

245C.031 BACKGROUND STUDY; ALTERNATIVE BACKGROUND STUDIES.

Subdivision 1. **Alternative background studies.** (a) The commissioner shall conduct an alternative background study of individuals listed in this section.

(b) Notwithstanding other sections of this chapter, all alternative background studies except subdivision 12 shall be conducted according to this section and with sections 299C.60 to 299C.64.

(c) All terms in this section shall have the definitions provided in section 245C.02.

(d) The entity that submits an alternative background study request under this section shall submit the request to the commissioner according to section 245C.05.

(e) The commissioner shall comply with the destruction requirements in section 245C.051.

(f) Background studies conducted under this section are subject to the provisions of section 245C.32.

(g) The commissioner shall forward all information that the commissioner receives under section 245C.08 to the entity that submitted the alternative background study request under subdivision 2. The commissioner shall not make any eligibility determinations regarding background studies conducted under this section.

Subd. 2. **Access to information.** Each entity that submits an alternative background study request shall enter into an agreement with the commissioner before submitting requests for alternative background studies under this section. As a part of the agreement, the entity must agree to comply with state and federal law.

Subd. 3. **Child protection workers or social services staff having responsibility for child protective duties.** The commissioner shall conduct an alternative background study of any person who has responsibility for child protection duties when the background study is initiated by a county social services agency or by a local welfare agency according to section 260E.36, subdivision 3.

Subd. 4. **Applicants, licensees, and other occupations regulated by the commissioner of health.** The commissioner shall conduct an alternative background study, including a check of state data, and a national criminal history records check of the following individuals. For studies under this section, the following persons shall complete a consent form:

(1) An applicant for initial licensure, temporary licensure, or relicensure after a lapse in licensure as an audiologist or speech-language pathologist or an applicant for initial certification as a hearing instrument dispenser who must submit to a background study under section 144.0572.

(2) An applicant for a renewal license or certificate as an audiologist, speech-language pathologist, or hearing instrument dispenser who was licensed or obtained a certificate before January 1, 2018.

Subd. 5. **Guardians and conservators.** (a) The commissioner shall conduct an alternative background study of:

(1) every court-appointed guardian and conservator, unless a background study has been completed of the person under this section within the previous five years. The alternative background study shall be completed prior to the appointment of the guardian or conservator, unless a court determines that it would be in the best interests of the ward or protected person to appoint a guardian or conservator before the alternative background study can be completed. If the court appoints the guardian or conservator while the alternative background study is pending, the alternative background study must be completed as soon as reasonably possible after the guardian or conservator's appointment and no later than 30 days after the guardian or conservator's appointment; and

(2) a guardian and a conservator once every five years after the guardian or conservator's appointment if the person continues to serve as a guardian or conservator.

(b) An alternative background study is not required if the guardian or conservator is:

(1) a state agency or county;

(2) a parent or guardian of a proposed ward or protected person who has a developmental disability if the parent or guardian has raised the proposed ward or protected person in the family home until the time that the petition is filed, unless counsel appointed for the proposed ward or protected person under section 524.5-205, paragraph (d); 524.5-304, paragraph (b); 524.5-405, paragraph (a); or 524.5-406, paragraph (b), recommends a background study; or

(3) a bank with trust powers, a bank and trust company, or a trust company, organized under the laws of any state or of the United States and regulated by the commissioner of commerce or a federal regulator.

Subd. 6. Guardians and conservators; required checks. (a) An alternative background study for a guardian or conservator pursuant to subdivision 5 shall include:

(1) criminal history data from the Bureau of Criminal Apprehension and other criminal history data obtained by the commissioner of human services;

(2) data regarding whether the person has been a perpetrator of substantiated maltreatment of a vulnerable adult under section 626.557 or a minor under chapter 260E. If the subject of the study has been the perpetrator of substantiated maltreatment of a vulnerable adult or a minor, the commissioner must include a copy of the public portion of the investigation memorandum under section 626.557, subdivision 12b, or the public portion of the investigation memorandum under section 260E.30. The commissioner shall provide the court with information from a review of information according to subdivision 7 if the study subject provided information that the study subject has a current or prior affiliation with a state licensing agency;

(3) criminal history data from a national criminal history record check as defined in section 245C.02, subdivision 13c; and

(4) state licensing agency data if a search of the database or databases of the agencies listed in subdivision 7 shows that the proposed guardian or conservator has held a professional license directly related to the responsibilities of a professional fiduciary from an agency listed in subdivision 7 that was conditioned, suspended, revoked, or canceled.

(b) If the guardian or conservator is not an individual, the background study must be completed of all individuals who are currently employed by the proposed guardian or conservator who are responsible for exercising powers and duties under the guardianship or conservatorship.

Subd. 7. Guardians and conservators; state licensing data. (a) Within 25 working days of receiving the request for an alternative background study of a guardian or conservator, the commissioner shall provide the court with licensing agency data for licenses directly related to the responsibilities of a guardian or conservator if the study subject has a current or prior affiliation with the:

(1) Lawyers Responsibility Board;

(2) State Board of Accountancy;

(3) Board of Social Work;

- (4) Board of Psychology;
- (5) Board of Nursing;
- (6) Board of Medical Practice;
- (7) Department of Education;
- (8) Department of Commerce;
- (9) Board of Chiropractic Examiners;
- (10) Board of Dentistry;
- (11) Board of Marriage and Family Therapy;
- (12) Department of Human Services;
- (13) Peace Officer Standards and Training (POST) Board; and
- (14) Professional Educator Licensing and Standards Board.

(b) The commissioner and each of the agencies listed above, except for the Department of Human Services, shall enter into a written agreement to provide the commissioner with electronic access to the relevant licensing data and to provide the commissioner with a quarterly list of new sanctions issued by the agency.

(c) The commissioner shall provide to the court the electronically available data maintained in the agency's database, including whether the proposed guardian or conservator is or has been licensed by the agency and whether a disciplinary action or a sanction against the individual's license, including a condition, suspension, revocation, or cancellation, is in the licensing agency's database.

(d) If the proposed guardian or conservator has resided in a state other than Minnesota during the previous ten years, licensing agency data under this section shall also include licensing agency data from any other state where the proposed guardian or conservator reported to have resided during the previous ten years if the study subject has a current or prior affiliation to the licensing agency. If the proposed guardian or conservator has or has had a professional license in another state that is directly related to the responsibilities of a guardian or conservator from one of the agencies listed under paragraph (a), state licensing agency data shall also include data from the relevant licensing agency of the other state.

(e) The commissioner is not required to repeat a search for Minnesota or out-of-state licensing data on an individual if the commissioner has provided this information to the court within the prior five years.

(f) The commissioner shall review the information in paragraph (c) at least once every four months to determine whether an individual who has been studied within the previous five years:

- (1) has any new disciplinary action or sanction against the individual's license; or
- (2) did not disclose a prior or current affiliation with a Minnesota licensing agency.

(g) If the commissioner's review in paragraph (f) identifies new information, the commissioner shall provide any new information to the court.

Subd. 8. **Guardians ad litem.** The commissioner shall conduct an alternative background study of:

(1) A guardian ad litem appointed under section 518.165 if a background study of the guardian ad litem has not been completed within the past three years. The background study of the guardian ad litem must be completed before the court appoints the guardian ad litem, unless the court determines that it is in the best interests of the child to appoint the guardian ad litem before a background study is completed by the commissioner.

(2) A guardian ad litem once every three years after the guardian has been appointed, as long as the individual continues to serve as a guardian ad litem.

Subd. 9. Guardians ad litem; required checks. (a) An alternative background study for a guardian ad litem under subdivision 8 must include:

(1) criminal history data from the Bureau of Criminal Apprehension and other criminal history data obtained by the commissioner of human services; and

(2) data regarding whether the person has been a perpetrator of substantiated maltreatment of a minor or a vulnerable adult. If the study subject has been determined by the Department of Human Services or the Department of Health to be the perpetrator of substantiated maltreatment of a minor or a vulnerable adult in a licensed facility, the response must include a copy of the public portion of the investigation memorandum under section 260E.30 or the public portion of the investigation memorandum under section 626.557, subdivision 12b. When the background study shows that the subject has been determined by a county adult protection or child protection agency to have been responsible for maltreatment, the court shall be informed of the county, the date of the finding, and the nature of the maltreatment that was substantiated.

(b) For checks of records under paragraph (a), clauses (1) and (2), the commissioner shall provide the records within 15 working days of receiving the request. The information obtained under sections 245C.05 and 245C.08 from a national criminal history records check shall be provided within three working days of the commissioner's receipt of the data.

(c) Notwithstanding section 260E.30 or 626.557, subdivision 12b, if the commissioner or county lead agency or lead investigative agency has information that a person of whom a background study was previously completed under this section has been determined to be a perpetrator of maltreatment of a minor or vulnerable adult, the commissioner or the county may provide this information to the court that requested the background study.

Subd. 10. First-time applicants for educator licenses with the Professional Educator Licensing and Standards Board. The Professional Educator Licensing and Standards Board shall make all eligibility determinations for alternative background studies conducted under this section for the Professional Educator Licensing and Standards Board. The commissioner may conduct an alternative background study of all first-time applicants for educator licenses pursuant to section 122A.18, subdivision 8. The alternative background study for all first-time applicants for educator licenses must include a review of information from the Bureau of Criminal Apprehension, including criminal history data as defined in section 13.87, and must also include a review of the national criminal records repository.

Subd. 11. First-time applicants for administrator licenses with the Board of School Administrators. The Board of School Administrators shall make all eligibility determinations for alternative background studies conducted under this section for the Board of School Administrators. The commissioner may conduct an alternative background study of all first-time applicants for administrator licenses pursuant to section 122A.18, subdivision 8. The alternative background study for all first-time applicants for administrator licenses must include a review of information from the Bureau of Criminal Apprehension,

including criminal history data as defined in section 13.87, and must also include a review of the national criminal records repository.

Subd. 12. **Occupations regulated by MNsure.** (a) The commissioner shall conduct a background study of any individual required under section 62V.05 to have a background study completed under this chapter. Notwithstanding subdivision 1, paragraph (g), the commissioner shall conduct a background study only based on Minnesota criminal records of:

- (1) each navigator;
- (2) each in-person assister; and
- (3) each certified application counselor.

(b) The MNsure board of directors may initiate background studies required by paragraph (a) using the online NETStudy 2.0 system operated by the commissioner.

(c) The commissioner shall review information that the commissioner receives to determine if the study subject has potentially disqualifying offenses. The commissioner shall send a letter to the subject indicating any of the subject's potential disqualifications as well as any relevant records. The commissioner shall send a copy of the letter indicating any of the subject's potential disqualifications to the MNsure board.

(d) The MNsure board or its delegate shall review a reconsideration request of an individual in paragraph (a), including granting a set aside, according to the procedures and criteria in chapter 245C. The board shall notify the individual and the Department of Human Services of the board's decision.

History: *1Sp2021 c 7 art 2 s 18*