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02/22/2021	481	Introduction and first reading Referred to Health and Human Services Finance and Policy
02/25/2021	574	Author added Wiklund
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03/10/2021	774a	Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy
03/21/2022		Comm report: To pass as amended and re-refer to Finance See First Special Session 2021, HF33, Art. 2, Sec. 27, 66

- 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; permitting additional authorized fingerprint collection
- 1.4 vendors; requiring an authorized on-site fingerprint collection vendor; appropriating
- 1.5 money; amending Minnesota Statutes 2020, sections 144.057, subdivision 1;
- 1.6 245C.02, subdivision 4a; 245C.03, subdivision 1; 245C.05, subdivisions 2c, 5;
- 1.7 245C.08, subdivision 1; 245C.32, subdivisions 1a, 1b.
- 1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.9 Section 1. Minnesota Statutes 2020, section 144.057, subdivision 1, is amended to read:
- 1.10 Subdivision 1. **Background studies required.** (a) Except as specified in paragraph (b),
- 1.11 the commissioner of health shall contract with the commissioner of human services to
- 1.12 conduct background studies of:
- 1.13 (1) individuals providing services that have direct contact, as defined under section
- 1.14 245C.02, subdivision 11, with patients and residents in hospitals, boarding care homes,
- 1.15 outpatient surgical centers licensed under sections 144.50 to 144.58; nursing homes and
- 1.16 home care agencies licensed under chapter 144A; assisted living facilities and assisted living
- 1.17 facilities with dementia care licensed under chapter 144G; and board and lodging
- 1.18 establishments that are registered to provide supportive or health supervision services under
- 1.19 section 157.17;
- 1.20 (2) individuals specified in section 245C.03, subdivision 1, who perform direct contact
- 1.21 services in a nursing home or a home care agency licensed under chapter 144A; an assisted
- 1.22 living facility or assisted living facility with dementia care licensed under chapter 144G;
- 1.23 or a boarding care home licensed under sections 144.50 to 144.58. If the individual under
- 1.24 study resides outside Minnesota, the study must include a check for substantiated findings

2.1 of maltreatment of adults and children in the individual's state of residence when the
 2.2 information is made available by that state, and must include a check of the National Crime
 2.3 Information Center database;

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

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

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

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

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

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

2.27 Sec. 2. Minnesota Statutes 2020, section 245C.02, subdivision 4a, is amended to read:

2.28 Subd. 4a. **Authorized fingerprint collection vendor.** "Authorized fingerprint collection
 2.29 vendor" means a one of up to three qualified organization organizations under a written
 2.30 contract with the commissioner to provide services in accordance with section 245C.05,
 2.31 subdivision 5, paragraph (b).

3.1 Sec. 3. Minnesota Statutes 2020, section 245C.03, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

3.30 (c) For child foster care when the license holder resides in the home where foster care
3.31 services are provided, a short-term substitute caregiver providing direct contact services for

4.1 a child for less than 72 hours of continuous care is not required to receive a background
4.2 study under this chapter.

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

4.4 Sec. 4. Minnesota Statutes 2020, section 245C.05, subdivision 2c, is amended to read:

4.5 Subd. 2c. **Privacy notice to background study subject.** (a) Prior to initiating each
4.6 background study, the entity initiating the study must provide the commissioner's privacy
4.7 notice to the background study subject required under section 13.04, subdivision 2. The
4.8 notice must be available through the commissioner's electronic NETStudy and NETStudy
4.9 2.0 systems and shall include the information in paragraphs (b) and (c).

4.10 (b) The background study subject shall be informed that any previous background studies
4.11 that received a set-aside will be reviewed, and without further contact with the background
4.12 study subject, the commissioner may notify the agency that initiated the subsequent
4.13 background study:

4.14 (1) that the individual has a disqualification that has been set aside for the program or
4.15 agency that initiated the study;

4.16 (2) the reason for the disqualification; and

4.17 (3) that information about the decision to set aside the disqualification will be available
4.18 to the license holder upon request without the consent of the background study subject.

4.19 (c) The background study subject must also be informed that:

4.20 (1) the subject's fingerprints collected for purposes of completing the background study
4.21 under this chapter must not be retained by the Department of Public Safety, Bureau of
4.22 Criminal Apprehension, or by the commissioner. The Federal Bureau of Investigation will
4.23 only retain fingerprints of subjects with a criminal history;

4.24 (2) effective upon implementation of NETStudy 2.0, the subject's photographic image
4.25 will be retained by the commissioner, and if the subject has provided the subject's Social
4.26 Security number for purposes of the background study, the photographic image will be
4.27 available to prospective employers and agencies initiating background studies under this
4.28 chapter to verify the identity of the subject of the background study;

4.29 (3) ~~the commissioner's~~ an authorized fingerprint collection vendor shall, for purposes
4.30 of verifying the identity of the background study subject, be able to view the identifying
4.31 information entered into NETStudy 2.0 by the entity that initiated the background study,
4.32 but shall not retain the subject's fingerprints, photograph, or information from NETStudy

5.1 2.0. ~~The~~ An authorized fingerprint collection vendor shall retain no more than the subject's
5.2 name and the date and time the subject's fingerprints were recorded and sent, only as
5.3 necessary for auditing and billing activities;

5.4 (4) the commissioner shall provide the subject notice, as required in section 245C.17,
5.5 subdivision 1, paragraph (a), when an entity initiates a background study on the individual;

5.6 (5) the subject may request in writing a report listing the entities that initiated a
5.7 background study on the individual as provided in section 245C.17, subdivision 1, paragraph
5.8 (b);

5.9 (6) the subject may request in writing that information used to complete the individual's
5.10 background study in NETStudy 2.0 be destroyed if the requirements of section 245C.051,
5.11 paragraph (a), are met; and

5.12 (7) notwithstanding clause (6), the commissioner shall destroy:

5.13 (i) the subject's photograph after a period of two years when the requirements of section
5.14 245C.051, paragraph (c), are met; and

5.15 (ii) any data collected on a subject under this chapter after a period of two years following
5.16 the individual's death as provided in section 245C.051, paragraph (d).

5.17 Sec. 5. Minnesota Statutes 2020, section 245C.05, subdivision 5, is amended to read:

5.18 Subd. 5. **Fingerprints and photograph.** (a) Notwithstanding paragraph (b), for
5.19 background studies conducted by the commissioner for child foster care, children's residential
5.20 facilities, adoptions, or a transfer of permanent legal and physical custody of a child, the
5.21 subject of the background study, who is 18 years of age or older, shall provide the
5.22 commissioner with a set of classifiable fingerprints obtained from an authorized agency for
5.23 a national criminal history record check.

5.24 (b) For background studies initiated on or after the implementation of NETStudy 2.0,
5.25 except as provided under subdivision 5a, every subject of a background study must provide
5.26 the commissioner with a set of the background study subject's classifiable fingerprints and
5.27 photograph. The photograph and fingerprints must be recorded at the same time by ~~the~~
5.28 ~~commissioner's~~ an authorized fingerprint collection vendor and sent to the commissioner
5.29 through the commissioner's secure data system described in section 245C.32, subdivision
5.30 1a, paragraph (b).

6.1 (c) The fingerprints shall be submitted by the commissioner to the Bureau of Criminal
6.2 Apprehension and, when specifically required by law, submitted to the Federal Bureau of
6.3 Investigation for a national criminal history record check.

6.4 (d) The fingerprints must not be retained by the Department of Public Safety, Bureau
6.5 of Criminal Apprehension, or the commissioner. The Federal Bureau of Investigation will
6.6 not retain background study subjects' fingerprints.

6.7 (e) ~~The commissioner's~~ An authorized fingerprint collection vendor shall, for purposes
6.8 of verifying the identity of the background study subject, be able to view the identifying
6.9 information entered into NETStudy 2.0 by the entity that initiated the background study,
6.10 but shall not retain the subject's fingerprints, photograph, or information from NETStudy
6.11 2.0. ~~The~~ An authorized fingerprint collection vendor shall retain no more than the name
6.12 and date and time the subject's fingerprints were recorded and sent, only as necessary for
6.13 auditing and billing activities.

6.14 (f) For any background study conducted under this chapter, the subject shall provide the
6.15 commissioner with a set of classifiable fingerprints when the commissioner has reasonable
6.16 cause to require a national criminal history record check as defined in section 245C.02,
6.17 subdivision 15a.

6.18 Sec. 6. Minnesota Statutes 2020, section 245C.08, subdivision 1, is amended to read:

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

6.22 (1) information related to names of substantiated perpetrators of maltreatment of
6.23 vulnerable adults that has been received by the commissioner as required under section
6.24 626.557, subdivision 9c, paragraph (j);

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

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

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

7.1 (5) except as provided in clause (6), information received as a result of submission of
7.2 fingerprints for a national criminal history record check, as defined in section 245C.02,
7.3 subdivision 13c, when the commissioner has reasonable cause for a national criminal history
7.4 record check as defined under section 245C.02, subdivision 15a, or as required under section
7.5 144.057, subdivision 1, paragraph (a), clause (2);

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

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

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

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

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

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

7.32 (c) The commissioner shall also review criminal case information received according
7.33 to section 245C.04, subdivision 4a, from the Minnesota court information system that relates

8.1 to individuals who have already been studied under this chapter and who remain affiliated
8.2 with the agency that initiated the background study.

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

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

8.11 Sec. 7. Minnesota Statutes 2020, section 245C.32, subdivision 1a, is amended to read:

8.12 Subd. 1a. **NETStudy 2.0 system.** (a) The commissioner shall design, develop, and test
8.13 the NETStudy 2.0 system and implement it no later than September 1, 2015.

8.14 (b) The NETStudy 2.0 system developed and implemented by the commissioner shall
8.15 incorporate and meet all applicable data security standards and policies required by the
8.16 Federal Bureau of Investigation (FBI), Department of Public Safety, Bureau of Criminal
8.17 Apprehension, and the Office of MN.IT Services. The system shall meet all required
8.18 standards for encryption of data at the database level as well as encryption of data that
8.19 travels electronically among agencies initiating background studies, ~~the commissioner's~~
8.20 authorized fingerprint collection ~~vendor~~ vendors, the commissioner, the Bureau of Criminal
8.21 Apprehension, and in cases involving national criminal record checks, the FBI.

8.22 (c) The data system developed and implemented by the commissioner shall incorporate
8.23 a system of data security that allows the commissioner to control access to the data field
8.24 level by the commissioner's employees. The commissioner shall establish that employees
8.25 have access to the minimum amount of private data on any individual as is necessary to
8.26 perform their duties under this chapter.

8.27 (d) The commissioner shall oversee regular quality and compliance audits of ~~the~~
8.28 authorized fingerprint collection ~~vendor~~ vendors.

8.29 Sec. 8. Minnesota Statutes 2020, section 245C.32, subdivision 1b, is amended to read:

8.30 Subd. 1b. **Civil remedies.** When accessing private data on individuals through NETStudy
8.31 2.0, entities that are authorized to initiate background studies and ~~the commissioner's~~
8.32 authorized fingerprint collection vendors shall be subject to all responsibilities and civil

9.1 remedies applicable to a responsible authority or government entity as specified under
9.2 section 13.08.

9.3 **Sec. 9. DIRECTION TO COMMISSIONER OF HUMAN SERVICES; ON-SITE**
9.4 **BACKGROUND STUDY FINGERPRINTING.**

9.5 (a) The commissioner of human services shall contract with a qualified contractor to
9.6 conduct on-site fingerprinting beginning August 1, 2021, at locations of employers with 50
9.7 or more staff with outstanding background studies, including studies that have been delayed
9.8 pursuant to the commissioner's modifications to background study requirements issued in
9.9 response to the COVID-19 outbreak. The commissioner shall develop a list of employers
9.10 with 50 or more staff who need fingerprints taken in order to complete a background study.
9.11 The commissioner and the contractor shall coordinate to develop a plan to identify which
9.12 employer locations the contractor shall serve and inform those employers and staff of the
9.13 timing and nature of the contractor's services.

9.14 (b) The commissioner may contract with the qualified contractor to provide services
9.15 under paragraph (a) up to the date of the expiration of the modification in CV23: modifying
9.16 certain background study requirements, issued by the commissioner of human services
9.17 pursuant to Executive Orders 20-11 and 20-12.

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

9.19 **Sec. 10. APPROPRIATION; ON-SITE BACKGROUND STUDY FINGERPRINTING**
9.20 **CONTRACT.**

9.21 (a) \$..... is appropriated in fiscal year 2022 from the general fund to the commissioner
9.22 of human services for a qualified contractor to conduct on-site background study
9.23 fingerprinting to address the background study backlog under section 4. This is a onetime
9.24 appropriation.

9.25 (b) The appropriation in Minnesota Statutes, section 4.07, subdivision 3, does not apply
9.26 to any federal funds from the American Rescue Plan Act of 2021, received by the state of
9.27 Minnesota between the effective date of this section and June 30, 2021, for which the general
9.28 fund appropriation in paragraph (a) is an eligible expenditure. Federal funding for which
9.29 this section applies shall not be used for any other purpose, unless the amount of the federal
9.30 funding exceeds the amount of the eligible general fund appropriation.

9.31 (c) If the state of Minnesota receives federal funds from the American Rescue Plan Act
9.32 of 2021 between the effective date of this section and June 30, 2021, for which any general

10.1 fund appropriation enacted in paragraph (a) is an eligible expenditure, the commissioner
10.2 must cancel the general fund appropriation in paragraph (a) in an amount up to, but not
10.3 greater than, the amount appropriated in paragraph (a). The commissioner may designate
10.4 a portion of an appropriation for cancellation if the federal funds are not sufficient to replace
10.5 the entire general fund appropriation.

10.6 (d) Each amount canceled under paragraph (c) is appropriated from the federal fund for
10.7 the original purposes of the general fund appropriation in paragraph (a). This appropriation
10.8 may be used for expenses retroactive to the effective date of this section. Any appropriation
10.9 under this paragraph is a onetime appropriation.

10.10 (e) Paragraphs (b) to (d) do not apply to federal funds after the eligible general fund
10.11 appropriation in paragraph (a) has been canceled, and federal funds have been appropriated
10.12 for the same purpose.

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