

## CHAPTER 245E

### CHILD CARE ASSISTANCE PROGRAM FRAUD INVESTIGATIONS

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#### 245E.01 DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Applicant.** "Applicant" has the meaning given in section 119B.011, subdivision 2.

Subd. 3. **Child care assistance program.** "Child care assistance program" means any of the assistance programs under chapter 119B.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of human services.

Subd. 5. **Controlling individual.** "Controlling individual" has the meaning given in section 245A.02, subdivision 5a.

Subd. 6. **County.** "County" means a local county child care assistance program staff or subcontracted staff, or a county investigator acting on behalf of the commissioner.

Subd. 7. **Department.** "Department" means the Department of Human Services.

Subd. 8. **Financial misconduct or misconduct.** "Financial misconduct" or "misconduct" means an entity's or individual's acts or omissions that result in fraud and abuse or error against the Department of Human Services. Financial misconduct includes acting as a recruiter offering conditional employment on behalf of a provider that has received funds from the child care assistance program.

Subd. 9. **Identify.** "Identify" means to furnish the full name, current or last known address, phone number, and e-mail address of the individual or business entity.

Subd. 10. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 11. **Mail.** "Mail" means the use of any mail service with proof of delivery and receipt.

Subd. 12. **Provider.** "Provider" means either a provider as defined in section 119B.011, subdivision 19, or a legal unlicensed provider as defined in section 119B.011, subdivision 16.

Subd. 13. **Recipient.** "Recipient" means a family receiving assistance as defined under section 119B.011, subdivision 13.

Subd. 13a. **Recruiter offering conditional employment.** "Recruiter offering conditional employment" means a child care provider, center owner, director, manager, license holder, or other controlling individual or agent who, for pecuniary gain, directly procures or solicits an applicant or a prospective employee and requires as a condition of employment that the applicant or prospective employee has one or more children who are eligible for or receive child care assistance.

Subd. 14. **Terminate.** "Terminate" means revocation of participation in the child care assistance program.

**History:** 2013 c 108 art 5 s 5; 2015 c 78 art 4 s 42,43

## 245E.02 INVESTIGATIONS OF FINANCIAL MISCONDUCT.

Subdivision 1. **Investigating provider or recipient financial misconduct.** The department shall investigate alleged or suspected financial misconduct by providers and errors related to payments issued by the child care assistance program under this chapter. Recipients, employees, and staff may be investigated when the evidence shows that their conduct is related to the financial misconduct of a provider, license holder, or controlling individual. When the alleged or suspected financial misconduct relates to acting as a recruiter offering conditional employment on behalf of a provider that has received funds from the child care assistance program, the department may investigate the provider, center owner, director, manager, license holder, or other controlling individual or agent, who is alleged to have acted as a recruiter offering conditional employment.

Subd. 1a. **Provider definitions.** For the purposes of this section, "provider" includes:

- (1) individuals or entities meeting the definition of provider in section 245E.01, subdivision 12; and
- (2) owners and controlling individuals of entities identified in clause (1).

Subd. 2. **Scope of investigations.** (a) The department may contact any person, agency, organization, or other entity that is necessary to an investigation.

(b) The department may examine or interview any individual, document, or piece of evidence that may lead to information that is relevant to child care assistance program benefits, payments, and child care provider authorizations. This includes, but is not limited to:

- (1) child care assistance program payments;
- (2) services provided by the program or related to child care assistance program recipients;
- (3) services provided to a provider;
- (4) provider financial records of any type;
- (5) daily attendance records of the children receiving services from the provider;
- (6) billings; and
- (7) verification of the credentials of a license holder, controlling individual, employee, staff person, contractor, subcontractor, and entities under contract with the provider to provide services or maintain service and the provider's financial records related to those services.

Subd. 3. **Determination of investigation.** After completing its investigation, the department shall issue one of the following determinations:

- (1) no violation of child care assistance requirements occurred;
- (2) there is insufficient evidence to show that a violation of child care assistance requirements occurred;
- (3) a preponderance of evidence shows a violation of child care assistance program law, rule, or policy;

or

(4) there exists a credible allegation of fraud.

Subd. 3a. **Prohibited hiring practice.** It is prohibited to hire a child care center employee when, as a condition of employment, the employee is required to have one or more children who are eligible for or receive child care assistance, if:

(1) the individual hiring the employee is, or is acting at the direction of or in cooperation with, a child care center provider, center owner, director, manager, license holder, or other controlling individual; and

(2) the individual hiring the employee knows or has reason to know the purpose in hiring the employee is to obtain child care assistance program funds.

Subd. 4. **Actions or administrative sanctions.** (a) After completing the determination under subdivision 3, the department may take one or more of the actions or sanctions specified in this subdivision.

(b) The department may take the following actions:

(1) refer the investigation to law enforcement or a county attorney for possible criminal prosecution;

(2) refer relevant information to the department's licensing division, the child care assistance program, the Department of Education, the federal Child and Adult Care Food Program, or appropriate child or adult protection agency;

(3) enter into a settlement agreement with a provider, license holder, controlling individual, or recipient; or

(4) refer the matter for review by a prosecutorial agency with appropriate jurisdiction for possible civil action under the Minnesota False Claims Act, chapter 15C.

(c) In addition to section 256.98, the department may impose sanctions by:

(1) pursuing administrative disqualification through hearings or waivers;

(2) establishing and seeking monetary recovery or recoupment;

(3) issuing an order of corrective action that states the practices that are violations of child care assistance program policies, laws, or regulations, and that they must be corrected; or

(4) suspending, denying, or terminating payments to a provider.

(d) Upon a finding by the commissioner that any child care provider, center owner, director, manager, license holder, or other controlling individual of a child care center has employed, used, or acted as a recruiter offering conditional employment for a child care center that has received child care assistance program funding, the commissioner shall:

(1) immediately suspend all program payments to all child care centers in which the person employing, using, or acting as a recruiter offering conditional employment is an owner, director, manager, license holder, or other controlling individual. The commissioner shall suspend program payments under this clause even if services have already been provided; and

(2) immediately and permanently revoke the licenses of all child care centers of which the person employing, using, or acting as a recruiter offering conditional employment is an owner, director, manager, license holder, or other controlling individual.

**History:** 2013 c 108 art 5 s 5; 2015 c 78 art 4 s 44-46; 1Sp2019 c 9 art 2 s 82

**245E.03 DUTY TO PROVIDE ACCESS.**

Subdivision 1. **Affirmative duty.** A provider, license holder, controlling individual, employee, staff person, or recipient has an affirmative duty to provide access upon request to information specified under section 245E.05 or the program facility.

Subd. 2. **Failure to provide access.** Failure to provide access may result in denial or termination of authorizations for or payments to a recipient, provider, license holder, or controlling individual in the child care assistance program.

Subd. 3. **Notice of denial or termination.** When a provider fails to provide access, a 15-day notice of denial or termination must be issued to the provider, which prohibits the provider from participating in the child care assistance program. Notice must be sent to recipients whose children are under the provider's care pursuant to Minnesota Rules, part 3400.0185.

Subd. 4. **Continued or repeated failure to provide access.** If the provider continues to fail to provide access at the expiration of the 15-day notice period, child care assistance program payments to the provider must be denied beginning the 16th day following notice of the initial failure or refusal to provide access. The department may rescind the denial based upon good cause if the provider submits in writing a good cause basis for having failed or refused to provide access. The writing must be postmarked no later than the 15th day following the provider's notice of initial failure to provide access. Additionally, the provider, license holder, or controlling individual must immediately provide complete, ongoing access to the department. Repeated failures to provide access must, after the initial failure or for any subsequent failure, result in termination from participation in the child care assistance program.

Subd. 5. **Duplication of records.** The department, at its own expense, may photocopy or otherwise duplicate records referenced in section 245E.05. Photocopying must be done on the provider's premises on the day of the request or other mutually agreeable time, unless removal of records is specifically permitted by the provider. If requested, a provider, license holder, or controlling individual, or a designee, must assist the investigator in duplicating any record, including a hard copy or electronically stored data, on the day of the request.

Subd. 6. **Department access to program or records.** A provider, license holder, controlling individual, employee, or staff person must grant the department access during the department's normal business hours, and any hours that the program is operated, to examine the provider's program or the records listed in section 245E.05. A provider shall make records available at the provider's place of business on the day for which access is requested, unless the provider and the department both agree otherwise. The department's normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays as defined in section 645.44, subdivision 5.

**History:** 2013 c 108 art 5 s 5

**245E.04 HONEST AND TRUTHFUL STATEMENTS.**

It shall be unlawful for a provider, license holder, controlling individual, or recipient to:

- (1) falsify, conceal, or cover up by any trick, scheme, or device a material fact;
- (2) make any materially false, fictitious, or fraudulent statement or representation; or
- (3) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry related to any child care assistance program services that the provider,

license holder, or controlling individual supplies or in relation to any child care assistance payments received by a provider, license holder, or controlling individual or to any fraud investigator or law enforcement officer conducting a financial misconduct investigation.

**History:** 2013 c 108 art 5 s 5

#### **245E.05 RECORD RETENTION.**

Subdivision 1. **Records required to be retained.** The following records must be maintained, controlled, and made immediately accessible to license holders, providers, and controlling individuals. The records must be organized and labeled to correspond to categories that make them easy to identify so that they can be made available immediately upon request to an investigator acting on behalf of the commissioner at the provider's place of business:

- (1) payroll ledgers, canceled checks, bank deposit slips, and any other accounting records;
- (2) daily attendance records required by and that comply with section 119B.125, subdivision 6;
- (3) billing transmittal forms requesting payments from the child care assistance program and billing adjustments related to child care assistance program payments;
- (4) records identifying all persons, corporations, partnerships, and entities with an ownership or controlling interest in the provider's child care business;
- (5) employee records identifying those persons currently employed by the provider's child care business or who have been employed by the business at any time within the previous five years. The records must include each employee's name, hourly and annual salary, qualifications, position description, job title, and dates of employment. In addition, employee records that must be made available include the employee's time sheets, current home address of the employee or last known address of any former employee, and documentation of background studies required under chapter 119B or 245C;
- (6) records related to transportation of children in care, including but not limited to:
  - (i) the dates and times that transportation is provided to children for transportation to and from the provider's business location for any purpose. For transportation related to field trips or locations away from the provider's business location, the names and addresses of those field trips and locations must also be provided;
  - (ii) the name, business address, phone number, and website address, if any, of the transportation service utilized; and
  - (iii) all billing or transportation records related to the transportation.

Subd. 2. **Time period for record retention.** (a) A provider, license holder, or controlling individual must retain all records in subdivision 1 for at least six years after the last date of service. Microfilm or electronically stored records satisfy the record-keeping requirements of this subdivision.

(b) In the event of an appealed case, the provider must retain all records required in subdivision 1 for the duration of the appeal or six years, whichever is longer.

Subd. 3. **Withdrawal or termination from program.** A provider, license holder, or controlling individual who withdraws or is terminated from the child care assistance program must retain the records required under subdivision 1 and make them available to the department on demand.

Subd. 4. **Provider change of ownership.** If the ownership of a provider changes, the transferor, unless otherwise provided by law or by written agreement with the transferee, is responsible for maintaining, preserving, and upon request from the department, making available the records related to the provider that were generated before the date of the transfer. Any written agreement affecting this provision must be held in the possession of the transferor and transferee. The written agreement must be provided to the department or county immediately upon request, and the written agreement must be retained by the transferor and transferee for six years after the agreement is fully executed.

Subd. 5. **Electronic record keeping or signatures.** A provider's use of electronic record keeping or electronic signatures is governed by chapter 325L.

**History:** 2013 c 108 art 5 s 5

#### 245E.06 ADMINISTRATIVE SANCTIONS.

Subdivision 1. **Factors regarding imposition of administrative sanctions.** (a) The department shall consider the following factors in determining the administrative sanctions to be imposed:

- (1) nature and extent of financial misconduct;
- (2) history of financial misconduct;
- (3) actions taken or recommended by other state agencies, other divisions of the department, and court and administrative decisions;
- (4) prior imposition of sanctions;
- (5) size and type of provider;
- (6) information obtained through an investigation from any source;
- (7) convictions or pending criminal charges; and
- (8) any other information relevant to the acts or omissions related to the financial misconduct.

(b) Any single factor under paragraph (a) may be determinative of the department's decision of whether and what sanctions are imposed.

Subd. 2. **Written notice of department sanction; sanction effective date; informal meeting.** (a) The department shall give notice in writing to a person of an administrative sanction that is to be imposed. The notice shall be sent by mail as defined in section 245E.01, subdivision 11.

- (b) The notice shall state:
- (1) the factual basis for the department's determination;
  - (2) the sanction the department intends to take;
  - (3) the dollar amount of the monetary recovery or recoupment, if any;
  - (4) how the dollar amount was computed;
  - (5) the right to dispute the department's determination and to provide evidence;
  - (6) the right to appeal the department's proposed sanction; and

(7) the option to meet informally with department staff, and to bring additional documentation or information, to resolve the issues.

(c) In cases of determinations resulting in denial or termination of payments, in addition to the requirements of paragraph (b), the notice must state:

(1) the length of the denial or termination;

(2) the requirements and procedures for reinstatement; and

(3) the provider's right to submit documents and written arguments against the denial or termination of payments for review by the department before the effective date of denial or termination.

(d) The submission of documents and written argument for review by the department under paragraph (b), clause (5) or (7), or paragraph (c), clause (3), does not stay the deadline for filing an appeal.

(e) Notwithstanding section 245E.03, subdivision 4, the effective date of the proposed sanction shall be 30 days after the license holder's, provider's, controlling individual's, or recipient's receipt of the notice, unless timely appealed. If a timely appeal is made, the proposed sanction shall be delayed pending the final outcome of the appeal. Implementation of a proposed sanction following the resolution of a timely appeal may be postponed if, in the opinion of the department, the delay of sanction is necessary to protect the health or safety of children in care. The department may consider the economic hardship of a person in implementing the proposed sanction, but economic hardship shall not be a determinative factor in implementing the proposed sanction.

(f) Requests for an informal meeting to attempt to resolve issues and requests for appeals must be sent or delivered to the department's Office of Inspector General, Financial Fraud and Abuse Division.

*[See Note.]*

Subd. 3. **Appeal of department action.** A provider's rights related to the department's action taken under this chapter against a provider are established in sections 119B.16 and 119B.161.

*[See Note.]*

Subd. 4. **Consolidated hearings with licensing sanction.** If a financial misconduct sanction has an appeal hearing right and it is timely appealed, and a licensing sanction exists for which there is an appeal hearing right and the sanction is timely appealed, and the overpayment recovery action and licensing sanction involve the same set of facts, the overpayment recovery action and licensing sanction must be consolidated in the contested case hearing related to the licensing sanction.

*[See Note.]*

Subd. 5. **Effect of department's administrative determination or sanction.** Unless a timely and proper appeal is received by the department, the department's administrative determination or sanction shall be considered a final department determination.

*[See Note.]*

**History:** 2013 c 108 art 5 s 5; 2015 c 78 art 4 s 47,48; 1Sp2019 c 9 art 1 s 18, 43

**NOTE:** Subdivisions 2, 4, and 5 are repealed by Laws 2019, First Special Session chapter 9, article 1, section 43, effective February 26, 2021. Laws 2019, First Special Session chapter 9, article 1, section 43.

**NOTE:** The amendment to subdivision 3 by Laws 2019, First Special Session chapter 9, article 1, section 18, is effective February 26, 2021. Laws 2019, First Special Session chapter 9, article 1, section 18, the effective date.

### **245E.07 MONETARY RECOVERY.**

Subdivision 1. **Grounds for and methods of monetary recovery.** (a) The department may obtain monetary recovery from a provider who has been improperly paid by the child care assistance program, regardless of whether the error was intentional or county error. The department does not need to establish a pattern as a precondition of monetary recovery of erroneous or false billing claims, duplicate billing claims, or billing claims based on false statements or financial misconduct.

(b) The department shall obtain monetary recovery from providers by the following means:

- (1) permitting voluntary repayment of money, either in lump-sum payment or installment payments;
- (2) using any legal collection process;
- (3) deducting or withholding program payments; or
- (4) utilizing the means set forth in chapter 16D.

Subd. 2. **Monetary recovery; random sample extrapolation.** The department is authorized to calculate the amount of monetary recovery from a provider, license holder, or controlling individual based upon extrapolation from a statistical random sample of claims submitted by the provider, license holder, or controlling individual and paid by the child care assistance program. The department's random sample extrapolation shall constitute a rebuttable presumption of the accuracy of the calculation of monetary recovery. If the presumption is not rebutted by the provider, license holder, or controlling individual in the appeal process, the department shall use the extrapolation as the monetary recovery figure. The department may use sampling and extrapolation to calculate the amount of monetary recovery if the claims to be reviewed represent services to 50 or more children in care.

Subd. 3. [Repealed, 2015 c 78 art 4 s 62]

**History:** 2013 c 108 art 5 s 5

### **245E.08 REPORTING OF SUSPECTED FRAUDULENT ACTIVITY.**

(a) A person who, in good faith, makes a report of or testifies in any action or proceeding in which financial misconduct is alleged, and who is not involved in, has not participated in, or has not aided and abetted, conspired, or colluded in the financial misconduct, shall have immunity from any liability, civil or criminal, that results by reason of the person's report or testimony. For the purpose of any proceeding, the good faith of any person reporting or testifying under this provision shall be presumed.

(b) If a person that is or has been involved in, participated in, aided and abetted, conspired, or colluded in the financial misconduct reports the financial misconduct, the department may consider that person's report and assistance in investigating the misconduct as a mitigating factor in the department's pursuit of civil, criminal, or administrative remedies.

**History:** 2013 c 108 art 5 s 5



**245E.09 DATA PRIVACY.**

Data of any kind obtained or created in relation to a provider or recipient investigation under this chapter is defined, classified, and protected the same as all other data under section 13.46, and this data has the same classification as licensing data.

**History:** *2013 c 108 art 5 s 5*