

Licensed Child and Adult Foster Care: Implementation plan for 2023 legislative changes

December 2023

New laws passed by the 2023 Legislature include several provisions that impact licensed foster care. This document outlines an overview of each change, the date the change is effective, instructions for what license holders need to do about the change, and guidance on how licensors will monitor these changes.

Each section header indicates the programs impacted by the change: family child foster care (CFC); child foster residence setting (CFRS); Rule 4 child placing agency (Private Agency); adult foster care (AFC); community residential setting (CRS).

Infant safe sleep – CFC, CFRS

Overview

New language has been added to Minnesota Statutes, section [245A.1435](#) to align with the American Association of Pediatrics' (AAP) recommendations for infant safe sleep and to provide greater clarity for license holders. When an infant is placed down to sleep, the infant's pacifier cannot have anything attached to it and the infant's clothing or sleepwear cannot have weighted materials, a hood, or a bib. An infant may wear a helmet while sleeping if the license holder has specific documentation. A plain language definition of swaddling has been incorporated into the statute, as well as clarity on the type of sleepwear that is appropriate for swaddling. License holders now have the option to request a variance to permit the use of a cradleboard, if requested by a parent or guardian for a cultural accommodation.

See [MN Laws, Chapter 70, Article 8, Section 19 \(2023 245A.1435, 245A.02, subd 5b\)](#).

Effective date: January 1, 2024.

What license holders need to know

License holders and caregivers must be familiar with the new language and not place infants down to sleep wearing clothing or sleepwear that has weighted materials, a hood, or a bib; or a pacifier with an attachment. If a swaddle is used, it must be wrapped over the infant's arms, fastened securely across the infant's upper torso, and not constrict the infant's hips or legs. Like other clothing or sleepwear, a swaddle cannot have weighted materials, a hood, or a bib.

If an infant under one year of age requires a helmet for their development and would wear it while being placed down to sleep, license holders must use the DHS form to obtain signed documentation from a physician, advanced practice registered nurse, physician assistant, licensed occupational therapist, or licensed physical therapist. The DHS helmet documentation form will be developed and shared in the coming weeks.

If a parent or guardian requests the use of a cradleboard for a cultural accommodation, license holders may request a variance to Minnesota Statutes, section [245A.1435](#). The DHS cradleboard variance request form will be developed and shared in the coming weeks. A cradleboard variance may only be issued by DHS.

What licensors need to do

Licensors will review safe sleep requirements with foster parents as part of initial and ongoing home safety inspections while assessing infant sleep space in the home, or when a license holder newly begins caring for infants. Licensors will request that license holders utilize the DHS approved forms when caring for an infant who requires a helmet during sleep, or if a parent or guardian requests use of a cradleboard for an infant in their care.

Child foster care license holder qualifications – CFC, CFRS

Overview

Language has been added in Minnesota Statutes, section [245A.11, subdivision 12](#), which is similar to the “personal characteristics of applicants” found in Minnesota Rules 2960.3060, subpart 3. This new language makes clear that these are ongoing expectations, and not just at the time of application.

See [MN Laws, Chapter 70, Article 8, Section 17 \(2023 245A.11\)](#).

Effective date: January 1, 2024.

What license holders need to know

License holders must maintain the ability to care for a foster child and ensure a safe home environment. If there are any changes to the license holder or household member’s physical or behavioral health that may affect the license holder’s ability to care for a foster child or may pose a risk to the child’s health, the license holder must immediately notify the licensing agency. Likewise, if there are any changes to the care of a child or vulnerable adult for whom the license holder is a parent or legally responsible, such as living out of home for treatment for physical or behavioral health, modified parenting time arrangements, legal custody, or placement in foster care, the license holder must immediately notify the licensing agency of the change.

What licensors need to do

When licensors receive information regarding a change related to the license holder or household member’s physical or behavioral health that may affect the license holder’s ability to care for a foster child or may pose a risk to the child’s health, the licensing agency will assess the need for a specialist evaluation. If an evaluation is

requested, the licensor must tell the license holder or household member the reason and request they sign a release of information. Refusal to complete an evaluation is considered as part of the overall evaluation of the program's operation and would not be the sole basis for a licensing sanction. Licensors are encouraged to consult foster care triage in these circumstances.

Licensing moratorium changes – CRS, AFC

Overview

Changes were made to the licensing moratorium exception, under Minnesota Statutes, section [245A.03, subdivision 7](#) (a) (5), to now include people receiving customized living services under an elderly waiver. The individual is no longer required to have been residing in the customized living facility before July 1, 2022. The date the exception is available has been extended to December 31, 2023.

Changes were also made to licensing moratorium exception, under Minnesota Statutes, section 245A.03, subd. 7 (a) (1), to clarify that this exception is to ensure people aged 55 and older living in settings who want and need to access corporate adult foster care services can do so.

See [MN Laws, Chapter 61, Article 1, Sec. 2](#) and [MN Laws, Chapter 50, Article 1, Sec. 14](#).

Effective date: May 25, 2023.

What license applicants need to know

New applicants who wish to pursue a CRS license under this moratorium exception must submit a 245D-HCBS license application to DHS by December 31, 2023. Applicants who already hold a 245D-HCBS license must submit a CRS application to the county by December 31, 2023.

New applicants who wish to pursue a corporate adult foster care license to serve people 55 and older on an elderly waiver and/or private pay need to submit a license application to the county. This is an ongoing moratorium exception under Minnesota Statutes, section [245A.03, subdivision 7 \(a\)\(1\)](#).

What licensors need to do

Licensors will follow the usual process for obtaining approval for a moratorium exception and processing the new license application.

Documenting first date of direct contact – AFC, CFRS, Private Agencies

Overview

License holders must establish a process to identify when each background study subject first has direct contact with a client at the program, record that date in the program's records, and provide the dates to DHS upon request.

License holders must document the first date that each [background study subject](#) has [direct contact](#) with a person at the program. See [MN Laws, Chapter 70, Article 17, Section 13 \(2023 245A.041, subdivision 6\)](#).

Effective date: January 1, 2024.

What license holders need to do

Corporate and Family Adult Foster Care and Rule 4 Private Agency License Holders

License holders must document the first date that each [background study subject](#) has [direct contact](#) with a person at the program. The program may document this date in the personnel file, on a centralized list, or in another location. Wherever these dates are documented, the license holder must be able to provide the dates to DHS upon request. Documenting these dates is important to demonstrate the license holder has met requirements for the timely completion of background studies and staff trainings.

Child Foster Care Residence Setting License Holders

License holders must document the first date that each [background study subject](#) has [direct contact](#) with a person at the program. The license holder must be able to provide the date(s) to DHS upon request. This is in addition to existing requirements in section [245A.041, subdivision 5](#) to document the first date of *working in* a child foster residence setting, even if not providing direct contact services. Both dates must be documented for each person but in some cases may be the same date. Documenting these dates is important to demonstrate the license holder has met requirements for the timely completion of background studies.

Nonprofit controlling individuals – Private Agencies, CFRS

Overview

The 2023 Legislature made changes to the definitions for owner and controlling individual in Minnesota Statutes, section [245A.02](#) to include a nonprofit corporation as a type of owner of a licensed program and therefore also a controlling individual. Programs with a nonprofit corporation included as a controlling individual will be able to change their board of directors without having to apply for a new license. This will eliminate a burdensome and redundant licensing process for nonprofit corporations that other types of organizations are not required to complete. The new language also clarifies that the definition of a controlling individual includes the president and treasurer of the board of directors of a nonprofit corporation.

See [MN Laws, Chapter 70, Article 17, Sections 9 \(2023 245A.02, subd. 5a\) and 10 \(2023 245A.02, subd. 10b\)](#).

Effective date: July 1, 2023.

What license holders need to know

When an applicant or license holder is a nonprofit corporation, the nonprofit corporation must identify the president and treasurer of the board of directors as controlling individuals on the application and must complete

a background study for each of these individuals. If the president or treasurer of the board of directors changes, the license holder needs to notify their DHS, county, or private agency licensor of the change.

What licensors need to do

For CFRS licenses held by a nonprofit corporation who also holds a 245D-HCBS license, the license holder notifies both licensors of the change and the DHS licensor will complete the process to update controlling individuals on the license.

For CFRS programs that do not also hold an HCBS license, the county or private agency licensors will submit a 3324 to notify DHS of any changes to the controlling individuals.

Maltreatment of Minors Act training – CFC, CFRS, Private Agencies

Overview

In addition to the existing orientation training requirement, mandatory reporters are required to complete annual/yearly training on the maltreatment of minors reporting requirements and definitions in [Minnesota Statutes, chapter 260E](#).

See [MN Laws, Chapter 70, Article 8, Section 36 \(2023 245A.66, subdivision 4\)](#).

Effective date: January 1, 2024.

What license holders need to know

License holders must ensure that each license holder, caregiver, and staff complete this training at orientation and annually thereafter.

What licensors need to do

Licensors will monitor compliance during licensing reviews by confirming that all mandated reporters have completed training each year on the maltreatment of minors reporting requirements and definitions.

Additional information

Prone restraint prohibition – all programs

This language applies to all DHS-licensed and -certified programs.

A prone restraint is a physical hold or mechanical restraint that places a person in a face-down position. New requirements for all licensed and certified programs prohibit the use of prone restraints except in very specific brief instances. These exceptions include:

- a person rolling into a prone position during a restraint if the person is restored to a non-prone position as quickly as possible; and
- holding a person briefly in a prone restraint to apply mechanical restraints if the person is restored to a non-prone position as quickly as possible.

See [MN Laws, Chapter 70, Article 17, Section 19 \(Minnesota Statutes, section 245A.211\)](#).

Effective date: July 1, 2023.

Mandatory revocation or denial

Changes to Minnesota Statutes, section [245A.04, subdivision 7](#), provide an exception to the mandatory revocation or denial of a license based on an affiliated license holder or controlling individual's previous revocation or denial. If the commissioner finds certain criteria exist to grant a license or not revoke a license, the commissioner is not required to deny an application or revoke a license.

See [MN Laws, Chapter 61, Article 7, Section 1](#).

Effective date: July 1, 2023.

Temporary immediate suspension authority

A temporary immediate suspension (TIS) that is issued to a residential program may be given a delayed effective date for up to 30 calendar days to allow for time to transition persons served by the program to new providers and avoid a sudden service interruption. Additionally, for a license holder that operates multiple service sites under a single license, the immediate suspension order must be specific to the service site(s) where a TIS is warranted and not apply to any other service sites operated under the same license. If a license holder operates multiple programs, each under their own license, the immediate suspension order must be specific to the individual licensed program where a TIS is warranted and not apply to any other licensed programs operated by the same license holder.

See [MN Laws, Chapter 61, Article 7, Sections 2 and 3](#).

Effective date: July 1, 2023.

Authority to order a suspension due to pending investigation

New language in Minnesota Statutes, section [245A.07, subdivisions 2a](#) and [3](#) provide the commissioner with the authority to order the suspension of a license if an investigation related to the basis for a Temporary Immediate Suspension (TIS) is incomplete and there continues to be an ongoing imminent risk of harm. If a TIS has been issued and law enforcement, child protection, and/or maltreatment investigations are ongoing at the time the 90-day TIS period is up, a suspension may be issued if the results of the investigation(s) are needed to determine

the final licensing sanction. The license holder can appeal the suspension, but because the suspension follows a final order affirming a TIS, the license holder is prohibited from operating during this time.

See [MN Laws, Chapter 70, Article 17, Sections 14 and 15](#).

Effective date: July 1, 2023.

Receivership

The language in Minnesota Statute, section [245A.13](#), about receivership of a licensed or certified program has been updated and aligns with the Minnesota Department of Health's receivership process. The changes adjust receivership timelines, establish a funding mechanism for instances of receivership, limit liability of managing agents, set criteria for termination of the receivership, and establish a period of financial reconciliation with the managing agent so that monies advanced in excess of need are returned to DHS. The changes also allow DHS to develop a list of entities available and qualified to serve as managing agents in the event receivership is necessary.

See [MN Laws, Chapter 61, Article 7, Sections 6-12](#).

Effective date: July 1, 2023.

Additional staffing

The DHS Licensing Division received funding to allow us to hire additional staff in the foster care unit. This will provide the capacity to:

- offer more trainings, technical assistance, and resources to counties and private agencies;
- decrease the length of time it takes to issue licenses, license denials, licensing actions and variances; and
- conduct routine on-site reviews of delegated licensing activities for adult foster care and community residential settings, as well as more timely reviews of delegated activities for child foster care.

Provider Hub

DHS received funding to expand the DHS Provider Hub (Salesforce) to all license types. This will be a gradual process as different license types are onboarded. DHS is committed to working toward a smooth transition for current Binti users in child foster care to onboard to the new platform.

Department of Children, Youth, and Families

The state of Minnesota is working on a transition to create a new Department of Children, Youth, and Families (DCYF). Several programs serving children and youth that are currently the responsibility of the Minnesota

Departments of Human Services, Public Safety, and Education will be included in the transfer to the new Department. A commissioner for this new cabinet-level agency will be appointed by July 1, 2024, with the complete transfer of programs completed by July 1, 2025. There are no immediate changes. A [new Implementation Office](#) within Minnesota Management and Budget will guide the transition, in consultation with the relevant departments. Licensing will share more information, as it becomes available.

Background studies

Updates on legislative changes related to background studies are posted on the ["What's new" for background studies webpage](#).