

## Exclusions from Chapter 245D licensure

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<b>Legal authority</b>	<a href="#">Federally approved BI, CAC, CADI, DD and EW waiver plans, Alternative Care (AC) program (Minn. Stat. §256B.0913), Minn. Stat. §245A.03, subd. 2(1) and 2(2), Minn. Stat. §245A.02, subd. 13, Minn. Stat. §144A.484, Minn. Stat. Ch. 144G</a>	
<b>Definitions</b>	<p><b>Individual provider:</b> A person who is not employed by an agency, organization or other type of provider business entity to deliver home and community-based services (HCBS) waiver services to an eligible person.</p> <p><b>Licensed home care agency with an HCBS designation:</b> A basic home care provider or a comprehensive home care provider with an HCBS designation under <a href="#">Minn. Stat. §144A.484</a>. The Minnesota Department of Health (MDH) licenses this type of provider.</p> <p><b>Hospital:</b> An acute care institution licensed under <a href="#">Minn. Stat. §144.50 to 144.58</a>. MDH licenses this type of provider.</p> <p><b>Nursing facility:</b> A facility licensed to provide nursing care for people who need long-term care, as defined in <a href="#">Minn. R. 9505.0175, subp. 23</a> and <a href="#">Minn. R. 9505.04658</a>. MDH licenses this type of provider.</p>	
<b>Overview</b>	<p>A provider must have a 245D license or a home care license with an HCBS designation to deliver the following services:</p> <ul style="list-style-type: none"> <li>• <a href="#">24-hour emergency assistance</a> (non-equipment).</li> <li>• <a href="#">Adult companion services</a>.</li> <li>• <a href="#">Homemaker</a> (home management and assistance with activities of daily living).</li> <li>• <a href="#">Individual community living supports (ICLS)</a>.</li> <li>• <a href="#">Individualized home supports</a> (without training).</li> <li>• <a href="#">Night supervision</a>.</li> <li>• <a href="#">Respite</a>.</li> </ul> <p>For the above services, the following types of providers may be excluded from 245D licensure, meaning they can deliver the services without a 245D license:</p> <ul style="list-style-type: none"> <li>• Individual providers.</li> <li>• Licensed home care agencies with an HCBS designation.</li> </ul> <p><b>Out-of-home respite</b></p> <p>When <a href="#">respite</a> is delivered outside of a person's home, the following providers also are excluded from 245D licensure:</p> <ul style="list-style-type: none"> <li>• Medicare-certified hospitals.</li> <li>• Medicare-certified nursing facilities.</li> <li>• Licensed adult foster care settings</li> <li>• Licensed assisted living facilities.</li> </ul>	
<b>Lead agency responsibilities</b>	<p>When a person chooses to use an excluded provider, the lead agency is responsible to:</p> <ul style="list-style-type: none"> <li>• Ensure the provider is enrolled as a Medical Assistance (MA) provider with Minnesota Health Care Programs (MHCP).</li> <li>• Ensure both the provider and the location where the person will receive services are able to meet the person's assessed needs.</li> <li>• Monitor the provider's delivery of services.</li> <li>• Monitor the person's health and safety, individual outcomes and provision of services, as documented in the person's support plan.</li> </ul>	
<b>Individual</b>	Individual providers are excluded from 245D licensure in some cases. If an	

<p><b>providers</b></p>	<p>individual provider serves more people than allowed in the scenarios below, the provider must have a 245D license. For provider standards and qualifications, refer to the section below.</p> <p><b>Related</b> Individual providers are excluded from 245D licensure if they provide services to a person to whom they are related. A person is considered “related” when there is an adoptive, biological or step relationship, or when they are a legal guardian (refer to <a href="#">CBSM – Paying relatives and legally responsible individuals</a>). A related person may be a:</p> <ul style="list-style-type: none"> <li>• Parent.</li> <li>• Child.</li> <li>• Sibling.</li> <li>• Niece or nephew.</li> <li>• Grandparent.</li> <li>• Aunt or uncle.</li> </ul> <p>For example, if an uncle provides services to his nephew, the uncle may be excluded from 245D licensure. If excluded, an individual provider only can serve one related person.</p> <p><b>Unrelated</b> Individual providers are excluded from 245D licensure if the people receiving services are both:</p> <ul style="list-style-type: none"> <li>• Unrelated to the individual provider.</li> <li>• From a single, related family.</li> </ul> <p>For example, if a neighbor provides services to siblings, the neighbor may be excluded from 245D licensure.</p> <p><b>Note</b> A person’s landlord or anyone who has any financial interest in a person’s housing <b>cannot</b> deliver ICLS. An unrelated provider <b>cannot</b> deliver respite to people younger than age 18 in an unlicensed setting.</p>
<p><b>144A-licensed home care agencies with an HCBS designation</b></p>	<p>Licensed home care providers with an HCBS designation may be excluded from 245D licensure. This exclusion applies to licensed home care agencies that <b>only</b> provide the 245D basic support services listed above. For provider standards and qualifications, refer to the section below.</p>
<p><b>Hospitals, nursing facilities, adult foster care settings and assisted living facilities</b></p>	<p>Hospitals and nursing facilities are excluded from 245D licensure when providing out-of-home waiver/AC respite services. This exclusion applies to Medicare-certified hospitals and Medicare-certified nursing facilities licensed by MDH. Assisted living facilities are excluded from 245D licensure when providing out-of-home AC/EW respite services. This exclusion applies to assisted living facilities licensed in accordance with <a href="#">Minn. Stat. Ch. 144G</a>. Adult foster care providers are excluded from 245D licensure when providing out-of-home AC/EW respite services. This exclusion applies to adult foster care providers licensed under <a href="#">Minn. R. 9555.5105 to 9555.6265</a> and <a href="#">Minn. Stat. Ch. 245A</a>. For provider standards and qualifications, refer to the section below.</p>
<p><b>Provider standards and qualifications</b></p>	<p><b>Individual providers</b> Although an individual provider may be excluded from 245D licensure, the provider still must:</p> <ul style="list-style-type: none"> <li>• Enroll with DHS as an MA provider with MHCP.</li> <li>• Meet the service-specific definition and provider standards and</li> </ul>

	<ul style="list-style-type: none"> <li>• qualifications.</li> </ul> <p>An individual provider also must meet the following 245D requirements:</p> <ul style="list-style-type: none"> <li>• Service recipient rights per <a href="#">Minn. Stat. §245D.04, subd. 1(4), 2(1), 2(2), 2(3), 2(6) and 3.</a></li> <li>• Health services and medication monitoring per <a href="#">Minn. Stat. §245D.05</a> and <a href="#">Minn. Stat. §245D.051.</a></li> <li>• Incident reporting and prohibited and restricted procedures per <a href="#">Minn. Stat. §245D.06.</a></li> <li>• Emergency use of manual restraint per <a href="#">Minn. Stat. §245D.061.</a></li> <li>• Staffing standards per <a href="#">Minn. Stat. §245D.09, subd. 1, 2, 3, 4a, 5a, 6 and 7.</a></li> </ul> <p><b>144A-licensed home care agencies with an HCBS designation</b></p> <p>Although a licensed home care provider with an HCBS designation may be excluded from 245D licensure, the home care provider still must:</p> <ul style="list-style-type: none"> <li>• Enroll with DHS as an MA provider with MHCP.</li> <li>• Meet the service-specific definition and provider standards and qualifications.</li> <li>• Comply with the requirements for home care services governed by <a href="#">Minn. Stat. Ch. 144A.</a></li> </ul> <p><b>Hospitals, nursing facilities, adult foster care settings and assisted living facilities</b></p> <p>Although these settings are excluded from 245D licensure when providing out-of-home respite services, they still must meet one of the following requirements:</p> <ul style="list-style-type: none"> <li>• Hospital licensing standards per <a href="#">Minn. Stat. §144.50 to 144.56.</a></li> <li>• Nursing facility (i.e., long-term care facility) licensing per <a href="#">Minn. Stat. Ch. 144A.</a></li> <li>• Assisted living facility licensed under <a href="#">Minn. Stat. Ch. 144G (AC/EW only).</a></li> <li>• Adult foster care licensed under <a href="#">Minn. R. 9555.5050 to 9555.6265</a> and <a href="#">Minn. Stat. Ch. 245A (AC/EW only).</a></li> </ul>
<p><b>Additional resources</b></p>	<p><a href="#">CBSM – Paying relatives and legally responsible individuals</a></p> <p><a href="#">CBSM – Waiver/AC service provider overview</a></p> <p><a href="#">DHS – Licensing</a></p> <p><a href="#">MHCP Provider Manual – HCBS programs provider enrollment</a></p> <p><a href="#">MHCP Provider Manual – MHCP provider enrollment</a></p> <p><a href="#">Provider Not Required to Receive a 245D Program License – Application Assurance Statement, DHS-6189Z (PDF)</a></p>