissioner shall consult with the stakeholders described in section 144A.351, and employ a variety of methods to improve the state's capacity to meet the informed decisions of those people who want to move out of corporate foster care or community residential settings, long-term service needs within budgetary limits, including seeking proposals from service providers or lead agencies to change service type, capacity, or location to improve services, increase the independence of residents, and better meet

4.1 needs identified by the long-term services and supports reports and statewide data and
4.2 information.

4.3 (f) At the time of application and reapplication for licensure, the applicant and the license
4.4 holder that are subject to the moratorium or an exclusion established in paragraph (a) are
4.5 required to inform the commissioner whether the physical location where the foster care
4.6 will be provided is or will be the primary residence of the license holder for the entire period
4.7 of licensure. If the primary residence of the applicant or license holder changes, the applicant
4.8 or license holder must notify the commissioner immediately. The commissioner shall print
4.9 on the foster care license certificate whether or not the physical location is the primary
4.10 residence of the license holder.

4.11 (g) License holders of foster care homes identified under paragraph (f) that are not the
4.12 primary residence of the license holder and that also provide services in the foster care home
4.13 that are covered by a federally approved home and community-based services waiver, as
4.14 authorized under section 256B.0915, 256B.092, or 256B.49, must inform the human services
4.15 licensing division that the license holder provides or intends to provide these waiver-funded
4.16 services.

4.17 (h) The commissioner may adjust capacity to address needs identified in section
4.18 144A.351. Under this authority, the commissioner may approve new licensed settings or
4.19 delicense existing settings. Delicensing of settings will be accomplished through a process
4.20 identified in section 256B.493. Annually, by August 1, the commissioner shall provide
4.21 information and data on capacity of licensed long-term services and supports, actions taken
4.22 under the subdivision to manage statewide long-term services and supports resources, and
4.23 any recommendations for change to the legislative committees with jurisdiction over the
4.24 health and human services budget.

4.25 (i) The commissioner must notify a license holder when its corporate foster care or
4.26 community residential setting licensed beds are reduced under this section. The notice of
4.27 reduction of licensed beds must be in writing and delivered to the license holder by certified
4.28 mail or personal service. The notice must state why the licensed beds are reduced and must
4.29 inform the license holder of its right to request reconsideration by the commissioner. The
4.30 license holder's request for reconsideration must be in writing. If mailed, the request for
4.31 reconsideration must be postmarked and sent to the commissioner within 20 calendar days
4.32 after the license holder's receipt of the notice of reduction of licensed beds. If a request for
4.33 reconsideration is made by personal service, it must be received by the commissioner within
4.34 20 calendar days after the license holder's receipt of the notice of reduction of licensed beds.

5.1 (j) The commissioner shall not issue an initial license for children's residential treatment
5.2 services licensed under Minnesota Rules, parts 2960.0580 to 2960.0700, under this chapter
5.3 for a program that Centers for Medicare and Medicaid Services would consider an institution
5.4 for mental diseases. Facilities that serve only private pay clients are exempt from the
5.5 moratorium described in this paragraph. The commissioner has the authority to manage
5.6 existing statewide capacity for children's residential treatment services subject to the
5.7 moratorium under this paragraph and may issue an initial license for such facilities if the
5.8 initial license would not increase the statewide capacity for children's residential treatment
5.9 services subject to the moratorium under this paragraph.