

CHAPTER 245A

HUMAN SERVICES LICENSING

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245A.02 DEFINITIONS.

[For text of subs 1 to 16, see M.S.2004]

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

[For text of subs 18 and 19, see M.S.2004]

History: 1Sp2005 c 4 art 1 s 4

245A.03 WHO MUST BE LICENSED.

[For text of subd 1, see M.S.2004]

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;

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

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

(4) sheltered workshops or work activity programs that are certified by the commissioner of economic security;

(5) programs operated by a public school for children 33 months or older;

(6) nonresidential programs primarily 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 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 that do not provide intensive residential treatment;

(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 are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;

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

(13) Head Start nonresidential programs which operate for less than 45 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) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for 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;

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

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

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

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

(21) unrelated individuals who provide out-of-home respite care services to persons with mental retardation or related conditions from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with mental retardation or a related condition, in the person's primary residence;

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

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

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

(26) consumer-directed community support service funded under the Medicaid waiver for persons with mental retardation and related conditions when the individual who provided the service is:

(i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and

(ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service.

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

(c) Nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

[For text of subs 2a and 2b, see M.S.2004]

Subd. 3. Unlicensed programs. (a) It is a misdemeanor for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a residential or nonresidential program without a license and in willful

disregard of this chapter unless the program is excluded from licensure under subdivision 2.

(b) The commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program, if an individual, corporation, partnership, voluntary association, other organization, or controlling individual has:

(1) failed to apply for a license after receiving notice that a license is required or continues to operate without a license after receiving notice that a license is required;

(2) continued to operate without a license after the license has been revoked or suspended under section 245A.07, and the commissioner has issued a final order affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or

(3) continued to operate without a license after the license has been temporarily suspended under section 245A.07.

The county attorney and the attorney general have a duty to cooperate with the commissioner.

[For text of subs 4 to 6, see M.S.2004]

History: *1Sp2005 c 4 art 1 s 5,6*

245A.035 RELATIVE FOSTER CARE; EMERGENCY LICENSE.

Subdivision 1. **Grant of emergency license.** Notwithstanding section 245A.03, subdivision 2a, or 245C.13, subdivision 2, 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 260C.007, subdivision 27.

[For text of subs 2 to 4, see M.S.2004]

Subd. 5. **Child foster care license application.** (a) 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 245C.22, or to grant a variance of licensing requirements under sections 245C.21 to 245C.27.

(b) When the county or private child-placing agency is processing an application for child foster care licensure of a relative as defined in section 260B.007, subdivision 12, or 260C.007, subdivision 27, the county agency or child-placing agency must explain the licensing process to the prospective licensee, including the background study process and the procedure for reconsideration of an initial disqualification for licensure. The county or private child-placing agency must also provide the prospective relative licensee with information regarding appropriate options for legal representation in the pertinent geographic area. If a relative is initially disqualified under section 245C.14, the county or child-placing agency must provide written notice of the reasons for the disqualification and the right to request a reconsideration by the commissioner as required under section 245C.17.

(c) The commissioner shall maintain licensing data so that activities related to applications and licensing actions for relative foster care providers may be distinguished from other child foster care settings.

[For text of subd 6, see M.S.2004]

History: *1Sp2005 c 4 art 1 s 7,8*

245A.04 APPLICATION PROCEDURES.

[For text of subs 1 to 6, see M.S.2004]

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

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

(b) The commissioner may issue an initial license for a period not to exceed two years if:

- (1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet operational;
- (2) certain records and documents are not available because persons are not yet receiving services from the program; and
- (3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the commissioner to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling or to another location.

(d) A license holder must notify the commissioner and obtain the commissioner's approval before making any changes that would alter the license information listed under paragraph (a).

(e) The commissioner shall not issue a license if the applicant, license holder, or controlling individual has:

- (1) been disqualified and the disqualification was not set aside;
- (2) has been denied a license within the past two years; or
- (3) had a license revoked within the past five years.

(f) The commissioner shall not issue a license if an individual living in the household where the licensed services will be provided as specified under section 245C.03, subdivision 1, has been disqualified and the disqualification has not been set aside.

For purposes of reimbursement for meals only, under the Child and Adult Care Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 226, relocation within the same county by a licensed family day care provider, shall be considered an extension of the license for a period of no more than 30 calendar days or until the new license is issued, whichever occurs first, provided the county agency has determined the family day care provider meets licensure requirements at the new location.

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

[For text of subs 8 to 12, see M.S.2004]

Subd. 13. **Funds and property; other requirements.** (a) A license holder must ensure that persons served by the program retain the use and availability of personal funds or property unless restrictions are justified in the person's individual plan. This

subdivision does not apply to programs governed by the provisions in section 245B.07, subdivision 10.

(b) The license holder must ensure separation of funds of persons served by the program from funds of the license holder, the program, or program staff.

(c) Whenever the license holder assists a person served by the program with the safekeeping of funds or other property, the license holder must:

(1) immediately document receipt and disbursement of the person's funds or other property at the time of receipt or disbursement, including the person's signature, or the signature of the conservator or payee; and

(2) return to the person upon the person's request, funds and property in the license holder's possession subject to restrictions in the person's treatment plan, as soon as possible, but no later than three working days after the date of request.

(d) License holders and program staff must not:

(1) borrow money from a person served by the program;

(2) purchase personal items from a person served by the program;

(3) sell merchandise or personal services to a person served by the program;

(4) require a person served by the program to purchase items for which the license holder is eligible for reimbursement; or

(5) use funds of persons served by the program to purchase items for which the facility is already receiving public or private payments.

History: *1Sp2005 c 4 art 1 s 9,10*

245A.06 CORRECTION ORDER AND CONDITIONAL LICENSE.

[For text of subs 1 to 4, see M.S.2004]

Subd. 8. Requirement to post correction order. For licensed family child care providers and child care centers, upon receipt of any correction order or order of conditional license issued by the commissioner under this section, and notwithstanding a pending request for reconsideration of the correction order or order of conditional license by the license holder, the license holder shall post the correction order or order of conditional license in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the correction order or order of conditional license is accompanied by a maltreatment investigation memorandum prepared under section 626.556 or 626.557, the investigation memoranda must be posted with the correction order or order of conditional license.

History: *1Sp2005 c 4 art 1 s 11*

245A.07 SANCTIONS.

Subdivision 1. Sanctions; appeals; license. (a) In addition to making a license conditional under section 245A.06, the commissioner may propose to suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

(b) If a license holder appeals the suspension or revocation of a license and the license holder continues to operate the program pending a final order on the appeal, and the license expires during this time period, the commissioner shall issue the license holder a temporary provisional license. The temporary provisional license is effective on the date issued and expires on the date that a final order is issued. Unless otherwise specified by the commissioner, variances in effect on the date of the license sanction under appeal continue under the temporary provisional license. If a license holder fails to comply with applicable law or rule while operating under a temporary provisional license, the commissioner may impose sanctions under this section and section 245A.06, and may terminate any prior variance. If the license holder prevails on the appeal and

the effective period of the previous license has expired, a new license shall be issued to the license holder upon payment of any fee required under section 245A.10. The effective date of the new license shall be retroactive to the date the license would have shown had no sanction been initiated. The expiration date shall be the expiration date of that license had no license sanction been initiated.

(c) If a license holder is under investigation and the license is due to expire before completion of the investigation, the program shall be issued a new license upon completion of the reapplication requirements. Upon completion of the investigation, a licensing sanction may be imposed against the new license under this section, section 245A.06, or 245A.08.

(d) Failure to reapply or closure of a license by the license holder prior to the completion of any investigation shall not preclude the commissioner from issuing a licensing sanction under this section, section 245A.06, or 245A.08 at the conclusion of the investigation.

[For text of subs 2 and 2a, see M.S.2004]

Subd. 3. License suspension, revocation, or fine. (a) The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, if a license holder or an individual living in the household where the licensed services are provided has a disqualification which has not been set aside under section 245C.22, or if a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, or during an investigation. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, 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 a fine was ordered.

(b) 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 and Minnesota Rules, parts 1400.8505 to 1400.8612. 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 or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. Except as provided in subdivision 2a, paragraph (c), a timely appeal of an order suspending or revoking a license shall stay the suspension or revocation until the commissioner issues a final order.

(c)(1) If the license holder was ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal of an order to pay a fine must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the fine has been ordered. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order.

(2) The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

(3) A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order.

(5) 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.

[For text of subd. 4, see M.S.2004]

Subd. 5. Requirement to post licensing order or fine. For licensed family child care providers and child care centers, upon receipt of any order of license suspension, temporary immediate suspension, fine, or revocation issued by the commissioner under this section, and notwithstanding a pending appeal of the order of license suspension, temporary immediate suspension, fine, or revocation by the license holder, the license holder shall post the order of license suspension, temporary immediate suspension, fine, or revocation in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the order of license suspension, temporary immediate suspension, fine, or revocation is accompanied by a maltreatment investigation memorandum prepared under section 626.556 or 626.557, the investigation memoranda must be posted with the order of license suspension, temporary immediate suspension, fine, or revocation.

History: *1Sp2005 c 4 art 1 s 12-14*

245A.08 HEARINGS.

[For text of subs 1 and 2, see M.S.2004]

Subd. 2a. Consolidated contested case hearings. (a) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3, is based on a disqualification for which reconsideration was requested and which was not set aside under section 245C.22, the scope of the contested case hearing shall include the disqualification and the licensing sanction or denial of a license. When the licensing sanction or denial of a license is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and the licensing sanction or denial of a license. In such cases, a fair hearing under section 256.045 shall not be conducted as provided for in sections 626.556, subdivision 10i, and 626.557, subdivision 9d. When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, the scope of the contested case hearing shall include the maltreatment determination and fine and reconsideration of the maltreatment determination shall not be conducted as provided for in sections 626.556, subdivision 10i, and 626.557, subdivision 9d.

(b) In consolidated contested case hearings regarding sanctions issued in family child care, child foster care, family adult day services, and adult foster care, the county attorney shall defend the commissioner's orders in accordance with section 245A.16, subdivision 4.

(c) The commissioner's final order under subdivision 5 is the final agency action on the issue of maltreatment and disqualification, including for purposes of subsequent background studies under chapter 245C and is the only administrative appeal of the final agency determination, specifically, including a challenge to the accuracy and completeness of data under section 13.04.

(d) When consolidated hearings under this subdivision involve a licensing sanction based on a previous maltreatment determination for which the commissioner has issued a final order in an appeal of that determination under section 256.045, or the individual failed to exercise the right to appeal the previous maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, the commissioner's order is conclusive on the issue of maltreatment. In such cases, the scope of the administrative law judge's review shall be limited to the disqualification and the licensing sanction or denial of a license. In the case of a denial of a license or a licensing sanction issued to a facility based on a maltreatment determination regarding an individual who is not the license holder or a household member, the scope of the administrative law judge's review includes the maltreatment determination.

(e) If a maltreatment determination or disqualification, which was not set aside under section 245C.22, is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, and the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(f) Notwithstanding section 245C.27, subdivision 1, paragraph (c), when a denial of a license under section 245A.05 or a licensing sanction under section 245A.07 is based on a disqualification for which reconsideration was requested and was not set aside under section 245C.22, and the disqualification was based on a conviction or an admission to any crimes listed in section 245C.15, the scope of the administrative law judge's review shall include the denial or sanction and a determination whether the disqualification should be set aside. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

(g) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction under section 245A.07 is based on the termination of a variance under section 245C.30, subdivision 4, the scope of the administrative law judge's review shall include the sanction and a determination whether the disqualification should be set aside. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

[For text of subs 3 and 4, see M.S.2004]

Subd. 5. Notice of the commissioner's final order. After considering the findings of fact, conclusions, and recommendations of the administrative law judge, the commissioner shall issue a final order. The commissioner shall consider, but shall not be bound by, the recommendations of the administrative law judge. The appellant must be notified of the commissioner's final order as required by chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The notice must also contain information about the appellant's rights under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The institution of proceedings for judicial review of the commissioner's final order shall not stay the enforcement of the final order except as provided in section 14.65.

Subd. 5a. **Granting a subsequent license.** (a) A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation. Notwithstanding the five-year restriction, when a license is revoked because a person, other than the license holder, resides in the home where services are provided and that person has a disqualification that is not set aside and no variance has been granted, the former license holder may reapply for a license when:

- (1) the person with a disqualification, who is not a minor child, is no longer residing in the home and is prohibited from residing in or returning to the home; or
- (2) the person with the disqualification is a minor child, the restriction applies until the minor child becomes an adult and permanently moves away from the home or five years, whichever is less.

(b) An applicant whose application was denied must not be granted a license for two years following a denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial.

History: *1Sp2005 c 4 art 1 s 15,16*

245A.10 FEES.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **License or certification fee for certain programs.** (a) Child care centers and programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule:

Licensed Capacity	Child Care Center License Fee	Other Program License Fee
1 to 24 persons	\$225	\$400
25 to 49 persons	\$340	\$600
50 to 74 persons	\$450	\$800
75 to 99 persons	\$565	\$1,000
100 to 124 persons	\$675	\$1,200
125 to 149 persons	\$900	\$1,400
150 to 174 persons	\$1,050	\$1,600
175 to 199 persons	\$1,200	\$1,800
200 to 224 persons	\$1,350	\$2,000
225 or more persons	\$1,500	\$2,500

(b) A day training and habilitation program serving persons with developmental disabilities or related conditions shall be assessed a license fee based on the schedule in paragraph (a) unless the license holder serves more than 50 percent of the same persons at two or more locations in the community. When a day training and habilitation program serves more than 50 percent of the same persons in two or more locations in a community, the day training and habilitation program shall pay a license fee based on the licensed capacity of the largest facility and the other facility or facilities shall be charged a license fee based on a licensed capacity of a residential program serving one to 24 persons.

Subd. 5. **License or certification fee for other programs.** (a) Except as provided in paragraphs (b) and (c), a program without a stated licensed capacity shall pay a license or certification fee of \$400.

(b) A mental health center or mental health clinic requesting certification for purposes of insurance and subscriber contract reimbursement under Minnesota Rules, parts 9520.0750 to 9520.0870, shall pay a certification fee of \$1,000 per year. If the mental health center or mental health clinic provides services at a primary location with

satellite facilities, the satellite facilities shall be certified with the primary location without an additional charge.

(c) A program licensed to provide residential-based habilitation services under the home and community-based waiver for persons with developmental disabilities shall pay an annual license fee that includes a base rate of \$250 plus \$38 times the number of clients served on the first day of August of the current license year. State-operated programs are exempt from the license fee under this paragraph.

[For text of subd 6, see M.S.2004]

History: 1Sp2005 c 4 art 3 s 4; art 5 s 6

245A.14 SPECIAL CONDITIONS FOR NONRESIDENTIAL PROGRAMS.

[For text of subds 1 to 3, see M.S.2004]

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

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

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

(c) the license holder is a church or religious organization; or

(d) the license holder is a community collaborative child care provider. For purposes of this subdivision, a community collaborative child care provider is a provider participating in a cooperative agreement with a community action agency as defined in section 256E.31.

[For text of subds 6 to 11, see M.S.2004]

Subd. 12. **First aid training requirements.** Notwithstanding Minnesota Rules, part 9503.0035, subpart 2, when children are present in a family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, or a child care center governed by Minnesota Rules, parts 9503.0005 to 9503.0170, at least one staff person must be present in the center or home who has been trained in first aid. The first aid training must have been provided by an individual approved to provide first aid instruction. First aid training may be less than eight hours and persons qualified to provide first aid training shall include individuals approved as first aid instructors.

Subd. 13. **Cardiopulmonary resuscitation training.** (a) When children are present in a child care center governed by Minnesota Rules, parts 9503.0005 to 9503.0170, or in a family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least one staff person must be present in the center or home who has been trained in cardiopulmonary resuscitation (CPR) and in the treatment of obstructed airways. The CPR training must have been provided by an individual approved to provide CPR instruction, must be repeated at least once every three years, and must be documented in the staff person's records.

(b) Notwithstanding Minnesota Rules, part 9503.0035, subpart 3, item A, cardiopulmonary resuscitation training may be provided for less than four hours.

(c) Notwithstanding Minnesota Rules, part 9503.0035, subpart 3, item C, persons qualified to provide cardiopulmonary resuscitation training shall include individuals approved as cardiopulmonary resuscitation instructors.

History: 2005 c 98 art 1 s 24; 1Sp2005 c 4 art 1 s 17,18

245A.144 TRAINING ON RISK OF SUDDEN INFANT DEATH SYNDROME AND SHAKEN BABY SYNDROME.

(a) License holders must document that before staff persons, caregivers, and helpers assist in the care of infants, they receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. The training on reducing the risk of sudden infant death syndrome and shaken baby syndrome may be provided as:

(1) orientation training to child care center staff under Minnesota Rules, part 9503.0035, subpart 1, and to child foster care providers, who care for infants, under Minnesota Rules, part 2960.3070, subpart 1;

(2) initial training to family and group family child care providers under Minnesota Rules, part 9502.0385, subpart 2;

(3) in-service training to child care center staff under Minnesota Rules, part 9503.0035, subpart 4, and to child foster care providers, who care for infants, under Minnesota Rules, part 2960.3070, subpart 2; or

(4) ongoing training to family and group family child care providers under Minnesota Rules, part 9502.0385, subpart 3.

(b) Training required under this section must be at least one hour in length and must be completed at least once every five years. At a minimum, the training must address the risk factors related to sudden infant death syndrome and shaken baby syndrome, means of reducing the risk of sudden infant death syndrome and shaken baby syndrome in child care, and license holder communication with parents regarding reducing the risk of sudden infant death syndrome and shaken baby syndrome.

(c) Training for family and group family child care providers must be approved by the county licensing agency according to Minnesota Rules, part 9502.0385.

(d) Training for child foster care providers must be approved by the county licensing agency and fulfills, in part, training required under Minnesota Rules, part 2960.3070.

History: 1Sp2005 c 4 art 1 s 19

245A.1445 DANGERS OF SHAKING INFANTS AND YOUNG CHILDREN.

The commissioner shall make available for viewing by all licensed and legal nonlicensed child care providers a video presentation on the dangers associated with shaking infants and young children. The video presentation shall be part of the initial and annual training of licensed child care providers. Legal nonlicensed child care providers may participate at their option in a video presentation session offered under this section. The commissioner shall provide to child care providers and interested individuals, at cost, copies of a video approved by the commissioner of health under section 144.574 on the dangers associated with shaking infants and young children.

History: 1Sp2005 c 4 art 3 s 3

245A.146 CRIB SAFETY REQUIREMENTS.

Subdivision 1. **Consumer product safety Web link.** The commissioner shall maintain a link from the licensing division Web site to the United States Consumer Product Safety Commission Web site that addresses crib safety information.

Subd. 2. **Documentation requirement for license holders.** (a) Effective January 1, 2006, all licensed child care providers must maintain the following documentation for every crib used by or that is accessible to any child in care:

(1) the crib's brand name; and

(2) the crib's model number.

(b) Any crib for which the license holder does not have the documentation required under paragraph (a) must not be used by or be accessible to children in care.

Subd. 3. **License holder documentation of cribs.** (a) Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and

model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs.

(b) The license holder shall maintain written documentation to be reviewed on site for each crib showing that the review required in paragraph (a) has been completed, and which of the following conditions applies:

(1) the crib was not identified as unsafe on the United States Consumer Product Safety Commission Web site;

(2) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, but the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe; or

(3) the crib was identified as unsafe on the United States Consumer Product Safety Commission Web site, and the license holder has removed the crib so that it is no longer used by or accessible to children in care.

(c) Documentation of the review completed under this subdivision shall be maintained by the license holder on site and made available to parents of children in care and the commissioner.

Subd. 4. Crib safety standards and inspection. (a) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document the following:

(1) no corner posts extend more than 1/16 of an inch;

(2) no spaces between side slats exceed 2.375 inches;

(3) no mattress supports can be easily dislodged from any point of the crib;

(4) no cutout designs are present on end panels;

(5) no heights of the rail and end panel are less than 26 inches when measured from the top of the rail or panel in the highest position to the top of the mattress support in its lowest position;

(6) no heights of the rail and end panel are less than nine inches when measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position;

(7) no screws, bolts, or hardware are loose or not secured, and there is no use of woodscrews in components that are designed to be assembled and disassembled by the crib owner;

(8) no sharp edges, points, or rough surfaces are present;

(9) no wood surfaces are rough, splintered, split, or cracked;

(10) no tears in mesh of fabric sides in non-full-size cribs;

(11) no mattress pads in non-full-size mesh or fabric cribs exceed one inch; and

(12) no gaps between the mattress and any sides of the crib are present.

(b) Upon discovery of any unsafe condition identified by the license holder during the safety inspection required under paragraph (a), the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided for necessary repairs or to destroy the crib.

(c) Documentation of the inspections and actions taken with unsafe cribs required in paragraphs (a) and (b) shall be maintained on site by the license holder and made available to parents of children in care and the commissioner.

Subd. 5. Commissioner inspection. During routine licensing inspections, and when investigating complaints regarding alleged violations of this section, the commissioner shall review the provider's documentation required under subdivisions 3 and 4.

Subd. 6. Failure to comply. The commissioner may issue a licensing action under section 245A.06 or 245A.07 if a license holder fails to comply with the requirements of this section.

History: 2005 c 139 s 1

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 and chapter 245C, to recommend denial of applicants under section 245A.05, to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;

(2) adult foster care maximum capacity;

(3) adult foster care minimum age requirement;

(4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment; and

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

(b) County agencies must report:

(1) information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner; and

(2) for relative child foster care applicants and license holders, the number of relatives, as defined in section 260C.007, subdivision 27, and household members of relatives who are disqualified under section 245C.14; the disqualifying characteristics under section 245C.15; the number of these individuals who requested reconsideration under section 245C.21; the number of set-asides under section 245C.22; and variances under section 245C.30 issued. This information shall be reported to the commissioner annually by January 15 of each year in a format prescribed by the commissioner.

(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.

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

(e) A license issued under this section may be issued for up to two years.

[For text of subs 2 and 3, see M.S.2004]

Subd. 4. **Enforcement of commissioner's orders.** The county or private agency shall enforce the commissioner's orders under sections 245A.07, 245A.08, subdivision 5, and chapter 245C, according to the instructions of the commissioner. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's orders under sections 245A.07, 245A.08, and chapter 245C, according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner. For purposes of this section, a conflict of interest means that the county attorney has a direct or shared financial interest with the license holder or has a personal relationship or family relationship with a party in the licensing action.

[For text of subd 5, see M.S.2004]

Subd. 6. **Certification by commissioner.** The commissioner shall ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with this section and other applicable laws and rules at least every four years. County agencies that comply with this section shall be certified by the commissioner. If a county agency fails to be certified by the commissioner, the commissioner shall certify a reduction of state administrative aids in an amount up to 20 percent of the county's state portion of Children and Community Services Act funding.

History: 2005 c 98 art 3 s 14; 1Sp2005 c 4 art 1 s 20,21

245A.18 CHILD PASSENGER RESTRAINT SYSTEMS.

Subdivision 1. **Seat belt use.** A license holder must comply with all seat belt and child passenger restraint system requirements under section 169.685.

Subd. 2. **Child passenger restraint systems; training requirement.** (a) Family and group family child care, child care centers, child foster care, and other programs licensed by the Department of Human Services that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.

(b) Before a license holder, staff person, caregiver, or helper transports a child or children under age nine in a motor vehicle, the person transporting the child must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this section may be used to meet initial or ongoing training under the following:

- (1) Minnesota Rules, part 2960.3070, subparts 1 and 2;
- (2) Minnesota Rules, part 9502.0385, subparts 2 and 3; and
- (3) Minnesota Rules, part 9503.0035, subparts 1 and 4.

(c) Training required under this section must be at least one hour in length, completed at orientation or initial training, and repeated at least once every five years. At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight, and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.

(d) Training under paragraph (c) must be provided by individuals who are certified and approved by the Department of Public Safety, Office of Traffic Safety. License holders may obtain a list of certified and approved trainers through the Department of Public Safety Web site or by contacting the agency.

History: 1Sp2005 c 4 art 1 s 22