Certified License-Exempt Child Care Centers: Implementation Plan for 2019 Legislative Changes

Office of Inspector General, Licensing Division

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Introduction

The 2019 Legislature changed several laws that impact certified license-exempt child care centers, including certification requirements and background study requirements. Many of the changes were necessary to bring Minnesota into compliance with the federal Child Care and Development Block Grant Reauthorization Act of 2014 or to address gaps in current statute.

Each section of this Implementation Plan contains:
- the actual text of the law, including the changes made during the 2019 legislative session
- an overview of each new or changed requirement
- what the change means for providers
- guidance on how licensors will monitor these changes.

Forms have been created or updated to reflect the legislative changes and are available on the Department of Human Services (DHS) Licensing website.

Key

The actual text of the laws and how they were changed are shown in the shaded box at the beginning of each section of this plan. Here is how to read those sections:

Plain text is unchanged – it was the law before and continues to be the law.

Stricken text (like this) is used on words that are being removed from the law.

Underlined text (like this) is used for words that are being added to the law.
**Supervision**

Minn. Stat. 245H.13, subd. 10

**Subd. 10. Supervision.** Staff must supervise each child at all times. Staff are responsible for the ongoing activity of each child, appropriate visual or auditory awareness, physical proximity, and knowledge of activity requirements and each child’s needs. Staff must intervene when necessary to ensure a child’s safety. In determining the appropriate level of supervision of a child, staff must consider: (1) the age of a child; (2) individual differences and abilities; (3) indoor and outdoor layout of the child care program; and (4) environmental circumstances, hazards, and risks.

**Overview**

This establishes basic supervision requirements for certified centers to follow. It allows for variation based upon the ages and needs of the children. It does not require that children have to be within sight and hearing. This supervision definition only applies to certified license-exempt centers.

**What do providers need to do?**

Ensure that your supervision practices comply with this definition and make changes, if necessary. Familiarize yourself and your staff with this supervision definition. In many cases, this may not be a change from your current practice and may not require you to do anything differently.

**How will licensors monitor for compliance?**

Beginning Sept. 30, 2019, licensors will monitor through observation that the supervision requirements are being followed. If DHS receives information that supervision requirements are not being followed, a certification investigation may take place.
Due process: reconsideration of certification application denial

Minn. Stat. 245H.03, subd. 4

Subd. 4. Reconsideration of certification denial. (a) The applicant may request reconsideration of the denial by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within 20 calendar days after the applicant received the order. If a request is made by personal service, it must be received by the commissioner within 20 calendar days after the applicant received the order. The applicant may submit with the request for reconsideration a written argument or evidence in support of the request for reconsideration.

(b) The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Overview

When the certified license-exempt child care center statute was enacted, it did not include due process rights provided to license applicants and licensed providers. The 2019 law takes several steps to correct this oversight. Effective Sept. 30, 2019, this section allows an applicant who is denied certification to request reconsideration and outlines that process.

What do providers need to do?

If your application to become a certified license-exempt child care center is denied, you have the right to request reconsideration. This request must be made in writing, within 20 calendar days of receiving the denial. You can include a written argument or evidence to support your request for reconsideration. The commissioner’s decision on a request for reconsideration is final and cannot be appealed.

How will licensors monitor for compliance?

n/a
Due process: reconsideration of decertification

Minn. Stat. 245H.07, subd. 1-4

Subdivision 1. Generally. (a) The commissioner may decertify a center if a certification holder:

(1) failed to comply with an applicable law or rule; or

(2) knowingly withheld relevant information from or gave false or misleading information to the commissioner in connection with an application for certification, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules; or

(3) has authorization to receive child care assistance payments revoked pursuant to chapter 119B.

(b) When considering decertification, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule.

(c) When a center is decertified, the center is ineligible to receive a child care assistance payment under chapter 119B.

Subd. 2. Reconsideration of decertification. (a) The certification holder may request reconsideration of the decertification by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within 20 calendar days after the certification holder received the order. If a request is made by personal service, it must be received by the commissioner within 20 calendar days after the certification holder received the order. With the request for reconsideration, the certification holder may submit a written argument or evidence in support of the request for reconsideration.

(b) The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Subd. 3. Decertification due to maltreatment. If the commissioner decertifies a center pursuant to subdivision 1, paragraph (a), clause (1), based on a determination that the center was responsible for maltreatment, and if the center requests reconsideration of the decertification according to subdivision 2, paragraph (a), and appeals the maltreatment determination under section 626.556, subdivision 10i, the final decertification determination is stayed until the commissioner issues a final decision regarding the maltreatment appeal.

Overview

When the certified license-exempt child care center statute was enacted, it did not include due process rights provided to license applicants and licensed providers. The 2019 law takes several steps to correct this oversight. Effective Sept. 30, 2019, this section allows a certified center that loses its certification to
request reconsideration. The bill also included a new subd. 4, effective February 26, 2021, which lays out due process rights if you are decertified for revocation of child care assistance.

What do providers need to do?

If you have lost your certification, you may request reconsideration. This request must be made in writing, within 20 calendar days of receiving the decertification. You can include a written argument or evidence to support your request for reconsideration. The commissioner’s decision on a request for reconsideration is final and cannot be appealed.

How will licensors monitor for compliance?

n/a
Written policies for reporting abuse and neglect

Minn. Stat. 245H.11 REPORTING.

(a) The certification holder must comply and must have written policies for staff to comply with the reporting requirements for abuse and neglect specified in section 626.556. A person mandated to report physical or sexual child abuse or neglect occurring within a certified center shall report the information to the commissioner.

(b) The certification holder must inform the commissioner within 24 hours of:

(1) the death of a child in the program; and

(2) any injury to a child in the program that required treatment by a physician.

Overview

In order to be certified, centers were required to provide written policies for reporting abuse and neglect and are already required to comply with mandatory reporting requirements under the Maltreatment of Minors Act (626.556). This change simply requires the center to continue to maintain this written policy.

What do providers need to do?

You must maintain your written policies for reporting abuse and neglect. If you choose to review your policies, you can refer to the Guidelines for Developing Policies and Procedures for Certified Centers for what must be included.

There is a DHS sample policy, Maltreatment of Minors Mandated Reporting Policy for Certified Centers, available for centers to use.

How will licensors monitor for compliance?

Beginning Sept. 30, 2019, licensors will review your written policies for reporting abuse and neglect. Your licensor will look to see that you have maintained these policies and that they contain all of the required information.
**Written health and safety policies**

Minn. Stat. 245H.13, subd. 8

Subd. 8. **Required policies.** A certified center must have written policies for health and safety items in subdivisions 1 to 6.

**Overview**

In order to be certified, centers were required to provide written policies for these health and safety items:

- Exclusion of sick children and infectious disease outbreak control
- Immunizations
- Administration of medication
- Preventing and responding to allergies
- Building and physical premises; free of hazards
- Transporting children

This change simply requires the center to continue to maintain these written policies.

**What do providers need to do?**

You must maintain your written health and safety policies. If you choose to review your policies, you can refer to the [Guidelines for Developing Policies and Procedures for Certified Centers](#) for what must be included.

**How will licensors monitor for compliance?**

Beginning Sept. 30, 2019, licensors will review your written health and safety policies. Your licensor will look to see that you have maintained each of these policies and that they contain all of the required information.
Fire marshal inspection

Minn. Stat. 245A.151 FIRE MARSHAL INSPECTION.

When licensure under this chapter or certification under chapter 245H requires an inspection by a fire marshal to determine compliance with the State Fire Code under section 299F.011, a local fire code inspector approved by the state fire marshal may conduct the inspection. If a community does not have a local fire code inspector or if the local fire code inspector does not perform the inspection, the state fire marshal must conduct the inspection. A local fire code inspector or the state fire marshal may recover the cost of these inspections through a fee of no more than $50 per inspection charged to the applicant or license holder or license-exempt child care center certification holder. The fees collected by the state fire marshal under this section are appropriated to the commissioner of public safety for the purpose of conducting the inspections.

Minn. Stat. 245H.13, subd. 5

Subd. 5. Building and physical premises; free of hazards. (a) The certified center must document compliance with the State Fire Code by providing To be accepted for certification, the applicant must demonstrate compliance with the State Fire Code, section 299F.011, by either:

(1) providing documentation of a fire marshal inspection completed within the previous three years by a state fire marshal or a local fire code inspector trained by the state fire marshal.; or

(2) complying with the fire marshal inspection requirements according to section 245A.151.

(b) The certified center must designate a primary indoor and outdoor space used for child care on a facility site floor plan.

(c) The certified center must ensure the areas used by a child are clean and in good repair, with structurally sound and functional furniture and equipment that is appropriate to the age and size of a child who uses the area.

(d) The certified center must ensure hazardous items including but not limited to sharp objects, medicines, cleaning supplies, poisonous plants, and chemicals are out of reach of a child.

(e) The certified center must safely handle and dispose of bodily fluids and other potentially infectious fluids by using gloves, disinfecting surfaces that come in contact with potentially infectious bodily fluids, and disposing of bodily fluid in a securely sealed plastic bag.

Overview

Effective Sept. 30, 2019, certified centers that need to obtain a fire marshal inspection will be required to pay $50 to the state fire marshal for the inspection.
What do providers need to do?

New applicants who have not had an inspection in the previous three years, certified centers who have experienced significant changes to their physical space and certified centers that are relocating to a new location must have an inspection done by the state fire marshal. The fee for the inspection is $50. Your licensor will work with you on this process.

How will licensors monitor for compliance?

Before a location change, updated floor plan, or new certification application is approved, licensors will check for documentation that a state fire marshal inspection was completed.
Risk reduction plan

Minn. Stat. 245H.13, subd. 7

Subd. 7. **Risk reduction plan.** (a) The certified center must develop a risk reduction plan that identifies risks to children served by the child care center. The assessment of risk must include risks presented by (1) the physical plant where the certified services are provided, including electrical hazards; and (2) the environment, including the proximity to busy roads and bodies of water.

(b) The certification holder must establish policies and procedures to minimize identified risks. After any change to the risk reduction plan, the certification holder must inform staff of the change in the risk reduction plan and document that staff were informed of the change.

Overview

Federal law requires child care providers account for risks to children. Existing certified center law covers most required risk areas. The 2019 law brings Minnesota certified centers fully into compliance with this requirement by having centers create a risk reduction plan to identify and address safety risks associated with the safety of the building and physical premises, including electrical hazards, bodies of water and vehicular traffic. The risk reduction plan provides an opportunity to evaluate the unique physical plant and environment of your certified center. When risks are identified and policies and procedures are proactively put in place, it can minimize risks for children.

What do providers need to do?

By Sept. 30, 2019, certified centers must create a risk reduction plan unique to each certified center that assesses the risks of the physical plant and environment and lays out policies and procedures to minimize those risks. An optional **Risk Reduction Plan** form is available on the DHS Licensing website or you can create your own form. This must have two sections: one addressing the physical plant, one addressing the environment.

- The physical plant includes the space used by your certified center, including the layout and structure of the building. At a minimum, the physical plant section must describe electrical hazard risks. Any other risks may be added.
- The environment includes the outdoor area used by the certified center and surrounding the building. At a minimum, the environment section must describe risks involving proximity to busy roads and bodies of water. Any other risks may be added.

Staff must be informed of your risk reduction plan and you must have documentation. Any change to the risk reduction plan requires documentation of the day the change was made and documentation that staff
were informed of the change. All documentation must include the staff person’s name and date they were informed. The optional DHS Risk Reduction Plan form includes space for recording this documentation.

See the sample Risk Reduction Plan for additional information.

How will licensors monitor for compliance?

Beginning Sept. 30, 2019, licensors will review your written risk reduction plan. Your licensor will look to see that you have a risk reduction plan for each individual certified center, that it contains all of the required information (physical plant and environment sections, including risks and related policies and procedures to minimize the risks) and documentation that staff have been informed of the plan.
Behavior guidance

Minn. Stat. 245H.13, subd. 9

Subd. 9. Behavior guidance. The certified center must ensure that staff and volunteers use positive behavior guidance and do not subject children to:

(1) corporal punishment, including but not limited to rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking;

(2) humiliation;

(3) abusive language;

(4) the use of mechanical restraints, including tying;

(5) the use of physical restraints other than to physically hold a child when containment is necessary to protect a child or others from harm; or

(6) the withholding or forcing of food and other basic needs.

Overview

This establishes a basic behavior guidance standard that all certified centers must follow. Staff and volunteers must use positive behavior guidance and not engage in any behavior that may harm children.

What do providers need to do?

You must ensure your staff and volunteers use positive behavior guidance. Children must not be subjected to corporal punishment, humiliation, abusive language, mechanical or physical restraints or the withholding of basic needs. The law does allow for the use of physical restraints when holding a child is necessary to protect the child or others from harm.

How will licensors monitor for compliance?

Beginning Sept. 30, 2019, licensors will monitor through observation that behavior guidance requirements are being followed. If DHS receives information that behavior guidance requirements are not being followed, a certification investigation may take place.
Emergency plan

Minn. Stat. 245H.15, subd. 1

Subdivision 1. **Written emergency plan.** (a) A certified center must have a written emergency plan for emergencies that require evacuation, sheltering, or other protection of children, such as fire, natural disaster, intruder, or other threatening situation that may pose a health or safety hazard to children. The plan must be written on a form developed by the commissioner and reviewed and updated at least once each calendar year. The annual review of the emergency plan must be documented.

(b) The plan must include:

(1) procedures for an evacuation, relocation, shelter-in-place, or lockdown;

(2) a designated relocation site and evacuation route;

(3) procedures for notifying a child's parent or legal guardian of the relocation and reunification with families;

(4) accommodations for a child with a disability or a chronic medical condition;

(5) procedures for storing a child's medically necessary medicine that facilitates easy removal during an evacuation or relocation;

(6) procedures for continuing operations in the period during and after a crisis; and

(7) procedures for communicating with local emergency management officials, law enforcement officials, or other appropriate state or local authorities; and

(8) accommodations for infants and toddlers.

(c) The certification holder must have an emergency plan available for review upon request by the child's parent or legal guardian.

Overview

Federal law requires a child care provider’s emergency plan to include accommodations for infants and toddlers, if the provider serves those ages. The 2019 law brings Minnesota certified centers into compliance with this requirement.
What do providers need to do?

If your certified center serves infants, toddlers or both, accommodations for these young children must be added to your emergency plan. The plan must include information about how you will accommodate the unique needs of these age groups during a shelter-in-place, lockdown situation, evacuation and relocation. The *Child Care Emergency Plan* currently requires information on accommodations for infants and toddlers in the evacuation and relocation procedures. DHS has created an *Emergency Plan Addendum* so that you can document how you will accommodate infants and toddlers during a shelter-in-place and lockdown situation. If your center serves infants or toddlers, similar to the requirement to use the DHS *Child Care Emergency Plan* form, you must also use the *Emergency Plan Addendum*.

How will licensors monitor for compliance?

As is current practice, licensors will review the certified center’s emergency plan. Beginning Sept. 30, 2019, they will look to see that your emergency plan includes the addendum with accommodations for infants and toddlers, if applicable.
Training definitions

Minn. Stat. 245H.01, subd.7-9

Subd. 7. **Substitute.** "Substitute" means an adult who is temporarily filling a position as a staff person for less than 240 hours total in a calendar year due to the absence of a regularly employed staff person who provides direct contact services to a child.

Subd. 8. **Staff person.** "Staff person" means an employee of a certified center who provides direct contact services to children.

Subd. 9. **Unsupervised volunteer.** "Unsupervised volunteer" means an individual who: (1) assists in the care of a child in care; (2) is not under the continuous direct supervision of a staff person; and (3) is not employed by the certified center.

Overview

Defining these roles in statute provides clarity for the training requirements (245H.14) and other references in 245H to those terms. The changes to training requirements bring Minnesota into compliance with federal law for certified centers.

What do providers need to do?

Consult these definitions if you need guidance on who must receive specific trainings.

Establish a process for tracking substitute hours to ensure that those who work more than 240 hours in a calendar year complete the required trainings.

- The 240 hours is site-specific.
- If a substitute works more than 240 hours in a calendar year, then the substitute needs the training required of a staff person.

Establish a process for tracking volunteers to identify volunteers who are always supervised and those who are unsupervised. An example of an unsupervised volunteer is a parent who accompanies a child to the bathroom and is not directly supervised by another staff person. If parents or other volunteers are always supervised and never alone with children, they are supervised volunteers and do not require training.

How will licensors monitor for compliance?

These definitions will guide licensors when reviewing training documentation to ensure all individuals have completed required trainings.
First aid and cardiopulmonary resuscitation (CPR) training

Minn. Stat. 245H.14, subd.1

Subdivision 1. First aid and cardiopulmonary resuscitation. At least one designated staff person who completed pediatric first aid training and pediatric cardiopulmonary resuscitation (CPR) training must be present at all times at the program, during field trips, and when transporting a child. The designated staff person must repeat pediatric first aid training and pediatric CPR training at least once every two years.

(a) Before having unsupervised direct contact with a child, but within the first 90 days of employment for the director and all staff persons, and within 90 days after the first date of direct contact with a child for substitutes and unsupervised volunteers, each person must successfully complete pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) training, unless the training has been completed within the previous two calendar years. Staff must complete the pediatric first aid and pediatric CPR training at least every other calendar year and the center must document the training in the staff person's personnel record.

(b) Training completed under this subdivision may be used to meet the in-service training requirements under subdivision 6.

Overview

Pediatric first aid and pediatric CPR training must be completed before unsupervised direct contact with children and ongoing for the director, all staff persons, substitutes and unsupervised volunteers. The 2019 law brings Minnesota certified centers into compliance with federal requirements.

What do providers need to do?

It is no longer acceptable to have just one designated person with pediatric first aid and pediatric CPR training. You must ensure the director and all staff persons, including substitutes, and unsupervised volunteers complete pediatric first aid and pediatric CPR training. Reference the new definitions in 245H.01 (p. 18) if you are unsure if someone needs to be trained. The training must be completed before having unsupervised direct contact with a child. The director and staff must complete it within the first 90 days of employment. Substitutes and unsupervised volunteers must complete it within 90 days after the first date of direct contact with a child. Pediatric first aid and pediatric CPR training must be completed on an ongoing basis, at least every other calendar year. If an individual has completed the training within the previous two calendar years, the requirement has been met. You will need to make available the training records for the two previously completed calendar years. For certified centers, the pediatric first aid and
pediatric CPR training requirement does not include that it needs to be provided by a certified first aid and CPR trainer.

How will licensors monitor for compliance?

As is current practice, licensors will review pediatric first aid and pediatric CPR training. Beginning Sept. 30, 2019, licensors will review documentation of pediatric first aid and pediatric CPR training for the director (new requirement), staff persons (new requirement: all staff), substitutes (new requirement) and unsupervised volunteers (new requirement).

Individuals whose start date and date of first contact is prior to Sept. 30, 2019, will be required to comply with pediatric first aid and pediatric CPR training requirements by Jan. 1, 2020.

Individuals whose start date and date of first contact is after Sept. 30, 2019, must complete pediatric first and pediatric CPR training within 90 days and prior to unsupervised direct contact.
Sudden unexpected infant death training

Minn. Stat. 245H.14, subd. 2

Subd. 2. Sudden unexpected infant death. A certified center that cares for an infant who is younger than one year of age must ensure that the director, all staff persons, including substitutes, unsupervised volunteers, and any other volunteers receive training according to section 245A.1435 on reducing the risk of sudden unexpected infant death before assisting in the care of an infant.

Overview

The director, staff persons, substitutes and all volunteers (whether supervised or not) must receive training on reducing the risk of sudden unexpected infant death before caring for infants and again every calendar year. This is consistent with the current policy; the language now clearly lists all the roles.

What do providers need to do?

If your certified center serves infants, you must ensure the director, all staff persons, substitutes and all volunteers (whether supervised or not) receive training on reducing the risk of sudden unexpected infant death before providing care and again every calendar year.

How will licensors monitor for compliance?

As is current practice, licensors will review sudden unexpected infant death training. Beginning Sept. 30, 2019, licensors will review documentation of sudden unexpected infant death training for the director (new requirement), staff persons, substitutes (new requirement) and all volunteers. If your certified center only serves children one year of age and older, this training is not required.
Abusive head trauma training

Minn. Stat. 245H.14, subd. 3

Subd. 3. Abusive head trauma. A certified center that cares for a child through four years of age under school age must ensure that the director and all staff persons and volunteers, including substitutes and unsupervised volunteers, receive training on abusive head trauma from shaking infants and young children before assisting in the care of a child through four years of age under school age.

Overview

The new legislation clarifies that the director, all staff persons, substitutes and unsupervised volunteers must complete abusive head trauma training prior to assisting in the care of a child under school age. It also changes the applicable age from four years old to under school age.

What do providers need to do?

If your certified center serves children under school age, you must ensure the director, all staff persons, substitutes and unsupervised volunteers receive abusive head trauma training. If your certified center only serves school age children, even those who are four years old, this training is not required.

How will licensors monitor for compliance?

As is current practice, licensors will review abusive head trauma training. Beginning Sept. 30, 2019, licensors will review documentation of abusive head trauma training for the director (new requirement), staff persons, substitutes (new requirement) and unsupervised volunteers. Supervised volunteers will no longer need the training. If your certified center only serves school age children, this training is not required.
Child development training

Minn. Stat. 245H.14, subd. 4

Subd. 4. Child development. The certified center must ensure each staff person completes at least two hours of child development and learning training within 14 days of employment and annually every second calendar year thereafter. Substitutes and unsupervised volunteers must complete child development and learning training within 90 days after the first date of direct contact with a child and every second calendar year thereafter. The director and staff persons not including substitutes must complete at least two hours of training on child development. The training for substitutes and unsupervised volunteers is not required to be of a minimum length. For purposes of this subdivision, "child development and learning training" means how a child develops physically, cognitively, emotionally, and socially and learns as part of the child's family, culture, and community.

Overview

Child development training must be completed by the director, all staff, substitutes and unsupervised volunteers. The timeframe for this initial training is extended from within 14 days to within 90 days. The training must be at least two hours for the director and staff persons, but no minimum length is required for substitutes and unsupervised volunteers. It is required to be repeated every second calendar year.

What do providers need to do?

The director and all staff persons must complete two hours of child development training within 90 days of employment and ongoing, every other calendar year. Substitutes and unsupervised volunteers must complete child development training within 90 days after the first date of direct contact with a child and ongoing, every other year. However, there is no minimum training length for substitutes and unsupervised volunteers. Child development training taken within the previous two years satisfies this requirement.

How will licensors monitor for compliance?

As is current practice, licensors will review child development training. Beginning Sept. 30, 2019, licensors will review documentation of child development training for the director (new requirement), staff persons, substitutes (new requirement) and unsupervised volunteers (new requirement).

For staff hired prior to Sept. 30, 2019, licensors will look for child development training that occurred within the year prior to employment or within 14 days of employment. The training is required to be two hours in length (old requirement). We will be looking for this to be completed every other year (new requirement).
For directors, staff, substitutes and unsupervised volunteers hired after Sept. 30, 2019, licensors will look for child development training that occurred within two years prior to the first date of direct contact or within 90 days of the first date of direct contact (new requirement). For directors and staff, the training is required to be two hours in length. For substitutes and unsupervised volunteers, there is no minimum length required. We will be looking for this to be completed every other year (new requirement).
**Orientation**

Minn. Stat. 245H.14, subd. 5

Subd. 5. **Orientation**. The certified center must ensure each staff person is the director and all staff persons, substitutes, and unsupervised volunteers are trained at orientation on health and safety requirements in sections 245H.11, 245H.13, 245H.14, and 245H.15. The certified center must provide staff with an orientation within 14 days of employment after the first date of direct contact with a child. Before the completion of orientation, a staff person these individuals must be supervised while providing direct care to a child.

**Overview**

The director, all staff, substitutes and unsupervised volunteers must receive orientation training on health and safety requirements before having unsupervised direct contact with a child. The 2019 law brings Minnesota certified centers into compliance with federal requirements. The timing of the training is changed from within 14 days of employment to within 14 days after the first date of direct contact with a child.

**What do providers need to do?**

Continue to provide orientation training to staff persons, including the director. In addition, make sure your substitutes and unsupervised volunteers receive orientation training. The training must occur within 14 days after the first date of direct contact with a child and before providing unsupervised direct care. Orientation training must cover the health and safety requirements in Minn. Stat. sections 245H.11, 245H.13, 245H.14 and 245H.15. The optional Orientation Training Record form has been updated to help you document this training.
How will licensors monitor for compliance?

As is current practice, licensors will review orientation training. Beginning Sept. 30, 2019, licensors will review documentation of orientation training for the director (new requirement), staff persons, substitutes (new requirement) and unsupervised volunteers (new requirement).

For staff hired prior to Sept. 30, 2019, licensors will look for orientation training within 14 days of employment (old requirement). Licensors will look to ensure staff were supervised prior to receiving orientation training.

For directors, staff, substitutes and unsupervised volunteers hired after Sept. 30, 2019, licensors will look for orientation training within 14 days of the first date of direct contact (new requirement). Licensors will look to ensure directors, staff, substitutes and unsupervised volunteers were supervised prior to receiving orientation training.
In-service training

Minn. Stat. 245H.14, subd. 6

Subd. 6. In service. (a) The certified center must ensure each the director and all staff person--persons, including substitutes and unsupervised volunteers, are trained at least annually once each calendar year on health and safety requirements in sections 245H.11, 245H.13, 245H.14, and 245H.15.

(b) The director and each staff person, not including substitutes, must annually complete at least six hours of training each calendar year. Training required under paragraph (a) may be used toward the hourly training requirements of this subdivision.

Overview

The 2019 law clarifies that the director and all staff persons, including substitutes, must receive ongoing in-service training on health and safety requirements. Additionally, unsupervised volunteers must also receive this training. Six hours of training is required each calendar year for the director and all staff persons. There is no minimum length for substitutes and unsupervised volunteers.

What do providers need to do?

The director, all staff persons, substitutes and unsupervised volunteers must complete in-service training each calendar year.

- The director and every staff person must complete six hours of in-service training each calendar year.
- There is no minimum length required for substitutes or unsupervised volunteers.
- In-service must include training on the health and safety requirements in Minn. Stat. sections 245H.11, 245H.13, 245H.14 and 245H.15.

Beginning Sept. 30, 2019, your in-service training documentation must now include records for the director, substitutes, and unsupervised volunteers, in addition to staff persons. The optional Yearly In-Service Training Record form has been updated to reflect the 2019 legislative changes. As a reminder, other required trainings may count toward in-service hours.
How will licensors monitor for compliance?

As is current practice, licensors will review in-service training. Licensors will review in-service training completed during the previous calendar year. In 2020, licensors will look to ensure that the director, staff persons, substitutes and unsupervised volunteers received the health and safety trainings outlined in Minn. Stat. sections 245H.11, 245H.13, 245H.14 and 245H.15 in 2019. Licensors will also review documentation to show that the director and staff persons had at least six hours of in-service training in the previous calendar year.
Background study disqualification variance

Minn. Stat. 245C.30, subd. 1-3

Subdivision 1. License holder and license-exempt child care center certification holder variance. (a) Except for any disqualification under section 245C.15, subdivision 1, when the commissioner has not set aside a background study subject’s disqualification, and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to people receiving services, the commissioner may grant a time-limited variance to a license holder or license-exempt child care center certification holder.

(b) The variance shall state the reason for the disqualification, the services that may be provided by the disqualified individual, and the conditions with which the license holder, license-exempt child care center certification holder, or applicant must comply for the variance to remain in effect.

(c) Except for programs licensed to provide family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the variance must be requested by the license holder or license-exempt child care center certification holder.

Subd. 2. Disclosure of reason for disqualification. (a) The commissioner may not grant a variance for a disqualified individual unless the applicant, license-exempt child care center certification holder, or license holder requests the variance and the disqualified individual provides written consent for the commissioner to disclose to the applicant, license-exempt child care center certification holder, or license holder the reason for the disqualification.

(b) This subdivision does not apply to programs licensed to provide family child care for children, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home. When the commissioner grants a variance for a disqualified individual in connection with a license to provide the services specified in this paragraph, the disqualified individual's consent is not required to disclose the reason for the disqualification to the license holder in the variance issued under subdivision 1, provided that the commissioner may not disclose the reason for the disqualification if the disqualification is based on a felony-level conviction for a drug-related offense within the past five years.

Subd. 3. Consequences for failing to comply with conditions of variance. When a license holder or license-exempt child care center certification holder permits a disqualified individual to provide any services for which the subject is disqualified without complying with the conditions of the variance, the commissioner may terminate the variance effective immediately and subject the license holder to a licensing action under sections 245A.06 and 245A.07 or a license-exempt child care center certification holder to an action under sections 245H.06 and 245H.07.
Overview

Certified centers may request a variance for a potential staff person with a background study disqualification, in the same way that one can be provided to licensed child care centers.

What do providers need to do?

Effective Sept. 30, 2019, if you have an individual who does not receive a background study clearance and you believe the individual does not pose a risk of harm to anyone served by the program, you may request a time-limited variance. This does not apply to permanent disqualifications.

As is currently an option, an individual may request reconsideration to have their disqualification set-aside. If the disqualification is not set-aside, the not set-aside notice you receive will include information on how the center can request a variance. If granted a variance for the disqualified individual, you must follow the conditions of the variance for it to remain in effect.

Step-by-step explanation of set-aside and variance processes

A disqualification can be appealed by the disqualified individual by requesting reconsideration. The individual will receive the form and instructions for a reconsideration request with the notice of disqualification that is sent to the background study subject from DHS. A reconsideration may be granted (set-aside) if the information used to disqualify is incorrect, or the individual does not pose a risk of harm to people receiving services.

Some outcomes of an individual’s reconsideration request are:

- **Set-aside:** If the request for reconsideration demonstrates that the individual does not pose a risk of harm to anyone served by the program, the commissioner may set-aside the disqualification. The person remains disqualified but may have direct contact with or access to persons receiving services. The set-aside of a disqualification is limited to the certified center specified in the set-aside notice.

- **Not set-aside:** If the conditions for a set-aside are not met, the disqualification will not be set-aside. The subject will either have to be immediately removed from the subject’s position, or, if already removed, will not be allowed to return.
If a disqualification is not set-aside, the center may request a variance. Some outcomes of the center’s variance request are:

- **Not set-aside, variance granted**: Under the new law, DHS may grant a variance to a certified child care center to permit someone who was not granted a set-aside to remain affiliated with the program. A variance is a set of conditions under which a disqualified person may provide direct contact services or have access to people receiving services. The conditions are intended to minimize the risk of harm to people receiving services.

- **Not set-aside, variance not granted**: If a variance is not granted, the disqualification stands and the individual cannot be affiliated with the certified child care center.

How will licensors monitor for compliance?

Licensors will continue to review documentation to ensure a background study has been completed for everyone required under 245C. If you have an individual who has been granted a set-aside or variance, your licensor will review that set-aside or variance to ensure you are complying with its terms.
**Child care background study subject**

Minn. Stat. 245H.10, subd. 1

Subdivision 1. **Documentation Individuals to be studied.** (a) The applicant or certification holder must submit and maintain documentation of a completed background study for: each child care background study subject as defined in section 245C.02, subdivision 6a.

(1) each person applying for the certification;

(2) each person identified as a center operator or program operator as defined in section 245H.01, subdivision 3;

(3) each current or prospective staff person or contractor of the certified center who will have direct contact with a child served by the center;

(4) each volunteer who has direct contact with a child served by the center if the contact is not under the continuous, direct supervision by an individual listed in clause (1), (2), or (3); and

(5) each managerial staff person of the certification holder with oversight and supervision of the certified center.

(b) To be accepted for certification, a background study on every individual in paragraph (a), clause (1), applying for certification must be completed under chapter 245C and result in a not disqualified determination under section 245C.14 or a disqualification that was set aside under section 245C.22.

Minn. Stat. 245C.02, subd. 6a

Subd. 6a. **Child care background study subject.** (a) "Child care background study subject" means an individual who is affiliated with a licensed child care center, certified license exempt child care center, licensed family child care program, or legal nonlicensed child care provider authorized under chapter 119B, and who is:

(1) who is employed by a child care provider for compensation;

(2) whose activities involve assisting in the supervision care of a child for a child care provider; or

(3) who is required to have a background study under section 245C.03, subdivision 1.

(3) a person applying for licensure, certification, or enrollment;

(4) a controlling individual as defined in section 245A.02, subdivision 5a;
(5) an individual 13 years of age or older who lives in the household where the licensed program will be provided and who is not receiving licensed services from the program;

(6) an individual ten to 12 years of age who lives in the household where the licensed services will be provided when the commissioner has reasonable cause as defined in section 245C.02, subdivision 15;

(7) an individual who, without providing direct contact services at a licensed program, certified program, or program authorized under chapter 119B, may have unsupervised access to a child receiving services from a program when the commissioner has reasonable cause as defined in section 245C.02, subdivision 15; or

(8) a volunteer, contractor, prospective employee, or other individual who has unsupervised physical access to a child served by a program and who is not under supervision by an individual listed in clause (1) or (5), regardless of whether the individual provides program services.

(b) Notwithstanding paragraph (a), an individual who is providing services that are not part of the child care program is not required to have a background study if:

(1) the child receiving services is signed out of the child care program for the duration that the services are provided;

(2) the licensed child care center, certified license exempt child care center, licensed family child care program, or legal nonlicensed child care provider authorized under chapter 119B has obtained advanced written permission from the parent authorizing the child to receive the services, which is maintained in the child’s record;

(3) the licensed child care center, certified license exempt child care center, licensed family child care program, or legal nonlicensed child care provider authorized under chapter 119B maintains documentation on-site that identifies the individual service provider and the services being provided; and

(4) the licensed child care center, certified license exempt child care center, licensed family child care program, or legal nonlicensed child care provider authorized under chapter 119B ensures that the service provider does not have unsupervised access to a child not receiving the provider’s services.

**Overview**

This section consolidates current law and makes several changes, particularly as they relate to in-house field trips and contracted specialty service providers. Much of the background studies language in 245H.10 has been stricken and consolidated into 245C.02, subd. 6a. These provisions went into effect July 1, 2019.

All individuals directly employed by the certified center, even if they do not provide direct contact services, must have a background study. This means employees directly employed by the center such as cooks, janitors and office staff must have a study.
The law also clarifies when volunteers, contractors, prospective employees and others with unsupervised access need a background study.

- If they have physical access to a child and are supervised, they do not need a study.
- If they have physical access to a child and are not supervised, they DO need a study.
- If they have NO physical access, they do not need a study.

Additionally, individuals providing parent-approved services that are not part of the child care program, such as speech, special education, swimming lessons and community education classes, do not need a background study if they meet all four of these conditions:

- The child is signed out of the program
- The child’s record contains the parent’s prior written permission
- The child’s record contains the name of the service provider and the services provided and
- The service provider does not have unsupervised access to other children in care.

If certified center staff are present and providing supervision of the children during the services, such as speech, special education, swimming lessons and community education classes, the four conditions directly above would not need to be met and the individual providing the service would not need a background study.

What do providers need to do?

You must ensure that everyone who is directly employed by the certified center completes a background study, even if the individual is not providing child care services. This would include administrative staff directly employed by the certified center. This would not include school secretaries, nurses and other school employees located within the same building but employed by the school district, rather than the certified center.

Non-employees (such as volunteers, contractors, prospective employees) who are always supervised by someone who has had a background study do not need to have a study themselves. For example:

- A prospective employee who spends time in the classroom as a part of the interview process and is under continuous direct supervision by a center employee would not need a study.
- A school nurse who is employed by the school district would be able to administer medication and first aid without a background study as long as the nurse is always supervised by someone with a cleared background study.
- A janitor who is employed by the school district or a contracted company can carry out their job responsibilities without a background study as long as the janitor would never have unsupervised access to a child.
If your current practices allow for these individuals to have unsupervised access to children, you must either run a background study on these individuals or change your supervision practices.

Non-employees (such as a school district HR person) who have access to children’s records but do not have direct access to children would not need a study.

Non-employees who provide parent-approved services to a child are allowed to have unsupervised access to the child without having had a background study if they meet all four of these conditions:

- The child is signed out of the program
- The child’s record contains the parent’s prior written permission
- The child’s record contains the name of the service provider and the services provided and
- The service provider does not have unsupervised access to other children in care.

Providers are required to document that any service provider without a background study meets all four of these conditions. The name of the service provider can be an individual or company/organization, as appropriate.

As a reminder, if a certified center employee with a cleared background study provides supervision during use of a contractor or service provider, the contractor or service provider does not need a background study or documentation.

Consult the updated Is a Background Study Required? worksheet to assist you in determining whether an individual needs a study.

How will licensors monitor for compliance?

Licensors will review your use of contractors, volunteers, substitute and employee lists; background study documentation; and NetStudy 2.0 records to ensure all required individuals have completed a background study.
Additional background study databases

Minn. Stat. 245C.08, subd. 1

Subdivision 1. **Background studies conducted by Department of Human Services.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review:

(1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (j);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

(4) information from the Bureau of Criminal Apprehension, including information regarding a background study subject's registration in Minnesota as a predatory offender under section 243.166;

(5) except as provided in clause (6), information received as a result of submission of fingerprints for a national criminal history record check, as defined in section 245C.02, subdivision 13c, when the commissioner has reasonable cause for a national criminal history record check as defined under section 245C.02, subdivision 15a, or as required under section 144.057, subdivision 1, clause (2);

(6) for a background study related to a child foster care application for licensure, children's residential facilities, a transfer of permanent legal and physical custody of a child under sections 260C.503 to 260C.515, or adoptions, and for a background study required for family child care, certified license-exempt child care, child care centers, and legal nonlicensed child care authorized under chapter 119B, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) when the background study subject is 18 years of age or older, or a minor under section 245C.05, subdivision 5a, paragraph (c), information received following submission of fingerprints for a national criminal history record check; and

(iii) when the background study subject is 18 years of age or older or a minor under section 245C.05, subdivision 5a, paragraph (d), for licensed family child care, certified license-exempt child care, licensed child care centers, and legal nonlicensed child care authorized under chapter 119B, information obtained using non-fingerprint-based data including information from the criminal and sex offender registries for any state in which the background study subject resided for the past five years and information from the national crime information database and the national sex offender registry; and
(7) for a background study required for family child care, certified license-exempt child care centers, licensed child care centers, and legal nonlicensed child care authorized under chapter 119B, the background study shall also include, to the extent practicable, a name and date-of-birth search of the National Sex Offender Public website.

*The rest of the subdivision is unchanged.*

**Overview**

Beginning on July 1, 2019, background studies include a search of three additional name-based databases in order to meet federal requirements. These additional database searches are required for all adults affiliated with child care programs as well as for minors who are employed by the provider, involved in the supervision of children served by the program or if the commissioner has reasonable cause to require a national criminal history record check. DHS will initiate these additional searches. This change will not impact what is required to be entered in NETStudy 2.0 or the background study fees.

**What do providers need to do?**

Providers do not need to take any action at this time. Studies submitted through NETStudy 2.0 after July 1, 2019, automatically include these additional checks, as appropriate based on the legal requirements described above.

**How will licensors monitor for compliance?**

There is no change to how licensors monitor compliance based on these additional checks done by background studies.
Background studies: clearance notice for background study subjects who have lived outside of Minnesota in the last five years

Minn. Stat. 245C.13, subd. 3

**Subd. 3. Other state information.** If the commissioner has not received criminal, sex offender, or maltreatment information from another state that is required to be reviewed under this chapter within ten days of requesting the information, and the lack of the information is the only reason that a notice is issued under subdivision 2, paragraph (a), clause (1), item (ii), the commissioner may issue a notice under subdivision 2, paragraph (a), clause (1), item (i). The commissioner may take action on information received from other states after issuing a notice under subdivision 2, paragraph (a), clause (1), item (ii).

**Overview**

The study for a new employee who currently lives out of state or who has lived outside of Minnesota in the last five years requires search of the criminal, sex offender or maltreatment databases from the other state(s) where the new employee lived during those five years. If another state has not responded to the requested information after at least 10 days since DHS submitted the request — and this is the only reason that the study could not be cleared — DHS can issue a clearance notice. This clearance notice may be rescinded if the results from the other state(s) contains disqualifying information.

Currently, DHS waits weeks or months for some states to respond to information requests. The new law enables DHS to issue clearances as early as 10 days after submitting the out-of-state request. This change, effective July 1, 2019, allows Minnesota to comply with federal law while also allowing people to get clearances faster than is currently allowed.

**What do providers need to do?**

Providers need to comply with notices issued by DHS through NETStudy 2.0. Providers must ensure an individual required to have a background study does not have direct contact with children served by the program until receiving a notice indicating otherwise.

If you have a new employee who currently lives out of state or who has lived outside of Minnesota in the last five years, you are required to submit a form to DHS that will be used to complete a maltreatment check in the other state(s). A document titled **CC CANR Instructions** has been added into the “Help” section of NETStudy 2.0. This document contains instructions regarding what to do when an out of state maltreatment check is needed. It also contains links to the forms that are used for all other states. You should have the study subject follow the instructions on each form to complete them and then send the completed form to DHS immediately after their background study has been submitted. Please refer to the **CC CANR Instructions** document for further information. If you are not the individual with access to
NETStudy 2.0 for your organization, please connect with the person within your organization who can share a copy of these instructions.

How will licensors monitor for compliance?

Licensors will review your background study documentation to ensure all required individuals completed a background study and followed direct contact and supervision requirements prior to receiving the appropriate background study clearance.
**Background studies: direct contact**

Minn. Stat. 245C.13, subd. 2

Subd. 2. **Direct contact pending completion of background study.** The subject of a background study may not perform any activity requiring a background study under paragraph (b) (c) until the commissioner has issued one of the notices under paragraph (a).

(a) Notices from the commissioner required prior to activity under paragraph (b) include:

(1) a notice of the study results under section 245C.17 stating that:

   (i) the individual is not disqualified; or

   (ii) more time is needed to complete the study but the individual is not required to be removed from direct contact or access to people receiving services prior to completion of the study as provided under section 245C.17, subdivision 1, paragraph (b) or (c). The notice that more time is needed to complete the study must also indicate whether the individual is required to be under continuous direct supervision prior to completion of the background study;

(2) a notice that a disqualification has been set aside under section 245C.23; or

(3) a notice that a variance has been granted related to the individual under section 245C.30.

(b) For a background study affiliated with a licensed child care center or certified license exempt child care center, the notice sent under paragraph (a), clause (1), item (ii), must require the individual to be under continuous direct supervision prior to completion of the background study except as permitted in subdivision 3.

(c) Activities prohibited prior to receipt of notice under paragraph (a) include:

(1) being issued a license;

(2) living in the household where the licensed program will be provided;

(3) providing direct contact services to persons served by a program unless the subject is under continuous direct supervision; or

(4) having access to persons receiving services if the background study was completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause (2), (5), or (6), unless the subject is under continuous direct supervision; or

(5) for licensed child care center and certified license exempt child care centers, providing direct contact services to persons served by the program.
Overview

Beginning Sept. 30, 2019, anyone required to have a study cannot have direct contact with children until you have received a notice from DHS about the results of the background study. For a majority of studies, this process results in a clearance notice about two or three business days after the person is fingerprinted.

The process takes longer if the results from one of the databases show the individual may have disqualifying information. In which case, the center will get a notice stating more time is needed to complete the study. The notice will indicate whether or not the person can work with or without supervision.

What do providers need to do?

Providers need to ensure that an individual required to have a background study (staff, unsupervised volunteers, substitutes and other individuals as described in the Is a Background Study Required? worksheet) does not have direct contact with children served by the program until receiving a notice indicating otherwise. Providers must adhere to the notices sent through NETStudy 2.0.

- For individuals who need a study after Sept. 30, 2019, providers must ensure that the individual does not have direct contact until a notice indicating otherwise is received.
- Existing staff who currently have unsupervised direct contact may continue to have unsupervised direct contact while DHS rolls out enhanced studies. This remains true when you are notified by DHS to run enhanced studies on these existing staff. After the individual’s enhanced study is completed, if a notice is received indicating supervision is needed or a disqualification, you must follow the notice.

To expedite the process, you should encourage new background study subjects to complete the fingerprinting process as soon as possible to ensure the study can be completed quickly and the individual can begin working with children without a prolonged delay.

How will licensors monitor for compliance?

Licensors will review background study documentation, including dates of first supervised and unsupervised direct contact, to ensure all required individuals have completed a background study and did not have direct contact with a child prior to receiving the appropriate background study clearance.
Additional information: 2019 legislation

Mandatory fraud reporting

Licensors must immediately report any suspected fraud to county human services investigators or the DHS Office of Inspector General (800-627-9977, https://fraudhotline.dhs.mn.gov/).

Changes to Minnesota’s Child Care Assistance Program and Parent Aware

For information about changes to Minnesota’s Child Care Assistance Program and Parent Aware (Minnesota’s quality rating and improvement system), please visit https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/child-care-and-early-education/.

Additional clarifying information

Sunscreen

In previous communications, DHS has instructed certified centers that sunscreen must be stored out of reach of children. Effective immediately, sunscreen that is not stored out reach of children will not directly result in a violation of certification requirements. However, if a child does access sunscreen and harm is caused, the certified center may be subject to certification action.

Background study requirements for a Sensitive Information Person (SIP)

Having the role of a Sensitive Information Person (SIP) in and of itself does not require a background study. However, please refer to the Is a Background Study Required? worksheet to ensure the individual would not need a study otherwise. For example, a school district HR staff person designated as a SIP who is not an employee of the center would not need a study as long as the person does not have unsupervised access to children.

Certification Holder Contact Person and Center Operator access to background study information

The Certification Holder Contact Person (CHCP) will receive the onboarding tool via email that allows access to set up a NETStudy 2.0 account. The CHCP will need to designate a Sensitive Information Person (SIP), who will then have the ability to initiate a background study required for new and prospective employees. In order for the CHCP or Center Operator to have access to background study information, the SIP would need to create an account for the CHCP and/or Center Operator.