

Alternative Overnight Supervision Licensure Requirements compared to the requirements in 245D Home and Community-Based Standards, Monitoring Technology Usage Policy and Community Based Services Manual: Remote Support

245A, Subd. 7a. Alternate overnight supervision technology; adult foster care and community residential setting licenses.	245D	Monitoring technology usage policy	Remote support – CBSM
<p>(a) The commissioner may grant an applicant or license holder an adult foster care or community residential setting license for a residence that does not have a caregiver in the residence during normal sleeping hours as required under Minnesota Rules, part 9555.5105, subpart 37, item B, or section 245D.02, subdivision 33b, but uses monitoring technology to alert the license holder when an incident occurs that may jeopardize the health, safety, or rights of a foster care recipient. The applicant or license holder must comply with all other requirements under Minnesota Rules, parts 9555.5105 to 9555.6265, or applicable requirements under chapter 245D, and the requirements under this subdivision. The license printed by the commissioner must state in bold and large font:</p> <p>(1) that the facility is under electronic monitoring; and</p> <p>2) the telephone number of the county's common entry point for making reports of suspected maltreatment of vulnerable adults under section 626.557, subdivision 9</p>	<p>*See supervision definitions at end of document.</p>	<p>Monitoring technology supervision: The use of equipment to oversee, monitor and supervise someone who receives waiver/AC services. It can help keep people safe and support independence. The equipment used may include alarms, sensors, cameras and other devices.</p> <p>Affected participant: A person who, as a roommate or significant other who lives with the person and is not a caregiver, may have their personally identifiable information viewed or recorded by the monitoring technology.</p>	<p>Remote support is the provision of a covered service by a staff member or caregiver who is at a remote location and is engaged with the person through enabling technology that uses live, two-way communication.</p> <p>Remote support as a method of service delivery is covered when it:</p> <ul style="list-style-type: none"> • Is chosen and preferred as a service delivery method by the person or their guardian (if applicable) • Appropriately meets the person's assessed needs • Is provided within the scope of the service being delivered • Is provided as specified in the person's support plan. <p>The remote support method of service delivery does not affect:</p> <ul style="list-style-type: none"> • The covered service's licensing requirements • The alternative overnight supervision technology (AOST) licensing requirements. <p>**We'll need to look at remote support and what might need to change or be clarified when the AOST license goes away.</p>
<p>(b) Applications for a license under this section must be submitted directly to the Department of Human Services licensing</p>	<p>N/A – would no longer occur separate from 245D licensing</p>		

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division. The licensing division must immediately notify the county licensing agency. The licensing division must collaborate with the county licensing agency in the review of the application and the licensing of the program.			
(c) Before a license is issued by the commissioner, and for the duration of the license, the applicant or license holder must establish, maintain, and document the implementation of written policies and procedures addressing the requirements in paragraphs (d) through (f).	N/A		
(d) The applicant or license holder must have policies and procedures that:			
(1) establish characteristics of target populations that will be admitted into the home, and characteristics of populations that will not be accepted into the home;	<p>245D.071, Subd. 2. Abuse prevention. Prior to or upon initiating services, the license holder must develop, document, and implement an abuse prevention plan according to section 245A.65, subdivision 2.</p> <p>This subd reads under (a): (1) The assessment of the population shall include an evaluation of the following factors: age, gender, mental functioning, physical and emotional health or behavior of the client; the need for specialized programs of care for clients; the need for training of staff to meet identified individual needs; and the knowledge a license holder may have regarding previous abuse that is relevant to minimizing risk of abuse for clients.</p> <p>245D.11, Subd 4 Admission Criteria</p>		<p>For people on Brain Injury (BI), Community Access for Disability Inclusion (CADI), Community Alternative Care (CAC) and Developmental Disabilities (DD) waivers, remote support can be used for the following allowable services (CRS is on the list of services)</p> <p>Remote support as a method of service delivery is covered when it:</p> <ul style="list-style-type: none"> • Is chosen and preferred as a service delivery method by the person or their guardian (if applicable)

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	<p>The license holder must establish policies and procedures that promote continuity of care by ensuring that admission or service initiation criteria:</p> <p>(1) is consistent with the service-related rights identified in section 245D.04, subdivisions 2, clauses (4) to (7), and 3, clause (8);</p> <p>(2) identifies the criteria to be applied in determining whether the license holder can develop services to meet the needs specified in the person's coordinated service and support plan;</p> <p>(5) requires the person or the person's legal representative and license holder to sign and date the residency agreement when the license holder provides foster care or supported living services under section 245D.03, subdivision 1, paragraph (c), clause (3), item (i) or (ii), to a person living in community residential settings defined in section 245D.02, subdivision 4a; an adult foster home defined in Minnesota Rules, part 9555.5105, subpart 5; or a foster family home defined in Minnesota Rules, part 9560.0521, subpart 12. The residency agreement must include service termination requirements specified in section 245D.10, subdivision 3a, paragraphs (b) to (f). The residency agreement must be reviewed annually, dated, and signed by the person or the person's legal representative and license holder.</p>		<ul style="list-style-type: none"> • Appropriately meets the person's assessed needs • Is provided within the scope of the service being delivered • Is provided as specified in the person's support plan. <p>Remote support can be initiated by the person or staff member/caregiver, on either a scheduled or intermittent/as-needed basis, depending on the person's individual support plan needs.</p>
(2) explain the discharge process when a resident served by the program requires overnight supervision or other services that	245D.10, Subd. 3a Service termination. (a) The license holder must establish policies and procedures for service termination that promote		

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cannot be provided by the license holder due to the limited hours that the license holder is on site;	continuity of care and service coordination with the person and the case manager and with other licensed caregivers, if any, who also provide support to the person.		
(3) describe the types of events to which the program will respond with a physical presence when those events occur in the home during time when staff are not on site, and how the license holder's response plan meets the requirements in paragraph (e), clause (1) or (2);	245D.071, Subd. 3 (d) A discussion of how technology might be used to meet the person's desired outcomes must be included in the 45-day planning meeting. The coordinated service and support plan or support plan addendum must include a summary of this discussion. The summary must include a statement regarding any decision that is made regarding the use of technology and a description of any further research that needs to be completed before a decision regarding the use of technology can be made. Nothing in this paragraph requires that the coordinated service and support plan include the use of technology for the provision of services.		<p>When a person chooses to use remote support, their support plan must include all of the following information:</p> <ul style="list-style-type: none"> • The person's assessed needs and identified goals that can be met using remote support • How remote support will support the person to live and work in the most integrated community settings • The person's needs that must be met with in-person support • How remote support will not replace in-person support provided as a core service function • The plan for providing in-person and remote support based on the person's needs, to ensure their health and safety • Whether the person or their guardian (if applicable) agrees to the use of cameras for service delivery • Amount, frequency and duration of remote support use.

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<p>(4) establish a process for documenting a review of the implementation and effectiveness of the response protocol for the response required under paragraph (e), clause (1) or (2). The documentation must include:</p> <p>(i) a description of the triggering incident;</p> <p>(ii) the date and time of the triggering incident;</p> <p>(iii) the time of the response or responses under paragraph (e), clause (1) or (2);</p> <p>(iv) whether the response met the resident's needs;</p> <p>(v) whether the existing policies and response protocols were followed; and</p> <p>(vi) whether the existing policies and protocols are adequate or need modification.</p>	<p>245D.071, Subd 5: Service plan review and evaluation. (a) The license holder must give the person or the person's legal representative, case manager, and other people as identified by the person or the person's legal representative, an opportunity to participate in the ongoing review and development of the service plan and the methods used to support the person and accomplish outcomes identified in subdivisions 3 and 4. At least once per year, or within 30 days of a written request by the person, the person's legal representative, or the case manager, the license holder, in coordination with the person's support team or expanded support team, must meet with the person, the person's legal representative, the case manager, and other people as identified by the person or the person's legal representative, and participate in service plan review meetings following stated timelines established in the person's coordinated service and support plan or coordinated service and support plan addendum. The purpose of the service plan review is to determine whether changes are needed to the service plan based on the assessment information, the license holder's evaluation of progress toward accomplishing outcomes, or other information provided by the support team or expanded support team.</p> <p>245D.11, Subd 2 (7) a procedure for the review of incidents and emergencies to identify trends or patterns, and corrective action if needed. The license holder</p>	<p>Ongoing review The lead agency must review annually. That review includes documentation in the support plan of:</p> <ul style="list-style-type: none"> • The monitoring technology that has been used • Progress toward achieving identified goal. <p>The lead agency must review as soon as possible if there is a(n):</p> <ul style="list-style-type: none"> • Change in guardianship or legal representative responsible for informed consent • Decrease in the participant's level of control over the monitoring technology • Increase in the number of critical incidents while using monitoring technology • Substantial change to in where, when or the amount of time that monitoring technology is used. 	

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	<p>must establish and maintain a record-keeping system for the incident and emergency reports. Each incident and emergency report file must contain a written summary of the incident. The license holder must conduct a review of incident reports for identification of incident patterns, and implementation of corrective action as necessary to reduce occurrences. Each incident report must include: (i) the name of the person or persons involved in the incident. It is not necessary to identify all persons affected by or involved in an emergency unless the emergency resulted in an incident; (ii) the date, time, and location of the incident or emergency; (iii) a description of the incident or emergency; (iv) a description of the response to the incident or emergency and whether a person's coordinated service and support plan addendum or program policies and procedures were implemented as applicable; (v) the name of the staff person or persons who responded to the incident or emergency; and (vi) the determination of whether corrective action is necessary based on the results of the review.</p>		
<p>When no physical presence response is completed for a three-month period, the license holder's written policies and procedures must require a physical presence response drill to be conducted for which the effectiveness of the response protocol under paragraph (e), clause (1) or (2), will be reviewed and documented as required under this clause; and</p>			

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(5) establish that emergency and nonemergency phone numbers are posted in a prominent location in a common area of the home where they can be easily observed by a person responding to an incident who is not otherwise affiliated with the home.	245D.22 Subd 7: Telephone and posted numbers. A list of emergency numbers must be posted in a prominent location. When an area has a 911 number or a mental health crisis intervention team number, both numbers must be posted and the emergency number listed must be 911. In areas of the state without a 911 number, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center. The names and telephone numbers of each person's representative, physician or advanced practice registered nurse, and dentist must be readily available		
(e) The license holder must document and include in the license application which response alternative under clause (1) or (2) is in place for responding to situations that present a serious risk to the health, safety, or rights of residents served by the program:	N/A		
(1) response alternative (1) requires only the technology to provide an electronic notification or alert to the license holder that an event is underway that requires a response. Under this alternative, no more than ten minutes will pass before the license holder will be physically present on site to respond to the situation; or (iii) the license holder maintains written procedures to dispatch emergency	*refer again to the CSSP addendum requirements listed above.	The use of all monitoring technology must meet the following three requirements: <ul style="list-style-type: none"> • Achieve an identified goal or outcome • Address health, potential individual risks and safety planning • Be the least restrictive option and the person's preferred method to meet an assessed need. The lead agency must update the person's support plan to describe how the use of the	Remote support can be initiated by the person or staff member/caregiver, on either a scheduled or intermittent/as-needed basis, depending on the person's individual support plan needs.

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<p>response personnel to the site in the event of an identified emergency; and</p> <p>(iv) each resident's individualized plan of care, coordinated service and support plan under sections 256B.0913, subdivision 8; 256B.092, subdivision 1b; 256B.49, subdivision 15; and 256S.10, if required, or individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the maximum response time, which may be greater than ten minutes, for the license holder to be on site for that resident.</p>		<p>monitoring technology meets these three requirements.</p>	
<p>(2) response alternative (2) requires the electronic notification and alert system under alternative (1), but more than ten minutes may pass before the license holder is present on site to respond to the situation. Under alternative (2), all of the following conditions are met:</p> <p>(i) the license holder has a written description of the interactive technological applications that will assist the license holder in communicating with and assessing the needs related to the care, health, and safety of the foster care recipients. This interactive technology must permit the license holder to remotely assess the well being of the resident served by the program without requiring the initiation of the foster care recipient.</p>	<p>245D.07 (3) providing the most integrated setting and inclusive service delivery that supports, promotes, and allows:</p> <p>(iii) a balance between risk and opportunity, meaning the least restrictive supports or interventions necessary are provided in the most integrated settings in the most inclusive manner possible to support the person to engage in activities of the person's own choosing that may otherwise present a risk to the person's health, safety, or rights.</p>	<p>Monitoring technology equipment might include:</p> <ul style="list-style-type: none"> • Audio listening devices • Cameras and video equipment (e.g., baby video monitors) • Mobile, on-person equipment (e.g., body sensors, GPS) • Sensors not on the person (e.g., motion sensors, door and window alarms). <p>Monitoring-technology usage can include the equipment as well as remote-based staff paid to provide oversight and support of a person.</p>	<p>Remote support: A real-time, two-way communication between the provider and the person. Remote support:</p> <ul style="list-style-type: none"> • Supplements direct in-person service delivery of individualized home supports and supported living services for adults in their own home (SLS) • Meets the intermittent or unscheduled support needs for a person to live and work in the most integrated setting. <p>Real-time, two-way communication: Remote support delivered through one of the following methods:</p>

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<p>Requiring the foster care recipient to initiate a telephone call does not meet this requirement;</p> <p>(ii) the license holder documents how the remote license holder is qualified and capable of meeting the needs of the foster care recipients and assessing foster care recipients' needs under item (i) during the absence of the license holder on site;</p>			<ul style="list-style-type: none"> • Telephone • Secure written electronic messaging (e.g., texting) (Note: this does not include email or fax) • Secure video conferencing.
<p>(f) Each resident's placement agreement, individual service agreement, and plan must clearly state that the adult foster care or community residential setting license category is a program without the presence of a caregiver in the residence during normal sleeping hours; the protocols in place for responding to situations that present a serious risk to the health, safety, or rights of residents served by the program under paragraph (e), clause (1) or (2); and a signed informed consent from each resident served by the program or the person's legal representative documenting the person's or legal representative's agreement with placement in the program. If electronic monitoring technology is used in the home, the informed consent form must also explain the following:</p>		<p>The lead agency approves and oversees the use of all monitoring technology. When camera or video equipment is located in the person's bedroom, DHS must also approve. The case manager collaborates with the person and his/her team to make sure monitoring technology is appropriate. Monitoring technology cannot be used without informed consent.</p> <p>As part of the informed-consent process, the lead agency must complete and keep a copy of each of the following in the person's file:</p> <ol style="list-style-type: none"> 1. Participant Consent for Use of Monitoring Technology, DHS-6789B (PDF) 2. Affected Participant Consent for the Use of Monitoring Technology form, DHS-6789C (PDF), if applicable (for a definition of affected participant, see definition section) 	

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<p>(1) how any electronic monitoring is incorporated into the alternative supervision system;</p> <p>(2) the backup system for any electronic monitoring in times of electrical outages or other equipment malfunctions;</p> <p>(3) how the caregivers or direct support staff are trained on the use of the technology;</p> <p>(4) the event types and license holder response times established under paragraph (e);</p>		<p>3. The updated support plan.</p> <p>Participant participation: We recognize there will be times when the person's guardian may need to be heavily involved in this process. However, the participant, regardless of age, should be involved in the informed consent and planning process as much as possible.</p> <p>When consent is not required: Participants and affected participants do not have to give consent for door and window alarms that do not record personally identifiable data when used:</p> <ul style="list-style-type: none"> • To supplement the supervision provided by an on-site caregiver and address critical health and safety needs as documented in the support plan • By non-residential providers as part of normal business operations. 	
<p>(5) how the license holder protects each resident's privacy related to electronic monitoring and related to any electronically recorded data generated by the monitoring system. A resident served by the program may not be removed from a program under this subdivision for failure to consent to electronic monitoring. The consent form must explain where and how the electronically recorded data is stored,</p>	<p>245D.11, Subd. 3. Data privacy. The license holder must establish policies and procedures that promote service recipient rights by ensuring data privacy according to the requirements in: (1) the Minnesota Government Data Practices Act, section 13.46, and all other applicable Minnesota laws and rules in handling all data related to the services provided; and</p>	<p>The license holder or primary caregiver must store electronic video and audio recordings of participants for five days unless a participant or legal representative requests the recording be held longer based on:</p> <ul style="list-style-type: none"> • A specific report of alleged maltreatment 	<p>1. Respect and maintain the person's privacy at all times, including when:</p> <ul style="list-style-type: none"> • The person is in settings typically used by the general public • Scheduled or intermittent/as-needed support includes responding to a person's health, safety and other support needs for personal cares (Note: DHS approval is required for

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<p>with whom it will be shared, and how long it is retained; and</p> <p>*For the bolded area referring to discharges, refer back to the discharge section within 245D. The preference would be for alternate forms of supervision to be handled the same way as any other overnight supervision change in need like is currently in practice for asleep/awake changes.</p>	<p>(2) the Health Insurance Portability and Accountability Act of 1996 (HIPAA), to the extent that the license holder performs a function or activity involving the use of protected health information as defined under Code of Federal Regulations, title 45, section 164.501, including, but not limited to, providing health care services; health care claims processing or administration; data analysis, processing, or administration; utilization review; quality assurance; billing; benefit management; practice management; repricing; or as otherwise provided by Code of Federal Regulations, title 45, section 160.103. The license holder must comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, Code of Federal Regulations, title 45, parts 160 to 164, and all applicable requirements.</p>	<ul style="list-style-type: none"> • The recording captures an incident or event of alleged maltreatment. <p>In that case, the recordings must be maintained in a secured area for 30 days to give the investigating agency an opportunity to make a copy of the recording. The investigating agency will maintain the recordings as required in Minn. Stat. §626.557, subd. 12b.</p> <p>HIPAA requirements: All video, audio or other personally identifiable information must be treated consistently with HIPAA regulations.</p>	<p>cameras in bedrooms. Use of cameras in bathrooms is prohibited.)</p> <p>2. Ensure the use of enabling technology complies with relevant requirements under the Health Insurance Portability and Accountability Act (HIPAA)</p> <p>3. Comply with the data privacy laws, restrictions and guidelines in MHCP Provider Agreement, DHS-4138 (PDF) and the data privacy provisions in paragraph 21 of the agreement</p> <p>4. Ensure all transmitted written electronic messages are retrievable for review by choosing a storage method that makes the messages retrievable.</p>
<p>(6) the risks and benefits of the alternative overnight supervision system.</p> <p>The written explanations under clauses (1) to (6) may be accomplished through cross-references to other policies and procedures as long as they are explained to the person giving consent, and the person giving consent is offered a copy.</p>	N/A		
<p>(g) Nothing in this section requires the applicant or license holder to develop or maintain separate or duplicative policies, procedures, documentation,</p>	N/A		

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consent forms, or individual plans that may be required for other licensing standards, if the requirements of this section are incorporated into those documents.			
(h) The commissioner may grant variances to the requirements of this section according to section 245A.04, subdivision 9 .	N/A		
(i) For the purposes of paragraphs (d) through (h), "license holder" has the meaning under section 245A.02, subdivision 9 , and additionally includes all staff, volunteers, and contractors affiliated with the license holder.	N/A		
(j) For the purposes of paragraph (e), the terms "assess" and "assessing" mean to remotely determine what action the license holder needs to take to protect the well-being of the foster care recipient.	N/A		
(k) The commissioner shall evaluate license applications using the requirements in paragraphs (d) to (f). The commissioner shall provide detailed application forms, including a checklist of criteria needed for approval.	N/A		
(l) To be eligible for a license under paragraph (a), the adult foster care or community residential setting license holder must not have had a conditional	N/A		

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license issued under section 245A.06 or any licensing sanction under section 245A.07 during the prior 24 months based on failure to provide adequate supervision, health care services, or resident safety in the adult foster care home or community residential setting.			
(m) The commissioner shall review an application for an alternative overnight supervision license within 60 days of receipt of the application. When the commissioner receives an application that is incomplete because the applicant failed to submit required documents or that is substantially deficient because the documents submitted do not meet licensing requirements, the commissioner shall provide the applicant written notice that the application is incomplete or substantially deficient. In the written notice to the applicant, the commissioner shall identify documents that are missing or deficient and give the applicant 45 days to resubmit a second application that is substantially complete. An applicant's failure to submit a substantially complete application after receiving notice from the commissioner is a basis for license denial under section 245A.05 . The commissioner shall complete subsequent review within 30 days.	N/A		

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(n) Once the application is considered complete under paragraph (m), the commissioner will approve or deny an application for an alternative overnight supervision license within 60 days.	N/A		
<p>(o) For the purposes of this subdivision, "supervision" means:</p> <p>(1) oversight by a caregiver or direct support staff as specified in the individual resident's place agreement or coordinated service and support plan and awareness of the resident's needs and activities; and</p> <p>(2) the presence of a caregiver or direct support staff in a residence during normal sleeping hours, unless a determination has been made and documented in the individual's coordinated service and support plan that the individual does not require the presence of a caregiver or direct support staff during normal sleeping hours.</p>	<p>245D.02, Subd. 33b. Supervision.</p> <p>(a) "Supervision" means:</p> <p>(1) oversight by direct support staff as specified in the person's coordinated service and support plan or coordinated service and support plan addendum and awareness of the person's needs and activities;</p> <p>(2) responding to situations that present a serious risk to the health, safety, or rights of the person while services are being provided; and</p> <p>(3) the presence of direct support staff at a service site while services are being provided, unless a determination has been made and documented in the person's coordinated service and support plan or coordinated service and support plan addendum that the person does not require the presence of direct support staff while services are being provided.</p> <p>(b) For the purposes of this definition, "while services are being provided," means any period of time during which the license holder will seek reimbursement for services.</p>	<p>Monitoring technology equipment usage and supervision must meet the following four requirements:</p> <ol style="list-style-type: none"> 1. Allow a caregiver to see, hear or locate a person 2. Be the most appropriate means (and the person's preferred method) to address assessed need(s) and goal(s) 3. Monitor the person in real time 4. Achieve one of the following: <ul style="list-style-type: none"> • Increase independence • Address a complex medical condition or other extreme circumstance • Reduce or minimize critical incidents • Improve the quality of supports. 	<p>Remote support: A real-time, two-way communication between the provider and the person. Remote support:</p> <ul style="list-style-type: none"> • Supplements direct in-person service delivery of individualized home supports and supported living services for adults in their own home (SLS) • Meets the intermittent or unscheduled support needs for a person to live and work in the most integrated setting. <p>Real-time, two-way communication: Remote support delivered through one of the following methods:</p> <ul style="list-style-type: none"> • Telephone • Secure written electronic messaging (e.g., texting) (Note: this does not include email or fax) • Secure video conferencing.

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