

The 2004 Minnesota Legislature amended the Human Services Licensing Act (HSLA), Minnesota Statutes, Chapter 245A the Department of Human Services Background Studies Act, Minnesota Statutes, Chapter 245C.

245A.03 - Who must be licensed. – Effective August 1, 2004

Subd. 3 Unlicensed program. Adds the authority to seek an injunction against the operation of a program without a license when a program continues to operate with out a license: 1) after having received noticed that licensure was required; 2) after the license has been suspended or revoked and the commissioner has issued a final order affirming the sanction; and 3) when the license has been temporarily immediately suspended.

245A.04 - Application procedures. – Effective August 1, 2004

Subd. 1 Application for licensure. Moves into statute the rule requirements that: 1) an applicant seeking licensure in Minnesota with headquarters outside of the state must have a program office located in the state; 2) applicants and license holders must have a policy and training on the policy that prohibits the license holder, staff and others affiliated with the program who are responsible for persons served by the program from abusing prescription medication or being under the influence of a chemical that could impair ability to provide care; and 3) applicants and license holders must have a grievance procedure for persons served by the program. [Minn. Rules 9543.1000 to 9543.1060 are repealed]

Subd. 6 Commissioner’s evaluation. Adds a cross reference to Chapter 245C.

Subd. 7 Issuance of a license; extension of a license. Moves into statute the current rule requirement that license holders must notify the commissioner and obtain approval before making changes that would alter the license.

Clarifies the DHS shall not issue or renew a license if the applicant, license holder, or a controlling individual has been: 1) disqualified and the disqualification was not set aside; 2) denied a license within the past two years; or 3) had a license revoked within the past five years. [Minn. Rules 9543.1000 to 9543.1060 are repealed]

245A.05 - Denial of application. – Effective August 1, 2004

Authorizes personal service as a means of notice of a license denial as well as an applicant’s request for an appeal of a denial.

Updates references to current Office of Administrative Hearings (OAH) contested case rules.

245A.06 - Correction order and conditional license. – Effective August 1, 2004

Subd. 2 Reconsideration of correction orders. Clarifies that a request for reconsideration of a correction order must be postmarked and sent to the commissioner within 20 calendar days after receipt of the order.

Subd. 4 Notice of conditional license; reconsideration of conditional license. Allows personal service as a means of notice of a conditional license as well as the license holder’s request for reconsideration of the conditional license.

Clarifies that a request for reconsideration of a conditional license must be postmarked and sent to the commissioner within ten calendar days after the license holder’s receipt of the of the order.

Provides for a single hearing when DHS issues a dual order of conditional license and a fine, rather than a separate hearing and reconsideration review as required under current law.

245A.07 - Sanctions. – Effective August 1, 2004

Subd. 2 Temporary Immediate Suspension. Amends the temporary immediate suspension standard to include the actions of other individuals and conditions in the home as bases for a determination of imminent risk of harm to persons receiving services.

Updates reference to Office of Administrative Hearings (OAH) contested case rules.

Authorizes personal service as means of notice of an order of temporary immediate suspension as well as the license holder's request for an appeal of the order.

Subd. 2a Immediate suspension expedited hearing. Clarifies that the notice of hearing for a temporary immediate suspension may be issued by certified mail or personal service.

Clarifies that the record closes at the end of the ten-day period for submission of exceptions to the Administrative Law Judge's (ALJ) report.

Subd. 3 License suspension; revocation or fine. Clarifies that a disqualification that is not set aside under section 245C.22 may be the basis for a license suspension, revocation, or fine.

Authorizes personal service as a means of notice of an order of suspension, revocation, or fine, as well as the license holder's request for a hearing regarding the sanction.

Updates reference to Office of Administrative Hearings (OAH) contested case rules.

245A.14 - Special conditions for nonresidential programs. – Effective August 1, 2004

Subd. 4 Special Family Day Care Homes. Allows community collaborative child care providers to be licensed under the family child care and group family child care rules.

Defines "community collaborative child care provider".

245A.16 - Standards for county agencies and private agencies. – Effective August 1, 2004

Subd. 4 References commissioner's orders pertaining to disqualification determinations and hearings under 245C for purposes of county enforcement and defense of such orders.

Amendments to Minn. Statutes, Chapter 245C: Background Studies Act

245C.02 - Definitions – Effective May 30, 2004

Subd. 18 Serious maltreatment. Adds to the definition of "serious maltreatment" neglect when it results in criminal sexual conduct against a child or vulnerable adult.

245C.03 - Background study; individuals to be studied – Effective May 30, 2004

Subd. 1 Licensed programs. Clarifies language regarding individuals who are required to have a background study.

245C.05 - Background study; information and data provided to commissioner. – May 30, 2004

Subd. 1 Individuals studied. Moves requirements regarding additional information required from subjects of a background study conducted by counties or private agencies, from Minn. Rules, part 9543.0040, subpart 3 (Rule 13) into statute. [Minn. Rule 9543.0040 subpart 3 is repealed.]

245C.08 - Background study; information commissioner reviews. – May 30, 2004

Subd. 2 Background studies conducted by a county or private agency, foster care and family child care. Moves county background study requirements under Minn. Rules, part 9543.0040, subpart 3 (Rule 13) into statute so that all background study requirements are in statute.

Subd. 3 Arrest and investigative information. Clarifies that the reasonable cause standard for purposes of arrest and investigate information, applies to all individuals who are subject to a background study.

245C.14 - Disqualification. – May 30, 2004

Subd. 1 Disqualification from direct contact. Clarifies that a preponderance of evidence of an act that meets the definition of a listed crime, is a disqualification regardless of whether the preponderance of evidence is for a felony, gross misdemeanor, or misdemeanor level crime.

245C.15 - Disqualifying crimes or conduct. – May 30, 2004

Subd. 2 15-year disqualification. Clarifies that if an individual is convicted of one of the listed felony crimes, but the sentence is a gross misdemeanor or a misdemeanor disposition, the individual is disqualified but the lookback period is the applicable gross misdemeanor or misdemeanor level disposition.

Subd. 3 10-year disqualification. Clarifies that if an individual is convicted of one of the listed gross misdemeanor crimes, but the sentence is a misdemeanor disposition, the individual is disqualified but the lookback period is the applicable misdemeanor level disposition.

Subd. 4 7-year disqualification. Clarifies that a determination of maltreatment in another state, the elements of which are substantially similar to the elements of maltreatment under Minnesota Law, is a disqualification.

245C.16 - Disqualified individual's risk of harm – May 30, 2004

Subd. 1 Determining immediate risk of harm. Adds to the factors to be considered when determining immediate risk of harm, whether the individual has a disqualification from a previous background study that has not been set aside.

Clarifies that the commission may, pending the conclusion of a maltreatment investigation or criminal proceedings, order the immediate removal or continuous supervision of an individual if it is determined that the individual poses an immediate risk of harm based on arrest information or a pending maltreatment investigation.

245C.18 - Obligation to remove disqualified individuals from direct contact. – Effective May 30, 2004

Requires a license holder to immediately remove an individual from a position of direct contact, if the individual did not submit a timely request for a hearing, or the individual requested a hearing and the commissioner did not set aside the disqualification following that hearing.

245C.20 - License holder record keeping. – Effective May 30, 2004

Requires that licensed programs must document in personnel files the date the program initiates a background study; and contact the commissioner to inquire about the status of a study, if the program has not received a response from the commissioner within 45 days of initiation of the study.

245C.21 – Requesting reconsideration of disqualification. – Effective May 30, 2004

Subd. 3 - Information disqualified individuals must provide when requesting reconsideration.

Adds cross-reference to the information to be submitted by the disqualified individual with their request for reconsideration under section 245C.22.

Adds a new subdivision that authorizes the commissioner to, upon request, inform the applicant or license holder who received notice of an individual's disqualification or that has the consent of the disqualified individual, whether the individual has requested reconsideration.

245C.22 - Commissioner's review and action on a reconsideration request – Effective May 30, 2004

Subd. 3 - Preeminent weight given to safety of persons being served. Clarifies that any "single" factor may be determinative of whether to set aside the individuals' disqualification.

Subd. 4 - Risk of harm; set aside. Clarifies that the disqualified individual has the burden of proof to demonstrate that the individual does not pose a risk of harm to persons receiving services.

245C.23 – Commissioner's reconsideration notice. – Effective May 30, 2004

Subd. 1 - Commissioner's notice of disqualification that is set aside. Clarifies that if the license holder was initially sent a notice that more time was needed to conduct the background study and the individual's disqualification is subsequently set aside upon reconsideration, the license holder is then sent the same notice as in cases where the individual is not disqualified.

Subd. 2 - Commissioner's notice of disqualification that is not set aside. Adds to the current immediate removal standards, the immediate removal of an individual from direct contact if: 1) the disqualified individual whose disqualification was not set aside, did not timely request a hearing; or 2) the disqualified individual requested a hearing, but the commissioner did not set aside the disqualification following that hearing.

Clarifies that a previous order of immediate removal or continuous supervision remains in effect pending a hearing.

245C.25 - Consolidated reconsideration of maltreatment determination and disqualification – Effective May 30, 2004

Clarifies that when a county has previously conducted a consolidated reconsideration of a maltreatment determination, and an individual is subsequently disqualified by the county based on that determination, the county conducts the reconsideration of that disqualification. The scope of the subsequent reconsideration is limited to the risk of harm.

245C.27 - Fair hearing rights. – Effective May 30, 2004

Subd. 1 - Fair hearing when disqualification is not set aside. Clarifies that the right to a fair hearing does not apply if the disqualification is deemed conclusive under section 245C.29.

245C.27, subd. 2 and 245C.28, subd. 1 and 2 - Consolidated fair hearing for maltreatment determination and disqualifications not set aside; license holder; and individual other than license holder. – Effective May 30, 2004

Amends sections 245C.27 and 245C.28, by deleting the reference to “or rescinded” as done throughout this chapter to clarify that the hearing rights stem from the not set aside of the disqualification only.

245C.29 - Conclusive disqualification determination or dispositions. – Effective May 30, 2004.

Subd. 2 – Conclusive disqualification determination. Adds to the list of conclusive determinations: 1) when a determination that that information relied upon to disqualify an individual is conclusive under this section and the individual is subsequently disqualified, the subsequent reconsideration is limited to a determination of risk of harm and is not subject to another hearing; and 2) when a licensing action is based on the disqualification of an individual in connection with a license to provide family child care, foster care for children or adults in the provider’s own home, or adult day services in the provider’s own home, the disqualification is conclusive if a request for reconsideration is not submitted with 30 days.