

TO: ALL APPLICANTS AND LICENSE HOLDERS

FROM: Alyssa Dotson, Deputy Inspector General
Licensing Division
Office of Inspector General

DATE: January 2, 2025

SUBJECT: Commissioner Access - Inspections and Investigations

Minnesota Statutes, chapter 245A, requires applicants and license holders of programs licensed by the Department of Human Services (DHS) to cooperate with the Commissioner of Human Services (or the Commissioner's representative) when DHS is conducting licensing reviews, inspections, or related activities. The term "certification" and its derivatives have the same meaning as, and may be substituted for, the term "licensure" and its derivatives. Minn. Stat. § 245A.02, subd. 3a.

Minnesota Statutes, chapter 245H, requires applicants and certification holders of license-exempt child care centers certified by DHS to cooperate with the Commissioner when DHS is conducting licensing reviews, inspections, or related activities.

Under Minnesota Statutes, sections 245A.04, subd. 5, and 245H.04, **applicants, license holders, and certification holders must provide access to the physical plant and grounds, documents and records (including records maintained in electronic format), persons served by the program, and staff**, and must allow the Commissioner to photocopy, photograph, and make audio and video recordings during the inspection. (Persons receiving services from the program may refuse to be interviewed, photographed, or audio or videotaped.) The Commissioner must be given access without prior notice and as often as the Commissioner considers necessary if the Commissioner is investigating alleged maltreatment, conducting a licensing inspection, or investigating an alleged violation of applicable laws or rules.

At a minimum, in order to license programs and conduct investigations, the Licensing Division requires access, upon request, to the following information:

1. All information relevant to DHS investigations of maltreatment or other violations of applicable laws and rules;
2. All governing body materials (such as meeting minutes);
3. All administrative materials, including facility investigation of employee misconduct and internal reviews of reported or suspected maltreatment;
4. All staff records including staff-to-staff communication logs;

5. All client records including communication logs; and
6. All documentation regarding program operations (such as policies and procedures).

The Commissioner may suspend, revoke, or deny a license, or impose a fine if an applicant or a license holder fails to comply with applicable laws or rules, or 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.

The Commissioner may decertify a certified license -exempt child care center if a certification holder knowingly withholds relevant information from or gives false or misleading information to the Commissioner.

DHS' Statutory Authority to Access Protected Records and Information

Some federal rules and statutes restrict access to certain types of information and records. However, many of those rules and statutes have exceptions that allow access to agencies such as DHS. DHS is authorized to conduct licensing inspections and investigations and other licensing-related activities under Minnesota Statutes, sections 245A.04 and 245H.04; maltreatment investigations under Minnesota Statutes, chapter 260E (Reporting of Maltreatment of Minors) and Minnesota Statutes, section 626.557 (Reporting of Maltreatment of Vulnerable Adults Act); and background studies under Minnesota Statutes, chapter 245C. All information received as a result of these licensing-related activities is protected under the Minnesota Data Practices Act. See Minnesota Statutes, section 13.46.

Alcohol and Drug Abuse Patient Records

42 CFR Part 2 permits programs to disclose records containing patient identifying information to any government agency authorized by law to regulate its activities. See 42 CFR § 2.53. Further, those authorized government agencies may copy and remove such records, in accordance with CFR § 2.53.

The Commissioner shall manage records, including patient-identifying information, in accordance with 42 CFR § 2.16 and 2.53, and all applicable federal, state, and local laws.

Therefore, applicants and license holders must provide the Commissioner access to all documents and information required to conduct these inspections and investigations, including patient records and records containing patient identifying information.

HIPAA Compliance

The Health Insurance Portability and Accountability Act (HIPAA) permits a covered entity to release protected health information (PHI) to government authorities authorized to receive reports of child abuse or neglect or conduct maltreatment investigations of minors and vulnerable adults. See 45 CFR § 164.512 (b)(1)(ii), and 45 CFR. § 164.512 (c) and § 164.512 (a).

Therefore, applicants and license holders must provide the Commissioner access to all documents and information required to conduct these inspections and investigations, including all private and confidential information and protected health information.

VAWA Compliance

The Violence Against Women Act (VAWA) permits a license holder to grant access to data obtained under VAWA when the access is granted by statute or court mandate. See 42 USC § 13925(b)(2)(C). In Minnesota, state statute requires license holders to allow the Commissioner access to records and data when the Commissioner is investigating allegations of maltreatment and conducting licensing inspections, investigations, or other licensing -related activities. This grant of access includes access to (1) the physical plant and grounds where the program is provided, (2) documents and records, including electronic records, and (3) persons served by the program. Minnesota Statutes, section 245A.04, subd. 5.

Therefore, applicants and license holders must provide the Commissioner access to all documents and information required to conduct these inspections and investigations, including those containing personally identifying information, personal information, individual information, and individual client information.



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