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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 339

01/17/2023 Authored by Curran; Pelowski; Hanson, J.; Finke; Hicks and others
The bill was read for the first time and referred to the Committee on Human Services Policy
02/08/2023 Adoption of Report: Re-referred to the Committee on Human Services Finance

1.1 A bill for an act
1.2 relating to human services; modifying licensure requirements for community
1.3 residential settings; amending Minnesota Statutes 2022, section 245A.11,
1.4 subdivisions 7, 7a; proposing coding for new law in Minnesota Statutes, chapter
1.5 245D.

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

1.7 Section 1. Minnesota Statutes 2022, section 245A.11, subdivision 7, is amended to read:

1.8 Subd. 7. Adult foster care; variance for alternate overnight supervision. (a) The
1.9 commissioner may grant a variance under section 245A.04, subdivision 9, to rule parts
1.10 requiring a caregiver to be present in an adult foster care home during normal sleeping hours
1.11 to allow for alternative methods of overnight supervision. The commissioner may grant the
1.12 variance if the local county licensing agency recommends the variance and the county
1.13 recommendation includes documentation verifying that:

1.14 (1) the county has approved the license holder's plan for alternative methods of providing
1.15 overnight supervision and determined the plan protects the residents' health, safety, and
1.16 rights;

1.17 (2) the license holder has obtained written and signed informed consent from each
1.18 resident or each resident's legal representative documenting the resident's or legal
1.19 representative's agreement with the alternative method of overnight supervision; and

1.20 (3) the alternative method of providing overnight supervision, which may include the
1.21 use of technology, is specified for each resident in the resident's: (i) individualized plan of
1.22 care; (ii) individual service plan under section 256B.092, subdivision 1b, if required; or (iii)

2.1 individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart
2.2 19, if required.

2.3 (b) To be eligible for a variance under paragraph (a), the adult foster care license holder
2.4 must not have had a conditional license issued under section 245A.06, or any other licensing
2.5 sanction issued under section 245A.07 during the prior 24 months based on failure to provide
2.6 adequate supervision, health care services, or resident safety in the adult foster care home.

2.7 (c) A license holder requesting a variance under this subdivision to utilize technology
2.8 as a component of a plan for alternative overnight supervision may request the commissioner's
2.9 review in the absence of a county recommendation. Upon receipt of such a request from a
2.10 license holder, the commissioner shall review the variance request with the county.

2.11 ~~(d) A variance granted by the commissioner according to this subdivision before January~~
2.12 ~~1, 2014, to a license holder for an adult foster care home must transfer with the license when~~
2.13 ~~the license converts to a community residential setting license under chapter 245D. The~~
2.14 ~~terms and conditions of the variance remain in effect as approved at the time the variance~~
2.15 ~~was granted~~ The variance requirements under this subdivision for alternative overnight
2.16 supervision do not apply to community residential settings licensed under chapter 245D.

2.17 **EFFECTIVE DATE.** This section is effective January 1, 2024.

2.18 Sec. 2. Minnesota Statutes 2022, section 245A.11, subdivision 7a, is amended to read:

2.19 Subd. 7a. **Alternate overnight supervision technology; adult foster care and**
2.20 **community residential setting licenses.** (a) The commissioner may grant an applicant or
2.21 license holder an adult foster care ~~or community residential setting~~ license for a residence
2.22 that does not have a caregiver in the residence during normal sleeping hours as required
2.23 under Minnesota Rules, part 9555.5105, subpart 37, item B, or section 245D.02, subdivision
2.24 33b, but uses monitoring technology to alert the license holder when an incident occurs that
2.25 may jeopardize the health, safety, or rights of a foster care recipient. The applicant or license
2.26 holder must comply with all other requirements under Minnesota Rules, parts 9555.5105
2.27 to 9555.6265, or applicable requirements under chapter 245D, and the requirements under
2.28 this subdivision. The license printed by the commissioner must state in bold and large font:

2.29 (1) that the facility is under electronic monitoring; and

2.30 (2) the telephone number of the county's common entry point for making reports of
2.31 suspected maltreatment of vulnerable adults under section 626.557, subdivision 9.

2.32 (b) Applications for a license under this section must be submitted directly to the
2.33 Department of Human Services licensing division. The licensing division must immediately

3.1 notify the county licensing agency. The licensing division must collaborate with the county
3.2 licensing agency in the review of the application and the licensing of the program.

3.3 (c) Before a license is issued by the commissioner, and for the duration of the license,
3.4 the applicant or license holder must establish, maintain, and document the implementation
3.5 of written policies and procedures addressing the requirements in paragraphs (d) through
3.6 (f).

3.7 (d) The applicant or license holder must have policies and procedures that:

3.8 (1) establish characteristics of target populations that will be admitted into the home,
3.9 and characteristics of populations that will not be accepted into the home;

3.10 (2) explain the discharge process when a resident served by the program requires
3.11 overnight supervision or other services that cannot be provided by the license holder due
3.12 to the limited hours that the license holder is on site;

3.13 (3) describe the types of events to which the program will respond with a physical
3.14 presence when those events occur in the home during time when staff are not on site, and
3.15 how the license holder's response plan meets the requirements in paragraph (e), clause (1)
3.16 or (2);

3.17 (4) establish a process for documenting a review of the implementation and effectiveness
3.18 of the response protocol for the response required under paragraph (e), clause (1) or (2).
3.19 The documentation must include:

3.20 (i) a description of the triggering incident;

3.21 (ii) the date and time of the triggering incident;

3.22 (iii) the time of the response or responses under paragraph (e), clause (1) or (2);

3.23 (iv) whether the response met the resident's needs;

3.24 (v) whether the existing policies and response protocols were followed; and

3.25 (vi) whether the existing policies and protocols are adequate or need modification.

3.26 When no physical presence response is completed for a three-month period, the license
3.27 holder's written policies and procedures must require a physical presence response drill to
3.28 be conducted for which the effectiveness of the response protocol under paragraph (e),
3.29 clause (1) or (2), will be reviewed and documented as required under this clause; and

4.1 (5) establish that emergency and nonemergency phone numbers are posted in a prominent
4.2 location in a common area of the home where they can be easily observed by a person
4.3 responding to an incident who is not otherwise affiliated with the home.

4.4 (e) The license holder must document and include in the license application which
4.5 response alternative under clause (1) or (2) is in place for responding to situations that
4.6 present a serious risk to the health, safety, or rights of residents served by the program:

4.7 (1) response alternative (1) requires only the technology to provide an electronic
4.8 notification or alert to the license holder that an event is underway that requires a response.
4.9 Under this alternative, no more than ten minutes will pass before the license holder will be
4.10 physically present on site to respond to the situation; or

4.11 (2) response alternative (2) requires the electronic notification and alert system under
4.12 alternative (1), but more than ten minutes may pass before the license holder is present on
4.13 site to respond to the situation. Under alternative (2), all of the following conditions are
4.14 met:

4.15 (i) the license holder has a written description of the interactive technological applications
4.16 that will assist the license holder in communicating with and assessing the needs related to
4.17 the care, health, and safety of the foster care recipients. This interactive technology must
4.18 permit the license holder to remotely assess the well being of the resident served by the
4.19 program without requiring the initiation of the foster care recipient. Requiring the foster
4.20 care recipient to initiate a telephone call does not meet this requirement;

4.21 (ii) the license holder documents how the remote license holder is qualified and capable
4.22 of meeting the needs of the foster care recipients and assessing foster care recipients' needs
4.23 under item (i) during the absence of the license holder on site;

4.24 (iii) the license holder maintains written procedures to dispatch emergency response
4.25 personnel to the site in the event of an identified emergency; and

4.26 (iv) each resident's individualized plan of care, support plan under sections 256B.0913,
4.27 subdivision 8; 256B.092, subdivision 1b; 256B.49, subdivision 15; and 256S.10, if required,
4.28 or individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart
4.29 19, if required, identifies the maximum response time, which may be greater than ten minutes,
4.30 for the license holder to be on site for that resident.

4.31 (f) Each resident's placement agreement, individual service agreement, and plan must
4.32 clearly state that the adult foster care ~~or community residential setting~~ license category is
4.33 a program without the presence of a caregiver in the residence during normal sleeping hours;

5.1 the protocols in place for responding to situations that present a serious risk to the health,
5.2 safety, or rights of residents served by the program under paragraph (e), clause (1) or (2);
5.3 and a signed informed consent from each resident served by the program or the person's
5.4 legal representative documenting the person's or legal representative's agreement with
5.5 placement in the program. If electronic monitoring technology is used in the home, the
5.6 informed consent form must also explain the following:

5.7 (1) how any electronic monitoring is incorporated into the alternative supervision system;

5.8 (2) the backup system for any electronic monitoring in times of electrical outages or
5.9 other equipment malfunctions;

5.10 (3) how the caregivers or direct support staff are trained on the use of the technology;

5.11 (4) the event types and license holder response times established under paragraph (e);

5.12 (5) how the license holder protects each resident's privacy related to electronic monitoring
5.13 and related to any electronically recorded data generated by the monitoring system. A
5.14 resident served by the program may not be removed from a program under this subdivision
5.15 for failure to consent to electronic monitoring. The consent form must explain where and
5.16 how the electronically recorded data is stored, with whom it will be shared, and how long
5.17 it is retained; and

5.18 (6) the risks and benefits of the alternative overnight supervision system.

5.19 The written explanations under clauses (1) to (6) may be accomplished through
5.20 cross-references to other policies and procedures as long as they are explained to the person
5.21 giving consent, and the person giving consent is offered a copy.

5.22 (g) Nothing in this section requires the applicant or license holder to develop or maintain
5.23 separate or duplicative policies, procedures, documentation, consent forms, or individual
5.24 plans that may be required for other licensing standards, if the requirements of this section
5.25 are incorporated into those documents.

5.26 (h) The commissioner may grant variances to the requirements of this section according
5.27 to section 245A.04, subdivision 9.

5.28 (i) For the purposes of paragraphs (d) through (h), "license holder" has the meaning
5.29 under section 245A.02, subdivision 9, and additionally includes all staff, volunteers, and
5.30 contractors affiliated with the license holder.

6.1 (j) For the purposes of paragraph (e), the terms "assess" and "assessing" mean to remotely
6.2 determine what action the license holder needs to take to protect the well-being of the foster
6.3 care recipient.

6.4 (k) The commissioner shall evaluate license applications using the requirements in
6.5 paragraphs (d) to (f). The commissioner shall provide detailed application forms, including
6.6 a checklist of criteria needed for approval.

6.7 (l) To be eligible for a license under paragraph (a), the adult foster care ~~or community~~
6.8 ~~residential setting~~ license holder must not have had a conditional license issued under section
6.9 245A.06 or any licensing sanction under section 245A.07 during the prior 24 months based
6.10 on failure to provide adequate supervision, health care services, or resident safety in the
6.11 adult foster care home ~~or community residential setting~~.

6.12 (m) The commissioner shall review an application for an alternative overnight supervision
6.13 license within 60 days of receipt of the application. When the commissioner receives an
6.14 application that is incomplete because the applicant failed to submit required documents or
6.15 that is substantially deficient because the documents submitted do not meet licensing
6.16 requirements, the commissioner shall provide the applicant written notice that the application
6.17 is incomplete or substantially deficient. In the written notice to the applicant, the
6.18 commissioner shall identify documents that are missing or deficient and give the applicant
6.19 45 days to resubmit a second application that is substantially complete. An applicant's failure
6.20 to submit a substantially complete application after receiving notice from the commissioner
6.21 is a basis for license denial under section 245A.05. The commissioner shall complete
6.22 subsequent review within 30 days.

6.23 (n) Once the application is considered complete under paragraph (m), the commissioner
6.24 will approve or deny an application for an alternative overnight supervision license within
6.25 60 days.

6.26 (o) For the purposes of this subdivision, "supervision" means:

6.27 (1) oversight by a caregiver or direct support staff as specified in the individual resident's
6.28 place agreement or support plan and awareness of the resident's needs and activities; and

6.29 (2) the presence of a caregiver or direct support staff in a residence during normal sleeping
6.30 hours, unless a determination has been made and documented in the individual's support
6.31 plan that the individual does not require the presence of a caregiver or direct support staff
6.32 during normal sleeping hours.

6.33 **EFFECTIVE DATE.** This section is effective January 1, 2024.

7.1 Sec. 3. [245D.261] COMMUNITY RESIDENTIAL SETTINGS; REMOTE
7.2 OVERNIGHT SUPERVISION.

7.3 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
7.4 the meanings given them, unless otherwise specified.

7.5 (b) "Enabling technology" means a device capable of live, two-way communication or
7.6 engagement between a resident and direct support staff at a remote location.

7.7 (c) "Monitoring technology" means the use of equipment to oversee, monitor, and
7.8 supervise someone who receives medical assistance waiver or alternative care services
7.9 under chapter 256B or 256S.

7.10 (d) "Resident" means an adult residing in a community residential setting.

7.11 Subd. 2. Documentation of permissible remote overnight supervision. A license
7.12 holder providing remote overnight supervision in a community residential setting in lieu of
7.13 on-site direct support staff must comply with the requirements of this chapter, including
7.14 the requirement under section 245D.02, subdivision 33b, paragraph (a), clause (3), that the
7.15 absence of direct support staff from the community residential setting while services are
7.16 being delivered must be documented in the resident's support plan or support plan addendum.

7.17 Subd. 3. Provider requirements for remote overnight supervision. (a) A license
7.18 holder providing remote overnight supervision in a community residential setting must:

7.19 (1) use enabling technology;

7.20 (2) clearly state in each person's support plan addendum that the community residential
7.21 setting is a program without the in-person presence of overnight direct support;

7.22 (3) include with each person's support plan addendum the license holder's protocols for
7.23 responding to situations that present a serious risk to the health, safety, or rights of residents
7.24 served by the program; and

7.25 (4) include in each person's support plan addendum the person's maximum permissible
7.26 response time as determined by the person's support team.

7.27 (b) Upon being notified via technology that an incident has occurred that may jeopardize
7.28 the health, safety, or rights of a resident, the license holder must conduct an evaluation of
7.29 the need for the physical presence of a staff member. If a physical presence is needed, a
7.30 staff person, volunteer, or contractor must be on site to respond to the situation within the
7.31 resident's maximum permissible response time.

8.1 Subd. 4. Required policies and procedures for remote overnight supervision. (a) A
8.2 license holder providing remote overnight supervision must have policies and procedures
8.3 that:

8.4 (1) protect the residents' health, safety, and rights;

8.5 (2) explain the discharge process if a person served by the program requires in-person
8.6 supervision or other services that cannot be provided by the license holder due to the limited
8.7 hours that direct support staff are on site;

8.8 (3) explain the backup system for technology in times of electrical outages or other
8.9 equipment malfunctions;

8.10 (4) explain how the license holder trains the direct support staff on the use of the
8.11 technology; and

8.12 (5) establish a plan for dispatching emergency response personnel to the site in the event
8.13 of an identified emergency.

8.14 (b) Nothing in this section requires the license holder to develop or maintain separate
8.15 or duplicative policies, procedures, documentation, consent forms, or individual plans that
8.16 may be required for other licensing standards if the requirements of this section are
8.17 incorporated into those documents.

8.18 Subd. 5. Consent to use of monitoring technology. If a license holder uses monitoring
8.19 technology in a community residential setting, the license holder must obtain a signed
8.20 informed consent form from each resident served by the program or the resident's legal
8.21 representative documenting the resident's or legal representative's agreement to use of the
8.22 specific monitoring technology used in the setting. The informed consent form documenting
8.23 this agreement must also explain:

8.24 (1) how the license holder uses monitoring technology to provide remote supervision;

8.25 (2) the risks and benefits of using monitoring technology;

8.26 (3) how the license holder protects each resident's privacy while monitoring technology
8.27 is being used in the setting; and

8.28 (4) how the license holder protects each resident's privacy when the monitoring
8.29 technology system electronically records personally identifying data.

8.30 **EFFECTIVE DATE.** This section is effective January 1, 2024.