

# Residential Facilities for Adults with Mental Illness: 2023 Legislative changes and program implementation

October 2023

The 2023 Legislature made changes to laws that impact the Department of Human Services (DHS) licensed residential facilities for adults with mental illness. 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.

## Prone and contraindicated restraint prohibitions

### Overview

**Prone restraint prohibition.** A prone restraint is a physical 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;
- 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.

**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.

**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.

## 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 \(2023 245A.041, subdivision 6\)](#).

## 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.

## Updating licensing rules

### Overview

DHS will begin a multi-year project to update the licensing requirements for residential adult mental health programs licensed according to Minnesota Rules, [parts 9520.0500 to 9520.0670](#). This process will include consulting with programs, clients, families, counties, and other people and organizations that these requirements impact. These licensing standards are over 40 years old and many need improvement. Some of the focus areas will be:

- updating requirements for [category I programs](#) to align with current mental health practices, client rights for similar services, and health and safety needs of clients receiving services;
- removing the [category II program](#) type; and
- revising and codifying the licensing requirements for the [Forensic Mental Health Program](#) which are currently under a variance.

Exploring additional ideas for improvements from providers will be an important part of the project. Beginning in the spring of 2024, DHS will invite programs and other partners to a series of meetings to determine what rule changes should be made. Any changes will likely not become effective until at least some point in 2026 after formal amendments to the rule are made. [MN Laws, Chapter 70, Article 9, Section 38](#).

## What providers need to do

License holders should begin thinking about the changes, additions, subtractions, and improvements they would like made to the existing rules and be ready to discuss them next spring.

## 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](mailto: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](mailto: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](#).