

## CHAPTER 333—H.F.No. 1210

*An act relating to human services; regulating the licensure of programs for the care of children or of adults with certain disabilities; providing penalties; replacing the existing licensure law; amending Minnesota Statutes 1986, sections 256D.01, by adding a subdivision; and 256D.37, by adding a subdivision; proposing coding for new law as Minnesota Statutes, chapter 245A; repealing Minnesota Statutes 1986, sections 245.781; 245.782; 245.783; 245.791; 245.792; 245.801; 245.802; 245.803; 245.804; 245.805; 245.811; 245.812; 245.88; 245.881; 245.882; 245.883; 245.884; and 245.885.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [245A.01] CITATION.

Sections 1 to 17 may be cited as the "human services licensing act."

Sec. 2. [245A.02] DEFINITIONS.

Subdivision 1. SCOPE. The terms used in sections 1 to 17 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 mental illness, mental retardation or a related condition, a physical handicap, or a functional impairment; or

(2) is chemically dependent or abuses chemicals.

Subd. 3. APPLICANT. "Applicant" means an individual, corporation, partnership, voluntary association or other organization that has applied for licensure under sections 1 to 17 and the rules of the commissioner.

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. 6. COUNTY AGENCY. "County agency" means the agency designated by the county board of commissioners, human service boards, county welfare boards or multicounty welfare boards, or departments where those have been established under the law.

Subd. 7. FUNCTIONAL IMPAIRMENT. For the purposes of adult day care 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

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(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. 8. LICENSE. "License" means a certificate issued by the commissioner 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, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program and has been granted a license by the commissioner under sections 1 to 17 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; a nursing home that receives public funds to provide services for five or more persons whose primary diagnosis is mental retardation 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 that are provided in or outside of a person's own home.

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

Subd. 12. PRIVATE AGENCY. "Private agency" means an individual, corporation, partnership, voluntary association or other 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.

Subd. 13. INDIVIDUAL WHO IS RELATED. "Individual who is related" means a spouse, a parent, 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. "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

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diagnosis is mental retardation 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 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 that are provided in or outside of a person's own home.

**Sec. 3. [245A.03] WHO MUST BE LICENSED.**

Subdivision 1. LICENSE REQUIRED. Unless licensed by the commissioner, an individual, corporation, partnership, voluntary association or other organization 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 residential or nonresidential program.

Subd. 2. EXCLUSION FROM LICENSURE. Sections 1 to 17 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 legally constituted local school board, or private schools that have been approved under the rules of the commissioner of education;
- (6) nonresidential programs for children that provide care or supervision for

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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 2;

(8) board and lodge facilities licensed by the commissioner of health that provide services for more than five persons whose primary diagnosis is mental illness or mental retardation who have refused services in a residential program;

(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 not located in family or group family day care homes whose primary purpose is to provide activities outside of the regular school day for children age five and older, until such time as appropriate rules have been adopted by the commissioner;

(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) family day care for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period; or

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules.

**Subd. 3. UNLICENSED PROGRAMS.** (a) It is a misdemeanor for an individual, corporation, partnership, voluntary association, or other organization to provide a residential or nonresidential program without a license and in willful disregard of sections 1 to 17 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, or other organization 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.

#### Sec. 4. [245A.04] APPLICATION PROCEDURES.

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Subdivision 1. APPLICATION FOR LICENSURE. An individual, corporation, partnership, voluntary association or other organization subject to licensure under section 3 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.

Subd. 2. NOTIFICATION OF AFFECTED MUNICIPALITY. The commissioner must not issue a license without giving 30 calendar days' written notice to the affected municipality or other political subdivision unless the program is considered a permitted single-family residential use under sections 12 and 15. The notification must be given before the first issuance of a license and annually after that time if annual notification is requested in writing by the affected municipality or other political subdivision. State funds must not be made available to or be spent by an agency or department of state, county, or municipal government for payment to a residential or nonresidential program licensed under sections 1 to 17 until the provisions of this subdivision have been complied with in full. The provisions of this subdivision shall not apply to programs located in hospitals.

Subd. 3. STUDY OF THE APPLICANT. (a) Before issuing a license, the commissioner shall conduct a study of the applicant. The applicant, the bureau of criminal apprehension, county attorneys, county sheriffs, county agencies, and local chiefs of police, after notice to the subject of the data, shall help with the study by giving the commissioner criminal conviction data, arrest information, reports about abuse or neglect of children or adults, and investigation results available from local, state, and national criminal record repositories, including the criminal justice data communications network, about:

- (1) the applicant;
- (2) persons living in the household where the licensed program will be provided;
- (3) 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, if the contact is not directly supervised by the individuals listed in clause (1) or (3).

The commissioner and agencies required to help conduct the study may charge the applicant or the subject of the data a reasonable fee for conducting the study.

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(b) A study must meet the following minimum criteria:

(1) if the subject of the data has resided in the same county for at least the past five years, the study must include information from the county sheriff and the county attorney;

(2) if the subject of the data has resided in the state, but not in the same county, for the past five years, the study must include information from the agencies listed in clause (1) and the bureau of criminal apprehension; and

(3) if the subject of the data has not resided in the state for at least five years, the study must include information from the agencies listed in clauses (1) and (2) and the national criminal records repository and the state law enforcement agencies in the states where the subject of the data has maintained a residence during the past five years.

(c) An applicant's failure or refusal to cooperate with the commissioner is reasonable cause to deny an application or revoke or suspend 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.

(d) 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.

Subd. 4. INSPECTIONS; WAIVER. (a) Before issuing a license, the commissioner shall conduct an inspection of the program. The inspection must include but is not limited to:

(1) an inspection of the physical plant;

(2) an inspection of records and documents;

(3) an evaluation of the program by consumers of the program; and

(4) observation of the program in operation.

For the purposes of this subdivision, "consumer" means a person who receives the services of a licensed program, the person's legal guardian, or the parent or individual having legal custody of a child who receives the services of a licensed program.

(b) The evaluation required in paragraph (a), clause (3) or the observation in paragraph (a), clause (4) is not required prior to issuing a provisional license under subdivision 7. If the commissioner issues a provisional license under subdivision 7, these requirements must be completed within one year after the issuance of a provisional license. The observation in paragraph (a), clause (4) is not required if the commissioner determines that the observation would hinder the persons receiving services in benefiting from the program.

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Subd. 5. COMMISSIONER'S RIGHT OF ACCESS. When the commissioner is exercising the powers conferred by sections 1 to 16, 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, 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 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 2 until the rule is revised to include disqualification standards. The commissioner shall revise all rules authorized by this chapter to include disqualification standards. The provisions of chapter 364 do not apply to applicants or licenseholders governed by sections 1 to 17 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;

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(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 or other organization, 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.

Subd. 8. HOSPITAL INSPECTIONS. Licensing authority granted under this section shall not modify the presumption regarding routine hospital inspections under section 144.55, subdivision 4.

#### Sec. 5. [245A.05] DENIAL OF APPLICATION.

An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14. The applicant may appeal the denial by notifying the commissioner in writing by certified mail within 20 calendar days after receiving notice that the application was denied. Section 8 applies to hearings held to appeal the commissioner's denial of an application.

#### Sec. 6. [245A.06] CORRECTION ORDER AND FINES.

Subdivision 1. CONTENTS OF CORRECTION ORDERS. 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

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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.

Subd. 2. RECONSIDERATION OF CORRECTION ORDERS. If the applicant or license holder believes that the contents of the commissioner's correction order are in error, the applicant or license holder may ask the department of human services to reconsider the parts of the correction order that are alleged to be in error. The request for reconsideration must be in writing, delivered by certified mail, and:

- (1) specify the parts of the correction order that are alleged to be in error;
- (2) explain why they are in error; and
- (3) include documentation to support the allegation of error.

A request for reconsideration does not stay any provisions or requirements of the correction order. The commissioner shall respond to requests made under this subdivision within 15 working days after receipt of the request for reconsideration. The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Subd. 3. FAILURE TO COMPLY. If upon reinspection, the commissioner finds that the applicant or license holder has not corrected the violations specified in the correction order, the commissioner may order a fine. This section does not prohibit the commissioner from seeking a court order, denying an application, or suspending, revoking, or making probationary the license in addition to ordering a fine.

Subd. 4. NOTICE OF FINE; APPEAL. A license holder who is ordered to pay a fine must be notified of the order by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the fine was ordered and must inform the license holder of the right to a contested case hearing under chapter 14. The license holder may appeal the order to forfeit a fine by notifying the commissioner by certified mail within 15 calendar days after receiving the order. A timely appeal shall stay forfeiture of the fine until the commissioner issues a final order under section 8, subdivision 5.

Subd. 5. FORFEITURE OF FINES. The license holder shall pay the fines assessed within 15 calendar days of receipt of notice of 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

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

Subd. 6. AMOUNT OF FINES. Until the commissioner adopts one or more schedules of fines, fines shall be assessed as follows:

(1) the license holder shall forfeit \$1,000 for each occurrence of violation of law or rule prohibiting the maltreatment of children or the abuse, neglect, or exploitation of vulnerable adults, including but not limited to corporal punishment, illegal or unauthorized use of physical, mechanical, or chemical restraints, and illegal or unauthorized use of aversive or deprivation procedures;

(2) the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff to child or adult ratios, except that the holder of a family or group family day care license shall forfeit \$100 for a violation under this clause; and

(3) the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those included in clauses (1) and (2), except that the holder of a family or group family day care license shall forfeit \$50 for a violation under this clause.

For the purposes of this section, "occurrence" means each calendar day or part of a day that a violation continues to exist after the date set for correction in the commissioner's correction order.

#### Sec. 7. [245A.07] SANCTIONS.

Subdivision 1. SANCTIONS AVAILABLE. In addition to ordering forfeiture of fines, the commissioner may propose to suspend, revoke, or make probationary the license or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

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 1 to 17 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

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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 shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

Subd. 3. SUSPENSION, REVOCATION, PROBATION. The commissioner may suspend, revoke, or make probationary a license if a license holder fails to comply fully with applicable laws or rules. A license holder who has had a license suspended, revoked, or made probationary must be given notice of the action by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or made probationary and must inform the license holder of the right to a contested case hearing under chapter 14. The license holder may appeal an order suspending, revoking, or making a license probationary by notifying the commissioner in writing by certified mail within ten calendar days after receiving notice that the license has been suspended, revoked, or made probationary.

Sec. 8. [245A.08] HEARINGS.

Subdivision 1. RECEIPT OF APPEAL; CONDUCT OF HEARING. Upon receiving a timely appeal or petition pursuant to sections 5 to 7, the commissioner shall issue a notice of and order for hearing to the appellant under chapter 14.

Subd. 2. CONDUCT OF HEARINGS. At any hearing provided for by sections 5 to 7, the appellant may be represented by counsel and has the right to call, examine, and cross-examine witnesses. The administrative law judge may require the presence of witnesses and evidence by subpoena on behalf of any party.

Subd. 3. BURDEN OF PROOF. (a) At a hearing regarding suspension, immediate suspension, revocation, or making probationary a license for family day care or foster care, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings involving suspension, immediate suspension, revocation, or making probationary a family day care or foster care license shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

(b) At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the appellant has complied fully with sections 1 to 16 and other applicable law or rule and that the application should be approved and a license granted.

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(c) At all other hearings under this section, the commissioner bears the burden of proof to demonstrate, by a preponderance of the evidence, that the violations of law or rule alleged by the commissioner occurred.

**Subd. 4. RECOMMENDATION OF ADMINISTRATIVE LAW JUDGE.** The administrative law judge shall recommend whether or not the commissioner's order should be affirmed. The recommendations must be consistent with sections 1 to 17 and the rules of the commissioner. The recommendations must be in writing and accompanied by findings of fact and conclusions and must be mailed to the parties by certified mail to their last known addresses as shown on the license or application.

**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 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.

## Sec. 9. [245A.09] RULES.

**Subdivision 1. COMMISSIONER'S AUTHORITY.** The commissioner shall adopt rules under chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under sections 1 to 17. The commissioner shall not adopt any rules that are inconsistent with or duplicative of existing state or federal regulations. Nothing in this subdivision shall be construed to prohibit the commissioner from incorporating existing state or federal regulations or accreditation standards by reference.

**Subd. 2. STANDARDS AND REGULATORY METHODS.** This subdivision applies to rules governing sections 1 to 17 that are adopted after July 1, 1987. As appropriate for each type of license:

(a) The commissioner shall give preference in rule to standards that describe program outcomes and the practices that have been shown to result in the desired program outcomes.

(b) The rules may include model program standards for each type of program licensed by the commissioner.

(c) The rules shall include basic licensing standards governing licensure of each type of program licensed by the commissioner. The basic licensing standards must be met by all applicants and license holders. Basic licensing standards must include, but are not limited to:

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(1) standards for adequate staff that take into account the age distribution and severity of handicap of persons served by the program;

(2) safety standards that take into account the size and conditions of the physical plant and studies of fire safety including studies of the interaction between fire detection factors, fire spread factors, and evacuation factors in case of a fire;

(3) standards for program services that describe, when appropriate, adequate levels of shelter, nutrition, planned activities, materials, and qualifications of individuals responsible for administering and delivering program services;

(4) standards that describe the characteristics of the settings where program services are to be delivered; and

(5) health and sanitation standards.

Subd. 3. REDUCTION OF FEES. The commissioner may adopt rules under subdivision 1 to provide for the reduction of fees established under section 11 when a license holder substantially exceeds the basic standards for licensure.

Subd. 4. EVALUATION OF RULES. For rules adopted under this section after July 1, 1987, the commissioner shall evaluate the effects of the rules within three years after the date of adoption and at least once every five years thereafter. The evaluation must include an assessment of any discrepancies between the actual and intended effects of the rules, identification of necessary revisions, if any, and a discussion of the rules' effect on the availability and quality of licensed programs. The commissioner shall consider the results of the evaluation in amending and writing rules.

Subd. 5. OTHER DUTIES OF THE COMMISSIONER. For rules adopted after July 1, 1987, the commissioner shall:

(1) summarize the rules in language understandable to the general public and inform license holders and applicants where they may obtain a copy of the rules and the summary;

(2) develop and provide each applicant with information describing the services offered to applicants by the commissioner and explaining the penalties for operating an unlicensed program or failing to fully comply with the commissioner's correction orders or applicable laws or rules;

(3) upon request, interpret rules for applicants and license holders; and

(4) take measures to ensure that rules are enforced uniformly throughout the state.

Subd. 6. CONSULTATION WITH AFFECTED PARTIES. In developing rules, the commissioner shall request and receive consultation from: other state

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departments and agencies; counties and other affected political subdivisions that reflect the diversity of political subdivisions affected by the rule; persons and relatives of persons using the program governed by the rule; advocacy groups; and representatives of license holders affected by the rule. In choosing parties for consultation, the commissioner shall choose individuals and representatives of groups that reflect a cross section of urban, suburban, and rural areas of the state.

Subd. 7. REGULATORY METHODS. (a) Where appropriate and feasible the commissioner shall identify and implement alternative methods of regulation and enforcement to the extent authorized in this subdivision. These methods shall include:

(1) expansion of the types and categories of licenses that may be granted;

(2) when the standards of an independent accreditation body have been shown to predict compliance with the rules, the commissioner shall consider compliance with the accreditation standards to be equivalent to partial compliance with the rules; and

(3) use of an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

If the commissioner determines that the methods in clause (2) or (3) can be used in licensing a program, the commissioner may reduce any fee set under section 11 by up to 50 percent.

(b) The commissioner shall work with the commissioners of health, public safety, administration, and education in consolidating duplicative licensing and certification rules and standards if the commissioner determines that consolidation is administratively feasible, would significantly reduce the cost of licensing, and would not reduce the protection given to persons receiving services in licensed programs. Where administratively feasible and appropriate, the commissioner shall work with the commissioners of health, public safety, administration, and education in conducting joint agency inspections of programs.

(c) The commissioner shall work with the commissioners of health, public safety, administration, and education in establishing a single point of application for applicants who are required to obtain concurrent licensure from more than one of the commissioners listed in this clause.

(d) The commissioner may specify in rule periods of licensure up to two years.

#### **Sec. 10. [245A.095] REVIEW OF RULES FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESSES.**

Subdivision 1. Residential programs for five or more persons with a mental illness must be licensed under sections 1 to 17. To assure that this requirement is met, the commissioner of health, in cooperation with the commissioner of human services, shall monitor licensed boarding care, board and lodging, and supervised living facilities.

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**Subd. 2. SPECIFIC REVIEW OF RULES.** The commissioner shall:

(1) provide in rule for various levels of care to address the residential treatment 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;

(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; and

(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.

**Subd. 3. HOUSING SERVICES FOR PERSONS WITH MENTAL ILLNESS.** The commissioner of human services shall study the housing needs of people with mental illness and shall articulate a continuum of services from residential treatment as the most intensive service through housing programs as the least intensive. The commissioner shall develop recommendations for implementing the continuum of services and shall present the recommendations to the legislature by January 31, 1988.

**Sec. 11. [245A.10] FEES.**

The commissioner shall charge a fee for evaluation of applications and inspection of programs, other than family day care and foster care, which are licensed under sections 1 to 17.

**Sec. 12. [245A.11] SPECIAL CONDITIONS FOR RESIDENTIAL PROGRAMS.**

**Subdivision 1. POLICY STATEMENT.** It is the policy of the state that persons shall not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings.

**Subd. 2. PERMITTED SINGLE-FAMILY RESIDENTIAL USE.** Residential programs with a licensed capacity of six or fewer persons shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations.

**Subd. 3. PERMITTED MULTIFAMILY RESIDENTIAL USE.** Unless otherwise provided in any town, municipal, or county zoning regulation, a licensed residential program with a licensed capacity of seven to 16 adults or

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children shall be considered a permitted multifamily residential use of property for the purposes of zoning and other land use regulations. A town, municipal, or county zoning authority may require a conditional use or special use permit to assure proper maintenance and operation of a residential program. Conditions imposed on the residential program must not be more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the adults or children being served by the program. Nothing in sections 1 to 17 shall be construed to exclude or prohibit residential programs from single-family zones if otherwise permitted by local zoning regulations.

**Subd. 4. LOCATION OF RESIDENTIAL PROGRAMS.** In determining whether to grant a license, the commissioner shall specifically consider the population, size, land use plan, availability of community services, and the number and size of existing licensed residential programs in the town, municipality, or county in which the applicant seeks to operate a residential program. The commissioner shall not grant an initial license to any residential program if the residential program will be within 1,320 feet of an existing residential program unless the town, municipality, or county zoning authority grants the residential program a conditional use or special use permit. In cities of the first class, this subdivision applies even if a residential program is considered a permitted single-family residential use of property under subdivision 2. Foster care homes are exempt from this subdivision.

**Subd. 5. OVERCONCENTRATION AND DISPERSAL.** (a) Before January 1, 1985, each county having two or more group residential programs within 1,320 feet of each other shall submit to the department of human services a plan to promote dispersal of group residential programs. In formulating its plan, the county shall solicit the participation of affected persons, programs, municipalities having highly concentrated residential program populations, and advocacy groups. For the purposes of this subdivision, "highly concentrated" means having a population in residential programs serving seven or more persons that exceeds one-half of one percent of the population of a recognized planning district or other administrative subdivision.

(b) Within 45 days after the county submits the plan, the commissioner shall certify whether the plan fulfills the purposes and requirements of this subdivision including the following requirements:

(1) a new program serving seven or more persons must not be located in any recognized planning district or other administrative subdivision where the population in residential programs is highly concentrated;

(2) the county plan must promote dispersal of highly concentrated residential program populations;

(3) the county plan shall promote the development of residential programs in areas that are not highly concentrated;

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(4) no person in a residential program shall be displaced as a result of this section until a relocation plan has been implemented that provides for an acceptable alternative placement;

(5) if the plan provides for the relocation of residential programs, the relocation must be completed by January 1, 1990. If the commissioner certifies that the plan does not do so, the commissioner shall state the reasons, and the county has 30 days to submit a plan amended to comply with the requirements of the commissioner.

(c) After July 1, 1985, the commissioner may reduce grants under section 245.73 to a county required to have an approved plan under paragraph (a) if the county does not have a plan approved by the commissioner. The county board has the right to be provided with advance notice and to appeal the commissioner's decision. If the county requests a hearing within 30 days of the notification of intent to reduce grants, the commissioner shall not certify any reduction in grants until a hearing is conducted and a decision made in accordance with the contested case provisions of chapter 14.

Subd. 6. HOSPITALS; EXEMPTION. Residential programs located in hospitals shall be exempt from the provisions of this section.

#### **Sec. 13. [245A.12] VOLUNTARY RECEIVERSHIP FOR RESIDENTIAL FACILITIES.**

A majority of controlling persons 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 persons 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.

#### **Sec. 14. [245A.13] INVOLUNTARY RECEIVERSHIP FOR RESIDENTIAL FACILITIES.**

Subdivision 1. APPLICATION. The commissioner may petition the district court in the county where the residential program is located for an order directing the controlling persons 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 that the commissioner has either begun license suspension or revocation proceedings, suspended or revoked a license, or decided to deny an application for licensure of the residential program. If the license holder or applicant operates more than one residential

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program, the commissioner's petition must specify and be limited to the residential program for which 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. 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 persons 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 the commissioner or the commissioner's designated representative as a receiver to operate the residential program. The court shall determine a fair monthly rental for the physical plant, taking into account all relevant factors including the conditions of the physical plant. The rental fee must be paid by the receiver to the appropriate controlling persons for each month that the receivership remains in effect. No payment made to a controlling person 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 18 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 guarantee 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 person by virtue of the receivership.

**Subd. 4. RECEIVER'S FEE; LIABILITY; ASSISTANCE FROM THE COMMISSIONER.** A receiver appointed under an involuntary receivership is

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entitled to a reasonable receiver's fee as determined by the court. 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 18 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.

**Sec. 15. [245A.14] SPECIAL CONDITIONS FOR NONRESIDENTIAL PROGRAMS.**

Subdivision 1. PERMITTED SINGLE-FAMILY RESIDENTIAL USE. A licensed nonresidential program with a licensed capacity of 12 or fewer persons shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations.

Subd. 2. PERMITTED MULTIFAMILY USE. Unless otherwise provided in a town, municipal, or county regulation, a licensed nonresidential program with a licensed capacity of 13 to 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A town, municipal, or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of the program. Conditions imposed on the nonresidential program must not be more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones unless the additional conditions are necessary to protect the health and safety of the persons being served by the nonresidential program. Nothing in sections 1 to 17 shall be construed to exclude or prohibit nonresidential programs from single-family zones if otherwise permitted by local zoning regulations.

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:

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

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

(c) The provider 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.

**Sec. 16. [245A.15] REGULATION OF FAMILY DAY CARE BY LOCAL GOVERNMENT.**

The authority of local units of government to establish requirements for family day care programs is limited by section 299F.011, subdivision 4a, clauses (1) and (2).

**Sec. 17. [245A.16] STANDARDS FOR COUNTY AGENCIES AND PRIVATE AGENCIES.**

Subdivision 1. DELEGATION OF AUTHORITY TO AGENCIES. County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 4, to recommend denial of applicants under section 5, or to recommend suspending, revoking, and making licenses probationary under section 7, shall comply with rules and directives of the commissioner governing those functions and with this section.

Subd. 2. INVESTIGATIONS. (a) The county or private agency shall conduct timely investigations of allegations of abuse or neglect of children or adults in programs for which the county or private agency is the commissioner's designated representative and record a disposition of each complaint in accordance with applicable law or rule. The county or private agency shall conduct similar investigations of allegations of violations of rules governing licensure of the program.

(b) If an investigation conducted under clause (a) results in evidence that the commissioner should deny an application or suspend, revoke, or make probationary a license, the county or private agency shall make that recommendation to the commissioner within ten working days.

Subd. 3. RECOMMENDATIONS TO THE COMMISSIONER. The county or private agency shall not make recommendations to the commissioner regarding licensure without first conducting an inspection, study of the applicant, and evaluation pursuant to section 4, subdivisions 3 and 4. The county or private agency must forward its recommendation to the commissioner regarding the appropriate licensing action within 20 working days of receipt of a completed application.

Subd. 4. ENFORCEMENT OF THE COMMISSIONER'S ORDERS. The

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county or private agency shall enforce the commissioner's orders under sections 7 and 8, subdivision 5, according to the instructions of the commissioner.

Subd. 5. INSTRUCTION AND TECHNICAL ASSISTANCE. The commissioner shall provide instruction and technical assistance to county and private agencies that are subject to this section. County and private agencies shall cooperate with the commissioner in carrying out this section by ensuring that affected employees participate in instruction and technical assistance provided by the commissioner.

Subd. 6. CERTIFICATION BY THE COMMISSIONER. The commissioner shall ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with this section and other applicable laws and rules at least biennially. County agencies that comply with this section shall be certified by the commissioner. If a county agency fails to be certified by the commissioner, the commissioner shall certify a reduction of up to 20 percent of the county's community social services act funding or an equivalent amount from state administrative aids.

Sec. 18. Minnesota Statutes 1986, section 256D.01, is amended by adding a subdivision to read:

Subd. 1d. PAYMENTS TO FACILITIES. After the effective date of this subdivision, the commissioner shall make no payments under rules authorized by subdivision 1b to newly-licensed facilities which have five or more residents with a primary diagnosis of mental illness unless they are licensed or exempted from licensure under chapter 245A. The commissioner of health shall monitor newly-licensed boarding care, board and lodging and supervised living facilities, and shall report to the commissioner of human services facilities that are not in compliance with this subdivision.

Sec. 19. Minnesota Statutes 1986, section 256D.37, is amended by adding a subdivision to read:

Subd. 5. After the effective date of this subdivision, the commissioner shall make no payments under subdivision 1 to newly-licensed facilities which have five or more residents with a primary diagnosis of mental illness unless they are licensed or exempted from licensure under chapter 245A. The commissioner of health shall monitor newly-licensed boarding care, board and lodging and supervised living facilities, and shall report to the commissioner of human services facilities that are not in compliance with this subdivision.

Sec. 20. **REPEALER.**

Minnesota Statutes 1986, sections 245.781; 245.782; 245.783; 245.791; 245.792; 245.801; 245.802; 245.803; 245.804; 245.805; 245.811; 245.812; 245.88; 245.881; 245.882; 245.883; 245.884; and 245.885, are repealed.

Sec. 21. **EFFECTIVE DATE.**

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Sections 1 to 17 are effective July 1, 1987.

Sec. 22. INSTRUCTIONS TO REVISOR.

In the next edition of Minnesota Statutes, in the sections referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C. The revisor may change the references in column C to the sections of Minnesota Statutes in which the bill sections are compiled.

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
<u>13.46, subd. 2</u>	<u>245.782</u>	<u>245A.02</u>
<u>144.653, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>144A.01, subd. 5</u>	<u>245.781</u>	<u>245A.01</u>
<u>144A.071, subd. 2</u>	<u>245.781</u>	<u>245A.01</u>
<u>144A.10, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>174.30, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>241.021, subd. 2</u>	<u>245.783</u>	<u>245A.04</u>
<u>241.021, subd. 2</u>	<u>245.791</u>	<u>245A.03</u>
<u>245.73, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>245.73, subd. 2</u>	<u>245.781</u>	<u>245A.01</u>
<u>252.24, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>252.275, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>252.291, subd. 1</u>	<u>245.782</u>	<u>245A.02</u>
<u>252.32, subd. 1</u>	<u>245.782</u>	<u>245A.02</u>
<u>254B.03, subd. 2</u>	<u>245.781</u>	<u>245A.01</u>
<u>254B.03, subd. 2</u>	<u>245.791</u>	<u>245A.03</u>
<u>254B.05</u>	<u>245.781</u>	<u>245A.01</u>
<u>254B.05</u>	<u>245.791</u>	<u>245A.03</u>
<u>256B.02, subd. 2</u>	<u>245.782</u>	<u>245A.02</u>
<u>260.185, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>260.191, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>260.194, subd. 1</u>	<u>245.781</u>	<u>245A.01</u>
<u>268.04, subd. 32</u>	<u>245.791</u>	<u>245A.03</u>
<u>268.38, subd. 12</u>	<u>245.781</u>	<u>245A.01</u>
<u>299F.011, subd. 4</u>	<u>245.782</u>	<u>245A.02</u>
<u>462.357, subd. 6</u>	<u>245.782</u>	<u>245A.02</u>
<u>466.01, subd. 4</u>	<u>245.782</u>	<u>245A.02</u>
<u>466.03, subd. 6</u>	<u>245.782</u>	<u>245A.02</u>
<u>595.02, subd. 2</u>	<u>245.801</u>	<u>245A.08</u>
<u>611A.52, subd. 8</u>	<u>245.791</u>	<u>245A.03</u>
<u>626.556, subd. 2</u>	<u>245.781</u>	<u>245A.01</u>
<u>626.556, subd. 2</u>	<u>245.782</u>	<u>245A.02</u>
<u>626.556, subd. 10</u>	<u>245.781</u>	<u>245A.01</u>
<u>626.557, subd. 2</u>	<u>245.781</u>	<u>245A.01</u>
<u>626.557, subd. 10</u>	<u>245.781</u>	<u>245A.01</u>

Approved May 29, 1987

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