

Exemptions In Programs Licensed To Provide Both Adult Foster Care (Rule 203) & Residential Habilitation (MN Statutes, chapter 245B)

Applicability of the AFC Licensing Exemptions

Minnesota Statutes, Chapter 245B, sometimes referred to as the consolidated standards; govern the provision of licensed services to persons with developmental disabilities (DD). Under section 245B.03, subdivision 2, paragraphs (c), residential service sites controlled by license holders licensed under 245B for home and community based residential habilitation services for four or fewer adults are exempt from compliance with certain adult foster care licensing requirements under Rule 203.

- The exemptions remove duplicative licensing standards for license holders who control both the adult foster care (Rule 203) and residential habilitation services (245B-RHS) licenses.
- The exemptions only apply in these programs at least one resident with DD is receiving supported living services under the DD waiver.
- Some of the exempted Rule 203 standards are replaced by an applicable 245B standard (see attached table). In this case the 245B standard applies to all residents at that adult foster care home regardless of diagnosis or funding source.

Monitoring and Enforcement in Dually Licensed Programs

A 245B-RHS license is issued to provide services in a single or in multiple counties specified on the license. DHS Licensing monitors for compliance with the 245B licensing standards within the county or counties where the services are provided. A 245B-RHS license review includes, in part, a record review of persons with DD served within the county or counties and the staff working under that license. It is not limited to a single foster care home. When investigating allegations of violations of the 245B licensing standards, the investigation may include any person receiving adult foster care services in the dually licensed program if the allegation is related to a 245B licensing standard that replaces an exempted Rule 203 standard.

The foster care licensing agency monitors for compliance with all nonexempt adult foster care standards under Rule 203 at an adult foster care residence. The foster care licensing agency investigates reports alleging violations of the nonexempt adult foster care licensing standards in the individual foster care homes.

- Reports of alleged licensing violations will be referred to the appropriate licensing agency (see table)
- DHS Licensing forwards all its licensing actions issued to 245B license holders to the social service agency for the county where the services are provided. County foster care licensors may request copies of these orders from their county social service directors.

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Lead Agency Responsibility for Compliance Monitoring of Exempt Rule 203 Standards

This table identifies which agency acts as the lead in the following areas for licensing reviews and complaint investigations.

| AFC Standards | 245B Standards | Lead Agency - AFC or DHS |
|--|--|---|
| <u>Consumer Rights</u> | | |
| The provider is exempt from the resident rights requirements under rule part 9555.6255. | Instead the provider must ensure the protection and exercise of consumer service- and protection-related rights as required under section 245B.04, subd. 1, 2, 3. | DHS |
| <u>Consumer Abuse Prevention and Risk Management Plans</u> | | |
| The provider is exempt from the individual and program abuse prevention plan requirements under 245A.65, subd. 2 and 626.557, subd. 14. | Instead the provider must develop, document and implement a risk management plan as required under section 245B.06, subd. 2. | DHS |
| <u>Consumer Assessments</u> | | |
| The provider is exempt from the assessment requirements under rule part 9555.5605, subp. 1, 2, 3, 4, 5, and 6 for consumers with individual service plans. | Instead the provider must complete consumer assessments as required under section 245B.06, subd. 3 and in accordance with the ISP as defined under 245B.02, subd. 11. | DHS for residents with DD receiving SLS AFC for residents <u>not</u> receiving SLS |
| <u>Consumer Placement Agreements and Service Plans</u> | | |
| For AFC residents <u>who are</u> receiving SLS under the DD waiver the provider is exempt from the requirements related to developing and signing an individual resident placement agreement (IRPA) and conducting a placement review within 30 days of placement under rule part 9555.5705, for consumers with individual service plans (ISPs). | Instead the provider must develop methods to support consumer outcomes within 10 working days after the 45 day service initiation meeting as required under section 245B.06, subd. 4, and in accordance with the ISP as defined under 245B.02, subd. 11. | DHS for residents with DD receiving SLS AFC for residents <u>not</u> receiving SLS |
| For AFC residents <u>who are not</u> receiving SLS under the DD waiver the provider must meet all the requirements under rule part 9555.5705, except that the review meeting may occur within 45 days as allowed under section 245B.06, subd. 4, instead of 30 days. | | |
| <u>Consumer Records</u> | | |
| The provider is exempt from the requirements for maintaining the personal record of the resident under rule part 9555.6245. | Instead the provider must maintain consumer data files, as well as ensure access to and retention of the files as required under section 245B.07, subd. 1, 2, and 3. | DHS |
| <u>Consumer Funds</u> | | |
| The provider is exempt from the requirements to safeguard cash resources entrusted to the foster care operator under rule part 9555.6265. | Instead the provider must manage and handle consumer funds as required under section 245B.07, subd. 10. | DHS |
| <u>Consumer Health</u> | | |
| The provider is exempt from sanitation and health requirements related to resident medication under rule part 9555.6225, subp. 8. NOTE: The provider must still comply with medication storage requirements under subpart 9. | Instead the provider must meet consumer health care needs as assigned, and administer and monitor medication and treatment orders as required under sections 245B.05, subd. 5 and 245B.07, subd. 8, (a), (6). | DHS |

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| AFC Standards | 245B Standards | Lead Agency - AFC or DHS |
|---|--|---|
| <u>Staff Orientation and Training</u> | | |
| The foster care agency and the provider are exempt from the orientation and training requirements under rule parts 9555.5505 and 9555.6185. | Instead the provider must provide and document staff and volunteer orientation and training as required under sections 245B.07, subd. 5, 6, and 7, 245A.04, subd. 1, (c) and subd. 14. | DHS |
| <u>Record on the Residence</u> | | |
| The foster care agency is exempt from maintaining physicians' reports and letters of reference as part of the record on the residence as required under rule part 9555.5515, B and G. | There is no 245B standard that replaces this requirement. | N/A |
| <u>Licensing Study / Study of the Applicant</u> | | |
| The provider is exempt from making available and maintaining physical health reports on employees as required under rule part 9555.6125, subp. 3, C, (2). | There is no 245B standard that replaces this requirement. | N/A |
| <u>Staff Qualifications</u> | | |
| The provider is exempt from the qualification requirements under rule part 9555.6125, subp. 4, items B-G. | Instead the provider must ensure that staff are qualified as required under section 245B.07, subd. 4, (a) and (b). Section 245B.07, subd. 4, (a), prohibits staff under 18 years of age from performing overnight duties. However, under 245B.03, subd. 2, (c), the commissioner may approve alternative methods of providing overnight supervision for dually licensed AFC/RHS programs using the process and criteria for granting a variance in section 245A.04, subd. 9. | DHS |
| <u>Prohibition of Abuse of Prescription Medications and Chemicals</u> | | |
| The provider is exempt from the evaluation for cause requirements under rule part 9555.6125, subp. 5. | Instead the provider must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care as required under section 245A.04, subd. 1, (c). The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy. | DHS as it relates to establishing the policy and training staff |
| <u>Zoning</u> | | |
| The county foster care agency is exempt from having to notify the local zoning administrator when an AFC home is opened as required under rule part 9555.6125, subp. 6. | There is no 245B standard that replaces the zoning requirement for dually licensed AFC/RHS programs. | N/A |

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Lead Agency Responsibility for Compliance Monitoring of Nonexempt Rule 203 Standards

This table identifies which agency acts as the lead in the following areas where there is not an exemption to the AFC standards, but where compliance monitoring and enforcement is conducted by a single agency to remove duplication of regulatory activities.

| AFC Standards | 245B Standards | Lead Agency - AFC or DHS |
|---|--|-----------------------------|
| <u>Maltreatment of Vulnerable Adults</u> | | |
| The provider must comply with the requirement under section 245A.65; subd. 1 and 3, to establish and enforce written policies and procedures related to suspected or alleged maltreatment, and providing orientation and training to clients and mandated reporters who are under the control of the license holder to these procedures. | Same | DHS |
| <u>Client Supervision</u> | | |
| <p>The provider must comply with all AFC standards related to client supervision as defined under part 9555.5105, subp. 37, "Supervision" means:</p> <p>A. oversight by a caregiver as specified in the individual resident placement agreement (or the ISP) and daily awareness of a resident's needs and activities; and</p> <p>B. the presence of a caregiver in the residence during normal sleeping hours.</p> | The provider must comply with all 245B standards related to the provision of direct care services as defined under section 245B.02, subd. , "Direct service" means one or more of the following: supervision, assistance, or training; and supervision as required under section 245B.06, subd. 7. | AFC |
| <p>The provider must also comply with sections 245A.04, subd. 1, (c) and 245A.04, subd. 14, and is required to implement and monitor the policy prohibiting staff abuse of prescriptions medications and being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care, which includes client supervision.</p> | | |
| <u>Physical Environment</u> | | |
| The provider must comply with all AFC standards related to the physical environment of the residence as required under rule part 9555.6205 and sanitation and health as required under rule part 9555.6225, subp. 1 to 7. | <p>The provider must also comply with the standards for maintaining a safe and hazard free environment as required under section 245B.05, subd. 1, (1).</p> <p>DHS continues to monitor for compliance with section 245B.05, subd. 1, (2), (3) and (4).</p> | AFC |
| <u>Water and Food</u> | | |
| The provider must comply with all AFC standards related to water and food as required under rule part 9555.6215. | There are no 245B standards specific to the preparation, provision, or storage of water and food. | AFC |