

HOUSE RESEARCH

Bill Summary

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Overview

This bill makes changes to DHS licensing provisions. It provides requirements for caregiver training in CPR, first aid and methods to reduce Sudden Infant Death Syndrome and Shaken Baby Syndrome. It adds to the list of criminal offenses that result in disqualification from employment and contact with minors and vulnerable adults. It adds procedures for dealing with offenders being treated at state-operated services facilities. It adds a requirement for background studies on all guardians ad litem.

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- 1** **Licensing data.** Amends § 13.46, subd. 4. Allows the Department of Human Services (DHS) and the Department of Corrections (DOC) to exchange all nonpublic data for the purposes of regulating services for which DHS and DOC have regulatory authority.
- 2** **Use of data.** Amends § 243.166, subd. 7. Provides that information obtained through the registration of predatory offenders is private data. Adds that state-operated services are authorized to access this data.
- 3** **School age child care program.** Amends § 245A.03, subd. 2. Deletes as an exclusion from licensing "scouting, boys clubs, girls clubs, nor sports or art programs" in section 245A.02, subdivision 17, and moves this to the exclusion from licensure section 254A.03, subdivision 2.
- 4** **Exclusion from licensure.** Amends § 245A.03, subd. 2 (a). Changes the exclusion from licensure for short-term Head Start programs from 31 to 45 days. Adds the exclusion from

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licensure for scouting, boys clubs, girls clubs, sports or art programs.

5 **Unlicensed programs.** Amends § 245A.03, subd. 3. Provides that it is a misdemeanor to continue to operate without a license after receiving notice that a license is required. Allows the county attorney or attorney general to begin proceedings to obtain a court order against continued operation of the program.

6 **Child foster care license application.** Amends § 245A.035, subd. 5. Provides that when a relative is being considered for licensure for child foster care, the county or child-placing agency must explain the licensing process to the licensee including the background study process and the procedure for reconsideration of an initial disqualification. The agency must also provide the prospective relative licensee with information about legal representation. Provides that if a relative is initially disqualified, the agency must provide notification in writing and must inform the relative of the right to request reconsideration. Directs the commissioner to maintain licensing data regarding relatives separate from that information from other foster care providers.

7 **Issuance of a license; extension of a license.** Amends § 245A.04, subd. 7. Adds that the commissioner shall not issue a license if an individual living in the household where the licensed services will be provided has been disqualified and the disqualification has not been set aside.

8 **Handling funds and property; additional requirements.** Amends § 245A.04, subd. 13. Changes language from "resident" to "person served by the program." Adds that the requirements that govern handling of funds and property of persons receiving services under this subdivision do not apply to programs serving persons with developmental disabilities. Deletes the requirement for providing a statement, at least quarterly, itemizing receipts and disbursements of resident funds or other property.

9 **Sanctions available, appeals; temporary provisional license.** Amends § 245A.07, subd. 1. Creates the category of temporary provisional license. This category of license applies to programs that continue to operate while they appeal the suspension or revocation of their license. Provides that the commissioner can issue a license sanction under this section even if the license holder fails to reapply or closes a license during the course of an investigation.

10 **License suspension, revocation, or fine.** Amends § 245A.07, subd. 3. Provides that the commissioner may suspend or revoke a license or impose a fine if an individual living in the household where the licensed services are provided has a disqualification which has not been set aside.

11 **Consolidated contested case hearings for sanction based on maltreatment determinations and disqualifications.** Amends § 245A.08, subd. 2a. Paragraph (a). Provides that if a license holder is fined based on a maltreatment determination, and the fine is issued at the same time as the maltreatment determination, the license holder can appeal both. The contested case hearing shall consider the maltreatment determination and the fine. A separate consideration of the maltreatment determination will not be provided.

Paragraph (b). Adds family adult day services to the list of consolidated contested case hearings that the county attorney shall defend.

Adds paragraph (f). Provides the scope of review for an administrative law judge.

Adds paragraph (g). Provides the scope of review for an administrative law judge

12 **Notice of commissioner's final order.** Amends § 245A.08, by adding subd. 5a. Adds an

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exception to the five-year prohibition from granting a license following revocation based on disqualification. Allows a license to be granted when the person with the disqualification no longer resides in the home and is prohibited from residing in or returning to the home. Provides that if the disqualified person is a minor, the license restriction applies until the minor becomes an adult and permanently moves away from home or five years, whichever is less.

13 First aid training requirements for staff in child care centers. Amends § 245A.14, by adding subd. 12. Allows first aid training to be less than eight hours.

14 Cardiopulmonary resuscitation (CPR) training requirement. Amends § 245A.14, by adding subd. 13. Paragraph (a). Provides that when children are present in a child care center or in a family child care home, at least one staff person must be present who has been trained in CPR and in the treatment of obstructed airways. States that CPR training must be repeated at least once every three years.

Paragraph (b). Provides that CPR training may be provided for less than four hours.

Paragraph (c). Provides that individuals approved to provide CPR training include individuals approved as CPR instructors.

Effective date. This section is effective January 1, 2006.

15 Reduction of risk of sudden infant death syndrome and shaken baby syndrome in child care and child foster care programs. Amends § 245A.144. Adds that foster care providers who care for infants must receive training on reducing sudden infant death syndrome and shaken baby syndrome.

Effective date . This section is effective January 1, 2006.

16 Delegation of authority to agencies. Amends § 245A.16, subd. 1. Adds that county agencies must report, for relative foster care applicants and licensees, the number of relatives and household members disqualified; the disqualifying characteristics; the number of requests for reconsideration; the number of set-asides; and the number of variances issued. This information is to be reported to the commissioner annually by January 15 of each year.

17 Enforcement of commissioner's orders. Amends § 245A.16, subd. 4. Provides that a conflict of interest, under this section, means that the county attorney has a direct or shared financial interest with the license holder or has a personal or family relationship with a party in the licensing sanction.

18 Child passenger restraint systems; training requirement. Amends § 245A.18.

Subd. 1. States that a license holder must comply with all seat belt and child passenger restraint system requirements.

Subd. 2. States that providers serving children under age nine must document training that fulfills the requirements of this subdivision. Provides that training must address the proper use and installation of child restraint systems in motor vehicles and that this training must be at least one hour in length, completed at initial training and repeated at least once every five years. Training must be provided by individuals

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certified by the Department of Public Safety, Office of Traffic Safety.

Effective date . Effective date is January 1, 2006.

- 19 Incident.** Amends § 245B.02, subd. 10. Clarifies the definition of "incident" for purposes of provider reporting requirements to include events that require relocation of services for more than 24 hours and circumstances involving a fire department related to health, safety or supervision of a consumer.
- 20 Determining number of direct service staff required.** Amends § 245B.055, subd. 7. Provides the formula to be used for a 1:10 staff ratio.
- 21 Policies and procedures.** Amends § 245B.07, subd. 8. Modifies this section based on the revised definition of "incident."
- 22 Licensed programs.** Amends § 245C.03, subd. 1. Provides that when the commissioner has reasonable cause, a background study shall be completed on an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program.
- 23 Study subject affiliated with multiple facilities.** Amends § 245C.07. Clarifies that only one background study is required when individuals provide direct contact services in multiple licensed facilities owned by the same license holder.
- 24 Background studies conducted by commissioner of human services.** Amends § 245C.08, subd. 1. Allows the commissioner, for the purpose of background studies, to review county agency findings of maltreatment of minors as indicated through the social service information system. Provides that for the purposes of background studies, the commissioner may consider information, even that has been expunged, from juvenile court records and from the Bureau of Criminal Apprehension unless the commissioner has received notice of the expungement and the court order for expungement is directed specifically to the commissioner.
- 25 Background studies conducted by a county or private agency; foster care and family child care.** Amends § 245C.08, subd. 2. Allows counties and private agencies, for the purpose of background studies, to review information, even that has been expunged, from the Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the National Criminal Records Repository, and criminal records from other states unless the commissioner has received notice of expungement and the order is directed specifically to the commissioner.
- 26 Permanent disqualification.** Amends § 245C.15, subd. 1. Makes technical changes. Adds aiding and abetting the listed crimes as a disqualification. Adds that disqualification may be based on a judicial determination other than conviction.
- 27 15-year disqualification.** Amends § 245C.15, subd. 2. Adds felony-level crimes that currently are not identified as disqualifications themselves. Adds aiding and abetting the listed crimes as a disqualification. Adds voluntary termination of parental rights as a 15-year disqualification related to child foster care and family child care. Adds that disqualification may be based on a judicial determination other than conviction. Establishes uniform standards for computing the 15-year look back period for background study decisions.
- 28 Ten-year disqualification.** Amends § 245C.15, subd. 3. Adds misdemeanor-level crimes that currently are not identified as disqualifications themselves. Adds aiding and abetting the listed crimes as a disqualification. Adds that disqualification may be based on a judicial determination other than conviction. Establishes uniform standards for computing the ten-

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year look back period for background study decisions.

- 29 Seven-year disqualification.** Amends § 245C.15, subd. 4. Adds misdemeanor-level crimes that currently are not identified as disqualifications themselves. Adds aiding and abetting the listed crimes as a disqualification. Adds that disqualification may be based on a judicial determination other than conviction. Establishes uniform standards for computing the seven-year look back period for background study decisions.
- 30 Disqualification notice sent to subject.** Amends § 245C.17, subd. 2. Provides that when the subject of a background study is provided notice of disqualification, the notice must contain an explanation of any restrictions on the commissioner's discretion to set aside the disqualification. Also, the subject must be provided notice of the commissioner's notice of the individual's immediate risk of harm.
- 31 Time frame for requesting reconsideration of a disqualification.** Amends § 245C.21, subd. 2. Specifies that requests for reconsideration, if mailed, must be postmarked and sent within the specified period. If the request for reconsideration is made by personal services, it must be received by the commissioner within the specified period.
- 32 Preeminent weight given to safety of persons being served.** Amends § 245C.22, subd. 3. Provides that the interests of the persons receiving services must be given preeminent weight over the interests of the disqualified individual.
- 33 Risk of harm; set aside.** Amends § 245C.22, subd. 4. Provides that if the individual requests reconsideration on the basis the information relied on was incorrect or inaccurate, and the commissioner determines the information was correct, the commissioner must also determine if the individual poses a risk of harm to persons receiving services.
- 34 Permanent bar to set aside disqualification.** Amends § 245C.24, subd. 2. Deletes a reference to "provider" and inserts "individual."
- 35 Ten-year bar to set aside disqualification.** Amends § 245C.24, subd. 3. Adds aiding and abetting any of the specified offenses as a bar to set aside disqualification. Adds that the commissioner shall not set aside a disqualification when the individual was disqualified based on a preponderance of evidence determination or an admission and less than ten years have passed since the individual committed the act or admitted to committing the act, whichever is later.
- 36 Fair hearing when disqualification is not set aside.** Amends § 245C.27, subd. 1. Provides that disqualification based on a judicial determination is the same as a conviction for the purpose of appeal. Specifies that an individual, disqualified based on a conviction and a preponderance of evidence, may request a fair hearing unless the disqualifications are deemed conclusive. If granted a fair hearing, the scope of the hearing shall be limited to whether the individual poses a risk of harm.
- 37 Employees of public employer.** Amends § 245C.28, subd. 3. Provides that if an individual was disqualified based on a conviction or admission to a specified crime, the scope of a contested case hearing shall be limited to whether the individual poses a risk of harm.
- 38 Disclosure of reason for disqualification.** Amends § 245C.30, subd. 2. Provides that a disqualified individual does not need to give consent for the commissioner to disclose the reason for disqualification to the license holder of a program that provides family child care, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home.
- 39 Records of patients and residents receiving state-operated services.** Amends § 246.13.

Subd. 1. Powers, duties and authority of the commissioner. Requires that a

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vulnerable adult prevention plan be developed for, and included in the record of, all residents receiving state-operated services. Directs that DHS shall maintain an adequate and uniform system of patient records and statistics.

Subd. 2. Definitions; risk assessment and management. (a) Adds the following definitions:

- Appropriate and necessary medical and other records
- Community-based treatment
- Criminal history data
- Designated agency
- Law enforcement agency
- Predatory offender and offender
- Treatment facility

(b) Directs that the commissioner shall have access to medical and criminal history data, as necessary to comply with Minnesota Rules, part 1205.0400:

- To determine whether a patient is required to register as a predatory offender;
- To facilitate the responsibilities of the special review board and end-of-confinement committee;
- To prepare and update abuse prevention plans and patient treatment plans;
- To facilitate custody, supervision, and transportation of individuals between the Department of Corrections and the Department of Human Services; or
- To facilitate the exchange of data between the Department of Corrections, the Department of Human Services, and court services personnel as described in section 13.84, subdivision 1.

(c) Provides that a state operated services treatment facility must make a good faith effort to obtain written authorization from the patient before releasing patient records.

(d) Provides that if the patient refuses or is unable to give informed consent to release information, then the chief executive officer shall provide appropriate and necessary medical and other records.

(e) Allows the commissioner of human services access to the National Crime

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Information Center through the Department of Public Safety.

Subd. 3. Community-based treatment and medical treatment. Adds that when a patient is released to a community facility, state-operated services must disclose the patient's abuse prevention plan and may disclose necessary health and other information.

Subd. 4. Predatory offender registration notification. (a) Adds that a state-operated facility provide written notice to the patient that the patient is required to register as a predatory offender.

(b) Adds that if the patient is unwilling or unable to register, that the state-operated facility will complete the registration form and submit it to the Bureau of Criminal Apprehension, and, if applicable, to the patient's correction agent, and the law enforcement agency and county attorney in the patient's community of residence.

(c) Provides that the patient is not relieved of the duty to comply with the predatory offender registration requirements even if the state-operated facility has submitted the registration form.

Subd. 5. Procedure for bloodborne pathogens. State-operated services facilities must comply with the limitations on use of bloodborne pathogen test results as outlined in chapter 246.

40 Release on pass; notification. Amends § 253B.18, subd. 4a. Provides that when a state-operated services facility plans for a committed or confined individual, or one transferred out of a state-operated services facility, is to have a pass, the law enforcement agency where the facility is located must be notified.

41 Guardian ad litem. Amends §260B.163, subd. 6. Directs the court that a background study must be done for each guardian ad litem.

42 Guardian ad litem. Amends 260C.163, subd. 5. Directs the court that a background study must be done for each guardian ad litem.

43 Database of registered predatory offenders. Amends § 299C.093. Adds that DHS has access to the predatory offender database.

44 Background study of guardian ad litem. Amends 518.165, by adding subd. 4. Paragraph (a). Instructs that the court shall initiate a background study on guardians ad litem through the commissioner of human services. Background studies must be updated every three years.

Paragraph (b). Provides details of what information must be included in background study.

Paragraph (c). States that the Minnesota Supreme Court shall pay the commissioner a fee for conducting the background study.

Paragraph (d). Provides that the court may initiate a background study using court data on criminal convictions.

45 Procedure, criminal history, and maltreatment records background study. Adds subd. 5 to § 518.165. Paragraph (a). States that requests for background studies shall be submitted

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to the Department of Human Services through the department's on-line background study system.

Paragraph (b). States that a set of classifiable fingerprints of the subject must be submitted when a search of the National Criminal Records Repository is requested.

Paragraph (c). Lists the information the commissioner of human services shall provide the court when a background study is completed.

Paragraph (d). Provides that information shall be released to the court if the subject of the background study has been determined to be a perpetrator of maltreatment of a minor or vulnerable adult after the study has been completed.

- 46 **Rights.** Adds subd. 6 to § 518.165. Provides that the court shall notify the subject of a background study of specific rights.
- 47 **Limitations of order.** Amends § 609A.03, subd. 7. Provides that an expunged record of a conviction may be opened for purposes of a background study unless the court order for expungement is directed to the commissioner of human services.
- 48 **Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** Amends § 626.556, subd. 10i. Provides consistency for the standards of requesting reconsideration with other appeal requests in chapters 245A and 245C.
- 49 **Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** Amends § 626.557, subd. 9d. Provides consistency between sections on appeal rights for reconsideration of disqualification based on maltreatment of a vulnerable adult and disqualification based on maltreatment of a minor.
- 50 **Abuse prevention plan.** Amends § 626.557, subd. 14. Directs that health care facilities, including home health agencies and personal care attendant services, develop an abuse prevention plan to address potential risks an individual may pose to other patients, staff and others. Adds that if the facility knows a vulnerable adult has a history of sexual misconduct or abuse of others, then the individual abuse prevention plan must detail measures that will be taken to minimize the risk to other vulnerable adults, visitors, and person outside the facility whom the vulnerable adult might reasonably be expected to encounter if unsupervised.
- 51 **Repealer.** Repeals Minnesota Statutes 2004, section 246.017, subdivision 1.