



New Licensing Requirement for Providers of Day Services for Adults with Disabilities

Overview

The Commissioner is temporarily modifying the licensing requirements for providers of day services for adults with disabilities, as defined under Minnesota Statutes, section 252.41, subdivision 3 and governed under the standards under Chapter 245D, that continue to operate during the peacetime emergency. This modification includes new licensing requirements set forth below, and is effective May 29, 2020 until the end of the peacetime emergency.

Pursuant to previous DHS Waiver CV43, license holders can deliver day services remotely to a person authorized to receive services. Remote services help mitigate the transmission of COVID-19 and license holders are encouraged to utilize various forms of electronic supports to deliver services via telephone or virtual platforms such as Face Time, Skype, or Google Meet.

Pursuant to [Emergency Executive Order 20-55](#), “at-risk persons ... are strongly urged to stay at home or in their place of residence except to engage in necessary activities for health and wellbeing ... “ At-risk persons are defined in paragraph 2 of the Order as follows:

Consistent with guidance issued by the Centers for Disease Control and Prevention (“CDC”), “at-risk persons” include people who are:

- a. 65 years and older.
- b. Living in a nursing home or a long-term care facility, as defined by the Commissioner of Health.
- c. Any age with underlying medical conditions, particularly if not well controlled, including:
 - i. People with chronic lung disease or moderate to severe asthma.
 - ii. People who have serious heart conditions.
 - iii. People who are immunocompromised (caused by cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, or prolonged use of corticosteroids and other immune weakening medications).
 - iv. People with severe obesity (body mass index (BMI) of 40 or higher).
 - v. People with diabetes.

vi. People with chronic kidney disease undergoing dialysis.

vii. People with liver disease.

In order to ensure compliance with existing Executive Orders, the Commissioner is establishing the following new licensing requirements during the peacetime emergency for providers of day services for adults with disabilities delivered in a licensed facility. Noncompliance with the new requirements that is identified through a licensing investigation or licensing inspection may result in a correction order or a conditional license under Minnesota Statutes, section 245A.06, or sanctions under Minnesota Statutes, section 245A.07.

I. Modification to Minnesota Statutes, section 245D.04 Relating to Service Recipient Rights during Peacetime Emergency:

The Commissioner is temporarily modifying Minnesota Statutes, section 245D.04, subdivision 2 pertaining to a person's service-related rights by adding a new clause:

A person's service-related rights include the right to:

...

(10) make an informed choice about whether to receive day services in the licensed facility/community or to "stay-at-home" and receive no day services or receive services remotely during the peacetime emergency to minimize their exposure to COVID-19. This right exists even if the person does not meet the definition of an "at-risk person" under [Emergency Executive Order 20-55, paragraph 2](#).

II. New Requirements for Providers of Day Services for Adults with Disabilities Governed by Minnesota Statutes, Chapter 245D and Operating during the Peacetime Emergency:

1. License holders who resume service delivery in the licensed day facility may provide such services in the facility only to persons who live in their own home or who live with family members in non-congregate licensed or unlicensed settings.
2. Prior to resuming services, the Authorized Agent for the licensed program must complete, sign and submit to DHS Licensing Division the "[Notification of Operation of Day Services Pursuant to DHS Waiver CV73](#)".
3. Pursuant to Emergency Executive Orders [20-55](#) and [20-63](#), the Commissioner is requiring license holders of a day services facility license under Minnesota Statutes, Chapter 245D, to adhere to [Minnesota Department of Health \(MDH\)](#) and [Centers for Disease Control and Prevention \(CDC\)](#) guidelines on COVID-19. This is an ongoing requirement, as the guidance will evolve during the pandemic. DHS will communicate current guidance and any updated guidance to providers via email and on the DHS website. If a person receiving services or a staff person tests positive for COVID-19 or has symptoms of

COVID-19, the license holder must follow the MDH and CDC guidelines specific to the situation and program capabilities.

4. License holders of day services for adults with disabilities must establish and implement a COVID-19 Preparedness Plan as set forth in [Emergency Executive Order 20-63, paragraph 7.e](#). The plan must provide for the business's implementation of Minnesota OSHA Standards and MDH and CDC Guidelines in their workplaces. These requirements are set forth in guidance published by DEED and DLI available on DEED's website (<https://mn.gov/deed/newscenter/covid/safework/business/>).

As set forth in the Plan Guidance, at a minimum, each Plan must adequately address the following areas:

- A. **Require work from home whenever possible.** All Plans must ensure that all workers who can work from home continue to do so. Because the license holder is now allowed to deliver services remotely under Waiver CV43, the Plan should address how remote services are being delivered in addition to facility-based services.
- B. **Ensure that sick workers stay home.** All Plans must establish policies and procedures, including health screenings that prevent sick workers from entering the workplace.
- C. **Social distancing.** All Plans must establish social distancing policies and procedures.
- D. **Worker hygiene and source control.** All Plans must establish hygiene and source control policies for workers.
- E. **Cleaning, disinfection, and ventilation protocols.** All Plans must establish cleaning, disinfection, and ventilation protocols for areas within the workplace.

The Plan must also include specific policies and procedures to ensure compliance with new licensing requirements under Chapter 245D set forth below.

5. The license holder must train staff related to their duties in implementing the COVID-19 Preparedness Plan and document the provision of this training. This training must be included in orientation of new staff.
6. The license holder must monitor implementation of the COVID-19 Preparedness Plan and revise the plan when the license holder identifies a need for revision.
7. The COVID-19 Preparedness Plan must be posted on site and readily accessible to staff and persons receiving services.
8. A copy of the COVID-19 Preparedness Plan must be offered to each person receiving services, their legal representative, if any, and their case manager.
9. The COVID-19 Preparedness Plan must be available to the Commissioner upon request.

III. Modifications to Minnesota Statutes, Chapter 245D Day Services Programs Operating during Peacetime Emergency:

A. Modifications to Minnesota Statutes, section 245D.28:

The Commissioner is temporarily modifying Minnesota Statutes, section 245D.28 by adding the following physical plant and space requirements that must also be incorporated into the COVID-19 Preparedness Plan:

1. To help ensure social distancing strategies can be implemented in the facility, the license holder must limit occupancy to no more than 50% of the licensed capacity or a maximum of 50 people at a time, including staff, whichever is smaller. Staff who are not required onsite to deliver services must work remotely, consistent with [Emergency Executive Order 20-63](#).
2. The license holder must deliver services in shifts, with a maximum duration of three hours throughout the day for each person receiving services. The license holder must document the start and end time of each shift and the staff who worked those shifts, and must ensure the facility is cleaned and disinfected between shifts.

B. Modifications to Minnesota Statutes, section 245D.29:

The Commissioner is temporarily modifying Minnesota Statutes, section 245D.29 by adding the following health and safety requirements that must also be incorporated into the COVID-19 Preparedness Plan:

1. If services are delivered in the licensed facility, the license holder must have a protocol for screening of persons receiving services at the start of the day and throughout the time services are delivered.
2. The license holder must identify and isolate service recipients with COVID-19 symptoms and other service recipients who have been exposed, and immediately arrange for their return home.
3. The license holder must establish communication protocols to legal representatives, case managers, and residential providers when service recipients have been potentially exposed.
4. The license holder must create and implement a schedule for frequent handwashing throughout the program day and ensure handwashing and/or hand-sanitizer supplies are readily available and stocked.
5. Staff must be trained in the use of masks and face coverings and, where it does not impede clear communication, be required to wear a mask or face covering at all times while working with people receiving services.
6. The license holder must create and implement staggered activity schedules that minimize contact with others outside of assigned cohorts.
7. The license holder must ensure that cohorts are meeting within the facility in designated areas that are protected from other cohorts through the use of separate rooms or other physical barriers.
8. The license holder must use visual aids (e.g., painter's tape, stickers) to illustrate traffic flow and appropriate spacing to support social distancing.
9. The license holder must rearrange any seating spaces to maximize the space between persons receiving services with at least six feet between seats. Whenever possible, seating should be turned in the same direction (rather than facing each other) to reduce transmission caused from virus-containing droplets created when people talk, cough, or sneeze. During meal times, staff who work directly with individuals should eat at different times and in a separate area at least 6 feet away from others.
10. The license holder must establish and implement a cleaning and disinfecting protocol that incorporates the [CDC guidance for facilities](#).
11. The license holder must develop and implement arrival and departure protocols for persons receiving services that include social distancing strategies and other mitigation efforts, including staggering of arrival and departure times and minimizing congregating in groups at transition times.

12. If the license holder provides transportation to persons receiving services, the COVID-19 Preparedness Plan must address how social distancing and other mitigation efforts will be implemented during transportation.

C. Modifications to Minnesota Statutes, section 245D.31:

The Commissioner is temporarily modifying Minnesota Statutes, section 245D.31 by adding the following staff ratios and facility coverage requirements that must also be incorporated into the COVID-19 Preparedness Plan:

1. The license holder must create and maintain consistent cohorts of the same staff and persons receiving services. Cohorts must consist of 10 or fewer people, including staff. Cohorts must be maintained throughout the program day, including meal times, and should also be maintained during the programming week whenever possible.
2. The license holder must limit non-essential volunteers and visitors.