

## CHAPTER 245A

## HUMAN SERVICES LICENSING

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**245A.02 DEFINITIONS.***[For text of subs 1 to 10, see M.S.1990]*

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.

*[For text of subs 11 to 14, see M.S.1990]***History:** 1991 c 142 s 1**245A.03 WHO MUST BE LICENSED.***[For text of subd 1, see M.S.1990]*

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;
- (2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;
- (3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;
- (4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;
- (5) programs for children enrolled in kindergarten to the 12th grade and pre-kindergarten regular and special education programs that are operated by the commissioner of education or a school as defined in section 120.101, subdivision 4;
- (6) nonresidential programs for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building or present on property that is contiguous with the physical facility where the nonresidential program is provided;
- (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;
- (12) programs whose primary purpose is to provide, for adults or school-age children, including children who will be eligible to enter kindergarten within not more than four months, social and recreational activities, such as scouting, boys clubs, girls clubs,

sports, or the arts; except that a program operating in a school building is not excluded unless it is approved by the district's school board;

(13) head start nonresidential programs which operate for less than 31 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;

(15) nonresidential programs for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance; or

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules.

For purposes of clause (5), the department of education, after consulting with the department of human services, shall adopt standards applicable to preschool programs administered by public schools that are similar to Minnesota Rules, parts 9503.005 to 9503.0175. These standards are exempt from rulemaking under chapter 14.

*[For text of subd 3, see M.S.1990]*

**History:** 1991 c 265 art 9 s 63

#### **245A.04 APPLICATION PROCEDURES.**

*[For text of subds 1 and 2, see M.S.1990]*

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

(1) the applicant;

(2) persons over the age of 13 living in the household where the licensed program will be provided;

(3) current employees or contractors of the applicant who will have direct contact with persons served by the program; and

(4) volunteers who have direct contact with persons served by the program to provide program services, if the contact is not directly supervised by the individuals listed in clause (1) or (3).

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

For purposes of this subdivision, "direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to per-

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

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

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

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

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

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

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

(g) The commissioner shall not implement the procedures contained in this subdivision until appropriate rules have been adopted, except for the applicants and license holders for child foster care, adult foster care, and family day care homes.

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

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

(j) 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.

*[For text of subds 3a to 9, see M.S.1990]*

**History:** 1991 c 38 s 1

**245A.14 SPECIAL CONDITIONS FOR NONRESIDENTIAL PROGRAMS.**

*[For text of subsds 1 to 5, see M.S.1990]*

**Subd. 6. Drop-in child care programs.** Except as expressly set forth in this subdivision, drop-in child care programs must be licensed as a drop-in program under the rules governing child care programs operated in a center. Drop-in child care programs are exempt from the requirements in Minnesota Rules, parts 9503.0040; 9503.0045, subpart 1, items F and G; 9503.0050, subpart 6, except for children less than 2-1/2 years old; one-half the requirements of 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); 9503.0070; and 9503.0090, subpart 2. A drop-in child care program must be operated under the supervision of a person qualified as a director and a teacher. A drop-in child care program must have at least two persons on staff whenever the program is operating, except that the commissioner may permit variances from this requirement under specified circumstances for parent cooperative programs, as long as all other staff-to-child ratios are met. 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. If the 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. 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. 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. The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher. The commissioner by rule may require that a drop-in child care program serving children less than 2-1/2 years of age serve these children in an area separated from older children and may permit children age 2-1/2 and older to be cared for in the same child care group.

**Subd. 7. Cultural dynamics training for child care providers.** (a) The ongoing training required of licensed child care centers and group and family child care providers shall include training in the cultural dynamics of childhood development and child care as an option.

(b) The cultural dynamics training must include, but not be limited to, the following: awareness of the value and dignity of different cultures and how different cultures complement each other; awareness of the emotional, physical, and mental needs of children and families of different cultures; knowledge of current and traditional roles of women and men in different cultures, communities, and family environments; and awareness of the diversity of child rearing practices and parenting traditions.

(c) The commissioner shall amend current rules relating to the initial training of the licensed providers included in paragraph (a) to require cultural dynamics training upon determining that sufficient curriculum is developed statewide.

**History:** 1991 c 142 s 2; 1991 c 143 s 1

**NOTE:** Subdivision 7, paragraph (a), as added by Laws 1991, chapter 143, section 1, is effective August 1, 1992. See Laws 1991, chapter 143, section 2.

**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 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) By January 1, 1991, the commissioner shall study and make recommendations to the legislature regarding the licensing and provision of support services to child foster homes. In developing the recommendations, the commissioner shall consult licensed private agencies, county agencies, and licensed foster home providers.

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

*[For text of subs 2 to 6, see M.S.1990]*

**History:** 1991 c 142 s 3