

## Children's Residential Facilities: 2020 Legislative Changes

The 2020 Legislature changed several laws that impact Department of Human Services (DHS) licensed children's residential facilities. The sections below contain an overview of each new or changed requirement, instructions for what providers need to do in response to the change, and a link to the law that was changed.

### Background study changes

Last year, the 2019 Legislature changed background study law to require all adults **working in** (see definition on page 4) a facility to have a background study. This year, the 2020 Legislature aligned several other background study requirements with the term 'working in' because this term includes some work activities that are not included in the definitions of direct contact or access (see definitions on page 4) which are typically used in background study law.

Some changes will only apply to facilities that are Title IV-E eligible as federal funding requirements prohibit a person from working in these facilities, even if supervised, before the results of a background study are received. The requirements that apply to **only** Title IV-E eligible facilities will be identified in the sections below.

### Definitions updated

#### Overview

The definition for the term "background study" was updated to include the term working in. A definition for the term "Title IV-E eligible" was added to distinguish background study requirements that apply to only those types of facilities. These changes are effective August 1, 2020. See [Minnesota Session Laws - 2020, 1st Special Session, Chapter 2, Article 5, Sections 5 and 8](#), for the full text of the law.

#### What do providers need to do?

No action is required from providers at this time.

### When background studies must occur

#### Overview

The law was amended to clarify the time frames by which a facility must submit a background study request to DHS. A license holder must submit a background study request to DHS **before** an adult begins working in the facility. For people in roles that do not include working in a facility, a background study request must be submitted:

- before a new license is issued to an applicant;
- before a person becomes a controlling individual for a facility;
- before a volunteer has unsupervised direct contact with a person that the program serves;
- before a person age 13 or older, who is not receiving services from the facility, lives in the facility;
- when directed to by DHS, if there is reasonable cause for a person age ten to 12, who is not receiving services from the facility, lives in the household where the licensed services are provided; and
- when directed to by DHS, if there is reasonable cause for a person who, without providing direct contact services, may have unsupervised access to people receiving services from the facility.

These changes are effective August 1, 2020. See [Minnesota Session Laws - 2020, 1st Special Session, Chapter 2, Article 5, Section 12](#), for the full text of the law.

### **What do providers need to do?**

Submit a background study request **before** an adult begins working in your facility or for people who do not work in your facility, according to the time frames described above.

## **Additional Background Study Changes**

Additional changes were made to when a person is legally allowed to begin working in a facility, to the activities a person is disqualified from, and to the ability to work in a Title IV-E eligible program during the disqualification reconsideration process. DHS is still determining how to implement these new requirements and will send information about the impact these changes will have on your staff and what you can expect, when there is more information to share. Licensors will not be enforcing these new requirements until further information is provided.

## **Other Changes**

### **Advanced Practice Registered Nurses**

#### **Overview**

An advanced practice registered nurse (APRN) was added as an alternative to a physician in requirements that previously only included a physician. The requirements in law where an APRN was added include:

- For providers that serve infants, an APRN may direct an alternative sleeping position for an infant. (245A.1435)
- The definition of “serious maltreatment” in background study law now includes neglect resulting in serious injury which reasonably requires the care of an APRN or a physician. (245C.02, subdivision 18)

This change is effective August 1, 2020. See [Minnesota Session Laws - 2020, Regular Session, Chapter 115, Article 4, Sections 78 and 79](#), for the full text of the law.

## **What do providers need to do?**

No action is required from providers at this time.

## **Maltreatment of Minors Act (MOMA)**

### **Overview**

Where MOMA is located in the law is changing from Minnesota Statutes, section 626.556 to [Minnesota Statutes, chapter 260E](#), as of August 1, 2020.

### **What do providers need to do?**

This does not change any reporting or training requirements for children’s residential facilities. Providers will need to update any policies, procedures, or forms that reference Minnesota Statutes, section 626.556 with the new statute number. DHS will update its website and forms to reflect this new statutory citation.

## Definitions

### Access to persons served by a program

"Access to persons served by a program" means physical access to persons receiving services, access to the persons' personal property, or access to the persons' personal, financial, or health information, without continuous, direct supervision, as defined in subdivision 8. ([245C.02, subdivision 2](#))

### Direct contact

"Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program. ([245C.02, subdivision 11](#))

### Working in

"Working in" includes any person in the facility – whether or not the person will have direct contact with a resident served by the facility – who:

- is an employee or
- is paid by (directly, indirectly, under a contract or through a contracted vendor) and is under the direction of the license holder.

Working in does **not** include the following three groups of people.

1. A person who provides services to a resident at the facility that are not part of the children's residential facility's programming (external mental health professionals, county case managers, etc.) if the person:
  - is not paid by the license holder
  - is not an employee nor under the direction of the license holder and
  - is under continuous direct supervision whenever they have physical access to other residents who are not receiving services from the person (for example, the person must be under continuous direct supervision while in common areas where other residents are present).
2. Repair people (plumbers, electricians, etc.) who are not employees of the facility and who are under continuous direct supervision if they have physical access to a resident.
3. Unpaid volunteers who are under continuous direct supervision whenever they have direct contact with a resident served by the facility.