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# State of Minnesota

## HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1512**

02/25/2021 Authored by Edelson, Albright, Schomacker, Robbins, Hamilton and others  
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to human services; exempting certain licensed individuals from background
- 1.3 studies under chapter 245C; amending Minnesota Statutes 2020, sections 144.057,
- 1.4 subdivision 1; 245C.03, subdivision 1; 245C.08, subdivision 1.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2020, section 144.057, subdivision 1, is amended to read:
- 1.7 Subdivision 1. **Background studies required.** (a) Except as specified in paragraph (b),
- 1.8 the commissioner of health shall contract with the commissioner of human services to
- 1.9 conduct background studies of:
- 1.10 (1) individuals providing services that have direct contact, as defined under section
- 1.11 245C.02, subdivision 11, with patients and residents in hospitals, boarding care homes,
- 1.12 outpatient surgical centers licensed under sections 144.50 to 144.58; nursing homes and
- 1.13 home care agencies licensed under chapter 144A; assisted living facilities and assisted living
- 1.14 facilities with dementia care licensed under chapter 144G; and board and lodging
- 1.15 establishments that are registered to provide supportive or health supervision services under
- 1.16 section 157.17;
- 1.17 (2) individuals specified in section 245C.03, subdivision 1, who perform direct contact
- 1.18 services in a nursing home or a home care agency licensed under chapter 144A; an assisted
- 1.19 living facility or assisted living facility with dementia care licensed under chapter 144G;
- 1.20 or a boarding care home licensed under sections 144.50 to 144.58. If the individual under
- 1.21 study resides outside Minnesota, the study must include a check for substantiated findings
- 1.22 of maltreatment of adults and children in the individual's state of residence when the

information is made available by that state, and must include a check of the National Crime Information Center database;

(3) all other employees in assisted living facilities or assisted living facilities with dementia care licensed under chapter 144G, nursing homes licensed under chapter 144A, and boarding care homes licensed under sections 144.50 to 144.58. A disqualification of an individual in this section shall disqualify the individual from positions allowing direct contact or access to patients or residents receiving services. "Access" means physical access to a client or the client's personal property without continuous, direct supervision as defined in section 245C.02, subdivision 8, when the employee's employment responsibilities do not include providing direct contact services;

(4) individuals employed by a supplemental nursing services agency, as defined under section 144A.70, who are providing services in health care facilities; and

(5) controlling persons of a supplemental nursing services agency, as defined under section 144A.70.

(b) The commissioner of human services is not required to conduct a background study on any individual identified in paragraph (a) if the individual has a valid license issued by a health-related licensing board as defined in section 214.01, subdivision 2, and has completed the criminal background check as required in section 214.075, unless the commissioner of human services has reasonable cause as defined in section 245C.02, subdivision 15, to conduct a background study.

(c) If a facility or program is licensed by the Department of Human Services and subject to the background study provisions of chapter 245C and is also licensed by the Department of Health, the Department of Human Services is solely responsible for the background studies of individuals in the jointly licensed programs.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2020, section 245C.03, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) Except as specified in paragraph (b), the commissioner shall conduct a background study on:

(1) the person or persons applying for a license;

(2) an individual age 13 and over living in the household where the licensed program will be provided who is not receiving licensed services from the program;

(3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;

(4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);

(5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause as defined in section 245C.02, subdivision 15;

(6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause as defined in section 245C.02, subdivision 15;

(7) all controlling individuals as defined in section 245A.02, subdivision 5a;

(8) notwithstanding the other requirements in this subdivision, child care background study subjects as defined in section 245C.02, subdivision 6a; and

(9) notwithstanding clause (3), for children's residential facilities and foster residence settings, any adult working in the facility, whether or not the individual will have direct contact with persons served by the facility.

(b) The commissioner is not required to conduct a background study on any individual identified in paragraph (a) if the individual has a valid license issued by a health-related licensing board as defined in section 214.01, subdivision 2, and has completed the criminal background check as required in section 214.075, unless the commissioner has reasonable cause to conduct a background study.

(c) For child foster care when the license holder resides in the home where foster care services are provided, a short-term substitute caregiver providing direct contact services for a child for less than 72 hours of continuous care is not required to receive a background study under this chapter.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2020, section 245C.08, subdivision 1, is amended to read:

Subdivision 1. **Background studies conducted by Department of Human Services.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review:

(1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (j);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

(4) information from the Bureau of Criminal Apprehension, including information regarding a background study subject's registration in Minnesota as a predatory offender under section 243.166;

(5) except as provided in clause (6), information received as a result of submission of fingerprints for a national criminal history record check, as defined in section 245C.02, subdivision 13c, when the commissioner has reasonable cause for a national criminal history record check as defined under section 245C.02, subdivision 15a, or as required under section 144.057, subdivision 1, paragraph (a), clause (2);

(6) for a background study related to a child foster family setting application for licensure, foster residence settings, children's residential facilities, a transfer of permanent legal and physical custody of a child under sections 260C.503 to 260C.515, or adoptions, and for a background study required for family child care, certified license-exempt child care, child care centers, and legal nonlicensed child care authorized under chapter 119B, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years;

(ii) when the background study subject is 18 years of age or older, or a minor under section 245C.05, subdivision 5a, paragraph (c), information received following submission of fingerprints for a national criminal history record check; and

(iii) when the background study subject is 18 years of age or older or a minor under section 245C.05, subdivision 5a, paragraph (d), for licensed family child care, certified license-exempt child care, licensed child care centers, and legal nonlicensed child care authorized under chapter 119B, information obtained using non-fingerprint-based data including information from the criminal and sex offender registries for any state in which

5.1 the background study subject resided for the past five years and information from the national  
5.2 crime information database and the national sex offender registry; and

5.3 (7) for a background study required for family child care, certified license-exempt child  
5.4 care centers, licensed child care centers, and legal nonlicensed child care authorized under  
5.5 chapter 119B, the background study shall also include, to the extent practicable, a name  
5.6 and date-of-birth search of the National Sex Offender Public website.

5.7 (b) Notwithstanding expungement by a court, the commissioner may consider information  
5.8 obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice  
5.9 of the petition for expungement and the court order for expungement is directed specifically  
5.10 to the commissioner.

5.11 (c) The commissioner shall also review criminal case information received according  
5.12 to section 245C.04, subdivision 4a, from the Minnesota court information system that relates  
5.13 to individuals who have already been studied under this chapter and who remain affiliated  
5.14 with the agency that initiated the background study.

5.15 (d) When the commissioner has reasonable cause to believe that the identity of a  
5.16 background study subject is uncertain, the commissioner may require the subject to provide  
5.17 a set of classifiable fingerprints for purposes of completing a fingerprint-based record check  
5.18 with the Bureau of Criminal Apprehension. Fingerprints collected under this paragraph  
5.19 shall not be saved by the commissioner after they have been used to verify the identity of  
5.20 the background study subject against the particular criminal record in question.

5.21 (e) The commissioner may inform the entity that initiated a background study under  
5.22 NETStudy 2.0 of the status of processing of the subject's fingerprints.