

9555.6125 LICENSING STUDY.

Subpart 1. **Access to residence.** The applicant shall give the commissioner access to the residence to determine compliance with parts 9555.5105 and 9555.6105 to 9555.6265. Access shall include the residence to be occupied as an adult foster home; any adjoining land or buildings owned or operated by the applicant or operator in conjunction with the provision of adult foster care and designated for use by a resident; noninterference in interviewing caregivers, roomers, or household members; and the right to view and photocopy the records and documents specified in parts 9555.6235 and 9555.6245. The commissioner shall have access to the residence at any time during the period of licensure to determine whether the operator is in compliance with parts 9555.5105 and 9555.6105 to 9555.6265.

Subp. 2. **Inspections.** The residence must be inspected by a fire marshal within 12 months before initial licensure to verify that the residence is a dwelling unit within a residential occupancy as defined in section 9.117 of the Minnesota Uniform Fire Code and that the residence complies with the fire safety standards for that residential occupancy contained in the Minnesota Uniform Fire Code. A home safety checklist, approved by the commissioner, must be completed by the operator and the commissioner before licensure each year a fire marshal inspection is not made. The residence shall be inspected according to the licensed capacity specified on the initial application form. If the commissioner has reasonable cause to believe that a potentially hazardous condition may be present or the licensed capacity is increased to four residents, the commissioner shall request a subsequent inspection and written report by a fire marshal to verify the absence of hazard. Any condition cited by a fire marshal, building official, or health authority as hazardous or creating an immediate danger of fire or threat to health and safety must be corrected before a license is issued or renewed by the department.

Subp. 3. **Study of applicant.** A study of the applicant shall be conducted by the commissioner under items A to D.

A. The applicant shall provide the commissioner with a completed, signed form as required by Minnesota Statutes, chapter 245C, for each caregiver, household member age 13 and over, and each owner, partner, board member, and employee who will be involved in the operation of the adult foster home. The form must disclose the person's full name and all previous or additional names, date of birth, the specific nature of information to be disclosed, who will receive the information, and who will disclose it. The commissioner shall seek the assistance of the Minnesota Bureau of Criminal Apprehension, the county attorney, and sheriff or chief of police in the locality where the person resides in determining the person's arrest, conviction, or criminal history record. If the person has not resided in the state for five years, the form shall also be sent to a national criminal history repository. In the case of a household member who is nine years of age but under the age of 14, the

commissioner shall ascertain from the local court of jurisdiction whether the juvenile has been adjudicated as a delinquent for any of the acts specified in subpart 4, item D.

B. The applicant who is an individual shall provide social history information to the commissioner about each household member. "Social history information" means information on education; employment; financial condition; military service; marital history; strengths and weaknesses of household relationships; mental illness; chemical dependency; hospitalizations; involuntary terminations of parental rights; the use of services for developmental disabilities; felony, gross misdemeanor or misdemeanor convictions, arrests or admissions; and substantiated reports of maltreatment.

C. If the applicant is an authorized representative of a partnership, corporation, or governmental unit, the applicant shall make available and maintain the following information:

- (1) the names and addresses of the owners and board members;
- (2) the name, address, and physical health report of the employees who are involved in the operation of the adult foster home;
- (3) an organization chart;
- (4) personnel policies;
- (5) the personnel records of persons in subitem (2) and verification that they comply with the qualifications in subpart 4;
- (6) job descriptions of persons in subitem (2); and
- (7) the staffing pattern to be used in the adult foster home.

D. The applicant shall provide the commissioner with the names of three persons not related to the applicant who can supply information about the applicant's ability to operate an adult foster home.

Subp. 4. **Qualifications.** Operators, caregivers, and household members must meet the qualifications in items A to G.

- A. Operators and caregivers must be adults.
- B. [Repealed, L 2009 c 79 art 1 s 21]
- C. Operators, caregivers, and household members must agree to disclose the arrest, conviction, and criminal history information specified in subpart 3.
- D. Operators, caregivers, and household members must not have a disqualification under Minnesota Statutes, section 245C.15, that is not set aside under Minnesota Statutes, section 245C.22, or for which a variance has not been granted under Minnesota Statutes, section 245C.30.

E. Operators and caregivers must not have a diagnosis of developmental disability and be receiving services under parts 9525.0004 to 9525.0036.

F. [Repealed, L 1991 c 38 s 2]

G. Caregivers and household members must not abuse prescription drugs or use controlled substances as named in Minnesota Statutes, chapter 152, or alcohol, to the extent that the use or abuse has or may have a negative effect on the health, rights, or safety of residents.

Subp. 5. **Evaluation for cause.** The commissioner may require, before licensure or at any time during the licensed term of the adult foster home, a physical, mental health, chemical dependency, or criminal history evaluation of the operator, caregiver, or household member if the commissioner has reasonable cause to believe that any of the qualifications or requirements in subpart 4, items A to G have not been met or that the operator or any caregiver cannot care for a resident. Evaluations must be conducted by a professional qualified by license, certification, education, or training to perform the specific evaluation.

Subp. 6. **Zoning.** At least 30 days before the initial license issuance date, the commissioner shall notify the local zoning administrator in the jurisdiction where the residence is located of the license application.

Subp. 7. **Period of licensure; nontransfer.** A license shall be issued by the commissioner for up to two years when the applicant complies with parts 9555.6105 to 9555.6265. A license is not transferable to another operator or residence.

Subp. 8. **Initial license.** An applicant for initial licensure may be granted an initial license by the commissioner for up to two years if the laws and rules cannot be complied with immediately, and if the deviations from parts 9555.6105 to 9555.6265 do not threaten the health, rights, or safety of a resident. All deviations must be corrected within the time specified by the commissioner but not exceeding one year. Failure to correct deviations within the stated time shall be cause for revocation of a license or a fine or both.

Subp. 9. **Variance procedure.** An applicant or operator may request a variance from compliance with parts 9555.5105 and 9555.6105 to 9555.6265. A request for a variance must comply with and be handled according to the following procedures:

A. An applicant or operator must submit a written request for a variance to the commissioner. The request must include:

(1) the sections or parts 9555.6105 to 9555.6265 with which the applicant or operator cannot comply;

(2) the reasons why the applicant or operator needs to depart from the specified sections;

(3) the period for which the applicant or operator requests a variance;

(4) the specific equivalent alternative measures that the applicant or operator will provide so the health, rights, and safety of residents are ensured if the variance is granted; and

(5) if applicable, any items specified in Minnesota Statutes, section 245A.11, subdivision 2a or 7.

B. An applicant or operator must submit to the commissioner written approval from a fire marshal of the alternative measures identified to ensure the safety of residents when a variance of part 9555.6125, subpart 2, is requested.

C. An applicant or operator must submit to the commissioner written approval from a health authority of the alternative measures identified to ensure the health of residents when a variance of parts 9555.6215 and 9555.6225 is requested.

Subp. 10. **Variance standard.** A variance may be granted if:

A. the variance is submitted in accordance with subpart 9;

B. the commissioner does not have reasonable cause to believe the health, rights, or safety of the residents will be threatened;

C. the variance would not be contrary to a standard required by Minnesota Statutes; and

D. a request for variance to subpart 4, item E, has clear and convincing evidence presented by the operator, caregiver, or household member that no threat or harm whatsoever will result to the residents due to the granting of the variance. The commissioner shall consider the nature of the crime committed and amount of time which has elapsed without a repeat of the crime.

Subp. 11. **License terms.** A license must show:

A. the licensed capacity of the adult foster home;

B. the expiration date of the license and address of the residence;

C. the name and address of the operator;

D. that the operator is licensed under parts 9555.5105 and 9555.6105 to 9555.6265; and

E. the provisional status of the license, if applicable.

Subp. 12. **Change in license terms.** The following shall apply to changes in the terms of licensure:

A. The license issued must not be transferred to another operator, building, or address unless the provisions in item B are followed first.

B. The operator must notify the commissioner and the studies in part 9555.6125 must be completed:

- (1) before the operator moves the residence to another building or address;
- (2) when there is an addition of any adult or child who is or will be a roomer, resident, household member, or caregiver;
- (3) when the operator makes structural changes to the residence that require a building permit from the local jurisdiction; or
- (4) before the operator changes, sells, or transfers ownership or responsibility for the operation of the residence.

Subp. 13. **License review.** Before the expiration of a license, the commissioner must conduct a study of the operator and an inspection of the residence to determine compliance with parts 9555.5105 and 9555.6105 to 9555.6265 at least once every 24 months to determine whether a new license shall be issued.

Statutory Authority: *MS s 14.386; 14.388; 245A.04; 245A.09; 256B.092*

History: *12 SR 148; L 1987 c 333 s 22; 15 SR 2043; L 1991 c 38 s 2; 18 SR 2244; L 2001 1Sp9 art 14 s 35; L 2005 c 56 s 2; 30 SR 585; L 2009 c 79 art 1 s 21*

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