

HOUSE RESEARCH

Bill Summary

FILE NUMBER: S. F. 1340
Version: Third engrossment

DATE: February 25, 2014

Authors: Abeler and others

Subject: DHS licensing/OIG/background studies

Analyst: Lynn Aves

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Section

Article 1: Data Practices

Overview

This article makes two changes to chapter 13. The amendments allow the commissioner to disclose certain data to the subject of an investigation, and classify certain licensing data as public data.

- 1** **Investigative data.** Amends § 13.46, subd. 3. Allows the commissioner to disclose to a recipient or service provider that an investigation into possible overpayments of public funds is being conducted if the disclosure will not compromise the investigation.
- 2** **Licensing data.** Amends § 13.46, subd. 4. Adds that the general nature of a complaint or allegation leading to a temporary immediate license suspension and the existence of settlement negotiations is public data. Adds that the identity of the controlling individual is public data when that person is responsible for maltreatment, or when the controlling individual is disqualified under chapter 245C, that person's name and the reason for the disqualification are public data.

Section

Article 2: Licensing

Overview

This article modifies certain training requirements and safety inspections for family child care providers. Amendments are made to licensing actions and hearing requirements.

- 1 **Training required.** Amends § 119B.125, subd. 1b. Requires legal nonlicensed child care providers to complete first aid and CPR training which includes CPR for infants and children.
- 2 **Controlling individual.** Amends § 245A.02, subd. 5a. Clarifies that a site director who does not have an ownership interest in the program is not considered a “managerial official” under the definition of “controlling individual.”
- 3 **Application for licensure.** Amends § 245A.04, subd. 1. Requires applicants for licensure to provide the applicant’s taxpayer identification number and federal employer identification number, if the applicant has employees, and the business name or assumed name registered with the secretary of state.
- 4 **Commissioner’s right of access.** Amends § 245A.04, subd. 5. Provides that the commissioner must be allowed to have access to personnel records of current and former staff and information related to staff work experience, training, or educational requirements when this information is relevant to inspections or investigations.
- 5 **Education programs; permitted ages, additional requirement.** Amends § 245A.04, subd. 11. Makes a conforming change to be consistent with Department of Education requirements for education programs.
- 6 **Contents of correction orders and conditional licenses.** Amends § 245A.06, subd. 1. Allows the commissioner to issue a conditional license when a disqualified family or household member whose disqualification has not been set aside has no direct contact or access to persons receiving services but continues to be affiliated with the license holder.
- 7 **Temporary immediate suspension.** Amends § 245A.07, subd. 2. Adds that a pattern of continued noncompliance by a license holder who is operating while appealing an order of license revocation is a basis for the temporary immediate suspension of the license.
- 8 **Immediate suspension expedited hearing.** Amends § 245A.07, subd. 2a. Adds that if an appeal of a temporary immediate suspension is withdrawn or dismissed, the commissioner must issue a final order on the temporary immediate suspension within ten calendar days.
- 9 **License suspension, revocation, or fine.** Amends § 245A.07, subd. 3. Provides that when a license is revoked or suspended, the commissioner’s notice must inform the license holder of the right to a contested case hearing under chapter 14 and the revenue recapture act hearing rules.

Section

- 10 Time frame for conducting hearing.** Amends § 245A.07, by adding subd. 7. Establishes time frames when a license holder has timely appealed a licensing sanction:
- ▶ within 15 working days of receipt of request, the commissioner must request assignment of an administrative law judge (ALJ);
 - ▶ within 90 calendar days, the hearing must be conducted by the ALJ, unless an extension has been granted; and
 - ▶ extensions shall not be granted for a total of more than 90 days.
- 11 Consolidated contested case hearings.** Amends § 245A.08, subd. 2a. Requires the request for reconsideration of a disqualification to be submitted timely before the disqualification can be included in the contested case hearing.
- 12 Granting subsequent license.** Amends § 245A.08, subd. 5a. Provides that if an applicant or controlling individual who was denied a license becomes affiliated with a subsequent application within two years of the license denial, then the subsequent application must be denied. Adds that the addition of a new co-applicant on a subsequent application is not a substantial change in circumstances.
- 13 License holder documentation of cribs.** Amends § 245A.146, subd. 3. Requires family child care license holders to perform monthly safety inspections of mesh-sided or fabric-sided play yards, pack and plays, or playpens used by or accessible to any child in care. Lists the issues that must be documented.
- 14 Crib safety standards and inspections.** Amends § 245A.146, subd. 4. Requires license holders to perform safety inspections, at least monthly, of every portable or rigid crib used by or accessible to any child in care. Lists the issues that must be documented.
- 15 Cardiopulmonary resuscitation.** Amends § 245A.50, subd. 4. Requires at least one caregiver to have CPR training that includes CPR techniques for infants and children.
- 16 License holder requirements.** Amends § 245A.65, subd. 1. Establishes that license holders who serve vulnerable adults must have policies and procedures in place to complete an internal review within 30 days of a report of alleged or suspected maltreatment. Requires documentation of the review, and allows the commissioner immediate access to the review.
- 17 Internal review.** Amends § 245A.66, subd. 1. Requires license holders, except for family child care and child foster care, to have policies and procedures in place to complete an internal review within 30 days of a report of alleged or suspected maltreatment. Requires documentation of the review, and allows the commissioner immediate access to the review.
- 18 to 26** These sections are deleted by the S1340A1 amendment because the statutory sections were repealed during the 2013 session.

Section

Article 3: Financial Fraud and Abuse Investigation

- 1 Vehicles exempt from tax, fees, or plate display.** Amends § 168.012, subd. 1. Allows the DHS offices of Special Investigations and Inspector General and the executive staff of the Minnesota sex offender program to drive unmarked vehicles when performing official duties.
- 2 Data sharing with the Department of Human Services; multiple identification cards.** Amends § 256.01, subd. 18d. Adds a requirement for the commissioner of public safety to provide DHS with all photographs or electronically produced images of applicants and holders of a driver's license or state identification card whose license or card has been canceled due to providing incorrect information or who obtained their license or card fraudulently. Provides an immediate effective date.
- 3 Use of data.** Amends § 268.19, subd. 1. Allows unemployment insurance information to be released to DHS and the Office of Inspector General, including county fraud investigators, for purposes of fraud investigations. Provides an immediate effective date.
- 4 Publicly owned and leased vehicles identified.** Amends § 471.346. Allows unmarked vehicles for DHS investigations and county fraud prevention investigations.

Article 4: Chemical and Mental Health

- 1 Rate requirements.** Amends § 254B.05, subd. 5. Updates cross references. 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. Establishes documentation and case review requirements for programs receiving an enhanced rate.

Article 5: Background Studies

Overview

This article makes changes to the background study process.

- 1 When background study must occur.** Amends § 245C.04. Clarifies that background study requests must be submitted through the NETStudy electronic system. Allows an individual to be absent from work for 120 days before a new background study is required. Current law requires a new background study after the individual has been absent from work for 90 days.

Requires a new background study to be completed when an individual affiliated with a program has a legal name change, or the program may send a notice to the commissioner of the name change.

Section

- 2 **Applicant, license holder, other entities, or agencies.** Amends § 245C.05, subd. 6. Provides that law enforcement agencies must provide arrest and investigative data to DHS.
- 3 **Background studies conducted by the Department of Human Services.** Amends § 245C.08, subd. 1. Provides that if there is reasonable cause to believe the identity of a background study subject is uncertain, the commissioner can require the subject to provide fingerprints for a fingerprint-based background check.
- 4 **Determining immediate risk of harm.** Amends § 245C.16, subd. 1. Clarifies that this section does not apply to PCA background studies.
- 5 **Background studies initiated by program.** Amends § 245C.20, subd. 1. Requires a program to document the date the background study was initiated and the date the subject of the study first had direct contact with persons served by the program.
- 6 **Time frame; response to disqualification reconsideration requests.** Amends § 245C.22, subd. 1. Emphasizes that the request for reconsideration must be complete and must contain all required information.
- 7 **Commissioner's notice of disqualification that is not set aside.** Amends § 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.
- 8 **License holder.** Amends § 245C.21, subd. 1. Requires timely submission of request for reconsideration of a maltreatment determination or disqualification in order for the reconsideration to be considered in the hearing regarding a licensing sanction.
- 9 **Employees of public employer.** Amends § 245C.28, subd. 3. Provides that Revenue Recapture Act rules apply to licensing contested case hearings. Prohibits an individual from requesting a contested case hearing if one has previously been held regarding the individual's disqualification on the same basis.
- 10 **Conclusive disqualification determination.** Amends § 245C.29, subd. 2. Provides that a disqualification is conclusive if an individual does not challenge the correctness of the determination. Provides that if a disqualification is conclusive, the individual has the right to request reconsideration on the risk of harm unless the commissioner is barred from setting aside the disqualification.
- 11 **Standard of evidence for maltreatment and disqualification hearings.** Amends § 256.045, subd. 3b. Provides that if a disqualification is based solely on a conviction or is conclusive under section 245C.29, the individual does not have a right to a hearing under this section.

Section

12 **Background study review.** Paragraph (a) requests that the Office of the Legislative Auditor review the background study provisions in chapter 245C. Lists suggested issues for review.

Paragraph (b) instructs the OLA to collect information from stakeholders affected by the background study process. Requests that the OLA present findings to the Legislative Audit Commission and the chairs of the house and senate standing committees with jurisdiction over the Department of Human Services by January 1, 2015.