

245C.30 VARIANCE FOR A DISQUALIFIED INDIVIDUAL.

Subdivision 1. **License holder and license-exempt child care center certification holder variance.** (a) Except for any disqualification under section 245C.15, subdivision 1, when the commissioner has not set aside a background study subject's disqualification, and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to people receiving services, the commissioner may grant a time-limited variance to a license holder or license-exempt child care center certification holder.

(b) The variance shall state the reason for the disqualification, the services that may be provided by the disqualified individual, and the conditions with which the license holder, license-exempt child care center certification holder, or applicant must comply for the variance to remain in effect.

(c) Except for programs licensed to provide family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the variance must be requested by the license holder or license-exempt child care center certification holder.

Subd. 1a. **Public law background study variances.** For a variance related to a public law background study conducted under section 245C.032, the variance shall state the services that may be provided by the disqualified individual and state the conditions with which the license holder or applicant must comply for the variance to remain in effect. The variance shall not state the reason for the disqualification.

Subd. 2. **Disclosure of reason for disqualification.** (a) The commissioner may not grant a variance for a disqualified individual unless the applicant, license-exempt child care center certification holder, or license holder requests the variance and the disqualified individual provides written consent for the commissioner to disclose to the applicant, license-exempt child care center certification holder, or license holder the reason for the disqualification.

(b) This subdivision does not apply to programs licensed to provide family child care for children, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home. When the commissioner grants a variance for a disqualified individual in connection with a license to provide the services specified in this paragraph, the disqualified individual's consent is not required to disclose the reason for the disqualification to the license holder in the variance issued under subdivision 1, provided that the commissioner may not disclose the reason for the disqualification if the disqualification is based on a felony-level conviction for a drug-related offense within the past five years.

Subd. 3. **Consequences for failing to comply with conditions of variance.** When a license holder or license-exempt child care center certification holder permits a disqualified individual to provide any services for which the subject is disqualified without complying with the conditions of the variance, the commissioner may terminate the variance effective immediately and subject the license holder to a licensing action under sections 245A.06 and 245A.07 or a license-exempt child care center certification holder to an action under sections 245H.06 and 245H.07.

Subd. 4. **Termination of a variance.** The commissioner may terminate a variance for a disqualified individual at any time for cause.

Subd. 5. **Final decision.** The commissioner's decision to grant or deny a variance is final and not subject to appeal under the provisions of chapter 14.

History: 2003 c 15 art 1 s 30; 1Sp2005 c 4 art 1 s 43,44; 1Sp2017 c 6 art 16 s 42; 1Sp2019 c 9 art 2 s 79-81; 1Sp2021 c 7 art 2 s 65