



Minnesota Department of **Human Services**

DATE: September 21, 2007

TO: 245B WAIVER SERVICES PROGRAMS SERVING PERSONS WITH DEVELOPMENT DISABILITIES

SUBJECT: Selected Highlights of Licensing Legislation from the 2007 Session

Minnesota Statutes, chapter 245A (Human Services Licensing Act) (See Minnesota Session Laws 2007, chapter 112). Unless otherwise noted, the changes became effective on August 1, 2007. The changes highlighted below are not a comprehensive list of all 2007 statutory changes that may impact DHS license holders.

1. Sec. 245A.04, subd. 14 [Policies and procedures for program administration required and enforceable]. A new subdivision was added to section 245A.04, that clarifies the responsibility of license holders to implement program policies and procedures required by statute and rule.

Subd. 14. Policies and procedures for program administration required and enforceable. (a) The license holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under Minnesota Statutes and Minnesota Rules.

(b) The license holder shall:

- (1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);
- (2) document the provision of this training; and
- (3) monitor implementation of policies and procedures by program staff.

(c) The license holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the commissioner.

2. Sec. 245A.04, subd. 15 [Pandemic planning]. A new subdivision was added to section 245A.04, that requires license holders to cooperate with state and local government disaster planning agencies to prepare for and react to pandemic emergencies. (Also, see the enclosure on pandemic planning).

Subd. 15. Pandemic planning. Upon request, the license holder must cooperate with state and local government disaster planning agencies working to prepare for or react to emergencies presented by a pandemic outbreak.

3. Sec. 245A.1435 [Reduction of risk of sudden infant death syndrome in licensed programs]. A new section was added to chapter 245A to reduce the risk of Sudden Infant Death Syndrome in programs that care for infants. Requires license holders to place infants to sleep on the infant's back unless documentation from the infant's parent

directing an alternate sleeping position and prohibits items such as pillows and comforters from being placed in the crib with the infant. Standards are based on national research and “Back to Sleep” campaign standards and make standards consistent with current training requirements under Minn. Stat. sec. 245A.144. Child care providers must meet crib requirements under sec. 245A.146.

Sec. 15. [245A.1435] REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME IN LICENSED PROGRAMS.

When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. Licensed child care providers must meet the crib requirements under section 245A.146.

4. Sec. 245A.65, subd. 1 [License holder requirements]. Clarifies policies and procedures requirements for license holders serving vulnerable adults to conduct an internal review relating to suspected or alleged maltreatment and requires development of a correction action plan following this review.

Subdivision 1. **License holder requirements.** All license holders serving vulnerable adults shall establish and enforce written policies and procedures related to suspected or alleged maltreatment, and shall orient clients and mandated reporters who are under the control of the license holder to these procedures, as defined in section 626.5572, subdivision 16.

(a) License holders must establish policies and procedures allowing but not mandating the internal reporting of alleged or suspected maltreatment. License holders shall ensure that the policies and procedures on internal reporting:

(1) meet all the requirements identified for the optional internal reporting policies and procedures in section 626.557, subdivision 4a; and

(2) identify the primary and secondary person or position to whom internal reports may be made and the primary and secondary person or position responsible for forwarding internal reports to the common entry point as defined in section 626.5572, subdivision 5. The secondary person must be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment.

(b) The license holder shall:

(1) establish and maintain policies and procedures to ensure that an internal review is completed and that corrective action is taken as necessary to protect the health and safety of vulnerable adults when the facility has reason to know that an internal or external report of alleged or suspected maltreatment has been made. The review must include an evaluation of whether related policies and procedures were followed, whether the policies and procedures were adequate, whether there is a need for additional staff training, whether the reported event is similar to past events with the vulnerable adults or the services involved, and whether there is a need for ~~any further corrective action to be taken~~ by the facility license holder to protect the health and safety of vulnerable adults; Based on the results of this review, the license holder must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or the license holder, if any.

(2) identify the primary and secondary person or position who will ensure that, when required, internal reviews are completed. The secondary person shall be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment; and

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(3) document and make internal reviews accessible to the commissioner upon the commissioner's request. The documentation provided to the commissioner by the license holder may consist of a completed checklist that verifies completion of each of the requirements of the review.

(c) The license holder shall provide an orientation to the internal and external reporting procedures to all persons receiving services. The orientation shall include the telephone number for the license holder's common entry point as defined in section 626.5572, subdivision 5. If applicable, the person's legal representative must be notified of the orientation. The program shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.

(d) The license holder shall post a copy of the internal and external reporting policies and procedures, including the telephone number of the common entry point as defined in section 626.5572, subdivision 5, in a prominent location in the program and have it available upon request to mandated reporters, persons receiving services, and the person's legal representatives.

5. Sec. 245A.65, subd. 1a [Determination of vulnerable adult status]. A new subdivision was added to section 245A.65 which requires license holders that provide services to adults who are excluded from the categorical definition of vulnerable adult under section 626.5572 to make a determination regarding functional vulnerable adult status. (Some adults who are excluded from the definition of "vulnerable adult" and thus are not categorically vulnerable adults, such as individuals in chemical dependency programs or offender programs, may still be considered a functional vulnerable adult if the individual possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction: (i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and (ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.)

Subd. 1a. Determination of vulnerable adult status. (a) A license holder that provides services to adults who are excluded from the definition of vulnerable adult under section 626.5572, subdivision 21, clause (2), must determine whether the person is a vulnerable adult under section 626.5572, subdivision 21, clause (4). This determination must be made within 24 hours of:

(1) admission to the licensed program; and

(2) any incident that:

(i) was reported under section 626.557; or

(ii) would have been required to be reported under section 626.557, if one or more of the adults involved in the incident had been vulnerable adults.

(b) Upon determining that a person receiving services is a vulnerable adult under section 626.5572, subdivision 21, clause (4), all requirements relative to vulnerable adults under section 626.557 and chapter 245A must be met by the license holder.

6. Sec. 245A.66 [Requirements; maltreatment of minors]. A new section was added to chapter 245A that requires license holders serving children, except for family child care and child foster care for children in license holder's residence, to establish policies and procedures to ensure that an internal review is completed and corrective action is taken when the facility has reason to know that a report of suspected or alleged maltreatment has been made. The change makes the standards for programs serving children consistent with the current standards for programs serving vulnerable adults.

[245A.66] REQUIREMENTS; MALTREATMENT OF MINORS.

Except for family child care settings and foster care for children in the license holder's residence, license holders serving children shall:

(1) establish and maintain policies and procedures to ensure that an internal review is completed and that corrective action is taken if necessary to protect the health and safety of children in care when the facility has reason to know that an internal or external report of alleged or suspected maltreatment has been made. The review must include an evaluation of whether:

(i) related policies and procedures were followed;

(ii) the policies and procedures were adequate;

(iii) there is a need for additional staff training;

(iv) the reported event is similar to past events with the children or the services involved; and

(v) there is a need for corrective action by the license holder to protect the health and safety of children in care.

Based on the results of this review, the license holder must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or the license holder, if any:

(2) identify the primary and secondary person or position who will ensure that, when required, internal reviews are completed. The secondary person shall be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment; and

(3) document that the internal review has been completed and provide documentation showing the review was completed to the commissioner upon the commissioner's request.

The documentation provided to the commissioner by the license holder may consist of a completed checklist that verifies completion of each of the requirements of the review.

Minnesota Statutes, chapter 245C (The Human Services Background Study Act)

7. Sec. 245C.07 [Study subject affiliated with multiple facilities]. The amendment clarifies the scope of the provision requiring one background study for license holders who own multiple facilities, to include applicants or other entities, and to apply to programs licensed by the Department of Health and the Department of Corrections. Only one study is required when an individual works for multiple programs under the same license holder if the specified conditions are met. Changes terminology from "facilities" to "programs or services." (Also see the enclosure on background study information.)

245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.

(a) When a license holder, applicant, or other entity owns multiple facilities programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed facilities programs or services if:

(1) the license holder designates one individual with one address and telephone number as the person to receive sensitive background study information for the multiple licensed programs or services that depend on the same background study; and

(2) the individual designated to receive the sensitive background study information is capable of determining, upon request of the department, whether a background study subject is providing direct contact services in one or more of the license holder's programs or services and, if so, at which location or locations.

(b) When a background study is being initiated by a licensed facility program or service or a foster care provider that is also registered under chapter 144D, a study subject affiliated with

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multiple licensed facilities programs or services may attach to the background study form a cover letter indicating the additional facilities' names of the programs or services, addresses, and background study identification numbers.

When the commissioner receives a notice, the commissioner shall notify each facility program or service identified by the background study subject of the study results.

The background study notice the commissioner sends to the subsequent agencies shall satisfy those facilities' programs' or services' responsibilities for initiating a background study on that individual.

Minnesota Statutes, section 626.556, Reporting of Maltreatment of Minors Act

8. Minnesota Statutes, section 626.556, Reporting of Maltreatment of Minors Act. Section 626.556, subdivision 2, paragraph (p) [Definitions]. The amendment defines “accidental” for purposes of consistency with the standard under the Reporting of Maltreatment of Vulnerable Adults Act for determining whether neglect or abuse occurred.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise: ...

(p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

- (1) is not likely to occur and could not have been prevented by exercise of due care; and
- (2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence of event.