Children's Residential Facilities:
2023 Legislative changes and program implementation

October 2023

The 2023 Legislature made changes to several laws that impact Department of Human Services (DHS) licensed children's residential facilities. The sections below contain an overview of each change, instructions for what providers need to do about the change, the date the change is effective, and a link to the change in law.

The hyperlinks within this document go to where the new law can be found. When reviewing the new law:

- Text that is stricken with a line through it reflects words that are being removed from the law.
- Text that is underlined reflects words that are being added to the law.
- Text that is unchanged reflects what the law was before and continues to be the law.

Later this year, the Minnesota Office of the Revisor of Statutes will update the statute sections on their website to reflect the new laws.

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Maltreatment of minors reporting annual training

Overview

In addition to the existing orientation requirement, programs must also provide a training **annually** to each mandatory reporter at the program on the maltreatment of minors reporting requirements and definitions in Minnesota Statutes, chapter 260E. **Effective January 1, 2024**. MN Laws, Chapter 70, Article 8, Section 36 (2023 245A.66, subd. 4).

What providers need to do

License holders must ensure that each mandatory reporter at the program receives this training annually in addition to the orientation training.

Document date of first direct contact

Overview

License holders must document the first date that each background study subject has direct contact with a client 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 this date is important to demonstrate your program has met requirements for the timely completion of background studies and staff trainings. **Effective January 1, 2024**. See MN Laws, Chapter 70, Article 17, Section 13 (2023 245A.041, subdivision 6).

This is in addition to existing requirements in section 245A.041, subdivision 5 to document the first date of ***working in*** a children's residential facility, even if not providing direct contact services.

What providers need to do

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 also continue to document the first date each background study subject begins working in a children's residential facility, even if not providing direct contact services.

For staff who provide direct contact services, you must document the first date the person begins working in the facility and then also document the first date the person begins providing direct contact services. If the person begins providing direct contact services on the first day they work in the program, these may be the same date but the documentation must clearly indicate this.

Prone and contraindicated restraint prohibitions

Overview

Prone restraint prohibition. A prone restraint is a physical hold or use of a 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;
- holding a person briefly in a prone restraint to allow staff to safely exit a seclusion room; 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. **Mechanical restraints are only allowed for limited use when transporting a resident.**

Contraindicated restraint prohibition. Programs must not use any type of restraint that is contraindicated for a person's known medical or psychological conditions. Contraindicated means a restraint that increases the risk of harm to a person due to their condition. An assessment of any contraindications must occur prior to using restraints on a person and the program must document this determination.

Note: Only children's residential facilities with a restrictive procedures certification under Minnesota Rules, part 2960.0710, may use restrictive procedures.

Effective July 1, 2023. MN Laws, Chapter 70, Article 17, Section 19 (2023 245A.211)

What providers need to do

Programs will need to update all policies, procedures, and staff training materials to reflect these new requirements and notify staff of the changes. Before using any restraints on a person, the program must assess each person and document a determination of whether the person has any conditions that restraints would be contraindicated for or that they do not have any contraindicated conditions. Providers should develop a process to complete this prior to the first use of a restraint and if a condition becomes known at a later point. This determination must include documentation of the type of restraints that the program will not use on the person. The program must establish a process to ensure that all staff who use restraints know which restraints they cannot use for specific clients.

Mental health diagnostic assessments

Overview

For children's residential facilities with a **mental health treatment certification**, the standard diagnostic assessment (DA) contents change. Many changes align the components in a mental health diagnostic assessment with the substance use disorder comprehensive assessment to streamline the process when completing both assessments. The additions to the diagnostic assessment include documentation of:

- any withdrawal symptoms, medical conditions, and behavioral and emotional symptoms as part of the immediate risks to health and safety portion;
- the client's history of substance use disorder treatment; and
- a substance use history, if applicable, including:
    - amounts and types of substances, frequency and duration, route of administration, periods of abstinence, and circumstances of relapse; and
    - the impact to functioning when under the influence of substances, including legal interventions.

The standards also clarify that clinicians may use information from other providers and prior assessments to complete the DA if they document the source of the information.

The completion of the Early Childhood Service Intensity Instrument (ECSII) or Child and Adolescent Service Intensity Instrument (CASII) as part of a Diagnostic Assessment is removed from the standards. The DHS Behavioral Health Division will provide guidance soon about when a CASII/ECSII is still required, including referrals to children's residential facilities.

Effective July 1, 2023. MN Laws, Chapter 70, Article 9, Section 16 (2023 245I.10, subd. 6)

Effective August 1, 2023. MN Laws, Chapter 50, Article 2, Section 21 (2023 245I.10, subd. 6)

What providers need to do

Licensed holders must include additional required elements in diagnostic assessments.

Substance use disorder assessments–Outdated cross references

Overview

Language is added to statute to replace outdated references to repealed requirement for chemical use assessments in Minnesota Rules, part 2960.0160, subpart 2, item E and other rule references. This replacement clarifies that when the rule uses the term chemical use assessment that it must meet the requirements for a comprehensive assessment under Minnesota Statutes, section 245G.05 instead of the repealed rule reference. It further clarifies that the assessment must be completed by an individual who meets the qualifications for an alcohol and drug counselor in Minnesota Statutes, section 245G.11, subdivision 5. **Effective August 1, 2023**. MN Laws, Chapter 50, Article 2, Section 27 (2023 254A.19, subd. 7).

What providers need to do

Programs must ensure that chemical use assessments meet the requirements for a comprehensive assessment under Minnesota Statutes, section 245G.05 and that chemical dependency assessors at the program meet the qualifications for an alcohol and drug counselor under Minnesota Statutes, section 245G.11, subdivisions 1 and 5.

Substance use disorder–Comprehensive assessment

Overview

The comprehensive assessment contents change to align most of the components in a substance use disorder comprehensive assessment with the mental health diagnostic assessment to streamline the process when completing both assessments. The assessment will still require substance use specific items and several items are only required as part of a substance use disorder comprehensive assessment. The assessment summary requirements combine into the comprehensive assessment which will eliminate the separate assessment summary.

The alcohol and drug counselor may delay some specific topics if gathering the information would retraumatize the client or harm their willingness to engage in treatment. These specific topics below include this note in parentheses **(may gather later)**. If delaying these items, the alcohol and drug counselor must document in the assessment that the topic will require further assessment at a later point during the client's treatment.

The comprehensive assessment must document information about the client's current life situation, including all the following information:

- Client's age
- Client's current living situation, including the client's housing status and household members
- Status of the client's basic needs
- Client's education level and employment status
- Client's current medications
- Immediate risks to the client's health and safety, including withdrawal symptoms, medical conditions, and behavioral and emotional symptoms
- Client's perceptions of the client's condition
- Client's description of the client's symptoms, including the reason for the client's referral
- Client's history of mental health and substance use disorder treatment
- Cultural influences on the client
- Substance use history, including:
    - amounts and types of substances, frequency and duration, route of administration, periods of abstinence, and circumstances of relapse; and
    - the impact to functioning when under the influence of substances, including legal interventions.
- Client's relationship with the client's family and other significant personal relationships, including the client's evaluation of the quality of each relationship **(may gather later)**
- Client's strengths and resources, including the extent and quality of the client's social networks **(may gather later)**
- Important developmental incidents in the client's life **(may gather later)**
- Maltreatment, trauma, potential brain injuries, and abuse that the client has suffered **(may gather later)**
- Client's history of or exposure to alcohol and drug usage and treatment **(may gather later)**
- Client's health history and the client's family health history, including the client's physical, chemical, and mental health history **(may gather later)**
- Diagnosis of a substance use disorder or a finding that the client does not meet the criteria for a substance use disorder
- Determination of whether the individual screens positive for co-occurring mental health disorders using a screening tool approved by the commissioner pursuant to section 245.4863
- Risk rating and summary to support the risk ratings within each of the dimensions listed in section 254B.04, subdivision 4, and
- Recommendation for the ASAM level of care identified in section 254B.19, subdivision 1.

Effective January 1, 2024.

The new assessment content requirements are in MN Laws, Chapter 50, Article 2, Section 13 (2023 245G.05, subd. 3) and the required items for 245I.10, subdivision 6, paragraphs **(b) and (c)** are in MN Laws, Chapter 50, Article 2, Section 21 (2023 245I.10, subd. 6).

The repeal of the separate assessment summary requirements is in MN Laws, Chapter 50, Article 2, Section 63.

What providers need to do

Providers should begin updating forms and electronic records documents and train staff so the new contents will be ready by the effective date. Beginning January 1, 2024, all new assessments must contain the information the section above lists.

Opioid overdose medication

Overview

Children's residential facilities with a **chemical dependency (substance use disorder) treatment certification** must maintain a supply of an opiate antagonist (example, naloxone or Narcan) that is available at the program for the emergency treatment of an opioid overdose. The program must have a standing order that permits maintaining a supply of opiate antagonists at the program. Staff must receive training in the specific mode of administration the program uses, which may include intranasal administration, intramuscular injection, or both.

To ensure broad and quick access in an emergency, requirements for other types of medications will not apply to these opiate antagonists as the sections below will explain.

Orders

The program must have a written standing order protocol by a physician, advanced practice registered nurse, or physician assistant, that permits the license holder to maintain a supply of opiate antagonists on site. Providers can work with another organization, medical provider, or pharmacy to obtain a standing order. The Steve Rummler HOPE Network provides assistance with standing orders and obtaining naloxone. Additional information about accessing naloxone can be found on the Minnesota Department of Health's Drug Overdose Prevention Resources webpage under the naloxone heading.

Storage

Due the need for immediate access, emergency opiate antagonist medications such as naloxone are **not** required to be stored in a locked area and staff may carry this medication on them or store it in an unlocked location at the program.

Staff training

All staff who provide direct care services must receive training in the specific mode of administration of opiate antagonists the program uses. This could include intranasal administration, intramuscular injection, or both. The program can use any training from any person or organization that includes instruction on how to safely administer these medications, a registered nurse is **not** required to provide the training.

Effective July 1, 2023. MN Laws, Chapter 61, Article 5, Section 6 (2023 245A.242)

What providers need to do

Children's residential facilities with a **chemical dependency (substance use disorder) treatment certification**, must ensure that a supply of an opiate antagonist is always available at the program to respond to a potential overdose and that staff receive training on how to administer the medication. The license holder must maintain a copy of the written standing order that permits the program to maintain a supply of opiate antagonists on site. The Minnesota Department of Health's Drug Overdose Prevention Resources webpage under the naloxone heading contains resources to assist providers with obtaining this medication and staff training resources.

Substance use disorder treatment–Former students

Overview

For children's residential facilities with a **chemical dependency (substance use disorder) treatment certification**, former students who have completed certain educational requirements may practice alcohol and drug counseling without a permit or license for 90 days. The 90-day period begins from the degree conferral date from an accredited school or educational program or from the last date the former student received credit for an alcohol and drug counseling course from an accredited school or educational program. Former students may only practice at the site where the student completed their internship or practicum and must be paid for work during the 90-day practice period.

In DHS-licensed programs, an alcohol and drug counselor (ADC) must supervise and be responsible for all treatment services that a former student performs. Additionally, an ADC must review and sign each assessment, individual treatment plan, progress note, and treatment plan review that a former student prepares. Former students must receive the same orientation and trainings as those for staff. **Effective August 1, 2023.**

- The definition for a former student that lists the educational requirements that must be met to be considered a former student is in MN Laws, Chapter 49, Section 1 (2023 148F.01, subd. 14a).
- The practice limits are in MN Laws, Chapter 49, Section 2 (2023 148F.11, subd. 2a).
- The requirements for supervision and training in a licensed program are in MN Laws, Chapter 70, Article 6, Section 33 (2023 245A.245).

What providers need to do

Personnel policies must include a job description for the former student position that defines the responsibilities, duties, and qualifications staff need to perform those duties. License holders that have former students at their programs must document in the personnel file that the person meets all requirements to be a former student and must verify and document the start date of the 90-day period. On an ongoing basis, the program must meet all requirements for former student supervision and alcohol and drug counselor review and signing of documents.

HIV training

Overview

For children's residential facilities with a **chemical dependency (substance use disorder) treatment certification**, requirements for the HIV minimum standards change to require DHS to outline the content for the annual training programs must provide to staff. The outline is available on the children's residential facilities webpage by clicking the HIV minimum standards heading. When you click this hyperlink, a summary will appear that explains the annual training content outline. There is also a link to a new 3-page condensed document to use for staff and client orientations. This document also contains a list of referral sources providers may use to meet the requirement in 245A.19, paragraph (c). A more expansive resource guide is also available to inform your policies and procedures and to provide additional optional training contents. **Effective August 1, 2023**. MN Laws, Chapter 49, Section 3 (2023 245A.19).

What providers need to do

Providers may begin using the new material as soon as they wish but must transition to the new content in all trainings, policies, and procedures by **January 1, 2024**. The email at this link was sent to programs to notify them of these changes.

Infant safe sleep

Overview

This section applies to programs that:

- directly care for infants, or
- provide services to parents with their infants at the program.

For programs with staff who directly care for infants:

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 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. More information about these changes will be provided prior to the January 1, 2024, effective date.

For residential settings specializing in providing prenatal, postpartum, or parenting supports for youth (Minnesota Statutes, Section 245A.25, subd. 6)

License holders are not directly required to meet the standards in 245A.1435 while the infant's parent is responsible for supervising them. However, the license holder must provide education to parents about these important safety standards as required by Minnesota Statutes, Section 245A.25,subd. 6, para. (d). DHS will make minor updates to the educational material that license holders must provide to parents to reflect some of these changes. DHS will notify programs when the new version is available.

Effective January 1, 2024. Chapter 70, Article 8, Sections 4, 19, 20, 21 (2023 245A.02, subd. 5b; 245A.1435; 245A.146, subd. 3; 245A.16, subd. 1)

What providers need to do

For programs that directly care for infants

Programs must ensure staff are familiar with the new language and do 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, programs 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 prior to the January 1, 2024, effective date.

If a parent or guardian requests the use of a cradleboard for a cultural accommodation, programs may request a variance to Minnesota Statutes, section 245A.1435. The DHS cradleboard variance request form will be developed and shared prior to the January 1, 2024, effective date. A cradleboard variance may only be issued by the DHS commissioner. If a variance is granted, the license holder must check the cradleboard not less than monthly to ensure it is structurally sound and there are no loose or protruding parts and maintain written documentation of this review.

The DHS Sudden Unexpected Infant Death Training in Develop will be updated in the coming months to reflect the new legislative language.

For residential settings specializing in providing prenatal, postpartum, or parenting supports for youth (Minnesota Statutes, Section 245A.25, subd. 6)

Beginning January 1, 2024, provide the new education material to parents who need it and who have not yet received the existing version.

Nonprofit corporation controlling individual

Overview

The definitions for **owner** and **controlling individual** changed to include a nonprofit corporation as one type of owner of a licensed program and therefore also a controlling individual. Programs with a nonprofit corporation included as a controlling individual can change their board of directors without applying for a new license. This eliminates a burdensome and redundant licensing process for nonprofit corporations that other types of organizations do not have to complete. This change also clarifies the definition of a controlling individual by including the president and treasurer of the board of directors of a nonprofit corporation which were previously part of the owner definition. **Effective July 1, 2023**. MN Laws, Chapter 70, Article 17, Sections 9 and 10 (2023 245A.02, subds. 5a and 10b).

What providers need to do

License holders that are a nonprofit corporation and that are not listed as a controlling individual for the license will need to update their license information with DHS. To update this information, please contact the licensor for your program. If you do not know who your licensor is, email: dhs.mhcdlicensing@state.mn.us.

Questions

If you have questions about this implementation plan or other licensing requirements, please contact your licensor directly or email dhs.mhcdlicensing@state.mn.us.

Background studies

Updates on legislative changes related to background studies are posted on the "What's new" for background studies webpage.