

MAFCWA Question and Answer

Background Study Questions

1. Who can use the DHS Net Study for background checks?

Only dually licensed AFC/245B-Waivered Service (WS) programs can use the DHS study for completing their background checks. These homes can use these studies IF and WHEN the county tells them IN WRITING that the results of these studies will be accepted. A copy of the letter informing the license holder that the agency is accepting the DHS study must be kept in the licensing file.

It is possible for a county to give permission to these agencies on an individual level. For example, a county could have 24 dually licensed AFC/WS homes in the county. They may have told twelve in writing that the county will accept the DHS background study; while the other twelve may be required to have their background studies completed by the county. If your agency is accepting a DHS study, a county study should not be completed.

All child foster care (with or without WS), family child care, and adult foster care without WS must have their background studies completed by the county.

(see Minnesota Statutes 245C.04 and 245C.11 subd 2.13)

2. When should the Counties be receiving notice of new employees?

If the county is conducting the background study for the license holder, the county must immediately be notified of new employees so the background study can be initiated. Record of the background study must be maintained in the license holder's file. New employees must be under continuous direct supervision until either a clearance or a more time is needed notice is issued. The county needs to recommend a fine in any case where it is determined that a background study was not submitted on a person required to be studied before that person had direct contact with persons served in the program. When the county is conducting its own background studies for adult foster care, a new background study is required to be conducted at each reapplication.

If the county is accepting a DHS study from a dually licensed AFC/WS program, the county is required to monitor the program for compliance with BGS requirements. A new background study is not required at reapplication. Some counties request that license holders notify them of employee changes on a routine basis. Others monitor compliance when they visit the program. Again, when it is determined that a background study was not submitted on a person required to be studied before that person had direct contact with persons served in the program, the county needs to recommend a fine.

3. Does the county need to keep a record of employee's background study results?

As indicated in the answer to question #2, this depends on whether the county is conducting the background study or if the county is accepting the DHS study (see question #1). Under either scenario, the county is required to monitor for compliance, to issue correction orders, and recommend a fine when a program fails to initiate a background study before a person requiring a study has direct contact with persons receiving services.

When DHS conducts Rule 13 reviews, we expect to see documentation that you have completed the background study OR if you are accepting a DHS study, we will expect to see 1) documentation in the file that your agency is accepting a DHS study 2) names of the staff persons providing direct contact services for that license holder and 3) documentation of the county's verification of each staff person's background study status.

4. How should the 15 day notice letter be handled?

This is discussed in the body of the April 2006 Renewal Report Memo. If the study has not been completed, the more time is needed notice is required. Once that notice has been issued, the subject is not required to be under continuous direct supervision and counties cannot require an individual to continue to be supervised until their background study is completed. The "more time is needed notice" must be sent within 15-days IF a clearance letter or a DQ letter has not been issued.

(see Minnesota Statutes 245C.13 subd 1.)

5. Can Social Services charge for a background study?

No, pursuant to Minnesota Statutes, Chapter 245C there can be no fee charged for these background studies.

245C.10 Background Study; fees

Subdivision 1. Subject of background study. No applicant, license holder, or individual who is the subject of a background study shall pay any fees required to conduct the study.

6. When does the disqualified staff have to divulge their disqualifications to the provider during the reconsideration process?

If an individual is disqualified and the licensed holder/program is not ordered to immediately remove the individual from a position providing direct contact services, the license holder/program may choose to allow the person to continue working. In those cases, the individual must provide the license holder/program a copy of his/her notice of disqualification, which states the reason(s) he/she is disqualified.

(see Minnesota Statutes 245C.17, subd 3)

In addition, when a disqualification is set aside, the license holder/program is informed of the reason for the individual's disqualification in the set aside notice. Also, before a variance may be granted for a disqualification that has not been set aside for a person working in a corporate AFC, the disqualified individual must provide written consent for DHS to disclose to the license holder/program the reason for his/her disqualification.

(see Minnesota Statutes 245C.23, subd 1, and 245C.30, subd 2)

7. How should it work when both the county and state DHS discover disqualifications on an individual? Who is responsible for sending the disqualification letter? If the state DHS generates the letter, how can we be sure to get a copy of the disqualification letter for our files?

If DHS receives a background study on an individual, the individual has a disqualification, and we see that the individual has a family systems license, the Background Studies Unit notifies Family Systems. A staff member from Family Systems will contact the county licenser to discuss and, if the Background Studies Unit disqualifies him/her in connection with the Family Systems license, a copy of the notice will be sent to the county licenser. If the county receives new disqualifying information on an individual and you are aware that he/she also works in a directly licensed program, please call the Background Studies Unit at (651) 296-3971, and ask to speak to someone on the program team.

8. How long is the waiting list at this time for requests for reconsideration to be reviewed and processed? If we know that a provider will support a person with a disqualification, can we initiate the provider requesting reconsideration with their support to speed up the process?

As indicated in the February 2006 License Renewal Report (30-60-90-120), the Licensing Division's Legal Unit reviews requests for reconsideration of disqualifications based on the following priorities, focusing on the highest risk: 1) County and private agency recommendations for not set asides for current license holders that will result in a licensing action; 2) emergency relative foster care cases; 3) ICPC cases; 4) criminal sexual conduct cases; 5) Dakota County interagency agreement reviews; 6) applicants for licenses; 7) oldest pending cases; and 8) all other cases.

While we are making considerable headway in reducing the backlog, a backlog does remain, in part due to the fact that on average, each week we receive approximately 20 new requests for reconsideration, which must be reviewed according to the priorities listed above. The good news is that the majority of disqualification reconsideration requests relating to county and private agency-delegated areas are now current as of about June 2006, meaning that overall there is approximately a four-month backlog. Of course, as noted above, the highest priority cases are completed sooner.

The majority of those requests which have been pending for the longest period of time are requests relating to corporate adult foster care employees. This is based on the priority and the lower risk status given that the individual has either been immediately removed or is under continuous supervision if assessed to pose a risk of harm. A number of these cases involve individuals who are no longer in the employment of the adult foster care provider, which account for the majority of the oldest cases in this area. With regard to the corporate foster care variance requests, as you know, pursuant to Minnesota Statutes, Chapter 245C, the license holder must request a variance in order for a variance to be granted regarding a disqualified employee. When DHS receives a recommendation which already includes the license holder's request and support for a variance, this does speed up the process. Of course, before doing so, all notice requirements must be met.

The other primary category of oldest pending requests include a number of cases in which DHS has requested additional information from a county or private agency. As previously noted in the February 2006 License Renewal Report, the reconsideration record must be complete before the legal staff can proceed with the review.

9. **It would be helpful to know what reconsideration factors DHS looks at in deciding about granting a variance, set-aside or nothing. Is there information from us that can help expedite this?**

When determining whether a disqualified individual has demonstrated that they do not pose a risk of harm, the Commissioner must consider the risk of harm factors specified in Minnesota Statutes, section 245C.22, subdivisions 3 and 4. All of these factors are applied to each request in making a decision whether to set aside the disqualification. If the disqualification is not set aside, but the Commissioner has determined that there are conditions under which the disqualified individual may provide direct contact services or have access to persons receiving services that minimize the risk of harm, the Commissioner may grant a time-limited variance. Complete and specific information provided by the disqualified individual in support of their request as well as by the county or private agency in support of their recommendation and considering the risk of harm factors, assists DHS in completing the review in a timelier manner.

10. **There is a 7 year lookback; how do we determine the Risk of Harm level of Low, Medium, High when there is no conviction level?**

The factors you must consider in determining the subject's immediate risk of harm are independent of, and subsequent to, your determination that the individual is disqualified. The factors that must be considered in determining the immediate risk of harm are listed at Minnesota Statutes, section 245C.16, subd 1 (b). One of the factors to be considered is the recency of the discharge from probation. If an individual is disqualified for an offense for which there was no probation, then this factor would not be relevant.

11. **Do we need to run background studies on household members who turn 13 prior to relicensure, or can we just submit them with relicensure?**

This question was addressed in the September 2006 Monthly Renewal Report Memo. While initiating a background study at the time a household member turns 13 years of age between licensing periods is not technically required, we strongly recommend that one be initiated either at the time of the 13th birthday or at the "off year" visit if one is done. It has come to our attention that counties handle background studies for these household members turning 13 in a variety of ways. If a study is not done when these household members reach age 13, or at an "off year" visit, it is possible that a child could be close to age 15 before a study is done with the up to two year licensing periods.

12. **We have had some disqualifications upheld from DHS regarding 5th degree drug charges, however, they are not listed as disqualifiers under Chapter 152. Which one is correct?**

Even though the Chapter 152 crimes are only specified under the 15-year disqualification section of Chapter 245C, all offenses under Chapter 152 are disqualifications, and the look-back period is determined by the level of the offense. DHS is pursuing clarification of this statutory language.

13. **When a disqualifier is found, and there is no bar indicated, what look-back periods apply?**

It is important to remember that "bar" refers to a restriction on the commissioner's authority to set aside or grant variances to certain disqualifications, so the bars have no effect on the disqualification look-back periods.

Generally, the look-back periods are 15 years for felony level offenses, 10 years for gross misdemeanor offenses, 7 years for misdemeanor level offenses, and 7 years for serious/recurring maltreatment of a child or vulnerable adult. (Although child maltreatment records are required to be retained for at least 10 years under Minnesota Statutes, section 626.556, the disqualification look back period is 7 years.) Please refer to Chapter 245C and the Disqualification Guide that was distributed with the September 2005 Monthly Renewal Report Memo to determine disqualification periods.

General Licensing Questions

14. When is an age variance needed?

MN Rules, part 2960.3010, subp. 21, defines a foster child as a person under 18 years of age, a person in special education, or a juvenile under the jurisdiction of a juvenile court who is under 22 years of age and is placed in a foster home. A child who meets this definition may be in placement in a cfc home without an age variance. An age variance would be necessary for persons who do not meet the characteristics in the definition above. Also, a minimum age variance IS REQUIRED if a child is placed in an adult foster care home.

15. Can a corporate Adult Foster Home have a capacity for five if the clients are 55 and older?

A capacity of five (5) is allowed if all persons in care are age 55 or over and do not have a serious and persistent mental illness or a developmental disability. (see Minnesota Statutes, section 245A.11 (a))

16. Is there a way for a corporate adult foster care facility to have a capacity variance, only for the daytime hours, to also provide adult day care in the home?

Family Adult Day Services now has standards set in statute and any program providing that service must be licensed under those standards. (see Minnesota Statutes 245A.143)

17. Can we license relatives for AFC?

No. Residential programs that are provided to a person by an individual who is related, unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, are excluded from licensure. [see Minnesota Statutes, section 245A.03, subd. 2 (a) (1)] The county may certify a relative to care for an individual under certain circumstances.

18. If a relative is certified to care for one adult, can the home also be licensed to care for others?

If you have a situation like this, please contact a DHS licenser for technical assistance.

19. If you have a FADS and AFC licensed home, do you need to send in a dual license request?

No. An adult foster care license holder may provide family adult day services if the license holder meets the FADS requirements. [see Minnesota Statutes, section 245A.143, subd 1 (c)]

20. Can corporate AFC homes do FADS?

While it is clear from the Scope of Chapters 245A.143 that the intent was not to have corporate FADS programs, there is nothing to prohibit a corporation from making an application and requesting a variance to this rule part. The decision to approve or deny the request remains at the county level. There may be funding implications for a corporate provider.

[see Minnesota Statutes, section 245A.143, subd 1 (b)]