

Position Statement

For 2023 Session

Legislative Change Regarding Licensing Actions Impacting Vulnerable Individuals

Proposal

Issue:

Proposal:

Strike and add language to licensing statute to allow the state the ability to elect not to revoke a license affiliated with a license holder or controlling individual that had a different license revoked if they determine the operating program is in compliance with laws and rules and the program's continued operation is in the best interest of the community being served.

Impact of Current Statute:

Current statute limits the Department of Human Services' (DHS) ability to enforce licensing standards when one license holder/controlling individual has authority over multiple homes and services. Under current law, if one home is non-compliant with licensing regulations and a licensing action such as a revocation is warranted, the law would require ALL licenses associated with the license holder/controlling individual to also succumb to this action, even if the other sites have followed state regulations. When a license holder is the controlling individual for multiple services and sites and a revocation occurs, this could cause placement disruptions for many vulnerable individuals across many communities.

This results in an ethical dilemma for county licensing staff, DHS licensing departments, as well as MN courts. They are forced to make one of the two following choices. First, not pursue a revocation of a specific setting when appropriate, so as to not cause the larger negative impact on the other homes and people residing in those homes; or second, properly pursue these licensing actions, knowing should a revocation be upheld many foster homes which have been in compliance with state law would also be closed and the residents of these homes forced to find placement with another license holder/controlling individual.

Implementation Strategy:

Proposed Changes

Minnesota Statutes 2022, section 245A.07, is amended by adding two subdivisions to read:

Subd. 2b. Immediate Suspension of Residential Programs.

For suspensions issued to a licensed residential program as defined in section 245A.02, subd. 14, the effective date of the order may be delayed for up to 30 calendar days to provide for the continuity of care of service recipients. The license holder must cooperate with the commissioner to ensure service recipients receive continued care during the period of the delay and to facilitate the transition of service recipients to new providers. In these cases, the suspension order takes effect when all service recipients

have been transitioned to a new provider, or 30 days after the suspension order was issued.

Subd. 2c. Immediate Suspension for programs with multiple licensed service sites

(a) For license holders that operate more than one service site under a single license, the suspension order shall be specific to the service site or sites where the commissioner determines an order is required under 245A.07, subdivision 2. The order shall not apply to other service sites operated by the same license holder unless the commissioner has included in the order an articulable basis for applying the order to other service sites.

(b) If the commissioner has issued more than one license to the license holder under this chapter, the suspension imposed under this section shall be specific to the license for the program at which the commissioner determines an order is required under 245A.07, subdivision 2. The order shall not apply to other licenses held by the same license holder if those programs are being operated in substantial compliance with applicable law and rules.

Minnesota Statutes 2022, section 245A.04, subdivision 7 is amended to read:

Subd. 7. Grant of license; license extension.

(a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license consistent with this section or, if applicable, a temporary change of ownership license under section [245A.043](#). At minimum, the license shall state:

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

(b) The commissioner may issue a license for a period not to exceed two years if:

- (1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clause (4), because the program is not yet operational;
- (2) certain records and documents are not available because persons are not yet receiving services from the program; and
- (3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the commissioner to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program.

(d) Except as provided in paragraphs (f) and (g), the commissioner shall not issue ~~or reissue~~ a license if the applicant, license holder, or an affiliated controlling individual has:

- (1) been disqualified and the disqualification was not set aside and no variance has been granted;

(2) been denied a license under this chapter, within the past two years;
(3) had a license issued under this chapter revoked within the past five years; or
(4) an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent; or
(5) failed to submit the information required of an applicant under subdivision 1, paragraph (f) or (g), after being requested by the commissioner.

When a license issued under this chapter is revoked ~~under clause (1) or (3)~~, the license holder and each affiliated controlling individual with a revoked license may not hold any license under chapter 245A for five years following the revocation, and other licenses held by the applicant, license holder, or licenses affiliated with each controlling individual shall also be revoked.

Notwithstanding this provision, the commissioner may elect not to revoke a license affiliated with a license holder or controlling individual that had a license revoked within the past five years if the commissioner determines: (a) the license holder or controlling individual is operating the program in substantial compliance with applicable laws and rules; and (b) the program's continued operation is in the best interests of the community being served.

Notwithstanding this provision, the commissioner may issue a new license in response to an application that is affiliated with an applicant, license holder, or controlling individual that had an application denied within the past two years or a license revoked within the past five years if the commissioner determines: (a) the applicant or controlling individual has operated one or more programs in substantial compliance with applicable laws and rules; and (b) the program's operation would be in the best interests of the community to be served.

In determining whether the program's operation would be in the best interests of the community to be served, the commissioner shall consider factors such as the number of persons served, the availability of alternative services available in the surrounding community, the management structure of the program, whether the program provides culturally specific services, and other relevant factors.

Minnesota Statutes 2022, section 245A.10, subdivision 6 is amended to read:

Subd. 6. License not issued until license or certification fee is paid.

The commissioner shall not issue or reissue a license or certification until the license or certification fee is paid. The commissioner shall send a bill for the license or certification fee to the billing address identified by the license holder. If the license holder does not submit the license or certification fee payment by the due date, the commissioner shall send the license holder a past due notice. If the license holder fails to pay the license or certification fee by the due date on the past due notice, the commissioner shall send a final notice to the license holder informing the license holder that the program license will expire on December 31 unless the license fee is paid before December 31. If a license expires, the program is no longer licensed and, unless exempt from licensure under section [245A.03, subdivision 2](#), must not operate after the expiration date. After a license expires, if the former license holder wishes to provide licensed services, the former license holder must submit a new license application and application fee under subdivision 3.

Minnesota Statutes 2022, section 245A.10, is amended by adding a subdivision to read:

Subd. 9. License not reissued until outstanding debt is paid. The commissioner shall not reissue a license or certification until the license holder has paid all outstanding debts

related to a licensing fine or settlement agreement for which payment is delinquent. If the payment is past due, the commissioner shall send a past due notice informing the license holder that the program license will expire on December 31 unless the outstanding debt is paid before December 31. If a license expires, the program is no longer licensed and must not operate after the expiration date. After a license expires, if the former license holder wishes to provide licensed services, the former license holder must submit a new license application and application fee under subdivision 3.

Systemic Priority Alignment (highlight all that apply and explain why)

- Equity
- Integrated Services
- Fiscal Framework

From the GARE Toolkit (See www.raciaequityalliance.org): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

Comments:

Without this legislative change, vulnerable people placed in homes where they are receiving quality care have the potential for their placements to be disrupted and having to move to a new home.

Relevant Committee (highlight all that apply and explain why)

- Adult Services
- Behavioral Health
- Children's Services
- Equity
- Healthcare
- Modernization
- Policy
- Self-Sufficiency

Why:

This issue pertains to all license holders/controlling individuals who have authority over community residential settings as well as 245D services for both children and adults.

Rationale/Background:

We are seeing an unintended consequence from the way current statute is written. We know one community residential setting can operate within statutory parameters and provide high quality care to those living in the home, while another facility may struggle to provide the same excellence. The current statute does not allow DHS licensing to sanction one facility without having direct ramifications on other facilities when they are owned or operated by the same license holder/controlling individual.



Submitted by: Jill Pooler, Wright County

Approved on: