

SAMPLE:
NEGATIVE ACTION RECOMMENDATION: Revocation

January 14, 2016

Ms. Emily Piper, Commissioner
Minnesota Department of Human Services
Office of Inspector General
Licensing Division
P.O. Box 64242
St. Paul, MN 55164-0242

Attention: Regina Wagner, Director
Licensing Division

Re: Recommendation for revocation of AFC License

License Holder
Adult Foster Care
1000 Compliance Lane
Metropolis, MN 12345

Dear Commissioner Piper:

It is the recommendation of Family County Human Services that the adult foster care license of License Holder be revoked based on the failure to comply with the following Minnesota Rules and/or Statutes governing the operation of a licensed adult foster care home:

Minnesota Statutes, section 245A.07 SANCTIONS.

Subd. 1. **Sanctions; appeals; license.** (a) In addition to making a license conditional under section 245A.06, the commissioner may suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, if a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22, or if a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

Minnesota Statutes, section 245A.04 APPLICATION PROCEDURES.

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

Minnesota Statutes, section 245A.04 APPLICATION PROCEDURES.

Subd. 5. **Commissioner's right of access.** When the commissioner is exercising the powers conferred by this chapter and section 245.69, the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records. Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Minnesota Statutes, section 245C.03 BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED.

Subd. 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

- (1) the person or persons applying for a license;
- (2) an individual age 13 and over living in the household where the licensed program will be provided;
- (3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;
- (4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);
- (5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause;
- (6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause . . .

Minnesota Statutes, section 245C.04 WHEN BACKGROUND STUDY MUST OCCUR.

Subd. 1. **Licensed programs.**

(f) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

Minnesota Rules, part 9555.6105 APPLICABILITY AND PURPOSE.

Parts 9555.5105 and 9555.6105 to 9555.6265, as authorized by Minnesota Statutes, chapter 245A, govern the licensure of the operator of an adult foster home. The purpose of parts 9555.5105 and 9555.6105 to 9555.6265 is to establish procedures and standards for licensure and operation of an adult foster home so minimum levels of care are provided and the health, safety, and rights of residents are assured.

Minnesota Rules, part 9555.6125 LICENSING STUDY.

Subp. 1. **Access to residence.** The applicant shall give the commissioner access to the residence to determine compliance with parts 9555.5105 and 9555.6105 to 9555.6265. Access shall include the residence to be occupied as an adult foster home; any adjoining land or buildings owned or operated by the applicant or operator in conjunction with the provision of adult foster care and designated for use by a resident; noninterference in interviewing caregivers, roomers, or household members; and the right to view and photocopy the records and documents specified in parts 9555.6235 and 9555.6245. The commissioner shall have access to the residence at any time during the period of licensure to determine whether the operator is in compliance with parts 9555.5105 and 9555.6105 to 9555.6265.

Minnesota Rules, part 9555.5105 DEFINITIONS.

Subp. 16. **Household member.** "Household member" means any person living in the adult foster home more than 30 consecutive calendar days in any 12 month period who is not a resident.

Minnesota Rules, part 9555.6125 LICENSING STUDY.

Subp. 2. **Inspections.** Any condition cited by a fire marshal, building official, or health authority as hazardous or creating an immediate danger of fire or threat to health and safety must be corrected before a license is issued or renewed by the department.

Subp. 12. **Change in license terms.** The following shall apply to changes in the terms of licensure:

B. The operator must notify the commissioner and the studies in part 9555.6125 must be completed:

(2) when there is an addition of any adult or child who is or will be a roomer, resident, household member, or caregiver . . .

Minnesota Rules, part 9555.6175 COOPERATE AND REPORT TO AGENCIES.

Subp. 3. **Reporting to local agency.** The operator shall ensure that the local agency is told:

A. within five calendar days of any change in the regular membership of the household or caregiver's employment status...

Minnesota Rules, part 9555.6185 FOSTER CARE TRAINING.

Subp. 2. **Training requirements.** In addition to the orientation training, caregivers must complete the training designed to meet the needs of the residents in care in any of the subject areas and in the amount specified in subpart 4. The operator must ensure that a record of training completed is maintained.

A. Caregivers with zero to five years of licensure or experience as an adult foster home caregiver must complete 12 hours training a year. . .

Violation(s): On June 3, 2010, Family County Human Services received information from the city inspector that showed Ms. Holder's adult foster care home was condemned on April 21, 2010. After receiving the letter, on June 4, 2010, Family County made an unannounced visit to Ms. Holder's home to follow-up on the letter from the city inspector. During the visit, the licenser observed a "notice of condemnation" affixed to the front door and no one was at home. The letter from the city inspector (attachment E) is attached. Ms. Holder did not report to Family County that her home had been condemned.

Previously, on December 3, 2009, Family County received a complaint regarding License Holder's AFC home. At 2:30 PM, on December 4, 2009, Family County made an unannounced visit to Ms. Holder's AFC home to investigate the complaint. Ms. Holder refused to allow the licenser into the home. Ms. Holder told the licenser it was rude to show up at her home without calling first. The licenser informed Ms. Holder that denying the licenser access may result in a sanction against her license to provide AFC services. Ms. Holder did not allow the licenser into the home.

The complaint under investigation alleged that Ms. Holder had a new boyfriend who had moved into the adult foster care home. This individual was reported to have a criminal background. Family County determined that an individual moved into Ms. Holder's home on October 12, 2009, and that Ms. Holder had failed to report a change in the household membership and failed to submit a background study for the individual.

On December 4, 2009, Family County issued a correction order for the above violations. The complaint (attachment A), site visit notes (attachment B), and correction order (attachment C) are attached.

Ms. Holder was initially licensed January 1, 2007. On December 3, 2007, Family County licensing staff completed a relicensing visit at Ms. Holder's home. During the visit, Ms. Holder failed to provide documentation of training completed during 2007. A correction order was issued for this violation. The correction order (attachment D) is attached.

Family County has reviewed this recommendation with the county attorney. The county attorney provided the Family County licenser with a letter supporting this recommendation. The letter (attachment F) is attached.

In summary, based on the serious nature of the violations that occurred including, Ms. Holder's action of denying the commissioner access to her adult foster care home, which demonstrated a failure to comply with the commissioner; the condemnation of Ms. Holder's home and failure to report the condemnation; Ms. Holder's failure to report that a new household member moved into her home and her failure to submit a background study for the new household member prior to allowing direct contact or access to persons served; and the additional violation of failing to comply with training requirements, Family County recommends that Ms. Holder's adult foster care license be revoked.

As the Family County licensing worker, I will continue to monitor the above situation until a decision is issued by DHS. Thank you for considering this recommendation and please feel free to contact me at 651-555-5555 with any questions.

Sincerely,

Rhonda Regulator
Adult Foster Care Licenser
Family County

enclosures