

CHAPTER 245A

HUMAN SERVICES LICENSING ACT

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245A.02 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1988]

Subd. 3. Applicant. "Applicant" means an individual, corporation, partnership, voluntary association, controlling individual, or other organization that has applied for licensure under sections 245A.01 to 245A.16 and the rules of the commissioner.

[For text of subds 4 and 5, see M.S.1988]

Subd. 5a. Controlling individual. "Controlling individual" means a public body, governmental agency, business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a program. Controlling individual also means an individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling individual. Controlling individual does not include:

(1) a bank, savings bank, trust company, building and loan association, savings and loan association, credit union, industrial loan and thrift company, investment banking firm, or insurance company unless the entity operates a program directly or through a subsidiary;

(2) an individual who is a state or federal official, or state or federal employee, or a member or employee of the governing body of a political subdivision of the state or federal government that operates one or more programs, unless the individual is also an officer or director of the program, receives remuneration from the program, or owns any of the beneficial interests not excluded in this subdivision;

(3) an individual who owns less than five percent of the outstanding common shares of a corporation:

(i) whose securities are exempt under section 80A.15, subdivision 1, clause (f); or

(ii) whose transactions are exempt under section 80A.15, subdivision 2, clause (b);
or

(4) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer or director of the program or owns any of the beneficial interests not excluded in this subdivision. This clause does not exclude from the definition of controlling individual an organization that is exempt from taxation.

[For text of subd 6, see M.S.1988]

Subd. 6a. Drop-in child care program. "Drop-in child care program" means a nonresidential program of child care provided to children for a maximum per child of five hours in any one day and 40 hours in any one calendar month at a child care center that does not have a regularly scheduled, ongoing child care program with a stable enrollment, and that is licensed exclusively for that purpose.

[For text of subds 7 and 8, see M.S.1988]

Subd. 9. License holder. "License holder" means an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program, has been granted a license by the commissioner under sections 245A.01 to 245A.16 and the rules of the commissioner, and is a controlling individual.

Subd. 10. Nonresidential program. "Nonresidential program" means care, supervision, rehabilitation, training or habilitation of a person provided outside the person's own home and provided for fewer than 24 hours a day, including adult day care programs; a nursing home that receives public funds to provide services for five or more persons whose primary diagnosis is mental retardation or a related condition or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a nursing home or hospital and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Nonresidential programs include home and community-based services and semi-independent living services for persons with mental retardation or a related condition that are provided in or outside of a person's own home.

[For text of subs 11 to 13, see M.S.1988]

Subd. 14. Residential program. "Residential program" means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment outside a person's own home, including a nursing home or hospital that receives public funds, administered by the commissioner, to provide services for five or more persons whose primary diagnosis is mental retardation or a related condition or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a program in an intermediate care facility for four or more persons with mental retardation or a related condition; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a hospital or nursing home and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Residential programs include home and community-based services and semi-independent living services for persons with mental retardation or a related condition that are provided in or outside of a person's own home.

History: 1989 c 282 art 2 s 60-65

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
- (4) advertise a residential or nonresidential program.

Subd. 2. Exclusion from licensure. Sections 245A.01 to 245A.16 do not apply to:

- (1) residential or nonresidential programs that are provided to a person by an individual who is related;
- (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, mental retardation or a related condition, a functional impairment, or a physical handicap;

(4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;

(5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education programs that are operated by the commissioner of education or a school as defined in section 120.101, subdivision 4;

(6) nonresidential programs 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 or present on property that is contiguous with the physical facility where the nonresidential program is provided;

(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 provide services for five or more persons whose primary diagnosis is mental illness who have refused an appropriate residential program offered by a county agency. This exclusion expires on July 1, 1990;

(9) homes providing programs for persons placed there by 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 operate for fewer than 40 calendar days in a calendar year;

(12) programs whose primary purpose is to provide social or recreational activities for adults or school-age children, such as scouting, boys clubs, girls clubs, sports, or the arts; except that a program operating in a school building is not excluded unless it is approved by the district's school board;

(13) head start nonresidential programs which operate for less than 31 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 mental retardation;

(15) nonresidential programs for nonhandicapped 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, until the commissioner adopts appropriate rules;

(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) until July 1, 1991, nonresidential programs for persons with mental illness; or

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules.

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 sections 245A.01 to 245A.16 unless the program is excluded from licensure under subdivision 2.

(b) If, after receiving notice that a license is required, the individual, corporation, partnership, voluntary association, other organization, or controlling individual has failed to apply for a license, 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. The county attorney and the attorney general have a duty to cooperate with the commissioner.

History: 1989 c 282 art 2 s 66-68

245A.04 APPLICATION PROCEDURES.

Subdivision 1. Application for licensure. (a) An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner. The commissioner shall provide the applicant with instruction in completing the application and provide information about the rules and requirements of other state agencies that affect the applicant.

The commissioner shall act on the application within 90 working days after a complete application and any required reports have been received from other state agencies or departments, counties, municipalities, or other political subdivisions.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the commissioner of human services on all matters provided for in this chapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

[For text of subd 2, see M.S.1988]

Subd. 3. Study of the applicant. (a) Before the commissioner issues a license, the commissioner shall conduct a study of the individuals specified in clauses (1) to (4) according to rules of the commissioner. The applicant, license holder, the bureau of criminal apprehension, and county agencies, after written notice to the individual who is the subject of the study, shall help with the study by giving the commissioner criminal conviction data and reports about abuse or neglect of adults substantiated under section 626.557 and the maltreatment of minors substantiated under section 626.556. The individuals to be studied shall include:

- (1) the applicant;
- (2) persons over the age of 13 living in the household where the licensed program will be provided;
- (3) current employees or contractors of the applicant who will have direct contact with persons served by the program; and
- (4) volunteers who have direct contact with persons served by the program to provide program services, if the contact is not directly supervised by the individuals listed in clause (1) or (3).

For purposes of this subdivision, "direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by a program. For purposes of this subdivision, "directly supervised" means an individual listed in clause (1) or (3) is within sight or hearing of a volunteer to the extent that the individual listed in clause (1) or (3) is capable at all times of intervening to protect the health and safety of the persons served by the program who have direct contact with the volunteer.

A study of an individual in clauses (1) to (4) shall be conducted on at least an annual basis. No applicant, license holder, or individual who is the subject of the study shall pay any fees required to conduct the study.

(b) The individual who is the subject of the study must provide the applicant or license holder with sufficient information to ensure an accurate study including the individual's first, middle, and last name; home address, city, county, and state of residence; zip code; sex; date of birth; and driver's license number. The applicant or license holder shall provide this information about an individual in paragraph (a), clauses (1) to (4), on forms prescribed by the commissioner. The commissioner may

request additional information of the individual, which shall be optional for the individual to provide, such as the individual's social security number or race.

(c) A study must include information from the county agency's record of substantiated abuse of adults, neglect of adults, and the maltreatment of minors, and information from the bureau of criminal apprehension.

The commissioner may also review arrest and investigative information from the bureau of criminal apprehension, a county attorney, county sheriff, county agency, local chief of police, other states, the courts, or a national criminal record repository if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual listed in paragraph (a), clauses (1) to (4).

(d) An applicant's or license holder's failure or refusal to cooperate with the commissioner is reasonable cause to deny an application or immediately suspend, suspend, or revoke a license. Failure or refusal of an individual to cooperate with the study is just cause for denying or terminating employment of the individual if the individual's failure or refusal to cooperate could cause the applicant's application to be denied or the license holder's license to be immediately suspended, suspended, or revoked.

(e) The commissioner shall not consider an application to be complete until all of the information required to be provided under this subdivision has been received.

(f) No person in paragraph (a), clause (1), (2), (3), or (4) who is disqualified as a result of this act may be retained by the agency in a position involving direct contact with persons served by the program.

(g) The commissioner shall not implement the procedures contained in this subdivision until appropriate rules have been adopted, except for the applicants and license holders for child foster care, adult foster care, and family day care homes.

(h) Termination of persons in paragraph (a), clause (1), (2), (3), or (4) made in good faith reliance on a notice of disqualification provided by the commissioner shall not subject the applicant or license holder to civil liability.

(i) The commissioner may establish records to fulfill the requirements of this section. The information contained in the records is only available to the commissioner for the purpose authorized in this section.

Subd. 3a. Notification to subject of study results. The commissioner shall notify the applicant or license holder and the individual who is the subject of the study, in writing, of the results of the study. When the study is completed, a notice that the study was undertaken and completed shall be maintained in the personnel files of the program.

The commissioner shall notify the individual studied if the information contained in the study could cause disqualification from direct contact with persons served by the program. The commissioner shall disclose the information to the individual studied. An applicant or license holder who is not the subject of the study shall be informed that the commissioner has found information that could cause disqualification of the subject from direct contact with persons served by the program. However, the applicant or license holder shall not be told what that information is unless the data practices act provides for release of the information and the individual studied authorizes the release of the information.

Subd. 3b. Reconsideration of disqualification. (a) Within 30 days after receiving notice of possible disqualification under subdivision 3a, the individual who is the subject of the study may request reconsideration of the notice of possible disqualification. The individual must submit the request for reconsideration to the commissioner in writing. The individual must present information to show that:

- (1) the information the commissioner relied upon is incorrect; or
- (2) the subject of the study does not pose a risk of harm to any person served by the applicant or license holder.

(b) The commissioner may set aside the disqualification if the commissioner finds

that the information the commissioner relied upon is incorrect or the individual does not pose a risk of harm to any person served by the applicant or license holder and rules adopted by the commissioner do not preclude reconsideration. The commissioner shall review the consequences of the event or events that could lead to disqualification, the vulnerability of the victim at the time of the event, the time elapsed without a repeat of the same or similar event, and documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event.

(c) The commissioner shall respond in writing to all reconsideration requests within 15 working days after receiving the request for reconsideration. If the disqualification is set aside, the commissioner shall notify the applicant or license holder in writing of the decision.

(d) Except as provided in subdivision 3c, the commissioner's decision to grant or deny a reconsideration of disqualification under this subdivision, or to set aside or uphold the results of the study under subdivision 3, is the final administrative agency action.

Subd. 3c. Contested case. If a disqualification is not set aside, a person who, on or after the effective date of rules adopted under subdivision 3, paragraph (i), is an employee of an employer, as defined in section 179A.03, subdivision 15, may request a contested case hearing under chapter 14. Rules adopted under this chapter may not preclude an employee in a contested case hearing for disqualification from submitting evidence concerning information gathered under subdivision 3, paragraph (e).

[For text of subd 4, see M.S.1988]

Subd. 5. Commissioner's right of access. When the commissioner is exercising the powers conferred by sections 245A.01 to 245A.15, the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of abuse, neglect, maltreatment, or other violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Subd. 6. Commissioner's evaluation. Before granting, suspending, revoking, or making probationary a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, consumer evaluations of the program, and information about the character and qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in rules adopted under this chapter. If any rule currently does not include these disqualification standards, the commissioner shall apply the standards in section 364.03, subdivision 3, until the rule is revised to include disqualification standards. The commissioner shall revise all rules authorized by this chapter to include disqualification standards. Prior to the adoption of rules establishing disqualification

standards, the commissioner shall forward the proposed rules to the commissioner of human rights for review and recommendation concerning the protection of individual rights. The recommendation of the commissioner of human rights is not binding on the commissioner of human services. The provisions of chapter 364 do not apply to applicants or license holders governed by sections 245A.01 to 245A.16 except as provided in this subdivision.

Subd. 7. **Issuance of a license; provisional license.** (a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license. At minimum, the license shall state:

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

(b) The commissioner may issue a provisional license for a period not to exceed one year if:

(1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet operational;

(2) certain records and documents are not available because persons are not yet receiving services from the program; and

(3) the applicant complies with applicable laws and rules in all other respects.

A provisional license must not be issued except at the time that a license is first issued to an applicant.

A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling individual, or to another location. All licenses expire at 12:01 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

[For text of subds 8 and 9, see M.S.1988]

History: 1989 c 282 art 2 s 69-76

245A.06 CORRECTION ORDER AND FINES.

Subdivision 1. **Contents of correction orders.** (a) If the commissioner finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order to the applicant or license holder. The correction order must state:

- (1) the conditions that constitute a violation of the law or rule;
- (2) the specific law or rule violated; and
- (3) the time allowed to correct each violation.

(b) Nothing in this section prohibits the commissioner from proposing a sanction as specified in section 245A.07, prior to issuing a correction order or fine.

[For text of subds 2 to 4, see M.S.1988]

Subd. 5. **Forfeiture of fines.** The license holder shall pay the fines assessed on or before the payment date specified in the commissioner's order. If the license holder fails to fully comply with the order, the commissioner shall suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or departments responsible for administering the funds shall

withhold payments and recover any payments made while the license is suspended for failure to pay a fine.

Subd. 5a. Accrual of fines. A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in an order to forfeit is corrected. A fine assessed for a violation shall stop accruing when the commissioner receives the written notice. The commissioner shall reinspect the program within three working days after receiving the notice. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit, accrual of the daily fine resumes on the date of reinspection and the amount of fines that otherwise would have accrued between the date the commissioner received the notice and date of the reinspection is added to the total assessment due from the license holder. The commissioner shall notify the license holder by certified mail that accrual of the fine has resumed. The license holder may challenge the resumption in a contested case under chapter 14 by written request within 15 days after receipt of the notice of resumption. Recovery of the resumed fine must be stayed if a controlling individual or a legal representative on behalf of the license holder makes a written request for a hearing. The request for hearing, however, may not stay accrual of the daily fine for violations that have not been corrected. The cost of reinspection conducted under this subdivision for uncorrected violations must be added to the total amount of accrued fines due from the license holder.

[For text of subd 6, see M.S.1988]

History: 1989 c 282 art 2 s 77-79

245A.07 SANCTIONS.

[For text of subd 1, see M.S.1988]

Subd. 2. Immediate suspension in cases of imminent danger to health, safety, or rights. If the license holder's failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger, the commissioner shall act immediately to suspend the license. No state funds shall be made available or be expended by any agency or department of state, county, or municipal government for use by a license holder regulated under sections 245A.01 to 245A.16 while a license is under immediate suspension. A notice stating the reasons for the immediate suspension and informing the license holder of the right to a contested case hearing under chapter 14 must be delivered by personal service to the address shown on the application or the last known address of the license holder. The license holder may appeal an order immediately suspending a license by notifying the commissioner in writing by certified mail within five calendar days after receiving notice that the license has been immediately suspended. A license holder and any controlling individual shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

[For text of subd 3, see M.S.1988]

History: 1989 c 282 art 2 s 80

245A.08 HEARINGS.

[For text of subds 1 to 4, see M.S.1988]

Subd. 5. Notice of the commissioner's final order. After considering the findings of fact, conclusions, and recommendations of the administrative law judge, the commissioner shall issue a final order. The commissioner shall consider, but shall not be bound by, the recommendations of the administrative law judge. The appellant must be notified of the commissioner's final order as required by chapter 14. The notice must also contain information about the appellant's rights under chapter 14. The institution of proceedings for judicial review of the commissioner's final order shall not stay the

enforcement of the final order except as provided in section 14.65. A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation.

History: 1989 c 282 art 2 s 81

245A.095 REVIEW OF RULES FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESSES.

Subdivision 1. License required. Residential programs with five or more persons with a mental illness must be licensed under sections 245A.01 to 245A.16. To assure that this requirement is met, the commissioner of health, in cooperation with the commissioner of human services, shall monitor licensed boarding care homes, board and lodging houses, and supervised living facilities.

By January 1, 1989, the commissioner of health shall recommend to the legislature an appropriate method for enforcing this requirement.

Subd. 1a. Rules. In developing rules for serving persons with mental illness, the commissioner of human services shall assure that persons with mental illness are provided with needed treatment or support in the least restrictive, most appropriate environment, that supportive residential care in small homelike settings is available for persons needing that care, and that a mechanism is developed to ensure that no person is placed in a care or treatment setting inappropriate for meeting the person's needs. To the maximum extent possible, the rule shall assure that length of stay is governed solely by client need and shall allow for a variety of innovative and flexible approaches in meeting residential and support needs of persons with mental illness.

Subd. 2. Specific review of rules. The commissioner shall:

(1) provide in rule for additional types of programs and services, including but not limited to supportive small group residential care, semi-independent and apartment living services, and crisis and respite services, to address the residential treatment and support needs of persons with mental illness;

(2) review category I and II programs established in Minnesota Rules, parts 9520.0500 to 9520.0690 to ensure that the categories of programs provide a continuum of residential service programs for persons with mental illness, including but not limited to programs meeting needs for intensive treatment, crisis and respite care, and rehabilitation and training;

(3) provide in rule for a definition of the term "treatment" as used in relation to persons with mental illness;

(4) adjust funding mechanisms by rule as needed to reflect the requirements established by rule for services being provided;

(5) review and recommend staff educational requirements and staff training as needed;

(6) review and make changes in rules relating to residential care and service programs for persons with mental illness as the commissioner may determine necessary; and

(7) the commissioner shall report to the legislature by February 15, 1990, on the status of rulemaking with respect to clauses (1) to (6).

Subd. 3. [Repealed, 1989 c 282 art 4 s 64]

History: 1989 c 282 art 4 s 61

245A.12 VOLUNTARY RECEIVERSHIP FOR RESIDENTIAL PROGRAMS.

A majority of controlling individuals of a residential program may at any time ask the commissioner to assume operation of the residential program through appointment of a receiver. On receiving the request for a receiver, the commissioner may enter into an agreement with a majority of controlling individuals and provide for the appointment of a receiver to operate the residential program under conditions acceptable to

both the commissioner and the majority of controlling persons. The agreement must specify the terms and conditions of the receivership and preserve the rights of the persons being served by the residential program. A receivership set up under this section terminates at the time specified by the parties to the agreement or 30 days after either of the parties gives written notice to the other party of termination of the receivership agreement.

History: 1989 c 282 art 2 s 82

245A.13 INVOLUNTARY RECEIVERSHIP FOR RESIDENTIAL PROGRAMS.

Subdivision 1. Application. In addition to any other remedy provided by law, the commissioner may petition the district court in the county where the residential program is located for an order directing the controlling individuals of the residential program to show cause why the commissioner or the commissioner's designated representative should not be appointed receiver to operate the residential program. The petition to the district court must contain proof by affidavit: (1) that the commissioner has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the residential program; or (2) it appears to the commissioner that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the residential program may close, the residential program's financial condition, or violations committed by the residential program of federal or state laws or rules. If the license holder, applicant, or controlling individual operates more than one residential program, the commissioner's petition must specify and be limited to the residential program for which it seeks receivership. The affidavit submitted by the commissioner must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the residential program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

Subd. 2. Appointment of receiver; rental. If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the residential program, the court shall appoint a receiver to operate the residential program. In the event that no receiver can be found who meets the conditions of this section, the commissioner or commissioner's designated representative may serve as the receiver. The court shall determine a fair monthly rental for the physical plant, taking into account all relevant factors necessary to meet required arms-length obligations of controlling individuals such as mortgage payments, real estate taxes, special assessments, and the conditions of the physical plant. The rental fee must be paid by the receiver to the appropriate controlling individuals for each month that the receivership remains in effect. No payment made to a controlling individual by the receiver or any state agency during a period of involuntary receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

Subd. 3. Powers and duties of the receiver. Within 36 months after the receivership order, a receiver appointed to operate a residential program during a period of involuntary receivership shall provide for the orderly transfer of the persons served by the residential program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver shall correct or eliminate deficiencies in the residential program that the commissioner determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver shall take actions designed to result in the immediate transfer of persons served by the residential program. During the period of the receivership, the receiver shall operate the residential program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the

persons served by the residential program. The receiver may make contracts and incur lawful expenses. The receiver shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the receiver's functions including the receiver's fee set under subdivision 4. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver. The receiver shall pay all valid obligations of the residential program and may deduct these expenses, if necessary, from rental payments owed to any controlling individual by virtue of the receivership.

Subd. 4. Receiver's fee; liability; assistance from the commissioner. A receiver appointed under an involuntary receivership is entitled to a reasonable receiver's fee as determined by the court. The receiver's fee is governed by section 256B.495. The receiver is liable only in an official capacity for injury to person and property by reason of the conditions of the residential program. The receiver is not personally liable, except for gross negligence and intentional acts.

Subd. 5. Termination. An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following events occurs:

- (1) the commissioner determines that the residential program's license application should be granted or should not be suspended or revoked;
- (2) a new license is granted to the residential program; or
- (3) the commissioner determines that all persons residing in the residential program have been provided with alternative residential programs.

Subd. 6. Emergency procedure. If it appears from the petition filed under subdivision 1, from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath if the court determines it necessary, that there is probable cause to believe that an emergency exists in a residential program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

Subd. 7. Rate recommendation. The commissioner of human services may review rates of a residential program participating in the medical assistance program which is in involuntary receivership and that has needs or deficiencies documented by the department of health or the department of human services. If the commissioner of human services determines that a review of the rate established under section 256B.501 is needed, the commissioner shall:

- (1) review the order or determination that cites the deficiencies or needs; and
- (2) determine the need for additional staff, additional annual hours by type of employee, and additional consultants, services, supplies, equipment, repairs, or capital assets necessary to satisfy the needs or deficiencies.

Subd. 8. Adjustment to the rate. Upon review of rates under subdivision 7, the commissioner may adjust the residential program's payment rate. The commissioner shall review the circumstances, together with the residential program cost report, to determine whether or not the deficiencies or needs can be corrected or met by reallocating residential program staff, costs revenues, or other resources including any investments, efficiency incentives, or allowances. If the commissioner determines that any deficiency cannot be corrected or the need cannot be met, the commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the commissioner's review by the residential program's actual resident days from the most recent desk-audited cost report or the estimated resident days in the projected receivership period. The payment rate adjustment must meet the conditions in Minnesota Rules, parts 9553.0010 to 9553.0080, and remains in effect

during the period of the receivership or until another date set by the commissioner. Upon the subsequent sale or transfer of the residential program, the commissioner may recover amounts that were paid as payment rate adjustments under this subdivision. The buyer or transferee shall repay this amount to the commissioner within 60 days after the commissioner notifies the buyer or transferee of the obligation to repay. This provision does not limit the liability of the seller to the commissioner pursuant to section 256B.0641.

History: 1989 c 282 art 2 s 83

245A.14 SPECIAL CONDITIONS FOR NONRESIDENTIAL PROGRAMS.

[For text of subds 1 and 2, see M.S.1988]

Subd. 3. Conditional license. Until such time as the commissioner adopts appropriate rules for conditional licenses, no license holder or applicant for a family or group family day care license is required to spend more than \$100 to meet fire safety rules in excess of those required to meet Group "R" occupancies under the Uniform Building Code, chapter 12, as incorporated by reference in Minnesota Rules, part 1305.0100.

When the commissioner determines that an applicant or license holder of a family or group family day care license would be required to spend over \$100 for physical changes to ensure fire safety, the commissioner may issue a conditional license when all of the following conditions have been met:

(a) The commissioner shall notify the license holder or applicant in writing of the fire safety deficiencies.

(b) The commissioner shall notify the license holder or applicant in writing of alternative compliance standards that would correct deficiencies, if available.

(c) The license holder or applicant agrees in writing to notify each parent, on a form prescribed by the commissioner that requires the signature of the parent, of the fire safety deficiencies, and the existence of the conditional license.

[For text of subds 4 and 5, see M.S.1988]

Subd. 6. Drop-in child care programs. Except as expressly set forth in this subdivision, drop-in child care programs must be licensed as a drop-in program under the rules governing child care programs operated in a center. Drop-in child care programs are exempt from the requirements in Minnesota Rules, parts 9503.0040; 9503.0045, subpart 1, items F and G; 9503.0050, subpart 6, except for children less than 2-1/2 years old; one-half the requirements of 9503.0060, subpart 4, item A, subitems (2), (5), and (8), subpart 5, item A, subitems (2), (3), and (7), and subpart 6, item A, subitems (3) and (6); 9507.0070; and 9503.0090, subpart 2. A drop-in child care program must be operated under the supervision of a person qualified as a director and a teacher. A drop-in child care program must maintain a minimum staff ratio for children age 2-1/2 or greater of one staff person for each ten children, except that there must be at least two persons on staff whenever the program is operating. If the program has additional staff who are on call as a mandatory condition of their employment, the minimum ratio may be exceeded only for children age 2-1/2 or greater, by a maximum of four children, for no more than 20 minutes while additional staff are in transit. The minimum staff-to-child ratio for infants up to 16 months of age is one staff person for every four infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one staff for every seven children. In drop-in care programs that serve both infants and older children, children up to age 2-1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios. The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have

at least the qualifications of an assistant teacher. A drop-in child care program serving children less than 2-1/2 years of age must serve these children in an area separated from older children. Children age 2-1/2 and older may be cared for in the same child care group.

History: 1989 c 282 art 2 s 84,85

245A.16 STANDARDS FOR COUNTY AGENCIES AND PRIVATE AGENCIES.

Subdivision 1. Delegation of authority to agencies. (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04, to recommend denial of applicants under section 245A.05, to recommend correction orders and fines under section 245A.06, or to recommend suspending, revoking, and making licenses probationary under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section.

(b) By January 1, 1991, the commissioner shall study and make recommendations to the legislature regarding the licensing and provision of support services to child foster homes. In developing the recommendations, the commissioner shall consult licensed private agencies, county agencies, and licensed foster home providers.

[For text of subds 2 to 6, see M.S.1988]

History: 1989 c 282 art 2 s 86