



Modified licensing requirements for adult day centers that resume facility operation during the peacetime emergency

The Commissioner is temporarily modifying the licensing requirements for adult day centers, as defined under Minnesota Statutes, section 245A.02, subdivision 2a and governed by standards under Minnesota Rules Chapter 223 (parts 9555.9600 – 9555.9730), that continue to operate during the peacetime emergency. This modification includes new licensing requirements set forth below, and is effective July 1, 2020 until the end of the peacetime emergency.

Pursuant to previous DHS Waivers CV44 and CV49, license holders can deliver adult 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 Emergency Executive Orders [20-55](#) and [20-74](#) the Commissioner is establishing new and modified licensing requirements during the peacetime emergency for adult day centers, as defined under Minnesota Statutes, section 245A.02, subdivision 2a, delivered in a facility licensed under Chapter 245A and governed by standards under Minnesota Rules, Chapter 223 (parts 9555.9600 – 9555.9730). Noncompliance with the new and modified 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. This does not waive or modify any requirements regarding the Positive Supports Rule under Minnesota Rules, Chapter 9544.

I. Modification to Minnesota Rules, part 9555.9670 relating to participants’ rights during the peacetime emergency:

The Commissioner is temporarily modifying Minnesota Rules, part 9555.9670 pertaining to participants' rights by adding a new item:

The rights shall include:

...

F. the right to make an informed choice about whether to receive adult day care services in the licensed facility/community or to “stay-at-home” and receive no adult day care 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 Adult Day Centers governed by Minnesota Rules, parts 9555.9600 through 9555.9730 and operating during the peacetime emergency:

1. License holders who resume service delivery in the licensed adult day center may provide such services in the facility only to persons who do not live in the following congregate settings:
 - a. Housing with services establishments registered under Minnesota Statutes, Chapter 144D and operating assisted living as defined under Minnesota Statutes, section 144G.02, subdivision 1;
 - b. Housing with services establishments registered under Minnesota Statutes, Chapter 144D and required to disclose special care status under Minnesota Statutes, section 325F.72;
 - c. Licensed adult foster care under Minnesota Rules 9555.6105 – 9555.6265; or
 - d. Community residential settings under Minnesota Statutes, section 245D, subdivision 4a.
2. Prior to resuming services, the Authorized Agent for the licensed program must complete, sign and submit to DHS Licensing Division the [“Notification About Resuming Facility Operation for Adult Day Centers”](#).
3. Pursuant to Emergency Executive Orders [20-55](#) and [20-74](#) the Commissioner is requiring license holders of adult day centers licensed under Minnesota Rule 223 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 participant 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 adult day centers must establish and implement a COVID-19 Preparedness Plan as set forth in [Emergency Executive Order 20-74, paragraph 7.e](#). The plan must provide for the program's implementation of Minnesota OSHA Standards and MDH and CDC Guidelines in their workplaces. These requirements are set forth in guidance published by the Department of Employment and Economic Development (DEED) and the Department of Labor and Industry (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 CV44 and CV49, 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 Rule 223 set forth below.

- F. 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.
- G. 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.
- H. The COVID-19 Preparedness Plan must be posted on site and readily accessible to staff and participants.
- I. A copy of the COVID-19 Preparedness Plan must be offered to each participant, their legal representative and caregiver, if any, and their case manager.
- J. The COVID-19 Preparedness Plan must be available to the Commissioner upon request.

III. Modifications to Minnesota Rules, parts 9555.9730 for Adult Day Centers operating during peacetime emergency:

The Commissioner is temporarily modifying Minnesota Rules, part 9555.9730 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 20-74, paragraph 7](#).
2. The license holder must deliver services in shifts, with a maximum duration of three hours throughout the day for each participant. 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.

IV. Modifications to Minnesota Rules, parts 9555.9720 for Adult Day Centers operating during peacetime emergency:

The Commissioner is temporarily modifying Minnesota Rules, part 9555.9720 by adding the following health and safety requirements that must also be incorporated into the COVID-19 Preparedness Plan and developed in consultation with a registered nurse as required in Minnesota Rules, part 9555.9710, subpart 3:

1. If services are delivered in the licensed facility, the license holder must have a protocol for screening participants at the start of the day and each day that services are delivered at the facility.
2. The license holder must identify and isolate participants with COVID-19 symptoms and other participants who have been exposed, and immediately arrange for their return home.
3. The license holder must establish communication protocols to caregivers, legal representatives, case managers, and residential providers when participants 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 participants.
6. The license holder must create and implement staggered daily program 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 participants 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 participants 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 participants 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 participants, the COVID-19 Preparedness Plan must address how social distancing and other mitigation efforts will be implemented during transportation.

V. Modifications to Minnesota Rules, parts 9555.9710 for Adult Day Centers operating during peacetime emergency:

- A. The Commissioner is temporarily modifying Minnesota Rule, part 9555.9710 by adding the following service and program requirements that must also be incorporated into the COVID-19 Preparedness Plan:
 1. When the license holder's plan for diversified daily program activities includes activities that occur in the community (grocery shopping, attending a fitness center, etc.), the license holder must create and implement a plan that includes social distancing strategies and other mitigation efforts to be used in the community, during transportation, and upon return to the center for both participants and staff persons.
 2. When a participant refuses services, the license holder must refer the participant and caregivers to community services as required to meet the needs identified in the participant's plan of care.
- B. The Commissioner is temporarily modifying Minnesota Rule, part 9555.9710, subpart 1, item C to require that a meal be served to each participant during their attendance at the adult day center regardless of the length of time the participant is at the center. All other requirements for this rule remain in effect.

VI. Modifications to Minnesota Rules, parts 9555.9690 for Adult Day Centers operating during peacetime emergency:

The Commissioner is temporarily modifying Minnesota Rule, part 9555.9690 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 8 or fewer people, including staff. Cohorts must be maintained throughout the program day, including meal and snack times, and should also be maintained during the programming week whenever possible.
2. The license holder must limit non-essential volunteers and visitors to the center.

VII. Modifications to Minnesota Rules, Chapter 223 (parts 9555.9690 – 9555.9730) for Adult Day Centers not operating during peacetime emergency:

The Commissioner is temporarily modifying Minnesota Rule 223 for centers **not operating** during peacetime emergency. Centers not operating during peacetime emergency are not required to maintain compliance in the following areas:

1. Minnesota Rules, part 9555.9660 relating to a report on a physical examination, updated annually, and attendance and participation reports and progress notes that are recorded at least monthly.
2. Minnesota Rules, part 9555.9700, subpart 3 relating to provisions for quarterly review and quarterly revision of the individual plan of care including the individual abuse prevention plan.
3. Minnesota Rules, part 9555.9710, subparts 3, 4, and 7 relating to:
 - i. Monthly review and revision of health services by a registered nurse
 - ii. Quarterly consultation and review of the structured exercise program by a registered physical therapist
 - iii. Updating a family and social history for the participant's record annually
4. Minnesota Rules, part 9555.9720, subparts 6, 7, 8 and 9 relating to the facility and equipment used at the facility.