

House Research Act Summary

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Section

Article 1: Data Practices

Overview

This article amends data practices laws related to government employers and background studies required for DHS licensed programs.

- 1** **Continuity of operations.** Amends §13.43, by adding subd. 17. Allows use of a public employee's personal home contact information to contact the employee in an emergency. Permits sharing of information with another government entity in an emergency to ensure continued operation of either agency.
- 2** **Private personnel data.** Amends §13.43, by adding subd. 18. Requires disclosure of private personnel data of state employees to the Department of Administration for purposes of the workers' compensation program.
- 3** **Investigative data.** Amends § 13.46, subd. 3. Adds that data in the welfare system pertaining to an applicant is subject to the data protections in this section.
- 4** **Licensing data.** Amends § 13.46, subd 4. Paragraph (a) contains no changes.

Paragraph (b) adds that specified data on current and former licensees and applicants is public data when an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license has been issued. The licensing determinations are already public data; this makes them public at the time they are issued.

This paragraph also provides that the identity of a license holder or applicant who is found to be responsible for maltreatment or is a disqualified individual is public data at the time the licensing sanction or denial is issued.

Additionally, if a licensing sanction or a license is denied based on disqualification of an individual, then the reason for the disqualification is public data. However, if this individual is not the license holder or an applicant, then the identity of the disqualified individual remains private data.

Paragraph (c) contains no changes.

Paragraph (d) clarifies that the names of reporters of complaints or alleged violations of licensing standards under specified chapters, and reports of alleged maltreatment under specified chapters are confidential data.

Paragraph (e) contains no changes.

Paragraph (f) specifies that licensing investigations under chapters 245A (Human Services Licensing), 245B (Services for Developmental Disabilities), 245C (Human Services Background Studies), applicable rules, and sections 626.556 (Maltreatment of Minors) and 626.557 (Maltreatment of Vulnerable Adults) are investigative data under subdivision 3.

Paragraphs (g) and (h) contain no changes.

Paragraph (i) add that the identity of a reporter of licensing violations or alleged maltreatment may not be disclosed unless otherwise specified in this chapter.

Paragraphs (j) and (k) contain no changes.

Article 2: Licensing Overview

This article amends the respiratory therapist practice statutes by changing professional regulation from registration to licensure. It amends the human services licensing act, background study act, reporting maltreatment of minors act, and reporting maltreatment of vulnerable adults act.

1 Definitions. Amends § 147C.01.

Subd. 1. Applicability. No change.

Subd. 2. Advisory council. Changes the name of the advisory council to “Respiratory Care Advisory Council.”

Subds. 3-5. Approved education program, board, and contact hour. No change.

Subd. 6. Credential. Strikes the words “permit” and “registration” from the list of credentials needed to practice respiratory therapy.

Subd. 7. Credentialing examination. Adds an examination administered by the

Canadian Society for Respiratory Care as an approved credentialing examination. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 7a. Equipment maintenance. Defines equipment maintenance as downloading and reporting specified information, and adjusting respiratory care equipment.

Subd. 8. Health care facility. Adds rehabilitation facility to the list of health care facilities.

Subd. 9. Qualified medical direction. No change.

Subd. 9a. Patient instruction. Provides that this includes education on the care, use, and maintenance of respiratory care equipment.

Subd. 10. Respiratory care. Substitutes “supervision of a physician” for “guidance of qualified medical direction.” Permits a respiratory therapist to provide services pursuant to a referral, or a verbal, written, or telecommunicated order from a physician, nurse practitioner, or physician assistant. Adds disease management to the definition of respiratory care.

2 Scope of practice. Amends § 147C.05. Makes technical changes to conform with the credential change from registration to licensure.

Strikes paragraphs (b) and (c) which limit the services that can be provided by a practitioner and the requirement that services can be provided only upon referral from a physician.

- Adds that a licensed respiratory therapist can transcribe and implement verbal, written, or telecommunicated orders from a nurse practitioner or physician assistant. Current law permits orders only from a physician.
- Permits a licensed respiratory therapist to perform advances in the art and techniques of respiratory care learned through formal or specialized training approved by the advisory council.

3 Unlicensed practice prohibited; protected titles and restrictions on use. Amends § 147C.10.

Subd. 1. Protected titles. Restricts the use of “Minnesota licensed respiratory therapist,” “licensed respiratory therapist,” “respiratory therapist,” “inhalation therapist,” “inhalation therapy technician,” or the use of “RT” or “LRT,” unless an individual holds a current, active respiratory therapist license that has been granted under this chapter.

Subd. 1a. Unlicensed practice prohibited. Requires that a person must be licensed as a respiratory therapist before practicing respiratory care.

Subd. 2. Other health care practitioners. Paragraph (a) states that this chapter does not prohibit an individual who has passed a certified examination on one or more of the practices in this chapter from performing those practices.

Paragraph (b) provides that a respiratory care license is not required for a respiratory

therapy student, a respiratory therapist who is a member of the military and is performing functions related to that duty, an employee of a durable medical equipment company or home medical equipment provider, self-care by a patient or gratuitous care by a friend or relative or an individual, under physician supervision, who is employed in a sleep lab.

Strikes a paragraph that provides physician practitioners are exempt from this chapter.

Subd. 3. Penalty. No change. Violations of title protection remain a gross misdemeanor.

Subd. 4. Identification of licensed practitioners. Makes technical changes to conform with the credential change from registration to licensure.

4 Licensure requirements. Amends § 147C.15.

Subd. 1. General requirements for licensure. Adds that an applicant for licensure must include the applicant's email address on the application form. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 2. Licensure by reciprocity. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 3. Temporary permit. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 4. Temporary registration. Strikes this subdivision.

Subd. 5. Practice limitations with temporary registration. Strikes this subdivision.

Subd. 6. License expiration. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 7. Renewal. Paragraph (a) makes technical changes to conform with the credential change from registration to licensure.

Paragraph (b) limits an applicant for renewal who has not practiced the equivalent of eight full weeks in the past five years to retaking the credentialing examination and achieving a passing score. Strikes language that provides an alternative to the applicant to complete no less than eight weeks of approved supervised clinical experience.

Subd. 8. Change of address. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 9. License renewal notice. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 10. Renewal deadline. No changes.

Subd. 11. Inactive status and return to active status. Strikes this subdivision.

Subd. 12. Licensure following lapse of licensed status. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 13. Cancellation due to nonrenewal. Makes technical changes to conform with the credential change from registration to licensure.

Subd. 14. Cancellation of license in good standing. Makes technical changes to conform with the credential change from registration to licensure.

- 5 Board action on applications for licensure.** Amends § 147C.20. Makes technical changes to conform with the credential change from registration to licensure.
- 6 Continuing education requirements.** Amends § 147.25. Makes technical changes to conform with the credential change from registration to licensure.
- 7 Discipline; reporting.** Amends § 147C.30. Makes technical changes to conform with the credential change from registration to licensure.
- 8 Respiratory care advisory council.** Amends § 147C.35. Makes technical changes to conform with the credential change from registration to licensure.
- 9 Fees.** Amends § 147C.40. Makes technical changes to conform with the credential change from registration to licensure.
- 10 Exemptions.** Amends § 157.22. Exempts DHS licensed group residential facilities with ten or fewer beds from licensure requirements when the facility employs or contracts with a certified food manager.
- 11 Day treatment services.** Amends § 245.4871, subd. 10. Changes the requirement from a minimum of a three hour time block for therapeutic services, to a two hour time block. Requires day treatment services to be available up to 15 hours per week; current law requires at least five days a week.
- 12 Exclusion from licensure.** Amends § 245A.03, subd. 2.
- Adds an exemption for chemical dependency or substance abuse treatment activities of licensed professionals in private practice when the services are not paid from the consolidated chemical dependency treatment fund.
 - Adds an exemption for programs operated by a YMCA, YWCA, or JCC whose primary purpose is to provide child care to school age children.
 - Adds an exemption for accredited programs serving children age 33 months or older that are operated by a nonpublic school for no more than 4 hours per day per child with no more than 20 children present at any one time.
- 13 Excluded providers seeking licensure.** Amends § 245A.03, by adding subd. 7. Adds that any accredited nonpublic school program serving children age 33 months or older may seek licensure.
- 14 Commissioner's right of access.** Amends § 245A.04, subd. 5. Clarifies that the commissioner has access to a program's electronic records. Adds that the commissioner has the right of access when exercising powers under sections 626.556 and 626.557, related to

investigation of maltreatment of children and vulnerable adults.

- 15 Grant of license; license extension.** Amends § 245A.04, subd. 7. Adds that a license cannot be issued or reissued if no variance has been granted if an applicant, license holder, or controlling individual has been disqualified and the disqualification not set aside. States that a license cannot be issued or reissued if the applicant, license holder, or controlling individual has an outstanding debt related to a license fee, licensing fine, or settlement agreement with delinquent payments.
- Provides that in specified circumstances a licensing holder and controlling individual are barred from holding any license under chapter 245A or 245B for five years.
- 16 Denial of application.** Amends § 245A.05. Adds that the commissioner may deny a license if an applicant or controlling individual has a disqualification that has not been set aside and no variance has been granted, or has an individual living in the household or is associated with an individual who will have contact with clients and who has a disqualification that has not been set aside and no variance has been granted.
- Specifies that if an individual wishes to appeal the commissioner's license denial, the written notification to the commissioner, if mailed, must be postmarked within 20 calendar days of receipt of the denial, or if hand delivered, must be received by the commissioner within 20 calendar days of receipt of the denial.
- 17 Sanctions; appeals; license.** Amends § 245A.07, subd. 1. Permits the commissioner to suspend or revoke a license if a license holder does not comply with applicable law or rule.
- 18 License suspension, revocation, or fine.** Amends § 245A.07, subd. 3. Permits a license holder to continue operating a program when the license holder has submitted a timely appeal of an order suspending or revoking a license until a final order has been entered.
- 19 Reduction of risk of sudden infant death syndrome in licensed programs.** Amends § 245A.1435. Requires parents who direct an alternative sleeping position for their infants to submit the directive on a form approved by the commissioner. Requires the license holder to place a child in a crib on a firm mattress that has a tightly fitted crib sheet.
- 20 Delegation of authority to counties.** Amends § 245A.16, subd. 1. Prohibits a county agency from granting a variance for a family child care provider to exceed the license capacity of 14 children. There is a very limited exception to this prohibition in section 245A.14, subd. 4, para. (e).
- 21 Sudden infant death syndrome and shaken baby syndrome training.** Amends § 245A.50, subd. 5. Clarifies that this is part of initial and ongoing annual training. Requires training on sudden infant death syndrome be provided at least once every five years and be of at least one-half hour in length. Requires annual training be conducted on shaken baby syndrome.
- 22 Accreditation, alternative inspection, and deemed compliance.** Creates §245B.031. Lists the requirements that must be met and maintained to be exempt from annual inspections for day training and habilitation or supported employment services programs.
- 23 Licensed programs.** Amends § 245C.04, subd. 1. Requires a license holder to notify the commissioner when an individual returns to a position requiring a background study if the

person returns after an absence of 45 days or more, and when a program that discontinued services for 45 or more days begins to provide services again.

- 24 Study subject affiliated with multiple facilities.** Amends § 245C.07. Requires a license holder who has multiple licensed programs to notify the commissioner if a program closes and to inform the commissioner the names of staff who will be transferred to one of the open programs.
- 25 Background study; commissioner reviews.** Amends §245C.08. Permits the commissioner to have access to juvenile court records for individuals ages 13 through 23 who live in a household where services will be provided and for other individuals when there is reasonable cause.
- 26 Direct contact pending completion of background study.** Amends § 245C.13, subd. 2. Provides that if the commissioner needs more time to complete the background study on an applicant, the notice that more time is needed must also indicate whether the applicant needs to be under continuous direct supervision prior to completion of the study.
- 27 Permanent disqualification.** Amends § 245C.15, subd. 1. Adds that if a disqualification is based on an *Alford* plea, the disqualification period begins on the date the plea is entered. An *Alford* plea is a form of a guilty plea in which the defendant asserts innocence but acknowledges on the record that the prosecutor could present enough evidence to prove guilt.
- Strikes involuntary termination of parental rights as a permanent disqualification.
- Provides an immediate effective date for this section..
- 28 15-year disqualification.** Amends § 245C.15, subd. 2. Adds a violation of section 609.495 (aiding an offender) to the list of 15-year disqualifying offenses.
- Adds that if a disqualification is based on an *Alford* plea, the disqualification period begins on the date the plea is entered.
- Provides that it is a 15 year disqualification if an individual's parental rights have been terminated regardless of whether this was a voluntary or involuntary termination of parental rights. Involuntary termination of parental rights had been a permanent disqualification. The change is in response to a finding by the Minnesota Court of Appeals in the case *Murphy v. Commissioner of Human Services*, 2009 WL1182124, that the distinction between voluntary and involuntary termination of parental rights for purposes of disqualification for employment was in violation of the equal protection clause.
- Provides an immediate effective date for this section.
- 29 Ten-year disqualification.** Amends § 245C.15, subd. 3. Adds that if a disqualification is based on an *Alford* plea, the disqualification period begins on the date the plea is entered.
- 30 Seven-year disqualification.** Amends § 245C.15, subd. 4. Adds that if a disqualification is based on an *Alford* plea, the disqualification period begins on the date the plea is entered.
- 31 Classification of certain data.** Amends §245C.22, subd. 7. Adds a cross-reference to the language added in Article 1, Section 2, providing that the identify of a disqualified individual remains private when a disqualification is not set aside and no variance is

granted, except as provided in Article 1, Section 2.

- 32 Permanent bar to set aside a disqualification.** Amends § 245C.24, subd. 2. Adds paragraph (c). This paragraph allows the commissioner to grant a variance to a foster parent who has adopted a foster child who has a disqualifying offense, when this is recommended by the county of responsibility for each of the remaining foster children in the home and the licensing agency for the home.
- Provides an immediate effective date.
- 33 Ten-year bar to set aside disqualification.** Amends § 245C.24, subd. 3. Adds criminal vehicular operation causing death to the list of offenses for which the commissioner cannot set aside the disqualification of an individual in connection with a license to provide family child care, child foster care in the provider's home, or adult foster care or day care services in the provider's home.
- Provides an immediate effective date.
- 34 Consolidated reconsideration of maltreatment determination and disqualification.** Amends § 245C.25. Adds that if the commissioner disqualifies an individual in connection with a child foster care license based on a county's maltreatment determination, the commissioner shall conduct the reconsideration of the disqualification.
- 35 Fair hearing when disqualification is not set aside.** Amends § 245C.27, subd. 1. Adds disqualification based on an *Alford* plea.
- 36 State agency hearings.** Amends § 256.045, subd. 3. Adds two statutory cross-references.
- 37 Standard of evidence for maltreatment and disqualification hearings.** Amends § 256.045, subd. 3b. Corrects a cross-reference.
- 38 Provider entity certification.** Amends § 256B.0943, subd. 4. Strikes the requirement that a noncounty provider entity must be recommended for certification by the provider's host county. Certification under this amendment would be entirely a state duty.
- 39 Provider entity clinical infrastructure requirements.** Amends § 256B.0943, subd. 6. Provides clarification of provider documentation requirements. Strikes a requirement that for a mental health practitioner's services to be reimbursed by medical assistance, a mental health professional must be present to observe at least one session with the practitioner and child or family during the first 12 hours of treatment.
- 40 Service delivery criteria.** Amends § 256B.0943, subd. 9. Requires a day treatment program to be available at least one day a week for a two hour time block. Current law requires a three hour time block. Lists the approved components of a structured treatment program.
- 41 Special needs.** Amends § 256D.44, subd. 5. Permits a recipient to live in housing owned or controlled by the recipient's service provider under specified circumstances.
- 42 License; permit.** Adds § 471.709. Prohibits a municipality from requiring a massage therapist to obtain a license or permit when the therapist is working for, or an employee of, a licensed medical professional.

- 43 Definitions.** Amends § 626.556, subd. 2. Amends paragraph (f), the definition of “neglect” to provide that the commission or omission of any of the specified acts, other than by accidental means, is considered neglect.
- 44 Determinations.** Amends § 626.556, subd. 10e. Adds that when substantiated maltreatment has been committed by an individual who is also the facility license holder, then both the individual and the facility must be determined responsible for the maltreatment and sanctions against the individual and facility can be imposed.
- 45 Notice of determinations.** Amends § 626.556, subd. 10f. Requires the local welfare agency that conducts an assessment or investigation involving a child foster care setting to notify the agency that has licensed the foster home of the results of the assessment or investigation and the reasons for the results. This notification can include private data, but cannot include the identity of the reporter.
- 46 Lead agency; notifications, dispositions, determinations.** Amends § 626.557, subd. 9c. Adds that when substantiated maltreatment has been committed by an individual who is also the facility license holder, then both the individual and the facility must be determined responsible for the maltreatment and sanctions against the individual and facility can be imposed.
- 47 Data management.** Amends §626.557, subd. 12b. States that after an investigation or assessment is complete, the name of the reporter must remain confidential.
- 48 Lead agency.** Amends §626.557, subd. 13. Paragraph (a) states that the Department of Health is the lead agency for investigating reports of maltreatment of vulnerable adults in specified facilities. Adds residential facilities that are also federally certified as ICF/MR facilities to the list.
- Paragraph (b) states that the Department of Human Services is the lead agency for investigation reports of maltreatment of vulnerable adults in specified programs. Strikes personal care provider organizations from the list of programs.
- Makes no changes to paragraph (c) that requires the county social service agency to be the lead agency for all other reports.
- 49 Repealer.** Repeals section 245C.10, subd. 1 (Subject of background study. This subdivision provides that subjects of background studies cannot be assessed a fee for the study.)

Article 3: DHS Licensing Technical

Overview

This article makes changes to cross references and modifies the definition of “children’s service worker.”

- 1 Personnel agencies; educational programs; professional services.** Amends §245C.03, subd. 4. Corrects a cross-reference.

- 2 **Background studies conducted by commissioner of human services.** Amends §245C.08, subd. 1. Corrects a cross-reference.
- 3 **Background studies conducted by a county agency.** Amends §245C.08, subd. 2. Corrects a cross-reference.
- 4 **Juvenile court records.** Amends §245C.08, subd. 4. Corrects a cross-reference.
- 5 **Disqualification from access.** Amends §245C.14, subd. 2. Corrects a cross-reference.
- 6 **Children's service worker.** Amends §299C.61, subd. 6. Modifies the definition of children's service worker to include an independent contractor. This modification is for purposes of the BCA conducting a criminal background study.
- 7 **Children's service worker rights.** Amends §299C.62, subd. 3. Modifies the definition of children's service worker to include an independent contractor. This modification is for purposes of the BCA conducting a criminal background study.
- 8 **Response of bureau.** Amends §299C.62, subd. 4. Modifies the definition of children's service worker to include an independent contractor. This modification is for purposes of the BCA conducting a criminal background study.