

House Research Act Summary

CHAPTER: 329

SESSION: 2010 Regular Session

TOPIC: DHS Licensing

Date: May 14, 2010

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Overview

This act modifies various DHS licensing provisions and hearing requirements.

Section

Article 1: Licensing

- 1** **Exceptions for replacement beds after June 30, 2003.** Amends § 144A.071, subd. 4c. Adds that the commissioner of health, with the commissioner of human services, may approve the consolidation and relocation of nursing facility beds to a new site in Goodhue County. Describes the project, including the number of beds that will be relocated or consolidated, and the formula by which the property payment rate will be increased.
- 2** **Exclusion from licensure.** Amends § 245A.03, subd. 2. Excludes specified board and lodge facilities licensed by MDH from DHS licensure.
- 3** **Permitted services by an individual who is related.** Amends § 245A.03, by adding subd. 9. Permits a related individual to provide licensed services to a person who is receiving supported living services under specifically, narrowly defined circumstances.
- 4** **Commissioner's right of access.** Amends § 245A.04, subd. 5. Provides the commissioner with the authority to have unannounced and unlimited access to licensed programs when investigating alleged maltreatment, conducting a licensing inspection, or investigating an alleged violation of laws or rules.
- 5** **Grant of license; license extension.** Amends § 245A.04, subd. 7. Adds that the commissioner cannot reissue a license if an individual living in a household where services

are provided has been disqualified and the disqualification has not been set aside or a variance granted.

Adds paragraphs (g) and (h) which specify circumstances under which the commissioner may issue or reissue a license despite an occurrence that would result in license denial or revocation.

Paragraph (g) permits a program to operate under a temporary provisional license while appealing a licensing suspension or revocation and pending the final order of the commissioner. If the license under suspension or revocation will expire during the appeal, the commissioner may issue a temporary provisional license if the license fee is paid.

Paragraph (h) sets out conditions under which a program can continue to operate if the license holder has been disqualified and ordered to be immediately removed from direct contact or under continuous supervision.

Adds paragraph (k) which states that the commissioner does not have the authority to grant or reissue a license if a tribal licensing authority has established jurisdiction to license the program or service.

Provides an immediate effective date for this section.

- 6 Sanctions; appeals; license.** Amends § 245A.07, subd. 1. Clarifies the circumstances under which the commissioner can issue a temporary provisional license. Adds that a temporary provisional license expires on the date a final order is issued, and if the license holder prevails in the appeal, then the commissioner will issue a new nonprovisional license.
- 7 Immediate suspension expedited hearing.** Amends § 245A.07, subd. 2a. Defines “reasonable cause.”
- Provides an immediate effective date.
- 8 License suspension, revocation, or fine.** Amends § 245A.07, subd. 3. Adds a cross-reference.
- 9 Sudden infant death and shaken baby syndrome for child foster care providers.** Amends § 245A.144. Makes a technical change and adds that the required training must be approved by the agency responsible for monitoring the foster care provider.
- 10 Licensing prohibition for certain facilities serving children.** Amends § 245A.30. Makes technical changes by substituting “children” for “juveniles.”
- 11 Sudden infant death syndrome and shaken baby syndrome training.** Amends § 245A.50, subd. 5, by specifying that caregivers and helpers who care for children under school age at child care centers must have this training as part of their initial and annual training.
- 12 Requirements; maltreatment of minors.** Amends § 245A.66 by adding subds. 2 and 3.

Subd. 2. Child care centers; risk reduction plan. Requires licensed child care centers to develop a risk reduction plan that assesses the general risks to children served by the child care center. Requires license holders to establish procedures to

minimize identified risks, train staff on the procedures, and annually review the procedures. Requires that the risk reduction plan include an assessment of certain specified risks and include a statement of measures that will be taken to minimize the risk of harm presented to children. Specifies items the risk reduction plan must address.

Subd. 3. Orientation to risk reduction plan and annual review of plan.

Requires license holders to ensure that all mandated reporters of maltreatment of minors who are under the control of the license holder, receive an orientation to the risk reduction plan prior to first providing unsupervised direct contact services to children, not to exceed 14 days from the first supervised direct contact, and annually thereafter. Requires license holders to review the risk reduction plan annually and to consider incidents that have occurred in the center since the last review. Requires license holders to inform mandated reporters of any changes made to the risk reduction plan

- 13 Reporting incidents.** Amends § 245B.05, subd. 7. Adds the requirement that any death or serious injury in an ICF/MR must be reported to the Office of Health Facility Complaints at the Department of Health, and to the ombudsman.
- 14 Serious maltreatment.** Amends § 245C.02, subd. 18. Modifies the definition of serious maltreatment by adding that an injury requiring the care of a physician does not include application or use of an over the counter medication or a prescription for a topical antibiotic to treat a burn when there is no follow-up appointment.
- 15 15-year disqualification.** Amends § 245C.15, subd. 2. Adds a cross-reference to the involuntary termination of parental rights statute.
- Provides a May 22, 2009, effective date.
- 16 License holder record keeping.** Amends § 245C.20, by adding subd. 2. Requires a license holder to maintain a copy of person's background study in the license holder's files when the study has been initiated by a personnel agency, educational program, or professional service agency.
- 17 Classification of certain data.** Amends § 245C.22, subd. 7. Adds that data regarding a disqualified individual is private data when the individual is a household member of a licensed foster care provider, and the individual previously received foster care services from the provider, was subsequently adopted by the provider, and the disqualifying event occurred before the adoption.
- 18 Medicaid reimbursement; licensed provider; related individuals.** Amends § 256B.092, subd. 4d, to allow Medicaid reimbursement for supported living services provided by a related individual when the provisions of 245A.30, subd. 9 are met. (See § 3 above.)
- 19 Definitions.** Amends § 626.556, subd. 2. Defines "nonmaltreatment mistake" within the Maltreatment of Minors Act. Specifies that this definition only applies to licensed child care centers.
- 20 Determinations.** Amends § 626.556, subd. 10e. Prohibits the evaluation of the facility's responsibility for determined maltreatment to be based on the completeness of the risk assessment or risk reduction plan and requires the evaluation of responsibility to be based

on the facility's compliance with the regulatory standards for policies and procedures, training, and supervision.

- 21 Consumer satisfaction; human services.** Requires the commissioner to submit an annual memorandum to the governor and legislature with listed information related to consumer satisfaction and resolution of consumer complaints. Requires the commissioner to publish the memorandum on the department's website each year. States that the first memorandum is due February 15, 2012, and annually thereafter. Provides a January 1, 2011, effective date.
- 22 Consumer satisfaction; commerce.** Requires the commissioner to submit an annual memorandum to the governor and legislature with listed information related to consumer satisfaction and resolution of consumer complaints. Requires the commissioner to publish the memorandum on the department's website each year. States that the first memorandum is due February 15, 2012, and annually thereafter. Provides a January 1, 2011, effective date.
- 23 Transfer of real property.** Allows the commissioner of administration to sell for fair market value all or part of the property at the Brainerd Regional Human Services Center to a federally recognized Indian tribe for public purposes. Requires approval of the attorney general. Allows the commissioner of human services to enter into a shared services agreement. Permits acquisition of easements on the Brainerd campus, but states that this authority expires May 15, 2015.
- 24 Repealer.** Paragraph (a) repeals Minnesota Rules, part 2500.5000, a rule regarding record keeping for chiropractors. This rule was enacted as in 2009 as Minnesota Statutes 2009 Supplement, section 148.107.

Paragraph (b) repeals § 256B.0919, subd. 4, related to licensure of related individuals to provide services.

Article 2: DHS Hearings

- 1 Fair hearing ~~when disqualification is not set aside~~ following a reconsideration decision.** Amends § 245C.27, subd. 1, including the headnote. Permits an individual to request a fair hearing following a reconsideration decision under § 245C.23 when the individual has been disqualified based on a preponderance of the evidence.
- 2 Consolidated fair hearing following a reconsideration decision.** Amends § 245C.27, subd. 2. Strikes the term "set aside" to make clear that an individual has a right to request a fair hearing following a reconsideration decision under § 245C.23.
- 3 Employees of public employer.** Amends § 245C.28, subd. 3. Strikes the term "set aside" to make clear that an individual has a right to request a fair hearing following a reconsideration decision under § 245C.23. Clarifies that if a disqualification is deemed conclusive under section 245C.29 then the individual may not request a contested case hearing.
- 4 State agency hearings.** Amends § 256.045, subd. 3. Clarifies that in individual has the right to request a fair hearing following a reconsideration decision issued under § 245C.23.

- 5 **Administrative reconsideration; review panel.** Amends § 626.556, subd. 10i. States that an individual whose reconsideration of maltreatment determination has been denied, and the individual remains disqualified following a reconsideration decision, then the individual may request a fair hearing.
- 6 **Administrative reconsideration; review panel.** Amends § 626.557, subd. 9d. States that an individual whose reconsideration of maltreatment determination has been denied, and the individual remains disqualified following a reconsideration decision, then the individual may request a fair hearing.