

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 320

(SENATE AUTHORS: UTKE)

DATE
01/25/2021

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Introduction and first reading
Referred to Human Services Licensing Policy

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; modifying licensing requirements for certain residential
1.3 settings using alternative overnight supervision technology; amending Minnesota
1.4 Statutes 2020, section 245A.11, subdivision 7a.

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

1.6 Section 1. Minnesota Statutes 2020, section 245A.11, subdivision 7a, is amended to read:

1.7 Subd. 7a. ~~Alternate~~ **Alternative overnight supervision technology; adult foster care**
1.8 **and community residential setting licenses.** (a) The commissioner may grant an applicant
1.9 or license holder an adult foster care or community residential setting license for a residence
1.10 that does not have a caregiver in the residence during normal sleeping hours as required
1.11 under Minnesota Rules, part 9555.5105, subpart 37, item B, or section 245D.02, subdivision
1.12 33b, but uses monitoring technology meeting the requirements of this subdivision to alert
1.13 the license holder when an incident occurs that may jeopardize the health, safety, or rights
1.14 of a foster care recipient. The applicant or license holder must comply with all other
1.15 requirements under Minnesota Rules, parts 9555.5105 to 9555.6265, or applicable
1.16 requirements under chapter 245D, ~~and the requirements under this subdivision.~~ The license
1.17 printed by the commissioner must state in bold and large font:

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

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

1.21 (b) Applications for a license under this ~~section~~ subdivision must be submitted directly
1.22 to the Department of Human Services licensing division. The licensing division must
1.23 immediately notify the county licensing agency. The licensing division must collaborate

2.1 with the county licensing agency in the review of the application and the licensing of the
2.2 program.

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

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

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

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

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

2.17 (4) require each resident's individualized plan of care, coordinated service and support
2.18 plan, if required, or individual resident placement agreement, if required, to identify the
2.19 maximum response time for the license holder to be on site for that resident;

2.20 (5) establish procedures to dispatch emergency response personnel to the site in the
2.21 event of an identified emergency;

2.22 (6) establish a process for documenting a review of the implementation and effectiveness
2.23 of the response protocol for the response required under paragraph (e), clause (1) or (2).

2.24 The documentation must include:

2.25 (i) a description of the triggering incident;

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

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

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

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

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

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

3.5 ~~(5)~~ (7) establish that emergency and nonemergency phone numbers are posted in a
3.6 prominent location in a common area of the home where ~~they~~ the phone numbers can be
3.7 easily observed by a person responding to an incident who is not otherwise affiliated with
3.8 the home.

3.9 (e) The license holder must ~~document~~ develop and include in the license application
3.10 ~~which response alternative under clause (1) or (2) is in place for responding to situations~~
3.11 ~~that present a serious risk to the health, safety, or rights of residents served by the program~~
3.12 a written document describing how the license holder plans to respond to an emergency in
3.13 a manner that meets the needs of the individual accessing the alternative overnight
3.14 supervision. The license holder must describe in the written document:

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

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

3.23 ~~(i) the license holder has a written description of the interactive technological applications~~
3.24 (1) the technology that will assist the license holder in communicating with and or remotely
3.25 assessing the needs related to the care, health, and safety of the foster care recipients. This
3.26 interactive technology must permit the license holder to remotely assess the well being of
3.27 the resident served by the program without requiring the initiation of the foster care recipient.
3.28 ~~Requiring the foster care recipient to initiate a telephone call does not meet this requirement;~~
3.29 and

3.30 ~~(ii) the license holder documents (2) how the remote license holder is qualified and~~
3.31 ~~capable of meeting the needs of the foster care recipients and assessing foster care recipients'~~
3.32 ~~needs under item (i) clause (1) during the absence of the license holder on site;~~

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

4.1 ~~(iv) each resident's individualized plan of care, coordinated service and support plan~~
4.2 ~~under sections 256B.0913, subdivision 8; 256B.092, subdivision 1b; 256B.49, subdivision~~
4.3 ~~15; and 256S.10, if required, or individual resident placement agreement under Minnesota~~
4.4 ~~Rules, part 9555.5105, subpart 19, if required, identifies the maximum response time, which~~
4.5 ~~may be greater than ten minutes, for the license holder to be on site for that resident.~~

4.6 (f) Each resident's placement agreement, individual service agreement, and plan must
4.7 clearly state that the adult foster care or community residential setting license category is
4.8 a program without the presence of a caregiver in the residence during normal sleeping hours;
4.9 the protocols in place for responding to situations that present a serious risk to the health,
4.10 safety, or rights of residents served by the program ~~under paragraph (e), clause (1) or (2);~~
4.11 and a signed informed consent from each resident served by the program or the person's
4.12 legal representative documenting the person's or legal representative's agreement with
4.13 placement in the program. If electronic monitoring technology is used in the home, the
4.14 informed consent form must also explain the following:

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

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

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

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

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

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

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

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

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

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

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

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

5.12 (l) To be eligible for a license under paragraph (a), the adult foster care or community
5.13 residential setting license holder must not have had a conditional license issued under section
5.14 245A.06 or any licensing sanction under section 245A.07 during the prior 24 months based
5.15 on failure to provide adequate supervision, health care services, or resident safety in the
5.16 adult foster care home or community residential setting.

5.17 (m) The commissioner shall review an application for an alternative overnight supervision
5.18 license within 60 days of receipt of the application. When the commissioner receives an
5.19 application that is incomplete because the applicant failed to submit required documents or
5.20 that is substantially deficient because the documents submitted do not meet licensing
5.21 requirements, the commissioner shall provide the applicant written notice that the application
5.22 is incomplete or substantially deficient. In the written notice to the applicant, the
5.23 commissioner shall identify documents that are missing or deficient and give the applicant
5.24 45 days to resubmit a second application that is substantially complete. An applicant's failure
5.25 to submit a substantially complete application after receiving notice from the commissioner
5.26 is a basis for license denial under section 245A.05. The commissioner shall complete
5.27 subsequent review within 30 days.

5.28 (n) Once the application is considered complete under paragraph (m), the commissioner
5.29 will approve or deny an application for an alternative overnight supervision license within
5.30 60 days.

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

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

6.4 (2) the presence of a caregiver or direct support staff in a residence during normal sleeping
6.5 hours, unless a determination has been made and documented in the individual's coordinated
6.6 service and support plan that the individual does not require the presence of a caregiver or
6.7 direct support staff during normal sleeping hours.