

# Guidance on upholding rights, person-centered practices, service suspension and service terminations during Minnesota's peacetime emergency

Guidance current as of May 18, 2020

This document provides guidance to 245D-licensed residential providers on upholding a person's rights, person-centered practices, service suspensions and service terminations under the peacetime emergency (executive orders [20-01 \(PDF\)](#) and [20-35 \(PDF\)](#) and the directive to stay at home (executive orders [20-20 \[PDF\]](#), [20-33 \[PDF\]](#) and [20-48 \[PDF\]](#)) declared by Gov. Walz.

The Minnesota Department of Human Services (DHS) affirms that people with disabilities who receive 245D-licensed residential services are valued members of their communities. While all people are experiencing restrictions on their rights during the peacetime emergency, people with disabilities may not have their rights restricted more than people without disabilities. People who live in licensed residential settings ("group homes") retain all rights afforded to them under chapter 245D that are not directly affected by one of the governor's orders.

Residential providers with 245D licenses are encountering difficult questions and situations as they respond to the COVID-19 virus and the requirements of the peacetime emergency order. Managing physical distance in a home between multiple people, including staff, can be extremely challenging in an already challenging environment. While adhering to the stay-at-home orders, you must uphold the rights afforded to people under Minnesota Statutes, chapter 245D, and the principles of the Positive Supports Rule (Minnesota Rules, chapter 9544). DHS continues to expect providers to promote the person's self-determination, person-centeredness, engagement in community and high-quality individualized supports – among other responsibilities. Residential service providers and direct support professionals are responsible for adhering to existing policies and directives. We acknowledge the vital role direct support professionals have in meeting the day-to-day responsibility for applying person-centered principles and protecting people's health, safety and well-being. This emergency is a particularly important time to learn more about what is important to people and get creative in finding ways to honor that.

## **How do I balance what is personally important to a person I support while balancing what is important for their health and safety during a pandemic?**

What is important for people (particularly health and safety) is at the forefront of our minds during this crisis, but we need to continue to consider and balance that with what is important to a person (things in life that help a person to be satisfied, content, comforted, fulfilled and happy). The two are not in opposition to each other. Usually, there is a link between them. We want to continue to ensure that people who use services have a life where they have control and have the quality of life that they define. Our obligation to meet both needs does not change during times of uncertainty.

Insisting someone do something important for them without balancing or linking with what is important to them will create a negative and power-over relationship. Exercising power over another person creates a tense dynamic and perpetuates the harmful perception that people with disabilities are not equal, autonomous individuals. Over time, this creates toxic environments for the people who use services and supports. To exercise power over another person can diminish any therapeutic relationship.

We need to continue to listen to people's words and observe their actions, and then find a way to help people get what they request. We may feel rushed to come up with ways to help people be safe, but we must also develop creative and innovative ways to contribute to their quality of life.

Here are some examples of creative solutions:

- Tanya is irritable and anxious about not being able to go places she usually goes to during the day such as the library, a coffee shop and the gym. Sit down with Tanya and check in about the options for the day. Talk about what she can safely do, such as going for a car ride, taking a walk, going through the coffee shop drive-thru, helping staff with household tasks around the house and learning how to make coffee at home.
- Dwayne wants to visit with his family. Work with Dwayne and his family to figure out how they can best maintain their social connection with some physical distance. Whether you use a virtual platform, have family members drive over and visit without getting out of the car (maintaining a safe distance), talk from a safe distance in the yard or something else.

The time spent understanding the seeming conflict between “important for” and “important to” and working with the person to develop solutions is a vital part of supporting someone. This is especially true during times of uncertainty and stress. If you want support and technical assistance to work through complex situations, please contact us at [positivesupports@state.mn.us](mailto:positivesupports@state.mn.us).

### **Do I need an individual rights restriction in place for each person to follow “social distancing” (maintaining physical distance) guidelines in accordance with the governor’s order when they live in a congregate residential setting?**

DHS does not consider restructuring a person’s community engagement opportunities in an effort to comply with the governor’s orders and the Centers for Disease Control and Prevention (CDC) guidance to be a rights restriction.

The governor’s directions to stay at home places limitations on everyone in the state. It instructs all of us to maintain physical distance between people and limit our interaction with the community. This has complicated the role of 245D-licensed providers, who are required to facilitate the community engagement of people with disabilities who receive services. Under 245D, the rights related to accessing the community and engaging in chosen activities do not allow people who receive services to do things that would otherwise be illegal or prohibited.

While the governor’s order might mean that people may not engage with the community in the ways they usually do, providers should work to find new ways to help people access their

community, within the limitations of the order. For example, the provider could arrange video meetings with friends and family. How and why it is important to maintain physical distance from others may be a new skill that providers are working to help people do and understand. If a person is struggling with this, we recommend finding alternatives that people might enjoy. For example, if a person typically greets people with a hug, they could create a new greeting that they find fun, but that doesn't include physical contact. Providers should also help the people they serve understand the need to maintain physical distance between people.

People are still able to take walks, grocery shop, go to work if their workplace is open, visit with friends/family members/neighbors while practicing physical distancing and access venues that are currently open – within the guidelines in the governor's order.

To help people make informed choices about staying home and maintaining physical distance, we suggest you have conversations with them about the importance of following the guidelines and the dangers of COVID-19. Fact sheets from the [CDC](#) or the [Minnesota Department of Health \(MDH\)](#) might help you with this. It can be helpful to relate the guidelines to a value that is important to them.

To learn more about ways to talk about COVID with the people you serve, consider the following links:

- [COVID-19 Information By and For People with Disabilities \(PDF\)](#)
- [How do you talk about COVID-19 to people with intellectual disabilities?](#)

### **If a person I support wants to leave the house during the governor's Emergency Executive Order 20-33, Stay At Home Order, may I physically stop them?**

In general, no. People are free to come to and go from their homes. DHS does not consider people leaving their own homes without staff's agreement to meet imminent risk — even at this time – unless other factors are also present.

DHS typically considers physically detaining someone as the use of manual restraint. DHS does not allow the emergency use of manual restraint except when there is imminent risk of harm to someone and that intervention is the least restrictive option.

Providers should attempt to find ways for the person to leave the house and enter their community safely. People may continue to take walks, grocery shop, go to their jobs (if open) and access venues that are currently open – within the guidelines the governor's order. In these situations, help people to understand the importance of maintaining physical distance and other kinds of risk management (e.g, not touching surfaces that might be contaminated, frequent hand-washing, not touching one's face, covering coughs, wearing a mask) and how to practice these when in the community. Here are some ideas about how you might do this:

- Example: Plan for an activity outside, such as going for a walk, when any necessary staff support can be available to assist, and then model safe practices such as using physical distancing or wearing a mask.
- Talk with the person to understand why they want to leave the home and find safe ways to connect with others or activities to maintain social connections and inclusion.

- Example: Use web-based platforms to visit with others virtually, participate in fitness or library classes, train for sports, play card or board games, explore different music, sing karaoke, worship or participate in social media.
- Perform task analyses for following safety guidelines and teach the skills identified in the analyses. Through the process, identify what supports the person needs to learn, maintain and perform the skills.
- Examples of skills where you could do a task analysis: hand washing, maintaining physical distance, using the internet, using computer or phone, using Facebook or other social media, shopping online
- Use existing social stories, for instance, around hand washing, social distancing and mask wearing. You can develop your own for any situation.
- Work as a household unit (people who live at a home and people who work in the home), using a consensus model, to develop household expectations during this time.
- Model the behavior you are trying to teach the person. Modeling is much more effective than only telling the person what to do. If the person is expected to wash their hands when coming home from work, staff should wash their hands when entering the home. Be aware that you are not asking the person to do something that others in the home are not doing.

### **What do I do if someone I support has been exposed to, or is suspected of having contracted, COVID-19?**

Consult with a licensed health professional for guidance, including recommendations on whether or not the person needs to be tested or quarantined.

We recommend that you have a conversation with each of the people you serve in advance about how they would like to protect themselves if there is an exposure in their home. Some people may choose to stay in their room if another person in the home is infected.

### **If a licensed health professional has ordered or recommended that a person I support needs to be quarantined at home, will quarantining a person in their room be considered seclusion under 245D? Can I keep the other individuals who live in the home in their bedrooms?**

No, DHS does not consider quarantine at home when recommended by the person's health care provider to be seclusion under statute 245D. There is a difference between prohibited seclusion and a quarantine ordered by a licensed health care professional to curb the spread of an infectious disease.

We acknowledge quarantining a person might present significant challenges. We ask everyone to do their best to continue providing necessary care for the people who access their services. Providers should make every attempt to quarantine people with suspected or confirmed COVID-19 diagnoses safely, when recommended by a licensed health care professional, and to mitigate exposure to staff and other residents. The default approach should not be isolating all residents in their bedrooms without the presence of COVID-19 symptoms. Under these

circumstances, people and providers may take the following precautions provided by the CDC and MDH:

- The facility should have a plan and discuss with people the plan should someone – either a person who lives in the home or a staff member – contract COVID-19.
- The person with suspected or confirmed case of COVID-19 should stay in a separate room as much as possible.
- If possible, the person should be provided their own bathroom or support professionals should disinfect a bathroom after each use.
- Everyone in the house should practice good hand hygiene.
- When the person leaves their room, the person should wear [personal protective equipment \(PDF\)](#), if it is safe for them to do so, and wash their hands.
- Household members should stay in another room or be separated from the person as much as possible. Meals may be served to the person under quarantine in their bedroom, or meal times may be staggered to avoid interaction with others.
- Support professionals should continue to monitor the person closely, while maintaining as much physical distance as possible.
- If available, support professionals and other people living in the home should wear PPE, if it is safe for them to do so.
- Make sure shared spaces in the home have good air flow. Use the fan setting on the air conditioner or furnace.
- Visitation by people other than non-essential workers should be postponed until people have been cleared of infection or have completed their quarantine period. It is important to continue monitoring the person's physical health as well as their social and emotional wellbeing. If possible, find opportunities for the person to connect with their social circle remotely to keep them from feeling socially isolated.
- Contact the Minnesota Department of Health's COVID-19 hotline at 1-800-657-3903.

For more mitigation strategies, visit the [MDH Coronavirus Disease 2019 webpage](#).

### **While keeping people home because of COVID-19 we have seen an increase in interfering behavior. When would a positive support transition plan (PSTP) or functional behavior assessment (FBA) need to be developed?**

A PSTP is required if your staff implements the emergency use of manual restraint three times in 90 days or four times in 180 days (See [Minn. R. 9544.0070](#)). An FBA is required when a PSTP is developed and afterward when a written intervention is developed or modified to change a target behavior.

That said, even though the situation might not meet the conditions for an FBA, if you are working with someone who is engaging in interfering behavior, you might want to consider conducting an FBA to help understand the best way to address the issues. You can find suggestions on conducting FBAs in the [Guidelines for Positive Supports in DHS-Licensed Settings \(PDF\)](#).

You may also email [positivesupports@state.mn.us](mailto:positivesupports@state.mn.us) or call the 245D help desk at 651-431-6624 with questions.

The governor's orders do not waive the person-centered planning requirements of 245D or the Positive Supports Rule. During these uncertain times, you might need to engage the person frequently to re-evaluate their identified positive support strategies, individual services and supports preferences, daily needs and activities, and the accomplishment of goals. The following are additional resources to support you and the person with these evaluations:

- [Minnesota Positive Supports website](#) – Institute on Community Integration
- [DHS Positive Supports website](#)

### **Should we still let people visit family or allow family visitors into the home? Can we restrict contact until the COVID-19 crisis passes without a rights restriction?**

During the shelter-in-place order, families are encouraged not to visit someone in a home or take their loved ones out of the home for any non-essential outings. We recommend you help people find alternative ways to connect with friends, family, schools and other service providers whenever possible. That said, please remember that many 245D-licensed residential facilities are congregate residential settings; they are also people's homes. Providers need to consider their actions from both perspectives and respect the rights of people who live there.

Providers need to support health and safety, while balancing a person's freedom of choice. People who receive 245D-licensed services have the right to see the people they want to see and to come and go freely from their homes within the limits of the governor's orders. Providers should help people to understand their options, their risks and alternative ways of having what is important to them so they can make informed decisions. You should discuss the risks, the stay-at-home order, MDH guidelines and any established household decisions about visitors with each resident, their family and friends and all staff. It is important to have these in writing so that there is common understanding and consistency in how people are treated. Limiting visitors in the home does not require individual rights restrictions during the governor's stay-at-home order.

If a person chooses to leave the house for a visit or another activity where they are exposed to other people, staff should talk with the resident before the visit or activity about the risk of exposure, the need for social distancing during the visit, and what additional steps will need to be taken when the person returns to ensure other residents and staff are safe. It is important to educate both residents and staff who are leaving the home about ways to further reduce the risk of disease transmission when they return to the home.

As noted in the [guidance for residential and non-residential settings \(PDF\)](#), the CDC and MDH recommend that residences restrict all visitors and non-essential health care personnel in the home, except for special circumstances. [MDH Guidance for Visiting People in their Homes \(PDF\)](#) includes "care of others" as one of the allowed activities if there is no other way to provide that service. The guidance lists things to take into consideration before deciding to visit a person in their home.

We encourage providers to have discussions with the people who live in the home to come up with mutually-agreed upon norms for:

- If, when and how to manage visitors

- How to mitigate risk to people, and to other people living in the home, if a person decides to leave the house and return. This could be a number of circumstances such as going to the grocery store, going to work or going to visit with family and friends.

Measures to consider in developing agreements about people coming and going from the house:

- Under the stay-at-home order, essential health care workers and other visitors may be allowed in the home for compassionate care or other special circumstances. This could include therapists, clergy, hospice workers, bereavement counselors and ombudsmen. Providers should make decisions about visitation for special circumstances on an individual basis, taking into account specific service needs and making reasonable accommodations when necessary.
- If visitors are allowed, consider creating a dedicated visiting area near the entrance to the residence, where people may meet them in a sanitized environment. These areas must be cleaned and disinfected after every visit. Guidance about cleaning is on [CDC's COVID-19 website](#).
- If a dedicated visiting area in the home is not an option, consider moving meetings to an area outside the home but still on the premises where people can maintain physical distance but still converse.
- Residences should require visitors to wash their hands and use PPE, such as facemasks.
- Providers should also carefully screen all visitors for fever or respiratory symptoms.
- Permitted visitors should refrain from physical contact with people while in the residence. For example, practice maintaining physical distance with no hand-shaking or hugging and remain six feet apart.
- Providers should not permit those with symptoms of a respiratory infection (e.g., fever, cough, shortness of breath or sore throat) to enter the home at any time, even in special circumstances. You should include this prohibition in the written materials you share with family, friends and staff.
- Consider how to support people so that they understand how to comply with the changing orders and recommendations. Ask them how they want to communicate with friends and family to limit or restrict visitation. Assess and teach new methods to receive needed services and supplies. Assess and teach new skills to maintain physical distancing, practice good hygiene and implement new recommendations.
- In lieu of visits, you may consider:
  - Talking with the person and their family to determine what alternative options would work best for them. Offering alternative means of communication for people who would otherwise visit, such as virtual communications (phone, video-communication, etc.)
  - Creating/increasing written communication to update families, including the house guidelines, and advising how to stay connected with their family member without visiting
  - Assigning staff as primary contact to families for inbound calls, and conduct regular outbound calls to keep families up to date

- Offering a “physical distance meeting” that may occur in the yard of the property where everyone can see each other but maintain a six-foot distance.

**A person I support interacted with someone outside the home who might have COVID-19. We serve other people in the home considered at high risk for infection. May I tell the person they cannot come home? May I suspend or terminate their services?**

In general, no. Residential settings are the person’s home and each person is still entitled to due process. Physical distancing and/or isolation should be the primary response in this situation. Consult with the person’s licensed health professional before determining whether to take actions such as quarantine.

Since COVID-19 could develop within 14 days of an exposure, there is a 14-day window of potential for transmitting the virus after any activity where exposure can’t be ruled out.

These are some examples of ways the person who may have been exposed can reduce the risk of transmission:

- Eating meals in a private room
- Having a dedicated bathroom
- Wearing a facemask when in communal areas
- Washing their hands.

Failure to follow physical distancing guidelines or Executive Order 20-20 requirements, alone, is not grounds for suspending or terminating a person’s services. All suspensions or terminations must still meet one of the permitted reasons in [Minn. Stat. §245D.10](#). Due process requirements in 245D.10 give a person the right to a 60-day notice period before terminating their services. Consider that after 60 days have passed the health risk might also have passed, meaning that a suspension or termination because of the potential health risk a person might pose to others will no longer be a valid reason to terminate services. If you have concerns about the person’s conduct putting the safety of others at risk, you should convene a team meeting (person and their advocates, provider, case manager and health care provider), to talk through the issues and find solutions to prevent the need for terminating services.

As an alternative to service termination or suspension because of the medical risk of someone in the home, consider the use of crisis respite. A person is eligible to receive crisis respite services when caregivers and service providers are not able to provide necessary intervention and protection of the person or others who live with that person. Crisis respite services allow the person to avoid institutional placement. Crisis respite may be provided in-home or out-of-home. License hotels are an approved setting on all of the disability waivers. For more information on the use of crisis respite, speak with the person’s case manager and/or visit the [Crisis Respite page in the Community-Based Services Manual \(CBSM\)](#).

We would again remind you that people may still take walks, grocery shop and access venues that are currently open – within the guidelines of the governor’s order. Terminating or suspending someone’s services solely for doing something everyone is able to do under the order is not permitted.

## **Does the governor's Emergency Executive Order 20-14 suspending evictions and writs of recovery during the peacetime emergency also prevent service terminations?**

[Executive Order 20-14 \(PDF\)](#) places limitations on evictions and lease terminations under [Minn. Stat. §504B](#). 245D residential providers are required to hold leases (or legally-binding agreements that have the same protections as leases) with the people they serve in residential sites, in accordance with the [home and community-based settings rule](#). For more information, read [Minnesota's Home and Community-Based Services Rule Statewide Transition Plan \(PDF\)](#). These leases and agreements create a landlord-tenant relationship that is covered under [Minnesota's landlord/tenant laws](#). These service providers should review their obligations as landlords under Executive Order 20-14.

There is a distinction between terminating services and terminating leases. While providers may terminate services, under proper circumstances, in accordance with 245D.10, lease terminations are subject to the limitations of Executive Order 20-14.

Consider that if a provider terminates services, the person's team, including the current provider and case manager, will have to find a new service provider to deliver the person's needed services in the residence for the duration of the peacetime emergency.