

CHAPTER 245A

HUMAN SERVICES LICENSING

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245A.01 CITATION.

Sections 245A.01 to 245A.16 may be cited as the "Human Services Licensing Act."

History: 1987 c 333 s 1

245A.02 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 245A.01 to 245A.16 have the meanings given them in this section.

Subd. 2. **Adult.** "Adult" means a person who is 18 years old or older and who:

- (1) has mental illness, mental retardation or a related condition, a physical handicap, or a functional impairment; or
- (2) is chemically dependent or abuses chemicals.

Subd. 3. **Applicant.** "Applicant" means an individual, corporation, partnership, voluntary association, controlling individual, or other organization that has applied for licensure under sections 245A.01 to 245A.16 and the rules of the commissioner.

Subd. 4. **Child.** "Child" means a person who has not reached age 18.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative including county agencies and private agencies.

Subd. 5a. **Controlling individual.** "Controlling individual" means a public body, governmental agency, business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a program. Controlling individual also means an individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling individual. Controlling individual does not include:

- (1) a bank, savings bank, trust company, savings association, credit union, industrial loan and thrift company, investment banking firm, or insurance company unless the entity operates a program directly or through a subsidiary;
- (2) an individual who is a state or federal official, or state or federal employee, or a member or employee of the governing body of a political subdivision of the state or federal government that operates one or more programs, unless the individual is also an officer or director of the program, receives remuneration from the program, or owns any of the beneficial interests not excluded in this subdivision;
- (3) an individual who owns less than five percent of the outstanding common shares of a corporation;

- (i) whose securities are exempt under section 80A.15, subdivision 1, clause (f); or
- (ii) whose transactions are exempt under section 80A.15, subdivision 2, clause (b); or
- (4) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer or director of the program or owns any of the beneficial interests not excluded in this subdivision. This clause does not exclude from the definition of controlling individual an organization that is exempt from taxation.

Subd. 6. County agency. "County agency" means the agency designated by the county board of commissioners, human service boards, local social services agencies or multicounty local social services agencies, or departments where those have been established under the law.

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 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.

Subd. 6b. Experience. For purposes of child care centers, "experience" includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, in a public or nonpublic school, or in a program licensed as a family day care or group family day care provider.

Subd. 7. Functional impairment. For the purposes of adult day care or adult foster care, "functional impairment" means:

(1) a condition that is characterized by substantial difficulty in carrying out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working; or

(2) a disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life and that requires support to maintain independence in the community.

Subd. 7a. HIV minimum standards. "HIV minimum standards" means those items approved by the department and contained in the HIV-1 Guidelines for chemical dependency treatment and care programs in Minnesota including HIV education to clients, completion of HIV training by all new and existing staff, provision for referral to individual HIV counseling and services for all clients, and the implementation of written policies and procedures for working with HIV-infected clients.

Subd. 7b. Interpretive guidelines. "Interpretive guidelines" means a policy statement that has been published pursuant to section 245A.09, subdivision 12, and which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, county agencies, the department of human services, and others concerned.

Subd. 8. License. "License" means a certificate issued by the commissioner authorizing the license holder to provide a specified program for a specified period of time and in accordance with the terms of the license and the rules of the commissioner.

Subd. 9. License holder. "License holder" means an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program, has been granted a license by the commissioner under sections 245A.01 to 245A.16 and the rules of the commissioner, and is a controlling individual.

Subd. 10. **Nonresidential program.** "Nonresidential program" means care, supervision, rehabilitation, training or habilitation of a person provided outside the person's own home and provided for fewer than 24 hours a day, including adult day care programs; a nursing home that receives public funds 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 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 nursing home or hospital and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Nonresidential 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.

Subd. 10a. **Parent cooperative.** "Parent cooperative" means a nonprofit group child care program that is governed by a board that meets regularly and makes all continuing operational decisions about the program. At least 70 percent of the board membership must be parent-users of the program.

Subd. 11. **Person.** "Person" means a child or adult as defined in subdivisions 2 and 4.

Subd. 12. **Private agency.** "Private agency" means an individual, corporation, partnership, voluntary association or other organization, other than a county agency, or a court with jurisdiction, that places persons who cannot remain in their own homes in residential programs, foster care, or adoptive homes.

Subd. 13. **Individual who is related.** "Individual who is related" means a spouse, a parent, a natural or adopted child or stepchild; a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian.

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

Subd. 15. **Respite care services.** "Respite care services" means temporary services provided to a person due to the absence or need for relief of the primary caregiver, the person's family member, or legal representative who is the primary caregiver and principally responsible for the care and supervision of the person. Respite care services are those that provide the level of supervision and care that is necessary to ensure the health and safety of the person. Respite care services do not include services that are specifically directed toward the training and habilitation of the person.

Subd. 16. **School age child.** "School age child," for programs licensed or required to be licensed as a child care center, means a child who is at least of sufficient age to have attended the first day of kindergarten, or is eligible to enter kindergarten within the next four months, but is younger than 13 years of age.

Subd. 17. **School age child care program.** "School age child care program" means a program licensed or required to be licensed as a child care center, serving more than ten children with the primary purpose of providing child care for school age children. School age

child care program does not include programs such as scouting, boys clubs, girls clubs, nor sports or art programs.

Subd. 18. **Supervision.** For purposes of child care centers, "supervision" means when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision component.

History: 1987 c 333 s 2; 1988 c 411 s 1; 1989 c 282 art 2 s 60-65; 1990 c 568 art 2 s 40; 1991 c 142 s 1; 1992 c 513 art 9 s 7,8; 1993 c 338 s 1,2; 1994 c 631 s 31; 1995 c 158 s 1,2; 1995 c 202 art 1 s 25; 1995 c 207 art 2 s 4; 1997 c 248 s 3-7

245A.023 IN-SERVICE TRAINING.

For purposes of child care centers, in-service training must be completed within the license period for which it is required. In-service training completed by staff persons as required must be transferable upon a staff person's change in employment to another child care program. License holders shall record all staff in-service training on forms prescribed by the commissioner of human services.

History: 1997 c 248 s 8

245A.03 WHO MUST BE LICENSED.

Subdivision 1. **License required.** Unless licensed by the commissioner, an individual, corporation, partnership, voluntary association, other organization, or controlling individual must not:

- (1) operate a residential or a nonresidential program;
- (2) receive a child or adult for care, supervision, or placement in foster care or adoption;
- (3) help plan the placement of a child or adult in foster care or adoption or engage in placement activities as defined in section 259.21, subdivision 9, in this state, whether or not the adoption occurs in this state; or
- (4) advertise a residential or nonresidential program.

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 unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, 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 economic security;
- (5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school as defined in section 120A.22, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of children, families, and learning;
- (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 within another building that is directly contiguous to the building in which the nonresidential program is 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;

(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 or programs operated by a park and recreation board of a city of the first class whose primary purpose is to provide social and recreational activities to school age children, provided the program is approved by the park and recreation board;

(12) programs operated by a school as defined in section 120A.22, subdivision 4, whose primary purpose is to provide child care to school-age children, provided the program 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 congregational 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 90 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;

(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;

(24) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47; or

(25) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults.

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

Subd. 2a. Foster care by an individual who is related to a child; license required. Notwithstanding subdivision 2, clause (1), in order to provide foster care for a child, an individual who is related to the child, other than a parent, or legal guardian, must be licensed by the commissioner except as provided by section 245A.035.

Subd. 2b. Exception. The provision in subdivision 2, clause (2), does not apply to:

(1) a child care provider who as an applicant for licensure or as a license holder has received a license denial under section 245A.05, a fine under section 245A.06, or a sanction under section 245A.07 from the commissioner that has not been reversed on appeal; or

(2) a child care provider, or a child care provider who has a household member who, as a result of a licensing process, has a disqualification under this chapter that has not been set aside by the commissioner.

Subd. 3. Unlicensed programs. (a) It is a misdemeanor for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a residential or nonresidential program without a license and in willful disregard of sections 245A.01 to 245A.16 unless the program is excluded from licensure under subdivision 2.

(b) If, after receiving notice that a license is required, the individual, corporation, partnership, voluntary association, other organization, or controlling individual has failed to apply for a license, the commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program. The county attorney and the attorney general have a duty to cooperate with the commissioner.

Subd. 4. Excluded child care programs; right to seek licensure. Nothing in this section shall prohibit a child care program that is excluded from licensure under subdivision 2, clause (2), or under Laws 1997, chapter 248, section 46, as amended by Laws 1997, First Special Session chapter 5, section 10, from seeking a license under this chapter. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for licensed family day care.

History: 1987 c 333 s 3; 1988 c 411 s 2; 1989 c 282 art 2 s 66-68; 1990 c 568 art 2 s 41; 1991 c 265 art 9 s 63; 1992 c 499 art 3 s 12; 1992 c 513 art 9 s 9; 1993 c 338 s 3,4; 1993 c 339 s 5; 1994 c 483 s 1; 1994 c 598 s 1,2; 1994 c 631 s 3,4,31; 1995 c 158 s 3; 1995 c 207 art 2 s 5; 1Sp1995 c 3 art 16 s 13; 1997 c 113 s 16; 1997 c 248 s 9; 1998 c 397 art 11 s 3; 1998 c 406 art 1 s 4,37; 1998 c 407 art 6 s 3,4; art 9 s 4

245A.035 RELATIVE FOSTER CARE; EMERGENCY LICENSE.

Subdivision 1. Grant of emergency license. Notwithstanding section 245A.03, subdivision 2a, a county agency may place a child for foster care with a relative who is not licensed to provide foster care, provided the requirements of subdivision 2 are met. As used in this section, the term "relative" has the meaning given it under section 260.181, subdivision 3.

Subd. 2. Cooperation with emergency licensing process. (a) A county agency that places a child with a relative who is not licensed to provide foster care must begin the process of securing an emergency license for the relative as soon as possible and must conduct the initial inspection required by subdivision 3, clause (1), whenever possible, prior to placing the child in the relative's home, but no later than three working days after placing the child in the home. A child placed in the home of a relative who is not licensed to provide foster care must be removed from that home if the relative fails to cooperate with the county agency in securing an emergency foster care license. The commissioner may issue an emergency foster care license to a relative with whom the county agency wishes to place or has placed a child for foster care, or to a relative with whom a child has been placed by court order.

(b) If a child is to be placed in the home of a relative not licensed to provide foster care, either the placing agency or the county agency in the county in which the relative lives shall conduct the emergency licensing process as required in this section.

Subd. 3. Requirements for emergency license. Before an emergency license may be issued, the following requirements must be met:

(1) the county agency must conduct an initial inspection of the premises where the foster care is to be provided to ensure the health and safety of any child placed in the home. The county agency shall conduct the inspection using a form developed by the commissioner;

(2) at the time of the inspection or placement, whichever is earlier, the relative being considered for an emergency license shall receive an application form for a child foster care license; and

(3) whenever possible, prior to placing the child in the relative's home, the relative being considered for an emergency license shall provide the information required by section 245A.04, subdivision 3, paragraph (b).

Subd. 4. Applicant study. When the county agency has received the information required by section 245A.04, subdivision 3, paragraph (b), the county agency shall begin an

applicant study according to the procedures in section 245A.04, subdivision 3. The commissioner may issue an emergency license upon recommendation of the county agency once the initial inspection has been successfully completed and the information necessary to begin the applicant background study has been provided. If the county agency does not recommend that the emergency license be granted, the agency shall notify the relative in writing that the agency is recommending denial to the commissioner; shall remove any child who has been placed in the home prior to licensure; and shall inform the relative in writing of the procedure to request review pursuant to subdivision 6. An emergency license shall be effective until a child foster care license is granted or denied, but shall in no case remain in effect more than 120 days from the date of placement.

Subd. 5. Child foster care license application. The emergency license holder shall complete the child foster care license application and necessary paperwork within ten days of the placement. The county agency shall assist the emergency license holder to complete the application. The granting of a child foster care license to a relative shall be under the procedures in this chapter and according to the standards set forth by foster care rule. In licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether to set aside a licensing disqualifier under section 245A.04, subdivision 3b, or to grant a variance of licensing requirements under section 245A.04, subdivision 9.

Subd. 6. Denial of emergency license. If the commissioner denies an application for an emergency foster care license under this section, that denial must be in writing and must include reasons for the denial. Denial of an emergency license is not subject to appeal under chapter 14. The relative may request a review of the denial by submitting to the commissioner a written statement of the reasons an emergency license should be granted. The commissioner shall evaluate the request for review and determine whether to grant the emergency license. The commissioner's review shall be based on a review of the records submitted by the county agency and the relative. Within 15 working days of the receipt of the request for review, the commissioner shall notify the relative requesting review in written form whether the emergency license will be granted. The commissioner's review shall be based on a review of the records submitted by the county agency and the relative. A child shall not be placed or remain placed in the relative's home while the request for review is pending. Denial of an emergency license shall not preclude an individual from reapplying for an emergency license or from applying for a child foster care license. The decision of the commissioner is the final administrative agency action.

History: 1995 c 207 art 2 s 6; 1996 c 421 s 1; 1998 c 406 art 1 s 5,37; 1998 c 407 art 9 s 5

245A.04 APPLICATION PROCEDURES.

Subdivision 1. Application for licensure. (a) An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner. The commissioner shall provide the applicant with instruction in completing the application and provide information about the rules and requirements of other state agencies that affect the applicant.

The commissioner shall act on the application within 90 working days after a complete application and any required reports have been received from other state agencies or departments, counties, municipalities, or other political subdivisions.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the commissioner of human services on all matters provided for in this chapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

Subd. 2. Notification of affected municipality. The commissioner must not issue a license without giving 30 calendar days' written notice to the affected municipality or other political subdivision unless the program is considered a permitted single-family residential use under sections 245A.11 and 245A.14. The notification must be given before the first issuance of a license and annually after that time if annual notification is requested in writing by the affected municipality or other political subdivision. State funds must not be made available to or be spent by an agency or department of state, county, or municipal government for payment to a residential or nonresidential program licensed under sections 245A.01 to 245A.16 until the provisions of this subdivision have been complied with in full. The provisions of this subdivision shall not apply to programs located in hospitals.

Subd. 3. Background study of the applicant. (a) Before the commissioner issues a license, the commissioner shall conduct a study of the individuals specified in paragraph (c), clauses (1) to (5), according to rules of the commissioner.

Beginning January 1, 1997, the commissioner shall also conduct a study of employees providing direct contact services for nonlicensed personal care provider organizations described in paragraph (c), clause (5).

The commissioner shall recover the cost of these background studies through a fee of no more than \$12 per study charged to the personal care provider organization.

Beginning August 1, 1997, the commissioner shall conduct all background studies required under this chapter for adult foster care providers who are licensed by the commissioner of human services and registered under chapter 144D. The commissioner shall conduct these background studies in accordance with this chapter. The commissioner shall initiate a pilot project to conduct up to 5,000 background studies under this chapter in programs with joint licensure as home and community-based services and adult foster care for people with developmental disabilities when the license holder does not reside in the foster care residence.

(b) Beginning July 1, 1998, the commissioner shall conduct a background study on individuals specified in paragraph (c), clauses (1) to (5), who perform direct contact services in a nursing home or a home care agency licensed under chapter 144A or a boarding care home licensed under sections 144.50 to 144.58, when the subject of the study resides outside Minnesota; the study must be at least as comprehensive as that of a Minnesota resident and include a search of information from the criminal justice data communications network in the state where the subject of the study resides.

(c) The applicant, license holder, the bureau of criminal apprehension, the commissioner of health 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 the maltreatment of adults 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 facility, agency, or program;
- (4) volunteers or student 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); and
- (5) any person who, as an individual or as a member of an organization, exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, and 256B.0625, subdivision 19.

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.

For purposes of this section and Minnesota Rules, part 9543.3070, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

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), (3), or (5) is within sight or hearing of a volunteer to the extent that the individual listed in clause (1), (3), or (5) 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 (5) shall be conducted at least upon application for initial license and reapplication for a license. The commissioner is not required to conduct a study of an individual at the time of reapplication for a license or if the individual has been continuously affiliated with a foster care provider licensed by the commissioner of human services and registered under chapter 144D, other than a family day care or foster care license, if: (i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder; (ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and (iii) the procedure described in paragraph (d) has been implemented and was in effect continuously since the last study was conducted. For the purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results. For individuals who are required to have background studies under clauses (1) to (5) and who have been continuously affiliated with a foster care provider that is licensed in more than one county, criminal conviction data may be shared among those counties in which the foster care programs are licensed. A county agency's receipt of criminal conviction data from another county agency shall meet the criminal data background study requirements of this section.

The commissioner may also conduct studies on individuals specified in clauses (3) and (4) when the studies are initiated by:

- (i) personnel pool agencies;
- (ii) temporary personnel agencies;
- (iii) educational programs that train persons by providing direct contact services in licensed programs; and
- (iv) professional services agencies that are not licensed and which contract with licensed programs to provide direct contact services or individuals who provide direct contact services.

Studies on individuals in items (i) to (iv) must be initiated annually by these agencies, programs, and individuals. Except for personal care provider organizations, no applicant, license holder, or individual who is the subject of the study shall pay any fees required to conduct the study.

(1) At the option of the licensed facility, rather than initiating another background study on an individual required to be studied who has indicated to the licensed facility that a background study by the commissioner was previously completed, the facility may make a request to the commissioner for documentation of the individual's background study status, provided that:

- (i) the facility makes this request using a form provided by the commissioner;
- (ii) in making the request the facility informs the commissioner that either:
 - (A) the individual has been continuously affiliated with a licensed facility since the individual's previous background study was completed, or since October 1, 1995, whichever is shorter; or
 - (B) the individual is affiliated only with a personnel pool agency, a temporary personnel agency, an educational program that trains persons by providing direct contact services in

licensed programs, or a professional services agency that is not licensed and which contracts with licensed programs to provide direct contact services or individuals who provide direct contact services; and

(iii) the facility provides notices to the individual as required in paragraphs (a) to (d), and that the facility is requesting written notification of the individual's background study status from the commissioner.

(2) The commissioner shall respond to each request under paragraph (1) with a written or electronic notice to the facility and the study subject. If the commissioner determines that a background study is necessary, the study shall be completed without further request from a licensed agency or notifications to the study subject.

(3) When a background study is being initiated by a licensed facility or a foster care provider that is also registered under chapter 144D, a study subject affiliated with multiple licensed facilities may attach to the background study form a cover letter indicating the additional facilities' names, addresses, and background study identification numbers. When the commissioner receives such notices, each facility identified by the background study subject shall be notified of the study results. The background study notice sent to the subsequent agencies shall satisfy those facilities' responsibilities for initiating a background study on that individual.

(d) If an individual who is affiliated with a program or facility regulated by the department of human services or department of health or who is affiliated with a nonlicensed personal care provider organization, is convicted of a crime constituting a disqualification under subdivision 3d, the probation officer or corrections agent shall notify the commissioner of the conviction. The commissioner, in consultation with the commissioner of corrections, shall develop forms and information necessary to implement this paragraph and shall provide the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents. The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system. A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this paragraph. Upon receipt of disqualifying information, the commissioner shall provide the notifications required in subdivision 3a, as appropriate to agencies on record as having initiated a background study or making a request for documentation of the background study status of the individual. This paragraph does not apply to family day care and child foster care programs.

(e) 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 for the past five years; 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 (c), clauses (1) to (5), on forms prescribed by the commissioner. By January 1, 2000, for background studies conducted by the department of human services, the commissioner shall implement a system for the electronic transmission of: (1) background study information to the commissioner; and (2) background study results to the license holder. 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.

(f) Except for child foster care, adult foster care, and family day care homes, a study must include 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 (i), and the commissioner's records relating to the maltreatment of minors in licensed programs, information from juvenile courts as required in paragraph (c) for persons listed in paragraph (c), 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 maltreatment of adults, and the maltreatment of minors, information from juvenile courts as required in paragraph (c) for persons listed in paragraph (c), clause (2), and information from the bureau of criminal apprehension. The commissioner may also review arrest and investi-

gative information from the bureau of criminal apprehension, the commissioner of health, a county attorney, county sheriff, county agency, local chief of police, other states, the courts, or the Federal Bureau of Investigation if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual listed in paragraph (c), clauses (1) to (5). The commissioner is not required to conduct more than one review of a subject's records from the Federal Bureau of Investigation if a review of the subject's criminal history with the Federal Bureau of Investigation has already been completed by the commissioner and there has been no break in the subject's affiliation with the license holder who initiated the background studies.

When the commissioner has reasonable cause to believe that further pertinent information may exist on the subject, the subject shall provide a set of classifiable fingerprints obtained from an authorized law enforcement agency. For purposes of requiring fingerprints, the commissioner shall be considered to have reasonable cause under, but not limited to, the following circumstances:

(1) information from the bureau of criminal apprehension indicates that the subject is a multistate offender;

(2) information from the bureau of criminal apprehension indicates that multistate offender status is undetermined; or

(3) the commissioner has received a report from the subject or a third party indicating that the subject has a criminal history in a jurisdiction other than Minnesota.

(g) An applicant's or license holder's failure or refusal to cooperate with the commissioner is reasonable cause to disqualify a subject, deny a license 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.

(h) 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.

(i) No person in paragraph (c), clause (1), (2), (3), (4), or (5) 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.

(j) Termination of persons in paragraph (c), clause (1), (2), (3), (4), or (5), 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.

(k) The commissioner may establish records to fulfill the requirements of this section.

(l) 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.

(m) An individual subject to disqualification under this subdivision has the applicable rights in subdivision 3a, 3b, or 3c.

Subd. 3a. Notification to subject and license holder of study results; determination of risk of harm. (a) The commissioner shall notify the applicant or license holder and the individual who is the subject of the study, in writing or by electronic transmission, of the results of the study. When the study is completed, a notice that the study was undertaken and completed shall be maintained in the personnel files of the program.

The commissioner shall notify the individual studied if the information in the study indicates the individual is disqualified from direct contact with persons served by the program. The commissioner shall disclose the information causing disqualification and instructions on how to request a reconsideration of the disqualification to the individual studied. An applicant or license holder who is not the subject of the study shall be informed that the commissioner has found information that disqualifies the subject from direct contact with persons served by the program. However, only the individual studied must be informed of the information contained in the subject's background study unless the only basis for the disqualification is failure to cooperate, the Data Practices Act provides for release of the information, or the individual studied authorizes the release of the information.

(b) If the commissioner determines that the individual studied has a disqualifying characteristic, the commissioner shall review the information immediately available and make a determination as to the subject's immediate risk of harm to persons served by the program where the individual studied will have direct contact. The commissioner shall consider all relevant information available, including the following factors in determining the immediate risk of harm: the recency of the disqualifying characteristic; the recency of discharge from probation for the crimes; the number of disqualifying characteristics; the intrusiveness or violence of the disqualifying characteristic; the vulnerability of the victim involved in the disqualifying characteristic; and the similarity of the victim to the persons served by the program where the individual studied will have direct contact. The commissioner may determine that the evaluation of the information immediately available gives the commissioner reason to believe one of the following:

(1) The individual poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact. If the commissioner determines that an individual studied poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact, the individual and the license holder must be sent a notice of disqualification. The commissioner shall order the license holder to immediately remove the individual studied from direct contact. The notice to the individual studied must include an explanation of the basis of this determination.

(2) The individual poses a risk of harm requiring continuous supervision while providing direct contact services during the period in which the subject may request a reconsideration. If the commissioner determines that an individual studied poses a risk of harm that requires continuous supervision, the individual and the license holder must be sent a notice of disqualification. The commissioner shall order the license holder to immediately remove the individual studied from direct contact services or assure that the individual studied is within sight or hearing of another staff person when providing direct contact services during the period in which the individual may request a reconsideration of the disqualification. If the individual studied does not submit a timely request for reconsideration, or the individual submits a timely request for reconsideration, but the disqualification is not set aside for that license holder, the license holder will be notified of the disqualification and ordered to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder.

(3) The individual does not pose an imminent risk of harm or a risk of harm requiring continuous supervision while providing direct contact services during the period in which the subject may request a reconsideration. If the commissioner determines that an individual studied does not pose a risk of harm that requires continuous supervision, only the individual must be sent a notice of disqualification. The license holder must be sent a notice that more time is needed to complete the individual's background study. If the individual studied submits a timely request for reconsideration, and if the disqualification is set aside for that license holder, the license holder will receive the same notification received by license holders in cases where the individual studied has no disqualifying characteristic. If the individual studied does not submit a timely request for reconsideration, or the individual submits a timely request for reconsideration, but the disqualification is not set aside for that license holder, the license holder will be notified of the disqualification and ordered to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder.

Subd. 3b. Reconsideration of disqualification. (a) The individual who is the subject of the disqualification may request a reconsideration of the disqualification.

The individual must submit the request for reconsideration to the commissioner in writing. A request for reconsideration for an individual who has been sent a notice of disqualification under subdivision 3a, paragraph (b), clause (1) or (2), must be submitted within 30 calendar days of the disqualified individual's receipt of the notice of disqualification. A request for reconsideration for an individual who has been sent a notice of disqualification under subdivision 3a, paragraph (b), clause (3), must be submitted within 15 calendar days of the disqualified individual's receipt of the notice of disqualification. Removal of a disqualified individual from direct contact shall be ordered if the individual does not request reconsideration within the prescribed time, and for an individual who submits a timely request for

reconsideration, if the disqualification is not set aside. The individual must present information showing that:

(1) the information the commissioner relied upon is incorrect or inaccurate. If the basis of a reconsideration request is that a maltreatment determination or disposition under section 626.556 or 626.557 is incorrect, and the commissioner has issued a final order in an appeal of that determination or disposition under section 256.045, the commissioner's order is conclusive on the issue of maltreatment; or

(2) the subject of the study does not pose a risk of harm to any person served by the applicant or license holder.

(b) The commissioner may set aside the disqualification under this section if the commissioner finds that the information the commissioner relied upon is incorrect or the individual does not pose a risk of harm to any person served by the applicant or license holder. In determining that an individual does not pose a risk of harm, the commissioner shall consider the consequences of the event or events that lead to disqualification, whether there is more than one disqualifying event, the vulnerability of the victim at the time of the event, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event, and any other information relevant to reconsideration. In reviewing a disqualification under this section, the commissioner shall give preeminent weight to the safety of each person to be served by the license holder or applicant over the interests of the license holder or applicant.

(c) Unless the information the commissioner relied on in disqualifying an individual is incorrect, the commissioner may not set aside the disqualification of an individual in connection with a license to provide family day 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 if:

(1) less than ten years have passed since the discharge of the sentence imposed for the offense; and the individual has been convicted of a violation of any offense listed in sections 609.20 (manslaughter in the first degree), 609.205 (manslaughter in the second degree), criminal vehicular homicide under 609.21 (criminal vehicular homicide and injury), 609.215 (aiding suicide or aiding attempted suicide), felony violations under 609.221 to 609.2231 (assault in the first, second, third, or fourth degree), 609.713 (terroristic threats), 609.235 (use of drugs to injure or to facilitate crime), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.561 or 609.562 (arson in the first or second degree), 609.71 (riot), burglary in the first or second degree under 609.582 (burglary), 609.66 (dangerous weapon), 609.665 (spring guns), 609.67 (machine guns and short-barreled shotguns), 609.749 (harassment; stalking), 152.021 or 152.022 (controlled substance crime in the first or second degree), 152.023, subdivision 1, clause (3) or (4), or subdivision 2, clause (4) (controlled substance crime in the third degree), 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree), 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult), 609.228 (great bodily harm caused by distribution of drugs), 609.23 (mistreatment of persons confined), 609.231 (mistreatment of residents or patients), 609.2325 (criminal abuse of a vulnerable adult), 609.233 (criminal neglect of a vulnerable adult), 609.2335 (financial exploitation of a vulnerable adult), 609.234 (failure to report), 609.265 (abduction), 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree), 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree), 609.268 (injury or death of an unborn child in the commission of a crime), 617.293 (disseminating or displaying harmful material to minors), 609.378 (neglect or endangerment of a child), a gross misdemeanor offense under 609.377 (malicious punishment of a child), 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or an attempt or conspiracy to commit any of these offenses, as each of these offenses is defined in Minnesota Statutes; or an offense in any other state, the elements of which are substantially similar to the elements of any of the foregoing offenses;

(2) regardless of how much time has passed since the discharge of the sentence imposed for the offense, the individual was convicted of a violation of any offense listed in sections 609.185 to 609.195 (murder in the first, second, or third degree), 609.2661 to 609.2663 (murder of an unborn child in the first, second, or third degree), a felony offense under 609.377

(malicious punishment of a child), 609.322 (solicitation, inducement, and promotion of prostitution), 609.342 to 609.345 (criminal sexual conduct in the first, second, third, or fourth degree), 609.352 (solicitation of children to engage in sexual conduct), 617.246 (use of minors in a sexual performance), 617.247 (possession of pictorial representations of a minor), 609.365 (incest), a felony offense under sections 609.2242 and 609.2243 (domestic assault), a felony offense of spousal abuse, a felony offense of child abuse or neglect, a felony offense of a crime against children, or an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes, or an offense in any other state, the elements of which are substantially similar to any of the foregoing offenses;

(3) within the seven years preceding the study, the individual committed an act that constitutes maltreatment of a child under section 626.556, subdivision 10e, and that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence; or

(4) within the seven years preceding the study, the individual was determined under section 626.557 to be the perpetrator of a substantiated incident of maltreatment of a vulnerable adult that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence.

In the case of any ground for disqualification under clauses (1) to (4), if the act was committed by an individual other than the applicant or license holder residing in the applicant's or license holder's home, the applicant or license holder may seek reconsideration when the individual who committed the act no longer resides in the home.

The disqualification periods provided under clauses (1), (3), and (4) are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the license holder or applicant poses a risk of harm to a person served by that individual after the minimum disqualification period has passed.

(d) The commissioner shall respond in writing or by electronic transmission to all reconsideration requests for which the basis for the request is that the information relied upon by the commissioner to disqualify is incorrect or inaccurate within 30 working days of receipt of a request and all relevant information. If the basis for the request is that the individual does not pose a risk of harm, the commissioner shall respond to the request within 15 working days after receiving the request for reconsideration and all relevant information. If the disqualification is set aside, the commissioner shall notify the applicant or license holder in writing or by electronic transmission of the decision.

(e) Except as provided in subdivision 3c, the commissioner's decision to disqualify an individual, including the decision to grant or deny a rescission or set aside a disqualification under this section, is the final administrative agency action and shall not be subject to further review in a contested case under chapter 14 involving a negative licensing appeal taken in response to the disqualification or involving an accuracy and completeness appeal under section 13.04.

Subd. 3c: Contested case. If a disqualification is not set aside, a person who is an employee of an employer, as defined in section 179A.03, subdivision 15, may request a contested case hearing under chapter 14. Rules adopted under this chapter may not preclude an employee in a contested case hearing for disqualification from submitting evidence concerning information gathered under subdivision 3, paragraph (e).

Subd. 3d. Disqualification. When a background study completed under subdivision 3 shows any of the following: a conviction of one or more crimes listed in clauses (1) to (4); the individual has admitted to or a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in clauses (1) to (4); or an administrative determination listed under clause (4), the individual shall be disqualified from any position allowing direct contact with persons receiving services from the license holder:

(1) regardless of how much time has passed since the discharge of the sentence imposed for the offense, and unless otherwise specified, regardless of the level of the conviction, the individual was convicted of any of the following offenses: sections 609.185 (murder in the

first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of prostitution); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); felony offense under 609.377 (malicious punishment of a child); 617.246 (use of minors in sexual performance prohibited); 617.247 (possession of pictorial representations of minors); a felony offense under sections 609.2242 and 609.2243 (domestic assault), a felony offense of spousal abuse, a felony offense of child abuse or neglect, a felony offense of a crime against children; or attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes, or an offense in any other state or country, where the elements are substantially similar to any of the offenses listed in this clause;

(2) if less than 15 years have passed since the discharge of the sentence imposed for the offense; and the individual has received a felony conviction for a violation of any of these offenses: sections 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.221 to 609.2231 (assault in the first, second, third, or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); repeat offenses under 609.3451 (criminal sexual conduct in the fifth degree); 609.713 (terroristic threats); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.563 (arson in the third degree); repeat offenses under 617.23 (indecent exposure; penalties); repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); 609.71 (riot); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns); 609.749 (harassment; stalking; penalties); 609.228 (great bodily harm caused by distribution of drugs); 609.2325 (criminal abuse of a vulnerable adult); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.378 (neglect or endangerment of a child); 609.324, subdivision 1 (other prohibited acts); 609.52 (theft); 609.2335 (financial exploitation of a vulnerable adult); 609.521 (possession of shoplifting gear); 609.582 (burglary); 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense); 609.27 (coercion); 609.275 (attempt to coerce); 609.687 (adulteration); 260.221 (grounds for termination of parental rights); and chapter 152 (drugs; controlled substance). An attempt or conspiracy to commit any of these offenses, as each of these offenses is defined in Minnesota Statutes; or an offense in any other state or country, the elements of which are substantially similar to the elements of the offenses in this clause. If the individual studied is convicted of one of the felonies listed in this clause, but the sentence is a gross misdemeanor or misdemeanor disposition, the lookback period for the conviction is the period applicable to the disposition, that is the period for gross misdemeanors or misdemeanors;

(3) if less than ten years have passed since the discharge of the sentence imposed for the offense; and the individual has received a gross misdemeanor conviction for a violation of any of the following offenses: sections 609.224 (assault in the fifth degree); 609.2242 and 609.2243 (domestic assault); violation of an order for protection under 518B.01, subdivision 14; 609.3451 (criminal sexual conduct in the fifth degree); repeat offenses under 609.746 (interference with privacy); repeat offenses under 617.23 (indecent exposure); 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); 609.71 (riot); 609.66 (dangerous weapons); 609.749 (harassment; stalking; penalties); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report

maltreatment of a vulnerable adult); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); 609.265 (abduction); 609.378 (neglect or endangerment of a child); 609.377 (malicious punishment of a child); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.52 (theft); 609.582 (burglary); 609.631 (check forgery; offering a forged check); 609.275 (attempt to coerce); or an attempt or conspiracy to commit any of these offenses, as each of these offenses is defined in Minnesota Statutes; or an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in this clause. If the defendant is convicted of one of the gross misdemeanors listed in this clause, but the sentence is a misdemeanor disposition, the lookback period for the conviction is the period applicable to misdemeanors; or

(4) if less than seven years have passed since the discharge of the sentence imposed for the offense; and the individual has received a misdemeanor conviction for a violation of any of the following offenses: sections 609.224 (assault in the fifth degree); 609.2242 (domestic assault); violation of an order for protection under 518B.01 (Domestic Abuse Act); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.746 (interference with privacy); 609.79 (obscene or harassing phone calls); 609.795 (letter, telegram, or package; opening; harassment); 617.23 (indecent exposure; penalties); 609.2672 (assault of an unborn child in the third degree); 617.293 (harmful materials; dissemination and display to minors prohibited); 609.66 (dangerous weapons); 609.665 (spring guns); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.52 (theft); 609.27 (coercion); or an attempt or conspiracy to commit any of these offenses, as each of these offenses is defined in Minnesota Statutes; or an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in this clause; failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or substantiated serious or recurring maltreatment of a minor under section 626.556 or of a vulnerable adult under section 626.557 for which there is a preponderance of evidence that the maltreatment occurred, and that the subject was responsible for the maltreatment. For the purposes of this section, serious maltreatment means sexual abuse; maltreatment resulting in death; or maltreatment resulting in serious injury or harm which reasonably requires the care of a physician whether or not the care of a physician was sought; or abuse resulting in serious injury. For purposes of this section, abuse resulting in serious injury means: bruises, bites, skin laceration or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite, and others for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyeball; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke. For purposes of this section, "care of a physician" is treatment received or ordered by a physician, but does not include diagnostic testing, assessment, or observation. For the purposes of this section, recurring maltreatment means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred, and that the subject was responsible for the maltreatment.

Subd. 4. **Inspections; waiver.** (a) Before issuing an initial license, the commissioner shall conduct an inspection of the program. The inspection must include but is not limited to:

- (1) an inspection of the physical plant;
- (2) an inspection of records and documents;
- (3) an evaluation of the program by consumers of the program; and
- (4) observation of the program in operation.

For the purposes of this subdivision, "consumer" means a person who receives the services of a licensed program, the person's legal guardian, or the parent or individual having legal custody of a child who receives the services of a licensed program.

(b) The evaluation required in paragraph (a), clause (3) or the observation in paragraph (a), clause (4) is not required prior to issuing an initial license under subdivision 7. If the com-

missioner issues an initial license under subdivision 7, these requirements must be completed within one year after the issuance of an initial license.

Subd. 5. Commissioner's right of access. When the commissioner is exercising the powers conferred by this chapter, the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Subd. 6. Commissioner's evaluation. Before granting, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in rules adopted under this chapter.

Subd. 7. Issuance of a license; extension of a license. (a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license. At minimum, the license shall state:

- (1) the name of the license holder;
 - (2) the address of the program;
 - (3) the effective date and expiration date of the license;
 - (4) the type of license;
 - (5) the maximum number and ages of persons that may receive services from the program; and
 - (6) any special conditions of licensure.
- (b) The commissioner may issue an initial license for a period not to exceed two years if:
- (1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet operational;
 - (2) certain records and documents are not available because persons are not yet receiving services from the program; and
 - (3) the applicant complies with applicable laws and rules in all other respects.
- (c) A decision by the commissioner to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling or to another location.

For purposes of reimbursement for meals only, under the Child and Adult Care Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 226, relocation within the same county by a licensed family day care provider, shall be considered an extension of the license for a period of no more than 30 calendar days or until the new

license is issued, whichever occurs first, provided the county agency has determined the family day care provider meets licensure requirements at the new location.

Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

Subd. 8. Hospital inspections. Licensing authority granted under this section shall not modify the presumption regarding routine hospital inspections under section 144.55, subdivision 4.

Subd. 9. Variances. The commissioner may grant variances to rules that do not affect the health or safety of persons in a licensed program if the following conditions are met:

(1) the variance must be requested by an applicant or license holder on a form and in a manner prescribed by the commissioner;

(2) the request for a variance must include the reasons that the applicant or license holder cannot comply with a requirement as stated in the rule and the alternative equivalent measures that the applicant or license holder will follow to comply with the intent of the rule; and

(3) the request must state the period of time for which the variance is requested.

The commissioner may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any applicant or license holder must inform the commissioner of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the commissioner shall result in revocation of the permanent variance and may be cause for other sanctions under sections 245A.06 and 245A.07.

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

Subd. 10. Adoption agency; additional requirements. In addition to the other requirements of this section, an individual, corporation, partnership, voluntary association, other organization, or controlling individual applying for a license to place children for adoption must:

(1) incorporate as a nonprofit corporation under chapter 317A;

(2) file with the application for licensure a copy of the disclosure form required under section 259.37, subdivision 2;

(3) provide evidence that a bond has been obtained and will be continuously maintained throughout the entire operating period of the agency, to cover the cost of transfer of records to and storage of records by the agency which has agreed, according to rule established by the commissioner, to receive the applicant agency's records if the applicant agency voluntarily or involuntarily ceases operation and fails to provide for proper transfer of the records. The bond must be made in favor of the agency which has agreed to receive the records; and

(4) submit a certified audit to the commissioner each year the license is renewed as required under section 245A.03, subdivision 1.

History: 1987 c 333 s 4; 1988 c 411 s 3,4; 1988 c 608 s 2; 1989 c 282 art 2 s 69-76; 1990 c 542 s 7; 1990 c 568 art 2 s 42-44; 1991 c 38 s 1; 1992 c 513 art 9 s 10; 1993 c 171 s 3,4; 1993 c 306 s 1; 1993 c 338 s 5; 1993 c 351 s 29; 1994 c 434 s 1-3; 1994 c 465 art 1 s 29; 1994 c 631 s 5,31; 1995 c 207 art 2 s 7-10; 1995 c 229 art 3 s 5; art 4 s 11; 1996 c 408 art 10 s 5; 1997 c 177 s 1; 1997 c 248 s 10-18; 1998 c 367 art 2 s 32; 1998 c 406 art 1 s 6,7,37; 1998 c 407 art 9 s 6,7

245A.05 DENIAL OF APPLICATION.

An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14. The applicant may appeal the denial by notifying the commissioner in writing by certified mail within 20 calendar days after receiving notice that the application

was denied. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application.

History: 1987 c 333 s 5

245A.06 CORRECTION ORDER AND FINES.

Subdivision 1. Contents of correction orders or fines. (a) If the commissioner finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order to or impose a fine on the applicant or license holder. The correction order or fine must state:

- (1) the conditions that constitute a violation of the law or rule;
- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a fine is imposed, the amount of the fine.

(b) Nothing in this section prohibits the commissioner from proposing a sanction as specified in section 245A.07, prior to issuing a correction order or fine.

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 and received by the commissioner within 20 calendar days after receipt of the correction order by the applicant or license holder, 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's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Subd. 3. Failure to comply. If the commissioner finds that the applicant or license holder has not corrected the violations specified in the correction order, the commissioner may impose a fine. If a fine was imposed and the violation was not corrected, the commissioner may impose an additional fine. This section does not prohibit the commissioner from seeking a court order, denying an application, or suspending, revoking, or making conditional the license in addition to imposing a fine.

Subd. 4. Notice of fine; reconsideration of fine. A license holder who is ordered to pay a fine must be notified of the order by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the fine was ordered and must inform the license holder of the responsibility for payment of fines in subdivision 7 and the right to request reconsideration of the fine. The license holder may request reconsideration of the order to forfeit a fine by notifying the commissioner by certified mail within 20 calendar days after receiving the order. A timely request for reconsideration shall stay forfeiture of the fine until the commissioner issues a decision on the request for reconsideration. The request for reconsideration must be in writing and:

- (1) specify the parts of the violation that are alleged to be in error;
- (2) explain why they are in error;
- (3) include documentation to support the allegation of error; and
- (4) any other information relevant to the fine or the amount of the fine.

The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Subd. 5. Forfeiture of fines. The license holder shall pay the fines assessed on or before the payment date specified in the commissioner's order. If the license holder fails to fully comply with the order, the commissioner shall issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or

municipal agencies or departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine.

Subd. 5a. **Accrual of fines.** A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in an order to forfeit is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit, the commissioner may issue a second fine. The commissioner shall notify the license holder by certified mail that a second fine has been assessed. The license holder may request reconsideration of the second fine under the provisions of subdivision 4.

Subd. 6. **Amount of fines.** Fines shall be assessed as follows:

(1) the license holder shall forfeit \$1,000 for each occurrence of violation of law or rule prohibiting the maltreatment of children or the maltreatment of vulnerable adults, including but not limited to corporal punishment, illegal or unauthorized use of physical, mechanical, or chemical restraints, and illegal or unauthorized use of aversive or deprivation procedures;

(2) the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff to child or adult ratios; and

(3) the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those included in clauses (1) and (2).

For the purposes of this section, "occurrence" means each violation identified in the commissioner's forfeiture order.

Subd. 7. **Responsibility for payment of fines.** When a fine has been assessed, the licensee holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Fines for child care centers must be assessed according to this section.

History: 1987 c 333 s 6; 1989 c 282 art 2 s 77-79; 1993 c 338 s 6; 1995 c 207 art 2 s 11-13; 1997 c 248 s 19-25

245A.07 SANCTIONS.

Subdivision 1. **Sanctions available.** In addition to ordering forfeiture of fines, the commissioner may propose to suspend, revoke, or make conditional the license or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

Subd. 2. **Immediate suspension in cases of imminent danger to health, safety, or rights.** If the license holder's failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger, the commissioner shall act immediately to suspend the license. No state funds shall be made available or be expended by any agency or department of state, county, or municipal government for use by a license holder regulated under sections 245A.01 to 245A.16 while a license is under immediate suspension. A notice stating the reasons for the immediate suspension and informing the license holder of the right to a contested case hearing under chapter 14 must be delivered by personal service to the address shown on the application or the last known address of the license holder. The license holder may appeal an order immediately suspending a license. The appeal of an order immediately suspending a license must be made in writing by certified mail and must be received by the commissioner within five calendar days after the license holder receives notice that the license has been immediately suspended. A license holder and any controlling individual shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

Subd. 3. **License suspension, revocation, denial or conditional license.** The commissioner may suspend, revoke, make conditional, or deny a license if an applicant or a license

holder fails to comply fully with applicable laws or rules; or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation. A license holder who has had a license suspended, revoked, or made conditional must be given notice of the action by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or made conditional.

(a) If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14. The license holder may appeal an order suspending or revoking a license. The appeal of an order suspending or revoking a license must be made in writing by certified mail and must be received by the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked.

(b) If the license was made conditional, the notice must inform the license holder of the right to request a reconsideration by the commissioner. The request for reconsideration must be made in writing by certified mail and must be received by the commissioner within ten calendar days after the license holder receives notice that the license has been made conditional. The license holder may submit with the request for reconsideration written argument or evidence in support of the request for reconsideration. The commissioner's disposition of a request for reconsideration is final and is not subject to appeal under chapter 14.

Subd. 4. Adoption agency violations. If a license holder licensed to place children for adoption fails to provide services as described in the disclosure form required by section 259.37, subdivision 2, the sanctions under this section may be imposed.

History: 1987 c 333 s 7; 1989 c 282 art 2 s 80; 1990 c 568 art 2 s 45; 1992 c 513 art 9 s 11,12; 1994 c 631 s 6,31; 1995 c 207 art 2 s 14; 1997 c 248 s 26,27

245A.08 HEARINGS.

Subdivision 1. Receipt of appeal; conduct of hearing. Upon receiving a timely appeal or petition pursuant to section 245A.05 or 245A.07, the commissioner shall issue a notice of and order for hearing to the appellant under chapter 14.

Subd. 2. Conduct of hearings. At any hearing provided for by section 245A.05 or 245A.07, the appellant may be represented by counsel and has the right to call, examine, and cross-examine witnesses. The administrative law judge may require the presence of witnesses and evidence by subpoena on behalf of any party.

Subd. 3. Burden of proof. (a) At a hearing regarding suspension, immediate suspension, or revocation of a license for family day care or foster care, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings involving suspension, immediate suspension, or revocation of a family day care or foster care license shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

(b) At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the appellant has complied fully with sections 245A.01 to 245A.15 and other applicable law or rule and that the application should be approved and a license granted.

(c) At all other hearings under this section, the commissioner bears the burden of proof to demonstrate, by a preponderance of the evidence, that the violations of law or rule alleged by the commissioner occurred.

Subd. 4. Recommendation of administrative law judge. The administrative law judge shall recommend whether or not the commissioner's order should be affirmed. The recommendations must be consistent with sections 245A.01 to 245A.16 and the rules of the commissioner. The recommendations must be in writing and accompanied by findings of

fact and conclusions and must be mailed to the parties by certified mail to their last known addresses as shown on the license or application.

Subd. 5. Notice of the commissioner's final order. After considering the findings of fact, conclusions, and recommendations of the administrative law judge, the commissioner shall issue a final order. The commissioner shall consider, but shall not be bound by, the recommendations of the administrative law judge. The appellant must be notified of the commissioner's final order as required by chapter 14. The notice must also contain information about the appellant's rights under chapter 14. The institution of proceedings for judicial review of the commissioner's final order shall not stay the enforcement of the final order except as provided in section 14.65. A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation.

History: 1987 c 333 s 8; 1989 c 282 art 2 s 81; 1990 c 568 art 2 s 46; 1997 c 248 s 28,29

245A.09 RULES.

Subdivision 1. Commissioner's authority. The commissioner shall adopt rules under chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under sections 245A.01 to 245A.16. The commissioner shall not adopt any rules that are inconsistent with or duplicative of existing state or federal regulations. Nothing in this subdivision shall be construed to prohibit the commissioner from incorporating existing state or federal regulations or accreditation standards by reference.

Subd. 2. Standards and regulatory methods. This subdivision applies to rules governing sections 245A.01 to 245A.16 that are adopted after July 1, 1987. As appropriate for each type of license:

(a) The commissioner shall give preference in rule to standards that describe program outcomes and the practices that have been shown to result in the desired program outcomes.

(b) The rules may include model program standards for each type of program licensed by the commissioner.

(c) The rules shall include basic licensing standards governing licensure of each type of program licensed by the commissioner. The basic licensing standards must be met by all applicants and license holders. Basic licensing standards must include, but are not limited to:

(1) standards for adequate staff that take into account the age distribution and severity of handicap of persons served by the program;

(2) safety standards that take into account the size and conditions of the physical plant and studies of fire safety including studies of the interaction between fire detection factors, fire spread factors, and evacuation factors in case of a fire;

(3) standards for program services that describe, when appropriate, adequate levels of shelter, nutrition, planned activities, materials, and qualifications of individuals responsible for administering and delivering program services;

(4) standards that describe the characteristics of the settings where program services are to be delivered; and

(5) health and sanitation standards.

Subd. 3. Reduction of fees. The commissioner may adopt rules under subdivision 1 to provide for the reduction of fees established under section 245A.10 when a license holder substantially exceeds the basic standards for licensure.

Subd. 4. Evaluation of rules. For rules adopted under this section after July 1, 1987, the commissioner shall evaluate the effects of the rules within three years after the date of adoption and at least once every five years thereafter. The evaluation must include an assessment of any discrepancies between the actual and intended effects of the rules, identification of necessary revisions, if any, and a discussion of the rules' effect on the availability and quality of licensed programs. The commissioner shall consider the results of the evaluation in amending and writing rules.

Subd. 5. Other duties of the commissioner. For rules adopted after July 1, 1987, the commissioner shall:

(1) summarize the rules in language understandable to the general public and inform license holders and applicants where they may obtain a copy of the rules and the summary;

(2) develop and provide each applicant with information describing the services offered to applicants by the commissioner and explaining the penalties for operating an unlicensed program or failing to fully comply with the commissioner's correction orders or applicable laws or rules;

(3) upon request, interpret rules for applicants and license holders; and

(4) take measures to ensure that rules are enforced uniformly throughout the state.

Subd. 6. Consultation with affected parties. In developing rules, the commissioner shall request and receive consultation from: other state departments and agencies; counties and other affected political subdivisions that reflect the diversity of political subdivisions affected by the rule; persons and relatives of persons using the program governed by the rule; advocacy groups; and representatives of license holders affected by the rule. In choosing parties for consultation, the commissioner shall choose individuals and representatives of groups that reflect a cross section of urban, suburban, and rural areas of the state.

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:

(1) expansion of the types and categories of licenses that may be granted;

(2) when the standards of another state or federal governmental agency or an independent accreditation body have been shown to predict compliance with the rules, the commissioner shall consider compliance with the governmental or 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.

(b) The commissioner shall work with the commissioners of health, public safety, administration, and children, families, and learning 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 children, families, and learning in conducting joint agency inspections of programs.

(c) The commissioner shall work with the commissioners of health, public safety, administration, and children, families, and learning 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.

Subd. 8. Interpretive guidelines; authority. The commissioner of human services may develop and publish interpretive guidelines.

Subd. 9. Effect of interpretive guidelines. Interpretive guidelines do not have the force and effect of law and have no precedential effect, but may be relied on by consumers, providers of service, county agencies, the department of human services, and others concerned until revoked or modified. A guideline may be expressly revoked or modified by the commissioner, by the issuance of another interpretive guideline, but may not be revoked or modified retroactively to the detriment of consumers, providers of service, county agencies, the department of human services, or others concerned. A change in the law or an interpretation of the law occurring after the interpretive guidelines are issued, whether in the form of a statute, court decision, administrative ruling, or subsequent interpretive guideline, results in the revocation or modification of the previously adopted guidelines to the extent that the change affects the guidelines.

Subd. 10. Rulemaking process; commissioner exempted. When developing, making, adopting, and issuing interpretive guidelines under the authority granted under subdivision 8, the commissioner is exempt from the rulemaking provisions of chapter 14 until July 1, 1998.

Subd. 11. **Issuance; discretion of the commissioner.** The issuance of interpretive guidelines is at the discretion of the commissioner of human services.

Subd. 12. **Publication of guidelines.** The commissioner shall publish notice of interpretive guidelines availability in the State Register. The commissioner may publish or make available the interpretive guidelines in any manner determined by the commissioner, provided they are accessible to the general public. The commissioner may charge a reasonable fee for copies of the guidelines requested by interested parties when they are provided by the commissioner.

History: 1987 c 333 s 9; 1993 c 338 s 7; 1995 c 207 art 2 s 15–19; 1Sp1995 c 3 art 16 s 13; 1997 c 187 art 4 s 7; 1997 c 248 s 30

245A.091 [Repealed, 1997 c 248 s 51]

245A.095 REVIEW OF RULES FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESSES.

Subdivision 1. **License required.** Residential programs with five or more persons with a mental illness must be licensed under sections 245A.01 to 245A.16. To assure that this requirement is met, the commissioner of health, in cooperation with the commissioner of human services, shall monitor licensed boarding care homes, board and lodging houses, and supervised living facilities.

By January 1, 1989, the commissioner of health shall recommend to the legislature an appropriate method for enforcing this requirement.

Subd. 1a. **Rules.** In developing rules for serving persons with mental illness, the commissioner of human services shall assure that persons with mental illness are provided with needed treatment or support in the least restrictive, most appropriate environment, that supportive residential care in small homelike settings is available for persons needing that care, and that a mechanism is developed to ensure that no person is placed in a care or treatment setting inappropriate for meeting the person's needs. To the maximum extent possible, the rule shall assure that length of stay is governed solely by client need and shall allow for a variety of innovative and flexible approaches in meeting residential and support needs of persons with mental illness.

Subd. 2. **Specific review of rules.** The commissioner shall:

(1) provide in rule for additional types of programs and services, including but not limited to supportive small group residential care, semi-independent and apartment living services, and crisis and respite services, to address the residential treatment and support needs of persons with mental illness;

(2) review category I and II programs established in Minnesota Rules, parts 9520.0500 to 9520.0690 to ensure that the categories of programs provide a continuum of residential service programs for persons with mental illness, including but not limited to programs meeting needs for intensive treatment, crisis and respite care, and rehabilitation and training;

(3) provide in rule for a definition of the term "treatment" as used in relation to persons with mental illness;

(4) adjust funding mechanisms by rule as needed to reflect the requirements established by rule for services being provided;

(5) review and recommend staff educational requirements and staff training as needed;

(6) review and make changes in rules relating to residential care and service programs for persons with mental illness as the commissioner may determine necessary; and

(7) the commissioner shall report to the legislature by February 15, 1990, on the status of rulemaking with respect to clauses (1) to (6).

Subd. 3. [Repealed, 1989 c 282 art 4 s 64]

History: 1987 c 333 s 10; 1988 c 411 s 5; 1989 c 282 art 4 s 61

245A.10 FEES.

The commissioner shall charge a fee for evaluation of applications and inspection of programs, other than family day care and foster care, which are licensed under sections

245A.01 to 245A.16. The commissioner may charge a fee for the licensing of school age child care programs, in an amount sufficient to cover the cost to the state agency of processing the license.

History: 1987 c 333 s 11; 1995 c 158 s 4

245A.11 SPECIAL CONDITIONS FOR RESIDENTIAL PROGRAMS.

Subdivision 1. Policy statement. It is the policy of the state that persons shall not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings.

Subd. 2. Permitted single-family residential use. Residential programs with a licensed capacity of six or fewer persons shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations, except that a residential program whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use. This exception shall not apply to residential programs licensed before July 1, 1995. Programs otherwise allowed under this subdivision shall not be prohibited by operation of restrictive covenants or similar restrictions, regardless of when entered into, which cannot be met because of the nature of the licensed program, including provisions which require the home's occupants be related, and that the home must be occupied by the owner, or similar provisions.

Subd. 2a. Adult foster care license capacity. An adult foster care license holder may have a maximum license capacity of five if all persons in care are age 60 or over and do not have a serious and persistent mental illness or a developmental disability. The commissioner may grant variances to this subdivision to allow the use of a fifth bed for emergency crisis services for a person with serious and persistent mental illness or a developmental disability, regardless of age, provided the variance complies with the provisions in section 245A.04, subdivision 9, and approval of the variance is recommended by the county in which the licensed foster care provider is located.

Subd. 2b. Adult foster care; family adult day care. An adult foster care license holder licensed under the conditions in subdivision 2a may also provide family adult day care for adults age 60 or over if no persons in the adult foster or adult family day care program have a serious and persistent mental illness or a developmental disability. The maximum combined capacity for adult foster care and family adult day care is five adults. A separate license is not required to provide family adult day care under this subdivision. Adult foster care homes providing services to five adults under this section shall not be subject to licensure by the commissioner of health under the provisions of chapter 144, 144A, 157, or any other law requiring facility licensure by the commissioner of health.

Subd. 3. Permitted multifamily residential use. Unless otherwise provided in any town, municipal, or county zoning regulation, a licensed residential program with a licensed capacity of seven to 16 persons shall be considered a permitted multifamily residential use of property for the purposes of zoning and other land use regulations. A town, municipal, or county zoning authority may require a conditional use or special use permit to assure proper maintenance and operation of a residential program. Conditions imposed on the residential program must not be more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the persons being served by the program. Nothing in sections 245A.01 to 245A.16 shall be construed to exclude or prohibit residential programs from single-family zones if otherwise permitted by local zoning regulations.

Subd. 4. Location of residential programs. In determining whether to grant a license, the commissioner shall specifically consider the population, size, land use plan, availability of community services, and the number and size of existing licensed residential programs in the town, municipality, or county in which the applicant seeks to operate a residential program. The commissioner shall not grant an initial license to any residential program if the residential program will be within 1,320 feet of an existing residential program unless one of the following conditions apply: (1) the existing residential program is located in a hospital

licensed by the commissioner of health; (2) the town, municipality, or county zoning authority grants the residential program a conditional use or special use permit; (3) the program serves six or fewer persons and is not located in a city of the first class; or (4) the program is foster care.

Subd. 5. Overconcentration and dispersal. (a) Before January 1, 1985, each county having two or more group residential programs within 1,320 feet of each other shall submit to the department of human services a plan to promote dispersal of group residential programs. In formulating its plan, the county shall solicit the participation of affected persons, programs, municipalities having highly concentrated residential program populations, and advocacy groups. For the purposes of this subdivision, "highly concentrated" means having a population in residential programs serving seven or more persons that exceeds one-half of one percent of the population of a recognized planning district or other administrative subdivision.

(b) Within 45 days after the county submits the plan, the commissioner shall certify whether the plan fulfills the purposes and requirements of this subdivision including the following requirements:

(1) a new program serving seven or more persons must not be located in any recognized planning district or other administrative subdivision where the population in residential programs is highly concentrated;

(2) the county plan must promote dispersal of highly concentrated residential program populations;

(3) the county plan shall promote the development of residential programs in areas that are not highly concentrated;

(4) no person in a residential program shall be displaced as a result of this section until a relocation plan has been implemented that provides for an acceptable alternative placement;

(5) if the plan provides for the relocation of residential programs, the relocation must be completed by January 1, 1990. If the commissioner certifies that the plan does not do so, the commissioner shall state the reasons, and the county has 30 days to submit a plan amended to comply with the requirements of the commissioner.

(c) After July 1, 1985, the commissioner may reduce grants under section 245.73 to a county required to have an approved plan under paragraph (a) if the county does not have a plan approved by the commissioner or if the county acts in substantial disregard of its approved plan. The county board has the right to be provided with advance notice and to appeal the commissioner's decision. If the county requests a hearing within 30 days of the notification of intent to reduce grants, the commissioner shall not certify any reduction in grants until a hearing is conducted and a decision made in accordance with the contested case provisions of chapter 14.

Subd. 5a. Integration of residential programs. The commissioner of human services shall seek input from counties and municipalities on methods for integrating all residential programs into the community.

Subd. 6. Hospitals; exemption. Residential programs located in hospitals shall be exempt from the provisions of this section.

History: 1987 c 333 s 12; 1988 c 411 s 6; 1990 c 568 art 2 s 47; 1992 c 513 art 9 s 14; 1993 c 10 s 1; 1995 c 224 s 79; 1997 c 203 art 7 s 4; 1997 c 248 s 31

245A.12 VOLUNTARY RECEIVERSHIP FOR RESIDENTIAL PROGRAMS.

Subdivision 1. Definitions. For purposes of this section and section 245A.13, the following terms have the meanings given them.

(a) "Controlling individual" has the meaning in section 245A.02, subdivision 5a. When used in this section and section 245A.13, it means only those individuals controlling the residential program prior to the commencement of the receivership period.

(b) "Physical plant" means the building or buildings in which a residential program is located; all equipment affixed to the building and not easily subject to transfer as specified in the building and fixed equipment tables of the depreciation guidelines; and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the same site if used for purposes related to resident care.

(c) "Related party" means a person who is a close relative of a provider or a provider group; an affiliate of a provider or a provider group; a close relative of an affiliate of a provider or provider group; or an affiliate of a close relative of an affiliate of a provider or provider group. For the purposes of this paragraph, the following terms have the meanings given them.

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Person" means an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

(3) "Close relative of an affiliate of a provider or provider group" means an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a provider or a provider group is no more remote than first cousin.

(4) "Control" includes the terms "controlling," "controlled by," and "under common control with" and means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) "Provider or provider group" means the license holder or controlling individual prior to the effective date of the receivership.

Subd. 2. Receivership agreement. A majority of controlling individuals of a residential program may at any time ask the commissioner to assume operation of the residential program through appointment of a receiver. On receiving the request for a receiver, the commissioner may enter into an agreement with a majority of controlling individuals and become the receiver and operate the residential program under conditions acceptable to both the commissioner and the majority of controlling individuals. The agreement must specify the terms and conditions of the receivership and preserve the rights of the persons being served by the residential program. A receivership set up under this section terminates at the time specified by the parties to the agreement.

Subd. 3. Management agreement. When the commissioner agrees to become the receiver of a residential program, the commissioner may enter into a management agreement with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the residential program subject at all times to the review and approval of the commissioner. A reasonable fee may be paid to the managing agent for the performance of these services.

Subd. 4. Rate adjustment. The provisions of section 245A.13, subdivisions 7 and 8, shall also apply to voluntary receiverships.

Subd. 5. Controlling individuals; restrictions on licensure. No controlling individual of a residential program placed into receivership under this section shall apply for or receive a license to operate a residential program for five years from the commencement of the receivership period. This subdivision does not apply to residential programs that are owned or operated by controlling individuals, that were in existence prior to the date of the receivership agreement, and that have not been placed into receivership.

Subd. 6. Liability. The controlling individuals of a residential program placed into receivership remain liable for any claims made against the residential program that arose from incidents or events that occurred prior to the commencement of the receivership period. Neither the commissioner nor the managing agent of the commissioner assumes this liability.

Subd. 7. Liability for financial obligations. Neither the commissioner nor the managing agent of the commissioner shall be liable for payment of any financial obligations of the residential program or of its controlling individuals incurred prior to the commencement of the receivership period unless such liability is expressly assumed in the receivership agreement. Those financial obligations remain the liability of the residential program and its controlling individuals. Financial obligations of the residential program incurred after the commencement of the receivership period are the responsibility of the commissioner or the managing agent of the commissioner to the extent such obligations are expressly assumed by each in the receivership or management agreements. The controlling individuals of the residential program remain liable for any financial obligations incurred after the commencement of the receivership period to the extent these obligations are not reimbursed in the rate paid to

the residential program and are reasonable and necessary to the operation of the residential program. These financial obligations, or any other financial obligations incurred by the residential program prior to the commencement of the receivership period which are necessary to the continued operation of the residential program, may be deducted from any rental payments owed to the controlling individuals of the residential program as part of the receivership agreement.

Subd. 8. Physical plant of the residential program. Occupation of the physical plant after commencement of the receivership period shall be controlled by paragraphs (a) and (b).

(a) If the physical plant of a residential program placed in receivership is owned by a controlling individual or related party, the physical plant may be used by the commissioner or the managing agent for purposes of the receivership as long as the receivership period continues. A fair monthly rental for the physical plant shall be paid by the commissioner or managing agent to the owner of the physical plant. This fair monthly rental shall be determined by considering all relevant factors necessary to meet required arms-length obligations of controlling individuals such as the mortgage payments owed on the physical plant, the real estate taxes, and special assessments. This rental shall not include any allowance for profit or be based on any formula that includes an allowance for profit.

(b) If the owner of the physical plant of a residential program placed in receivership is not a related party, the controlling individual shall continue as the lessee of the property. However, during the receivership period, rental payments shall be made to the owner of the physical plant by the commissioner or the managing agent on behalf of the controlling individual. Neither the commissioner nor the managing agent assumes the obligations of the lease unless expressly stated in the receivership agreement. Should the lease expire during the receivership, the commissioner or the managing agent may negotiate a new lease for the term of the receivership period.

Subd. 9. Receivership accounting. The commissioner may use the medical assistance account and funds for receivership cash flow and accounting purposes.

Subd. 10. Receivership costs. The commissioner may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

History: 1987 c 333 s 13; 1989 c 282 art 2 s 82; 1990 c 568 art 2 s 48; 1994 c 434 s 4

245A.13 INVOLUNTARY RECEIVERSHIP FOR RESIDENTIAL PROGRAMS.

Subdivision 1. Application. In addition to any other remedy provided by law, the commissioner may petition the district court in Ramsey county for an order directing the controlling individuals of the residential program to show cause why the commissioner should not be appointed receiver to operate the residential program. The petition to the district court must contain proof by affidavit: (1) that the commissioner has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the residential program; or (2) it appears to the commissioner that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the residential program may close, the residential program's financial condition, or violations committed by the residential program of federal or state laws or rules. If the license holder, applicant, or controlling individual operates more than one residential program, the commissioner's petition must specify and be limited to the residential program for which it seeks receivership. The affidavit submitted by the commissioner must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the residential program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

Subd. 2. Appointment of receiver. If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the residential program, the court shall appoint the commissioner as receiver to operate the residential program. The commissioner as receiver may contract with another entity or group to

act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the residential program subject at all times to the review and approval of the commissioner.

Subd. 3. Powers and duties of the receiver. Within 36 months after the receivership order, the receiver shall provide for the orderly transfer of the persons served by the residential program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver or the managing agent shall correct or eliminate deficiencies in the residential program that the commissioner determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver shall take actions designed to result in the immediate transfer of persons served by the residential program. During the period of the receivership, the receiver and the managing agent shall operate the residential program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the persons served by the residential program. The receiver or the managing agent may make contracts and incur lawful expenses. The receiver or the managing agent shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the functions of the receivership including the fee set under subdivision 4. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver or the managing agent.

Subd. 3a. Liability. The provisions contained in section 245A.12, subdivision 6, shall also apply to receiverships ordered according to this section.

Subd. 3b. Liability for financial obligations. The provisions contained in section 245A.12, subdivision 7, also apply to receiverships ordered according to this section.

Subd. 3c. Physical plant of the residential program. Occupation of the physical plant under an involuntary receivership shall be governed by paragraphs (a) and (b).

(a) The physical plant owned by a controlling individual of the residential program or related party must be made available for the use of the residential program throughout the receivership period. The court shall determine a fair monthly rental for the physical plant, taking into account all relevant factors necessary to meet required arms-length obligations of controlling individuals such as mortgage payments, real estate taxes, and special assessments. The rental fee must be paid by the receiver to the appropriate controlling individuals or related parties for each month that the receivership remains in effect. No payment made to a controlling individual or related party by the receiver or the managing agent or any state agency during a period of the receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

(b) If the owner of the physical plant of a residential program is not a related party, the court shall order the controlling individual to continue as the lessee of the property during the receivership period. Rental payments during the receivership period shall be made to the owner of the physical plant by the commissioner or the managing agent on behalf of the controlling individual.

Subd. 4. Fee. A receiver appointed under an involuntary receivership or the managing agent is entitled to a reasonable fee as determined by the court.

Subd. 5. Termination. An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following events occurs:

- (1) the commissioner determines that the residential program's license application should be granted or should not be suspended or revoked;
- (2) a new license is granted to the residential program;
- (3) the commissioner determines that all persons residing in the residential program have been provided with alternative residential programs; or
- (4) the residential program closes.

Subd. 6. Emergency procedure. If it appears from the petition filed under subdivision 1, from an affidavit or affidavits filed with the petition, or from testimony of witnesses under

oath if the court determines it necessary, that there is probable cause to believe that an emergency exists in a residential program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

Subd. 7. Rate recommendation. The commissioner of human services may review rates of a residential program participating in the medical assistance program which is in receivership and that has needs or deficiencies documented by the department of health or the department of human services. If the commissioner of human services determines that a review of the rate established under section 256B.501 is needed, the commissioner shall:

- (1) review the order or determination that cites the deficiencies or needs; and
- (2) determine the need for additional staff, additional annual hours by type of employee, and additional consultants, services, supplies, equipment, repairs, or capital assets necessary to satisfy the needs or deficiencies.

Subd. 8. Adjustment to the rate. Upon review of rates under subdivision 7, the commissioner may adjust the residential program's payment rate. The commissioner shall review the circumstances, together with the residential program cost report, to determine whether or not the deficiencies or needs can be corrected or met by reallocating residential program staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the commissioner determines that any deficiency cannot be corrected or the need cannot be met with the payment rate currently being paid, the commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the commissioner's review by the residential program's actual resident days from the most recent desk-audited cost report or the estimated resident days in the projected receivership period. The payment rate adjustment must meet the conditions in Minnesota Rules, parts 9553.0010 to 9553.0080, and remains in effect during the period of the receivership or until another date set by the commissioner. Upon the subsequent sale or transfer of the residential program, the commissioner may recover amounts that were paid as payment rate adjustments under this subdivision. The buyer or transferee shall repay this amount to the commissioner within 60 days after the commissioner notifies the buyer or transferee of the obligation to repay. This provision does not limit the liability of the seller to the commissioner pursuant to section 256B.0641.

Subd. 9. Receivership accounting. The commissioner may use the medical assistance account and funds for receivership cash flow and accounting purposes.

Subd. 10. Receivership costs. The commissioner may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

Subd. 11. Controlling individuals; restrictions on licensure. No controlling individual of a residential program placed into receivership under this section may apply for or receive a license to operate a residential program for five years from the commencement of the receivership period. This subdivision does not apply to residential programs that are owned or operated by controlling individuals that were in existence before the date of the receivership agreement, and that have not been placed into receivership.

History: 1987 c 333 s 14; 1988 c 411 s 7; 1989 c 282 art 2 s 83; 1990 c 568 art 2 s 49; 1992 c 513 art 9 s 15; 1994 c 434 s 5-7

245A.14 SPECIAL CONDITIONS FOR NONRESIDENTIAL PROGRAMS.

Subdivision 1. Permitted single-family residential use. A licensed nonresidential program with a licensed capacity of 12 or fewer persons and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445, to serve 14 or fewer children shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations.

Subd. 2. **Permitted multifamily use.** Except as otherwise provided in subdivision 1 or in a town, municipal, or county regulation, a licensed nonresidential program with a licensed capacity of 13 to 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A town, municipal, or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of the program. Conditions imposed on the nonresidential program must not be more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones unless the additional conditions are necessary to protect the health and safety of the persons being served by the nonresidential program. Nothing in sections 245A.01 to 245A.16 shall be construed to exclude or prohibit nonresidential programs from single-family zones if otherwise permitted by local zoning regulations.

Subd. 3. **Conditional license.** Until such time as the commissioner adopts appropriate rules for conditional licenses, no license holder or applicant for a family or group family day care license is required to spend more than \$100 to meet fire safety rules in excess of those required to meet Group "R" occupancies under the Uniform Building Code, chapter 12, as incorporated by reference in Minnesota Rules, part 1305.0100.

When the commissioner determines that an applicant or license holder of a family or group family day care license would be required to spend over \$100 for physical changes to ensure fire safety, the commissioner may issue a conditional license when all of the following conditions have been met:

(a) The commissioner shall notify the license holder or applicant in writing of the fire safety deficiencies.

(b) The commissioner shall notify the license holder or applicant in writing of alternative compliance standards that would correct deficiencies, if available.

(c) The license holder or applicant agrees in writing to notify each parent, on a form prescribed by the commissioner that requires the signature of the parent, of the fire safety deficiencies, and the existence of the conditional license.

Subd. 4. **Special family day care homes.** Nonresidential child care programs serving 14 or fewer children that are conducted at a location other than the license holder's own residence shall be licensed under this section and the rules governing family day care or group family day care if:

(a) the license holder is the primary provider of care and the nonresidential child care program is conducted in a dwelling that is located on a residential lot; or

(b) the license holder is an employer who may or may not be the primary provider of care, and the purpose for the child care program is to provide child care services to children of the license holder's employees.

Subd. 5. [Repealed, 1992 c 513 art 9 s 44]

Subd. 6. **Drop-in and school age child care programs.** (a) Except as expressly set forth in this subdivision, drop-in and school age child care programs must be licensed as a drop-in or school age program under the rules governing child care programs operated in a center.

(b) Drop-in and school age child care programs are exempt from the following Minnesota Rules:

(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, subitems (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 and school age child care program must be operated under the supervision of a person qualified as a director and a teacher.

(d) A drop-in and school age 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 cooperative 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 drop-in child care center is more than 20, children that are younger than age 2-1/2 must be in a separate 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. A school age child care program must maintain a minimum staff ratio of one staff person for every 15 children.

(g) If the drop-in child care program has additional staff who are on call as a mandatory condition 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) In a drop-in child care program, 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 children 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, children 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 and a school age child care program serving school age children 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 least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher.

(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.

(l) The commissioner may grant a variance to any of the requirements in paragraphs (a) to (k), as long as the health and safety of the persons served by the program are not affected. The request for a variance shall comply with the provisions in section 245A.04, subdivision 9.

Subd. 7. Cultural dynamics and disabilities training for child care providers. (a) The training required of licensed child care center staff and family and group family child care providers and staff shall include training in the cultural dynamics of early childhood development and child care.

(b) The cultural dynamics and disabilities training and skills development of child care providers shall be designed to achieve outcomes for providers of child care that include, but are not limited to:

(1) an understanding and support of the importance of culture and differences in ability in children's identity development;

(2) understanding the importance of awareness of cultural differences and similarities in working with children and their families;

(3) understanding and support of the needs of families and children with differences in ability;

(4) developing skills to help children develop unbiased attitudes about cultural differences and differences in ability;

(5) developing skills in culturally appropriate caregiving; and

(6) developing skills in appropriate caregiving for children of different abilities.

Curriculum for cultural dynamics and disability training shall be approved by the commissioner.

(c) The commissioner shall amend current rules relating to the training of the licensed child care center staff and licensed providers of family and group family child care and staff to require cultural dynamics training. Timelines established in the rule amendments for com-

plying with the cultural dynamics training requirements shall be based on the commissioner's determination that curriculum materials and trainers are available statewide.

History: 1987 c 333 s 15; 1988 c 608 s 3,4; 1989 c 282 art 2 s 84,85; 1Sp1989 c 2 s 10; 1990 c 426 art 1 s 28; 1990 c 568 art 2 s 50,51; 1991 c 142 s 2; 1991 c 143 s 1; 1993 c 338 s 8; 1995 c 158 s 5; 1995 c 207 art 2 s 20; art 4 s 1; 1998 c 407 art 6 s 5

245A.15 REGULATION OF FAMILY DAY CARE BY LOCAL GOVERNMENT.

The authority of local units of government to establish requirements for family day care programs is limited by section 299F.011, subdivision 4a, clauses (1) and (2).

History: 1987 c 333 s 16

245A.16 STANDARDS FOR COUNTY AGENCIES AND PRIVATE AGENCIES.

Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04, to recommend denial of applicants under section 245A.05, to issue correction orders, to issue variances, and recommend fines under section 245A.06, or to recommend suspending, revoking, and making licenses probationary under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section.

(b) For family day care programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

Subd. 2. **Investigations.** (a) The county or private agency shall conduct timely investigations of allegations of maltreatment of children or adults in programs for which the county or private agency is the commissioner's designated representative and record a disposition of each complaint in accordance with applicable law or rule. The county or private agency shall conduct similar investigations of allegations of violations of rules governing licensure of the program.

(b) If an investigation conducted under clause (a) results in evidence that the commissioner should deny an application or suspend, revoke, or make conditional a license, the county or private agency shall make that recommendation to the commissioner within ten working days.

Subd. 3. **Recommendations to the commissioner.** The county or private agency shall not make recommendations to the commissioner regarding licensure without first conducting an inspection, study of the applicant, and evaluation pursuant to section 245A.04, subdivisions 3 and 4. The county or private agency must forward its recommendation to the commissioner regarding the appropriate licensing action within 20 working days of receipt of a completed application.

Subd. 4. **Enforcement of the commissioner's orders.** The county or private agency shall enforce the commissioner's orders under sections 245A.07 and 245A.08, subdivision 5, according to the instructions of the commissioner. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's orders under sections 245A.07 and 245A.08 according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner.

Subd. 5. **Instruction and technical assistance.** The commissioner shall provide instruction and technical assistance to county and private agencies that are subject to this section. County and private agencies shall cooperate with the commissioner in carrying out this section by ensuring that affected employees participate in instruction and technical assistance provided by the commissioner.

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 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 re-

duction of up to 20 percent of the county's Community Social Services Act funding or an equivalent amount from state administrative aids.

History: 1987 c 333 s 17; 1989 c 282 art 2 s 86; 1990 c 568 art 2 s 52,53; 1991 c 142 s 3; 1992 c 513 art 9 s 16; 1993 c 338 s 9; 1997 c 248 s 32

245A.17 [Repealed, 1992 c 513 art 9 s 44]

245A.18 SEAT BELT USE REQUIRED.

(a) When a nonresidential license holder provides or arranges for transportation for children served by the license holder, children four years old and older must be restrained by a properly adjusted and fastened seat belt and children under age four must be properly fastened in a child passenger restraint system meeting federal motor vehicle safety standards. A child passenger restraint system is not required for a child who, in the judgment of a licensed physician, cannot be safely transported in a child passenger restraint system because of a medical condition, body size, or physical disability, if the license holder possesses a written statement from the physician that satisfies the requirements in section 169.685, subdivision 6, paragraph (b).

(b) Paragraph (a) does not apply to transportation of children in a school bus inspected under section 169.451 that has a gross vehicle weight rating of more than 10,000 pounds, is designed for carrying more than ten persons, and was manufactured after 1977.

History: 1990 c 568 art 2 s 54; 1993 c 13 art 1 s 31

245A.19 HIV TRAINING IN CHEMICAL DEPENDENCY TREATMENT PROGRAM.

(a) Applicants and license holders for chemical dependency residential and nonresidential programs must demonstrate compliance with HIV minimum standards prior to their application being complete. The HIV minimum standards contained in the HIV-1 Guidelines for chemical dependency treatment and care programs in Minnesota are not subject to rule-making.

(b) Ninety days after April 29, 1992, the applicant or license holder shall orient all chemical dependency treatment staff and clients to the HIV minimum standards. Thereafter, orientation shall be provided to all staff and clients, within 72 hours of employment or admission to the program. In-service training shall be provided to all staff on at least an annual basis and the license holder shall maintain records of training and attendance.

(c) The license holder shall maintain a list of referral sources for the purpose of making necessary referrals of clients to HIV-related services. The list of referral services shall be updated at least annually.

(d) Written policies and procedures, consistent with HIV minimum standards, shall be developed and followed by the license holder. All policies and procedures concerning HIV minimum standards shall be approved by the commissioner. The commissioner shall provide training on HIV minimum standards to applicants.

(e) The commissioner may permit variances from the requirements in this section. License holders seeking variances must follow the procedures in section 245A.04, subdivision 9.

History: 1992 c 513 art 9 s 17

245A.20 [Repealed, 1997 c 248 s 51]

245A.21 [Repealed, 1997 c 248 s 51]

245A.22 INDEPENDENT LIVING ASSISTANCE FOR YOUTH.

Subdivision 1. **Independent living assistance for youth.** "Independent living assistance for youth" means a nonresidential program that provides a system of services that includes training, counseling, instruction, supervision, and assistance provided to youth according to the youth's independent living plan, when the placements in the program are made by the county agency. Services may include assistance in locating housing, budgeting, meal

preparation, shopping, personal appearance, counseling, and related social support services needed to meet the youth's needs and improve the youth's ability to conduct such tasks independently. Such services shall not extend to youths needing 24-hour per day supervision and services. Youths needing a 24-hour per day program of supervision and services shall not be accepted or retained in an independent living assistance program.

Subd. 2. Admission. The license holder shall accept as clients in the independent living assistance program only individuals specified under section 256E.115.

Subd. 3. Independent living plan. Unless an independent living plan has been developed by the local agency, the license holder shall develop a plan based on the client's individual needs that specifies objectives for the client. The services provided shall include those specified in this section and the services specified under section 256E.115, subdivision 2, paragraph (a). The plan shall identify the persons responsible for implementation of each part of the plan. The plan shall be reviewed as necessary, but at least annually.

Subd. 4. Records. The license holder shall maintain a record for each client.

(a) **Required records.** For each client the record maintained by the license holder shall document the following:

- (1) admission information;
- (2) the independent living plan;
- (3) delivery of the services required of the license holder in the independent living plan;
- (4) the client's progress toward obtaining the objectives identified in the independent living plan; and
- (5) a termination summary after service is terminated.

(b) **Money records.** If the license holder manages the client's money, the record maintained by the license holder shall also include the following:

- (1) written permission from the client or the client's legal guardian to manage the client's money;
- (2) the reasons the license holder is to manage the client's money; and
- (3) a complete record of the use of the client's money and reconciliation of the account.

Subd. 5. Service termination plan. The license holder, in conjunction with the county agency, shall establish a service termination plan that specifies how independent living assistance services will be terminated and the actions to be performed by the involved agencies, including necessary referrals for other ongoing services.

Subd. 6. Place of residence provided by program. When a client's place of residence is provided by the license holder as part of the independent living assistance program, the place of residence is not subject to separate licensure.

Subd. 7. General licensing requirements apply. In addition to the requirements of this section, providers of independent living assistance are subject to general licensing requirements of this chapter.

History: 1997 c 248 s 33

JUVENILE FACILITIES LICENSING PROHIBITION

245A.30 LICENSING PROHIBITION FOR CERTAIN JUVENILE FACILITIES.

The commissioner may not:

- (1) issue any license under Minnesota Rules, parts 9545.0905 to 9545.1125, for the residential placement of juveniles at a facility if the facility accepts juveniles who reside outside of Minnesota without an agreement with the entity placing the juvenile at the facility that obligates the entity to pay the educational expenses of the juvenile; or
- (2) renew a license under Minnesota Rules, parts 9545.0905 to 9545.1125, for the residential placement of juveniles if the facility accepts juveniles who reside outside of Minnesota without an agreement with the entity placing the juvenile at the facility that obligates the entity to pay the educational expenses of the juvenile.

History: 1998 c 367 art 10 s 3

245A.65 LICENSE HOLDER REQUIREMENTS GOVERNING MALTREATMENT OF VULNERABLE ADULTS.

Subdivision 1. **License holder requirements.** All license holders serving vulnerable adults shall establish and enforce written policies and procedures related to suspected or alleged maltreatment, and shall orient clients and mandated reporters who are under the control of the license holder to these procedures, as defined in section 626.5572, subdivision 16.

(a) License holders must establish policies and procedures allowing but not mandating the internal reporting of alleged or suspected maltreatment. License holders shall ensure that the policies and procedures on internal reporting:

(1) meet all the requirements identified for the optional internal reporting policies and procedures in section 626.557, subdivision 4a; and

(2) identify the primary and secondary person or position to whom internal reports may be made and the primary and secondary person or position responsible for forwarding internal reports to the common entry point as defined in section 626.5572, subdivision 5. The secondary person must be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment.

(b) The license holder shall:

(1) establish and maintain policies and procedures to ensure that an internal review is completed when the facility has reason to know that an internal or external report of alleged or suspected maltreatment has been made. The review must include an evaluation of whether related policies and procedures were followed, whether the policies and procedures were adequate, whether there is a need for additional staff training, and whether there is a need for any further action to be taken by the facility to protect the health and safety of vulnerable adults;

(2) identify the primary and secondary person or position who will ensure that, when required, internal reviews are completed. The secondary person shall be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment; and

(3) document and make internal reviews accessible to the commissioner upon the commissioner's request.

(c) The license holder shall provide an orientation to the internal and external reporting procedures to all persons receiving services. The orientation shall include the telephone number for the license holder's common entry point as defined in section 626.5572, subdivision 5. If applicable, the person's legal representative must be notified of the orientation. The program shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.

(d) The license holder shall post a copy of the internal and external reporting policies and procedures, including the telephone number of the common entry point as defined in section 626.5572, subdivision 5, in a prominent location in the program and have it available upon request to mandated reporters, persons receiving services, and the person's legal representatives.

Subd. 2. **Abuse prevention plans.** All license holders shall establish and enforce ongoing written program abuse prevention plans and individual abuse prevention plans as required under section 626.557, subdivision 14.

(a) The scope of the program abuse prevention plan is limited to the population, physical plant, and environment within the control of the license holder and the location where licensed services are provided. In addition to the requirements in section 626.557, subdivision 14, the program abuse prevention plan shall meet the requirements in clauses (1) to (5).

(1) The assessment of the population shall include an evaluation of the following factors: age, gender, mental functioning, physical and emotional health or behavior of the client; the need for specialized programs of care for clients; the need for training of staff to meet identified individual needs; and the knowledge a license holder may have regarding previous abuse that is relevant to minimizing risk of abuse for clients.

(2) The assessment of the physical plant where the licensed services are provided shall include an evaluation of the following factors: the condition and design of the building as it

relates to the safety of the clients; and the existence of areas in the building which are difficult to supervise.

(3) The assessment of the environment for each facility and for each site when living arrangements are provided by the agency shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community; the type of grounds and terrain surrounding the building; the type of internal programming; and the program's staffing patterns.

(4) The license holder shall provide an orientation to the program abuse prevention plan for clients receiving services. If applicable, the client's legal representative must be notified of the orientation. The license holder shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation; the orientation may take place within 72 hours.

(5) The license holder's governing body shall review the plan at least annually using the assessment factors in the plan and any substantiated maltreatment findings that occurred since the last review. The governing body shall revise the plan, if necessary, to reflect the review results.

(6) A copy of the program abuse prevention plan shall be posted in a prominent location in the program and be available upon request to mandated reporters, persons receiving services, and legal representatives.

(b) In addition to the requirements in section 626.557, subdivision 14, the individual abuse prevention plan shall meet the requirements in clauses (1) and (2).

(1) The plan shall include a statement of measures that will be taken to minimize the risk of abuse to the vulnerable adult when the individual assessment required in section 626.557, subdivision 14, paragraph (b), indicates the need for measures in addition to the specific measures identified in the program abuse prevention plan. The measures shall include the specific actions the program will take to minimize the risk of abuse within the scope of the licensed services, and will identify referrals made when the vulnerable adult is susceptible to abuse outside the scope or control of the licensed services. When the assessment indicates that the vulnerable adult does not need specific risk reduction measures in addition to those identified in the program abuse prevention plan, the individual abuse prevention plan shall document this determination.

(2) An individual abuse prevention plan shall be developed for each new person as part of the initial individual program plan or service plan required under the applicable licensing rule. The review and evaluation of the individual abuse prevention plan shall be done as part of the review of the program plan or service plan. The person receiving services shall participate in the development of the individual abuse prevention plan to the full extent of the person's abilities. If applicable, the person's legal representative shall be given the opportunity to participate with or for the person in the development of the plan. The interdisciplinary team shall document the review of all abuse prevention plans at least annually, using the individual assessment and any reports of abuse relating to the person. The plan shall be revised to reflect the results of this review.

Subd. 3. Orientation of mandated reporters. The license holder shall ensure that each new mandated reporter, as defined in section 626.5572, subdivision 16, who is under the control of the license holder, receives an orientation within 72 hours of first providing direct contact services as defined in section 245A.04, subdivision 3, to a vulnerable adult and annually thereafter. The orientation and annual review shall inform the mandated reporters of the reporting requirements and definitions in sections 626.557 and 626.5572, the requirements of this section, the license holder's program abuse prevention plan, and all internal policies and procedures related to the prevention and reporting of maltreatment of individuals receiving services.

History: 1997 c 248 s 34