

The 2005 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 and Government Data Practices, Minnesota Statutes Chapter 13.

Amendments to Minn. Statute 245A

245A.03 - Who must be licensed. – Effective July 15, 2005

Subd. 3(a) (1) - Unlicensed programs. Addresses the operation of an unlicensed program after being given notice. It is a misdemeanor for a program to “continue to operate without a license after receiving notice that a license is required.”

245A.04 - Application procedures. – Effective August 1, 2005

Subd. 7 - Issuance of a license; extension of a license. States the commissioner shall not issue a license if an individual living in the household where the licensed services will be provided has been disqualified and the disqualification has not been set aside.

245A.06 - Correction order and conditional license. – Effective August 1, 2005

Subd. 8 - Requirement to post correction order. Requires license holders to post correction orders and conditional licenses (notwithstanding pending request for reconsideration) in a conspicuous location for two years.

245A.07 - Sanctions available. – Effective August 1, 2005

Subd. 1 - Sanctions, appeals, license. Create new license category for programs operating while they appeal the suspension or revocation of their license. If a license holder appeals the suspension or revocation of a license and the license holder continues to operate the program pending a final order on the appeal, and the license expires during this time period, the commissioner shall issue the license holder a temporary provisional license. The temporary provisional license is effective on the date issued and expires on the date that a final order is issued.

Subd. 3 - License suspension, revocation or fine. Clarifies that the commissioner may suspend or revoke a license if an individual living in the household where the licensed services are provided has a disqualification which has not been set aside.

Subd. 5 - Requirement to post licensing order or fine. Requires license holders to post any order of license suspension, temporary immediate suspension, fine, or revocation (notwithstanding an appeal of the action) in a conspicuous location for two years.

245A.08 - Hearings. – Effective August 1, 2005

Subd. 2a - Consolidated contested case hearings. States that when a fine is based on a determination the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment determination and the fine, the contested case hearing will address both actions and a separate reconsideration of the maltreatment determination under §626.556 or 626.557, will not be conducted.

Subd. 5 - Notice of commissioner’s final order. 5a) Adds an exception to the five-year prohibition from granting a license following a revocation when there has been a substantial change in the condition(s) that caused the revocation. Subd. 5a establishes a similar substantial change exception for license revocations that are based on a disqualification when the disqualified individual is no longer present in the licensed program-generally cases involving the revocation of a family child

care license based on the actions of the license holder's child or spouse. This change will allow a license to be granted again after that child or spouse no longer has any access to children receiving services.

245A.14 - Special conditions for nonresidential programs. – January 1, 2006

Subd. 12 - First aid training requirements. When children are present in a family child care home, at least one caregiver must have received first aid training. The training must be provided by an individual who has been approved to provide first aid instruction.

Subd. 13 - CPR training requirements. When children are present, at least one caregiver must be currently trained in CPR and in the treatment of obstructed airways. Training must be received from an approved CPR instructor and must be repeated at least once every three years.

245A.144 - Training on risk of sudden infant death syndrome and shaken baby syndrome. – Effective January 1, 2006

In addition to the required training on reducing the risk of Sudden Infant Death Syndrome, child care providers must receive training on reducing risks for Shaken Baby Syndrome. Training on each topic must be a minimum of one hour in length and be received at least once every five year.

245A.1445 - Child care provider training; dangers of shaking infants and young children. – Effective August 1, 2005

The Department of Human Services shall make available for viewing by all licensed child care providers a video presentation on the dangers associated with shaking infants and young children. The video presentation shall be part of the initial and annual training of licensed child care providers. The commissioner shall provide to child care providers, at cost, copies of a video approved by the commissioner of health.

245A.146 - Crib safety requirements. – January 1, 2006

Subd. 1. Consumer product safety Web link. The commissioner shall maintain a link from the licensing division Web site to the United States Consumer Product Safety Commission Web site that addresses crib safety information.

Subd. 2. Documentation requirement for license holders.

(a) Effective January 1, 2006, all licensed child care providers must maintain the following documentation for every crib used by or that is accessible to any child in care:

- (1) the crib's brand name; and
- (2) the crib's model number.

(b) Any crib for which the license holder does not have the documentation required under paragraph (a) must not be used by or be accessible to children in care.

Subd. 3. License holder documentation of cribs.

(a) Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs.

(b) The license holder shall maintain written documentation to be reviewed on site for each crib showing that the review required in paragraph (a) has been completed, and which of the following conditions applies:

- (1) the crib was not identified as unsafe on the United States Consumer Product Safety Commission Web site;

- (2) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, but the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe; or
- (3) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, and the license holder has removed the crib so that it is no longer used by or accessible to children in care.

(c) Documentation of the review completed under this subdivision shall be maintained by the license holder on site and made available to parents of children in care and the commissioner.

Subd. 4. Crib safety standards and inspection.

(a) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document the following:

- (1) no corner posts extend more than 1/16 of an inch;
- (2) no spaces between side slats exceed 2.375 inches;
- (3) no mattress supports can be easily dislodged from any point of the crib;
- (4) no cutout designs are present on end panels;
- (5) no heights of the rail and end panel are less than 26 inches when measured from the top of the rail or panel in the highest position to the top of the mattress support in its lowest position;
- (6) no heights of the rail and end panel are less than nine inches when measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position;
- (7) no screws, bolts, or hardware are loose or not secured, and there is no use of woodscrews in components that are designed to be assembled and disassembled by the crib owner;
- (8) no sharp edges, points, or rough surfaces are present;
- (9) no wood surfaces are rough, splintered, split, or cracked;
- (10) no tears in mesh of fabric sides in non-full-size cribs;
- (11) no mattress pads in non-full-size mesh or fabric cribs exceed one inch; and
- (12) no gaps between the mattress and any sides of the crib are present.

(b) Upon discovery of any unsafe condition identified by the license holder during the safety inspection required under paragraph (a), the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided for necessary repairs or to destroy the crib.

(c) Documentation of the inspections and actions taken with unsafe cribs required in paragraphs (a) and (b) shall be maintained on site by the license holder and made available to parents of children in care and the commissioner.

Subd. 5. Commissioner inspection. During routine licensing inspections, and when investigating complaints regarding alleged violations of this section, the commissioner shall review the provider's documentation required under subdivisions 3 and 4.

Subd. 6. Failure to comply. The commissioner may issue a licensing action under section 245A.06 or 245A.07 if a license holder fails to comply with the requirements of this section.

245A.18 - Child Passenger restraint systems; training requirement. – January 1, 2006

Subd. 1 - Seat Belt Use. A license holder must comply with all seat belt and child passenger restraint system requirements under section 169.685.

Subd. 2 - Child Passenger Restraint Systems; training requirement.

- (a) Family and group family child care, child care centers, child foster care, and other programs licensed by the Department of Human Services that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.
- (b) Before a license holder, staff person, caregiver, or helper transports a child or children under age nine in a motor vehicle, the person transporting the child must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this section may be used to meet initial or ongoing training under the following:
 - 1) Minnesota Rules, part 2960.3070, subparts 1 and 2;
 - 2) Minnesota Rules, part 9502.0385, subparts 2 and 3; and
 - 3) Minnesota Rules, part 9503.0035, subparts 1 and 4.
- (c) Training required under this section must be at least one hour in length, completed at orientation or initial training, and repeated at least once every five years. At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight, and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.
- (d) Training under paragraph (c) must be provided by individuals who are certified and approved by the Department of Public Safety, Office of Traffic Safety. License holders may obtain a list of certified and approved trainers through the Department of Public Safety web site or by contacting the agency.

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

245C.08 - Background study; information commissioner reviews – Effective August 1, 2005

Subd. 2- Background studies conducted by a county or private licensing agency. Paragraph (c) provides that for purposes of background studies, county or private agencies may consider information that has been expunged, unless the commissioner received notice of the expungement and the order is directed specifically to the commissioner.

245C.13 - Background study form processing – Effective with the 2005 legislative session.

Subd. 2 - Direct contact pending completion of background study. The subject of a background study may not perform any activity requiring a background study under paragraph (b) until the commissioner has issued one of the notices under paragraph (a).

- (a) Notices from the commissioner required prior to activity under paragraph (b) include:
 - (1) a notice of the study results under section 245C.17 stating that:
 - (i) the individual is not disqualified; or

- (ii) more time is needed to complete the study but the individual is not required to be removed from direct contact or access to people receiving services prior to completion of the study as provided under section 245A.17, paragraph (c);
- (2) a notice that a disqualification has been set aside under section 245C.23; or
- (3) a notice that a variance has been granted related to the individual under section 245C.30.

(b) Activities prohibited prior to receipt of notice under paragraph (a) include:

- (1) being issued a license;
- (2) living in the household where the licensed program will be provided;
- (3) providing direct contact services to persons served by a program unless the subject is under continuous direct supervision; or
- (4) having access to persons receiving services if the background study was completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause (2), (5), or (6), unless the subject is under continuous direct supervision.

245C.15, subd. 1 - Permanent disqualifications. – Effective August 1, 2005

There are two new permanent disqualifications in this section. Minn. Stat. §609.3451, criminal sexual conduct in the fifth degree and Minn. Stat. §609.3453, criminal sexual predatory conduct.

245C.17 - Notice of background study results. – Effective with the 2005 legislative session

Subd. 2 – Disqualification notice sent to subject. (a) (3) an explanation of any restrictions on the commissioner’s discretion to set aside the disqualification under section 245C.24, when applicable to the individual;

(4) a statement indicating that if the individual’s disqualification is set aside or the facility is granted a variance under section 245C.30, the individual’s identity and the reason for the individual’s disqualification will become public data under section 245C.22, subd. 7, when applicable to the individual; and

(5) the commissioner’s determination of the individual’s immediate risk of harm under section 245C.16.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to provide direct contact services as provided under subd. 3.

Subd. 3 - Disqualification notice.

(c) (2) before allowing the disqualified individual to provide direct contact services, the applicant, license holder, or other entity, as provided in this chapter, must: (i) obtain from the disqualified individual a copy of the individual’s notice of disqualification from the commissioner that explains the reason for disqualification; (ii) ensure that the individual studied is under continuous, direct supervision when providing direct contact services during the period in which the individual may request a reconsideration of the disqualification under section 245C.21 and (iii) ensure that the disqualified individual requests reconsideration within 30 days of receipt of the notice of disqualification.

(d) If the commissioner determines under section 245C.16 that an individual studies does not pose a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

- (1) immediately remove the individual studied from direct contact services; or

- (2) before allowing the disqualified individual to provide direct contact services, the applicant, license holder, or other entity as provided in this chapter must: (i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for the disqualification; and (ii) ensure that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.

245C.21- Requesting reconsideration of disqualification. – Effective August 1, 2005

Subd. 2 -Time frame for requesting reconsideration. Specifies that requests for reconsideration must be “postmarked and sent” within the specified time period.

245C.22 - Review and action on a reconsideration request. – Effective July 15, 2005

Subd. 3 - Preeminent weight given to safety of persons being served. Adds reference to the “disqualified individual” to clarify that the interest of persons receiving services must be given preeminent weight over the disqualified individual.

Subd. 4 - Risk of harm; set aside. Clarifies that if a disqualified individual requests reconsideration on the basis that the information relied upon to disqualify the individual was incorrect and the Commissioner determines that the information relied upon to disqualify this individual was correct, the Commissioner must also determine if the individual poses a risk of harm.

Subd. 7 - Classification of certain data.

- (a) Notwithstanding section 13.46, upon setting aside a disqualification under this section, the identity of the disqualified individual who received the set aside and the individual's disqualifying characteristics are public data if the set aside was:
 - (1) for any disqualifying characteristic under section 245C.15, when the set aside relates to a child care center or a family child care provider licensed under chapter 245A; or
 - (2) for a disqualifying characteristic under section 245C.15, subdivision 2.
- (b) Notwithstanding section 13.46, upon granting a variance to a license holder under section 245C.30, the identity of the disqualified individual who is the subject of the variance, the individual's disqualifying characteristics under section 245C.15, and the terms of the variance are public data, when the variance:
 - (1) is issued to a child care center or a family child care provider licensed under chapter 245A; or
 - (2) relates to an individual with a disqualifying characteristic under section 245C.15, subdivision 2.
- (c) The identity of a disqualified individual and the reason for disqualification remain private data when:
 - (1) a disqualification is not set aside and no variance is granted;
 - (2) the data are not public under paragraph (a) or (b);
 - (3) the disqualification is rescinded because the information relied upon to disqualify the individual is incorrect; or
 - (4) the disqualification relates to a license to provide relative child foster care. As used in this clause, "relative" has the meaning given it under section 260C.007, subdivision 27.
- (e) Licensed family day care providers and child care centers must notify parents considering enrollment of a child or parents of a child attending the family day care or child care center if the program employs or has living in the home any individual who is the subject of either a set aside or variance.

245C.24 - Disqualification; family child care and foster care. – Effective July 15, 2005

Subd. 2 - Permanent bar to set aside a disqualification. The commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section 245C.15, subd. 1.

245C.27 - Fair hearing rights. – August 1, 2005

Subd. 1- Fair hearing when disqualification is not set aside.

(c) to clarify that when an individual is disqualified based on a judicial determination, that determination is treated the same as a conviction for purposes of appeal.

(e) specifies that an individual who is disqualified on both a conviction and preponderance of evidence, the individual may request a fair hearing upon section 256.045, unless the disqualification is deemed conclusive. The amendment specifies that the scope of the hearing is limited to risk of harm.

245C.30 - Variance for a disqualified individual. – July 15, 2005

Subd. 1 - License holder variance. Provides that no variances may be issued for permanent disqualifications and, except for family systems programs, the variance request must be requested by the license holder.

Subd. 2 - Disclosure of reason for disqualification. Clarifies that for family child care, foster care for children in the provider's own home, foster care or day care services for adults in the provider's own home, a variance can be granted without a request from the applicant or license holder, and the consent of the disqualified individual is not required in order to disclose the reason for the disqualification to the license holder as part to the variance.

245C.301 - Notification of set aside or variance. – August 1, 2005

Licensed family child care providers and child care centers must provide a written notification to parents considering enrollment of a child or parents of a child attending the family child care or child care center if the program employs or has living in the home any individual who is the subject of either a set aside or variance.

Amendments to Minn. Statute Chapter 13 – Government Data Practices

13.46, subd. 4 - Licensing data. – Effective July 15, 2005

The following data is considered public information:

- The record of training and education in child care and child development.
- The number of serious injuries to or deaths of individuals in the licensed program as reported to the Commissioner of Human Services. A serious injury is one that is treated by a physician.
- The identity of a perpetrator of substantiated maltreatment when the maltreatment was a reason for a licensing action.