

## CHAPTER 338—S.F.No. 1077

*An act relating to human services; regulating child care programs; requiring an interpretive memoranda study; providing for a vulnerable adult study; amending Minnesota Statutes 1992, sections 245A.02, subdivisions 6a and 14; 245A.03, subdivision 2, and by adding a subdivision; 245A.04, subdivision 3; 245A.06, subdivision 2; 245A.09, subdivision 7; 245A.14, subdivision 6; and 245A.16, subdivision 6.*

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 245A.02, subdivision 6a, is amended to read:

Subd. 6a. **DROP-IN CHILD CARE PROGRAM.** "Drop-in child care program" means a nonresidential program of child care in which children participate on a one-time only or occasional basis up to a maximum of 45 ~~90~~ hours per child, per month. A drop-in child care program must be licensed under Minnesota Rules governing child care centers. A drop-in child care program must meet one of the following requirements to qualify for the rule exemptions specified in section 245A.14, subdivision 6:

(1) the drop-in child care program operates in a child care center which houses no child care program except the drop-in child care program;

(2) the drop-in child care program operates in the same child care center but not during the same hours as a regularly scheduled ongoing child care program with a stable enrollment; or

(3) the drop-in child care program operates in a child care center at the same time as a regularly scheduled ongoing child care program with a stable enrollment but the program's activities, except for bathroom use and outdoor play, are conducted separately from each other.

Sec. 2. Minnesota Statutes 1992, section 245A.02, subdivision 14, is amended to read:

Subd. 14. **RESIDENTIAL PROGRAM.** "Residential program" means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment outside a person's own home, including a nursing home or hospital that receives public funds, administered by the commissioner, to provide services for five or more persons whose primary diagnosis is mental retardation or a related condition or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a program in an intermediate care facility for four or more persons with mental retardation or a related condition; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a hospital or nursing home and

New language is indicated by underline, deletions by ~~strikeout~~.

receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Residential programs include home and community-based services ~~and semi-independent living services~~ for persons with mental retardation or a related condition that are provided in or outside of a person's own home.

Sec. 3. Minnesota Statutes 1992, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **EXCLUSION FROM LICENSURE.** Sections 245A.01 to 245A.16 do not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related, except as provided in subdivision 2a;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;

(4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;

(5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school as defined in section 120.101, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of education;

(6) nonresidential programs primarily for children that provide care or supervision, without charge for ten or fewer days a year, and for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present on property within another building that is directly contiguous with the ~~physical facility where to the building in which~~ the nonresidential program is provided located;

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness who have refused an appropriate residential program offered by a county agency. This exclusion expires on July 1, 1990;

(9) homes providing programs for persons placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years;

New language is indicated by underline, deletions by ~~strikeout~~.

- (10) programs licensed by the commissioner of corrections;
- (11) recreation programs for children or adults that operate for fewer than 40 calendar days in a calendar year;
- (12) programs whose primary purpose is to provide, for adults or school-age children, including children who will be eligible to enter kindergarten within not more than four months, social and recreational activities, such as scouting, boys clubs, girls clubs, sports, or the arts; except that a program operating in a school building is not excluded unless it is approved by the district's school board;
- (13) head start nonresidential programs which operate for less than 31 days in each calendar year;
- (14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;
- (15) nonresidential programs for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period;
- (16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules;
- (17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;
- (18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;
- (19) mental health outpatient services for adults with mental illness or children with emotional disturbance;
- (20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;
- (21) unrelated individuals who provide out-of-home respite care services to persons with mental retardation or related conditions from a single related family for no more than 30 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;
- (22) respite care services provided as a home- and community-based service to a person with mental retardation or a related condition, in the person's primary residence; or
- (23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17.

New language is indicated by underline, deletions by ~~strikeout~~.

For purposes of clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

Sec. 4. Minnesota Statutes 1992, section 245A.03, is amended by adding a subdivision to read:

**Subd. 2a. LICENSING OF AN INDIVIDUAL RELATED TO A QUALIFYING CHILD.** Notwithstanding subdivision 2, clause (1), the commissioner may license an individual who is related to a qualifying child, as defined in title IV-E of the Social Security Act, to provide foster care for that qualifying child. The commissioner may issue such a license retroactive to the date the qualifying child was placed in the applicant's home, so long as no more than 90 days have elapsed since the placement. If more than 90 days have elapsed since the placement, the commissioner may issue the license retroactive 90 days.

Sec. 5. Minnesota Statutes 1992, section 245A.04, subdivision 3, is amended to read:

**Subd. 3. STUDY OF THE APPLICANT.** (a) Before the commissioner issues a license, the commissioner shall conduct a study of the individuals specified in clauses (1) to (4) according to rules of the commissioner. The applicant, license holder, the bureau of criminal apprehension, and county agencies, after written notice to the individual who is the subject of the study, shall help with the study by giving the commissioner criminal conviction data and reports about abuse or neglect of adults in licensed programs substantiated under section 626.557 and the maltreatment of minors in licensed programs substantiated under section 626.556. The individuals to be studied shall include:

- (1) the applicant;
- (2) persons over the age of 13 living in the household where the licensed program will be provided;
- (3) current employees or contractors of the applicant who will have direct contact with persons served by the program; and
- (4) volunteers who have direct contact with persons served by the program to provide program services, if the contact is not directly supervised by the individuals listed in clause (1) or (3).

The juvenile courts shall also help with the study by giving the commissioner existing juvenile court records on individuals described in clause (2) relating to delinquency proceedings held within either the five years immediately preceding the application or the five years immediately preceding the individual's 18th birthday, whichever time period is longer. The commissioner shall destroy juvenile records obtained pursuant to this subdivision when the subject of the records reaches age 23.

New language is indicated by underline, deletions by ~~strikeout~~.

For purposes of this subdivision, "direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by a program. For purposes of this subdivision, "directly supervised" means an individual listed in clause (1) or (3) is within sight or hearing of a volunteer to the extent that the individual listed in clause (1) or (3) is capable at all times of intervening to protect the health and safety of the persons served by the program who have direct contact with the volunteer.

A study of an individual in clauses (1) to (4) shall be conducted ~~on~~ at least ~~an annual basis upon application for initial license and reapplication for a license~~. No applicant, license holder, or individual who is the subject of the study shall pay any fees required to conduct the study.

(b) The individual who is the subject of the study must provide the applicant or license holder with sufficient information to ensure an accurate study including the individual's first, middle, and last name; home address, city, county, and state of residence; zip code; sex; date of birth; and driver's license number. The applicant or license holder shall provide this information about an individual in paragraph (a), clauses (1) to (4), on forms prescribed by the commissioner. The commissioner may request additional information of the individual, which shall be optional for the individual to provide, such as the individual's social security number or race.

(c) Except for child foster care, adult foster care, and family day care homes, a study must include information from the county agency's record of substantiated abuse or neglect of adults in licensed programs, and the maltreatment of minors in licensed programs, information from juvenile courts as required in paragraph (a) for persons listed in paragraph (a), clause (2), and information from the bureau of criminal apprehension. For child foster care, adult foster care, and family day care homes, the study must include information from the county agency's record of substantiated abuse or neglect of adults, and the maltreatment of minors, information from juvenile courts as required in paragraph (a) for persons listed in paragraph (a), clause (2), and information from the bureau of criminal apprehension. The commissioner may also review arrest and investigative information from the bureau of criminal apprehension, a county attorney, county sheriff, county agency, local chief of police, other states, the courts, or a national criminal record repository if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual listed in paragraph (a), clauses (1) to (4).

(d) An applicant's or license holder's failure or refusal to cooperate with the commissioner is reasonable cause to deny an application or immediately suspend, suspend, or revoke a license. Failure or refusal of an individual to cooperate with the study is just cause for denying or terminating employment of the individual if the individual's failure or refusal to cooperate could cause the applicant's application to be denied or the license holder's license to be immediately suspended, suspended, or revoked.

New language is indicated by underline, deletions by ~~strikeout~~.

(e) The commissioner shall not consider an application to be complete until all of the information required to be provided under this subdivision has been received.

(f) No person in paragraph (a), clause (1), (2), (3), or (4) who is disqualified as a result of this section may be retained by the agency in a position involving direct contact with persons served by the program.

(g) Termination of persons in paragraph (a), clause (1), (2), (3), or (4) made in good faith reliance on a notice of disqualification provided by the commissioner shall not subject the applicant or license holder to civil liability.

(h) The commissioner may establish records to fulfill the requirements of this section. The information contained in the records is only available to the commissioner for the purpose authorized in this section.

(i) The commissioner may not disqualify an individual subject to a study under this section because that person has, or has had, a mental illness as defined in section 245.462, subdivision 20.

Sec. 6. Minnesota Statutes 1992, section 245A.06, subdivision 2, is amended to read:

Subd. 2. **RECONSIDERATION OF CORRECTION ORDERS.** If the applicant or license holder believes that the contents of the commissioner's correction order are in error, the applicant or license holder may ask the department of human services to reconsider the parts of the correction order that are alleged to be in error. The request for reconsideration must be in writing, delivered by certified mail, and:

- (1) specify the parts of the correction order that are alleged to be in error;
- (2) explain why they are in error; and
- (3) include documentation to support the allegation of error.

A request for reconsideration does not stay any provisions or requirements of the correction order. ~~The commissioner shall respond to requests made under this subdivision within 15 working days after receipt of the request for reconsideration.~~ The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Sec. 7. Minnesota Statutes 1992, section 245A.09, subdivision 7, is amended to read:

Subd. 7. **REGULATORY METHODS.** (a) Where appropriate and feasible the commissioner shall identify and implement alternative methods of regulation and enforcement to the extent authorized in this subdivision. These methods shall include:

New language is indicated by underline, deletions by ~~strikeout~~.

- (1) expansion of the types and categories of licenses that may be granted;
- (2) when the standards of an independent accreditation body have been shown to predict compliance with the rules, the commissioner shall consider compliance with the accreditation standards to be equivalent to partial compliance with the rules; and
- (3) use of an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

For programs and services for people with developmental disabilities, the commissioner of human services shall develop demonstration projects to use the standards of the commission on accreditation of rehabilitation facilities and the standards of the accreditation council on services to persons with disabilities during the period of July 1, 1993 to December 31, 1994, and incorporate the alternative use of these standards and methods in licensing rules where appropriate. If the commissioner determines that the methods in clause (2) or (3) can be used in licensing a program, the commissioner may reduce any fee set under section 245A.10 by up to 50 percent. The commissioner shall present a plan by January 31, 1995, to accept accreditation by either the accreditation council on services to people with disabilities or the commission on the accreditation of rehabilitation services as evidence of being in compliance where applicable with state licensing.

(b) The commissioner shall work with the commissioners of health, public safety, administration, and education in consolidating duplicative licensing and certification rules and standards if the commissioner determines that consolidation is administratively feasible, would significantly reduce the cost of licensing, and would not reduce the protection given to persons receiving services in licensed programs. Where administratively feasible and appropriate, the commissioner shall work with the commissioners of health, public safety, administration, and education in conducting joint agency inspections of programs.

(c) The commissioner shall work with the commissioners of health, public safety, administration, and education in establishing a single point of application for applicants who are required to obtain concurrent licensure from more than one of the commissioners listed in this clause.

(d) The commissioner may specify in rule periods of licensure up to two years.

Sec. 8. Minnesota Statutes 1992, section 245A.14, subdivision 6, is amended to read:

Subd. 6. **DROP-IN CHILD CARE PROGRAMS.** (a) Except as expressly set forth in this subdivision, drop-in child care programs must be licensed as a drop-in program under the rules governing child care programs operated in a center.

New language is indicated by underline, deletions by ~~strikeout~~.

(b) Drop-in child care programs are exempt from the ~~requirements in fol-~~  
lowing Minnesota Rules, parts:

(1) part 9503.0040;

(2) part 9503.0045, subpart 1, items F and G;

(3) part 9503.0050, subpart 6, except for children less than 2-1/2 years old;

(4) one-half the requirements of part 9503.0060, subpart 4, item A, sub-  
items (2), (5), and (8), subpart 5, item A, subitems (2), (3), and (7), and subpart  
6, item A, subitems (3) and (6);

(5) part 9503.0070; and

(6) part 9503.0090, subpart 2.

(c) A drop-in child care program must be operated under the supervision of  
a person qualified as a director and a teacher.

(d) A drop-in child care program must have at least two persons on staff  
whenever the program is operating, except that the commissioner may permit  
variances from this requirement under specified circumstances for parent coop-  
erative programs, as long as all other staff-to-child ratios are met.

(e) Whenever the total number of children present to be cared for at a cen-  
ter is more than 20, children that are younger than age 2-1/2 must be in a sepa-  
rate group. This group may contain children up to 60 months old. This group  
must be cared for in an area that is physically separated from older children.

(f) A drop-in child care program must maintain a minimum staff ratio for  
children age 2-1/2 or greater of one staff person for each ten children.

(g) If the program has additional staff who are on call as a mandatory condi-  
tion of their employment, the minimum child-to-staff ratio may be exceeded  
only for children age 2-1/2 or greater, by a maximum of four children, for no  
more than 20 minutes while additional staff are in transit.

(h) The minimum staff-to-child ratio for infants up to 16 months of age is  
one staff person for every four infants. The minimum staff-to-child ratio for chil-  
dren age 17 months to 30 months is one staff for every seven children.

(i) In drop-in care programs that serve both infants and older children, chil-  
dren up to age 2-1/2 may be supervised by assistant teachers, as long as other  
staff are present in appropriate ratios.

(j) The minimum staff distribution pattern for a drop-in child care program  
serving children age 2-1/2 or greater is: the first staff member must be a teacher;  
the second, third, and fourth staff members must have at least the qualifications  
of a child care aide; the fifth staff member must have at least the qualifications  
of an assistant teacher; the sixth, seventh, and eighth staff members must have at

New language is indicated by underline, deletions by ~~strikeout~~.



least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher. ~~The commissioner by rule may require that a drop-in child care program serving children less than 2-1/2 years of age serve these children in an area separated from older children and may permit children age 2-1/2 and older to be cared for in the same child care group~~

(k) A drop-in child care program may care for siblings 16 months or older together in any group. For purposes of this subdivision, sibling is defined as sister or brother, half-sister or half-brother, or stepsister or stepbrother.

Sec. 9. Minnesota Statutes 1992, section 245A.16, subdivision 6, is amended to read:

Subd. 6. **CERTIFICATION BY THE COMMISSIONER.** The commissioner shall ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with this section and other applicable laws and rules at least ~~biennially~~ every four years. County agencies that comply with this section shall be certified by the commissioner. If a county agency fails to be certified by the commissioner, the commissioner shall certify a reduction of up to 20 percent of the county's community social services act funding or an equivalent amount from state administrative aids.

Sec. 10. **INTERPRETIVE MEMORANDA STUDY.**

(a) The commissioner of human services shall study and report on the cost, feasibility, and means of implementing the publication and dissemination of written memoranda that provide interpretation, details, or supplementary information concerning the application of law or rules administered by the licensing division of the department of human services.

In preparing the report, the commissioner shall consult with the legislative commission to review administrative rules, legal advocates, consumer groups, providers of service, and county social service agencies.

The commissioner shall report the results of the study including the results of the pilot project authorized in paragraph (b) to the legislature by February 1, 1995.

(b) The commissioner of human services shall conduct a pilot project in conjunction with the study required by paragraph (a).

The purpose of the project is to allow the licensing division of the department of human services to gain the experience and information necessary to do this study and report by publishing and disseminating these memoranda concerning the application of the following rules governing developmental disabilities and child care center regulation: Minnesota Rules, parts 9503.0005 to 9503.0175; 9525.0500 to 9525.0660; 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140.

The commissioner is exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, in issuing these memoranda. The statements do not have the force and effect of law and have no precedential effect, but they may be relied on until modified or revoked.

New language is indicated by underline, deletions by ~~strikeout~~.

## Sec. 11. VULNERABLE ADULTS STUDY.

The commissioners of health and human services shall establish an advisory committee including consumers and their advocates, providers, county officials, and state officials to make recommendations on the means of preventing maltreatment of vulnerable adults and for the provisions of protective services to vulnerable adults. In making recommendations, the advisory committee shall review all services and protections available under existing state and federal laws with the focus on eliminating duplication of effort among various local, state, and federal agencies and minimizing possible conflicts of interest by establishing a statewide process of coordination of responsibilities. A report with recommendations for state law changes and changes to Minnesota Rules, parts 9555.8000 to 9555.8500, shall be made to the governor and legislature not later than February 1, 1994.

## Sec. 12. EFFECTIVE DATE.

Section 4 is effective the day immediately following final enactment.

Presented to the governor May 20, 1993

Signed by the governor May 24, 1993, 12:10 p.m.

## CHAPTER 339—S.F.No. 748

*An act relating to human services; clarifying day training and habilitation transportation exemptions; clarifying that counties may contract with hospitals to provide outpatient mental health services; clarifying the definition of crisis assistance; increasing the allowable duration of unlicensed, single-family respite care; clarifying the definition of related condition and application procedures for family support grants; correcting references to case management and hospital appeals; clarifying eligibility for case management services; clarifying nursing facility rate adjustments; clarifying the calculation and allowing 12-month plans for special needs exceptions; clarifying requirements for health care provider participation; clarifying voluntary spend-down procedures; amending Minnesota Statutes 1992, sections 174.30, subdivision 1; 245.470, subdivision 1; 245.4871, subdivision 9a; 245.488, subdivision 1; 245A.03, subdivision 2; 252.27, subdivisions 1 and 1a; 252.32, subdivision 1a; 256.045, subdivision 4a; 256.9686, subdivision 6; 256.9695, subdivisions 1 and 3; 256B.056, subdivision 5; 256B.0644; 256B.092, subdivisions 1, 1b, 1g, 7, and 8a; 256B.431, subdivision 10; 256B.48, subdivision 3a; 256B.501, subdivision 8; and 609.115, subdivision 9; repealing Minnesota Statutes 1992, section 256B.0629.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 174.30, subdivision 1, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.