

**Minnesota Department of Human Services
2013 LEGISLATIVE BACKGROUND INFORMATION**

Office of Inspector General (OIG) Policy Bill Revisor Bill Draft 13- 0149

S.F. 1340 (as amended by S1340A1 technical amendment) H.F.

TITLE: Relating to Human Services; modifying provisions relating to: licensing data provisions under to the Data Practices Act (Chapter 13); the Human Services Licensing Act (Chapter 245A); the Human Services Background Studies Act (Chapter 245C); and section 256.045 fair hearing provisions.

NATURE AND IMPACT OF PROPOSED CHANGES: Generally, a Licensing policy bill is introduced each session to clarify licensing and background study requirements. Articles 1 and 2 of this bill include many of the provisions from Licensing’s policy bill from the 2012 Session that did not pass due to time, the majority of which were clarifying in nature.

Article 1 Data Practices

Section 1. 13.46, subd. 3. Adds recipient and clarifies when public data can be disclosed.

Sec. 2. 13.46, subd. 4. Specifies what information is public when a temporary immediate suspension is issued, including the existence of settlement negotiations. Adds the category “controlling individual” to public information available on entities subject to licensing actions. Makes the existence of settlement negotiations public information for applicants denied a license

Article 2 Licensing

Licensing amendments:

Section 1. 119B.125, subd. 1b. Amends training for legal nonlicensed family child care provider to include CPR techniques for infants and children.

Sec. 2. 245A.02, subd. 5a. Under the definition of “controlling individual,” clarifies that a site director with no ownership interest in the program is not considered a managerial official as defined in statute.

Sec. 3. 245A.04, subd. 1. Provides additional requirements for individuals and nonindividuals when making an application for licensure. Individuals: taxpayer identification numbers and federal employer identification number for applicants with employees, as well as the complete business name and the “doing business as” name if doing business under a different name as registered with the Secretary of

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State. Nonindividuals: taxpayer identification number, federal employer identification number, the complete business name and the “doing business as” name if doing business under a different name as registered with the Secretary of State.

Sec. 4. 245A.04, subd. 5. Amends the commissioner’s right of access to clarify that license holders must provide access to personnel records of current and former staff to DHS for investigative and inspection purposes. Provides for verification, upon request, of documentation of staff work experience, training or educational requirements.

Sec. 5. 245A.04 , subd. 11. Technical amendment to be consistent with the Department of Education statute regarding educational programs provided on site in children’s residential programs..

Sec. 6. 245A.06, subd. 1. Provides for issuance of a conditional license to assure that when a disqualified individual has moved out of the home where services are provided, in order for licensure of the home to continue (according to current law), that arrangements have been made so that the disqualified person does not have direct contact or access to persons receiving services.

Sec. 7. 245A.07, subd. 2. Amends the temporary immediate suspension (TIS) standard to add a pattern of continued noncompliance after a sanction has been issued as a basis for issuance of a TIS. Adds a technical amendment to clarify that the Revenue Recapture Act rules apply to licensing expedited hearings.

Sec. 8. 245A.07, subd. 2a. Provides for final commissioner’s order affirming a TIS to be issued within ten days after a dismissal or withdrawal.

Sec. 9. 245A.07, subd. 3 Adds a technical amendment to clarify that the Revenue Recapture Act rules apply to licensing contested cases.

Sec. 10. 245A.07, subd. 7. Adds a subdivision to specify the time frame following receipt of a timely appeal of a licensing sanction, under which: 1) the commissioner must request assignment of an administrative law judge (15 working days); 2) the timeframe during which a hearing must be conducted (90 calendar days); and 3) the timeframe for issuance of a notice of hearing. Also specifies that an extension may be granted for no more than a total of 90 calendar days, including for purposes of discussing settlement unless there is a criminal or juvenile court action pending against the license holder or another individual subject to a background study.

Sec. 11. 245A.08, subd. 2a. Amends the scope of the contested case hearing provision to specify that a request for reconsideration of a disqualification must be timely in order for the disqualification to be included in the scope of the hearing.

Sec. 12. 245A.08, subd. 5a. Adds “controlling individual” to language concerning an application that was denied and a two-year wait is imposed unless new information is introduced which constitutes a substantial change in the reasons behind the dismissal. Clarifies that the addition of a new co-applicant to a subsequent license application does not constitute a substantial change when a controlling individual whose application was denied is affiliated with a subsequent application.

Sections 13 and 14. 245A.146, subdivisions 3 and 4. Amends the license holder crib documentation and the crib safety and inspection standards to comport with federal requirements.

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Sec. 15. 245A.50, subd. 4. Clarifies that for family child care, at least one caregiver must be present in the home who has been trained in CPR for infants and children.

Sec. 16 and 17. 245A.65, subd. 1, and 245A.66, subd. 1. Specifies a 30 calendar day timeline for license holder completion of a required internal review under sections 626.556 and 626.557 and that internal reviews must be made available to the commissioner immediately upon request.

Article 3 Financial Fraud and Abuse Investigation

Section 1. 168.012, subd. 1. Expands the use of unmarked vehicles used in investigation, surveillance, supervision and monitoring to include the DHS Office of Inspector General's staff, including contract and county fraud prevention investigators as well as staff of the MN sex offender program. This is a safety issue for staff.

Sec. 2. 256.01, subd. 18d. Requires the Dept. of Public Safety to provide photographs and electronically produced images monthly to DHS for all applicants and holders whose drivers' licenses and state identification cards have been canceled.

Sec. 3. 268.19, subd. 1. Adds the DHS Office of Inspector General and its agents with the department, including county fraud investigators, to the list of agencies able to see private data under the MN Unemployment Insurance Law for the purpose of investigating recipient or provider fraud.

Sec. 4. 471.346. Adds DHS investigations as being exempt from having its name displayed on owned or leased motor vehicles.

Article 4 Chemical and Mental Health

Section 1. 245B.05, subd. 5. Allows the commissioner to establish higher rates for chemical dependency treatment programs that provide on-site child care during hours of treatment activity or that arrange for off-site child care at a licensed child care center or family child care home. Adds that in order to meet the higher rate requirement, 25% of counseling staff, who are mental health professionals, must be licensed. Adds the requirement that in order to receive a higher payment rate, a chemical dependency facility that provides arrangements for off-site child care must keep current documentation of the child care provider's current licensure to provide child care services.

Article 6 Background Studies

Section 1. 245C.04. Clarifies that all background study requests must be submitted using NETStudy, an electronic system. Changes the timeline for submission of another study request when an individual returns from an absence from work from 90 to 120 days. Requires a new background study be initiated using NETStudy for individuals required to be studied who undergoes a legal name change.

Sec. 2. 245C.05, subd. 6. Clarifies that, upon request, law enforcement agencies are required to provide arrest and investigative data to DHS in accordance with this subdivision.

Sec. 3. 245C.08, subd. 1. Specifies that when the Commissioner has reasonable cause to believe the identity of a background study subject is uncertain, DHS may require the subject to provide a set of

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classifiable fingerprints and complete a Minnesota record check.

Sec. 4. 245C.16, subd. 1. Clarifies that, while generally the section regarding initial risk of harm assessment does not apply to PCAs, the commissioner can order a PCA with a completed background study to be supervised or immediately removed from direct contact services if the commissioner learns the individual is the subject of a pending criminal proceeding or maltreatment investigation, and determines that the individual poses an imminent risk of harm.

Sec. 5. 245C.20, subd. 1. Requires a license holder to document in an employee's personnel file, the date the subject of a study first has direct contact with persons served by the program, in addition to the date the program initiated a study.

Sec. 6. 245C.22, subd. 1. Clarifies that the timeline for the commissioner's response to a request for reconsideration begins from the date of a complete request and submission of all required information.

Sec. 7. 245C.23, subd. 2. Allows a disqualified individual to continue to work under continuous direct supervision pending the outcome of a hearing on the disqualification decision if the license holder was not previously ordered to remove the individual from direct client contact. Requires a license holder to immediately remove an individual whose disqualification has not been set aside and who does not have a right to a hearing.

Sec. 8. 245C.28, subd. 1. Amends the scope of the contested case hearing provision to specify that a request for a reconsideration of a maltreatment determination or a disqualification must be timely in order for the disqualification to be included in the scope of the hearing regarding a licensing sanction.

Sec. 9. 245C.28, subd. 3. Technical amendment to clarify that the Revenue Recapture Act rules apply to licensing contested cases.

Sec. 10. 245C.29, subd. 2. Clarifies that when a disqualified individual did not challenge the correctness of a determination, the disqualification is conclusive as specified. Also clarifies that the right to reconsideration on risk of harm applies only if there is no bar (necessary to reflect recent Court of Appeals decision).

Sec. 11. 256.045, subd. 3b. Clarifies the DHS fair hearing statute and makes it consistent with Chapter 245C and other subdivisions of section 256.045, specifying that if a disqualification is based solely on a conviction or is otherwise conclusive under section 245C.29, the disqualified individual does not have a hearing right under this section.

Sec. 12. Requires OLA review of background study law.