

ADULT DAY SERVICES CENTER LICENSING ORDINANCE #1
of
THE MINNESOTA CHIPPEWA TRIBE

CHAPTER I. PURPOSE

This Ordinance is for the purpose of establishing standards for adult day services and centers located on the six Minnesota Chippewa Tribe (MCT) constituent Bands' reservations. This Ordinance mandates high standards of care and treatment for participants in such services and centers. This Ordinance allows flexibility in program administration and operation while ensuring the health, safety and welfare of the participants.

CHAPTER II. DEFINITIONS

As used in this Ordinance, the following terms have the meanings given to them.

Section 201. *Adult Day Services*

A program operating less than 24 hours a day that provides Functionally Impaired Adults with an individualized and coordinated set of services, including health, social, and nutritional services, directed at maintaining or improving the Participants' capabilities for self-care.

It may include services or items considered essential under a Participant's customs, tradition or religion, including but not limited to, access to traditional foods and ceremonies or services.

Section 202. *Adult Day Services Center (Center)*

A facility that provides Adult Day Services to Functionally Impaired Adults on a regular basis for periods of less than 24 hours a day in a setting other than a Participant's home or a Licensee's residence.

Section 203. *Applicant*

A Tribe or reservation or an authorized Tribal Operator seeking a license to operate a Center within reservation boundaries that applies for licensure under this Ordinance.

An Applicant or Operator that is not a Tribe or Band must be at least 51% Indian-owned and controlled to be considered for licensure under this Ordinance.

Section 204. *Complete Application*

An application in which all information required under Chapter IV of this Ordinance has been provided in a true, accurate and thorough fashion and submitted according to instructions of the Division Director.

Section 205. *Controlling Individual*

The individual(s) with decision-making authority over operation of a Center and who is (are) responsible for the direction and management of policies, services and/or employees of a Center.

Section 206. *Division*

The Human Services Division of the MCT.

Section 207. *Direct Contact Services*

Face-to-face care, training, supervision, counseling, consultation, or medication assistance provided to Participants by a Licensee.

Section 208. *Education/Human Services Subcommittee (Subcommittee)*

That Subcommittee of the MCT which is authorized to issue licenses under this Ordinance.

Section 209. *Functionally Impaired Adult*

A person who is 18 years old or older and who has (i) a condition characterized by substantial difficulty in carrying out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working; or (ii) a disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life and that requires support to maintain independence in the community.

Section 210. *Human Services Director (Division Director)*

The Human Services Director of the MCT.

Section 211. *Incomplete Application*

An application for which required documents were not submitted, documents submitted do not meet licensing requirements, or the application fee is not paid.

Section 212. *License*

A certificate issued by the Subcommittee authorizing a Licensee to provide a specific program for a specified period of time in accordance with the terms of the license and the rules of the Subcommittee and Division Director.

Section 213. *Licensee*

License holder under this Ordinance who is legally responsible for the operation of a program licensed by the Subcommittee under this Ordinance.

Section 214. *Medication Assistance*

Assisting Participants to take medication and monitoring the effects of medication.

Where a Center provides this service, dispensing of medicine shall be done only by qualified personnel.

Section 215. *Operator*

The individual, partnership, corporation, or governmental unit licensed under this Ordinance and legally responsible for the operation of a Center.

Section 216. *Participant*

A Functionally Impaired Adult admitted to and receiving Adult Day Services from a Licensee.

Section 217. *Standards*

The set of requirements governing the operation of Adult Day Services and such Centers licensed under this Ordinance.

CHAPTER III. LICENSE REQUIRED

No person or entity may operate a Center of the kind defined in this Ordinance on an MCT constituent Band's reservation unless licensed pursuant to this Ordinance, an ordinance enacted by a Band for the purpose of licensing a Center, or the laws of the State of Minnesota.

CHAPTER IV. APPLICATION FOR LICENSURE

Section 401. *Compliance with Standards*

An Applicant must comply with the requirements of the Standards established by this Ordinance.

Section 402. *Required Information*

Prior to issuance of a license, an Applicant shall submit, on forms provided by the Division Director, the following:

- a. Information that demonstrates compliance with the Standards;

- b. Information that demonstrates compliance with applicable building, fire and safety codes, health rules, zoning ordinances, and other applicable rules and regulations, or documentation that a valid waiver has been granted in accordance with applicable law;
- c. Certification of completion in an approved first aid course by a sufficient number of staff members to ensure that one employee so currently certified shall be on the facility's premises at all times during operating hours;
- d. Letter of approval from an official authorized by the governing body of the appropriate MCT constituent Band;
- e. Certification of insurance, including premises liability coverage and workers' compensation in compliance with State law;
- f. Designation of a governing board or similar entity with decision-making authority or a Controlling Individual for the program or facility, including names of those persons;
- g. Written authorization from the Applicant and each employee providing Direct Contact Services to Participants for a background check conducted in accordance with Chapter VII of this Ordinance; and
- h. The initial application fee.

Applicant is responsible for verifying that the information contained in the application and any additional material, including a background study request, is true, accurate and complete.

CHAPTER V. LICENSE ISSUANCE, DENIAL, APPEAL

Section 501. License Issuance – Division Director

The Division Director shall have the authority to issue a license under this Ordinance upon a written finding that the Applicant has satisfied the requirements of Chapter IV.

The Division Director may not grant a license under this Ordinance unless first:

- a. An Applicant has submitted a complete application, including the application fee;
- b. There has been a determination that the Applicant meets the requirements of this Ordinance, including the Standards;
- c. The facility to be licensed has been visited; and
- d. Required background studies have been submitted and cleared.

The Division Director shall respond to an Applicant in writing, either granting the license or stating reasons for denial, within thirty (30) days of receiving the application.

Section 502. License Issuance – Subcommittee

Not less than thirty (30) days prior to the date a license is proposed to be issued, the Division Director shall advise the Subcommittee of the intent to license. The Division Director shall provide the name of the Applicant, the name and location of the program or Center, a summary of services proposed to be provided, a copy of the Section 501 finding, and such other information as may from time to time be requested by the Subcommittee.

The Subcommittee may at any time prior to issuance of the license direct that issuance of a license shall be held in abeyance pending review of the Division Director's decision to license or receipt of additional information required by the Subcommittee. The Subcommittee's decision upon review of a Division Director's proposal to license shall be final. The Subcommittee may authorize issuance or renewal of a license upon such conditions as it deems necessary to ensure compliance with the standards adopted by this Ordinance.

Section 503. *Conditions*

All licenses issued pursuant to this Ordinance are subject to the following conditions:

- a. Licenses are non-transferable.
- b. A Licensee must designate a governing board or similar entity with decision-making authority or a Controlling Individual for the program or facility. The names of persons comprising such board or entity or individual shall be kept current and changes sent to the Division Director.
- c. Licenses shall prescribe the maximum number of Participants, location of the program or Center, hours of operation, and the names of persons comprising the board or entity with decision-making authority or Controlling Individual.
- d. Licenses shall set forth any exception, qualification, or condition to the license and describe the time within which the Licensee must act to conform to the Standards. No exception, qualification, condition or waiver of a Standard shall be permitted unless there is specific representation by the Applicant that there will be no threat to the health, safety, or welfare of any Participant or staff member.

Section 504. *Denial of License and Appeal*

The Division Director shall deny an application if s/he cannot determine compliance with the requirements of this Ordinance, including the Standards.

The Division Director may deny an application based on the following grounds:

- a. The application is incomplete.
- b. The Applicant, Licensee, or Controlling Individual has been denied a license under this Ordinance within the twelve months preceding the date of application.
- c. The Applicant, Licensee, or Controlling Individual has had a license issued under this Ordinance revoked within the twelve months preceding the date of application.
- d. The Applicant, Licensee, or Controlling Individual has had a license issued under this Ordinance suspended within the twelve months preceding the date of application.
- e. The Applicant, Licensee, or Controlling Individual fails to comply fully with applicable law, or knowingly withholds relevant information from or gives false or misleading information to the Division Director or Subcommittee in connection with an application for license or renewal or during investigation.

The Division Director shall give the Applicant a notice setting forth each deficiency. The Applicant may resubmit an application with such information necessary to demonstrate that each deficiency has been cured or may appeal the denial (or any subsequent denial) to the Subcommittee.

The Subcommittee shall provide the Applicant an opportunity to be heard no later than ninety (90) days after the Division Director's denial to explain why the decision of the Division Director is arbitrary, capricious, or not in accordance with this Ordinance. The decision of the Subcommittee shall be final.

CHAPTER VI. TERM OF LICENSE, RENEWAL, CHANGE IN CIRCUMSTANCES

Section 601. Term

Licenses issued pursuant to this Ordinance shall be valid for one (1) year from the date of issuance.

Section 602. Renewal

A license issued under this Ordinance must be renewed annually, one year from the date of issuance.

A Licensee seeking renewal must apply for renewal. The Division Director must be in receipt of said renewal application, including the annual license fee, no later than thirty (30) days prior to the license's expiration. It is a Licensee's responsibility to submit the renewal application and fee in a timely fashion.

A license shall be renewed upon payment of the annual license fee, provided that the Division Director has made an inspection pursuant to Chapter VIII of this Ordinance within the last forty five (45) days and found that the Licensee continues to meet the criteria of this Ordinance. The process governing denial of a license in Chapter V controls here.

Section 603. Change in Circumstances

Before a Licensee may:

- a. change the location of a program,
- b. change the number of Participants served, or
- c. change the level or nature of services provided,

said Licensee shall notify the Division Director, who shall make inquiries and require information as necessary to ensure compliance with this Ordinance and may condition the license on such terms as may be reasonable and necessary to ensure compliance within a specified time.

CHAPTER VII. BACKGROUND STUDY REQUIREMENTS

Before a license will be issued, background studies must be completed for the person who signs the license application, the Applicant, and Controlling Individual. Following licensure, a Licensee shall submit background study requests for individuals required to be studied under Minnesota Statute Chapter 245C.03, including all staff providing Direct Contact Services to Participants.

Background studies shall be conducted in accordance with standards set out in Minnesota Statute Chapter 245C.12.

Where a Licensee operates more than one licensed Center, only one background study is necessary for each individual providing Direct Contact Services in one or more of the licensed Centers.

Any fee associated with background investigations shall be the responsibility of the licensee.

CHAPTER VIII. INSPECTIONS, PERIODIC REVIEWS, RIGHT OF ENTRY, RIGHT TO REVIEW INFORMATION

Section 801. Inspections

Prior to the issuance of any license or renewal, the Division Director shall inspect an Applicant facility or licensed facility to verify sanitary and safe facilities to protect the health, safety, and welfare of all persons using the facility, as measured by compliance with the Standards.

Section 802. Periodic License Review

After a license is issued, the Division Director or his/her designee shall conduct periodic licensing reviews at least twice a year in order to monitor a Center's compliance with this Ordinance and other applicable laws and rules. This includes drop-in visits and investigations.

Section 803. Inquiries and Investigations

The Division Director shall be authorized to conduct inquiries and investigations, in cooperation with the duly authorized staff of a Band's governing body, of allegations that any standard or requirement of this Ordinance has been violated. The investigation may include an on-site inspection and a review of such records as are reasonably necessary to determine compliance.

Section 804. Right of Entry

The Division Director or his/her designee may enter any Applicant facility or licensed facility without prior notice at reasonable times to inspect the facility for compliance with this Ordinance or to abate or cause to be abated a violation of this Ordinance.

Section 805. *Right to Review Information*

The Division Director or his/her designee has the right to request and review any information necessary to determine compliance with this Ordinance and other applicable laws and rules.

CHAPTER IX. FEES

Section 901. Initial Application Fee

The initial application fee is \$200.00. The fee is not prorated, is nonrefundable, and shall be in lieu of the annual license fee for that year.

Section 902. Annual License Fee

Once licensed, a Licensee shall pay an annual fee of \$100.00 per licensed facility to maintain his/her/its license, payable to the MCT no later than thirty (30) days prior to the license's expiration.

It is a Licensee's responsibility to submit the annual fee and renewal application in a timely fashion, i.e. no later than thirty (30) days prior to the license's expiration.

CHAPTER X. SUSPENSION, MODIFICATION, REVOCATION OF LICENSE

The Division Director may suspend, modify, or revoke a license upon a finding of one or more of the following conditions:

- a. Failure to comply with any requirement of this Ordinance.
- b. Violation of any law, code, regulation, or ordinance of the MCT, its constituent Bands, the State of Minnesota or the U.S. federal government relating to the health, safety, or welfare of Participants in this or a similar program, activity, or Center.
- c. Abandonment, abuse, denial of services, exploitation, maltreatment, neglect, or sexual abuse of anyone in the care of a Center, especially with regard to a Participant.
- d. Unsafe, unhealthful, or unsanitary conditions presenting a threat to the health, safety or welfare of the public or any Participant or employee of the Center.
- e. Fraud or misrepresentation in obtaining the license.

Such action shall be accompanied by written notice to the Licensee, including a concise statement of the alleged violation or failure to comply, issued within seventy two (72) hours of the Division Director reaching his/her finding.

A Licensee shall have up to thirty (30) days to cure said violation or failure, or to appeal to the Subcommittee and show cause as to why the Division Director's suspension, revocation or modification should not be implemented. The decision of the Subcommittee shall be final.

CHAPTER XI. PENALTIES FOR OFFENSES

Section 1101. Operating Without a License, With a Suspended or Revoked License, or In Contravention of a Condition

The Division Director may impose a civil penalty of up to \$500.00 per day for every day that a person or entity:

- a. Operates a Center, is required to be licensed under Tribal or State law to operate said Center, but has no such license;
- b. Continues to operate a Center with a suspended or revoked MCT license; or
- c. Operates a Center in contravention of any conditions or modifications imposed on an MCT license.

The MCT as the licensing entity may bring an action to enforce and collect the penalty in the appropriate constituent Band's court. The penalty shall be paid to the MCT Division of Human Services.

Section 1102. Additional Penalties

In addition to either suspension or revocation of a license, any violation of this ordinance may be punishable by:

- a. Commencement of an action for injunctive relief, or
- b. Any other remedy permitted by Tribal, State or Federal law.

Nothing in this Ordinance shall be construed as superseding or abridging remedies provided by Tribal, State or Federal law against any Center's employees.

CHAPTER XII. ONGOING COMPLIANCE

Applicants and Licensees shall maintain compliance with all licensing requirements under this Ordinance and other applicable laws and rules at all times.

CHAPTER XIII. FUNDING, COOPERATIVE AGREEMENTS

Any services or functions of the MCT or its constituent Bands under this Ordinance shall be subject to the availability of funding and resources. The MCT or its constituent Bands shall not be required to expend additional funds or resources beyond those appropriated. Subject to the approval of the MCT, the MCT and its constituent Bands may enter into cooperative agreements with the State of Minnesota or other agencies for funding or other services necessary to implement this Ordinance.

CHAPTER XIV. INCORPORATION OF ADULT DAY SERVICES STATE LAW AND RULES

The MCT incorporates by reference the licensed-adult-day-services rules and regulations adopted by the State of Minnesota at Minnesota Statutes 245A, 245C, and 626.557, and Minnesota Rules 9555.96005 – 9555.9730, except that to the extent that any provision of those rules and regulations conflicts with any provision of this Ordinance, this Ordinance controls.

For purposes of this Ordinance, any reference in Minnesota Statutes 245A, 245C, or 626.557, or Minnesota Rules 9555.96005 – 9555.9730 to an agency or employee of Minnesota is understood to refer to the MCT agency or employee whose function corresponds to that Minnesota agency or employee.

CHAPTER XV. SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be construed as a waiver by the MCT or any MCT constituent Band of its sovereign immunity for any reason whatsoever.

CHAPTER XVI. STANDARDS

The operation of Adult Day Services and Centers licensed under this Ordinance shall be in accordance with health, safety and welfare qualifications and standards governing adult day services center licensure set out in Minnesota Rules 9555.9640 – 9555.9730. Specifically, each Center shall have written, posted emergency plans.

Additionally, Licensees shall abide by HIPPA security and privacy rules set out in 45 CFR Parts 160 and 164.