

CHAPTER 9543
DEPARTMENT OF HUMAN SERVICES
LICENSURE

FAMILY DAY CARE AND ADULT AND CHILD**FOSTER CARE**

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IMPLEMENTATION OF RULES**FAMILY DAY CARE AND ADULT AND CHILD FOSTER CARE****9543.0010 PURPOSE AND APPLICABILITY.**

Subpart 1. **Purpose.** The purpose of parts 9543.0010 to 9543.0150, is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules.

Subp. 2. **Full applicability to county agencies.** Parts 9543.0040 to 9543.0130 apply in their entirety to county agencies.

Subp. 3. **Limited applicability to private agencies.** Parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 apply to private agencies authorized by the commissioner to perform licensing functions related to child foster care.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105.*

9543.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9543.0010 to 9543.0150, the following terms have the meaning given them.

Subp. 2. **Abuse.** "Abuse" has the meaning given it in Minnesota Statutes, section 626.557, subdivision 2, paragraph (d).

Subp. 3. **Agency.** "Agency" means a county agency as defined in subpart 9 or a private agency as defined in subpart 17.

Subp. 4. **Applicant.** "Applicant" means an applicant as defined in Minnesota Statutes, section 245A.02, subdivision 3, who has completed and signed a license application form. Applicant includes a current license holder who is seeking relicensure.

Subp. 5. **Authorized.** "Authorized" means that a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 and has been licensed by the commissioner to perform the child foster care program licensing functions under part 9543.0030, subpart 2.

Subp. 6. **Certification.** "Certification" means the commissioner's written notice to a county agency performing licensing functions delegated under part

9543.0030, subpart 1, that the county agency is in compliance with the requirements in parts 9543.0040 to 9543.0130.

Subp. 7. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 8. Complaint. "Complaint" means a report of an alleged license violation made to the agency about a program.

Subp. 9. County agency. "County agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 6.

Subp. 10. Department. "Department" means the Minnesota Department of Human Services.

Subp. 11. Imminent danger. "Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

Subp. 12. License. "License" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 13. License holder. "License holder" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 14. Maltreatment. "Maltreatment" has the meaning given it in Minnesota Statutes, section 626.556, subdivision 10e.

Subp. 15. Negative licensing action. "Negative licensing action" means denial of a license application or probation, suspension, revocation, or immediate suspension of an existing license.

Subp. 16. Neglect. "Neglect" has the meaning given it in Minnesota Statutes, sections 626.556, subdivision 2, paragraph (c) and 626.557, subdivision 2, paragraph (e).

Subp. 17. Private agency. "Private agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 12.

Subp. 18. Program. "Program" means family day care, child foster care, or adult foster care programs.

Subp. 19. Prospective applicant. "Prospective applicant" means a person who expresses interest to an agency in applying for a license to provide a program but who has not submitted a signed application form to the agency.

Subp. 20. Variance. "Variance" means written permission from the commissioner for a license holder to depart for a specified time from a standard specified in rule.

Subp. 21. Violation. "Violation" means failure to comply with applicable laws or rules governing a program.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0030 LICENSING FUNCTIONS.

Subpart 1. Delegation to county agencies. County agencies are delegated responsibility to perform the following functions related to licensure of programs:

- A. accept and process license applications;
- B. conduct inspections, studies, and evaluations of programs;
- C. recommend approval or denial of applications for licensure;
- D. process variance requests;
- E. monitor compliance with applicable licensing rules;
- F. investigate allegations of license violations;
- G. investigate unlicensed programs;

- H. issue correction orders;
- I. recommend forfeiture orders and negative licensing actions;
- J. enforce orders of the commissioner; and
- K. represent the commissioner in contested case proceedings conducted under Minnesota Statutes, chapter 14.

Subp. 2. Delegation to private agencies. Private agencies must be authorized by the commissioner to perform the following functions related to the licensure of child foster care programs:

- A. accept and process license applications;
- B. conduct inspections, studies, and evaluations of programs;
- C. recommend approval or denial of applications for licensure;
- D. process variance requests;
- E. monitor compliance with child foster care licensing rules;
- F. investigate allegations of license violations;
- G. issue correction orders;
- H. recommend forfeiture orders and negative licensing actions;
- I. enforce orders of the commissioner; and
- J. assist and cooperate with the commissioner and attorney general in contested case proceedings.

Statutory Authority: *MS s 245A.09, 245A.16*

History: *15 SR 2105*

9543.0040 LICENSE APPLICATION PROCEDURES.

Subpart 1. Licensure information. The agency shall provide information on license application procedures to prospective applicants according to items A to D.

A. The agency shall provide in writing to all prospective applicants, the information in subitems (1) to (3):

- (1) a summary of license requirements,
- (2) a description of the agency's licensing study process; and
- (3) the agency's timelines for processing license applications.

B. The agency shall provide the license application form prescribed by the commissioner to every prospective applicant who requests an application.

C. An agency that requires prospective applicants to attend an informational meeting before receiving a license application form must ensure that meetings take place at least every two months on either a group or individual basis.

D. Upon receiving a completed and signed license application form, the agency shall provide the applicant a copy of the program rules.

Subp. 2. Licensing study. The agency shall perform a licensing study of the applicant that includes:

- A. a background study performed according to subpart 3;
- B. a written record of a home study that includes:
 - (1) on-site inspection of the residence;
 - (2) home visits necessary to fully evaluate the applicant's qualification for licensure; and
 - (3) when an applicant has been operating a program:
 - (a) an in-home visit to observe compliance with program requirements;
 - (b) documented requests for program evaluations from parents or legal guardians of children in family day care; and
 - (c) evaluations from placement workers for foster care;

C. three letters of reference;

D. where the agency has knowledge the applicant was previously licensed, a reference from that previous agency;

E. reports from the fire marshal, building officials, and health officials that are required by rules governing the program;

F. for foster care licensing applicants, the information in part 9543.0060, subpart 4; and

G. any other reports or evaluations necessary to fully evaluate the applicant's qualifications for licensure and compliance with applicable laws and rules.

Subp. 3. Background study. The agency shall conduct a background study according to items A to D.

A. The study shall include the following individuals:

(1) the applicant;

(2) all individuals over age 13 living in the household; and

(3) any other individuals specified in Minnesota Statutes, section 245A.04, subdivision 3, paragraph (a).

B. The study shall include the following records:

(1) conviction records of the Minnesota Bureau of Criminal Apprehension;

(2) county agency records of substantiated abuse or neglect of vulnerable adults and maltreatment of minors;

(3) juvenile court records of delinquency proceedings held within the five years preceding application or five years preceding the 18th birthday of anyone over age 13 living in the household, whichever time period is longer; and

(4) any other information, including arrest and investigation records maintained by the Minnesota Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, and the national criminal record repository, and criminal records of other states, if there is reasonable cause to believe the information is pertinent to disqualification of the individual under part 9543.3070.

C. If the individual has lived in the county for less than five years, the study under item B shall include records from the previous county or counties of residence for the past five years.

D. When a background study indicates a subject is disqualified under part 9543.3070, the agency shall:

(1) notify the applicant in writing that:

(a) the study indicates a subject is disqualified;

(b) the subject has the right to request reconsideration from the commissioner as provided in part 9543.3080; and

(c) the application will be denied unless the commissioner sets aside the disqualification; and

(2) make a recommendation to the commissioner whether the disqualification should be set aside.

Subp. 4. Completed application. An application is completed when all studies, reports, and evaluations in subparts 2 and 3 have been completed and received by the agency.

Subp. 5. Licensing recommendation. The agency shall forward its licensure recommendation to the commissioner within 20 working days after an application is completed. The agency shall make its recommendation according to items A to C:

A. The agency shall recommend that the commissioner issue a license when the agency determines that the applicant fully complies with laws and rules governing the program and is qualified for licensure.

B. The agency may recommend that the commissioner issue a license and grant a variance according to part 9543.0050.

C. The agency shall recommend that the commissioner deny a license application if the agency determines the applicant fails to fully comply with laws or rules governing the program and variance requirements. The agency shall submit evidence to support its recommendation. Evidence may include:

- (1) documentation of specific facility deficiencies that endanger the health or safety of persons served by the program;
- (2) documentation of any disqualification that has not been set aside;
- (3) reports of agency investigations and on-site observations;
- (4) reports from law enforcement agencies;
- (5) reports from county child or adult protection services;
- (6) reports from fire, building, or health officials;
- (7) complaints that relate to the program; or
- (8) any other evidence that the applicant is not in compliance with applicable laws or rules governing the program.

Subp. 6. License renewal. Before the expiration date of a license, the agency shall:

- A. at least 30 days before the license expiration date, provide an application form and notice of the license expiration date to the license holder;
- B. conduct a licensing renewal study that includes information under subpart 2, items A, B, E, and F; and
- C. make a licensing recommendation to the commissioner.

Subp. 7. License extension. Before the expiration date of a program that is being investigated or a program that is appealing an order of revocation or suspension, the agency shall request the commissioner to extend the license pending disposition of the investigation or appeal.

Subp. 8. Tracking licensing progress. The agency shall track the progress of each application for licensure on a form approved by the commissioner including:

- A. the dates and documentation of all events described in subparts 2 to 7;
- B. the status of the license application 120 calendar days after receipt of a signed application form;
- C. the date and circumstances when a license application is withdrawn or a license is returned or not renewed by the license holder;
- D. the date the license is issued or denied; and
- E. if a license is issued, the date the license is effective and the expiration date of the license.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. A variance request must include the following information:

- A. the part or parts of the rule for which a variance is sought;
- B. the reasons why a variance from the specified provisions is sought;
- C. the period of time for which a variance is requested;
- D. written approval from the fire marshal, building inspector, or health authority when the variance request is for a variance from a fire, building, or health code; and

E. alternative equivalent measures the applicant or license holder will take to ensure the health and safety of persons served by the program if the variance is granted.

Subp. 2. **Variance procedures.** Except as provided in subpart 3, a request for a variance must be submitted in writing by the applicant or license holder.

Except for variance authority granted to a county agency under part 9502.0335, subpart 8b, the agency shall forward to the commissioner within ten working days of receipt of the request the information in subpart 1 and the agency's recommendation to approve or deny the request.

The commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency.

Subp. 3. **Foster care capacity variance at request of agency.** The agency may orally request from the commissioner a variance from child foster care capacity limits on behalf of a license holder. If the commissioner grants the variance, the agency shall submit to the commissioner the information in subpart 1 within five working days after the variance is granted.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0060 LICENSING FOSTER CARE PROGRAMS.

Subpart 1. **Additional foster care licensing requirements.** Agencies that perform foster care licensing functions shall comply with the requirements in subparts 2 to 6, in addition to other applicable requirements.

Subp. 2. **Program information.** The agency shall provide prospective applicants with information about foster care to enable the prospective applicant to decide whether to apply for licensure. The information must include:

A. the types of individuals the agency places in foster care;

B. the responsibilities of foster care license holders and of the agency;
and

C. the agency's policies governing foster care.

Subp. 3. **Orientation and preplacement training.** The agency shall provide applicants the orientation and preplacement training required in rules governing the program.

Subp. 4. **Foster care licensing study.** In addition to the licensing study under part 9543.0040, subpart 2, the licensing study of an applicant for foster care must include:

A. in-person interviews with all family members and other adults living in the household;

B. social history information; and

C. an evaluation of whether the individual meets the specific qualifications required in Minnesota Rules governing child foster care or adult foster care.

A written report of the foster care licensing study must be kept in the applicant's record.

Subp. 5. **Duties of agency.** The agency shall:

A. enter into a foster parent agreement with the license holder for child foster care;

B. coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensuror at least monthly for the first six months after the first placement in child foster care;

C. provide the license holder a copy of the annual relicensing evaluation report;

D. establish a grievance mechanism for resolving differences between the agency and the license holder and provide the license holder with a written description of grievance procedures;

E. ensure that the foster care provider has a means of contacting the agency 24 hours per day, seven days per week; and

F. ensure that training is available to enable license holders to meet the training requirements in rules governing foster care programs.

Subp. 6. **Notice of closure.** When a foster care program is closed, the agency shall notify the commissioner on forms prescribed by the commissioner.

Statutory Authority: *MS s 245A.09; 245A 16*

History: *15 SR 2105*

9543.0070 INVESTIGATIONS OF LICENSED PROGRAMS.

Subpart 1. **Reports of abuse or neglect of persons served by licensed programs.** If an agency receives a complaint alleging abuse or neglect of persons served by a program, the agency shall follow the procedures in items A to C.

A. The agency shall immediately report the complaint to the county child or adult protection unit where the program is located.

B. The agency shall cooperate with the county child or adult protection unit as requested in conducting the investigation required under part 9555.7300 or 9560.0222.

C. Upon completion of the investigation, the agency shall take the appropriate licensing action indicated by the findings of the investigation.

Subp. 2. **Timelines.** Except for reports of abuse, neglect, or maltreatment, the agency shall investigate all complaints of licensing violations received about programs for which it performs licensing functions. The agency shall investigate the complaints according to items A to C:

A. A complaint that alleges imminent danger or recurring physical injury to persons served by the program must be:

(1) reported according to subpart 1; and

(2) reported to the commissioner immediately.

B. Investigation of a complaint that does not indicate imminent danger to persons served by the program but that may result in a negative licensing action under part 9543.0100 must begin within three working days after the agency receives the complaint.

C. Investigation of a complaint that does not involve an issue of safety under item A or B for persons served by the program must begin within ten working days after the agency receives the complaint.

Subp. 3. **Determination.** The agency shall gather sufficient information about every complaint to:

A. make a determination that a licensing violation occurred, did not occur, or no determination can be made; and

B. if a violation occurred, issue a correction order or recommend a negative licensing action.

Subp. 4. **Reports of death.** The agency shall ensure that the death of a person served by a program is reported to the medical examiner or coroner and ombudsman as required in Minnesota Statutes, sections 626.556, subdivision 9, and 626.577, subdivision 9.

Subp. 5. **Recording complaints and investigations.** The agency shall:

A. maintain a register for recording complaints about licensed programs and tracking the status of each investigation;

B. record in the license holder's file the disposition of each complaint involving the license holder; and

C. maintain the records according to Minnesota Statutes, section 13.46.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. **Unlicensed family day care and adult foster care.** When a county agency learns that a family day care or adult foster care program required to be licensed is operating without a license, the county shall, within five working days, notify the operator in writing that a license is required or the program must discontinue operation.

A. If the operator discontinues the unlicensed operation, no further action is required.

B. If an operator who is eligible for licensure fails to sign an application form within 30 calendar days after notice that a license is required or fails to cooperate in the licensing study, the county agency shall:

(1) ask the county attorney to take legal action to halt the continued operation of the program or obtain misdemeanor prosecution of the operator; and

(2) inform the commissioner of the unlicensed program.

C. Nothing in items A and B prevents a county agency from immediately asking the county attorney to seek a court order against the continued operation of an unlicensed program.

Subp. 2. **Unlicensed child foster care.** The agency shall report to the county child protection unit when it learns of a child in an unlicensed foster care program that is required to be licensed.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0090 CORRECTION ORDERS.

Subpart 1. **Correction order, training.** An agency shall not issue correction orders unless licensors have been trained by the department on procedures for issuing correction orders. A correction order must be on forms prescribed by the commissioner. A copy of the correction order must be kept in the license holder's file.

Subp. 2. **Criteria for issuing correction orders.** A correction order may be issued if all of the following conditions are met:

A. the violation does not imminently endanger the health, safety, or rights of persons served by the program;

B. the violation is not listed in part 9543.0100, subpart 3;

C. the violation is not serious or chronic; and

D. the violation will be corrected within a reasonable time.

Subp. 3. **Time limitation.** A correction order must include a specific time period for correcting the violation.

Subp. 4. **Compliance with correction order.** The agency shall ensure that license holders provide evidence of compliance with a correction order or, if appropriate, recommend further action to the commissioner.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. **Basis for recommendation.** When recommending a negative licensing action, the agency shall:

A. submit to the commissioner the following information:

(1) the citation to laws or rules that have been violated;

(2) the nature and severity of each violation;

(3) whether the violation is recurring or nonrecurring;

- (4) the effect of the violation on persons served by the program;
- (5) an evaluation of the risk of harm to persons served; the agency may use the risk assessment completed under part 9560.0222, subpart 9;
- (6) any evaluations of the program by persons served or their families;
- (7) relevant facts, conditions, and circumstances concerning the operation of the program, including information identified in part 9543.0040, subpart 5, item C;
- (8) any relevant information about the qualifications of the applicant or license holder or persons living in the residence; and
- (9) any aggravating or mitigating factors related to the violation;
- and

B. notify the county attorney of the recommendation.

Subp. 2. Immediate suspension of license. If the agency has reasonable cause to believe that the health, safety, or rights of persons served by a program are in imminent danger, the agency must take actions described in items A to C:

A. The agency shall notify the commissioner immediately.

B. If the commissioner orders an immediate suspension, the agency shall arrange for delivery, by personal service, of written notice of immediate suspension to the license holder. The notice shall state:

- (1) the reason for the immediate suspension;
- (2) that the program must discontinue operation immediately;
- (3) the license holder's right to appeal and a contested case hearing;

and

- (4) that the commissioner has taken the action.

C. The agency shall make a recommendation for further action to the commissioner.

Subp. 3. Revocation or denial of license. Violations that are grounds for recommending license revocation or denial include, but are not limited to:

A. immediate suspension of a license under subpart 2;

B. a disqualification in part 9543.3070 or in rules governing the program;

C. a false statement knowingly made by the license holder, on the license application;

D. failure or refusal to provide the commissioner access to the physical plant and grounds, documents, persons served, and staff;

E. recurring failure to comply with discipline standards in rules governing the program;

F. severe or recurring failure to comply with capacity limits; or

G. licensing violations that occur while the license is probationary or suspended.

Subp. 4. License suspension. The agency may recommend license suspension rather than revocation under subpart 3 if the agency submits information demonstrating:

A. on the basis of factors in subpart 1, revocation is not warranted; and

B. suspension rather than revocation:

- (1) is in the best interests of persons served by the program; and
- (2) would not pose a risk of harm to persons served by the program.

Subp. 5. License probation. The agency may recommend probation rather than revocation or suspension if:

A. on the basis of factors in subpart 1, the agency demonstrates that revocation or suspension is not warranted.

B. the agency demonstrates that continued operation of the program:

- (1) is in the best interests of persons served by the program; and
- (2) would not pose a risk of harm to persons served by the program;

and

C. the agency submits to the commissioner a plan for monitoring the program to ensure the safety of persons served during the probationary period.

Subp. 6. Notification of licensee of negative licensing action: The agency shall give written notice to a license holder when the agency recommends a negative licensing action to the commissioner.

Subp. 7. Notice to parents of negative licensing action. The agency shall give written notice of a negative licensing action to the parents or guardians of children in the programs as follows:

A. When the agency recommends a negative licensing action to the commissioner, the agency shall immediately inform parents and guardians that a negative licensing action has been recommended and that they will be informed of the commissioner's action on the recommendation.

B. When the commissioner orders a negative licensing action, the agency shall immediately inform parents and guardians:

- (1) that a negative licensing action has been ordered and the circumstances for the action;
- (2) the effect of the negative licensing action on the operation of the program; and

(3) that an explanation of the appeal process available to the license holder is available upon request.

C. If the commissioner does not order a negative licensing action following the agency recommendation, the agency shall inform parents and guardians when the agency receives the commissioner's decision.

Subp. 8. Notice of negative licensing action to county. If a negative licensing action has been ordered against a child foster care program that is supervised by a private agency, the private agency shall notify in writing the county agency in which the program is located and any county that has placements in the home.

Statutory Authority: *MS s. 245A.09; 245A.16*

History: *15 SR 2105*

9543.0110 ENFORCING ORDERS OF COMMISSIONER.

Subpart 1. Agency enforcement of commissioner orders. The agency shall enforce and defend all orders of the commissioner, including immediate suspension, suspension, and revocation.

Subp. 2. Sanctioned programs. If the agency has knowledge that a program whose license has been immediately suspended, revoked, or suspended continues to operate, the agency shall immediately report the operation to the county attorney and the commissioner.

Subp. 3. Programs on probation. The agency shall monitor programs on probation for compliance with the plan developed under part 9543.0100, subpart 5. If a program fails to comply with the terms of its probation, the agency shall immediately report the noncompliance to the commissioner.

Statutory Authority: *MS s. 245A.09; 245A.16*

History: *15 SR 2105*

9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

Subpart 1. Contested case proceedings. The county agency shall represent the commissioner in contested case appeals of negative licensing actions involving license holders supervised by the county agency. The county agency shall:

- A. arrange for legal consultation and representation by the county attorney;
- B. prepare all documents necessary for the contested case proceeding;
- C. within 30 days after receipt of the appeal packet from the department, arrange with the Office of Administrative Hearings for the services of an administrative law judge and a timely date and location for the hearing;
- D. serve the notice of and order for hearing as provided in part 1400.5600; and
- E. send a copy of the notice of and order for hearing to the commissioner.

Subp. 2. Appeals involving private agencies. The attorney general represents the commissioner in contested case appeals of licensing actions involving license holders licensed based on the recommendation of a private agency.

Subp. 3. Informal dispositions, stipulated agreements. In making an informal disposition of a contested case, the county agency shall follow the procedures in items A to D:

A. The county agency shall obtain preliminary approval from the commissioner to discuss an informal disposition of the contested case.

B. Before entering into any settlement agreement with an applicant or license holder appealing an order of the commissioner, the county agency shall discuss the terms of the proposed agreement with the commissioner.

C. If the commissioner approves of the proposed terms, the county agency shall:

- (1) draft an agreement and obtain signatures of the party appealing and county representatives;
- (2) submit the signed agreement to the commissioner for approval and signatures; the agreement is not effective until signed by the commissioner; and
- (3) monitor the program for compliance with the terms of the agreement.

D. If the commissioner or parties are unable to reach a settlement, the county agency shall schedule a contested case hearing.

Statutory Authority: *MS s 245A 09; 245A.16*

History: *15 SR 2105*

9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. Maintaining records. The agency must maintain a record file of each applicant and license holder that includes:

- A. all records required by the rules governing the program;
- B. a record of all investigations and dispositions of all investigations according to Minnesota Statutes, section 13.46;
- C. dates and reports of all licensing studies; and
- D. a list of all persons currently being served by the foster care license holder.

Subp. 2. Commissioner access. The agency shall provide the commissioner access to and, if requested, copies of all records and documents in an applicant or license holder's file.

Subp. 3. Training requirements. The agency shall require that licensors receive six hours of training each calendar year.

Training must be relevant to licensing functions or to licensed programs.

The agency must keep a record of completed training in each licensor's personnel file.

Subp. 4. Conflict of interest. The agency shall ensure that no agency employee or board member who applies for licensure or who is licensed to operate a program based on the agency's recommendation is involved in any licensing recommendation or action related to that employee or board member.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0140 COUNTY CERTIFICATION.

Subpart 1. County agency certification. The commissioner shall biennially determine whether a county agency is in compliance with parts 9543.0040 to 9543.0130. When the county agency is in compliance with parts 9543.0040 to 9543.0130, the commissioner shall certify the county agency for two years.

Subp. 2. Notification of noncompliance. The commissioner shall notify the county agency when the county agency has failed to comply with parts 9543.0040 to 9543.0130. The notice must include:

- A. the deficiencies in the county agency's licensing procedures;
- B. the corrective action necessary to correct the deficiencies; and
- C. the time frame for correction of the deficiencies.

Subp. 3. County compliance. Within 30 calendar days after receiving a notice of noncompliance, the county shall:

- A. demonstrate compliance with parts 9543.0040 to 9543.0130; or
- B. submit to the commissioner for approval a corrective action plan.

Subp. 4. Review of corrective action plan. The commissioner shall review and approve or disapprove the corrective action plan within 30 calendar days after receiving the plan.

Subp. 5. Provisional certification. If the county agency does not fully comply with parts 9543.0040 to 9543.0130, but the failure to comply does not constitute a risk to persons served by licensed programs, the commissioner may issue a provisional certification of the county agency upon approval of the corrective action plan submitted under subpart 3, item B.

Subp. 6. County agency decertification based on demonstrated risk of harm to program participants. When the commissioner determines that a county agency's failure to comply with parts 9543.0040 to 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall immediately revoke certification of the county agency and initiate sanctions as provided in subpart 7.

Subp. 7. Funding sanction. If the county agency is decertified, the commissioner shall certify a funding reduction according to Minnesota Statutes, section 245A.16, subdivision 6.

Subp. 8. Expiration of certification. A certification issued to a county agency expires at 12:01 a.m. on the day after the expiration date stated on the certification.

Subp. 9. Contracting licensing functions. A county agency must receive prior approval from the commissioner before contracting with an authorized private agency or another county agency to perform licensing functions delegated under part 9543.0030, subpart 1, and remains subject to the certification provisions in part 9543.0140. This subpart does not apply to purchase of service contracts which have as their primary purpose to provide foster care services for individual clients.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

9543.0150 PRIVATE AGENCY AUTHORIZATION.

Subpart 1. Private agency authorization. The commissioner shall at least

biennially determine private agencies' compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130. When a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130, the commissioner shall authorize the private agency to perform licensing functions delegated under part 9543.0030, subpart 2, for a period up to two years. The authorization shall specify the effective and expiration dates of the authorization.

Subp. 2. Revocation of private agency's authorization. When the commissioner determines that a private agency's failure to comply with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall revoke the private agency's authorization to perform licensing functions under part 9543.0030, subpart 2. Revocation of a private agency's authorization is grounds for negative licensing action against a license issued under parts 9545.0750 to 9545.0830. Revocation of authorization or a negative licensing action may be appealed according to Minnesota Statutes, sections 245A.07 and 245A.08.

Statutory Authority: *MS s 245A.09; 245A.16*

History: *15 SR 2105*

BACKGROUND STUDIES

9543.3000 PURPOSE.

The purpose of parts 9543.3000 to 9543.3090 is to establish procedures and standards for background studies of individuals affiliated with programs subject to licensure under Minnesota Statutes, chapter 245A, to protect the health, safety, and rights of persons served by those programs. Parts 9543.3000 to 9543.3090 are not intended to govern personnel decisions of employers except that personnel decisions may be affected if an individual has a disqualification under part 9543.3070.

Statutory Authority: *MS s 245A.04, 245A.09*

History: *15 SR 2043*

9543.3010 APPLICABILITY.

Parts 9543.3000 to 9543.3090 apply to all residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. Parts 9543.3070 and 9543.3080 apply to child foster care, adult foster care, and family day care programs.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3020 DEFINITIONS.

Subpart 1. Scope. As used in parts 9543.3000 to 9543.3090, the following terms have the meanings given them in this part.

Subp. 2. Background study. "Background study" means the investigation conducted by the commissioner to determine whether a subject is disqualified from direct contact with persons served by a program.

Subp. 3. Commissioner. "Commissioner" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 5.

Subp. 4. Contractor. "Contractor" means any person, regardless of employer, who is providing program services for hire under the control of the provider.

Subp. 5. County agency. "County agency" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 6.

Subp. 6. Direct contact. "Direct contact" has the meaning given in Minnesota Statutes, section 245A.04, subdivision 3, paragraph (a).

Subp. 7. **License.** "License" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 8. **Program.** "Program" means a residential or nonresidential program licensed under Minnesota Statutes, chapter 245A.

Subp. 9. **Provider.** "Provider" means an applicant as defined in Minnesota Statutes, section 245A.02, subdivision 3, or license holder as defined in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 10. **Serious injury.** "Serious injury" means any harm suffered by a person which reasonably requires the care of a physician whether or not the care of a physician was sought. For the purpose of parts 9543.3000 to 9543.3090, the following are deemed to be serious injuries:

- A. bruises, bites, skin laceration, or tissue damage;
- B. fractures;
- C. dislocations;
- D. evidence of internal injuries;
- E. head injuries with loss of consciousness;
- F. extensive second-degree or third-degree burns and other burns for which complications are present;
- G. extensive second-degree or third-degree frostbite, and others for which complications are present;
- H. irreversible mobility or avulsion of teeth;
- I. injuries to the eyeball;
- J. ingestion of foreign substances and objects that are harmful;
- K. near drowning; and
- L. heat exhaustion or sunstroke.

Subp. 11. **Subject.** "Subject" means an individual identified in part 9543.3030 on whom a background study is required.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3030 INDIVIDUALS WHO MUST BE STUDIED.

A background study must be conducted of the following persons:

- A. individuals who are providers of programs licensed by the commissioner;
- B. individuals over age 13 living in the household where a program is operated;
- C. current employees or contractors who have direct contact with persons being served by the program; and
- D. volunteers who provide program services to persons served if:
 - (1) the volunteer has direct contact with persons served; and
 - (2) the volunteer is not directly supervised.

"Directly supervised" means an individual listed in item A or C is within sight or hearing of a volunteer to the extent that the individual listed in item A or C 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.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3040 RESPONSIBILITIES OF PROVIDER.

Subpart 1. **General.** A provider must require every individual identified in part 9543.3030 to complete the background information form prescribed by the commissioner.

Subp. 2. **Form submission.** A provider must submit each completed background study form to the commissioner:

A. before initial licensure and with every license renewal application; and

B. before a subject first has direct contact with persons served by the provider's program.

Subp. 3. **Direct contact prohibited.** A provider must ensure that a subject who is disqualified by the commissioner does not have direct contact with persons receiving services from the program unless the conditions in item A or B are met.

A. The provider has:

(1) received notice from the commissioner that the subject may be in direct contact pending reconsideration;

(2) obtained documentation that the subject will submit or has submitted a timely request for reconsideration; and

(3) documented compliance with requirements in the commissioner's notice.

B. The provider has received notice from the commissioner that the subject's disqualification has been set aside.

Subp. 4. **Employment termination.** Termination of a subject in good faith reliance on a notice of disqualification issued by the commissioner does not subject the provider to civil liability.

Subp. 5. **Record retention.** The subject's personnel file must contain the most recent notice issued by the commissioner under part 9543.3060, subpart 5. If the current notice is more than 12 months old, the subject's personnel file must also include documentation that the provider has made a timely application for a background study as required by Minnesota Statutes, section 245A.04.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3050 RESPONSIBILITIES OF SUBJECT.

A subject must provide to the provider the information necessary to ensure an accurate background study, including:

A. the subject's first, middle, and last name and all other names by which the individual has been known;

B. current home address, city, county, and state of residence;

C. counties of residence for the past five years;

D. date of birth;

E. sex; and

F. driver's license number or state identification number.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3060 RESPONSIBILITIES OF COMMISSIONER.

Subpart 1. **Negative licensing action.** In addition to other sanctions available to the commissioner under Minnesota Statutes, chapter 245A, the commissioner has reasonable cause to deny a license or to immediately suspend, suspend, or revoke a license if a provider:

A. fails or refuses to cooperate with the commissioner in conducting background studies as required in parts 9543.3000 to 9543.3090; or

B. permits a subject who has been disqualified by the commissioner to be in direct contact with persons served by the program.

Subp. 2. **Review of records.** In conducting the background study, the commissioner shall review:

A. conviction records of the Minnesota Bureau of Criminal Apprehension in which the last date of discharge from the criminal justice system is less than 15 years;

B. records of substantiated abuse or neglect of vulnerable adults and maltreatment of minors in licensed programs that are dated within seven years;

C. any other information, including arrest and investigative information from the Minnesota Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the national record repository, criminal records of other states, and juvenile court records on a subject identified in part 9543.3030, item B, that relate to delinquency proceedings within the five years preceding application or preceding the subject's 18th birthday, whichever period is longer, provided that the commissioner has reasonable cause to believe that the information is pertinent to disqualification of a subject. "Reasonable cause to believe" means that information or circumstances exist which provide the commissioner with articulable suspicion that further pertinent information may exist concerning a subject.

Subp. 3. Determination of disqualification. The commissioner shall evaluate the results of the study and any other information available to the commissioner and shall determine whether a subject is disqualified under part 9543.3070.

Subp. 4. Notice by commissioner to subject. Within 15 working days, the commissioner shall notify the subject in writing of the results of the background study or that additional time is needed to complete the study. If the study indicates a subject is disqualified, the notice shall state:

A. the reason for disqualification and either:

(1) have attached a copy of the records relied upon by the commissioner; or

(2) state how to obtain the records relied upon by the commissioner;

B. the procedures for requesting the commissioner to reconsider the disqualification; and

C. the factors to be considered by the commissioner under part 9543.3080 in the decision whether to set aside the disqualification.

Subp. 5. Notice by commissioner to provider. Within 15 working days, the commissioner shall notify the provider that:

A. the subject is not disqualified;

B. more time is needed to complete the study; or

C. the study indicates the subject is disqualified; and

(1) the subject has 30 days from receipt of the notice to request reconsideration of the disqualification and that the commissioner's decision will be issued within 15 working days after receipt of a request; and

(2) the provider may continue the subject in direct contact pending reconsideration if:

(a) the subject submits a timely request for reconsideration; and

(b) the provider takes actions specified by the commissioner to reduce the risk of harm to persons receiving services.

If the commissioner determines a subject who is disqualified presents a risk of imminent danger to persons receiving services from the program, the commissioner will notify the provider to immediately ensure the subject does not have direct contact with persons receiving services from the program.

Subp. 6. Disclosure of information; conditions. The commissioner shall not disclose the nature of the disqualification to the provider unless:

A. the subject consents to disclosure in writing; or

B. other law authorizes disclosure to the provider.

Subp. 7. **Record retention.** The commissioner shall maintain records of each study. The commissioner shall make the information in the records available only to the commissioner or the commissioner's designees for background study purposes. When the subject reaches age 23, the commissioner shall destroy juvenile court records obtained pursuant to the study.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3070 DISQUALIFICATION STANDARDS.

Subpart 1. **Disqualifications.** Items A to D disqualify an individual from programs serving children or adults.

A. The subject has been convicted of a crime or anticipatory crime against persons; or a crime or anticipatory crime reasonably related to the provision of services. The following offenses have been deemed to be crimes against persons or reasonably related to the provision of services or both:

- (1) Minnesota Statutes, section 609.17 (Attempts);
- (2) Minnesota Statutes, section 609.175 (Conspiracy);
- (3) Minnesota Statutes, section 609.185 (Murder in the first degree);
- (4) Minnesota Statutes, section 609.19 (Murder in the second degree);
- (5) Minnesota Statutes, section 609.195 (Murder in the third degree);
- (6) Minnesota Statutes, section 609.20 (Manslaughter in the first degree);
- (7) Minnesota Statutes, section 609.205 (Manslaughter in the second degree);
- (8) Minnesota Statutes, section 609.21 (Criminal vehicular homicide and injury);
- (9) Minnesota Statutes, section 609.215 (Suicide);
- (10) Minnesota Statutes, section 609.221 (Assault in the first degree);
- (11) Minnesota Statutes, section 609.222 (Assault in the second degree);
- (12) Minnesota Statutes, section 609.223 (Assault in the third degree);
- (13) Minnesota Statutes, section 609.2231 (Assault in the fourth degree);
- (14) Minnesota Statutes, section 609.224 (Assault in the fifth degree);
- (15) Minnesota Statutes, section 609.228 (Great bodily harm caused by distribution of drugs);
- (16) Minnesota Statutes, section 609.23 (Mistreatment of persons confined);
- (17) Minnesota Statutes, section 609.231 (Mistreatment of residents or patients);
- (18) Minnesota Statutes, section 609.235 (Use of drugs to injure or facilitate crime);
- (19) Minnesota Statutes, section 609.24 (Simple robbery);
- (20) Minnesota Statutes, section 609.245 (Aggravated robbery);
- (21) Minnesota Statutes, section 609.25 (Kidnapping);
- (22) Minnesota Statutes, section 609.255 (False imprisonment);
- (23) Minnesota Statutes, section 609.265 (Abduction);

- (24) Minnesota Statutes, section 609.2661 (Murder of an unborn child in the first degree);
- (25) Minnesota Statutes, section 609.2662 (Murder of an unborn child in the second degree);
- (26) Minnesota Statutes, section 609.2663 (Murder of an unborn child in the third degree);
- (27) Minnesota Statutes, section 609.2664 (Manslaughter of an unborn child in the first degree);
- (28) Minnesota Statutes, section 609.2665 (Manslaughter of an unborn child in the second degree);
- (29) Minnesota Statutes, section 609.267 (Assault of an unborn child in the first degree);
- (30) Minnesota Statutes, section 609.2671 (Assault of an unborn child in the second degree);
- (31) Minnesota Statutes, section 609.2672 (Assault of an unborn child in the third degree);
- (32) Minnesota Statutes, section 609.268 (Injury or death of an unborn child in the commission of a crime);
- (33) Minnesota Statutes, section 609.322 (Solicitation, inducement, and promotion of prostitution);
- (34) Minnesota Statutes, section 609.323 (Receiving profit derived from prostitution);
- (35) Minnesota Statutes, section 609.3232 (Protective order authorized; procedures; penalties);
- (36) Minnesota Statutes, section 609.324, subdivisions 1 and 1a (Other prohibited acts);
- (37) Minnesota Statutes, section 609.33 (Disorderly house);
- (38) Minnesota Statutes, section 609.342 (Criminal sexual conduct in the first degree);
- (39) Minnesota Statutes, section 609.343 (Criminal sexual conduct in the second degree);
- (40) Minnesota Statutes, section 609.344 (Criminal sexual conduct in the third degree);
- (41) Minnesota Statutes, section 609.345 (Criminal sexual conduct in the fourth degree);
- (42) Minnesota Statutes, section 609.3451 (Criminal sexual conduct in the fifth degree);
- (43) Minnesota Statutes, section 609.352 (Solicitation of children to engage in sexual conduct);
- (44) Minnesota Statutes, section 609.365 (Incest);
- (45) Minnesota Statutes, section 609.377 (Malicious punishment of a child);
- (46) Minnesota Statutes, section 609.378 (Neglect or endangerment of a child);
- (47) Minnesota Statutes, section 609.561 (Arson in the first degree);
- (48) Minnesota Statutes, section 609.562 (Arson in the second degree);
- (49) Minnesota Statutes, section 609.563 (Arson in the third degree);
- (50) Minnesota Statutes, section 609.713 (Terroristic threats);
- (51) Minnesota Statutes, section 609.746 (Interference with privacy);

(52) Minnesota Statutes, section 609.79 (Obscene or harassing phone calls);

(53) Minnesota Statutes, section 609.795 (Letter, telegram, or package; opening; harassment);

(54) Minnesota Statutes, section 617.23 (Indecent exposure);

(55) Minnesota Statutes, section 617.241 (Obscene materials and performances);

(56) Minnesota Statutes, section 617.243 (Indecent literature, distribution);

(57) Minnesota Statutes, section 617.246 (Use of minors in sexual performance);

(58) Minnesota Statutes, section 617.247 (Possession of pictorial representations of minors);

(59) Minnesota Statutes, section 617.293 (Harmful materials; dissemination and display to minors); and

(60) felony convictions under Minnesota Statutes, chapter 152 (Prohibited drugs).

B. The subject has admitted to or a preponderance of the evidence indicates the individual has committed an act that meets the definition of a crime listed in item A.

C. The subject is identified as the perpetrator in a determination that maltreatment of minors has occurred and a preponderance of evidence indicates:

(1) an act that meets the definition of maltreatment in Minnesota Statutes, section 626.556, subdivision 10e, paragraph (a), occurred;

(2) the subject committed the maltreatment; and

(3) the maltreatment was serious or recurring.

D. The subject is identified as the perpetrator in a substantiated report of abuse or neglect of vulnerable adults and a preponderance of evidence indicates:

(1) an act that meets the definition of abuse or neglect in Minnesota Statutes, section 626.557, subdivision 2, occurred;

(2) the subject committed the abuse or neglect;

(3) the abuse or neglect was serious or recurring; and

(4) the subject is not the victim of the abuse or neglect.

For purposes of this item "serious maltreatment, abuse, and neglect" is defined as a serious injury as set forth in part 9543.3020, subpart 10, whether intended or suffered as the result of neglect; sexual abuse; neglect or abuse which results in illness or harm which reasonably requires the attention of a physician; or death.

Subp. 2. Terminated parental rights. A subject who has had parental rights terminated under Minnesota Statutes, section 260.221, paragraph (b), is disqualified from programs serving children.

Subp. 3. Residential programs. A subject in a residential program must not have a conviction for, must not have admitted to, or a preponderance of the evidence must not indicate that the individual has committed an act of theft or related crimes. The following offenses have been deemed to be acts of theft or related crimes:

A. Minnesota Statutes, section 609.52 (Theft);

B. Minnesota Statutes, section 609.521 (Possession of shoplifting gear);

C. Minnesota Statutes, section 609.582 (Burglary);

D. Minnesota Statutes, section 609.625 (Aggravated forgery);

E. Minnesota Statutes, section 609.63 (Forgery);

F. Minnesota Statutes, section 609.631 (Check forgery; offering a forged check); and

G. Minnesota Statutes, section 609.635 (Obtaining signature by false pretense):

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3080 RECONSIDERATION OF DISQUALIFICATION.

Subpart 1. Application for reconsideration. Within 30 days after receiving notice of disqualification, a subject may request the commissioner in writing to reconsider the disqualification. The subject must submit information showing:

A. the information the commissioner relied upon is incorrect; or

B. the subject does not pose a risk of harm to any person served by the program.

Subp. 2. Extension. The subject may request additional time, not to exceed 30 days, to obtain the information in subpart 1 upon showing the information cannot be obtained within 30 days.

Subp. 3. Decision by commissioner. The commissioner shall set aside the disqualification if the commissioner determines that:

A. the information relied upon in making the determination of disqualification is incorrect; or

B. the subject does not pose a risk of harm to persons served by the program. In making this determination the commissioner shall consider at least:

(1) the nature and severity of the disqualifying event;

(2) the consequences of the disqualifying event;

(3) the number of disqualifying factors or events;

(4) the relation between the disqualification and the health, safety, and rights of persons served by the program, including factors such as:

(a) the age and vulnerability of victims at the time of the incident;

(b) the harm suffered by a victim; and

(c) the similarity between a victim and persons served by the program;

(5) the time elapsed without a repeat of the same or similar event;

(6) documentation of successful completion of training or rehabilitation pertinent to the incident; and

(7) any other information relevant to the reconsideration decision.

Subp. 4. Notice of commissioner's decision. Within 15 working days after receipt of a request for reconsideration, the commissioner shall notify the subject and the provider in writing:

A. whether the disqualification has been set aside; or

B. if a time extension has been granted under subpart 2, that the commissioner's decision will be issued within 15 working days after the extension date.

Subp. 5. Finality of decision. Except as provided in subpart 6, the commissioner's decision on a reconsideration request is the final administrative agency action and is not subject to review.

Subp. 6. Employees of public employers. A subject who is an employee of a public employer as defined by Minnesota Statutes, section 179A.03, subdivision 15, may appeal the commissioner's decision not to set aside a disqualification in a contested case proceeding under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9543.3090 APPLICABILITY AND IMPLEMENTATION OF RULES.

Parts 9543.3000 to 9543.3090 shall be implemented and shall apply to programs according to items A to C.

A. After March 29, 1991, applicants for initial licensure of a program must submit all required background study forms at the time of application.

B. Providers of programs licensed on March 29, 1991, must submit all required background study forms at the time of license renewal except that subjects who first become affiliated with the program after March 29, 1991, must have a background study according to part 9543.3040.

C. Notwithstanding part 9543.3040, subpart 3, a subject affiliated with a program on March 29, 1991, who is disqualified as a result of the subject's initial background study may continue in direct contact until the commissioner issues a decision on reconsideration of the disqualification.

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*