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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2215

02/27/2023 Authored by Noor and Neu Brindley The bill was read for the first time and referred to the Committee on Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying an exception to the community residential
1.3 setting licensing moratorium; amending Minnesota Statutes 2022, sections 245A.03,
1.4 subdivision 7; 256S.2101, by adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2022, section 245A.03, subdivision 7, is amended to read:

1.7 Subd. 7. Licensing moratorium. (a) The commissioner shall not issue an initial license
1.8 for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult
1.9 foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter
1.10 for a physical location that will not be the primary residence of the license holder for the
1.11 entire period of licensure. If a family child foster care home or family adult foster care home
1.12 license is issued during this moratorium, and the license holder changes the license holder's
1.13 primary residence away from the physical location of the foster care license, the
1.14 commissioner shall revoke the license according to section 245A.07. The commissioner
1.15 shall not issue an initial license for a community residential setting licensed under chapter
1.16 245D. When approving an exception under this paragraph, the commissioner shall consider
1.17 the resource need determination process in paragraph (h), the availability of foster care
1.18 licensed beds in the geographic area in which the licensee seeks to operate, the results of a
1.19 person's choices during their annual assessment and service plan review, and the
1.20 recommendation of the local county board. The determination by the commissioner is final
1.21 and not subject to appeal. Exceptions to the moratorium include:

1.22 (1) foster care settings where at least 80 percent of the residents are 55 years of age or
1.23 older;

2.1 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, or  
2.2 community residential setting licenses replacing adult foster care licenses in existence on  
2.3 December 31, 2013, and determined to be needed by the commissioner under paragraph  
2.4 (b);

2.5 (3) new foster care licenses or community residential setting licenses determined to be  
2.6 needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/DD,  
2.7 or regional treatment center; restructuring of state-operated services that limits the capacity  
2.8 of state-operated facilities; or allowing movement to the community for people who no  
2.9 longer require the level of care provided in state-operated facilities as provided under section  
2.10 256B.092, subdivision 13, or 256B.49, subdivision 24;

2.11 (4) new foster care licenses or community residential setting licenses determined to be  
2.12 needed by the commissioner under paragraph (b) for persons requiring hospital-level care;  
2.13 ~~or~~

2.14 (5) new foster care licenses or community residential setting licenses for people receiving  
2.15 customized living or 24-hour customized living services under the brain injury or community  
2.16 access for disability inclusion waiver plans under section 256B.49 and residing in the  
2.17 customized living setting before July 1, 2022, for which a license is required. A customized  
2.18 living service provider subject to this exception may rebut the presumption that a license  
2.19 is required by seeking a reconsideration of the commissioner's determination. The  
2.20 commissioner's disposition of a request for reconsideration is final and not subject to appeal  
2.21 under chapter 14. The exception is available until June 30, 2023. This exception is available  
2.22 when:

2.23 (i) the person's customized living services are provided in a customized living service  
2.24 setting serving four or fewer people under the brain injury or community access for disability  
2.25 inclusion waiver plans under section 256B.49 in a single-family home operational on or  
2.26 before June 30, 2021. Operational is defined in section 256B.49, subdivision 28;

2.27 (ii) the person's case manager provided the person with information about the choice of  
2.28 service, service provider, and location of service, including in the person's home, to help  
2.29 the person make an informed choice; and

2.30 (iii) the person's services provided in the licensed foster care or community residential  
2.31 setting are less than or equal to the cost of the person's services delivered in the customized  
2.32 living setting as determined by the lead agency; or

2.33 (6) new foster care licenses or community residential setting licenses for a customized  
2.34 living setting that is a single-family home in which customized living or 24-hour customized

3.1 living services were authorized and delivered on June 30, 2021, under the brain injury or  
3.2 community access for disability inclusion waiver plans under section 256B.49 or the elderly  
3.3 waiver under chapter 256S and for which a license is required. A customized living service  
3.4 provider subject to this exception may rebut the presumption that a license is required by  
3.5 seeking a reconsideration of the commissioner's determination. The commissioner's  
3.6 disposition of a request for reconsideration is final and not subject to appeal under chapter  
3.7 14. The exception is available for any eligible setting licensed as an assisted living facility  
3.8 under chapter 144G on or after August 1, 2021, if the assisted living licensee applies for a  
3.9 license under chapter 245D before June 30, 2023. The initial licensed capacity of the setting  
3.10 under this exception must be four. This exception is available when:

3.11 (i) the case manager of each resident of the customized living setting provided the person  
3.12 with information about the choice of service, service provider, and location of service,  
3.13 including in the person's home, to help the person make an informed choice about remaining  
3.14 in the newly licensed setting; and

3.15 (ii) the estimated average cost of services provided in the licensed foster care or  
3.16 community residential setting is less than or equal to the estimated average cost of services  
3.17 delivered in the customized living setting as determined by the lead agency.

3.18 (b) The commissioner shall determine the need for newly licensed foster care homes or  
3.19 community residential settings as defined under this subdivision. As part of the determination,  
3.20 the commissioner shall consider the availability of foster care capacity in the area in which  
3.21 the licensee seeks to operate, and the recommendation of the local county board. The  
3.22 determination by the commissioner must be final. A determination of need is not required  
3.23 for a change in ownership at the same address.

3.24 (c) When an adult resident served by the program moves out of a foster home that is not  
3.25 the primary residence of the license holder according to section 256B.49, subdivision 15,  
3.26 paragraph (f), or the adult community residential setting, the county shall immediately  
3.27 inform the Department of Human Services Licensing Division. The department may decrease  
3.28 the statewide licensed capacity for adult foster care settings.

3.29 (d) Residential settings that would otherwise be subject to the decreased license capacity  
3.30 established in paragraph (c) shall be exempt if the license holder's beds are occupied by  
3.31 residents whose primary diagnosis is mental illness and the license holder is certified under  
3.32 the requirements in subdivision 6a or section 245D.33.

3.33 (e) A resource need determination process, managed at the state level, using the available  
3.34 data required by section 144A.351, and other data and information shall be used to determine

4.1 where the reduced capacity determined under section 256B.493 will be implemented. The  
4.2 commissioner shall consult with the stakeholders described in section 144A.351, and employ  
4.3 a variety of methods to improve the state's capacity to meet the informed decisions of those  
4.4 people who want to move out of corporate foster care or community residential settings,  
4.5 long-term service needs within budgetary limits, including seeking proposals from service  
4.6 providers or lead agencies to change service type, capacity, or location to improve services,  
4.7 increase the independence of residents, and better meet needs identified by the long-term  
4.8 services and supports reports and statewide data and information.

4.9 (f) At the time of application and reapplication for licensure, the applicant and the license  
4.10 holder that are subject to the moratorium or an exclusion established in paragraph (a) are  
4.11 required to inform the commissioner whether the physical location where the foster care  
4.12 will be provided is or will be the primary residence of the license holder for the entire period  
4.13 of licensure. If the primary residence of the applicant or license holder changes, the applicant  
4.14 or license holder must notify the commissioner immediately. The commissioner shall print  
4.15 on the foster care license certificate whether or not the physical location is the primary  
4.16 residence of the license holder.

4.17 (g) License holders of foster care homes identified under paragraph (f) that are not the  
4.18 primary residence of the license holder and that also provide services in the foster care home  
4.19 that are covered by a federally approved home and community-based services waiver, as  
4.20 authorized under chapter 256S or section 256B.092 or 256B.49, must inform the human  
4.21 services licensing division that the license holder provides or intends to provide these  
4.22 waiver-funded services.

4.23 (h) The commissioner may adjust capacity to address needs identified in section  
4.24 144A.351. Under this authority, the commissioner may approve new licensed settings or  
4.25 delicense existing settings. Delicensing of settings will be accomplished through a process  
4.26 identified in section 256B.493.

4.27 (i) The commissioner must notify a license holder when its corporate foster care or  
4.28 community residential setting licensed beds are reduced under this section. The notice of  
4.29 reduction of licensed beds must be in writing and delivered to the license holder by certified  
4.30 mail or personal service. The notice must state why the licensed beds are reduced and must  
4.31 inform the license holder of its right to request reconsideration by the commissioner. The  
4.32 license holder's request for reconsideration must be in writing. If mailed, the request for  
4.33 reconsideration must be postmarked and sent to the commissioner within 20 calendar days  
4.34 after the license holder's receipt of the notice of reduction of licensed beds. If a request for

5.1 reconsideration is made by personal service, it must be received by the commissioner within  
5.2 20 calendar days after the license holder's receipt of the notice of reduction of licensed beds.

5.3 (j) The commissioner shall not issue an initial license for children's residential treatment  
5.4 services licensed under Minnesota Rules, parts 2960.0580 to 2960.0700, under this chapter  
5.5 for a program that Centers for Medicare and Medicaid Services would consider an institution  
5.6 for mental diseases. Facilities that serve only private pay clients are exempt from the  
5.7 moratorium described in this paragraph. The commissioner has the authority to manage  
5.8 existing statewide capacity for children's residential treatment services subject to the  
5.9 moratorium under this paragraph and may issue an initial license for such facilities if the  
5.10 initial license would not increase the statewide capacity for children's residential treatment  
5.11 services subject to the moratorium under this paragraph.

5.12 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2021.

5.13 Sec. 2. Minnesota Statutes 2022, section 256S.2101, is amended by adding a subdivision  
5.14 to read:

5.15 **Subd. 1a. Temporary rate increase for disability waiver customized living**  
5.16 **rates.** Effective for services provided between July 1, 2023, and June 30, 2025, all rates  
5.17 and rate components for community access for disability inclusion customized living and  
5.18 brain injury customized living under section 256B.4914 shall be the sum of 21.6 percent of  
5.19 the rates calculated under sections 256S.211 to 256S.215 and 78.4 percent of the rates  
5.20 calculated using the rate methodology in effect as of June 30, 2017.

5.21 Sec. 3. **DIRECTION TO COMMISSIONER; FOSTER CARE MORATORIUM**  
5.22 **EXCEPTION APPLICATIONS.**

5.23 (a) The commissioner must expedite the processing and review of all new and pending  
5.24 applications for an initial foster care or community residential setting license under Minnesota  
5.25 Statutes, section 245A.03, subdivision 7, paragraph (a), clauses (5) and (6).

5.26 (b) The commissioner must include on the application materials for an initial foster care  
5.27 or community residential setting license under Minnesota Statutes, section 245A.03,  
5.28 subdivision 7, paragraph (a), clauses (5) and (6), an opportunity for applicants to signify  
5.29 that they are seeking an initial foster care or community residential setting license in order  
5.30 to transition an existing operational customized living setting to a foster care or community  
5.31 residential setting. Operational is defined in section 256B.49, subdivision 28.

6.1 (c) For any pending applications for a license under Minnesota Statutes, section 245A.03,  
6.2 subdivision 7, paragraph (a), clause (5), the commissioner must determine if the applicant  
6.3 is eligible for an exception under Minnesota Statutes, section 245A.03, subdivision 7,  
6.4 paragraph (a), clause (6), and if so, act upon the application under clause (6) rather than  
6.5 clause (5).

6.6 (d) The commissioner must increase to four the licensed capacity of any setting for  
6.7 which the commissioner issued a license under Minnesota Statutes, section 245A.03,  
6.8 subdivision 7, paragraph (a), clause (5), before the final enactment of this act.

6.9 (e) This section expires June 30, 2023.

6.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.