

## Child foster residence settings: 2020 legislative changes

The 2020 Legislature changed several laws that impact background study requirements for Department of Human Services (DHS) licensed child foster residence settings. 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.

### Definitions

#### Overview

Definitions of “foster family setting” and “foster residence setting,” were added to the background studies section of statute. These terms are now used in Minnesota Statutes, chapter 245C to distinguish background study requirements for these two different settings. The definitions are consistent with what is found in the foster care rule (Minnesota Rules, chapter 2960.3010). The statute also adds a definition for “Title IV-E eligible” and updates “background study” to include the term working in. These changes are effective August 1, 2020. See [Minnesota Session Laws - 2020, 1st Special Session, Chapter 2, Article 5, Section 5](#), for the full text of the law.

#### What do providers need to do?

Familiarize yourself with these definitions and how they apply to the new law.

### Background studies required for *all* people working in a program

#### Overview

Background studies are now required for all people 18 or older working in a child foster residence setting – regardless of whether or not they have direct contact with people served by the program. This requirement is effective August 1, 2020. See [Minnesota Session Laws – 2020, 1<sup>st</sup> Special Session, Chapter 2, Article 5, Section 9](#), for the full text of the law.

#### What do providers need to do?

Providers must initiate a background study for all people who were not previously required to have a study. This includes anyone who is working in (see definition below) a program, even if they do not provide direct contact services.

**Working in** includes any person in the setting – whether or not the person will have direct contact with a child served by the program – 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 child at the program that are **not** part of the child foster residence setting’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 program 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 program.

In addition to persons working in a program, all other individuals as required by Minnesota Statutes, section 245C.03, subdivision 1, paragraph (a), must have a background study.

## When background studies must occur

### Overview

The law was amended to clarify the time frames by which a setting 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 foster residence setting. For people in roles that do not include working in a setting, 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 foster residence setting;
- 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 foster residence setting, lives in the setting;
- when directed to by DHS, if there is reasonable cause for a person age ten to 12, who is not receiving services from the setting 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 setting.

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 foster residence setting or for individuals who do not work in your setting, 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 Nurse and infant sleep position**

#### **Overview**

An advanced practice registered nurse or a physician may direct an alternative sleeping position for an infant. Previously, only an infant's physician was allowed to provide this direction. APRNs may include Certified Nurse Practitioners and Clinical Nurse Specialists, among others. More information about APRNs can be found on the [Minnesota Board of Nursing website](#). This change is effective August 1, 2020. See [Minnesota Session Laws - 2020, Regular Session, Chapter 115, Article 4, Section 78](#), 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 child foster residence settings. 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](#))