

June 24, 2024

**CERTIFIED MAIL**

Paul Thao, Authorized Agent  
5 Star Adult Day Center Inc  
301 West Avenue  
Zumbrota, MN 55992

License Number: 1103165 (Rule 223: Adult Day Center)

## **ORDER OF LICENSE REVOCATION**

Dear Paul Thao:

The Department of Human Services (DHS) is revoking your license to provide adult day center services for 5 Star Adult Day Center Inc, located at 2966 White Bear Avenue North, Maplewood, Minnesota. This revocation is based on your failure to comply with adult day care laws and rules, your program's history of noncompliance, and the Commissioner's evaluation of your program. Details of our findings are provided below. Our next steps and your options are also detailed.

The revocation goes into effect on July 8, 2024 at 4:00 p.m. to allow time for delivery of this order and ten days for you to inform the Commissioner whether you intend to appeal the license revocation explained below.

### **REASON FOR LICENSE REVOCATION**

#### **1. Conditional license violations**

DHS issued an Order of Conditional License, dated October 27, 2023. The conditional license was effective for a period of two years to October 27, 2025. The Order of Conditional License included terms that you were required to meet for the duration of the conditional license. DHS has determined that you failed to comply with terms #3 and #4 of the Order of Conditional License.

Term #3: Within 30 days of receiving approval of your quality assurance audit tools from your DHS licensor, you were ordered to complete an audit of all participant and personnel records using the approved quality assurance audit tool. Additionally, you were ordered to submit the date to your DHS licensor that all participant and personnel records would be brought into compliance based on the results of your audit.

On December 26, 2023, you submitted an audit tool to your licensor that included a Quality Assurance Policy and Self-monitoring checklist; however, you failed to complete an audit of all participant and personnel records using the approved quality assurance audit tool. Additionally, during a licensing review conducted on January 31, 2024, you failed to provide evidence of an audit of all participant and personnel records.

Term #4: During the first 30 days of your conditional license, no new admissions will be allowed. After this time, you must notify your licensor and receive approval prior to admitting new participants to your program. The notification to your licensor must include the name of the participant, the participant's anticipated date of admission, documentation of compliance with term 1 of your conditional license, and your plan to meet compliance with individual service planning requirements. New participants approved by DHS will be limited to no more than 10 in the first six months of your conditional license.

On May 2, 2024, DHS determined that you had admitted a new participant on November 23, 2023 following the issuance of the conditional license that DHS issued on October 27, 2023. This admission was in violation of Term #4.

Legal Authority: Minnesota Statutes, sections 245A.06, subdivision 3; and 245A.07, subdivision 3(a).

## 2. Failure to comply with licensing laws and rules

DHS determined that your program failed to fully comply with the laws and rules that apply to licensed adult day centers. DHS has also considered the nature, chronicity, or severity of the violations that led to the revocation of your license.

- **Nature:** Many of the violations cited in this Order of License Revocation are violations of law or rule affecting the health, safety, or rights of individuals served by the program. The licensing violations include:
  - Failure to provide orientation to reporting procedures related to suspected or alleged maltreatment and the program abuse prevention plan;
  - Failure to develop and review individual abuse prevention plans;
  - Failure to distribute policies and program information;
  - Failure to maintain participant records including attendance records;
  - Failure to complete initial service planning and develop written plans of care;
  - Failure to maintain personnel records;
  - Failure to provide staff annual in-service training;
  - Failure to ensure policies and procedures were developed to maintain compliance with licensing requirements under Minnesota Statutes and Minnesota Rules; and
  - Failure to offer services, including food service and nutrition services.
- **Chronicity:** Your program received its license on May 7, 2020. Since that time, your program has demonstrated a history of noncompliance with licensing rules and statutes. The information below summarizes this history:

○ April 1, 2021 Correction Order:	8 Violations
○ June 27, 2023 Correction Order:	11 Violations (5 Repeat)
○ October 27, 2023 Conditional Order:	9 Violations (9 Repeat)
○ February 15, 2024 Correction Order:	3 Violations (3 Repeat)
○ June 24, 2024 Revocation (this order):	12 violations (8 Repeat)
- **Severity:** Many of the violations that led to the revocation of your license relate to the health and safety of persons served. Your failure to demonstrate compliance with licensing rules and statutes presented an increased risk of abuse to vulnerable adults that attend your center and failure to

ensure participants' rights, including their right to participate in developing their own plan of care. Due to the serious and chronic nature of these violations, and the conditions in the program, which impact the health and safety of persons served in your care, your license to provide adult day services is being revoked.

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3(a)(1).

### **3. Commissioner's evaluation of program**

In determining whether a licensing action is warranted, DHS evaluated the facts, conditions, and circumstances concerning your program's operation. This includes consideration of the well-being of persons served by your program, and information about the qualifications of staff persons that are working in your program. Since your program has been licensed, you have continued to demonstrate significant and ongoing noncompliance with licensing rules and statutes. Specifically, you failed to comply with licensing laws and standards after DHS issued a Conditional License Order. This order demonstrated your inability to follow the laws and rules which are in place to ensure the health and safety of vulnerable adults. As a result, DHS has determined that revocation of your license is appropriate based on your failure to follow all the terms of the Order of Conditional License, the violations identified in this order, and the program evaluation.

Legal Authority: Minnesota Statutes, section 245A.04, subdivision 6.

**Due to the serious and chronic nature of these violations and the conditions in the program, which impact the health and safety of persons served in your care, your license to provide adult day services is revoked.**

## **LICENSING VIOLATIONS DETERMINED ON MAY 2, 2024**

DHS determined that your program failed to follow licensing rules and statutes, as described below.

### **PARTICIPANT RECORD VIOLATIONS**

1. Violation: The license holder did not meet the requirements for attendance record documentation.

The license holder failed to maintain documentation of actual attendance for each adult day service recipient for which the license holder was reimbursed by a government program that included:

- the first and last name of the recipient;
- the time of day that the recipient was dropped off; and
- the time of day that the recipient was picked up.

Statute Violated: Minnesota Statutes, section 245A.14, subdivision 14, paragraph (c).

2. Violation: For one of ten participants whose records were reviewed (P1), the license holder did not provide orientation to the license holder's internal and external reporting procedures related to suspected or alleged maltreatment and the program abuse prevention plan (PAPP) as required.

The license holder failed to provide orientation to P1 on the license holder's internal and external reporting procedures and PAPP with 24 hours of admission.

**Statute Violated:** Minnesota Statutes, section 245A.65, subdivision 1, paragraph (c) and subdivision 2, paragraph (a).

**Repeat Violation:** In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same statute.

3. **Violation:** For one participant whose record was reviewed (P1), the license holder did not meet the requirements for an individual abuse prevention plan (IAPP).

The license holder failed to develop an IAPP for P1 as part of the participant's initial program plan or service plan.

**Statute Violated:** Minnesota Statutes, section 245A.65, subdivision 2, paragraph (b).

**Repeat Violation:** In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same statute.

4. **Violation:** For one participant whose record was reviewed (P1), the license holder did not distribute policies and program information to participants and their caregivers upon admission as required.

The license holder failed to distribute the following policies and program information to P1 and P1's caregiver at admission:

- the scope of the programs, services, and care offered by the center;
- a description of the population to be served by the center;
- a description of individual conditions which the center is not prepared to accept, such as a communicable disease requiring isolation, a history of violence to self or others, unmanageable incontinence or uncontrollable wandering;
- the center's policy on and arrangements for providing transportation;
- the center's policy on providing meals and snacks;
- the center's fees, billing arrangements, and plans for payment;
- the center's policy governing the presence of pets in the center;
- the center's policy on smoking in the center;
- types of insurance coverage carried by the center;
- a statement of the center's compliance with Minnesota Statutes, section 626.557, and rules adopted under that section;
- a statement that center admission and employment practices and policies comply with Minnesota Statutes, chapter 363, the Minnesota Human Rights Act;
- the terms and conditions of the center's licensure by the department, including a description of the population the center is licensed to serve under part 9555.9730; and
- the telephone number of the department's licensing division.

- b. The license holder failed to distribute the participant's rights to P1 at admission.

Rule Violated: Minnesota Rules, part 9555.9640.

5. Violation: For nine participants whose records were reviewed (P1, P3, and P4-P10), the license holder did not include information in the participant's written record as required.
- a. The license holder failed to include the following information in P1's record:
    - an application form signed by P1 or P1's caregiver that included:
      - P1's date of admission or readmission;
      - the name and telephone of the person to call in case of an emergency involving the participant and the name and number of another person to call if that person cannot be reached; and
      - the name and telephone number of the participant's physician or medical provider;
    - a medical report, dated within the three months prior to or 30 days after P1's admission to the center signed by a physician or signed by a physician assistant or registered nurse and cosigned by a physician, that included:
      - a report on a physical examination, updated annually;
      - a medical history of P1;
      - indication of dietary restrictions and medication regimen, including the need for medication assistance, that apply to P1;
      - a release signed by the physician indicating whether P1 may engage in a structured exercise program; anddocumentation that P1 was free of communicable disease or infestations, as specified in parts 4605.7000 to 4605.7090, that would endanger the health of other participants;
    - participation reports and progress notes that were recorded at least monthly; and
    - notes on special problems, medication changes, and need for medication assistance.
  - b. The license holder failed to include a medical report in P3's record within the three months prior to or 30 calendar days after P3's admission to the center. P3's date of admission was September 26, 2022 and the license holder maintained a medical report for P3 on November 18, 2023.
  - c. The license holder failed to maintain discharge summaries in P4-P10's participant records.

Rule Violated: Minnesota Rules, part 9555.9660, subpart 1.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same rule.

6. Violation: For three participants whose records were reviewed (P1, P2, and P3), the license holder did not complete initial service planning as required.
- a. The license holder failed to:
    - conduct a needs assessment for P1 within 30 days of P1's admission that included:
      - P1's psychosocial status (for example, awareness level, personal care needs, need for privacy or socialization);

- P1's functional status (for example, endurance and capability for ambulation, transfer, and managing activities of daily living); and
  - P1's physical status, determined by observation, from the intake screening interview, and from the medical report received from the P1's physician; and
- develop a preliminary service plan for P1 based on the assessment in item A and coordinated with other plans of services for P1 within 30 days of P1's admission that included:
  - P1's nutritional needs and, where applicable, dietary restrictions;
  - the role of P1's caregiver or caregivers in carrying out the service plan; and
  - services and activities in which P1 would take part immediately upon admission.
- b. The license holder failed to conduct a needs assessment for P2 that addressed P2's physical status determined from the medical report received from P2's physician. The license holder conducted a needs assessment for P2 on August 8, 2023 but did not maintain a medical record from P2's physician until August 18, 2023.
- c. The license holder failed to conduct a needs assessment for P3 that addressed P3's physical status determined from the medical report received from P3's physician. The license holder conducted a needs assessment for P3 on October 11, 2022 but did not maintain a medical record from P3's physician until November 18, 2023.

Rule Violated: Minnesota Rules, part 9555.9700, subpart 2.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were cited for a similar violation.

7. Violation: For two participants whose records were reviewed (P1 and P2), the license holder did not develop a written plan of care as required.
- a. The license holder failed to develop a written plan of care for P1 within 90 days of P1's admission to the center that included:
    - an update of the preliminary service plan and additional services required by P1;
    - short and long term objectives for P1 stated in concrete, measurable, and time specific outcomes;
    - the staff members responsible for implementing the individual plan of care;
    - the anticipated duration of the individual plan of care;
    - provisions for quarterly review and quarterly revisions of the individual plan of care.
  - b. The license holder failed to develop a written plan of care for P2 that included short and long term objectives for P2 stated in concrete, measurable, and time specific outcomes.

Rule Violated: Minnesota Rules, part 9555.9700, subpart 3.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were cited for a similar violation.

## PERSONNEL RECORD VIOLATIONS

8. Violation: For two of two staff persons whose records were reviewed (SP1 and SP2), the license holder did not maintain a personnel record as required.

The license holder failed to maintain the following in SP1 and SP2's personnel record:

- SP1 and SP2's jobs description; and
- documentation of an annual performance evaluation in SP1 and SP2's personnel record.

Rule Violated: Minnesota Rules, part 9555.9650, items A.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same rule.

9. Violation: For two staff persons whose records were reviewed (SP1 and SP2), the license holder did not provide annual review to a mandated reporter as required.

The license holder failed to provide SP1 and SP2 annual review to the reporting requirements and definitions in sections 626.557 and 626.5572, the requirements of this section, the license holder's program abuse prevention plan, and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.

Statute Violated: Minnesota Statutes, section 245A.65, subdivision 3.

10. Violation: For two staff persons whose records were reviewed (SP1 and SP2), the license holder did not provide in-service training annually as required.

The license holder failed to provide SP1 and SP2 a minimum of eight hours of in-service training annually in areas related to care of center participants, including provision of medication assistance, and review of parts 9555.9600 to 9555.9730.

Rule Violated: Minnesota Rules, part 9555.9690, subpart 4.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same rule.

## SERVICE AND PROGRAM VIOLATIONS

11. Violation: The license holder did not offer services as required.

- a. The license holder had food prepared off-site but failed to maintain a current and accurate contract with the food service provider. Additionally, the license holder did not maintain a record indicating the menu for all meals served for at least six months.
- b. The license holder failed to ensure the menus for all meals and snacks were approved by a registered dietitian and met all applicable state rules and law and US Department of Agriculture

regulations.

Rule Violated: Minnesota Rules, part 9555.9710, subpart 1.

Repeat Violation: In a Conditional Order that DHS issued on October 27, 2023, you were previously found in violation of this same rule.

## **POLICY AND PROCEDURES VIOLATIONS**

12. Violation: The license holder did not establish policies and procedures related to suspected or alleged maltreatment as required.

The license holder's policy and procedures related to suspected or alleged maltreatment failed to identify the secondary person or position who would ensure that, when required, internal reviews were completed. The person identified in the policy and procedures was no longer employed with the center.

Statute Violated: Minnesota Statutes, section 245A.65, subdivision 1, paragraph (b).

## **YOUR RIGHT TO APPEAL**

You have the right to appeal the revocation. Your request must be in writing and clearly state that you are requesting a contested case hearing for this matter. Your request must be made before the deadlines provided below. If you do not meet this deadline, you lose your right to an administrative appeal. The timeline to appeal began when you received this order.

If you are mailing your request, it must be sent by certified mail and postmarked within 10 calendar days from when you received this order. Please send it to:

Commissioner, Department of Human Services  
Office of Inspector General  
Legal Counsel's Office  
Attention: Licensing Legal Unit  
PO Box 64953  
St. Paul, MN 55164-0953

If your request is being personally delivered, it must be received by DHS within 10 calendar days from when you received this order. Please bring it to:

Commissioner, Department of Human Services  
Office of Inspector General  
Legal Counsel's Office  
Attention: Licensing Legal Unit  
444 Lafayette Road North  
St. Paul, MN 55155

Upon DHS' receipt of your timely appeal, your case would be scheduled for a contested case hearing in front of an Administrative Law Judge. Following this hearing, the Commissioner of DHS will issue a final order. If you do not appeal or if the order is affirmed by the Commissioner following a hearing, DHS is prohibited from issuing you and the controlling individuals a license for five years. In addition, any additional licenses held by you or the controlling individuals shall also be revoked.

### **Legal representation at the contested case hearing:**

You do not need a lawyer to appeal. However, a lawyer can help you with your appeal. The state or county will not get you a lawyer and will not pay for a lawyer. If you cannot afford a lawyer, you may be able to get free legal advice or help with your appeal. To find out if free help is available, contact: Volunteer Lawyers Network at 612-752-6677; Central Minnesota Legal Services at 612-332-8151; Southern Minnesota Legal Services at 651-222-4731; or go to [www.lawhelpmn.org](http://www.lawhelpmn.org) to find a local legal services program that may be able to help you.

You can also find information on contested cases from the Office of Administrative Hearings website at <https://mn.gov/oah/self-help>. Click on Administrative Law Overview, then click on Administrative Law Contested Case Hearing Guide for a list of frequently asked questions.

### **Operating the program pending the outcome of the appeal:**

If you file an appeal within the timeframes described above, you may continue to operate pending the outcome of your appeal. If you continue to operate, you must do so in full compliance with all licensing laws and rules. Failure to follow a law or rule that may impact the health or safety of persons served by your program could result in the immediate suspension of your license.

### **Legal authority for this licensing action**

- This action is taken under Minnesota Statutes, section 245A.07, subdivision 3, which describes under which conditions DHS may revoke a license.
- The timeline to appeal a revocation order is provided in Minnesota Statutes, section 245A.07, subdivision 3(b).
- "Controlling individual" is defined under Minnesota Statutes, section 245A.02, subdivision 5a.
- Minnesota Statutes, section 245.095 defines which programs administered by DHS are included in the exclusion provision, and further defines "excluded," "individual," and "provider."
- License holders have a right to appeal licensing actions and request a contested case hearing, under Minnesota Statutes, chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.
- If a license holder files a timely appeal of a revocation order, the license holder may continue to operate the program pending a final order of the appeal under Minnesota Statutes, section 245A.07, subdivision 1(b).
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (3), the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has had a license issued under this chapter revoked within the past five years.
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (5), when a license issued under this chapter is revoked under clause (1) or (3), the license holder and controlling individual

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may not hold any license under chapter 245A for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.

## Questions

If you have any further questions regarding this matter, you may contact Brittany Raddatz, HCBS Unit Supervisor, at 651-431-6591.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Slaikeu". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

Jill Slaikeu, HCBS Unit Manager  
Licensing Division  
Office of Inspector General