

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-EIGHTH LEGISLATURE**

**S.F. No. 1403**

(SENATE AUTHORS: GAZELKA)

DATE	D-PG	OFFICIAL STATUS
03/14/2013	1026	Introduction and first reading Referred to Health, Human Services and Housing

1.1 A bill for an act  
 1.2 relating to human services; providing an exception to a licensing moratorium;  
 1.3 amending Minnesota Statutes 2012, section 245A.03, subdivision 7.

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

1.5 Section 1. Minnesota Statutes 2012, section 245A.03, subdivision 7, is amended to read:

1.6 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an  
 1.7 initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to  
 1.8 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to  
 1.9 9555.6265, under this chapter for a physical location that will not be the primary residence  
 1.10 of the license holder for the entire period of licensure. If a license is issued during this  
 1.11 moratorium, and the license holder changes the license holder's primary residence away  
 1.12 from the physical location of the foster care license, the commissioner shall revoke the  
 1.13 license according to section 245A.07. Exceptions to the moratorium include:

1.14 (1) foster care settings that are required to be registered under chapter 144D;

1.15 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009,  
 1.16 and determined to be needed by the commissioner under paragraph (b);

1.17 (3) new foster care licenses determined to be needed by the commissioner under  
 1.18 paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center, or  
 1.19 restructuring of state-operated services that limits the capacity of state-operated facilities;

1.20 (4) new foster care licenses determined to be needed by the commissioner under  
 1.21 paragraph (b) for persons requiring hospital level care; ~~or~~

1.22 (5) new foster care licenses determined to be needed by the commissioner for the  
 1.23 transition of people from personal care assistance to the home and community-based  
 1.24 services; or

2.1 (6) new foster care licenses for any facility that is:

2.2 (i) in Morrison County;

2.3 (ii) is licensed for five beds; and

2.4 (iii) is a senior care facility.

2.5 (b) The commissioner shall determine the need for newly licensed foster care homes  
2.6 as defined under this subdivision. As part of the determination, the commissioner shall  
2.7 consider the availability of foster care capacity in the area in which the licensee seeks to  
2.8 operate, and the recommendation of the local county board. The determination by the  
2.9 commissioner must be final. A determination of need is not required for a change in  
2.10 ownership at the same address.

2.11 (c) The commissioner shall study the effects of the license moratorium under this  
2.12 subdivision and shall report back to the legislature by January 15, 2011. This study shall  
2.13 include, but is not limited to the following:

2.14 (1) the overall capacity and utilization of foster care beds where the physical location  
2.15 is not the primary residence of the license holder prior to and after implementation  
2.16 of the moratorium;

2.17 (2) the overall capacity and utilization of foster care beds where the physical  
2.18 location is the primary residence of the license holder prior to and after implementation  
2.19 of the moratorium; and

2.20 (3) the number of licensed and occupied ICF/MR beds prior to and after  
2.21 implementation of the moratorium.

2.22 (d) When a foster care recipient moves out of a foster home that is not the primary  
2.23 residence of the license holder according to section 256B.49, subdivision 15, paragraph  
2.24 (f), the county shall immediately inform the Department of Human Services Licensing  
2.25 Division. The department shall decrease the statewide licensed capacity for foster care  
2.26 settings where the physical location is not the primary residence of the license holder, if the  
2.27 voluntary changes described in paragraph (f) are not sufficient to meet the savings required  
2.28 by reductions in licensed bed capacity under Laws 2011, First Special Session chapter 9,  
2.29 article 7, sections 1 and 40, paragraph (f), and maintain statewide long-term care residential  
2.30 services capacity within budgetary limits. Implementation of the statewide licensed  
2.31 capacity reduction shall begin on July 1, 2013. The commissioner shall delicense up to  
2.32 128 beds by June 30, 2014, using the needs determination process. Under this paragraph,  
2.33 the commissioner has the authority to reduce unused licensed capacity of a current foster  
2.34 care program to accomplish the consolidation or closure of settings. A decreased licensed  
2.35 capacity according to this paragraph is not subject to appeal under this chapter.

3.1 (e) Residential settings that would otherwise be subject to the decreased license  
3.2 capacity established in paragraph (d) shall be exempt under the following circumstances:

3.3 (1) until August 1, 2013, the license holder's beds occupied by residents whose  
3.4 primary diagnosis is mental illness and the license holder is:

3.5 (i) a provider of assertive community treatment (ACT) or adult rehabilitative mental  
3.6 health services (ARMHS) as defined in section 256B.0623;

3.7 (ii) a mental health center certified under Minnesota Rules, parts 9520.0750 to  
3.8 9520.0870;

3.9 (iii) a mental health clinic certified under Minnesota Rules, parts 9520.0750 to  
3.10 9520.0870; or

3.11 (iv) a provider of intensive residential treatment services (IRTS) licensed under  
3.12 Minnesota Rules, parts 9520.0500 to 9520.0670; or

3.13 (2) the license holder is certified under the requirements in subdivision 6a.

3.14 (f) A resource need determination process, managed at the state level, using the  
3.15 available reports required by section 144A.351, and other data and information shall  
3.16 be used to determine where the reduced capacity required under paragraph (d) will be  
3.17 implemented. The commissioner shall consult with the stakeholders described in section  
3.18 144A.351, and employ a variety of methods to improve the state's capacity to meet  
3.19 long-term care service needs within budgetary limits, including seeking proposals from  
3.20 service providers or lead agencies to change service type, capacity, or location to improve  
3.21 services, increase the independence of residents, and better meet needs identified by the  
3.22 long-term care services reports and statewide data and information. By February 1 of each  
3.23 year, the commissioner shall provide information and data on the overall capacity of  
3.24 licensed long-term care services, actions taken under this subdivision to manage statewide  
3.25 long-term care services and supports resources, and any recommendations for change to  
3.26 the legislative committees with jurisdiction over health and human services budget.

3.27 (g) At the time of application and reapplication for licensure, the applicant and the  
3.28 license holder that are subject to the moratorium or an exclusion established in paragraph  
3.29 (a) are required to inform the commissioner whether the physical location where the foster  
3.30 care will be provided is or will be the primary residence of the license holder for the entire  
3.31 period of licensure. If the primary residence of the applicant or license holder changes, the  
3.32 applicant or license holder must notify the commissioner immediately. The commissioner  
3.33 shall print on the foster care license certificate whether or not the physical location is the  
3.34 primary residence of the license holder.

3.35 (h) License holders of foster care homes identified under paragraph (g) that are not  
3.36 the primary residence of the license holder and that also provide services in the foster care

4.1 home that are covered by a federally approved home and community-based services  
4.2 waiver, as authorized under section 256B.0915, 256B.092, or 256B.49, must inform the  
4.3 human services licensing division that the license holder provides or intends to provide  
4.4 these waiver-funded services. These license holders must be considered registered under  
4.5 section 256B.092, subdivision 11, paragraph (c), and this registration status must be  
4.6 identified on their license certificates.