

245A.02 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them in this section.

Subd. 2. **Adult.** "Adult" means a person who is 18 years old or older and who:

- (1) has a mental illness, a developmental disability, a physical disability, or a functional impairment; or
- (2) is chemically dependent or abuses chemicals.

Subd. 2a. **Adult day care or family adult day services.** "Adult day care," "adult day services," and "family adult day services" mean a program operating less than 24 hours per day that provides functionally impaired adults with an individualized and coordinated set of services including health services, social services, and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care. Adult day care, adult day services, and family adult day services do not include programs where adults gather or congregate primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.

Subd. 2b. **Annual or annually.** With the exception of subdivision 2c, "annual" or "annually" means prior to or within the same month of the subsequent calendar year.

Subd. 2c. **Annual or annually; family child care training requirements.** For the purposes of section 245A.50, subdivisions 1 to 9, "annual" or "annually" means the 12-month period beginning on the license effective date or the annual anniversary of the effective date and ending on the day prior to the annual anniversary of the license effective date.

Subd. 3. **Applicant.** "Applicant" means an individual, organization, or government entity, as defined in section 13.02, subdivision 7a, that is subject to licensure under this chapter and that has applied for but not yet been granted a license under this chapter.

Subd. 3a. **Certification.** "Certification" means the commissioner's written authorization for a license holder licensed by the commissioner of human services or the commissioner of corrections to serve children in a residential program and provide specialized services based on certification standards in Minnesota Rules. The term "certification" and its derivatives have the same meaning and may be substituted for the term "licensure" and its derivatives in this chapter.

Subd. 3b. **Authorized agent.** "Authorized agent" means the controlling individual designated by the license holder responsible for communicating with the commissioner of human services on all matters related to this chapter and on whom service of all notices and orders must be made pursuant to section 245A.04, subdivision 1.

Subd. 4. **Child.** "Child" means a person who has not reached age 18.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative including county agencies and private agencies.

Subd. 5a. **Controlling individual.** (a) "Controlling individual" means an owner of a program or service provider licensed under this chapter and the following individuals, if applicable:

- (1) each officer of the organization, including the chief executive officer and chief financial officer;
- (2) the individual designated as the authorized agent under section 245A.04, subdivision 1, paragraph (b);

(3) the individual designated as the compliance officer under section 256B.04, subdivision 21, paragraph (g); and

(4) each managerial official whose responsibilities include the direction of the management or policies of a program.

(b) Controlling individual does not include:

(1) a bank, savings bank, trust company, savings 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, owner, or managerial official 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.45, clause (6); or

(ii) whose transactions are exempt under section 80A.46, clause (2);

(4) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer, owner, or managerial official 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; or

(5) an employee stock ownership plan trust, or a participant or board member of an employee stock ownership plan, unless the participant or board member is a controlling individual according to paragraph (a).

(c) For purposes of this subdivision, "managerial official" means an individual who has the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program. A site director who has no ownership interest in the program is not considered to be a managerial official for purposes of this definition.

Subd. 6. **County agency.** "County agency" means the agency designated by the county board of commissioners, human service boards, local social services agencies or multicounty local social services agencies, or departments where those have been established under the law.

Subd. 6a. **Drop-in child care program.** "Drop-in child care program" means a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a maximum of 90 hours per child, per month. A drop-in child care program must be licensed under Minnesota Rules governing child care centers. A drop-in child care program must meet one of the following requirements to qualify for the rule exemptions specified in section 245A.14, subdivision 6:

(1) the drop-in child care program operates in a child care center which houses no child care program except the drop-in child care program;

(2) the drop-in child care program operates in the same child care center but not during the same hours as a regularly scheduled ongoing child care program with a stable enrollment; or

(3) the drop-in child care program operates in a child care center at the same time as a regularly scheduled ongoing child care program with a stable enrollment but the program's activities, except for bathroom use and outdoor play, are conducted separately from each other.

Subd. 6b. **Experience.** For purposes of child care centers, "experience" includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, in a public or nonpublic school, or in a program licensed as a family day care or group family day care provider.

Subd. 6c. **Foster care for adults.** "Foster care for adults" means a program operating 24 hours a day that provides functionally impaired adults with food, lodging, protection, supervision, and household services in a residence, in addition to services according to the individual service plans under Minnesota Rules, part 9555.5105, subpart 18.

Subd. 7. **Functional impairment.** For the purposes of adult day care, adult day services, family adult day services, or adult foster care, "functional impairment" means:

(1) a condition that is characterized by substantial difficulty in carrying out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working; or

(2) a disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life and that requires support to maintain independence in the community.

Subd. 7a. **HIV minimum standards.** "HIV minimum standards" means those items approved by the department and contained in the HIV-1 Guidelines for chemical dependency treatment and care programs in Minnesota including HIV education to clients, completion of HIV training by all new and existing staff, provision for referral to individual HIV counseling and services for all clients, and the implementation of written policies and procedures for working with HIV-infected clients.

Subd. 7b. [Repealed, 2014 c 262 art 5 s 7]

Subd. 8. **License.** "License" means a certificate issued by the commissioner under section 245A.04 authorizing the license holder to provide a specified program for a specified period of time and in accordance with the terms of the license and the rules of the commissioner.

Subd. 9. **License holder.** "License holder" means an individual, organization, or government entity that is legally responsible for the operation of the program or service, and has been granted a license by the commissioner under this chapter and the rules of the commissioner.

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; 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 for persons with disabilities or persons age 65 and older that are provided in or outside of a person's own home under chapter 245D.

Subd. 10a. **Parent cooperative.** "Parent cooperative" means a nonprofit group child care program that is governed by a board that meets regularly and makes all continuing operational decisions about the program. At least 70 percent of the board membership must be parent-users of the program.

Subd. 10b. **Owner.** "Owner" means an individual or organization that has a direct or indirect ownership interest of five percent or more in a program licensed under this chapter. For purposes of this subdivision, "direct ownership interest" means the possession of equity in capital, stock, or profits of an organization, and "indirect ownership interest" means a direct ownership interest in an entity that has a direct or indirect ownership interest in a licensed program. For purposes of this chapter, "owner of a nonprofit corporation" means the president and treasurer of the board of directors or, for an entity owned by an employee stock ownership plan, means the president and treasurer of the entity. A government entity that is issued a license under this chapter shall be designated the owner.

Subd. 10c. **Organization.** "Organization" means a domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, voluntary association, and any other legal or commercial entity. For purposes of this chapter, organization does not include a government entity.

Subd. 11. **Person.** "Person" means a child or adult as defined in subdivisions 2 and 4.

Subd. 12. **Private agency.** "Private agency" means an organization, other than a county agency, or a court with jurisdiction, that places persons who cannot remain in their own homes in residential programs, foster care, or adoptive homes. A private agency is designated to perform the commissioner's licensing functions under section 245A.16.

Subd. 13. **Individual who is related.** "Individual who is related" means a spouse, a parent, a birth or adopted child or stepchild, a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian.

Subd. 14. **Residential program.** (a) Except as provided in paragraph (b), "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 program in an intermediate care facility for four or more persons with developmental disabilities; 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.

(b) For a residential program under chapter 245D, "residential program" means a single or multifamily dwelling that is under the control, either directly or indirectly, of the service provider licensed under chapter 245D and in which at least one person receives services under chapter 245D, including residential supports and services under section 245D.03, subdivision 1, paragraph (c), clause (3); out-of-home crisis respite services under section 245D.03, subdivision 1, paragraph (c), clause (1), item (ii); and out-of-home respite services under section 245D.03, subdivision 1, paragraph (b), clause (1). A residential program does not include out-of-home respite services when a case manager has determined that an unlicensed site meets the assessed needs of the person. A residential program also does not include multifamily dwellings where persons receive integrated community supports, even if authorization to provide these supports is granted under chapter 245D and approved in the federal waiver.

Subd. 15. **Respite care services.** "Respite care services" means temporary services provided to a person due to the absence or need for relief of the primary caregiver, the person's family member, or legal representative who is the primary caregiver and principally responsible for the care and supervision of the person. Respite care services are those that provide the level of supervision and care that is necessary to ensure the health and safety of the person. Respite care services do not include services that are specifically directed toward the training and habilitation of the person.

Subd. 16. **School-age child.** "School-age child," for programs licensed or required to be licensed as a child care center, means a child who is at least of sufficient age to have attended the first day of kindergarten, or is eligible to enter kindergarten within the next four months, but is younger than 13 years of age.

Subd. 17. **School-age child care program.** "School-age child care program" means a program licensed or required to be licensed as a child care center, serving more than ten children with the primary purpose of providing child care for school age children.

Subd. 18. **Supervision.** (a) For purposes of licensed child care centers, "supervision" means when a program staff person:

- (1) is accountable for the child's care;
- (2) can intervene to protect the health and safety of the child; and
- (3) is within sight and hearing of the child at all times except as described in paragraphs (b) to (d).

(b) When an infant is placed in a crib room to sleep, supervision occurs when a program staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision components.

(c) When a single school-age child uses the restroom within the licensed space, supervision occurs when a program staff person has knowledge of the child's activity and location and checks on the child at least every five minutes. When a school-age child uses the restroom outside the licensed space, including but not limited to field trips, supervision occurs when staff accompany children to the restroom.

(d) When a school-age child leaves the classroom but remains within the licensed space to deliver or retrieve items from the child's personal storage space, supervision occurs when a program staff person has knowledge of the child's activity and location and checks on the child at least every five minutes.

Subd. 19. **Family day care and group family day care child age classifications.** (a) For the purposes of family day care and group family day care licensing under this chapter, the following terms have the meanings given them in this subdivision.

(b) "Newborn" means a child between birth and six weeks old.

(c) "Infant" means a child who is at least six weeks old but less than 12 months old.

(d) "Toddler" means a child who is at least 12 months old but less than 24 months old, except that for purposes of specialized infant and toddler family and group family day care, "toddler" means a child who is at least 12 months old but less than 30 months old.

(e) "Preschooler" means a child who is at least 24 months old up to school age.

(f) "School age" means a child who is at least five years of age, but is younger than 11 years of age.

Subd. 20. **Weekly.** "Weekly" means at least once every calendar week, for the purposes of chemical dependency treatment programs licensed under chapter 245G.

Subd. 21. **Monthly.** "Monthly" means at least once every calendar month, for the purposes of chemical dependency treatment programs licensed under chapter 245G.

Subd. 22. **Quarterly.** "Quarterly" means at least every 90 calendar days, for the purposes of chemical dependency treatment programs licensed under chapter 245G.

History: 1987 c 333 s 2; 1988 c 411 s 1; 1989 c 282 art 2 s 60-65; 1990 c 568 art 2 s 40; 1991 c 142 s 1; 1992 c 513 art 9 s 7,8; 1993 c 338 s 1,2; 1994 c 631 s 31; 1995 c 158 s 1,2; 1995 c 202 art 1 s 25; 1995 c 207 art 2 s 4; 1997 c 248 s 3-7; 1999 c 36 s 1; 2000 c 327 s 6; 1Sp2001 c 9 art 14 s 4-6; 2002 c 375 art 1 s 5,6; 2002 c 379 art 1 s 113; 2004 c 288 art 1 s 2-7; 2005 c 56 s 1; 1Sp2005 c 4 art 1 s 4; 2006 c 196 art 1 s 52; art 2 s 5; 2013 c 108 art 8 s 8,9; art 9 s 5,6; 2014 c 228 art 2 s 2; 2014 c 291 art 1 s 1; 2015 c 78 art 4 s 6-9; 2016 c 158 art 1 s 88; 1Sp2017 c 6 art 9 s 1,2; art 13 s 2,3; 2018 c 182 art 2 s 7-9; 1Sp2019 c 9 art 2 s 14-21; art 7 s 5