

## CHAPTER 245A

### HUMAN SERVICES LICENSING

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#### 245A.02 DEFINITIONS.

*[For text of subds 1 to 5, see M.S.1994]*

**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.

*[For text of subds 6 to 7a, see M.S.1994]*

**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.

*[For text of subds 8 to 15, see M.S.1994]*

**Subd. 16. School age child.** "School age child" 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 nonresidential program 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.

**History:** 1995 c 158 s 1,2; 1995 c 202 art 1 s 25; 1995 c 207 art 2 s 4

#### 245A.03 WHO MUST BE LICENSED.

*[For text of subd 1, see M.S.1994]*

**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 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 120.101, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of 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;

(12) programs operated by a school as defined in section 120.101, 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 congregated 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; or

(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.

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.

*[For text of subd 3, see M.S.1994]*

**History:** 1995 c 158 s 3; 1995 c 207 art 2 s 5; 1Sp1995 c 3 art 16 s 13

### **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 only 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.

(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 90 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

## 245A.04 APPLICATION PROCEDURES.

*[For text of subs 1 and 2, see M.S.1994]*

**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 (5) according to rules of the commissioner. 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 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;
- (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); 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, 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 (b) has been implemented and was in effect continuously since the last study was conducted. No applicant, license holder, or individual who is the subject of the study shall pay any fees required to conduct the study.

(b) If an individual who is affiliated with a program or facility regulated by the department of human services or department of health is convicted of a crime constituting a disqualification under Minnesota Rules, parts 9543.3000 to 9543.3090, 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. This paragraph does not apply to family day care and foster care programs.

(c) 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 (5), 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.

(d) 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, the commissioner of health, 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 (5). The commissioner is not required to conduct more than one review of a subject's records from the national crimi-

nal record repository if a review of the subject's criminal history with the national criminal record repository 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.

(e) 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.

(f) 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.

(g) No person in paragraph (a), 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.

(h) Termination of persons in paragraph (a), 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.

(i) The commissioner may establish records to fulfill the requirements of 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.

(k) An individual who is subject to an applicant background study under this section and whose disqualification in connection with a license would be subject to the limitations on reconsideration set forth in subdivision 3b, paragraph (c), shall be disqualified for conviction of the crimes specified in the manner specified in subdivision 3b, paragraph (c). The commissioner of human services shall amend Minnesota Rules, part 9543.3070, to conform to this section.

(l) An individual must be disqualified if it has been determined that the individual failed to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (1) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (2) the maltreatment was recurring or serious as defined in Minnesota Rules, part 9543.3020, subpart 10.

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

*[For text of subd 3a, see M.S.1994]*

**Subd. 3b. Reconsideration of disqualification.** (a) Within 30 days after receiving notice of disqualification under subdivision 3a, the individual who is the subject of the study may request reconsideration of the notice of disqualification. The individual must submit the request for reconsideration to the commissioner in writing. The individual must present information to show that:

(1) the information the commissioner relied upon is incorrect; 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 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. The commissioner shall review the consequences of the event or events that could 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, and documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event. In reviewing a disqualification, 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 connec-

tion 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 section 609.20 (manslaughter in the first degree), 609.205 (manslaughter in the second degree), 609.21 (criminal vehicular homicide), 609.215 (aiding suicide or aiding attempted suicide), 609.221 to 609.2231 (felony violations of 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), 609.582 (burglary in the first or second degree), 609.66 (reckless use of a gun or dangerous weapon or intentionally pointing a gun at or towards a human being), 609.665 (setting a spring gun), 609.67 (unlawfully owning, possessing, or operating a machine gun), 609.749 (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), 609.265 (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), 609.377 (a gross misdemeanor offense of 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), 609.377 (a felony offense of malicious punishment of a child), 609.322 (soliciting, inducement, or promotion of prostitution), 609.323 (receiving profit derived from 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), 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 abuse 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 to all reconsideration requests within 15 working days after receiving the request for reconsideration. If the disqualification is set aside, the commissioner shall notify the applicant or license holder in writing 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 reconsideration of disqualification under this subdivision, or to set aside or uphold the results of the study under subdivision 3, 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 action taken in response to the disqualification.

*[For text of subs 3c to 6, see M.S.1994]*

**Subd. 7. Issuance of a license; provisional 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 a provisional license for a period not to exceed one year 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.

A provisional license must not be issued except at the time that a license is first issued to an applicant.

(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 individual, or to another 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.

*[For text of subd 8, see M.S.1994]*

**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 modi-



fications 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.

*[For text of subd 10, see M.S.1994]*

**History:** 1995 c 207 art 2 s 7-10; 1995 c 229 art 3 s 5; art 4 s 11

## 245A.06 CORRECTION ORDER AND FINES.

*[For text of subd 1, see M.S.1994]*

**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.

*[For text of subd 3, see M.S.1994]*

**Subd. 4. Notice of fine; appeal.** 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 a contested case hearing under chapter 14. The license holder may appeal the order to forfeit a fine by notifying the commissioner by certified mail within 15 calendar days after receiving the order. A timely appeal shall stay forfeiture of the fine until the commissioner issues a final order under section 245A.08, subdivision 5.

*[For text of subds 5 to 6, see M.S.1994]*

**Subd. 7. Responsibility for payment of fines.** When a fine has been assessed, the license 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.

**History:** 1995 c 207 art 2 s 11-13

## 245A.07 SANCTIONS.

*[For text of subds 1 and 2, see M.S.1994]*

**Subd. 3. Suspension, revocation, probation.** The commissioner may suspend, revoke, or make probationary a license if a license holder fails to comply fully with applicable laws or rules or knowingly 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 probationary 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 probationary.

(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 probationary, 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 probationary. 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.

*[For text of subd 4, see M.S.1994]*

**History:** 1995 c 207 art 2 s 14

## **245A.09 RULES.**

*[For text of subs 1 to 6, see M.S.1994]*

**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 an independent accreditation body have been shown to predict compliance with the rules, the commissioner shall consider compliance with the accreditation standards to be equivalent to partial compliance with the rules; and
- (3) use of an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

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

(b) The commissioner shall work with the commissioners of health, public safety, administration, and 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, provid-

ers 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.

**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:** 1995 c 207 art 2 s 15-19; 1Sp1995 c 3 art 16 s 13

#### **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:** 1995 c 158 s 4

#### **245A.11 SPECIAL CONDITIONS FOR RESIDENTIAL PROGRAMS.**

*[For text of subd 1, see M.S.1994]*

**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. 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.

*[For text of subs 2a to 6, see M.S.1994]*

**History:** 1995 c 224 s 79

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

*[For text of subs 1 to 4, see M.S.1994]*

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

**History:** 1995 c 158 s 5; 1995 c 207 art 2 s 20; art 4 s 1