Amended Modifications to Children’s Residential Facilities Licensing Requirements

In May 2020, the commissioner issued a waiver suspending or modifying certain children’s residential facility licensing requirements so that essential services could continue during the COVID-19 pandemic. The commissioner is now amending this waiver to require license holders to resume orientation trainings, annual trainings, annual staff development and evaluation plans, and the annual staff training plan effective January 1, 2021. In addition to this waiver specific to children’s residential facilities, the commissioner also amended the waiver for all DHS-licensed and certified services to require most annual and other ongoing training requirements to resume. The existing modification to child passenger restraint systems training requirements remains unchanged.

Resuming requirements

Beginning on January 1, 2021, all children’s residential facilities must resume orientation trainings, annual trainings, annual staff development and evaluation plans, and the annual staff training plan as follows:

Orientation trainings

Through December 31, 2020, programs are only required to provide orientation trainings to staff persons on the following topics: maltreatment reporting; emergency procedures; confidentiality; resident rights; and job specific responsibilities. Orientation to these topics must be completed prior to the staff person having direct contact with a resident.

Beginning on January 1, 2021, all license holders must resume providing all orientation trainings to all required topics to all new staff persons hired on or after January 1, 2021, according to the timelines required in Minnesota Rules, Chapter 2960.

Annual trainings, annual staff development and evaluation plans, and annual staff training plan

Through December 31, 2020, annual trainings, annual staff development and evaluation plans, and the annual staff training plan requirements are temporarily suspended. Given the previous modification of training, staff development and evaluation plan, and staff training plan requirements due to the peacetime emergency, licensors will not review annual trainings, annual staff development and evaluation plans, and annual staff training plans that were required to be completed between March 1, 2020 and December 31, 2020.

Beginning on January 1, 2021, all license holders must resume completion of annual trainings, annual staff development and evaluation plans, and the annual staff training plan. Annual trainings, annual staff development and evaluation plans, and annual staff training plans that were due in 2020, but were not completed, must instead be completed in 2021 by the same month the training or plan was due in 2020. License holders must ensure each
required training and plan is completed as it comes due after December 31, 2020 or be subject to a correction order if the requirements are not met.

**Programs that are unable to meet these requirements due to a COVID-19 outbreak at the program may request a program specific variance by contacting the MH/SUD/CRF Licensing Unit at dhs.mhcdlicensing@state.mn.us.**

**Ongoing modifications**

The remaining modified requirements below became effective March 13, 2020, and will continue during the peacetime emergency until DHS issues additional information about resuming the requirements.

Any departures from rule that a program implements from the list below must be documented in the program’s emergency plan. These changes do not waive or modify any requirements regarding the Positive Supports Rule under Minnesota Rules, Chapter 9544.

The ongoing modifications of requirements include the following:

**New requirement for programs operating during the peacetime emergency**

During the peacetime emergency, license holders are required to be familiar with the MDH guidance and CDC guidance on COVID-19. 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 guidance specific to the situation and program capabilities. As the guidance will evolve during the pandemic, license holders need to remain familiar with the guidance as it changes.

**Service delivery**

1. All spirituality services, activities, and counseling may be provided by telephone or video instead of in the community. License holders also must implement additional measures to allow for continued spirituality involvement, including the recommendations in the MDH *Interim Guidance for the Prevention of COVID-19 in DHS-Licensed Residential and Non-Residential Settings with At-Risk Persons*.

2. Programs must ensure that a resident’s participation in education is consistent with directions from the local school district and the Minnesota Department of Education.

3. The program is not required to complete the health screen, but must instead screen each resident for COVID-19 symptoms prior to admission. If a resident is symptomatic, the program must follow the MDH and CDC guidance specific to the situation and program capabilities.

4. Programs that restrict or eliminate in-person visitation based on MDH and CDC guidance must offer alternative means of communicating with people who would otherwise visit, such as virtual communications (phone, video communication). The program also must implement additional measures to allow for continued social contact including the recommendations in the MDH *Interim Guidance for the Prevention of COVID-19 in DHS-Licensed Residential and Non-Residential Settings with At-Risk Persons*.

5. Programs may temporarily suspend group therapy and group counseling if they are unable to accommodate guidelines for social distancing and other community mitigation strategies. If programs continue to provide therapy or counseling services in a group setting, programs are encouraged to limit group sizes to no more
than ten people total, including residents and staff, based on recommendations from MDH and CDC to limit group activities and maintain social distancing.

6. Mental health treatment programs may allow the mental health professional to provide their weekly face-to-face clinical supervision by telephone or video.

7. The program may obtain oral informed consent instead of written informed consent for the nonemergency administration of an antipsychotic or neuroleptic medication; however, oral consent expires in one month. If oral informed consent is obtained, the program must:
   a. document an explanation of why written informed consent could not initially be obtained;
   b. document that the oral consent was witnessed and the name of the witness;
   c. provide oral and written communication of all items required in 2960.0620, subpart 7;
   d. notify the resident's parent or legal representative that: written informed consent material is immediately being sent to them; the oral consent expires in one month; and the medication must be discontinued one month from the date of the oral consent if written consent is not received; and
   e. consult with the prescriber for further direction if written consent is not obtained one month from the date of the oral consent.

8. Shelter programs may allow a resident to stay for more than 90 days without a variance from DHS if the program documents the reason the resident needs to stay at the program for more than 90 days.

**Documentation**

9. The timeline for completing an administrative review of each use of a restrictive procedure is extended from within three working days after the use of the procedure to within **10 calendar** days after the use of the procedure.

**Personnel**

*Modifications previously numbered 10 and 11 related to orientation trainings, annual trainings, annual staff development and evaluation plans, and the annual staff training plan are ending effective December 31, 2020.*

12. Certified mental health treatment programs (both locked and unlocked) and shelter programs, which are experiencing staffing shortages as a result of the pandemic, are allowed to reduce staffing ratios to the group residential setting ratios of:
   - one awake staff person per 12 residents when residents are awake; and
   - one awake staff person per 25 residents when residents are normally asleep.

Before a certified mental health treatment program reduces the staffing ratios, a mental health professional must determine the ratios are clinically appropriate. Before a shelter program reduces the staffing ratios, the program director must determine the ratios are appropriate. Any program that departs from the staffing ratios required prior to the peacetime emergency must ensure that adequate supervision is provided and that the health and safety of residents is maintained. The license holder must inform DHS Licensing prior to implementing these reduced staffing ratios. If additional departures from staffing requirements are needed, license holders may request a variance.

13. The minimum age for staff is lowered from 21 years of age to 18 years of age.
Additional information

In addition to the links above, you may find it helpful to review the following links for more COVID-19 information and resources.

Questions and Answers for Staff, Families, and Clients of Children’s Residential Facilities: COVID-19

COVID-19 Testing in Residential Programs Licensed by the Department of Human Services: Frequently Asked Questions

COVID-19 Testing Resources for Residential Programs Licensed by the Department of Human Services

MDH community settings and COVID-19

DHS Licensing COVID-19 latest information

Background studies COVID-19 temporary changes

All DHS COVID-19 waivers and modifications

Minnesota Health Care Programs Provider Manual telemedicine and COVID-19

Questions, technical assistance and variances

For questions, concerns, technical assistance, or to request a program specific variance to a requirement not addressed by these modifications, please contact the MH/SUD/CRF Licensing Unit at dhs.mhcdlicensing@state.mn.us.