

# Substance Use Disorder Treatment: 2021 Legislative Changes

The 2021 Legislature changed several laws that impact Department of Human Services (DHS) licensed substance use disorder treatment programs. The sections below contain an overview of each new or changed requirement, instructions for what providers need to do in response to the change, and a link to the law that was changed.

## Telemedicine – COVID-19 waivers continued

The COVID-19 waiver, [CV.45](#), which modified licensing requirements for telemedicine ended on August 30, 2021; however, programs may continue to provide telemedicine in the same manner as allowed by other waivers that will be continuing. The telemedicine definition in [Minnesota Statutes, section 245G.01, subdivision 26](#), requires telemedicine to be provided as specified in section 254B.05, subdivision 5, paragraph (f), which was modified by the COVID-19 waiver [CV.30](#). At this time, programs may continue to provide telemedicine as allowed by the [CV.16](#) and [CV.30](#) waivers. Instructions for how to provide telemedicine according to what is allowed by these waivers is on the [Provider Manual COVID-19 Webpage](#) and programs should refer to this webpage as the primary source for the current telemedicine requirements.

## Telehealth – Client signatures

### Overview

Programs that use telehealth to conduct an assessment or provide treatment services must follow new requirements for clients that are not able to sign the treatment plan or an update to the plan. Instead of a signature, the program must document the reason the client's signature cannot be obtained and document the client's verbal or electronic written approval. This change became effective July 1, 2021. See, [Minnesota Session Laws - 2021, 1st Special Session, Chapter 7, Article 6, Section 6](#) for the full text of this law.

### What do providers need to do?

An alcohol and drug counselor must **clearly document** in the client record:

- that the client is receiving an assessment or treatment services by telehealth;
- the specific reason the client's signature cannot be obtained; and
- the client's verbal approval or electronic written approval of the specific treatment plan and each update to the treatment plan.

## Telehealth – Definitions and additional requirements

### Overview

The term “telemedicine” is removed and replaced with the term “telehealth” in the definitions for “face-to-face” and “telemedicine” in Minnesota Statutes, section 245G.01, subdivisions 13 and 26. The new definition for telehealth now includes a requirement for telehealth services to meet the standards for telehealth in [Minnesota Statutes, section 256B.0625, subdivision 3b](#). Additionally, the limitation that only licensed staff can provide treatment services is removed and treatment coordinators and recovery peers are added to the list of health care providers that can provide telehealth services in [Minnesota Statutes, section 256B.0625, subdivision 3b](#). This change is effective upon federal approval. See, [Minnesota Session Laws - 2021, 1st Special Session, Chapter 7, Article 6, Sections 4 and 5](#) for these changes.

### What do providers need to do?

After federal approval, DHS will notify providers that these changes are effective. Providers must then ensure that telehealth services meet the additional standards in [Minnesota Statutes, section 256B.0625, subdivision 3b](#) along with the standards in [Minnesota Statutes, section 254B.05, subdivision 5, paragraph \(f\)](#).

## Applications – County notification requirements

### Overview

The assessment of need requirements in Minnesota Rules, parts 9530.6800 and 9530.6810 were repealed and replaced with a new county notification requirement. The new notification requirement applies only to substance use disorder treatment programs licensed under chapter 245G. When submitting an application for a new license, an applicant must provide documentation that the county was notified according to the new requirements.

The new requirements for the county notification are as follows:

- The applicant must notify the **county human services director**.
- The notification must occur at least **60 days prior** to submitting the application.
- The **notification must:**
  - be in writing;
  - state the applicant's intent to open a new treatment program;
  - describe the proposed treatment program; and
  - describe the target population to be served by the program.

Applicants that meet requirements for program ownership changes in Minnesota Statutes, section 245A.043, **are exempt** from the new notification requirements. This change became effective July 1, 2021. See [Minnesota Session Laws - 2021, Regular Session, Chapter 30, Article 2, Sections 1 to 5](#) for these changes.

Additional processes that **do not** impact the issuance of a license are also done by the county human services director and the DHS Behavioral Health Division according to [Minnesota Statutes, section 254B.03, subdivision 2, paragraph \(e\)](#).

## What do providers need to do?

When a provider submits an application for a new substance use disorder treatment program, the application must include a copy of the written notification to the county human services director that clearly demonstrates the notification requirements listed above were met.

## Alternative licensing inspections

### Overview

Beginning January 1, 2022, programs accredited by The Joint Commission may request approval from DHS for an alternative licensing inspection status if certain conditions are met. Programs approved for this status will be reviewed less frequently by DHS for requirements that are part of a Joint Commission survey and that DHS determines to be the same as or similar to licensing requirements in Minnesota Statutes, chapter 245G. DHS will consult with The Joint Commission and accredited license holders to determine the standards that are the same as or similar to licensing requirements. DHS plans to consult with accredited license holders in October and will send more information about this process to providers this fall.

### Eligible programs

Only license holders that meet **all** of the following conditions may request approval from DHS for an alternative licensing inspection:

- The license holder must be accredited by The Joint Commission.
- After initial licensure, the license holder must have had at least one DHS review of all applicable licensing requirements.
- The license holder must be in substantial and consistent compliance at the time of the request, including:
  - not having a license that was conditional, suspended, or revoked within the last five years;
  - no substantiated allegations of maltreatment for which the facility was determined responsible within the past five years; and
  - all violations have been corrected and required documentation has been submitted for any correction order issued within the past two years.

Opioid treatment programs and programs licensed to serve clients with children are **not** eligible for alternative licensing inspections.

### Approval process

Beginning January 1, 2022, license holders may request approval for an alternative licensing inspection status. The request must be made on a form and according to instructions that DHS provides. The form will be available to providers by the end of December. License holders must also provide verification from The Joint Commission that they are accredited and have been in compliance with accreditation recommendations and requirements during the accreditation period. DHS must review and approve the license holder's applicable policies and procedures along with the request form before approving an alternative licensing inspection request. DHS will provide written notification within 90 days about whether the request has been approved.

## After approval

If approved for an alternative licensing inspection status, **the license holder** must meet all of the following conditions on an ongoing basis:

- Must maintain compliance with all licensing standards in Minnesota Statutes, chapter 245G
- Must submit to DHS any changes to policies required after a legislative change prior to the effective date of the change
- Must notify the commissioner in a timely manner if no longer accredited
- Must mail or e-mail to DHS the complete contents of all survey results and corrective responses within ten days of final approval of a corrective action plan or if no corrections upon receipt of the final report
- Must notify DHS if The Joint Commission does not subject a licensed location to a survey

For programs approved for an alternative licensing inspection status, **DHS** may still do the following:

- Conduct routine licensing reviews of requirements **not** included in accreditation surveys, as determined by DHS, and all applicable requirements in Minnesota Statutes, chapters 245A and 245C, and Minnesota Rules, chapter 9544
- Conduct routine licensing reviews every five years of all applicable requirements
- Conduct an inspection if The Joint Commission determines the scope of noncompliance of a standard with a pattern or widespread moderate likelihood to harm a client or any high likelihood to harm a client as determined by [The Joint Commission Survey Analysis for Evaluating Risk® SAFER™ Matrix](#)
- Conduct an inspection of a licensed location not included in an accreditation survey
- Investigate licensing complaints or reports

## Termination of approval

DHS may terminate the approval of an alternative licensing inspection status if after approval:

- DHS determines that the license holder has not maintained the accreditation;
- the license holder fails to provide DHS documentation that demonstrates compliance with accreditation standards;
- DHS substantiates maltreatment and the license holder or facility is determined responsible; or
- DHS issues the license holder an order for conditional license, fine, suspension, or license revocation that is not reversed after appeal.

These changes are effective January 1, 2022. See [Minnesota Session Laws - 2021, 1st Special Session, Chapter 7, Article 2, Section 68](#) for these changes.

## What do providers need to do?

Providers may take part in a meeting in October to provide input to the same or similar standards determination process. DHS will provide additional information about the meeting once it is scheduled. Beginning January 1, 2022, providers may submit requests for an alternative licensing inspection status. DHS will notify providers when the request form is available.

## Behavioral health fund term

### Overview

The term “consolidated chemical dependency treatment fund” and a similar term are removed from chapters 245A and 245G and replaced with the term "behavioral health fund." This change became effective July 1, 2021. See [Minnesota Session Laws - 2021, Regular Session, Chapter 30, Article 13, Section 83](#), for this change.

### What do providers need to do?

No action is required from providers related to this change.

### Questions

For questions, please contact your licensor directly or email [dhs.mhcdlicensing@state.mn.us](mailto:dhs.mhcdlicensing@state.mn.us).