

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MINNESOTA DID NOT COMPLY WITH  
FEDERAL WAIVER AND STATE  
REQUIREMENTS FOR ALL 20 ADULT  
DAY CARE CENTERS REVIEWED**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



Gloria L. Jarmon  
Deputy Inspector General  
for Audit Services

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# *Office of Inspector General*

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## Report in Brief

Date: May 2018

Report No. A-05-17-00009

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Review

We conducted health and safety reviews of Head Start grantees, regulated childcare facilities, and family adult foster care homes in Minnesota. These reviews identified multiple health and safety issues, and we chose the Elderly Waiver program (the program) to determine whether there may be similar health and safety risks affecting vulnerable adults receiving services in licensed adult day care centers (centers). The program funds home and community-based services, such as services received at a center for people aged 65 and older who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community.

Our objective was to determine whether Minnesota complied with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program.

### How OIG Did This Review

Of the 104 centers in Minnesota where vulnerable adults received services through the program for the quarter ended June 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location and history of health- and safety-related violations identified by the State. We conducted unannounced site visits from February 10 through March 29, 2017.

## Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed

### What OIG Found

Minnesota did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program. To protect the health and safety of vulnerable adults, Minnesota, as the licensing agency for centers, must ensure that centers follow licensing requirements in State statutes established in its application for waiver services. These licensing requirements include health and safety and administrative requirements.

We determined that all 20 of the centers we reviewed did not comply with State licensing requirements. In total, we found 200 instances of noncompliance with health and safety and administrative requirements.

Minnesota said that the instances of noncompliance occurred because low staffing levels did not allow State licensors to make relicensing visits every 2 years. Additionally, Minnesota and the centers indicated that there was a need to develop templates for administrative records that the State requires.

### What OIG Recommends and Minnesota Comments

We recommend that Minnesota ensure that the 200 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected, ensure vulnerable adults' health and safety by considering staffing standards and caseload thresholds for State licensors, and consider developing templates for the administrative records the State requires.

Minnesota agreed with our findings and recommendations and described corrective actions that it has taken and will take in response to our recommendations.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

The Office of Inspector General has conducted health and safety reviews of Head Start grantees;<sup>1</sup> regulated childcare facilities, including two reviews in Minnesota;<sup>2</sup> and regulated family adult foster care homes in Minnesota.<sup>3</sup> Those reviews identified multiple health and safety issues that put children and vulnerable adults at risk. We wanted to determine whether there may be similar health and safety risks for vulnerable adults receiving services in licensed adult day care centers (centers).

The Minnesota Department of Human Services (State agency) operates the Elderly Waiver program (the program) under a Federal waiver to its Medicaid State plan. The program funds home and community-based services, such as services received at a center, for people aged 65 and older who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community.

### OBJECTIVE

Our objective was to determine whether the State agency complied with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program.

### BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Minnesota, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

Section 1915(c) of the Social Security Act authorizes the Secretary of the U.S. Department of Health and Human Services (HHS) to waive certain Medicaid statutory requirements so that a State may offer home and community-based services to a State-specified target group of

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<sup>1</sup> *Review of 24 Head Start Grantees' Compliance With Health and Safety Requirements* (A-01-11-02503, issued December 2011).

<sup>2</sup> *Some Minnesota Childcare Home Providers Did Not Always Comply With State Health and Safety Licensing Requirements* (A-05-14-00021, issued March 2015) and *Some Minnesota Childcare Centers Did Not Always Comply With State Health and Safety Licensing Requirements* (A-05-14-00022, issued March 2015).

<sup>3</sup> *Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed* (A-05-16-00044, issued October 2017).

Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including implementing adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services.<sup>4</sup> The State agency must also provide assurances that State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver.<sup>5</sup>

### **Elderly Waiver Program**

The State agency operates the program, administered by counties, tribal entities, and health plan partners, under a 1915(c) waiver to its Medicaid State plan. The program funds home and community-based services, such as services received at a center, for people aged 65 and older who are eligible for medical assistance and require the level of care provided in a nursing home but choose to live in the community.

### **Minnesota Adult Day Care**

In Minnesota, adult day care is a program operating less than 24 hours per day in a center that provides functionally impaired adults with an individualized and coordinated set of services, including health, social, and nutritional services, that are directed at maintaining or improving the participants' ability to take care of themselves.

To protect the health and safety of vulnerable adults, the State agency, as the licensing agency for centers, must ensure that centers follow licensing requirements in State statutes established in its application for waiver services.<sup>6</sup> These licensing requirements include health and safety and administrative requirements. The State agency monitors and performs routine inspections of centers using its licensed inspectors. The State attempts to perform relicensing visits every 2 years, although this is not required; nor are unannounced visits.

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<sup>4</sup> 42 CFR § 441.302.

<sup>5</sup> 42 CFR § 441.302(a)(2).

<sup>6</sup> Minnesota Statutes, chapter 245A, Human Services Licensing; Minnesota Statutes, chapter 245C, Human Services Background Studies; Appendix C-1/C-3: Provider Specifications, which includes Minnesota Administrative Rules, sections 9555.9600 – 9555.9730.

## **HOW WE CONDUCTED THIS REVIEW**

Of the 104 centers in Minnesota where vulnerable adults received services through the program for the quarter ended June 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location and history of health- and safety-related violations identified by the State agency. To determine whether the State agency complied with Federal waiver and State requirements, we evaluated the State agency's oversight of State licensing requirements for centers by conducting unannounced site visits at the 20 selected centers from February 10 through March 29, 2017.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology. Appendix B contains Federal and State requirements related to health and safety and administration.

## **FINDINGS**

The State agency did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program. We determined that all 20 of the centers we reviewed did not comply with State licensing requirements. The 20 centers we reviewed had from 3 to 25 instances of noncompliance. In total, we found 200 instances of noncompliance with health and safety and administrative requirements. (See Appendix C for a summary of these instances of noncompliance.)

State agency officials said that instances of noncompliance occurred because low staffing levels did not allow State licensors to make relicensing visits every 2 years. Additionally, State officials and centers indicated that there was a need to develop templates for administrative records the State requires. According to State officials and centers, the lack of routine oversight and absence of templates for required administrative records contributed to confusion at the centers and noncompliance with numerous health and safety and administrative requirements, leaving vulnerable adults in the centers' care at risk.

## **CENTERS DID NOT COMPLY WITH HEALTH AND SAFETY REQUIREMENTS**

A center must comply with State licensing requirements at all times during the term of the license and ensure the health and safety of vulnerable adults receiving services at the center.<sup>7</sup> Among other requirements, a center must ensure that areas used by participants are free from debris, loose plaster, peeling paint, and litter; hazardous objects, materials, and chemicals are

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<sup>7</sup> Minnesota Administrative Rules, sections 9555.9600 – 9555.9730.

stored in an area inaccessible to vulnerable adults; and the use of knives and other potentially hazardous materials be allowed by vulnerable adults only under supervision.<sup>8</sup>

We determined that all 20 centers we reviewed did not comply with health and safety requirements. In total, we found 81 instances of noncompliance with State licensing requirements on health and safety.

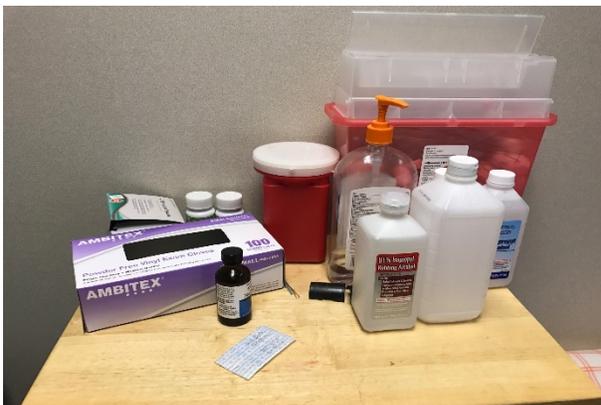
For example, we found peeling paint revealing rust on multiple bathroom stall dividers at one center (Photograph 1). In another center, we found a rust-covered floor drain, peeling paint, and loose plaster on the walls in a bathroom (Photograph 2). In a different center, we found hazardous chemicals and a full, open sharps biohazard container easily accessible to vulnerable adults (Photograph 3). Finally, in the most hazardous example, we found a knife easily accessible to vulnerable adults (Photograph 4).



**Photograph 1: Peeling paint revealing rust covering a bathroom stall divider.**



**Photograph 2: A rust-covered floor drain and peeling paint in a bathroom.**



**Photograph 3: Chemicals and a sharps biohazard container are accessible.**



**Photograph 4: A knife left out in the open is easily accessible.**

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<sup>8</sup> Minnesota Administrative Rules, section 9555.9720.

## **CENTERS DID NOT COMPLY WITH ADMINISTRATIVE REQUIREMENTS**

Centers must comply with State licensing requirements on administration.<sup>9</sup> Among other requirements, a center must submit completed background studies to the State before employees have direct contact with vulnerable adults served by the center.<sup>10</sup> Once licensed, centers must also complete an individual abuse-prevention plan for each vulnerable adult receiving services within 30 days of admission. Additionally, centers must ensure that the program's abuse-prevention plan is reviewed annually by the center's governing body. Finally, centers must ensure that all mandated reporters<sup>11</sup> receive orientation and annual training related to the suspected or alleged maltreatment of a vulnerable adult.<sup>12</sup>

We determined that 19 of the 20 centers we reviewed did not comply with administrative requirements. In total, we found 119 instances of noncompliance with State licensing requirements on administration.

For example, nine centers had at least one employee who had direct contact with vulnerable adults before a completed background study was submitted to the State, seven centers did not complete individual abuse-prevention plans within the required 30 days for at least one vulnerable adult, six centers did not have the program's abuse-prevention plans reviewed annually by the center's governing body, and four centers did not ensure that mandated reporters had received orientation or annual training related to suspected or alleged maltreatment of vulnerable adults.

## **CAUSES OF NONCOMPLIANCE WITH STATE LICENSING REQUIREMENTS**

The State agency did not comply with Federal waiver and State requirements in overseeing centers that serve vulnerable adults who receive services through the program because, according to State officials, low staffing levels did not allow State licensors to make relicensing visits every 2 years at 12 of the 20 centers we reviewed. Additionally, State agency officials and centers indicated that there was a need to develop templates for administrative records the State requires. According to State officials and centers, the lack of routine oversight and absence of templates for required administrative records contributed to confusion at the centers and noncompliance with numerous health and safety and administrative requirements, leaving vulnerable adults in their care at risk.

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<sup>9</sup> Minnesota Statutes, chapter 245A, Human Services Licensing; Minnesota Statutes, chapter 245C, Human Services Background Studies; and Minnesota Administrative Rules, sections 9555.9600 – 9555.9730.

<sup>10</sup> Minnesota Statutes, section 245A.04, subdivision 3 require individuals and entities applying for a license to comply with the background study requirements in Minnesota Statutes, including section 245C.04, subdivision 1(f).

<sup>11</sup> A mandated reporter is a professional or professional's delegate who is engaged in the care of vulnerable adults. Minnesota Statutes, section 626.5572, subdivision 16.

<sup>12</sup> Minnesota Statutes, section 245A.65, Maltreatment of Vulnerable Adults.

## RECOMMENDATIONS

We recommend that the State agency:

- ensure that the 200 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected,
- ensure the health and safety of vulnerable adults by considering staffing standards and caseload thresholds for State licensors, and
- consider developing templates for administrative records the State requires.

## STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our findings and recommendations and described corrective actions that it had taken and will take in response to our recommendations.

The State agency's comments are included in their entirety as Appendix D.

## OTHER MATTERS

Adult day care does not include programs in which adults gather primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.<sup>13</sup> Determining whether programs qualify as adult day care was outside the scope of our audit. However, during unannounced site visits, we observed that these were the only types of activities occurring at 7 of the 20 centers we visited. We did not observe program beneficiaries receiving the health services, social services, and nutritional services that they should have been receiving through the program.

After our visits, we informed the State agency of our concern. The State agency planned to conduct follow-up visits to the seven centers we identified to educate the centers about the expectation to provide appropriate types of services to beneficiaries in their care. The State agency stated that 1 of these centers, which we determined had 25 instances of noncompliance, closed after our unannounced site visit.

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<sup>13</sup> Minnesota Statutes, section 245A.02, subdivision 2(a).

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

Of the 104 centers in Minnesota where vulnerable adults received services through the program for the quarter ended June 2016, we selected 20 centers for our review. We selected the centers on the basis of their geographic location and history of health- and safety-related violations identified by the State agency.

To evaluate the State agency's oversight of State licensing requirements for centers, we conducted unannounced site visits at the 20 selected centers from February 10 through March 29, 2017. We conducted our fieldwork in the Minnesota counties of Blue Earth, Dakota, Hennepin, Itasca, Olmsted, Ramsey, Scott, and St. Louis.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal and State requirements for centers;
- discussed with State officials how Minnesota monitors its centers;
- developed a health and safety checklist, based on State licensing requirements, as a guide for conducting site visits;
- conducted unannounced site visits at the 20 centers we selected for review;
- interviewed State officials to inquire about the causes of noncompliance; and
- discussed the results of our review with State officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **APPENDIX B: FEDERAL AND STATE REQUIREMENTS**

### **FEDERAL REQUIREMENTS**

Section 1915(c) of the Social Security Act authorizes the Secretary of HHS to waive certain Medicaid statutory requirements so that a State may offer home and community-based services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Federal regulations for section 1915(c) waivers at 42 CFR § 441.302 require States to provide assurance that necessary safeguards will be taken, including implementing adequate standards for provider participation, to protect the health and welfare of individuals serviced under the waiver and to assure financial accountability for funds expended for those services. The State agency must also assure that State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver.

### **STATE REQUIREMENTS**

Minnesota Regulations for Adult Day Care Center Licensing are in Minnesota Statutes, chapter 245A, Human Services Licensing; Minnesota Statutes, chapter 245C, Human Services Background Studies; Minnesota Statutes, chapter 626, Peace Officers, Searches, Pursuit, Mandatory Reporting; and Minnesota Administrative Rules, chapter 9555, Social Services for Adults.

#### **General Statutes**

##### *Minnesota Statutes*

##### *Section 245A.02 subdivision 2(A) – Adult Day Care or Family Adult Day Services*

Adult day care, adult day services, and family adult day services do not include programs in which adults gather primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.

##### *Section 245A.04 – Application Procedures*

An individual, corporation, partnership, voluntary association, other organization, or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner of the State agency (commissioner). The provider must be able to demonstrate competent knowledge of licensing statutes and rules applicable to the program or services for which the provider is seeking to be licensed. Before issuing an initial license, the commissioner must conduct an inspection of the center.

*Minnesota Administrative Rules*

*Section 9555.9620 – Licensing Process*

An adult day care center must be licensed under Minnesota Statutes chapter 245A.

**Health and Safety Requirements**

*Minnesota Administrative Rules*

*Section 9555.9690 subpart 1(A) – Staff Ratio and Center Coverage*

When a center serves only participants who are capable of taking appropriate action for self-preservation under emergency conditions, the center must maintain a minimum staff-to-participant ratio of one staff member present for every eight participants present.

*Section 9555.9710 subpart 1(B) – Food Service and Nutrition*

The center must provide refrigeration for dairy products and other perishable foods, whether supplied by the center or supplied by the participant. The refrigeration must have a temperature of 40 degrees Fahrenheit or less.

*Section 9555.9720 subpart 1 – First Aid Kit*

The center must have a first aid kit that contains a first aid manual, sterile bandages and Band-Aids, sterile compresses, scissors, an ice bag or cold pack, an oral or topical thermometer, liquid soap, adhesive tape, and money for phone calls. The first aid kit and manual must be accessible to the staff in the center and must be taken on field trips.

*Section 9555.9720 subpart 2 – Telephone and Posted Numbers*

A center must have a non-coin-operated telephone that is readily accessible. A list of emergency numbers must be posted next to the telephone. When an area has a 911 number, 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.

*Section 9555.9720 subpart 5 – Hazardous Object, Materials, or Equipment*

Chemicals that are poisonous when swallowed or inhaled or that are damaging to eyes or skin must be stored in an area not accessible to the participants. Use of scissors, knives, matches, razor blades, and other potentially hazardous materials by participants must be allowed only under supervision.

### *Section 9555.9720 subpart 7 – Equipment and Furniture*

Equipment and furniture must be in good repair and without sharp points, splinters, and paint that contains lead.

### *Section 9555.9720 subpart 8 – Areas Used by Participants*

The areas used by participants must be free from debris, loose plaster, peeling paint, and litter. Rugs must have a nonskid backing.

### *Section 9555.9720 subpart 9 – Emergencies Caused by Fire and Weather*

The center must have written plans for emergencies caused by fire, blizzards, and tornadoes. The plans must be posted in a visible place and be on file in the center. The plans must include instructions on location and use of fire extinguishers and instructions on closing off the fire area. The fire escape plan must be rehearsed at least four times each year and the dates of rehearsals must be recorded in the file of emergency plans.

### *Section 9555.9720 subpart 10 – Medical Emergencies*

The center must have written procedures governing medical emergencies and an identified source of emergency medical care and transportation that is made known to all staff members and volunteers.

### *Section 9555.9730 subpart 3 – Signal System in Restrooms*

Restrooms used by participants must be equipped with a mechanism that participants can use to signal staff members by light or by sound if participants need assistance.

### *Section 9555.9730 subpart 5 – Private Space*

The usable indoor space available to a center must include a room or an area that may be used as private space for providing personal hygiene services or social services to participants.

### *Section 9555.9730 subpart 6 – Equipment and Furnishings*

Each center must provide a sturdy, non-folding chair for each participant who does not require or prefer a wheelchair, stable tables that are accessible to all participants and staff and accommodate dining and program activity needs, age appropriate games, books, crafts, and other materials to implement daily program activities, and one cot, couch, or recliner per eight participants.

*Section 9555.9730 subpart 7 – Temperature*

A minimum temperature of 70 degrees Fahrenheit must be maintained in indoor areas used by participants.

**Administrative Requirements**

*Minnesota Statutes*

*Section 245A.14 subdivision 14(C) – Attendance Records for Publicly Funded Services*

An adult day services program must maintain documentation of actual attendance for each adult day service recipient for which the license holder is reimbursed by a governmental program. The records must be accessible to the commissioner during the program's hours of operation, they must be completed on the actual day of attendance, and they must include the first, middle, 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.

*Section 245A.65 subdivision 2 – Abuse Prevention Plans*

All license holders must establish and enforce ongoing written program abuse-prevention plans and individual abuse-prevention plans.

*Section 245A.65 subdivision 2(A)(3) – Environment Assessment*

The assessment of the environment for each facility and for each site when living arrangements are provided by the agency must include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds and terrain surrounding the building, the type of internal programming, and the program's staffing patterns.

*Section 245A.65 subdivision 2(A)(5) – Annual Review*

The license holder's governing body or the governing body's delegated representative must review the center's program abuse-prevention plan at least annually using the assessment factors in the program abuse-prevention plan and any substantiated maltreatment findings that occurred since the last review. The governing body or the governing body's delegated representative must revise the program abuse-prevention plan, if necessary, to reflect the review results.

*Section 245A.65 subdivision 2(A)(6) – Program Abuse-Prevention Plan Posting*

A copy of the program’s abuse-prevention plan must be posted in a prominent location in the program and be available upon request to mandated reporters, persons receiving services, and legal representatives.

*Section 245A.65 subdivision 2(B)(1) – Individual Abuse-Prevention Plan*

The plan must include a statement of measures that will be taken to minimize the risk of abuse to the vulnerable adult when the individual assessment indicates the need for measures in addition to the specific measures identified in the program’s abuse-prevention plan. The measures must include the specific actions the program will take to minimize the risk of abuse within the scope of the licensed services, and will identify referrals made when the vulnerable adult is susceptible to abuse outside the scope or control of the licensed services. When the assessment indicates that the vulnerable adult does not need specific risk-reduction measures in addition to those identified in the program’s abuse-prevention plan, individual abuse-prevention plans must document this determination.

*Section 245A.65 subdivision 2(B)(2) – Individual Abuse-Prevention Plan*

An individual abuse-prevention plan must be developed for each new person as part of the initial individual program plan or service plan required under the applicable licensing rule. The review and evaluation of individual abuse-prevention plans must be done as part of the review of the program plan or service plan. The person receiving services must participate in the development of the individual abuse-prevention plan to the full extent of the person's abilities. If applicable, the person's legal representative must be given the opportunity to participate with or for the person in the development of the plan. The interdisciplinary team must document the review of all abuse-prevention plans at least annually, using the individual assessment and any reports of abuse relating to the person. The plan must be revised to reflect the results of this review.

*Section 245A.65 subdivision 3 – Orientation of Mandated Reporters*

The license holder must ensure that each new mandated reporter receives an orientation within 72 hours of first providing direct contact services to a vulnerable adult and annually thereafter. The orientation and annual review must inform the mandated reporters of the reporting requirements, 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.

*Section 245C.04 subdivision 1(F) – When Background Study Must Occur*

Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study requests to the commissioner using the electronic system

known as NETStudy before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

*Section 245C.20 – License Holder Record Keeping*

A licensed program must document in a personnel file the date the program initiates a background study under this chapter and the date the subject of the study first has direct contact with persons in the program. When a background study is completed under this chapter, a licensed program must maintain a notice in the program's personnel files that the study was undertaken and completed.

*Section 626.557 subdivision 14(B)(1-3) – Abuse Prevention Plans*

Each facility, including a home health care agency and personal care attendant service providers, must develop an individual abuse-prevention plan for each vulnerable adult residing there or receiving services from them. The plan must contain an individualized assessment of: (1) the person's susceptibility to abuse by other individuals, including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

*Section 626.557 subdivision 14(C) – Physical Aggression*

If the facility, except home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse-prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

*Minnesota Administrative Rules*

*Section 9555.9640 – Policy and Program Information Requirements*

A center must have available for review and must distribute to participants and their caregivers upon admission written information about the points in items A to N:

- A. the scope of the programs, services, and care offered by the center;
- B. a description of the population to be served by the center;

C. 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;  
D. the participants' rights developed in accordance with part 9555.9670 and additionally:

(1) a procedure for presenting grievances, including the name, address, and telephone number of the licensing division of the department, to which a participant or participant's caregiver may submit an oral or written complaint;

(2) a copy or written summary of Minnesota Statutes, section 626.557, the Vulnerable Adults Act;

E. the center's policy on and arrangements for providing transportation;

F. the center's policy on providing meals and snacks;

G. the center's fees, billing arrangements, and plans for payment;

H. the center's policy governing the presence of pets in the center;

I. the center's policy on smoking in the center;

J. types of insurance coverage carried by the center;

K. a statement of the center's compliance with Minnesota Statutes, section 626.557, and rules adopted under that section;

L. a statement that center admission and employment practices and policies comply with Minnesota Statutes, chapter 363, the Minnesota Human Rights Act;

M. 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

N. the telephone number of the department's licensing division.

The information in items A to N must be provided in writing to the commissioner upon request and must be available for inspection by the commissioner at the center.

#### *Section 9555.9650 subpart A – Personnel Records*

A center must maintain the personnel files in item A.

A. A personnel file for each employee that includes:

(1) the employee's job description;

(2) documentation that the employee has completed and signed the form required in part 9555.9620, subpart 3;

(3) an employment application or resume indicating that the employee meets the requirements in part 9555.9680, subpart 2;

(4) documentation that the employee has completed the orientation to the center required in part 9555.9690, subpart 3;

- (5) documentation of an annual performance evaluation;
- (6) documentation of completion of the annual in-service training required in part 9555.9690, subpart 4; and
- (7) documentation, when applicable, that the employee has completed the cardiopulmonary resuscitation and airway obstruction treatment training required in part 9555.9690, subpart 2, item C.

*Section 9555.9660 subpart 1(A) – Participant’s Written Record*

A center must develop and maintain a written record for each participant. Access to participants' records must be governed by subpart 2. Each participant's written record must include:

- A. an application form signed by the participant or the participant's caregiver that includes:
  - (1) the participant's name, address, date of birth, sex, date of admission or readmission, living arrangement, telephone number, and source of referral;
  - (2) the name and telephone number 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
  - (3) the name and telephone number of the participant's physician or medical provider.

*Section 9555.9690 subpart 3 – Staff Orientation to Center*

A center must provide all center employees with 20 hours of orientation to the center within the employee's first 40 hours of employment at the center. At least 4 hours of supervised orientation must be provided before employees work directly with center participants. The orientation must include training related to the kinds of functional impairments of current center participants, the protection and abuse reporting requirements of parts 9555.8000 to 9555.8500, and the safety requirements and procedures in part 9555.9720.

*Section 9555.9690 subpart 4 – In-Service Training*

A center must provide a minimum of 8 hours of in-service training annually. In-service training must be in areas related to care of center participants, including provision of medication assistance and review of parts 9555.8000 to 9555.8500, 9555.9600 to 9555.9730, and Minnesota Statutes, section 626.557.

### *Section 9555.9700 subpart 2(A) – Needs Assessment*

The center must assess the participant's needs for center services based on observation of the participant and information obtained from other sources, including any assessment performed within the prescribed time by a preadmission screening team under Minnesota Statutes, section 256B.0911. The needs assessment must address:

- (1) the participant's psychosocial status (for example, awareness level, personal care needs, need for privacy or socialization);
- (2) the participant's functional status (for example, endurance and capability for ambulation, transfer, and managing activities of daily living); and
- (3) the participant's physical status, to be determined by observation, from the intake screening interview, and from the medical report received from the participant's physician.

### *Section 9555.9700 subpart 3 – Individual Plan of Care*

Within 90 days of the participant's admission to the center, a written plan of care must be developed by the center staff together with the participant, the participant's caregiver, and other agencies and individual service providers. The plan of care must be dated and must include:

- A. an update of the preliminary service plan required in subpart 2 and additional services required by the participant;
- B. short and long-term objectives for the participant stated in concrete, measurable, and time-specific outcomes;
- C. the staff members responsible for implementing the individual plan of care;
- D. the anticipated duration of the individual plan of care as written; and
- E. provisions for quarterly review and quarterly revision of the individual plan of care.

### *Section 9555.9720 subpart 4 – Records of Incidents*

The center must maintain records of all incidents involving participants, including illnesses; accidents requiring first aid; incidents requiring emergency medical or psychiatric care; incidents requiring a police report to be made; and incidents when a complaint has been filed under Minnesota Statutes, section 626.557, Reporting of Maltreatment of Vulnerable Adults. The record must include the participant's name, the date and time of the incident, a description of the incident, the center's action in response to the incident, and indication that the incident was reported to the participant's caregiver.

*Section 9555.9720 subpart 11(D) – Pets*

A record of annual examinations for communicable disease and parasites by a licensed veterinarian is maintained for all pets that reside in or regularly visit the center.

**APPENDIX C: INSTANCES OF NONCOMPLIANCE AT EACH CENTER**

Center	Health and Safety		Administrative			Total
	Physical Environment	Emergencies	Records	Training	Background Checks	
1	2	1	1	0	2	6
2	3	2	5	2	3	15
3	4	0	2	0	0	6
4	1	0	2	0	0	3
5	2	0	4	2	1	9
6	2	2	5	2	1	12
7	0	2	6	2	2	12
8	2	0	2	0	1	5
9	4	1	3	2	1	11
10	1	2	2	1	0	6
11	5	1	4	1	0	11
12	1	1	2	0	0	4
13	8	4	12	1	0	25
14	2	0	2	0	0	4
15	3	1	10	3	1	18
16	2	0	3	0	1	6
17	6	0	7	0	1	14
18	3	1	6	1	2	13
19	3	2	6	1	1	13
20	6	1	0	0	0	7
<b>Total</b>	<b>60</b>	<b>21</b>	<b>84</b>	<b>18</b>	<b>17</b>	<b>200</b>

**Note:** We provided to the State agency under separate cover the specific centers reviewed and their specific violations.



Minnesota Department of Human Services  
Acting Commissioner Charles E. Johnson  
Post Office Box 64998  
St. Paul, Minnesota 55164-0998

April 9, 2018

Ms. Sheri L. Fulcher  
Regional Inspector General for Audit Services  
Office of Inspector General  
Office of Audit Services, Region V  
233 North Michigan, Suite #1360  
Chicago, Illinois 60601

Re: Report Number A-05-17-00009

Dear Ms. Fulcher:

Thank you for giving us the opportunity to respond to your March 8, 2018, draft audit report, "Minnesota Did Not Comply with Federal Waiver and State Requirements for all 20 Adult Day Care Centers Reviewed." We appreciate the time your staff spent meeting with us as part of your audit. It is our understanding that our response will be published in your final audit report.

The violations identified in this report are very concerning. We work hard to assure that adult day care services provided in Minnesota are conducted in a safe and welcoming environment, and that needed care is both identified and provided to our clients. As discussed below, we are already addressing the issues found, and are taking steps to improve our oversight of these programs.

It is important to note, however, that we do not believe the level of violations found is representative of all of Minnesota's adult day centers. As pointed out in the draft report, the sample used for this audit was focused on centers that had a history of cited violations. It was not a random sample of all 104 adult day care centers operating in Minnesota. As such, the audit was focused exclusively on facilities that were more likely to have violations, which makes the findings less surprising than the title of the report suggests.

**Recommendation #1:** *Ensure that 200 instances of noncompliance with health and safety and administrative requirements identified in this report are corrected.*

Minnesota concurs. Subsequent to this audit, DHS Licensing has inspected 17 of the 20 of the centers identified in this report to make certain that they are meeting licensing standards. As a result of these inspections, DHS Licensing has taken the following actions:

- Two programs have been placed on conditional licenses and one of these programs has subsequently closed;

- Twelve centers were issued correction orders with a total of 69 violations noted. Licensing reviews conducted by DHS did not always replicate your audit findings for a variety of reasons, including different participant and staff records may have been reviewed, daily activities and events differ over time, and centers self-correct violations. In addition, sometimes multiple instances of noncompliance result in one violation when they occur within one subpart or subsection of a rule or law.
- Two centers had no violations noted;
- One center voluntarily closed; and
- The remaining three centers will be inspected by April 30, 2018.

**Recommendation #2:** *Ensure the health and safety of vulnerable adults by considering staffing standards and caseload thresholds for State licensors.*

Minnesota agrees with this recommendation. At the time of this audit, DHS Licensing was transitioning licensing oversight from our child care unit to our home and community-based services (HCBS) unit. This change was initiated by DHS prior to the audit, as we recognized that licensed adult day centers are better aligned in the HCBS unit for monitoring, oversight, and technical assistance. The HCBS unit is conducting robust licensing reviews, engaging in meaningful technical assistance during each licensing review, and has been meeting bi-monthly as a unit to ensure consistency and conformity with the application of licensing standards. A legislative request to increase licensing fees to support this unit's activities did not pass in 2017; however, DHS will again address staffing needs in the next legislative session. The concerns noted at the adult day centers identified in this report brings more urgency to this request.

**Recommendation #3:** *Consider developing templates for administrative records the State requires.*

Minnesota concurs. DHS Licensing has recently completed the development of sample policies and forms for adult day centers. These sample policies and forms comply with the rules and laws that adult day centers must follow. They will be posted to our website for easy access. DHS Licensing has found that providing sample policies and forms helps providers to gain and maintain compliance with licensing regulations. In addition, DHS Licensing has provided training to adult day centers at the invitation of their trade organization. Each training has focused on how to achieve and maintain compliance with specific licensing standards.

**Other matters:** *Auditor did not observe program beneficiaries receiving the health services, social services and nutritional services expected of an adult day center at seven of the centers.*

Minnesota disagrees with this observation in part. During its inspections of four of the seven centers identified, DHS Licensing observed the provision of adult day services. Of the three remaining centers, one center closed following your visit and before DHS conducted an inspection. Two centers were placed on a conditional license status due to the nature, chronicity, or severity of the licensing violations determined by DHS. For both programs, DHS determined there was a lack of observable adult day services with meaningful and individualized outcomes directed at maintaining or improving each person's capabilities for self-care. One of these programs has subsequently decided to close rather than come into compliance with licensing standards. Three of the four programs that were determined to be providing adult day services had violations identified during their inspections related to incomplete plan of cares, including personal outcomes. DHS believes that as these programs develop short- and long-term objectives for each program participant they will better demonstrate compliance in this area.

In addition, DHS SIRS unit has opened program integrity investigations of each of the seven centers. These investigations are still ongoing.

The Minnesota Department of Human Services will continue to evaluate the progress being made to resolve all audit findings until full resolution has occurred. If you have any further questions or need additional information, please contact Gary L. Johnson, Internal Auditor, at (651) 431-3623.

Sincerely,

*/Charles E. Johnson/*

Charles E. Johnson  
Acting Commissioner